CHARLES V, *MONARCHIA UNIVERSALIS* AND THE LAW OF NATIONS (1515–1530)

by

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Introduction

Nowadays most international legal historians agree that the first half of the sixteenth century – coinciding with the life of the emperor Charles V (1500–1558) – marked the collapse of the medieval European order and the very first origins of the modern state system[1]. Though it took to the end of the seventeenth century for the modern law of nations, based on the idea of state sovereignty, to be formed, the roots of many of its concepts and institutions can be situated in this period[2].

While all this might be true in retrospect, it would be by far overstretching the point to state that the victory of the emerging sovereign state over the medieval system was a foregone conclusion for the politicians and lawyers of

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1. W.G. Grewe, *Was ist klassisches, was ist modernes Völkerrecht?*, in: Idee und Realität des Rechts in der Entwicklung internationaler Beziehungen, Festgabe für Wolfgang Preiser, eds. A. Böhm, K. Lüdersen and K.-H. Ziegler, Baden Baden 1983, p. 111–131; idem, *Epochen der Völkerrechtsgeschichte*, Baden Baden 1984, p. 33; A. Truyol y Serra, *Histoire du droit international public*, Paris 1992, p. 38–46; K.-H. Ziegler, *Völkerrechtsgeschichte, Ein Studienbuch*, Munich 1994, p. 120–121 and p. 145–146.

2. Before the twentieth century, most scholars held to the opinion that the modern law of nations originated from the seventeenth century with the writings of Hugo Grotius (1583–1645) and the peace treaties of Westphalia (1648) as starting points. The revaluation of the role played by the Spanish neo-scholastics such as Francisco de Vitoria (ca. 1480–1546) and Francisco Suarez (1548–1617) was seminal to putting backwards the beginning of the epoch of modern international law by more than a century. On that: W.G. Grewe, *Vom europäischen zum universellen Völkerrecht, Zur Frage der Revision des europazentrischen Bildes der Völkerrechtsgeschichte*, Zeitschrift für ausländisches öffentliches Recht und Völkerrecht, 42 (1982), p. 449–451; idem, *Grotius – Vater des Völkerrechts?*, Der Staat, 23 (1984), p. 161–178; W. Preiser, *Über die Ursprunge des modernen Völkerrechts*, in: Internationalrechtliche und staatsrechtliche Abhandlungen: Festschrift für Walter Schatzel zum 70. Geburtstag, ed. E. Bruel, Düsseldorf 1960, p. 373–387; C.R. Rossi, *Broken Chain of Being: James Brown Scott and the Origins of Modern International Law*, The Hague, London and Boston 1998; K.-H. Ziegler, *Hugo Grotius als 'Vater des Völkerrechts'*, in: Gedächtnisschrift für Wolfgang Martens, eds. P. Selmer and I. von Munch, Berlin and New York 1987, p. 851–858.

the era. During the period – more specifically the second and third decades of the century – there was an important revival of the medieval ideal of Christian unity under the leadership of a universal monarch. That this revival would prove to be a final convulsion of the old can only be stated with the benefit of hindsight.

Medieval Europe defined itself as a religious, cultural and to a certain extent political and juridical unity, known as the *respublica christiana*. Whereas the Latin world consisted of many more or less autonomous political entities, from large dynastic monarchies down to small fiefs and free cities, they were all part of a greater hierarchical and juridical *continuum* under the supreme, if theoretical, leadership of the pope and the Holy Roman Emperor. The learned *ius commune* – Roman and canon law – and the general rules and principles of feudal law provided a framework of juridical concepts and political ideals that was common to the whole of the Latin West and on which the legal organisation of international relations could be built[3]. Both the universal powers, the pope and the emperor, had lost much of their authority long before the sixteenth century. Nevertheless, the ideal of the *respublica christiana* as well as the theoretical supremacy of the pope and to a much lesser extent the emperor retained some value in diplomatic and juridical discourse.

At the coming to power of Charles V (1515–1558), first in the Burgundian Netherlands (1515) and Spain (1516), later as Holy Roman Emperor (1519), the *respublica christiana* was in deep turmoil[4]. In the decade to follow, the crisis would only deepen while at the same time the appeal to the old medieval concepts was heard once again. Different factors determined this.

First, the period between 1480 and 1515 had witnessed the emergence – or re-emergence – of three great dynastic powers: the French kingdom of the Valois, the Habsburg power complex in the Empire and the Netherlands and the kingdom of Spain. By 1515, these powers had been involved in a struggle for hegemony in Italy, and thereby in the whole of Europe, for over two decades[5]. The personal union between the Habsburg and Spanish territories would only sharpen the conflict. Both the Valois – under Charles VIII (1483–1498), Louis

3. Grewe, *Epochen*, p. 57–82; Ziegler, *Völkerrechtsgeschichte*, p. 97, p. 107–111, p. 120–127 and p. 133–137.

4. Charles V (born 1500) inherited his territories and titles from his four grandparents. His paternal grandfather was the Holy Roman Emperor Maximilian I of Habsburg, archduke of Austria; his paternal grandmother was Mary (1477–1482) of Burgundy, heiress to the Burgundian Netherlands. His maternal grandparents were Ferdinand, king of Aragon, Sardinia and Sicily and Isabelle (1471–1504), queen of Castille. In fact during most of Charles's reign as king of Castille (from 1516), his mother Joan was the rightful queen but she was found incapable of reigning. After the death of the king of Hungary and Bohemia in 1526, Charles and his brother Ferdinand pushed their claim to the titles of this relative as well.

5. On the Habsburg–Valois struggle in the early sixteenth century: P. Chaunu and M. Escamilla, *Charles Quint*, Paris 2000, p. 141–316; E. Füter, *Geschichte des europäischen Staatensystems von 1492–1559*, Munich 1919, p. 250–299; R.J. Knecht, *The Rise and Fall of Renaissance France*, London 1996; F. Mignet, *Rivalité de François Ier et de Charles Quint*, 2 vol., Paris 1875; G. Parker, *De politieke wereld van Karel V*, in: Karel V 1500–1558, De keizer en zijn tijd, ed. H. Soly, Antwerpen 1999, p. 113–225; F.C. Spooner, *The Habsburg–Valois Struggle,* in: The New Cambridge Modern History, vol. 2, Cambridge 1968, p. 334–358.

XII (1498–1515) and Francis I (1515–1547) – and the Habsburgs revived the ideal of a *respublica christiana* under the supreme secular leadership of a *monarcha universalis*. But it only held attraction for them in so far as their dynasty would provide that monarch. In this struggle for the leadership over the *respublica christiana*, the ideal of Christian unity was, ironically enough, the main victim[6].

Second, there was the failure of a common offensive against the Turks. In the face of the spectacular conquests of the Turks during the 1510s and 1520s in the Eastern Mediterranean – Syria and Egypt in 1516–1517, Rhodes in 1522 – and in South-Eastern-Europe – Belgrade in 1521 and the kingdom of Hungary in 1526 –, Christian unity as a precondition to a counteroffensive against the common enemy of Christianity gained importance once again, at least in theory. A common crusade to defend the Christian lands or to reconquer recently lost territories was high on the diplomatic agenda. In 1517, pope Leo X (1513–1521) unilaterally proclaimed a five-years general truce for all Christian powers[7]. In 1518 the French and English kings signed the treaty of London, thus implementing the papal goals of peace within the Christian world and of common warfare against the infidels. By January 1519, Charles adhered to the treaty and thus a general peace among the leading powers was reached[8]. In 1523, the outbreak of the war between Charles V, Francis I (1515–1547) of France and Henry VIII (1509–1547) of England put an end to the illusion. Afterwards, the idea of a common struggle against the infidels hardly stood a chance. By 1536 Francis I had entered an alliance with the Ottoman Empire against the Habsburgs[9]. Here again, the question who, as secular head of Christianity, would lead the common strife caused the undoing of the endeavour itself.

Third, there was of course the Reformation. Whereas by 1530, few European monarchs and political leaders were ready to accept the schism within the Catholic Church to be final and irreparable, it is undeniable that it severely challenged the ideal of Christian unity and that it deepened the divisions between the European powers[10]. By providing the French king with new objective allies against Charles V, the Reformation would greatly contribute to the ongoing struggle for hegemony in Europe.

6. On the universal aspirations of Francis I at his accession: A. Buisson, *Le chancelier Antoine Duprat*, Paris 1935, p. 134–144.

7. By papal bull of 6 March 1517, published in E. Charrière, ed., *Négociations de la France dans le Levant ou Correspondance, Mémoires et Actes diplomatiques*, [Collection de documents inédits sur l'histoire de France], vol. 1, Paris 1840, p. 63–68.

8. The peace of London dates from 2 October 1518. Charles V ratified it on 14 January 1519. For a critical edition of the ratification, including the treaty text see M. Mariño, ed., *Tratados internacionales de España. Carlos V*, vol. 3–2, Madrid 1984, p. 217–235 (hereinafter *Mariño*).

9. M. Hochedlinger, *Die französisch–osmanische 'Freundschaft' 1525–1792, Element antihabsburgischer Politik, Gleichgewichtsinstrument, Prestigeunternehmung, Aufriss einer Problem*, Mitteilungen des Österreichischen Instituts für Geschichtsforschung, 102 (1994), p. 115–119; D.M. Vaughan, *Europe and the Turk, An pattern of alliances 1350–1700*, Liverpool 1954, p. 104–128.

10. During the 1530s the hope that a general council or an imperial diet would make an end to the schism was vivid. Even after the failure of the 1530 Augsburg diet and the beginning of the unilateral, Catholic council at Trente (1545–1563), this hope did not immediately disappear. H.J. Grimm, *The Reformation Era 1500–1650*, New York 1973, p. 66–74.

Monarchia universalis

Charles V played a pivotal role in what proved to be the last convulsion and the final undoing of the medieval legal order of Europe. In his own time, the accession of the young prince as ruler of the Spanish, Habsburg and Burgundian lands in 1515–1516, his election as emperor in 1519 and the conquest of a huge new empire in Mexico by Hernan Cortes (1485–1547) in 1521 were greeted as the dawn of a new era[11]. In the light of the vivid desire for peace and unity among the Christian princes in order to launch a common counteroffensive against the victorious Turks, it can hardly come as a surprise that this young namesake of Charlemagne (768–814) was considered by many to be God's own instrument to unite Christianity, drive out the infidels and restore the Church. The emperor Maximilian's (1493–1519) astrologer Johannes Lichtenberger (ca. 1440–1503) had foretold that a second Charlemagne would be born to the Burgundian dynasty to destroy the Antichrist and chastise the Church[12]. The Dutch humanist Desiderius Erasmus (1469–1536) went as far as to call the young emperor the only equal of the Ottoman sultan, Süleyman the Magnificent (1520–1566)[13].

Over the last century, there has been a lot of scholarly debate on the question if and how Charles V and his government aspired to *monarchia universalis*, or secular overlordship within the Latin West. In Germany, Karl Brandi and Peter Rassow have for a long time dominated the debate. According to Rassow, Charles V used the imperial title and the concept of a universal – i.e., European – monarchy to strengthen the otherwise weak bonds between his different territories. For Rassow, Charles's imperialism was rooted in the medieval – Ghibelline, Dantesque and Bartolist – ideas on empire and *monarchia universalis*[14]. Brandi assessed Charles V's imperial aspirations as somewhat less important and stressed the dynastic element in his international politics. While Rassow saw Charles as the last 'Roman emperor' in the tradition of Charlemagne, Frederick Barbarossa (1152–1190) and Frederick II (1212–1250), Brandi considered him the first modern empire builder, working towards a centralised and bureaucratic territorial empire[15]. The Spanish historian Ramón Menéndez Pidal held that Rassow and Brandi overstressed the weight of the Holy Roman Empire in Charles's calculations and overlooked the fact that he was the founder of a Spanish empire[16].

11. J.M. Headley, *Germany, the Empire and Monarchia in the Thought and Policy of Gattinara*, in: Das römisch-deutsche Reich im politischen System Karls V., ed. H. Lutz, Munich 1982, p. 15.

12. M. Tanner, *The Last Descendant of Aeneas, The Hapsburgs and the Mythic Image of the Emperor*, New Haven and London 1993, p. 124–126.

13. J.D. Tracy, *Erasmus of the Low Countries*, Berkeley 1996, p. 194–195.

14. P. Rassow, *Die Kaisersidee Karls V. dargestellt an der Politik der Jahre 1528 bis 1540*, Graz 1932; idem, *Die politische Welt Karls V.*, Munich 1942; idem, *Der letzte Kaiser des Mittelalters*, Göttingen 1957.

15. K. Brandi, *The Emperor Charles V, The Growth and Destiny of a Man and a World-Empire*, London 1939.

16. R. Menéndez Pidal, *Idea imperial de Carlos V*, Madrid 1963. See on Brandi, Menéndez Pidal and Rassow: A. Kohler, *Quellen zur Geschichte Karls V.*, Darmstadt 1990, p. 11; H. Lutz, *Karl V., Biographische Probleme*, in: Biographie und Geschichtswissenschaft. Aufsätze zur Theorie und Praxis biographischer Arbeit, eds. G. Klingenstein, H. Lutz and G. Strouzh, Vienna 1979, p. 159–161. See also: Antonio Truyol y Serra, *Staats-*

During the last two decades, much research has been done in the field of early modern imperialism, both in its European and outer-European dimensions. While this second question deals with the justification of the Iberian and later French, British and Dutch conquests outside Europe[17], the first question concerns the theoretical implications and the practical influence of the ideal of a European empire[18]. Of course, the aspirations of Charles V and his government are central to the discussion of sixteenth century imperialism.

Before going onto the assessment by recent scholars of Charles V's aspiration to *monarchia universalis*, it is appropriate to clarify some concepts and terms. Both the medieval *respublica christiana* and the modern European state system can be considered what Hedley Bull, one of the leading scholars of the influential British Committee for the Theory of International Relations, called an international society. According to Bull, an international system is a group of political entities that are bound together in a network of interactions closely enough 'to make the behaviour of each a necessary element in the calculations of the other'. An international society is also bound together by a set of shared values, rules and institutions[19].

One of the other chairmen of the Committee, Adam Watson, put out the different historical international systems and societies on a gradual scale reflecting the measure of independence of their members. At one end of the '*pendulum*' is a system where the members are completely independent or sovereign; at the other end stands what Watson calls an empire. The modern European state system of the seventeenth, eighteenth and nineteenth centuries can be situated at the 'independent' end of the spectrum. An empire is different from hegemony inasmuch as the imperial power also intervenes in the domestic affairs of the other members, whereas a hegemonic power only has control over the international policy of the other entities[20].

räson und Völkerrecht in der Zeit Karls V., Völkerrecht und rechtliches Weltbild, Festschrift für Alfred Verdross, ed. F.A. von der Heydte, Vienna 1960, p. 273–292. For the most recent literature on Charles V and on his imperial ideas: W.P. Blockmans, *Keizer Karel V, De utopie van het keizerschap*, Leuven 2000; M. Fernández Alvarez, *Carlos V, el César y el Hombre*, Madrid 1999; A. Kohler, *Karl V. 1500–1558, Eine biographie*, Munich 1999; S. Macdonald, *Charles V, Ruler, dynast and defender of the faith*, London 2000; E. Schulin, *Kaiser Karl V., Geschichte eines übergrossen Wirkungsbereiches*, Stuttgart 1999.

17. See for recent literature: J. Fisch, *Die europäische Expansion and das Völkerrecht, Die Auseinandersetzungen um den Status der überseeischen Gebiete vom 15. Jahrhundert bis zur Gegenwart*, Stuttgart 1984; J. Muldoon, *The Americas in the Spanish World Order*, Philadelphia 1994; A. Pagden, *European Encounters with the New World*, New Haven and London 1993; idem, *Lords of all the World: Ideologies of Empire in Spain, Britain and France c. 1500–c. 1800*, New Haven and London 1995; A.P. Rubin, *International Law in the Age of Columbus*, Netherlands International Law Review, 39 (1992), p. 5–35; A. Truyol y Serra, *The Discovery of the New World and International Law*, University of Toledo Law Review (1971), p. 305–321.

18. Most influential are the works of: F. Bosbach, *Monarchia Universalis, Ein politisches Leitbegriff der frühen Neuzeit*, Göttingen 1986; idem, *Papsttum und Universalmonarchie im Zeitalter der Reformation*, Historisches Jahrbuch, 107 (1987), p. 44–76; F. Yates, *Astraea: the Imperial Theme in the Sixteenth Century*, London 1975. More recent: J. Muldoon, *Empire and Order, The Concept of Empire, 800–1800*, London 1999.

19. H. Bull, *The Anarchical Society, A Study of Order in World Politics*, 2nd ed., New York 1995, p. 9–19.

20. A. Watson, *The Evolution of International Society, A comparative historical analysis*, London 1992, p. 13–16.

Watson suggests another possible distinction between different kinds of hegemonies[21]. At the one hand, there are hegemonial systems where the position of the hegemonic power is only factual. At the other hand, there are systems – or better societies – where this position is juridically recognised through a broad consensus within the society. In this last case, the special rights and powers of the hegemonic power will be expressed in the international law applicable within that specific international society. In this article, the first kind of hegemony is further referred to as factual hegemony. For the second kind, I prefer the term juridical hegemony or overlordship[22].

Scholars like Yates or Bosbach who discussed the early modern concept of *monarchia universalis*, mostly tried to define or circumscribe it by referring to the ancient or medieval ideas, which were contained in it. From the late eleventh century on, the Investiture Controversy influenced the debate. Both canon and Roman lawyers were strongly but not exclusively concerned with strengthening the position of the pope and the Holy Roman Emperor in relation to the other[23]. During the thirteenth and fourteenth centuries, the ongoing strife among pro-papal Welfs and pro-imperial Ghibellins in the North of Italy greatly stimulated the scholarly debate.

In his *De monarchia*, Dante Alighieri (1265–1321) supported the claim of the emperor to a secular empire, and rejected any authority of the pope over the emperor. Dante repeated all the main arguments tradition could provide to fortify the imperial claim to secular overlordship within the *respublica christiana* and to make his power independent from the Church or the pope. His work, although far from original, was a brilliant synthesis of the pro-imperial, Ghibelline tradition. As such, it greatly influenced the main Roman lawyers of the Late Middle Ages, Bartolus da Sassoferrato (1314–1357) and Baldus de Ubaldis (1327–1400), and through them several early modern thinkers[24].

Dante argued that the end goal of history was mankind as a whole. Therefore, a secular monarchy, which encompassed mankind – or better Christianity –, was necessary. One of the chief arguments for the aspiration to secular overlordship of the Holy Roman Emperor was the doctrine of the *translatio imperii*. From the Assyrians on, history was a sequence of empires up to the Roman Empire. After the fall of the Western Roman Empire, the imperial idea was taken over first by the Franks, then by the German emperors of the Ottonian and Hohenstaufen or Ghibelline dynasties. Inspired by the doctrine of Roman law, Dante strongly defended the autonomy of the emperor in relation to the spiritual

21. Watson, *Evolution*, p. 15.

22. Martin Wight, another chairman of the Committee, referred to this as suzerainity, but this term is historically strictly limited to the feudal system: M. Wight, *Why is there no International Theory?*, in: Diplomatic Investigation, Essays in the theory of international politics, eds. H. Butterfield and M. Wight, London 1966, p. 17–24; M. Wight, *Systems of States*, Leicester 1977, p. 21–46.

23. Kenneth Pennington points out that modern historiography overemphasises the importance of the imperial–papal debate, and neglects the other aspects of the imperial theories: *The Prince and the Law, 1200–1600. Sovereignty and Rights in the Western Legal Tradition*, Philadelphia 1993, p. 30.

24. However, Bartolus and Baldus did not agree with Dante on the autonomous legitimisation of the secular authority from the pope: Pennington, *The Prince and the Law*, p. 197.

power. The powers of the emperor did not depend on a papal delegation of power, but on the so-called *lex regia* by which the Roman people had delegated their authority to the emperor. As the people held their powers from God, the imperial authority indirectly came from God as well. Thus, the emperor was as much Christ's vicar as the pope was. Dante adhered to a quite strict separation of the spiritual and temporal powers of the pope and emperor. Where he referred to the doctrine of the two swords of pope Gelasius I (492–496)[25], he stated that mankind had two goals: happiness in this world and salvation in the next. Therefore, mankind needed two distinct orders under the supreme authority of two different heads. The pope only held a ceremonial supremacy over the emperor, but could not intervene in his domain. The Romanist defenders of imperial authority as well as Dante associated the universal aspirations of the emperor with the universal application of the imperial, Roman law of the emperor Justinian (529–565). Imperial authority was vested in the law. As the lawgiver, the emperor was the fountain of justice and the bringer of peace. Medieval authors traced this idea to Virgil's Golden Age of Peace that was brought about by the reign of Caesar Augustus (27 B.C.–14 A.D.)[26].

Charles V, the chancellor Gattinara and the ideal of *monarchia universalis*

If modern historiography is close to unanimous on one aspect of Charles V's position on *monarchia universalis*, it is on the fact that his imperial chancellor, the Piemontese Mercurino Arborio di Gattinara (1465–1530)[27], was the main defender of the idea of *monarchia universalis* during the first decade of Charles's reign and that he had quite an influence on the young emperor. Though, according to modern historians, Charles V did not follow the imperial policy Gattinara proposed all the way, Gattinara's ideal formed one of the factors in the Caroline international strategy[28].

25. On this doctrine: I.S. Robinson, *Church and Papacy*, in: The Cambridge History of Medieval Political Thought c. 350–c. 1450, ed. J.H. Burns, Cambridge 1988, p. 288–300.

26. For good syntheses of the medieval theory of empire: Bosbach, *Monarchia universalis*, p. 19–29; J. Canning, *The Political Thought of Baldus de Ubaldis*, Cambridge 1987, p. 17–92; C. Davis, *Dante and the Idea of Rome*, Oxford 1957, p. 139–194; J.M. Headley, *Rhetoric and Reality: Messianic, Humanist and Civilian Themes in the Imperial Ethos of Gattinara*, in: Prophetic Rome in the High Renaissance Period, ed. M. Reeves, Oxford 1992, p. 241–242; Muldoon, *Empire and Order*, p. 21–113; Pennington, *The Prince and the Law*, p. 8–118; Yates, *Astraea*, p. 1–17.

27. The most extensive biographical studies on Gattinara are: C. Bornate, *Historia vite et gestorum per dominum magnum cancellarium (Mercurino Arborio di Gattinara), con note, aggiunte e documenti*, Miscellanea di storia italiana, 17 (1915), p. 231–585; G. Claretta, *Notice pour servir à la vie de Mercurin de Gattinara, Grand chancelier de Charles-Quint d'après des documents originaux*, Mémoires et documents publiés par la Societé savoisienne d'histoire et d'archéologie, 27 (1898), p. 246–345.

28. Brandi, *Charles V*, p. 90–91; Bosbach, *Monarchia Universalis*, p. 53–56; Kohler, *Karl V.*, p. 94–100; Lutz, *Karl V.*, p. 159–163; Menéndez Pidal, *La idea imperial de Carlos V*, p. 16–21; Rassow, *Der leztze Kaiser*, p. 23; Yates, *Astraea*, p. 21. The most important specialist on Gattinara is however J.M. Headley: *The Habsburg World Empire and the Revival of Ghibellinism*, Journal of Medieval and Renaissance Studies, 7 (1978), p. 93–127; idem, *Gattinara, Erasmus and Imperial Configurations of Humanism*, Archiv für

While not completely absent before[29], the imperial theme only came to the foreground once Gattinara became grand chancellor to Charles (15 October 1518) and once Charles V was elected emperor as successor to his grandfather Maximilian (28 June 1519). The destruction and conquest of a whole empire in Mexico in the years 1519 to 1521 further strengthened the convictions of the sponsors of Caroline imperialism.

Before 1519, the Burgundian faction dominated the government of the young king. The international policy of this faction affirmed the traditional aims of the Burgundian dynasty: commercial alliance with England and accommodation with France regarding the Burgundian claims, such as sovereignty over Flanders and Artois and recovery of the duchy of Burgundy. In the short run, the desire of consolidating power in Castile and Aragon added to the will of Charles's advisors to reach a peace with France. The accession of Charles as king of Castile and Aragon added however the conflict over the Spanish conquest of Navarre (1512) and the long French–Aragonese wars over Naples to the issues at stake between the Valois and the Habsburgs. Though the Burgundian faction had a hard time in accepting this, the addition of these French–Spanish conflicts gave the traditional French–Burgundian rivalry a truly European dimension and ruled out the possibility of an easy accommodation[30].

While as the oldest son of Maximilian's only son, Charles held the strongest claim to the imperial throne, his government and councillors were far from unanimous that Charles had to become emperor. His aunt, Margareth of Austria (1480–1530), regent of the Netherlands, supported the candidature of Charles's brother the archduke Ferdinand (1503–1564) because such a move would allow the Habsburg dynasty to push it claims more effectively[31]. Charles himself had to write his aunt to make her change her mind[32]. *A fortiori*, the idea that Charles was destined to be the new Charlemagne and *dominus mundi* was not really on the agenda before 1519.

The rise to power of Gattinara and the subsequent death of the leader of the Burgundian faction, William de Croy, lord of Chièvres (1458–1521), changed that. During the 1520s, the ambition to secular overlordship within the Christian world was certainly one of the policies promoted at Charles's court – by the Gattinara faction – and to a certain extent influenced Charles's international politics and his vision of the European legal order. While, thanks to the en-

Reformationsgeschichte, 71 (1980), p. 64–98; idem, *Germany*, p. 15–33; idem, *The emperor and his chancellor, A Study of the imperial chancellery under Gattinara*, Cambridge 1983; idem, *Rhetoric and Reality*, p. 241–270.

29. Headley, *Habsburg World Empire*, p. 93–96.

30. For the international politics of Charles V up to 1530: Brandi, *Charles V*, p. 90–289; Chaunu and Escamilla, *Charles Quint*, p. 57–316; J.G. Dickinson, *Peacemaking in the Renaissance*, Philadelphia 1986, p. 32–59; Kohler, *Karl V.*, p. 153–200; H. Lutz, *Kaiser Karl V., Frankreich und das Reich*, in: Frankreich und das Reich im 16. und 17. Jh., eds. H. Lutz, F.H. Schubert and H. Weber, Göttingen 1968, p. 7–19; *Mariño* vol. 3–2, p. xvii–lii and vol. 3–3, Madrid 1986, p. xix–lxii; Mignet, *Rivalité* vol. 1 and 2; Parker, *Politieke wereld*, p. 113–157; Rassow, *Die politische Welt*, p. 9–28; idem, *Der letzte Kaiser*, p. 7–30; R.B. Wernham, *Before the Armada. The Growth of English Foreign Policy 1485–1588*, London 1966, p. 89–121.

31. Rassow, *Die politische Welt*, p. 22.

32. Charles V to Margareth, 5 March 1519 in: Kohler, *Quellen*, p. 41.

deavours of John Headley, we now have quite a clear view of the concept of *monarchia universalis* as defended by Gattinara, little if no attention has been devoted to the question if and how these ideas were implemented in reality and whether they had any influence on international legal practice in the time of Charles V. Franz Bosbach very briefly remarked that the imperial theme was at the foreground of the Habsburg propaganda, but left little traces in the treaties of Charles V[33]. The purpose of the rest of this article is on the one hand to examine this assessment somewhat more in depth and on the other hand to evaluate what kind of legal order Charles V effectively tried to lay down in Europe during the 1520s. In other words, how important was the role of the ideal of *monarchia universalis* in Charles V's vision of the European legal order and more generally, what was that vision? Thus, a better insight may be obtained as to the importance of this decade for the formation of modern international law and the modern state system.

For this purpose, some important treaties Charles V entered into between his coming of age in 1515 and the death of Gattinara in 1530 will be studied. The main treaties between Charles and his opponent Francis I of France have been selected for study. The period before 1519 is taken into account to allow for a comparison between the period before and after Gattinara's coming to power and Charles's election as emperor. The years 1529–1530 are the years of the consolidation of the Habsburg hegemony in Italy, with the *Paix des Dames* of Cambrai between Charles V (1529), France and England and the peace treaties of Barcelona (1529) and Bologna (1530) between Charles V and pope Clement VII (1523–1534).

Before doing this, I will summarise what according to Headley were the characteristics of Gattinara's concept of *monarchia*. First of all, it has to be pointed out that as a Roman lawyer, Gattinara was familiar with the Romanist tradition and its epigones Bartolus and Baldus, and through them with Ghibellinism. He was also strongly influenced by Dante's *De monarchia*[34]. Gattinara would even invite the great Erasmus to edit Dante's treatise, an assignment Erasmus refused[35].

Headley studied Gattinara's visions of *monarchia universalis* on the basis of treatises, letters and speeches Gattinara wrote or inspired. First, for Gattinara the universal authority of the emperor was closely related to the universal authority of the Roman law. As such, the emperor or *monarcha* was the safeguard of 'the' law and the champion of justice and peace[36].

Second, Gattinara was not immune from the almost messianic and eschatological enthusiasm with which the young emperor Charles V engendered after his election. In the tradition of the popular and widespread prophesies of Joachim a Fiore (ca. 1130–1202), Charles V was seen by many as the promised second Charlemagne. The election of Charles V was inspired by God and was, com-

33. Bosbach, *Monarchia Universalis*, p. 48 and p. 56.
34. Headley, *Emperor and his Chancellor*, p. 11.
35. Headley, *Habsburg World Empire*, p. 105; idem, *Emperor and his Chanchellor*, p. 111; Yates, *Astraea*, p. 26.
36. *Consulta* of Gattinara of 12 March 1519 in: Bornate, *Historia vite*, p. 407–408. Headley, *Habsburg World Empire*, p. 99; idem, *Germany*, p. 16–17 and p. 20; idem, *Rhetoric and Reality*, p. 242.

bined with his already extensive powers as king of Spain and lord of the Netherlands, proof that Charles was God's chosen instrument[37].

Third, Charles's claim to the title of the last monarch meant that he would conquer the Turk and regain the four lost Eastern patriarchates.

Fourth, in the Dantesque tradition, Gattinara promoted harmonious co-operation between the two separate heads of Christianity, when possible. But in view of the pope's enmity towards the emperor, Gattinara increasingly criticised the pope. The emperor would have to intervene and restore the Church by chastising its corrupted bishops and leaders[38]. In the context of the emergence of Lutheranism, this meant that since the pope refused to convene a general council, the emperor would have to do so. Gattinara used this argument during the war against pope Clement VII that culminated in the *sacco di Roma* by imperial troops in 1527[39].

Fifth, for Gattinara as for Dante the roots of *monarchia* were to be found in Italy. Not only was Italy the heartland of the Roman Empire. Since the time of the Ottonian dynasty, the crown of the *regnum Italiae* was held by the German king and legitimised the German king's claim to the imperial title. As the pope crowned the emperor in Rome, the coming to Italy and the vesting of authority within the *regnum* had become the preconditions to the consecration as Roman emperor. Moreover, the launching of a crusade to the East, the first task of a true *caput Christianitatis*, was impossible without control over the peninsula. While Gattinara shared this Dantesque vision, he was also more pragmatic in his Italian policy. For him, Milan and Genoa were crucial[40].

Sixth, in view of the internal strife within the empire and the problem of Lutheranism, only possession of the Spanish crown with its claims in Italy and its territories in the New World gave the emperor the necessary power base to play his universal role[41].

Seventh, for Gattinara the universal aspirations he wanted to inspire in Charles V, in no way implied that he should create a true empire and subdue all other monarchs. As was clear in his Italian politics, control of Milan or Genoa did not mean annexation or even claiming of the throne[42]. A stable alliance with the rulers of even the crucial states of the peninsula, and their recognition of the imperial supremacy, was enough. For this model Gattinara found inspiration in

37. *Consulta* of 12 March 1519, p. 405–406; Headley, *Habsburg World Empire*, p. 97; idem, *Germany*, p. 19.

38. *Consulta* of Gattinara, July 1526 in: Bornate, *Historia vite*, p. 502–503. Headley, *Habsburg World Empire*, p. 98–104; idem, *Germany*, p. 17–18; idem, *Rhetoric and Reality*, p. 242–243, p. 254–257 and p. 261–264.

39. Headley, *Habsburg World Empire*, p. 104–107; idem, *Emperor and his Chancellor*, p. 86–104; idem, *Rhetoric and Reality*, p. 264–267; G. Müller, *Zur Vorgeschichte des Tridentinums, Karl V. und das Konzil während des Pontifikates Clemens' VII.*, Zeitschrift für Kirchengeschichte, 74 (1963), p. 87–94; S. Pezzella, *Alfonso de Valdés e la politica religiosa di Carlo V*, Studi e Materiali di storia della religione, 36 (1965), p. 211–268.

40. Headley, *Habsburg World Empire*, p. 107–112; idem, *Germany*, p. 15 and p. 21; idem, *Rhetoric and Reality*, p. 257–259.

41. Headley, *Germany*, p. 21–22.

42. That Gattinara wanted to respect the relative autonomy of the Italian princes and republics was even admitted by the Venetian ambassador Gaspare Contarini (1482–1542): E. Alberi, ed., *Relazioni degli ambasciatori veneti al Senato*, vol. 1, Florence 1840, p. 56–58.

the structure of the Roman Empire and the *ius italicum* that had allowed the Italian cities for a long time after their actual submission to Rome to retain their internal autonomy. Under the Republic most Italian city-states were only loosely connected to Rome through an alliance treaty, in which however they were the junior partners (*foedus iniquum*). These states or city-states were obliged to render troops and sometimes to give financial aid to the Roman war effort and could have no autonomous international policy[43].

In all, Gattinara's vision of *monarchia universalis* came close to juridical hegemony or overlordship. The emperor had to be recognised as the first secular ruler within the *respublica christiana*. As the leader of the Christian world, he was responsible for the external defence of Christianity, which came down to leading the war against the infidels. Of course, the other princes and states had to come to his aid when requested. As the defender of the Church, the emperor not only had to crush heresy, but could also intervene in spiritual matters when the clerical hierarchy was corrupted and was not apt to defend the faith. In this, the other secular rulers had again to follow him. As the bringer of peace and justice, one could suppose that the emperor was the arbitrator among Christian princes, but Gattinara never spelled out such a claim. In any event, this in no way implied that other rulers were submitted to the emperor in other matters or that the emperor held a claim to their powers and lands. In Gattinara's vision, *monarchia universalis* did not presuppose the vesting of a true empire in the definition of Adam Watson. Nevertheless, I will continue to refer to Gattinara's aspirations for Charles as imperial, as he to some extent attached them to Charles position as Holy Roman Emperor[44].

The early accommodation with Francis I (1515–1517)

In 1515 Charles was declared to be of age and officially took power in the Netherlands as heir to the Burgundian lands. After the death of his grandfather, Ferdinand the Catholic (1474–1516), king of Aragon and regent of Castile for his unfit daughter Joan (1504–1555), he claimed the Spanish kingdoms. In 1515, Charles immediately sought the confirmation of the existing Burgundian–French alliance with the new French king, Francis I. The treaty of peace and the marriage agreement of London of 7 August 1514 between Francis I and Henry VIII forced the Burgundian government in the Netherlands to an accommodation with France[45].

In 1508, the emperor Maximilian – tutor of Charles – and Louis XII had

43. See on Roman treaty law: J. Plescia, *The ius pacis in Ancient Rome*, Revue Internationale des Droits de l'Antiquité, 3rd series, 41 (1994), p. 321–338; K.-H. Ziegler, *Das Völkerrecht der römischen Republik*, in: Aufstieg und Niedergang der Römischen Welt, ed. H. Temporini, vol. 2, Berlin and New York 1972, p. 82–108; idem, *Friedensverträge im römischen Altertum*, Archiv des Völkerrechts, 27 (1989), p. 45–61. Headley, *Habsburg World Empire*, p. 109–114.

44. Confusion between 'emperor' as referring to Charles's position within the territories of the Holy Roman Empire and the term as referring to Gattinara's more universal ideals, is inevitable. It was inherent in the discourse of the times as well.

45. In J. Dumont, *Corps universel diplomatique du droit des gens*, vol. 4–1, Amsterdam and The Hague 1726, p. 183–188 (hereinafter *Dumont*).

entered an alliance that was directed against the Venetian republic[46]. Now, Charles wanted to confirm the peace and alliance, and strengthen it by a marriage agreement between himself and the young daughter of the late Louis XII, the princess Renée (1510–1575).

According to the instructions of Charles's ambassadors who were sent to Francis at his accession, the young prince's government was most concerned with pressing some traditional claims of the Burgundian house. First, the Burgundian envoys were to announce the majority and the coming to power of archduke Charles and to express his willingness to do homage to Francis, who was his suzerain lord for the counties of Flanders and Artois. At the crowning of the king, the archduke had to be excused for his absence and Charles's envoy was to pledge fealty for the French fiefs held by Charles. Charles did not claim exemption to do homage for Flanders and Artois on the basis of the treaties of Arras (1435), Conflans (1465) and Péronne (1468). In these treaties, this privilege had been granted to his ancestors Philip the Good (1419–1467) and Charles the Bold (1467–1477) in person. Charles did not refer to this now but accepted his obligations under feudal law. Moreover, the envoys were to implore the protection and goodwill of the king, such as a liege lord was supposed to grant his vassal[47].

Second, Francis should be asked to confirm and ratify the alliance treaties of Cambrai as the treaty partners had extended the treaties to their successors[48].

Third, Charles's envoys were to negotiate the marriage agreement and the dowry of Renée. The young princess was to be handed over to Charles and to be brought up at his court, but provided for by king Francis. At first, the Burgundian diplomats were to ask that Renée's dowry would be the highest a daughter of a French king had ever had, at least what the daughters of Louis X (1314–1316) and Philip V (1316–1322) had received in lands and territories. These princesses' dowries had consisted of the kingdom of Navarre and the counties of Champagne and Brie in this first case, and the counties of Artois and Burgundy in the second. Afterwards, these demands were reduced to Renée's paternal and maternal heritage: some French fiefs as well as 200.000 to 300.000 *écus d'or*. In the last instance, a sum of 500.000 *écus d'or* would be acceptable[49]. Next, Charles coveted as dowry the duchy of Milan and the county of Asti to which both Louis XII and Francis I as descendants of the dukes of Orléans, themselves descendants of the Visconti dukes of Milan, held claims. These territories were to be part of the dowry but first had to be conquered by Francis on behalf of the archduke. The envoys were allowed to offer Charles's military help in achieving this[50].

46. Treaty of 10 December 1508 between the Habsburgs, France and Gueldres and anti-Venetian league of the same date between the pope, the Habsburgs, France and Spain: *Mariño*, vol. 3–1, Madrid 1982, p. 171–243.

47. Instructions of 19 January 1515 in: A. Le Glay, ed., *Négociations diplomatiques entre la France et l'Autriche durant les trente premières années du XVIe siècle*, [Collection de documents inédits sur l'histoire de France], vol. 2, Paris 1845, p. 3–6 (hereinafter *Le Glay*).

48. Instruction of 19 January 1515, p. 5 and instruction of 26 January 1515 in: *Le Glay*, vol. 2, p. 21–22.

49. Instruction of 26 January 1515, p. 21–22 and supplement of 1 February 1515 in: *Le Glay*, vol. 2, p. 30–31.

50. Instruction of 26 January 1515, p. 23 and supplement of 1 February 1515, p. 31.

Fourth, Charles referred to the duchy of Burgundy that had been occupied by the French in 1482. His ambassadors were to mention restitution of Burgundy, but not much stress was laid upon that point. Restitution did not seem to be realistic at this stage. However, in the alliance treaty to be signed, a reservation for Charles's rights to the duchy had to be secured[51]. In case Milan and Asti were refused, Burgundy was acceptable as part of the dowry. This implied that Charles was ready to accept it on another basis than the claim he held as grandson to Mary of Burgundy (1477–1482), daughter of Charles the Bold[52].

Fifth, there was the matter of the duchy of Gueldres, which had been held by Charles the Bold but was now a fief of the duke Charles of Egmont (1467–1538) of the old Gueldres ducal family, a traditional ally of the French. If the alliance between Charles and Francis was to be renewed, Francis was supposed to help the archduke Charles reconquer this territory, or at least to refrain from helping the duke of Gueldres[53]. The treaty of Cambrai of 1508 had expressly included Charles of Egmont and stipulated a truce between the Habsburgs and the Egmont duke, during which the *status quo* had to be respected[54]. Just as the claim over Milan, this was not to be pressed to the point of breaking off the negotiations on the marriage and the renewal of alliance[55].

In all, these claims and demands, as well as some minor ones such as the restitution of Margareth of Austria's territory of Charolles, were mostly traditional claims of the Burgundians, based on feudal law and part of the heritable rights of the dynasty. Charles V only made reference to his future role as heir to the Habsburg and Spanish territories inasmuch as he wanted his future lands and subjects to be included in the alliance[56]. Isolated from his traditional ally England, and far from supported by his grandfathers Maximilian and Ferdinand who both had their own agendas, Charles had little choice than to seek a speedy accommodation with France. He had dire need of this agreement if he was to claim his Spanish inheritance in the near future.

In the final marriage treaty of Paris of 24 March 1515, Charles had to go back on most of his claims[57]. The marriage between Charles and Renée was agreed upon, but the princess would only be handed over once she was 12. The marriage was to be celebrated then and the princess would be brought to the territories of the groom at the expense of Francis I[58]. The dowry was set at 600.000 *écus d'or*, of which 400.000 came from granting the princess the duchy of Berry situated in the middle of France and far from Charles's territories. The French king reserved the right to buy the duchy for 400.000 *écus* at all times. Renée had to renounce all further rights from her paternal or maternal inheritance[59]. Both

51. Instruction of 26 January 1515, p. 23 and supplement of 1 February 1515, p. 35.
52. Supplement of 1 February 1515, p. 33–34.
53. Instruction of 26 January 1515, p. 23 and supplement of 1 February 1515, p. 32.
54. First treaty of 10 December 1508, art. 6–8 in: *Mariño*, vol. 3–1, p. 184–185.
55. Supplement of 1 February 1515, p. 32.
56. Supplement of 1 February 1515, p. 34–35.
57. For the final stage of the negotiations: letter of Gattinara to Margareth, 14 February 1515, in: *Le Glay*, vol. 2, p. 52–58; letters of the Burgundian envoys to Charles of 4 February 1515, of 5 February 1515, of 20 February 1515, of 9 March 1515 and of 15 March 1515, letter of Charles to his envoys of 5 March 1515, all in K. Lanz, ed., *Correspondenz des Kaiser Karls V.*, vol. 1, Leipzig 1844, p. 5–41 (hereinafter *Lanz*).
58. Art. 1 and 2 of the marriage agreement, in: *Mariño*, vol. 3–2, p. 6–8.
59. Art. 3 and 4, p. 8–9.

parties secured their promises regarding the marriage by pledging some of their border towns and lands. Charles could assign different French princes and nobles to swear and to guarantee the treaty. This implied that they would grant their support to Charles against their own king in case of breach of treaty. Certain nobles had to pledge their lands while twelve cities would guarantee the marriage agreement as well. Finally, Francis would have the treaty registered in the Parliament of Paris and the different *Chambres des Comptes* while Charles would do the same in the Great Council of Malines and his *Chambres des Comptes*[60]. As was customary with most treaties during the Middle Ages and up to the sixteenth century, the princes would, next to delivering a written ratification, swear an oath upon the treaty and expressly submit themselves to the jurisdiction of the Holy See for all matters concerning the upholding of the treaty[61].

In addition to the marriage agreement, both princes entered a treaty of friendship and alliance for themselves, their territories and their subjects, present and future. Friendship, or *amicitia*, between rulers, firstly meant that they would not seek to cause any damage to the interest or rights of the partner, nor of his subjects, allies and adherents. It also implied that they would not allow their subjects, vassals, allies or adherents to do so. Second, *amicitia* as a legal concept comprehended a promise not to discriminate each other's subjects before the law. Of course, this was of great importance for bilateral trade[62]. In the first article of the treaty all this was implied. The alliance or confederation between the parties meant that they were obliged to help the partner to defend his lands and subjects – present and future – in case of attack. The alliance was not strictly defensive, as it was stipulated that they would assist each other in a just conquest[63]. As was customary in most alliance and peace treaties from the later fifteenth century on, both parties could nominate their existing allies to be in-

60. Art. 7–11 and 13, p. 10–14.

61. Art. 12 and 13, p. 13–14. See on the ratification by oath and the consequences under canon law: A.Z. Hertz, *Medieval Treaty Obligation*, Connecticut Journal of International Law, 6 (1991), p. 431; R. Lesaffer, *Europa, Een zoektocht naar vrede? (1454–1763 en 1945–1997)*, Leuven 1999, p. 148–161; idem, *The Medieval Canon Law of Contract and Early Modern Treaty Law*, Journal of the History of International Law, 2 (2000), p. 191–196; K. Neitmann, *Die Staatsverträge des deutschen Ordens in Preussen 1230–1449, Studien zur Diplomatie eines spätmittelalterlichen deutschen Territorialstaates*, Cologne and Vienna 1986, p. 137–150; A. Nussbaum, *Forms and Observance of Treaties in the Middle Ages and the Early Sixteenth Century*, in: Law and Politics in the World Community, Essays on Hans Kelsen's Pure Theory and Related Problems in International Law, ed. A. Lipsky, Berkeley 1953, p. 193–198; H. Steiger, *Bemerkungen zur Friedensvertrag von Crépy-en-Laonnais vom 18. September 1544 zwischen Karl V. und Franz I.*, in: Recht zwischen Umbruch und Bewahrung, Völkerrecht – Europarecht – Staatsrecht, Festschrift für Rudolf Bernhardt, eds. U. Beyerlin, M. Bothe, R. Hofmann and E.-U. Peters, Berlin 1995, p. 249–264.

62. On the concept of *amicitia* in the history of international law: V. Epp, *Amicitia, Zur Geschichte personaler, sozialer, politischer und geistlicher Beziehungen im frühen Mittelalter*, Stuttgart 1999, p. 176–233; Lesaffer, *Europa*, p. 237–238; idem, *Amicitia in Renaissance Peace and Alliance Treaties (1450–1530)*, Journal of the History of International Law, 4 (2002), p. 77–99; B. Paradisi, *L' 'amicitia' internazionale nella storia antica*, in: idem, Civitas maxima, Studi di storia del diritto internazionale, vol. 1, Florence 1974, p. 296–338; idem, *L' 'amicitia' internazionale nell'alto medio evo*, in: idem, Civitas maxima, vol. 1, p. 339–397; Ziegler, *Völkerrechtsgeschichte*, p. 82–90.

63. Art. 1 of the alliance treaty of 24 March 1515, in: *Mariño*, vol. 3–2, p. 14–15.

cluded. In case of an alliance treaty, this inclusion generally came down to *amicitia* between the treaty partners and the other partner's nominated allies[64]. The duke of Gueldres was included as a French ally. However, under the treaty, the French king was no longer allowed to assist him[65]. Charles would only have to do homage to Francis once he was 20, but the traditional conflicts on certain jurisdictions and taxes in Flanders and Artois were referred to a conference of envoys, to be held at Arras. The *aide ordinaire*, a tax on the county of Artois, a traditional Burgundian claim, was granted to Charles[66]. The pope, the emperor and the electors and princes of the Empire were invited to act as guarantors of the treaty, pledging their assistance to the victim of any breach. It was stipulated that both the princes would ratify the treaty and would take an oath[67].

Shortly afterwards, Charles had a document handed over to Francis with some demands concerning the execution of the treaty. It was requested that Francis have the Walloon nobleman Robert de la Marck (1482–1541) – a vassal to both Charles and Francis who had been included as a French ally[68] – release the subjects of Charles he held prisoner. La Marck wanted to use these prisoners to enforce certain claims. Charles also demanded that Francis would make La Marck restore the loot he had taken during a raid in the county of Hainault to the detriment of a vassal of Charles, over whose lands La Marck had claims[69]. While the first request was granted, Francis stalled on the second one and La Marck stated that Charles held some of his rightful domains. Charles could not forget that La Marck had aided Charles of Gueldres against him in the war over Frisia[70]. Furthermore, Francis I had his envoys inform the Burgundians of his intention to stand by his other allies, the Albret pretenders to the kingdom of Navarre. He suggested that both he and Charles would, within six months, ask Ferdinand of Aragon to accept their arbitration. In 1512, Ferdinand had annexed Navarre to his kingdoms. If Ferdinand did not accept a solution through negotiation or arbitration, he would lose the benefit of his nomination as ally in the treaty and Francis would be able to assist the Albrets. If the Albrets refused, they would be treated in the same way. This meant that Charles could assist his grandfather[71]. With this, a possible conflict between Francis and Charles as heir to Ferdinand was touched upon. The same day, Francis I however excluded Ferdinand while Charles excluded the Albrets and Scotland, which was at that time involved in a war with England[72].

The treaties of Paris of 24 March 1515 did not last long. On 13 August 1516 a new treaty was signed between Charles and Francis in Noyon. By then, the

64. Art. 2, p. 15–16. See on inclusion clauses: R. Lesaffer, *Tussen respublica christiana en ius publicum Europeaeum, De ontwikkeling van de Europese rechtsordening in alliantieverdragen van de vroege Nieuwe Tijd (1450–1600)*, in: De rechtspraktijk in beeld, Van Justinianus tot de Duitse bezetting, ed. B. Jacobs, Tilburg 1997, p. 110–118; idem, *Europa*, p. 198–210.

65. Supplement of 1 February 1515, p. 32; nomination of allies, in *Mariño*, vol. 3–2, p. 28.

66. Art. 3–5, p. 16–17.

67. Art. 12, p. 21.

68. Nomination of allies to the alliance of 24 March 1515, p. 28.

69. *Le Glay*, vol. 2, p. 93–94.

70. *Mariño*, vol. 3–2, p. xxviii.

71. Document of 31 March 1515, in *Mariño*, vol. 3–2, p. 29–30.

72. *Mariño*, vol. 3–2, p. xxvii.

situation in Europe had greatly changed. After Ferdinand of Aragon had asked the pope to grant him the investiture of the kingdom of Naples and had advised his grandson not to give in on Navarre, Francis invaded Italy. Upon his tremendous victory at Marignano in October 1515, the French king occupied the duchy of Milan. Pope Leo X meanwhile changed sides as on 30 September he ratified an alliance with France[73]. At the death of Ferdinand of Aragon on 23 January 1516, Charles became the rightful king of Aragon and pretender to the Castilian throne. With the Aragonese inheritance came the isles of Sardinia and Sicily as well as a claim to, and a war over the kingdom of Naples and the hegemony in Italy. From 1516 on, Charles's Burgundian government had to include the Aragonese and Castilian interests in their calculations. Ferdinand of Aragon's international policy had been one of pacification with the main Christian powers over Italy, in order to direct his efforts against the Islamic powers in the Western Mediterranean and North Africa. With the land of the *reconquista*, Charles inherited the ideal of the crusade against the Moors of West Africa. Moreover, Ferdinand had taken care to acquire the dynastic claims of the last Paleologi on the Eastern Roman imperial throne. Thereby, Charles could not only become the emperor of the West, but was also claimant to the Eastern Empire[74].

For now, a new settlement with France was however higher on the political agenda. The new Spanish king wanted to go to Spain as soon as possible to enforce his rights there, and was eager to accept a new settlement with the French. New negotiations led to the peace treaty of Noyon of 13 August 1516. In the first article of the treaty, the friendship and defensive and offensive alliance as laid down at Paris were confirmed. Although there was no reference to future possessions, it was expressly stipulated that the friendship and alliance applied to all the territories of Charles and Francis, on both sides of the Alps[75]. Nevertheless, Charles was allowed to defend the lands of his paternal grandfather the emperor against the Venetians just as Francis could comply with his alliance of 27 June 1515 with the Venetian republic, except in the event of a Venetian attack on Charles's possessions. Regarding the marriage agreement, the original bride Renée was now substituted by Francis' infant daughter, Louise (1515), or in case of her premature death any other daughter to be born to the French king. As Louise's dowry, Francis conceded his rights to the kingdom of Naples. A whole series of alternative marriage alliances was provided in case of the death of Louise and/or Charles. If such a dynastic union would not become reality through the fault of the French king, he would lose all his rights to Naples anyhow. Normally, the groom could only enjoy the fruits of the dowry once the marriage has been consummated. Charles already possessed the Southern kingdom, Francis had to transfer his rights immediately and the marriage would not be consummated for many years. Therefore, Charles agreed to pay 50.000 *écus d'or* annually to his future father-in-law[76]. Since the kingdom was a papal fief,

73. *Mariño*, vol. 3–2, p. xxxi–xxxiv.
74. On the international policy of Ferdinand the Catholic: J.M. Doussinague, *La política internacional de Fernando el Católico*, Madrid 1944.
75. *Mariño*, vol. 3–2, p. 87–88.
76. Art. 4–10, p. 90–99.

the parties would seek the ratification of the treaty by the pope[77]. In articles 11 to 15, some traditional Burgundian claims such as the lands of Margareth in Charolles and the *aides* on the county of Artois, were discussed once again[78]. Now that Charles was claimant to the Castilian throne, he also held claims to the kingdom of Navarre. In the final article of the Noyon peace, it was agreed that when the Albrets came and put their claims before Charles in Spain, he would satisfy them. However, Francis reserved the right to abide by his alliance with the Albrets and to aid them in case no settlement was reached with the new Spanish king[79]. With this, an open fall-out over Navarre was postponed to a later date. *In fine*, the pope and the Holy See, the empire and its electors and princes were once again called upon to guarantee the peace[80]. The envoys promised that their sovereigns would ratify the peace and swear upon the treaty[81]. Duke Charles of Gueldres was included as a French ally and as such accepted the treaty[82].

On 3 December 1516 followed the treaty of Brussels, whereby the emperor Maximilian adhered to the treaty of Noyon. In fact, the French–imperial settlement was negotiated through Charles as plenipotentiary of his grandfather. Formerly, Maximilian had refused a treaty because of the French support for his archenemy Venice. His constant financial troubles forced him to take a more realistic stand and to agree to the policy of pacification of his heir[83]. The Brussels peace ended the war between Francis I and Maximilian. A general amnesty and oblivion of all harm and injustices committed during the war was announced. The parties agreed to enter a defensive alliance, which was to be similar to the alliance of Noyon[84]. The main article concerned the disputed town of Verona. The emperor had to hand over the town to Charles, who then would hand it over to Francis I. The French sovereign would have to pay the emperor 200.000 *écus d'or* in compensation. France promised that Venice would deliver up two towns in the neighbourhood of Verona as well as the Habsburg lands it had occupied in Friuli to the emperor[85]. The signatories to the treaty, Charles and Francis, promised that Maximilian and Venice would accept them as arbitrators for the settlement of other disputes between them[86]. These clauses were more or less in accordance to what the French diplomats had suggested during the negotiations[87]. The pope was invited to guarantee the treaty while the main parties would swear upon it[88].

The Brussels treaty also provided for a meeting of the three princes at Cambrai or Cateau-Cambrésis before 2 February 1517. At the initiative of the Habsburg princes, it became a meeting of the envoys of the three princes to fine-tune their

77. Art. 7, p. 96.
78. P. 99–102.
79. Art. 16, p. 102–103.
80. P. 103.
81. P. 103–104.
82. Acceptation of 12 December 1516, in: *Mariño*, vol. 3–2, p. 144–145.
83. *Mariño*, vol. 3–2, p. xlii–xliii.
84. Art. 1, in: *Mariño*, vol. 3–2, p. 168–169.
85. Art. 4–5, p. 170–172.
86. Art. 7, in: *Mariño*, vol. 3–2, p. 172–173.
87. French conditions of 12 November 1516, in: *Le Glay*, vol. 2, p. 114–116.
88. Art. 8 and 10, p. 173–174.

agreement. Meanwhile, Francis prepared for a new invasion in Italy by signing alliance treaties with the Swiss (29 November 1516) and with Scotland (January 1517)[89]. Nevertheless, on 11 March 1517 the diplomatic conference was concluded at Cambrai with a new treaty, which Charles entered both for himself as well as for the emperor[90]. First, the parties fixed the number of troops they were to provide in case the defensive alliance was called upon[91]. Second, the parties also agreed upon an offensive alliance against the Turks[92]. The pope would be implored to become the protector and head of the alliance[93]. This agreement was not much more than a further attempt of Charles to consolidate the peace with France, while not granting any new concessions.

More interesting was the proposal of the Habsburg envoys for a secret treaty to carve up the old *regnum Italiae* – the part of the peninsula to the north of the papal state that the emperor held in personal union with the German kingdom – and effectively divide it between the Habsburgs and the Valois. Under the authority of the emperor, king and suzerain of Italy, two new kingdoms would be formed[94]. Thereby the main territorial disputes between the emperor, the Aragonese dynasty and the Valois would be settled. This fantastic proposal was a fruit of the emperor's unrealistic ambitions. The fact that the Burgundians accepted it proves how inexperienced and unconcerned they were when it came to the high power politics of Aragonese diplomacy in Italy and the Western Mediterranean. While the French king was said to be prepared to enter the offensive alliance needed for this scheme, which was mostly directed against his ally Venice, he stalled by demanding that the other signatories one-sidedly start the attack in Italy[95]. Not surprisingly, the proposal was never formalised nor ratified[96].

During the whole phase of extensive negotiations between the French and the Caroline governments from 1515 to 1517, the desire of the young prince Charles to avoid an all-out war with France and to reach at least a temporary settlement was dominant. To achieve that aim, a marriage agreement between Charles and a French princess was the Burgundians' first and foremost concern. Until Charles actually came to inherit Spain, the demands and claims of his envoys were in essence those of his Burgundian ancestors: the restitution of the duchy of Burgundy, the recovery of the duchy of Gueldres against France's ally Charles of Egmont, the recognition of Charles's fiscal authority in Artois and the recovery of the lands of his aunt Margareth in France. While from the weak diplomatic position he was in, Charles could hardly hope to reach a favourable agreement on the first two points, he was happy to secure a promise of marriage.

89. *Mariño*, vol. 3–2, p. lxiv.
90. Preamble, in: *Mariño*, vol. 3–2, p. 185.
91. Art. 2, p. 187.
92. Art. 4, p. 188.
93. 'Et ont lesdits troys Princes laissé et reservé lieu à nostre Sainct Père le Pape pour entrer en ceste presente ligue': art. 6, p. 188.
94. Proposal of offensive alliance, in: *Mariño*, vol. 3–2, p. 189–193.
95. French answer to the proposal, in: *Mariño*, vol. 3–2, p. 194.
96. Letter of Francesco Remolino, cardinal of Palermo († 1518) of 9 July 1517, in: *Le Glay*, vol. 2, p. 117–120.

The traditional disputes that Charles was bound to inherit from his maternal grandfather, the Aragonese king Ferdinand the Catholic, were considered to be more of an impediment than an opportunity by Charles's government. In the end, they accepted the transfer of Francis's claims on Naples – thereby recognising them to be worth something – as a dowry while agreeing to pay him a substantial annual amount for the fact that they already occupied the kingdom. The dispute over Navarre was referred to a later time.

If the claims put forward by Charles were dominantly Burgundian, they were all based on dynastic rights and feudal law. Charles's main concern was to safeguard his dynastic inheritance, not state building, nor empire building. At no time did he deny that he was held to do homage to Francis I as his liege lord for Flanders and Artois. So his claim to sovereignty was not absolute. Except for his quite unrealistic opening demands in 1515 on Milan and Asti and the fantastic scheme on Italy of 1517 coming from his grandfather Maximilian, Charles did not really strive for anything outside what could be considered rightfully his under the rules of dynastic succession and the feudal system. He sought to hold and secure the great accumulation of territories that were his by right, and that could and would arise the jealousy of many other princes.

The international legal order at the accession of Charles (1515–1517)

That leaves us with the question how Charles and his government saw the European legal order in the years immediately following Charles's coming of age. First, it is clear that they nurtured no imperial aspirations. Only once during these three years of negotiations, was the supreme power of the Holy Roman Emperor invoked. The project of offensive alliance of Cambrai of 1517 foresaw the conquest by Habsburgs and Valois of the *regnum Italiae* under the aegis of the emperor and the formation of two new kingdoms. While the right of the suzerain-emperor to do so was far from clear, to say the least[97], it was his powers as feudal overlord of the *regnum Italiae* that were called upon, and not a theoretical concept of the emperor as *monarcha universalis*.

Second, Charles's ministers did not think of Europe as a system of sovereign states. To begin with, the abstract notion of the state had hardly taken root by the early sixteenth century. The main powers of Europe such as Spain and France were dynastic and feudal conglomerates of different territories, controlled in the most diverse ways by emerging bureaucratic governments under the supreme authority of the ruling prince. In fact, in the early 1500s the princes of Europe had not attained internal sovereignty while some impediments still stood in the way of their attaining external sovereignty.

Hedley Bull attempted to qualify the modern international system as well as other historic systems using three criteria. I prefer to use three criteria that are

97. During the fourteenth century, the right of the emperor as suzerain in Italy to unilateraly revoke powers and privileges of his vassals, was discussed at length by the commentators: G. Dolezalek, *I commentari di Odofredo e Baldo alla pace di Constanza*, in: La pace di Costanza 1183, Un difficile equilibrio di poteri fra società italiana ed imperio, Bologna 1985, p. 61–63.

close to Bull's but that are more specific for the qualification of international *law* systems. Who are the subjects of international law? Which are the material sources of international law? What are the basic principles regarding the right to wage war, the *ius ad bellum*? The modern or Westphalian system (1648–1919), based on the principle of state sovereignty, Bull linked to the English philosopher Thomas Hobbes (1588–1679). In what Bull called the Hobbesian tradition, as distinct from a Grotian and a Kantian tradition, the sovereign states are the sole subjects of international law. This implies a strict dualism between the international and the national legal spheres. Individuals or internal powers are absent from the international arena. In the absence of any other, *a fortiori* supranational authority, they are the sole lawmakers. The principle of voluntarism rules supreme. As only the states themselves are left to enforce international law, states can decide upon warfare at their discretion[98].

Though such a radical concept of international law never completely materialised and though sovereignty has to be seen as a relative concept, a system deserving the name of sovereign state system presupposes a level of sovereignty that was surely not reached at the beginning of the sixteenth century. In order to clarify this statement, it is useful to distinguish internal from external sovereignty[99].

As to internal sovereignty, this concept implies that the central ruler is the sole power within his territories who enjoys an original legitimisation of power and that all other territorial powers – nobility, clergy and towns – derive their legitimisation from the central power. Furthermore, in so far as it reflects upon international relations and law, internal sovereignty means that only the sovereign is a subject of international law and enjoys a monopoly of acting on the international scene. It is a precondition to dualism in international law. So far as the major European powers are concerned, this was not accomplished before – at the earliest – the second half of the seventeenth century[100].

The notion of the state as an internally monolith power was completely absent from the 1515–1517 treaties. Their preambles and main articles indicated that the treaties were agreements between the involved princes and not between political entities, let alone states. They were inter-regal, not inter-national treaties. The territories and subjects the signatory princes ruled were only linked to the treaty inasmuch as it was expressly stated that they would benefit from the treaty, or that the actual treaty parties – the princes – committed themselves to have their subjects abide to certain conditions[101].

98. H. Bull, *The Grotian Conception of International Society*; in: Diplomatic Investigations, Essays in the history of international politics, eds. H. Butterfield and M. Wight, London 1966, p. 51–73; idem, *The Anarchical Society*, p. 23–24; idem, *The Importance of Grotius in the Study of International Relations*, in: Grotius and International Relations, eds. H. Bull, B. Kingsbury and A. Roberts, Oxford 1990, p. 71–72; B. Kingbury and A. Roberts, *Grotian Thought in International Relations*, in: Grotius and International Relations, p. 1–64.

99. H. Bull, *Anarchical Society*, p. 8.

100. R. Lesaffer, *La paix de Vervins (2 mai 1598), Souverainité, territorialité et développement du droit public européen*, in: Personnalité, territorialité et droit, eds. J.–M. Cauchies and S. Dauchy, Brussels 1999, p. 131–152; idem, *The Concepts of War and Peace in the 15th century treaties of Arras*, in: Arras et la diplomatie européenne XVe–XVIe siècles, eds. D. Clauzel, C. Giry–Deloison and C. Leduc, Arras 1999, p. 165–182.

101. F.i.: '... entre les deputez du dit Seigneur Roy et les ambassadeurs du dit Seigneur

From a juridical point of view, these treaties, like all medieval and sixteenth century treaties, were to be considered contracts between persons who happened to be rulers, rather than *foedera* between political entities[102]. The treaties were subject to the normal rules of private contract law. An autonomous public law of international treaties was only to emerge in the seventeenth century[103].

As a consequence, the signatory rulers acceded to the treaties in their own names and not as the representatives of a public entity or political body. In fact, the involvement of the subjects was based upon the promise or commitment of the signatory prince that he would use his princely authority to make his vassals and subjects abide by the treaty. Theoretically, one could state that a treaty consisted of two different kinds of obligations: one set of obligations binding the princes directly to one another, and a second set of obligations binding the vassals and subject indirectly, through the authority of their prince. This construction remains very different from the modern law of treaties, where the sovereign power within the state or its delegate directly binds the state, acting as a representative of the state and not in its own right. In medieval and sixteenth century treaties, the prince cannot be considered to be a mandatory or plenipotentiary representative of the state as the real treaty partner; he as a person and a ruler is the treaty partner.

In many treaties from the fourteenth to the early sixteenth centuries, this was made quite evident through what can be described as co-ratification. In many important peace and alliance agreements, it was stipulated that the signatory princes would have some of their most important nobles and towns ratify the treaty. These internal powers not only became guarantors to the treaty having to support the victim of a breach of treaty, but became bound in a more direct way and in their own name to the treaty as well[104]. These clauses confirm the per-

Prince soubz les bons plaisirs des dits Seigneurs Roys, ont été advisez les articles ...': treaty of Paris, preamble, p. 6; '... que ... amictié, unyon, fraternité, intelligence, confederacion et alliance perpetuelle est et sera de nouveau prinse entre lesdits Roys très Chrestien et Catholicque, pour eulx et leurs successeurs roys et chacuns de leurs royaumes, pays, terres et seigneuries ...': treaty of Noyon, art. 1, p. 87; 'Que lesdit troys Princes ... declaireront et obligeront derechef et de novvel d'estre doresnavant bons, vrays et loyaulx frères, amys, alliez et confederez, amys d'amys et ennemys d'ennemys pour la garde, la tuicion et deffence de leurs estatz, royaumes, pays, terres, seigneuries et subgectz ...': treaty of Cambrai of 1517, art. 2, p. 187.

102. A *foedus* is a term from ancient Roman history. It is a treaty entered for the Roman *respublica* by the senate. In early modern doctrine, the concept of *foedus* was often referred to in order to stress the public law character of treaties and to distinguish them from common contracts under private law. Ziegler, *Völkerrecht der römischen Republik*, p. 90–94.

103. Grewe, *Epochen*, p. 421; Lesaffer, *Medieval Canon Law*, p. 185–186. As proof for that, one can refer to the discussion whether treaties were binding upon the successors of the signatory rulers if that was not mentioned in the treaty. This matter was still discussed in the seventeenth and eighteenth centuries by great scholars such as Hugo Grotius or Emer de Vattel (1714–1767). Grewe, *Epochen*, p. 232–234; Lesaffer, *Europa*, p. 134–141.

104. Klaus Neitmann does not agree with this. According to him the co-ratifying parties did not acceed to the treaty as they only offered an extra-guarantee to the treaty. He underestimates the personal character of the treaties. Nevertheless, the attachement of the co-ratifying powers to the princes proves that this personal character became problematic in the Later Middle Ages. From a modern perspective, the co-ratification is proof of the

sonal character of the treaty entered into by the prince. They indicate the recognition by the princes that their vassals and towns were subjects of law in the international field and – to a certain extent – could act autonomously.

General co-ratification clauses were absent from the treaties of Paris, Noyon, Brussels or Cambrai. The marriage agreement of Paris however provided that some of the highest noblemen in France as well as twelve towns would help Charles enforce the agreement if necessary, while others guaranteed it with their goods and properties. Though this cannot be considered as far reaching as co-ratification, it indicates that impermeability between the international and national legal order was far off: nobles and towns were allowed directly to play a role in the relations between their sovereign and another prince as guarantors of a treaty[105].

In the Paris marriage agreement, Charles also had to pledge territories for his word. He was asked to have this pledge corroborated by the assent of the three Estates of his lands and by the assent of his main subjects and vassals. This strongly resembles co-ratification[106]. The direct involvement of subjects, and even the three Estates, became customary – certainly in France – in the Late Middle Ages in case of the alienation of territories that were considered to belong to the public domain, and not to the private patrimony of the prince. Of course, this specific clause in case of alienation of territory also served to limit the powers of the sovereign[107].

Charles and Francis would have the treaty as well as the Paris alliance treaty registered by the main judicial institutions of their realms[108]. One cannot put the acceptance by the three Estates or the registration by courts of law on a similar footing as the ratification of treaties by the legislature in current treaty practice. This kind of ratification only became customary in most countries after the French Revolution or even during the nineteenth century. The registration clauses, typical to the later fifteenth and sixteenth century treaty practice of France[109], historically are but a step away from co-ratification and a step towards modern dualism. On the one hand, they are a clear indication that it was still considered useful to have more than the ruler's word that he would impose the treaty in his territories. On the other hand, the shift from individual co-ratification to acceptance by an institution constitutes a clear step towards a more abstract notion of the state and a de-personalised concept of power.

As to external sovereignty, it simply means the absence of any political authority higher than the sovereign ruler or state. Under the Hobbesian concept of international law, it implies that the state is the highest law making and enforcing power in the international legal order. The formation of international law is

absence of internal sovereignty and an abstract concept of state; from the perspective of the Late Middle Ages it is a first step towards it. Neitmann, *Staatsverträge*, p. 276–281.

105. Art. 8–10, p. 11–12.

106. Art. 13, p. 13–14.

107. E.H. Kantorowicz, *The King's Two Bodies, A Study in Medieval Political Theology*, Princeton 1981, p. 347–358; T. Meron, *The Authority to Make Treaties in the Late Middle Ages*, American Journal of International Law, 89 (1995), p. 3–6.

108. Art. 11 and 13 of the marriage agreement, art. 12 of the alliance, p. 12–14 and p. 21.

109. For examples: Lesaffer, *Europa*, p. 146.

voluntary: sovereign rulers or powers are only subject to rules they have consented to. No power can juridically limit their right to enforce their claims.

Historically, external sovereignty has to be linked to what the medieval Roman lawyers referred to as '*superiorem non recognoscens*'. Mighty princes as the king of France, England, Castile or Aragon were considered by the Bartolists to be sovereign in so far as they did not recognise the supremacy of the emperor. At the most, a ceremonial precedence was retained. Bartolus even referred to the Italian city-states as "*superiorem non recognoscentes*", if not *de iure*, at least *de facto*[110].

The 1515–1517 treaties show that the treaty partners did not consider themselves absolutely sovereign and that voluntarism was not as yet a basic principle within the European legal order. Firstly, there was still a certain supremacy of the pope and the Church to be taken into account. Sovereignty as the commentators understood it implied the emancipation of European princes and cities from imperial authority. But next to the imperial claim to supremacy, there was also a papal one. The authority of the pope was not restricted to merely spiritual matters. Different examples of the secular supremacy of the pope in the field of international or inter-regal relations can be offered. As the relations between the main powers were to a large extent dynastic, family and marital law was an important factor. Here canon law ruled supreme and the jurisdiction of the Church was widely recognised. This was all the more true as the Church and canon law were common to the whole of Europe, which made it much more practical to invoke canon law than local or regional customary law. Furthermore, most treaties were sworn during a church ceremony. Through the taking of an oath, breach of treaty became a sin as well as an offence under canon law[111].

Papal authority on these points was expressly referred to in the 1515–1517 treaties between Francis I and Charles. Article 2 of the Paris marriage agreement stated that if an ecclesiastical dispensation would prove to be necessary for the marriage between Charles and Renée, the French king and queen would obtain it at their expense[112]. In the Noyon treaty both princes promised to pay for the dispensation needed to allow the marriage between Charles and the newborn princess Louise[113]. Not only was the ecclesiastical jurisdiction thus recognised, this reference also proves that as in normal marital relations, canon law ruled supreme among the princes of Europe in their familial and marital relations.

There were also references to the papal authority over treaties sworn upon. In the Paris marriage agreement, the signatory parties expressly submitted themselves to the jurisdiction of the pope and the Holy See upon taking their oaths to

110. Canning, *Political Thought of Baldus*, p. 64–68, p. 93–158 and p. 209–221; Pennington, *The Prince and the Law*, p. 33–37 and p. 90.

111. M. David, *Parjure et mensonge dans le Décret de Gratien*, Studia Gratiana, 3 (1955), p. 117–141; J.G. Dickinson, *The Congress of Arras 1435, A Study in Medieval Diplomacy*, Oxford 1955, p. 71, p. 76 and p. 206–207; J. Gaudemet, *Le serment dans le droit canonique médiéval*, Le serment, ed. R. Verdier, vol. 2, Paris 1991, p. 68–69; Hertz, *Medieval Treaty Obligation*, p. 431; Neitmann, *Staatsverträge*, p. 303–304; Nussbaum, *Forms and Observance of Treaties*.

112. See p. 7.

113. Art. 4, p. 91.

the marriage agreement. They renounced all dispensations[114]. According to article 4 of the Noyon treaty, both parties would share the expenses for the dispensation necessary to liberate the parties from the oath they swore to sustain the Paris agreement[115]. So they absolved each other of the former mutual prohibition to seek dispensation. In the Paris, Noyon and Brussels alliance treaties, it was stipulated that the treaty was to be sworn upon by the princes. There was no express submission to the ecclesiastical jurisdiction, but the Paris alliance referred to the guarantees provided in the marriage treaty[116]. At Noyon, Charles submitted himself to the ecclesiastical authority for the payment of the annual pension he had promised Francis as part of the marriage agreement[117]. In the Cambrai treaty of 1517, the taking of an oath was very briefly mentioned[118]. The document attesting the oath taking of the Habsburg signatories shows that it was performed in a similar religious ceremony as in the case of previous treaties[119].

In so far as the general jurisdiction of the Church was concerned, the express submission of the Paris and Noyon treaties to ecclesiastical authority was redundant, as the taking of the oath in itself was enough to make the upholding of the treaty a matter for the Church. While this might be natural under canon law, for our purpose it is important to note that two main European princes readily accepted this authority. Moreover, the Paris clause granted the pope and the papal courts exclusive jurisdiction over all other ecclesiastical courts[120]. This was natural and convenient, as the pope could be seen to be more impartial than bishops from the territories of one of the two princes.

In these treaties, the swearing of an oath was only one of the ways used for princes to confirm the agreements reached and signed by their envoys. The

114. '... se submectra lui, ses hoirs et successeurs et leurs biens quelzconques à la jurisdiction et cohercion ecclesiastique de nostre Sainct Père et du Saint Siège Apolosticque, pour y estre contrainctz par toutes censures d'Eglise, comme par juge competant esleu et choisy du consentement des parties; et que dès maintenant ledit Seigneur en desrogant à son dit previlège pour l'observation des dites promesses et seurtez et entretenement du dit traictié, se oblige en la forme de la Chambre apostolicque et passe procuracion specialle et irrevocable, par laquelle il constitue procureurs irrevocables en court de Romme, tels qui seront presentement denommez, pour et ou nom du dit Segneur pardevant nostre Sainct Père et le Sainct Siège Apostolicque, conffesser judiciellement tout le contenu en ce present traicté et subire condempnacion spontaine à l'obervance que dessus, soubz la payne des dites censures, jusques à l'interdit inclusivement ...': art. 12, p. 13; see also art. 13, p. 13–14.

115. See p. 91.

116. Treaty of Paris, *in fine*, p. 21; treaty of Noyon, *in fine*, p. 103–104; treaty of Brussels, art. 10, p. 173–174;

117. Art. 7, p. 97; document by the bishop of Cambrai, 7 November 1516, in: *Mariño*, vol. 3–2, p. 130–134; procuration by Charles V of 10 November 1516, in: *Mariño*, vol. 3–2, p. 137–141.

118. *In fine*, p. 188–189.

119. Joint oath by Maximilian and Charles on 14 May 1517 in: *Mariño*, vol. 3–2, p. 204.

120. Of course thereby the natural authority of the episcopal courts did not disappear. In fact it was a kind of arbitration clause whereby the princes appointed the pope as arbitrator and undertook the commitment not to appeal to any other court. – '... comme par juge competant esleu et choisy du consentement des parties...': art. 12, p. 13.

treaties were also ratified through a sealed document. A separate document was made up as proof of the oath[121].

Heinhard Steiger has pointed out that in the peace treaty of Crépy of 1544, a distinction was made between written ratification and the confirmation by oath. His perusal of the documents concerning the treaties of Barcelona of 1493, of Madrid of 1526 and of Cambrai of 1529 suggests that the distinction between written ratification and confirmation by oath was already made from around 1500[122]. The existence of two different documents for the early peace treaties of Charles V and Francis I seem to corroborate that opinion.

Steiger is correct that written ratification and the taking of an oath were clearly distinguished by 1500. Indeed, the distinction goes as far back as the thirteenth or even the twelfth century. In the Early and High Middle Ages, treaties were constituted by the oral pledge or oath of the treaty partner. Signed and sealed documents held only instrumental value as proof of these acts and of the exact words the parties agreed on. Around 1200, this changed as the documents started to become constitutive of the personal obligation of the treaty partners themselves[123]. The process was however very gradual. Though they could be considered to be constitutive, the documents for a long time continued to encompass both a written statement of confirmation as well as a description of the ceremony of the oath taking[124]. To that extent, they were still instrumental as proof of the actual oath taking.

It is not easy, if possible at all, to determine the exact character of the signed and sealed documents. During the Late Middle Ages and the sixteenth century, there was a strong tendency to combine different methods to make and safeguard agreements and treaties. In my view, one can safely say that the ratification documents had multiple functions[125].

Whereas by the early sixteenth century written ratification was clearly distinguished from the taking of an oath that even separate documents were prepared, the two can hardly be completely separated. Until deep into the seventeenth century, almost all important political treaties were confirmed by oath. From the standpoint of current international law, it is tempting to state that the written ratification was the real constitutive action and made the treaty binding under the law of nations, while the oath only provided an extra guarantee under canon

121. Oath of Francis on the treaty of Paris of 1 april 1515, in: *Mariño*, vol. 3–2, p. 30–37; ratification by the same on 23 April 1515, in: *Mariño* vol. 3–2, p. 42–44; ratification by Charles on 1 June 1515, in: *Mariño*, vol. 3–2, p. 51–54; ratification by Francis of the Noyon treaty of 29 September 1516, in: *Mariño*, vol. 3–2, p. 107–109; Charles's oath to the Noyon treaty, in: *Mariño*, vol. 3–2, p. 121–124; ratification of the treaty of Noyon by Charles on 29 October 1516, in: *Mariño*, vol. 3–2, p. 124–126; ratification of the treaty of Cambrai by Maximilian and Charles of 14 May 1517, in: *Mariño*, vol. 3–2, p. 200–204; Charles's and Maximilian's oath of 14 May 1517 to the Cambrai treaty, in: *Mariño*, vol. 3–2, p. 204; oath of the Cambrai treaty by Francis I on 10 July 1517, in: *Mariño*, vol. 3–2, p. 210–211; ratification of the Cambrai treaty by Francis of 10 July 1517, in: *Mariño*, vol. 3–2, p. 213–214.

122. See on this: Steiger, *Crépy*, p. 256–260.

123. Ludwig Bittner, *Die Lehre von den völkerrechtlichen Vertragsurkunden*, Stuttgart 1944, p. 4.

124. It still has to be determined when exactly the making of distinct documents for the written ratification and the swearing of the oath became customary.

125. Nussbaum, *Forms and Observance*, p. 191.

law. This is however to stretch matters. The written ratification made the treaty binding upon the rulers under general principles of contract law as they emerged from Roman law, feudal law and customary law[126]. The taking of an oath strengthened its binding power under canon law. Under canon law, each promise – oral or written – was binding and could be enforced by the ecclesiastical courts. But in some countries like England, the secular rulers and courts only accepted the ecclesiastical jurisdiction if the agreement was made under certain formalities such as an oath. For important contracts such as treaties, the extra guarantee of an oath was likely to be considered necessary for a treaty to be properly sanctioned by canon law[127].

In view of the enormous impact of canon law on treaties in particular and contracts in general, an important treaty without proper canonical sanction would not be considered to be sufficiently corroborated. Canon law was at that time not only a substantial but also an inextricable part of what now would be considered 'the law of nations'. So a secure obligation under canon law was an important part or even a condition of a secure obligation under the 'law of nations', or historically more correct, the law in general. In my view, both kinds of obligations were crucial for a treaty to be considered truly binding upon princes under early sixteenth century treaty practice. An autonomous law of nations was still inconceivable[128].

Papal supremacy went further than these rather formal juridical points such as dispensation and the sanctioning of oaths. As head of the Church, the pope was also recognised by Charles and Francis as the nominal head of Christianity in its wars with the infidels. As such the pope was invited to become the head and protector of the anti-Turkish alliance of Cambrai, notwithstanding the fact that the emperor was a partner to the treaty[129]. None of the leading European powers seemed to want to press a claim to the secular leadership of Europe. They preferred to leave precedence to the pope. Though this leadership was quite meaningless outside the spiritual realm, it indicated that the idea of having a supreme power to lead the common strife of the *respublica christiana* was not seen as unnatural.

As indicated above, recognition of papal authority was not the only remnant of the *respublica christiana*. More material was the general recognition and application of the *ius commune*, and most of all canon law, as a body of law governing international, or better, inter-regal relations. More than the Roman *ius civile*, which as a system of learned law functioned as a common source of inspiration for legal concepts and institutions in international legal practice, canon law was part of the hard core of the law that governed the relations between the princes of Europe. Feudal law had much the same function as most of

126. As a written pact, it became binding under general rules of Roman and customary law. The general doctrines of contract were largely dominated by Roman, feudal and again, canon law arguments.

127. R.H. Helmholz, *Contract and the Canon Law, Possible points of contact between England and the Continent*, Towards a General Law of Contract, ed. J. Barton, Berlin 1990, p. 50–59.

128. See also Hertz, *Medieval Treaty Obligation*; Nussbaum, *Forms and Observance*.

129. 'Et ont lesdits troys Princes laissé et reservé lieu à nostre Sainct Père le Pape pour entrer en ceste presente ligue, alliance et confederacion comme chef et protecteur d'icelle ...': art. 6, p. 188.

the territorial disputes were based on feudal claims. Roman, canon and feudal law were part of a common tradition that could not be put aside by any individual ruler or power.

In all, the *respublica christiana* was still a juridical unity with at least a basis of a universally applicable law, consisting of canon, feudal and Roman legal precepts and rules. Of course, this was not international law in the modern sense. There was no clear distinction between the international and the national legal orders. Calling it monistic is legitimate from our perspective, but at the same time is an anachronism: there were no clear 'nations' or 'states' so that concepts such as monism and dualism were irrelevant. The *respublica christiana* was a highly complicated, hierarchical *continuum* of the most diverse political entities, each with their own legal order but not completely autonomous or separated from the others or from the whole. Within the *respublica christiana*, a body of rules regulated the relations between the highest and most sovereign political powers. They did not create this corpus. It was part of a tradition considered to be common to all. The creation of the rules within the international society of the Latin West was not monopolised by the sovereign rulers. It was a system of feudal customs, canon law and legal doctrine that was shared by the whole of Christianity. As such, it was the juridical translation of what Bull referred to as the common values that are necessary for an international society to exist. Voluntarism was not a principle underlying the system. Though rules of *ius commune* in general and canon law in particular might be under dispute, their authority was not. By consequence, sovereigns could be subject to rules they had not agreed upon. Moreover, through the custom of confirming the treaty by oath, the enforcement of treaties became subject to the supreme authority of the Church and the pope. Thus the sovereignty of the princes was also limited in the field of law enforcement. The three criteria put forward above for a sovereign state system were far from being met.

The Spanish neoscholastic Francisco de Vitoria (ca. 1480–1546) distinguished a natural *ius gentium* from a positive or man made *ius gentium.* While the first was a body of rules derived from natural law, the second one was determined through the consensus of the majority of the human society[130]. In fact, the body of canon, Roman and feudal law as it still dominated international legal practice at the beginning of the sixteenth century, can be brought under these two categories. The authoritative texts of civil and canon law were considered to reveal an immutable ideal against which all rules of law had to be measured. Through the inclusion of the *Libri feudorum* in the *Authenticum*, feudal law had found its way to the faculties of civil law and was studied as well by the Roman lawyers[131]. The immutable natural law given by God to man was part of the *ius commune* so that any explanation of natural law necessarily re-

130. 'And there are certainly many things which are clearly to be settled on the basis of the law of nations (*ius gentium*), whose derivation from natural law is manifestly sufficient to enable it to enforce binding right. But even on the occasions when it is not derived from natural law, the consent of the greater part of the world is enough to make it binding, especially when it is for the common good of all men': Francisco de Vitoria, *On the American Indians*, 3,1,3, Anthony Pagden and Jeremy Lawrance, eds., Political Writings, Cambridge 1991, p. 280–281.

131. H. Lange, *Römisches Recht im Mittelalter*, vol. 1, Munich 1997, p. 86–93.

ferred to it. General rules of feudal customary law, canon legislation and more detailed concepts of Roman law could be considered to be sanctioned by the consensus of the Christian world and to fall under what Vitoria understood to be positive or human *ius gentium*.

Apart from the pope, whose authority was essentially spiritual and always dependant on his unique position as head of the universal Church, there was no higher authority recognised by the great princes of Europe such as Charles or Francis. In the 1515–1517 treaties, they did not expressly recognise any secular prince to have any power to limit their political freedom. Nevertheless, this did not mean that the *respublica christiana* was a ship without a captain. Here again, Vitoria's doctrine came close to the truth. According to the Salamanca theologian, the sovereign princes themselves were, as the highest authorities within the human society, responsible for the upholding and enforcement of the *ius gentium*. They were not only to safeguard the good of their own lands and people, but were to work for the common good of Christianity[132].

This idea of shared responsibility was expressed in several of the preambles of the treaties here analysed. More particularly, both princes understood that peace among them was necessary to have peace in the whole Christian world and that war among Christian princes could only lead to the ruin of the *respublica christiana*. The protection and expansion of the faith were said to be their main concern. The ideal of Christian unity was at its strongest when the common strife against the infidels, the Turks, was concerned. For a common crusade to take place, it was essential that all strife among Christian princes should come to an end[133].

The concept of common responsibility was also expressed in the alliance treaties from 1515 to 1517 through the so-called guarantee clauses. In these clauses certain powers were invited to act as *conservatores* or guarantors to the treaties. This implied that these third powers would assist the victim of a breach of treaty in his endeavours to press his claims under the treaties. The 1515–1517 treaties nominated the pope and the electors and princes of the Holy Roman Empire as guarantors[134]. The nomination of the imperial princes cannot be interpreted as proof for a special position of the Empire, but has to be attributed to the fact that Charles was closely connected to the Empire through his pater-

132. For a recent analysis of Vitoria's system of *ius gentium*: P. Haggenmacher, *La place de Francisco de Vitoria parmi les fondateurs du droit international*, in: Actualité de la pensée juridique de Francisco de Vitoria, Brussels 1988, p. 27–80.

133. '... pour les joindre et allier perpetuellement ensemble au bien et augmentacion de toute la chose publique chrestienne et exaltacion de la sainte foi catholicque ...': preamble to the Paris marriage agreement, p. 5; '... au bien, repoz et tranquillité de toute la Chrestienté universelle et s'en puisse ensuyuir fruyct à l'honneur d'icellui nostre Createur contres les infideles ennemys de nostre saincte foy catholicque ...': preamble to the Brussels treaty, p. 168; '... pour le bien, repoz et soulagement de leurs subgectz, prouffit, utilité et paix universelle de toute la Chrestienté ...': preamble to the Cambrai treaty, p. 168. This idea was also part of the normal diplomatic discourse, f.i.: letter of Charles's envoys to Charles, 5 February 1515, in: *Lanz*, vol. 1, p. 10.

134. 'Les conservateurs de ce present traicté seront nostre Sainct Père, le Sainct Siège Apostolicque, le Saint Empire, électeurs et princes d'icellui, qui pourront et seront tenuz assister de leurs povoirs la partie qui entretiendra ce present traicté à l'encontre de celle qui ne le vouldra entretenir ne observer': Paris alliance treaty art. 12, p. 21; similar clause in art. 16 of the Noyon treaty, p. 103; Brussels treaty, art. 8, p. 173.

nal grandfather and through being an imperial prince himself. But also the French desire to interfere in the affairs of the Empire helps to explain this choice. Be that as it may, these clauses indicated that the *respublica christiana* was considered a unity where the affairs of one power reflected upon another and where third powers could be asked to take responsibility for peace and understanding between two others.

The failure of peace (1517–1525)

In 1523 an all-out war between Charles V, now emperor elect, and Francis I, broke out. As a result, the hope for a lasting accommodation between the two greatest Christian princes, shared by many, was finally and definitely crushed. After the spectacular conquest of Syria and Egypt by the Ottoman Turks in 1516–1517, the first onslaught of Suleyman the Magnificent on Christian Europe had followed: in 1521 he successfully besieged Belgrade; in 1522 Rhodes fell to his fleet.

The urgency to reach universal peace within the Christian world and launch a joint counterattack was at its greatest at around this time. In 1517 pope Leo X unilaterally announced a five years truce among the Christian princes. In 1518, Francis I and Henry VIII of England entered the treaty of London. This originally bilateral treaty was said to be open to all Christian princes and powers, and was to form the basis for a lasting universal peace. It also included an offensive alliance against the Turks. In January 1519 Charles acceded to the treaty[135].

At this time, Charles desired peace more than ever. First of all, he wanted to secure his election as emperor. Second, since his arrival in Spain the relations with the *Cortes* and the towns had deteriorated. From 1520 to 1521 Charles was confronted with the insurrection of the *comuneros* in Spain. From 1521 on, things started to change. Once his election ensured and his authority vested in Spain, Charles's prestige in Europe grew strongly. The death of Chièvres on 10 January 1521 and the coming to power of Gattinara led to a change of course in the international politics of the emperor.

Now that his position in Spain was more secure, the emperor desired to strengthen his hold on the Empire and his hereditary lands in Germany and Italy. First of all, he had to be crowned as king of the Romans in Germany – which happened in October 1521 – and if possible as emperor in Italy. Furthermore, there was the growing problem of Lutheranism to be dealt with, and the Habsburg hereditary lands and interests in Austria to be safeguarded. By 1522, Charles was in a position to pursue his claims against the French king more strongly than ever[136].

135. Treaty of London of 2 October 1518, in: *Dumont*, vol. 4–1, p. 266–269; ratification by Charles V of 14 January 1519, in: *Mariño*, vol. 3–2, p. 217–231.

136. Brandi, *Charles V*, p. 113–165; Chaunu and Escamilla, *Charles Quint*, p. 141–200; *Mariño*, vol. 3–2, p. lxvi–cii; Mignet, *Rivalité*, vol. 1, p. 107–112 and p. 215–311; J.G. Dickinson (or Russell), *The Field of the Cloth of Gold, Men and manners in 1520*, London 1969; idem, *Peacemaking in the Renaissance*, p. 32–35; Parker, *De politieke wereld*, p. 121–130; Rassow, *Karl V.*, p. 19–24; Wernham, *Before the Armada*, p. 93–97.

The years 1520 to 1522 were dominated by complex negotiations between Charles V and Francis I, in which the English king and his most prominent minister, the cardinal Thomas Wolsey (ca. 1474–1530) played a pivotal role. As *legatus a latere* of the pope, appointed to ensure the universal peace and as plenipotentiary of his king, Wolsey organised in the summer of 1521 a conference at Calais with the envoys of Charles V and Francis I. Both rulers accused the other of having broken the peace and of failing to abide to their obligations under the treaties of Noyon and London. More to the point, they both invoked the assistance of the English under the London treaty against the other power for having broken the peace first[137].

During the negotiations, which Wolsey presided between the Spanish and French envoys, the Spanish brought forward essentially the same disputes as in 1516 and 1517. The Spanish envoys accused the French of having broken the peace by inciting Robert de La Marck to invade the Netherlands and by supporting the Albret invasion of Spanish Navarre. All the disputes and claims from before the 1516 peace and alliance of Noyon were revived. Gattinara, head of the imperial delegation, also referred to the restitution of Burgundy and to older claims such as the Aragonese ones to Toulouse, Narbonne and Montpellier and the Navarrese ones to Béarn, Foix, Bigorre, Champagne and Brie. He also referred to the imperial rights over the Provence, the Dauphiné and Arles. The promises of the 1435 Arras treaties concerning the atonement for the murder of the Burgundian duke John the Fearless (1404–1419) were brought forward. To these quite unreasonable claims to great parts of the French territory, the French chancellor Antoine Duprat retaliated with quite similarly fantastic and ancient pretences to Aragon, Catalonia, Roussillon, Naples, Sicily, the Franche-Comté, Flanders and Artois. The French however were prepared to limit their demands to the execution of the Noyon marriage agreement and the correct payment of the annual tribute Charles had pledged for Naples. They accused the Spanish of interference in Francis's duchy of Milan and accused him of not abiding to his promise regarding the Albret family[138].

To Gattinara who was convinced that hegemony over Italy was the absolute priority, both realistic and unrealistic demands were only used to justify war[139]. Only through war could Francis be evicted from Milan and Charles's position on the peninsula be strengthened. Moreover, the imperial envoys stated that while the emperor had worked for peace and the protection of the faith against the Turks, the French king had broken the peace. This was not only a propagandistic statement, but was also meant as an argument to invoke English support under the treaty of London.

Charles V and Wolsey used the whole Calais negotiations as a ploy to mis-

137. On the conference: J.G. Dickinson, *The Search for Universal Peace, The Conference at Calais and Bruges in 1521,* Bullettin of the Institute for Historical Research, 44 (1971), p. 162–193. See also: Buisson, *Antoine Duprat,* p. 148–177; P. de Vaissière, ed., *Journal de Jean Barrillon, secrétaire du chancelier Duprat, 1515–1521,* vol. 2 , Paris 1899, p. 176–326; C. Weiss, ed., *Papiers d'état du cardinal de Granvelle,* [Collection de documents inédits sur l'histoire de France], vol. 1, Paris 1841, p. 125–241.

138. See the report of the negotiations in: Weiss, *Granvelle,* vol. 1, p. 135–190 and p. 209–228.

139. Memorandum to the emperor of 1521, in: Bornate, *Historia vite,* p. 428–431.

lead the French. Gattinara was clearly stalling at Calais[140]. Meanwhile, Charles negotiated an offensive alliance with England against France. During the conference of Calais, Wolsey travelled to the emperor in Bruges where the foundations were laid for such an offensive alliance[141]. By the summer of 1523 war raged all over Europe.

The apogee of Charles V's reign (1525–1530)

On 24 February 1525 disaster struck the French: at Pavia the French king Francis I was taken prisoner by the imperial troops. This event destroyed all hopes the French enjoyed, based on their not unsuccessful efforts in Italy, for an advantageous outcome of the war. During the negotiations that ensued and ended with the signing of the peace treaty of Madrid on 14 January 1526, they had to make tremendous concessions in order to have their king released.

From the very beginning, Charles's government was divided. The hardliners wanted to press the military advantage Charles's armies had won with the capture of the French king and to continue the war. Charles himself as well as Gattinara preferred to grasp the opportunity to make an advantageous peace treaty in which the traditional disputes with the French could be settled once and for all. A stable peace with Francis would allow Charles to vest his hegemony over Italy, have himself crowned emperor by the pope, deal with the increasing divisions within the Church and the Empire and to launch the counter-attack against the Turks. It is clear that this policy was very far from the one his government followed ten years before[142]. The imperial idea was high on the agenda, not only for ideological reasons but also because of the actual situation. By 1525, Lutheranism had become a real religious and political problem, threatening the stability of the Empire. The continuous onslaughts of the Turks on Hungary could hardly be overlooked any more.

This is not the place to analyse the complex negotiations that took most of a year between Charles's advisors and the plenipotentiaries both of the captive

140. On 30 July 1521 Gattinara addressed a memorandum to Charles arguing for war with France: Kohler, *Quellen zur Geschichte Karls V.*, p. 81; K. Lanz, ed., *Aktenstücke und Briefe zur Geschichte Kaiser Karls V.*, Stuttgart 1853, p. 231–233.

141. Treaty of Bruges of 25 August 1521 between Charles V and Henry VIII, in: G.A. Bergenroth, ed., *Calendar of Letters, Dispatches and State Papers relating to the Negotiations between England and Spain preserved in the archives at Simancas and elsewhere*, vol. 2, London 1866, p. 365–371 (hereinafter *Bergenroth*); treaty of 24 November 1521 between the emperor, the pope and Henry VIII, project in: *Bergenroth*, vol. 2, p. 663–665; treaty of Canterbury of 16 June 1522 between Charles V and Henry VIII, in: *Bergenroth*, vol. 2, p. 434–435, and different text in: R. Brown, ed., *Calendar of State Papers and Manuscripts, relating to English affairs in the archives and collections of Venice*, vol. 3, London 1869, p. 244–246; secret treaty of Windsor of 19 June 1522 between the same, in: *Bergenroth*, vol. 2, p. 438–440; treaty of 7 July 1522 between the same, in: *Bergenroth*, vol. 2, p. 449–450.

142. Charles V to the Persian sjah, 25 August 1525 in: *Lanz*, vol. 1, p. 168–169; Charles V to Margareth, 9 February 1526 in: *Lanz*, vol. 1, p. 190–191; Charles V to Louise of Savoy, March 1525 in: A. Champollion-Figeac, ed., *Captivité de François Ier* [Collection de documents inédits sur l'histoire de France], Paris 1847, p. 169 (hereinafter *Champollion-Figeac*); Brandi, *Emperor Charles V*, p. 225–226; *Mariño*, vol. 3–3, p. xxvi–xxvii.

king as well as of the French regent, his mother Louise of Savoy (1476–1531)[143]. Here only some aspects will be highlighted which are relevant for our purposes.

Charles V made his claims quite clear from the beginning. On 25 March 1525, he issued instructions to his envoys in Italy to present his demands to the captive king[144]. Charles proposed to release the French king once a peace treaty, settling all their disputes, was made and executed. Later on, he rejected any offers for a ransom, a position he would sustain until the very end. What was proposed as a chivalrous act was nothing less than using the king as a hostage in order to obtain French concessions.

The imperial envoys were to demand that the treaty preamble would state that the emperor could not be held responsible for the war. Charles had abided to all existing treaties, though they were disadvantageous to his interests. The French had caused the war by breaking their obligations under the treaties of Noyon and London before, during and after the Calais conference. The mere fact of Francis's capture proved that God was on the side of Charles V so that there could be no doubt that Charles had just cause for war. These references to the just war doctrine, which were extremely rare in any peace treaty of the time, were important because fighting a just war made the capture of Francis legal and submitted him to the laws of war. These entitled Charles V to bargain for his release[145].

But Charles was not willing to press his advantage too far. He not only had to consider his own interests but also those of the whole of Christianity. Therefore he would show clemency instead of rigor and proposed to make peace. Of course, Charles expected a similar inclination to peace and a similar reasonableness from Francis.

The imperial negotiators were to lay out all claims Charles was supposed rightfully to hold over territories disputed or held by the French. Charles referred to the papal bull of Boniface VIII (1294–1303) whereby he had deposed the French king Philip the Fair (1285–1314) and enfeoffed the Austrian archduke Albert (1298–1308) with the kingdom. Furthermore, the houses of Habsburg, Burgundy and Aragon and the Empire combined held claims to territories like the Languedoc, Champagne, Brie and the Dauphiné. Charles was however willing only to press the rights of the house of Burgundy.

143. See for some extensive studies on the subject: Brandi, *Emperor Charles V*, p. 224–235; A. Champollion-Figeac, *Captivité de François*; L.-P. Gachard, *La captivité de François Ier et le traité de Madrid*, Brussels 1860; G. Jacqueton, *La politique extérieure de Louise de Savoie, Relations diplomatiques de la France et de l'Angleterre pendant la captivité de François Ier (1525–1526)*, Paris 1892; *Mariño*, vol. 3–3, p. xxiv–lxxxvi; Mignet, *Rivalité*, vol. 2, p. 1–190.

144. *Champollion-Figeac*, p. 149–159.

145. On the laws of war and the code of chivalry concerning capture: P. Contamine, *Un contrôle politique croissant, Les usages de la guerre du XIVe au XVIIIe siècle: rançons et butins*, in: Guerre et concurrence entre les Etats européens du XIVe au XVIIIe siècle, ed. P. Contamine, Paris 1998, p. 201–211; M.H. Keen, *The Laws of War in the Late Middle Ages*, London 1965, p. 156–188; T. Meron, *Henry's Wars and Shakespeare's Laws, Perspectives on the Law of War in the Later Middle Ages*, Oxford 1993, p. 154–171; R.C. Stacey, *The Age of Chivalry*, in: The Laws of War, Constraints on Warfare in the Western World, eds. M. Howard, G.J. Andreopoulos and M.R. Shulman, New Haven and London 1994, p. 27–39. On the just war doctrine see a.o.: F.H. Russell, *The Just War in the Middle Ages*, Cambridge 1975.

The treaty proposed by Charles would encompass a peace agreement, an alliance and a marriage agreement. The alliance proposed was to be an anti-Turkish alliance. Both parties would assemble an army of 20.000 soldiers to launch a crusade against the Turks. First Francis would have to help Charles to appease Italy and to ensure his coronation as emperor by the pope. The military leadership of this crusade would rest with the emperor. Thereby Charles V demanded no less than to be recognised as the secular leader of Christianity. Both princes would ask the pope and the other secular rulers of Christianity to join their effort. Thereby Francis was asked implicitly to promote Charles's leadership over the whole of Christianity. The marriage proposed was to be between the princess Maria (1521–1577), daughter of Charles's sister Eleanor (1498–1558), dowager of Portugal, and the French dauphin Francis (1517–1536).

In order to ensure peace and before Francis was to be released, the duchy of Burgundy had to be handed over to Charles. References were made to the original investiture of Philip the Bold (1363–1404) by the French king Jean II (1350–1364) in 1363 as well as to the treaties of Arras (1435), Conflans (1465) and Péronne (1468). These included the transfer of sovereignty over Flanders and Artois to Charles. The French king would also have to fulfil all the acts of repentance the peace treaty of Arras provided for the murder of the Burgundian duke John the Fearless (1404–1419) on the instigation of the dauphin of France, later king Charles VII (1422–1461)[146]. Furthermore, the French were fully to restore the rights Charles the Bold had held over Thérouanne, Artois and Hesdin. Other traditional Burgundian pretences like the rights of Margareth over Charolles, Noyon and Chinon were repeated. This time Charles claimed sovereignty as well. Thereby, he wanted to ensure that he would not have to recognise the French king as his overlord ever again.

Charles did not forget his main allies either. The duke of Bourbon, Charles (1489–1537), who during the war had betrayed his sovereign and had gone over to Charles, was to be restored to all his rights and possessions and was to have the county of Provence which belonged to the Empire. He was to hold the Provence and all his French territories as a sovereign kingdom. The duke would obtain the county of Provence through the emperor as dowry for the upcoming marriage with Charles's sister Eleanor. Of course, these demands on behalf of Bourbon were quite unrealistic from the start.

From Francis's answer as well as from other documents attesting the negotiations[147], it is clear that Charles from the very beginning also required the cession of all French claims and rights on Naples, Milan, Genoa and Asti. Charles's hegemony over Italy was not to be disputed any longer by the French.

After Francis's capture, both he and the regent government had taken a quite passive stance. They implored the emperor's magnamity and only made vague openings towards possible concessions[148]. In May, the French first took a clear

146. Peace treaty of Arras of 21 September 1435, art. 1–10 in: *Dumont*, vol. 3–2, p. 310–311.

147. For Francis's answer see: *Champollion-Figeac*, p. 166–168; instruction of Louise of Savoy to the French negotiators, 28 April 1525 in: Weiss, *Granvelle*, vol. 1, p. 268.

148. Louise of Savoy to Charles V, 3 March 1525 in: *Champollion-Figeac*, p. 135; first instructions of Louise of Savoy to the French envoys, 28 April 1525 in: *Champollion-Figeac*, p. 174–177.

stance by proposing a settlement by ransom. By then, Charles's demands had been formulated and the negotiations could start in earnest[149]. Some important conclusions can be drawn from the negotiations between March 1525 and January 1526.

First, in the weak position they were in, the French from the beginning acceded to most of Charles's realistic territorial claims though they made some difficulties about the exact details or the execution of the promises they were to make. The French were prepared to cede all their rights and claims over the disputed Italian territories and fiefs. After some initial hesitation, they were also willing to accept the transfer of sovereignty over Flanders and Artois. A major point Francis won during the negotiations, was that he was to marry Eleanor[150]. Thereby he severely damaged the interests of his rebellious vassal Bourbon and left the dauphin available for a marriage with Henry VIII's daughter Mary Tudor (1553–1558). The English king had meanwhile changed sides and made his peace with the French regent[151]. Francis promised to restore Bourbon to all his French fiefs, but the quite unrealistic claim to the cession of the Provence or to an independent kingdom was dropped.

Second, already in his initial answer Francis hardly disputed Charles's demand to help him with his coronation and to join a crusade under his supreme leadership[152]. Nor was this point of principle much disputed afterwards. On the one hand, the French were ready to concede because they knew that, once Francis was released, it would be easy to stall and not to comply. On the other hand, their position on this point proved that now they – at least temporarily – had to accept Charles's factual hegemony over Italy and thereby over Europe; they did not want to endanger the success of the negotiations by fussing over the theoretical and juridical recognition of the emperor as the secular leader of Christianity. By not going into the point, a more express articulation of all the traditional Bartolist, Ghibelline and Dantesque implications by the imperialists was avoided and both parties could rest with their own interpretations of the imperial idea.

Third, although the French government and king were quite reasonable regarding Charles's traditional claims over Italy, the Low Countries and the Bourbon territories, the negotiations dragged on for the better part of a year over one major point: the restitution of the duchy of Burgundy. Charles V from the beginning had, at least implicitly, distinguished in fact two kinds of claims: those concerning his position as emperor, his coronation, the crusade and Italy; and those concerning the traditional pretences of the Burgundian dynasty. The first

149. Answer of Francis to Charles's proposals in: *Champollion-Figeac*, p. 169–169; instructions of Louise of Savoy, 6 June 1525 in: *Champollion-Figeac*, p. 202. See also: M. Hamon, *L'honneur, l'argent et la Bourgogne, La rançon de François Ier,* Revue française d'histoire des idées politiques, 1 (1995), p. 17–18.

150. *Mariño*, vol. 3–3, p. xxxiv–xxxvi. See proposals of Francis from Pizzighitone, in: *Champollion-Figeac*, p. 170.

151. On the English position during the negotiations: Wernham, *Before the Armada*, p. 111–113.

152. Francis's answer to the emperor's initial demands, point 9, p. 167; further only the practical implications and details were disputed: Francis's answer of 10 October 1525, point 17 in: *Champollion-Figeac*, p. 368.

can be comprehended as being in the interest of Christianity, the second as in the interest of himself as head of his house and dynasty.

From the imperial side, the dispute over the duchy was more one of honour and reputation than of expediency. The duchy was, although quite large and rich, of little real political or military value to the Habsburgs. Enclosed on three sides by French territories, it would remain forever an easy prey in each new war with France. Those were however not considerations that mattered much to Charles or the other princes of the sixteenth century. Like many other princes, the Habsburgs held several of their territories on the basis of merely dynastic and feudal rights, which were, albeit strong, seldom undisputed. The tendency to stress the legitimacy of their holdings was important; the cession of claims meant a severe blow to the overall legitimacy and the honour of the house in general[153]. Here the upholding of the honour of the prince as head of the dynasty became synonymous with the upholding of dynastic power.

The successful accumulation of many territories like the Low Countries, Castile, Aragon, Naples, the Austrian duchies and later Milan, Hungary and Bohemia by Charles and his brother Ferdinand had never been a certainty before it was actually accomplished. Therefore, during Charles's minority and in the early years of his reign, Charles and his advisors had taken a quite defensive stance. The Habsburgs would press all the legitimate claims they had to the full, but would not provoke anybody or weaken the legitimacy of the inheritance by pressing more disputed demands. The giving up of rightful claims was unthinkable, because the Habsburgs believed this would trigger a kind of domino effect[154].

The duchy of Burgundy, the original fief of the dynasty from which it had taken its name, had enormous symbolic importance for Charles. The emperor went so far as to reject Francis's proposal to hand the duchy over to Francis and Eleanor as dowry. Thereby he would have obtained the French recognition of his rights [155]. Charles did not flatly reject the possibility of granting the duchy to his sister, but he was not prepared to bargain over his rights and his discretion to do with the duchy what he wanted[156]. His position was therefore now far different from the one he took in the 1515 negotiations. Of course, Charles now also demanded – as he claimed that the breach of the treaties of Conflans, Péronne, Paris and Noyon by the French king meant that he had lost all rights of sovereignty over him – full sovereignty over the duchy.

153. Gattinara wrote a treatise defending the Habsburg claim over the duchy of Burgundy, referring to the dynastic rights, royal cessions and the former treaties between the houses of Burgundy and France, in: C. Bornate, ed., *Mémoire du chancellier de Gattinara sur les droits de Charles Quint au duché de Bourgogne*, Bulletin de la Commission Royale d'Histoire, 76 (1907), p. 391–535.

154. This defensive strategic thinking and the obsession with the domino theory would dominate the Spanish imperial policies until deep in the seventeenth century. See e.g.: J.H. Elliott, *The Count-Duke of Olivares, The Statesman in an Age of Decline*, New Haven and London 1986, esp. p. 57.

155. Proposals of Francis I from Pizzighitone, p. 171; report of the conference between Charles V and Margareth of Alençon (1492–1549), 9 October 1525: *Champollion-Figeac*, p. 359.

156. Charles to De Praet, 20 November 1525 in: Kohler, *Quellen zur Geschichte Karls V.*, p. 115.

For Francis, the dispute over Burgundy also held symbolic value and reflected upon his honour. Francis and the regent for a long time held on to the position that they were only prepared to pay ransom for the king's personal release, and that they did not want to bargain more of the king's rights than those the war had been waged over. Anyhow, the restitution of Burgundy was an excessive claim as a substitute for ransom[157]. This was clearly stated to be a matter of honour[158]. By taking this stance and holding on for as long as possible to it, the French were invoking the traditional laws of war under the code of chivalry and the just war doctrine. They considered Francis to be a prisoner to be held for ransom like any other noble, and continued to try to separate the matter of captivity from the political settlement. They sought to sever the link between Francis as a prisoner of war like any other, and the King as a public authority.

For the French, there was yet another element to consider. Since the Hundred Years War and the reign of Louis XI (1461–1483), the idea of the integrity of the French royal or public domain had won ground. The principle that the king could not alienate territories from the public domain without the consent of the Estates was now revived. Francis and the regency not only advanced this difficulty – just as Francis in his first answer had indicated the same problem of consent of the Estates regarding the sovereignty over Flanders and Artois[159] – to stall and thereby to weaken the imperial position, they had every reason to fear for the stability of the regime and especially the regency if the Parliaments or, worse, the Estates – both the provincial Estates of Burgundy and the General Estates of the realm –, would be provoked. To see the French argument against the cession of Burgundy as a sudden articulation of modern doctrine of national sovereignty would however be incorrect. It was nothing else than the restatement of a traditional argument already developed in the fourteenth and fifteenth centuries when France had to make large territorial concessions because of the Hundred Years War[160].

Charles V refused to accept ransom and thereby to treat Francis in a similar way as all other nobles taken captive, including Henri II d'Albret, the king of Navarre (1517–1555), who had been ransomed. The emperor wanted to release the captive king only after Francis had restored Charles's rightful inheritance[161]. Since the summer of 1525 the negotiations had dragged on over the dispute: ransom or Burgundy. In the end, Francis and the regency had partly to give in on the Burgundian restitution, albeit in a very dubious way. Francis had

157. Instructions of Louise of Savoy, 6 June 1525, p. 202; Report of the negotiations at Toledo, July–August 1525 in: *Champollion-Figeac*, p. 264.

158. Instruction of Louise of Savoy, 6 june 1525, p. 198; Hamon, *L'honneur, l'argent et la Bourgogne*, p. 19.

159. Point 3, p. 166.

160. Meron, *Authority to Make Treaties*, p. 3–6. One of the French negotiators, Jean de Selve, president of the Parliament of Paris (1465–1529) stated that the cession of Burgundy was a public concern while the cession of Milan only a dynastical one: letter of 21 August 1525, see: Buisson, *Duprat*, p. 179. See also: letter of De Praet to the emperor, 13–15 October 1525 in: *Le Glay*, vol. 2, p. 170.

161. Hamon, *L'honneur, l'argent et la Bourgogne*, p. 19–20. See f.i. letter of Charles to De Praet of 20 November 1525 in: *Le Glay*, vol. 2, p. 646. See also: H. Hauser, *Le traité de Madrid et la cession de Bourgogne à Charles–Quint sur le sentiment national bourguignon*, Paris 1912.

obtained his release before the duchy was actually handed over by his allegation that his presence in France was necessary in order to convince the Parliaments and the Estates and make the cession valid. Francis I only swore on the treaty of Madrid after he had made another – secret – oath declaring that his oath on the treaty was forced on him and therefore invalid. After his release, he only rejected the treaty on the point of Burgundy. Anyway, he went to great lengths for Burgundy by jeopardizing his honour as a Christian prince, as a knight and as most Christian king in such a way. This 'betrayal' would damage the personal relations and the esteem between the two powerful princes severely[162].

At the end of the peace process, Charles and Gattinara fell out with one another to the point that the chancellor refused to draft the final version of the treaty and to attach the imperial seal to it. From the beginning, Charles's ambassador in France Louis de Praet († 1555) had defended the opinion that a choice had to be made: either a peace was made that was acceptable to the French so that the peace would last; or a peace was made that was so harsh that French power would be broken[163]. Gattinara now seemed to act on the assumptions of this reasoning. By giving in to the French king on his release before actually handing over Burgundy and by provoking the French and some Italian states through an all too direct control over Milan, the emperor was following an impossible *via media* and peace was bound to fail[164]. Moreover, Gattinara thought that Charles's policy towards Milan would seem too harsh and blatantly aggressive to the Italian princes and republics. At this stage, if a lasting peace was impossible, he preferred a harder stance towards France and the accommodation of the Italian princes to ensure a lasting hegemony over Italy than doing it the other way round. Thereby, the chancellor proved to be more concerned with the imperial aspirations of Charles towards the pacification of Italy and Germany and his coronation than Charles himself was[165]. The fierce upholding of his dynastic right, both over Burgundy and Milan, estranged the emperor from his chancellor.

Nevertheless, Charles V went through with the existing peace project and on 14 January 1526 the treaty was signed. In the preamble to the treaty it was stipulated that the French king had been taken captive in a just war. Peace was to be made in order to allow the princes of Christianity to turn against the infidels[166]. The treaty made an end to the war and provided for a defensive alliance between both princes covering all their territories. Trade regulations were to be

162. Protest of Francis I to the treaty of Madrid, 13 January 1526 in: *Mariño*, vol. 3–3, p. 109–121.

163. '... et se doit traicter en lune des deux extremitez, assavoir de mectre luy en son royaulme si bas, que par cy apres il ne puisse grever, ou le traicter si bien et en faisant avec sa personne sy estroictes alliances, que a jamais il ne vous veulle mal faire': letter of De Praet to Charles V, 14 November 1525 in: *Lanz*, vol. 1, p. 182.

164. Gattinara favoured the investiture of Maximilian Sforza (1493–1530) as duke of Milan.

165. Gachard, *Captivité*, p. 59–62; Headley, *Habsburg World Empire*, p. 108; idem, *Emperor and his Chancellor*, p. 46–58; idem, *Rhetoric and Reality*, p. 259; Parker, *Politieke wereld*, p. 145.

166. Treaty of Madrid of 14 January 1526, preamble in: *Mariño*, vol. 3–3, p. 127–128.

restored to pre-war conditions[167]. In the third article Francis was to promise that he would restore the duchy of Burgundy with Charolles, Noyon and Châteauchinon and give up all sovereignty over it within six weeks. This was said to be stipulated in order to strengthen the peace and to facilitate the release of Francis[168]. Only the next article provided for the conditions for the release of the French king. Some important nobles such as the dauphin and Francis's younger son, Henri of Orléans (later to be king as Henri II, 1547–1559) were to be exchanged as hostages for the restitution of Burgundy. They would only be returned after Francis had ratified the treaty and after it would have been approved and sworn upon by the Estates and registered in the Parliaments and the *Chambres des Comptes* of the realm. In accordance with the customs of war, Francis also promised that in case he could not comply with the conditions of his release – the restitution of Burgundy – he would return to prison[169].

Article 5 implied some more French concessions that were supposed to strengthen the peace by putting an end to old disputes. These included the cession of the French pretences over Naples and all pensions concerning this realm as well as over Milan, Genoa and Asti. Furthermore, Francis had to give up the sovereignty over the counties of Flanders and Artois and his claims over Arras, Tournai, Saint–Amand, Lille, Douai, Orchies and the towns on the Somme as well as Boulogne, Ponthieu and Guines. Only his claims on Auxerre, Mâcon and Bar–sur–Seine – fiefs of the duchy of Burgundy – Francis I would be allowed to push in the future[170]. Article 7 concerned the marriage agreement between the captive king and Charles's sister Eleanor. Francis would seek dispensation from the pope. The dowry would mainly consist of money, but the emperor would bestow his rights on Auxerre, Mâcon and Bar–sur–Seine on his sister and her future offspring[171]. Furthermore, Francis had to promise that he would induce the Albrets to drop their claim to Navarre. In the matter of Gueldres, he would even assist the emperor in the reconquest of the duchy against his old ally. Similar stipulations were provided regarding such other French allies as Robert de La Marck and the dukes of Württemberg[172]. The French king took over Charles's financial obligations towards the English king[173]. He had to restore all the duke of Bourbon's lands, titles and rights[174].

Article 23 and 25 repeated that the main reason for the peace treaty was the desire to launch a crusade against the Turks and other infidels and heretics. Therefore, it was essential that the emperor could go to Italy. Francis I promised he would assist Charles at his request to that end with ships and troops[175]. Article 25 provided Charles and Francis would implore the pope to call upon all Christian princes to restore the peace and to contribute to the crusade. In case of an earlier attack by the Turks, the emperor, as head of the secular princes of

167. Art. 1–2, p. 128–131. Article 6 provided that each prince would assist the other with an army of 11.500 men, p. 140–141.
168. P. 131–133.
169. Art. 4, p. 133–136.
170. P. 136–140.
171. Art. 7–13, p. 141–142.
172. Art. 20–22, p. 145–148.
173. Art. 24, p. 149–151.
174. Art. 26, p. 153–157.
175. Art. 23, p. 148–149.

Christianity and as the principal responsible for the defence of Christianity, would take up arms against them. He would be assisted and accompanied in person by Francis I and all other Christian princes prepared to do so. If the personal presence of Francis were not deemed necessary, then his troops and ships would fight under the supreme leadership of a captain general of the imperial army[176].

At the end of the treaty, the nominative inclusion of most powerful princes and republics of Christianity such as the pope, the kings of England, Hungary, Poland, Denmark, Portugal and Scotland, and the Swiss was agreed upon[177]. Immediately upon his return to France, the king would hand over letters of ratification to the imperial envoys. Once the dauphin had reached the age of 14, he would confirm the treaty by swearing an oath and by the express renunciation of all his claims according to the treaty [178]. Both the emperor and Francis – after his release – would swear in the presence of the envoys of the other party. Both parties were to submit themselves to the ecclesiastical jurisdiction and punishments and rejected all dispensations[179]. These clauses once again offered proof for the view that the taking of an oath and written ratification had become two different acts.

The treaty of Madrid was never executed. Upon his release, Francis refused to cede Burgundy and on 22 May 1526 entered the league of Cognac with, among others, the pope and England[180]. The war that ensued ended with the peace treaties of Cambrai of 5 August 1529 between the emperor and France on the one hand and between the emperor and England on the other[181]. Italy, shocked after the *sacco di Roma* (1527) by Charles's mutinous troops, was pacified through the treaties of Barcelona of 29 June 1529 and of Bologna of 23 December 1530 with the pope, Clement VII[182].

The accommodation of Cambrai with Francis I was masterminded and negotiated through secret diplomatic contacts between Charles's aunt Margareth and Francis's mother Louise. After the breach of treaty by Francis and the sharp rebukes by Charles, the honour of both princes did not allow for more direct negotiations[183]. As these treaties were based on the policies and assumptions set out at Madrid, it will suffice to indicate some major points.

First, in the treaty of Cambrai, Charles made a major concession by not any longer demanding the restitution of Burgundy and accepting the huge ransom of 2,000,000 *écus d'or* instead for Francis's release, or better the release of the

176. '... el dicho Señor Emperador, como cabeça de los prínçipes seglares de la christianidad, a quien principalmente pertenesçe la defensión della ...': art. 25, p. 152, see also p. 151–153.

177. Art. 43, p. 169–170.

178. Art. 44, p. 170.

179. Art. 45, p. 170–171.

180. *Dumont*, vol. 4–1, p. 451–455.

181. Imperial–French treaty in: *Dumont* vol. 4–2, p. 7–17; Imperial–English treaty in: *Dumont*, vol. 4–2, p. 42–48.

182. In: *Dumont*, vol. 4–2, p. 1–7 and p. 53–58.

183. For the negotiations, report to Margareth from 31 December 1528 in: *Le Glay*, vol. 2, p. 676–691. It had even come to a challenge for a single combat: letter of Nicolas Perrenot de Granvelle (1486–1550) to the emperor of 31 March and 8 and 10 April 1528 in: *Lanz*, vol. 1, p. 265.

hostages, which had been substituted for Francis. The emperor reserved all his claims and rights on the duchy and appurtenances, but would try to recover his rights through amiable means or by recourse to justice[184]. Second, for the assistance of Charles's coming to Italy, Francis now only had to deliver twelve ships without any soldiers or crew [185]. This was in some way in line with the stipulations of article 27 in which France had to promise not to intervene in the affairs of the Empire or Italy[186]. There was no explicit reference to the crusades, but as the treaty in general affirmed the Madrid treaty, one can say the relevant clause was silently affirmed as well[187]. In article 46 it was said that both princes would swear upon the treaty and submit themselves to the ecclesiastical authority. Article 47 provided for the ratification by Francis of the treaty, as well as that of Madrid, in a similar way as the treaty of Madrid, including ratification by the general and provincial Estates as well as registration by the Parliaments[188].

The treaty of Barcelona was negotiated and drafted by Gattinara himself[189]. With this treaty he succeeded in having the pope recognise the hegemony of the emperor in Italy. Quite strikingly, in the preamble Charles was referred to as '*Sacrae Romanae Ecclesiae, Apostolicaeque Sedis, Protector, et Defensor, et Christianae Reipublicae Caput*'[190]. This phrase encompassed both the recognition of the emperor as secular head of Christianity, as well as his claim to be the secular protector – and if need be corrector – of the spiritual head of Christianity. This phrase, as well as a more direct reference to the joint leadership of pope and emperor, affirmed Charles's and Gattinara's pretences about co-operation between emperor and pope and their mutual responsibility towards the faithful fulfilment of their tasks[191]. By accepting the idea of dual leadership, the pope implicitly accepted the idea that in case of the failure of the pope to keep the Church safe and united, the emperor could intervene. Furthermore, the preamble to the Barcelona treaty referred to Gattinara's idea that the pacification of Italy was at the heart of pacifying and restoring Christianity[192].

Next to establishing the peace between the emperor and the pope[193], the treaty also provided for a defensive alliance. As Caesar, and therefore protector of

184. Art. 2–3, p. 8.
185. Art. 29, p. 12.
186. P. 12.
187. Art. 2, p. 8. The preamble repeated that the peace was signed in order to allow for a war against the infidels, p. 7.
188. P. 15. The pope was invited to become a principal party to the treaty, most princes and republics were included: art. 43, p. 14.
189. Headley, *Habsburg World Empire*, p. 112–113; idem, *Emperor and his Chancellor*, p. 131–137.
190. *Dumont*, vol. 4–2, p. 2; see also art. 1 and 7, p. 2 and p. 4.
191. '... et cum a deo simus ambo constituti veluti luminaria duo magna, demus operam, ut per nos illustretur orbis terrarum, neque per nostrum dissidium oriatur eclypsis, cogitemus de republica, de profligandis barbaris, de sectis et erroribus comprimendis': letter of Charles V to Clement VII of 18 September 1529 in: *Lanz*, vol. 1, p. 219. In a letter to the cardinals of 6 October 1526, the emperor had asked for a Council, in: *Lanz*, vol. 1, p. 221.
192. '... ut his duobus Luminaribus a Deo Optimo Maximo institutis sibi invicem (ut decet) correspondentibus, universa Christiana Respublica decenter illustrata, pristinum decorem, ac nitorem reaffirmare, ipsaque misera Italia pacari, et foveri ...': p. 2.
193. Art. 1, p. 3.

the Church, Charles would defend the papal state. The pope recognised Charles's rights to Naples and would defend his possession of this papal fief[194]. By accepting Charles's restoration of his Medici family in Florence, the pope had to recognise that Charles was the *de iure* and *de facto* overlord over Italy. Charles V promised he would restore particular fiefs to the Papal State now occupied by among others the house of Este from Ferrara[195]. The hope was expressed that Charles would soon come to Italy and meet the pope. Both rulers would then speak about pacifying Italy, and thereby working towards universal peace. They would grant each other all the honours and privileges their positions as pope and Caesar entailed. The emperor did not refrain from stating that he was an obedient son to the pope, but the pope had to recognise him as the oldest son of the Church and treat him as such. This was nothing more than an affirmation of the medieval ideas of dual leadership sponsored by Gattinara. Furthermore, all this was a vague reference to Charles's future crowning at Rome[196]. In the end the pope crowned Charles at Bologna.

Over Milan, Gattinara scored a major success. In article, 9 the recent history of the duchy, including the rebellion of the Milanese duke Maximilian Sforza against the emperor, his sovereign, was related. The parties agreed that the emperor, the pope as well as the Church Council that was to be convened, would act as judge over the duke. In case he was acquitted, the duchy would be restored to him. In case not, the emperor, as sovereign lord over Italy would be at liberty to dispose over the duchy[197]. The pope and emperor would not enter treaties regarding Italy without each other's consent[198]. In an annex to the treaty, the pope promised to assist the emperor and his brother in their fight against the Turks with all possible spiritual as well as with financial means[199]. The emperor would confirm the treaty by oath and letters of ratification; the pope by papal bull[200]. For the emperor, the pacification of Italy and the vesting of his hegemony there were all the more urgent as the Turks had marched up to Vienna (1529) and the political as well as the religious situation in the Empire was deteriorating fast. The Bologna treaty of December 1530 implied some detailed regulations concerning other Italian principalities and republics such as Venice and Ferrara in order to ensure the tranquillity of the peninsula[201].

194. Art. 2, p. 3: '... teneaturque Caesar, tanquam Advocatus, Protector, et Defensor Ecclesiae, in vim hujusce defensivi Foederis, assistere Eidem Sanctissimo Domino nostro, ipsique Apostolico Sedi in tuendis ... Civitatibus ... Statibus ad ipsam Romanam Ecclesiam in Italia spectantibus ...'. See also art. 6, p. 3–4.

195. Art. 4–5 and 8, p. 3.

196. '... de Italiae quiete, deque universali Christianorum Pace uberius tractare ...': art. 7, p. 4.

197. P. 4.

198. Art. 12, p. 5.

199. P. 6–7.

200. Art. 17, p. 5. They pledged all their goods, art. 18, p. 5.

201. The same ratification procedures as in the Barcelona treaty were provided for, art. 16–17, p. 58.

The international legal order at the apogee of Charles V's reign (1525–1530)

First, some brief remarks regarding internal sovereignty have to be made. Both the Madrid as well as the Cambrai treaties provided for the approval and ratification of the treaties by the French Estates and for their registration in the Parliaments and the *Chambres des Comptes*. These one-sided stipulations were made in order to ensure the cession and restitution of certain territories that belonged to the royal domain of the French realm. In that, they were different from the stipulations of the 1516–1517 treaties that were two-sided and did not only reflect the French customary rules regarding the inalienability of the public domain. To interpret these Madrid and Cambrai clauses as proof of the rise of the sovereign state would be wrong. Rather it was a return to a fourteenth-century concept that had mostly been brought forward to strengthen the French bargaining position. Co-ratification by individual nobles, prelates and towns were not provided for. In general, after the 1540s these provisions became quickly obsolete in general treaty practice. This is of course a step, albeit small, in the slow but steady process of the monopolisation of treaty making power by the central authority[202]. However, internal sovereignty was not accomplished as yet and the basic assumptions about the personal character of international relations in general and treaty making in particular explained above remained unchanged. The mixture of the peace negotiations with the problem of Francis's captivity, release and ransom – promoted by the Caroline government as it was – corroborates this assessment.

Second, and before turning to the general question of external sovereignty and some conclusions on *monarchia universalis*, some words have to be said as to the legal concepts and assumptions underlying the Madrid and Cambrai treaties. As was made clear by the negotiations about Francis's release, his ransom and the subsequent deliverance of hostages, the medieval laws of war were still applied. More generally, the 'law of nations' continued to be that amalgam of feudal, dynastic, canon and Roman law, next to customary and treaty practice. The Madrid negotiations, centring on the restitution of the duchy of Burgundy, offer clear proof of this. The arguments brought forward both by the French and the imperialists were of a clearly dynastic and feudal character, including as they did references to older treaties Arras, Conflans, Péronne and Noyon. From the 'Burgundian' side they came down to the laying out of the classical heritable line from Philip the Bold to Charles the Bold and Mary of Burgundy to Charles V and the idea that the fief like all French fiefs could be inherited through the female line. The French stuck to the argument that as part of the royal domain and as an *apanage*, the duchy was just as the French crown submitted to the *loi salique* excluding women from the heritable line. Thus feudal and dynastic arguments were part of the negotiations[203].

In general, it has to be stressed that Charles V, albeit his territorial perspective and interests were much wider in 1526 than before, stuck to a policy of

202. Lesaffer, *Europa*, p. 147.

203. Besides the already mentioned memorandum of Gattinara, the report of the Toledo conference of the summer of 1525 can be referred to: *Champollion-Figeac*, p. 264–276.

defending the traditional claims of the dynasties he was heir to. That the most traditional claim of the first house he fell heir to, Burgundy, was at the centre of the negotiations and the – realistic and justifiable – claims of the houses of Aragon, Castile and Habsburg were more easily accomplished, may have been just a coincidence, but anyhow is immaterial for this assessment of his priorities. In all, the 'law of nations' as an amalgam of rules inspired by the *ius commune* and feudal law, was as much part of the 'law' in general as municipal systems were. An evolution towards dualistic conceptions of 'international' and 'internal' relations could not be discerned as yet.

This brings us, third, to the matters of external sovereignty and the role of *monarchia universalis* in Charles's treaties from the later 1520s. Since his election as Holy Roman Emperor in 1519, a new dimension had gradually been added to Charles's perspectives and aspirations alongside the defence of his dynastic rights. The growing threats from the Turks and from the Lutherans to the integrity and unity of the Christian world as well as his unexpected victory over Francis at Pavia, had helped to bring these universal aspirations to the foreground. In the treaty of Madrid with the captive French king, the imperial idea was reflected in Francis's pledge to aid the emperor's coming to Italy and to accept his leadership as secular head of Christianity in a future crusade. It has to be stressed that this imperial demand was hardly disputed by the French negotiators – only the practical implications of it – and that at Cambrai, when Francis I was in a much stronger position, only the practical implications were weakened. The theoretical recognition of Charles's position as head of Christianity and leader of a future Crusade was not repeated, was silently passed over, but was not challenged either. The treaty of Barcelona was more two-sided and affirmed Gattinara's ideals of co-operation between the secular and the spiritual leader of the Latin West. It also pacified Italy, which for Gattinara was an essential stepping-stone towards the vesting of the imperial authority in Germany and the restoration of the Church.

The Madrid, Cambrai and Barcelona treaties involved an exceptional, and at the same time the last, affirmation of the universal ambitions of a Roman Emperor in the medieval tradition of the Bartolists and of Dante. The French king had to accept the emperor as secular head of Christianity and as military leader of the outward defence of Christianity. The pope had to accept him as his equal in the joint leadership of the *respublica christiana*. The emperor was the secular responsible for the well-being, the safety and the integrity of the Church. Italy was the cornerstone to the pacification of Christianity. The concept of universal monarchy as it was expressed in the treaties was nothing more or less than Gattinara's clear but limited concept of 'empire'. His influence, not only on the Barcelona treaty, but also on the whole imperial policy from as early as the battle of Pavia, can therefore be seen to have been significant.

Gattinara's concept of *monarchia universalis* as it can be traced back to the Madrid, Cambrai and Barcelona treaties meant nothing more or less than the vesting of a juridically recognised hegemony as defined above, but did not go as far as real empire-building. The vesting of his 'authority' by Charles and the theoretical recognition of it by the pope and by Charles's most powerful competitor within the Christian world did not imply the denial of the 'sovereignty' of the French king or other princes as it was understood from the Middle Ages on,

id est as '*superiorem non recognoscentes*'. This late, and rather theoretical as well as temporal, restoration of imperial authority was as much a part of the same construct of the *respublica christiana* as was the whole amalgam of law the princes of the Latin West organised their relations on. To that extent, the accomplishment of Charles's aspirations as '*caput Christianitatis*' was in complete accordance with the emperor's general concept of the international legal order that was mainly still medieval, feudal and dynastic. This *respublica christiana* was considered a hierarchical *continuum* of all sorts of powers, ruled by the *ius commune* of canon, Roman and feudal legal precepts. Within that system, their relative positions and territorial claims were mainly vested on a dynastic and feudal basis. At least from a theoretical perspective, nothing stood in the way of a combination of Charles's dynastic motives with Gattinara's more imperial aspirations. But when it came to real politics, Charles's and Gattinara's falling-out over Madrid had shown that priorities could be, and were, different.

During the 1520s, the theoretical assumptions of the *respublica christiana* were still relevant as the basic framework on which the European legal order of the day was based. These included the ideal of *monarchia universalis,* however unrealistic its accomplishment was most of the time. Seen from the flipside of the coin, this means one can hardly find any significant element pointing towards the emergence of the modern state system and the modern law of nations. While some evolutions towards the monopolisation of international relations by the sovereigns can be discerned, it would take unto the later seventeenth century for this evolution to be completed. The inclusion of references to Charles's position as head of Christianity is in itself abundant proof of the fact that an absolute claim to external sovereignty was not as yet made. Just as in the 1515–1517 treaties, the Madrid, Cambrai and Barcelona treaties were also to be ratified by an oath, and in the case of the imperial–French peaces, express reference was made to ecclesiastical jurisdiction. Furthermore, the treaties included abundant reference to papal and ecclesiastical authority in the context of the marriage agreements. The references to the just war doctrine and the laws of war show that these bodies of rules still limited the liberty of the '*superiorem non recognoscentes*' to assert their alleged rights by force.

Charles V's early reign was marked by a revival of the ideal of *monarchia universalis* and of the unity of the *respublica christiana*. This revival even found its way into high power politics and into treaty practice. But it proved to be the final convulsion of the old. The re-emergence of the medieval imperial ideal was only possible in the quite extraordinary circumstances created through the accumulation of territories and powers by Charles V and the 'miracle' of Pavia. The ideal had long overstretched its life force. The rapid deterioration of Charles's strategic position in the 1530s pushed his imperial aspirations to the background. The objective alliances between France and the Turks and between France and the protestants broke the back of the ideal of Christian – or even Catholic – unity in the face of the enemy. The impact of the Reformation, which increasingly determined the international relations from the 1530s on, thus caused the breakdown of a system that had been weakened from within for a long time. Halfway the sixteenth century, the *respublica christiana* had ceased to exist for all practical purposes. All this allows us to understand that the

respublica christiana was not brought down by an as yet non-existent sovereign state, but by the Reformation, and more relevant for our purposes, by the clash of two dynasties whose ambitions – but not their theoretical conceptions – proved to be incompatible with the medieval ideal of the *respublica christiana*.

Inasmuch as it marked the last serious attempt at safeguarding the *respublica christiana* and vesting a *monarchia universalis* in the medieval tradition, the third decade of the sixteenth century was thus crucial in the development of the European legal order. Thus modern historiography is correct in emphasizing the importance of the period for the formation of modern international law. But it would take another two decades for the façade of the old system to crumble down. Only then the princes of Europe became truly externally sovereign; only then the need for a new international legal order was sharply felt; only then there was the vacuum which was necessary for the – internally – sovereign, territorial state to be formed. Moreover, it would take another century before the conditions for the articulation of this new international system were laid down. First, the religious turmoil had to come to a halt. Second, the sovereign territorial state had to be in place. The emergence of the sovereign state was not the prime cause for the breakdown of the old *respublica christiana*, but was partly its consequence. The emergence of the sovereign state was neither the cause for the formation of the modern legal order.