LESAFFER (Randall), ed. *The Twelve Years Truce (1609) : peace, truce, war, and law in the Low Countries at the turn of the 17th century*. Leiden/Boston, Martinus Nijhoff/Brill, 2014; one volume 16x24 cm, 2 ill., IX + 297 p. (Legal history library; 13 - Studies in the History of International Law; 6). Price: € 119. – ISBN 9789004274914.

The twelve years truce, concluded in Antwerp on 9 April 1609 between the Archdukes Albert and Isabelle and the States-General of the United Provinces, was an important or "crucial" (1) step in the recognition of the Northern Netherlands' independence[1]. The treaty allowed "merchants and navigators from the rebellious provinces to venture on their own to the Indies" (3), in the context of Grotius's famous *Mare Liberum*[2]. Its elaborate provisions formed the basis for the Peace of Munster and are thus indirectly at the basis of the "classical" law of Nations (3)[3]. The collective work presented here collects the contributions of a conference held in Tilburg on 23-24 March 2009. Three themes have been withheld. First, "Truce and Peace", assembling the contributions of Paul Brood (focusing on the "great constitutional texts" of the Dutch Republic, 7-14), Alicia Esteban Estríngana (on negotiations 1607-1609, 15-47), Bram De Ridder and Violet Soen (starting with the 1598 Act of Cession, 48-68) and Alain Wijffels (69-87, on the Anglo-Spanish Peace Treaty of 1604). Second, "Truce and War", focusing on events after 1609, such as the alliance between the VOC and Johor (Peter Borschberg, 89-120), Dutch army operations (Olaf van Nimwegen, 121-150) and the impact of contributions (Tim Piceu, 152-179). Finally, "Truce and Law", with papers by Beatrix C.M. Jacobs ("The United Provinces: Free or Sovereign ?", 181-194), Georges Martyn ("How 'Sovereign' were the Southern Netherlands under the Archdukes ?", 196-208), Carlo Focarelli (on the doctrine of diplomatic inviolability, 210-231), Randall Lesaffer, Erik-Jan Broers and Johanna Waelkens (covering the 1609-1648 periods and the law of nations, 233-254), Bernd Klesmann (on truce and peace treaties as criteria for *bellum justum*, 256-275) and Werner Thomas (on religious toleration and the Treaty of London, 277-297). These papers offer a fascinating array of diverse and interesting perspectives on a seminal legal act and constitute a highly enjoyable collection of scholarship. Within the restrictions of a book review, it is not possible to treat them all. The following selection is mine and thus arbitrary.

Bram De Ridder and Violet Soen contrast Philip II's apparently unilateral decision to cede the Spanish Netherlands to his daughter Isabella Clara Eugenia with the double convocation of the States-General in 1598 and 1600 (49). This organ primarily convened for fiscal purposes, but gradually gained more importance for matters of war and peace (50). The States-General even abjured Philip II in July 1581 (52). At Philip's cession of the (Southern) Netherlands, this organ would be seen to confer supplementary legitimacy (53). The inauguration of Isabella as sovereign before the assembled delegates at the Coudenbergh palace would invoke the States' traditional idea of a contractual monarchy and their loyalty to the House of Habsburg (54-55). If the States-General gathered twice, in 1598 and 1600, this was an expression of their

[1] See also: Bernardo GARCIA GARCIA, Manuel Herrero Sanchez and Alain Hugon (ed.), *El arte de prudencia. La Tregua de los Doce Años en la Europa de los Pacificadores*, Madrid: Fundacion Carlos de Amberes, 2012; X, ed., *Tiempo de paces, 1609-2009 : la Pax Hispanica y la Tregua de los Doce Años*, Madrid: Sociedad estatal de conmemoraciones culturales, 2009 ; Simon GROENVELD, *Het Twaalfjarig Bestand 1609-1621. De jongelingenjaren van de Republiek der Verenigde Nederlanden*, The Hague: Haags Historisch Museum, 2009.

[2] Hugo GROTIUS, *Hugo Grotius' Mare Liberum: 1609-2009* (ed. Robert FEENSTRA and Jeroen VERVLIET), Leiden/Boston: Martinus Nijhoff/Brill, 2009.

[3] Randall LESAFFER, "The classical law of nations (1500-1800)",: in Alexander Orakhelashvili (ed.), *Research Handbook on Theory and History of International Law*, Cheltenham: Edward Elgar, 2011, p. 408-440.

"compliant behavior" towards Philip II: Archduke Albert, appointed as Governor-General, still had to marry Isabella when the assembly gathered to ratify the Peace of Vervins (concluded between Henry IV of France and Philip II, 2 May 1598) (56). Luring the North into submission was outside this assembly's reach (60). Once Isabella had arrived in her new provinces, the States-General's meeting from April to November 1600 mainly served classical ends: raising taxes for war (61). No active political role was within their reach. If Archduke Albert negotiated, he preferred its president, Jean Richardot, to act as his private agent (62). The United Provinces saw Albert as the continuation of Philip II's tyranny. Messages from the Southern States-General were answered with pleas to unite against Spanish oppression, not with the start of genuine peace talks (64). Oldenbarnevelt tried to convince the loyal Habsburg provinces to join the Northern struggle but did not manage to overcome their fundamental allegiance to the House of Habsburg (66). The "myth" nevertheless survived that a united States-General of the XVII Province would automatically lead to reunification (68).

Werner Thomas emphasizes the need for distinction between Spanish policy towards subjects of other sovereigns, on the one hand, and their own, on the other (278). The former (e.g. Englishmen or merchants of the Hanseatic League) could benefit from religious toleration –at least in peacetime-, although it was inconceivable that the latter would benefit from freedom of religion[4]. Paradoxically, the *convivienca* (a term dating from Spain's medieval past) of several religions in the Southern Netherlands was influenced by the Treaty of London (29 August NS 1604) between James I and Philip III. This instrument contained privileges for English merchants, but was vehemently attacked in Spanish public opinion (281). Local Inquisition applied the Treaty of London restrictively (284). This created frictions with the Inquisition's supreme court, the *Suprema*, which did apply government policy. This "climate of toleration" caused a drop in arrests of British subjects (285). A similar treatment could not be applied in the Southern Netherlands, since the inhabitants of the Northern Provinces continued to be seen as rebellious subjects (286). Archduke Albert had a ferocious reputation and was a former Grand Inquisitor in Portugal. Moreover, religious freedom for the Catholics in the North was a contentious claim in the truce negotiations (288). Surprisingly, however, article 7 of the Truce referred to the Treaty of London, granting subjects of the States-General the same privileges in the Southern Netherlands as those of James I in Spain. Once the truce was signed, wealthy Protestants from Antwerp sponsored trips for the poor to attend reformed services in Dutch-controlled Lillo (290). Flemish subjects participated in Calvinist sermons in Dutch border towns such as Breda, Cadzand or Bergen-op-Zoom, or in France: Calais, Arras, Douai or Lille had their own Protestant communities, protected by the 1598 Edict of Nantes (293). To prevent the Spanish Netherlands from "ending up in the same way as the German Empire" (294), Philip III ordered severe measures. Yet, in spite of new heresy laws, Thomas qualified the prevailing climate as "de facto toleration". Only public worshipping or public insults to the Catholic faith were prosecuted. Flemish Protestants invoked discrimination with regards to the privileges granted to the Dutch on the basis of the 1609 Truce (295). Even when hostilities started again in 1621, Catholic persecution was limited, bishops preferring "bringing the flock back by arguments", in the "spirit of the Council of Trent" (296). Moreover, the Archdukes' policy to "gain the hearts of the Flemish subjects" had "created a type of religiosity

[4] Françoise HILDESHEIMER, *Du Siècle d'or au Grand Siècle. L'État en France et en Espagne, XVIe-XVIIe siècle*, Paris: Flammarion, 2000 (Champs Universités).

that was strong and combative enough", once their provinces were reintegrated in the Spanish monarchy at Isabella's decease.

Alain Wijffels reminds readers of the "opportunities" for "Belgian" subjects to fulfil administrative and diplomatic services for the Spanish monarchy (69), for instance at the Peace of Vervins or the 1604 conference at Somerset House uniting a "Spanish" and English delegation. Half of the Spanish delegates (Richardot, Verreycken, Arenberg) were "Belgian" (73). Wijffels emphasizes the overarching need for James I to keep Spain out of the Northern Netherlands (75), just as the countervailing Dutch need for both French and English support, in order to counter Spain and… France itself. In this context, "little leeway" was left for any truly "Belgian" diplomacy. The Treaty of London could not contain more than the usual civilities between monarchs and some points of bilateral importance (76). Wijffels focuses on "style", rather than on the content of the treaty, which regulated only minor points. The inclusion of both monarch's "vassals" and "subjects" in the specific obligations entailed by the peace treaty should have served as an alternative to James I and Philip III themselves. Wijffels argues that in view of the anarchical nature of international relations and the absence of a monopoly of violence, sovereigns were immune from enforcement (by other means than warfare). Consequently, only their subjects and vassals could be held accountable for violations of a treaty (77). Linking these categories, directly attached to an obligation contracted by their sovereigns alone, to various sanctions is original, but I doubt whether this is specific to the Anglo-Spanish treaty of 1604 as such. These formulations rather reflect an attempt to be as inclusive as possible in the ill-categorized early modern legal pluralism. I can agree to Wijffels' subsequent formulation (78), according to which –paraphrasing Alberico Gentili's *De iure belli libri tres* (1612)- "the prince is judge in the law of nations", implying princes "committed themselves to secure punishment of any subject who would act in breach of the treaty" (78). Yet, I disagree when he states that "the sovereigns' own infringements (or failure to comply with an obligation under the treaty) could not be punished in any way". Injured sovereigns had horizontal execution through reprisals, or the course of arms as a legitimate cause of action, at their disposal under the law of nations. War was an *ultima ratio*, but nevertheless a legitimate reaction to the violation of a treaty provision, even under classical *bellum justum*-theory. Further, English subjects needed to be stopped from acting as privateers under Dutch pavilion, depredating on Spanish trade (art. 6) (79), a point to which James I reacted by forbidding foreign enlistment (78). Wijffels sees continuity in treaty structure, as well with regards to early modern peace treaties as a corpus[5], as with regards to the 1609 truce as its immediate successor, especially for trade matters (82-85). Finally, Wijffels argues that the "very recurrence" of "those clauses which were routinely included and did not reflect particular controversial issues" "was creating a degree of international customary law" (86). This is of course valid as a general point, but should be taken with caution, since this process can only be appreciated *ex post*[6].

Beatrix Van Erps-Jacobs points out the difference in wording between the 1609 Truce, where Albert and Isabella declare in art. 1 to recognize the Northern Provinces as "free Countries, Provinces and States", on the one hand, and the Treaty of Munster (30 January 1648) on the other hand, whereby Philip IV, as King of Spain, recognizes them as "free and sovereign

[5] Randall LESAFFER, *Europa: een zoektocht naar vrede? : 1453-1763 en 1945-1997*, Leuven: Universitaire Pers, 1999.

[6] Gabriel Bonnot de MABLY, *Le droit public de l'Europe, fondé sur les traitez conclus jusqu'en l'année 1740*, Amsterdam: M. Uytwerf, 1748.

states, provinces and lands" (181-182). She then recalls the diverse opinions on the 1609 truce. Pennings and Thomassen considered the Republic as sovereign in view of pre-existing "ambassador-level diplomatic relations", with France and England, the Ottomans, Hamburg, Lübeck, Venice or Denmark (183). Grotius's *De Antiquitate Reipublicae Batavicae*, on the other hand, did not see the United Provinces, but every province separately as sovereign, leaving the "summa potestas" at State level (183, 188). For Beatrix Van Erp-Jacobs, the 1609 truce could never have been more –a genuine peace treaty-, since the Republic refused to give up its colonial activities and did not want to allow the exercise of the Roman Catholic Religion (186). Conversely, the Archdukes were adamant at keeping their titles and claims to the Northern Netherlands. Consequently, the recognition of the Republic as "free Countries, Provinces and Estates" should be read as "as if they were or had been free" (186). For Spain, this did not entail recognition, but a mere assertion of precarious possession, "fort the purpose and the duration of the truce" (188). For the United Provinces, the recognition equaled a de facto echo of a legal title to these territories (187). Contrary to romantic and nationalist assertions in 19th century historiography, this recognition boiled down to a fictitious assertion, or an agreement to disagree. In subsequent secret negotiations, Spain made it clear that recognition of the Republic would come at the same price as before: relinquishing its overseas establishments and allowing for public practice of Catholicism (188). Van Erp-Jacobs then delves into doctrine. If Jean Bodin saw sovereignty as the sovereign's indivisible power to legislate, Johannes Althusius, contemporary of the 1609 truce, expressed "the view that indivisible and inalienable sovereignty rested not with the prince but with the people […] the estates and their assembly and its members representing them, and that this sovereignty only implies the control of power." (191) If the latter conception would have enhanced the Republic's position, it is doubtful whether "the negotiators had really reflected upon the term" (193). Van Erps-Jacobs rational conclusion is that "the apparent equivalency and sense of vagueness made it easier to reach an agreement […] and to accommodate a margin of interpretation". She argues it was likely that even the stronger worded Treaty of Munster only referred to the "recognition of the States-General as a negotiating party in its own right". The use of the word "sovereignty" in its early modern connotation "into political parlance and reality", however, was irreversible.

Georges Martyn has another take at this contentious term, but from the internal Southern perspective. In a discussion between "half empty" or "half full" (196), the author clearly sides with the latter option, building a case for the Archdukes' position as "sovereign rulers of the (Southern) Netherlands" (Ibid.). Martyn first recalls that Albert and Isabella were reigning in the Southern Netherlands as Duke of Brabant, Count of Flanders, Lord of Malines, "in their personal names, not as representatives" (199). Feudal links above this level had been cut by Charles V in the Transaction of Augsburg (1548) regarding Imperial fiefs and at the Peace of Madrid (1526) regarding the Kingdom of France. The Archdukes ruled "Par la grâce de Dieu" and without intervention in the legislative process by the King of Spain (201). The Great Council of Malines and the Council of Brabant were sovereign tribunals and their decisions could not be appealed against. As far as external sovereignty is concerned, Martyn agrees with the consensus in historiography: Albert and Isabella had scant influence on foreign policy or military affairs (200). This can be linked to the very wording of the 1598 Act of Cession: Spanish garrisons were present, trade with the Spanish colonies was prohibited (202). Yet, Albert and Isabella sent out their own ambassadors to Rome, Paris and London (205) and received diplomatic envoys in Brussels. The Treaty of London (1604) "can be considered a

personal achievement of Albert", as well as the provisional 1607 truce with the Dutch Republic (206). Martyn equally gathers indices from what is now well-established as the field of cultural diplomatic history[7]. The Archdukes' envoys ranked after all other crowned heads in Europe, but before those of Republics (Venice, Genoa), and were treated with the same phrases as those "used among sovereigns". Of course, the presence of Philip III's ambassadors or military men such as Ambrogio Spinola, Genoese commander of the Spanish army[8], Secretary of State and War Juan de Mancicidor, or Albert's confessor, the Dominican Iñigo de Brizuela at the Coudenberg palace, put a factual strain on the exercise of the "collaboration" between Madrid and Brussels. In the light of the eternal limitations on sovereignty stemming from competing legal orders, Martyn calls for a reappraisal and a nuanced approach of what seems a clear-cut question at first sight.

Frederik Dhondt

Research Foundation Flanders (FWO)
Research Group CORE, VUB
Legal History Institute, Ghent University

[7] Lucien BELY, *L'art de la paix en Europe: naissance de la diplomatie moderne, XVIe-XVIIIe siècle*, Paris: Presses universitaires de France, 2007, (Le noeud gordien) ; Christian WINDLER, "Diplomatic History as a Field for Cultural Analysis", *Historical Journal* XLIV (2001), 79-106.

[8] Manuel HERRERO SANCHEZ, "Republican diplomacy and the power balance in Europe", in Antonella ALIMENTO, ed., *War, Trade and Neutrality. Europe and the Mediterranean in seventeenth and eighteenth centuries*, Milano: FrancoAngeli, 2011, p. 23-40.