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**Author**: Meerts, Paul Willem
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# PART TWO

# The Conduct of Diplomatic Negotiation:
## Case Studies and Approaches

# CHAPTER VI

# The Seventeenth Century: Forward- and Backward- Looking Outcomes

# CHAPTER VI: THE SEVENTEENTH CENTURY: FORWARD- AND BACKWARD-LOOKING OUTCOMES

The 1648 Peace of Westphalia represents one of the most outstanding examples of forward-looking outcomes in human history (Wilde, 2000: 29 and 43). Moreover, the regime created at the negotiations in Münster and Osnabrück – a regime that marked the end of the *Respublica Christiana* and the beginning of the system of sovereign, independent states (Schrijver, 1998: 144) – is still alive and well today. By legitimizing the *de facto* status quo, Westphalia established a new political and legal system in Europe and sowed the seeds of further changes in European societies:

> The essence of the old system of governance was that all peoples were held together in a universal society by a non-exclusive form of territoriality, in which political authority was both personalized and divided within and across territorial formations and for which inclusive bases of legitimization prevailed. The sharp division between citizens and non-citizens, being an important feature in the modern state, was not there (Van Staden and Vollaard, 2002: 179).

Some see Westphalia as the beginning of international state law: 'It was then that international law emerged as a law of "states" that could be thought of as "legal subjects" or "persons" distinct from their rulers of elite groups' (Koskenniemi, 2011: 5).

There have always been attacks on the regime of formal equality between sovereign states that was created at Münster and Osnabrück, and the regime will probably be further undermined in the decades to come. Nevertheless, after 350 years, the system of states, as created in the mid-seventeenth century, is still the most effective way of avoiding chaos and structuring the world community. This chapter will deal with how the negotiations came about, what kind of negotiation processes (forward- or backward-looking) took place, how matters of peace and justice were handled, what regimes were installed, and what their prospects might be in the twenty-first century.

In the middle of the seventeenth century, wracked by wars between and within the old hegemonic powers of the Holy Roman Empire and Spain, and the ascendant states, such as France, Britain, Sweden and the Netherlands, Europe was looking for a lasting peace agreement. The wars, a mixture of internal and external warfare under a cloak of religious differences, were devastating. Civil wars raged, sparked by emotional religious outbursts, and these cruel conflicts were used as a pretext for external interference in the internal affairs of states. The Swedes, for example, used the threat of Catholic action against the Protestant fiefdoms in Germany as an excuse to intervene in the affairs of the

Holy Roman Empire, which had been invited in by the Protestant overlords to rescue them from Catholic oppression. Moreover, many such rulers had converted to Lutheranism or, in the Netherlands, to Calvinism to mobilize the people against their feudal masters. This resistance to emperor or king was, in fact, a reaction against the attempts of the highest rulers to modernize their states. The states were in reality composite territories, rooted in the medieval feudal system that had withered away at the end of the fifteenth century (Groenveld, 2000: 52). They could no longer deal with modern-day demands, and attempts to move in the direction of a unitary state brought about their demise.

Yet even as the people transformed into Renaissance men and women, as societies became more open, as the merchant class, step by step, marginalized the noble families, and as cities grew into pre-eminence, the feudal system still clung on in its increasingly outmoded and irrelevant forms. In other words, the political system was now inappropriate both in terms of the underlying values and norms of society and of its economic structures and processes. Confronted with this problem, the emperor of Germany and the king of Spain started to modernize their states by introducing a relatively strong bureaucracy whose success depended on greater state centralization. The attempts by these sovereigns to remove the root cause of the internal weakness of the state – namely the extreme decentralization of their domain – provoked resistance and revolution. Thus, paradoxically, the efforts to assure an effective implementation of sovereignty led to a breakup of the old powers. This gave birth to the peace negotiations in Westphalia, which, in turn, can be seen as the cradle of today's notion of sovereignty. It should be added, however, that the tendency to centralize the state was not always a rational process. In Spain, it also had to do with the character of King Philip II, who was not only incapable of delegating, but also a master of procrastinating micro-management and a workaholic who read all documents and signed all decrees himself with '*Yo, el Rey*', or 'I, the King' (Vroom, 2000: 45 and 49).

The Peace of Westphalia had many faces. It was a necessary instrument of transition from the old era to the new. As far as peace and justice are concerned, it stood for important elements both in backward- and forward-looking negotiations. For the old powers, the peace agreement acted as a safeguard against further decay. For the young powers, it was the place to obtain justice, to assume their rightful place in the community of states. In that sense, the agreement had more of a forward-looking character for the young states than for the old. In fact, Westphalia put an end to the division of the world between Spain and Portugal that had been made in the Treaty of Tordesillas and, at the same time, legitimized Hugo Grotius' idea of a *mare liberum*. It had a mixture of short-term, backward-looking aspects and long-term, forward-looking aspects: it put an end to internal and external wars and, by installing committees and guarantors to oversee peace, it created – formally at least – the equality of states and religions.

Let us try to define the major concepts that will be covered in this chapter. Although Westphalia created new regimes, it had some difficulty in doing so, as will be explained below. 'Building institutions in world politics is a frustrating and difficult business. Common interests are often hard to discover and to maintain. Furthermore, collective action invites myopic behavior' (Keohane, 1983: 246). Regimes were defined in chapter III of this thesis as:

> […] implicit or explicit principles, norms, rules and decision-making procedures around which actors' expectations converge in a given area of international relations. Principles are beliefs of fact, causation, and rectitude. Norms are standards of behaviour defined in terms of rights and obligations. Rules are specific prescriptions or proscriptions for action. Decision-making procedures are prevailing practices for making and implementing collective choice (Krasner, 1983: p. 2).

Westphalia's forward-looking outcome is an example of a negotiated regime. 'These regimes are characterized by conscious efforts to agree on their major provisions, explicit consent on the part of individual participants, and formal expression of the results' (Young, 2003: 99).

The Westphalia negotiations created the regime of equal sovereign states, or 'black boxes', as the building blocks of Europe – and, in effect, of the world – as we know it today. The principle of justice meant respect for the territorial integrity and sovereignty of each state over its own territory to the exclusion of other actors. The norm was the *communis opinio* (common opinion, generally accepted view) regarding the way in which European countries should deal with each other. The rules were the agreements on the implementation of the principles and norms, translated in diplomatic codes, ways of conducting war, exchanging goods, and dealing with any matter concerning inter-state relationships. A decision-making procedure was established, in the sense that only heads of state could decide on inter-state matters through consensus. It should be noted here that – with the possible exception of the Chinese, Ottoman, Persian and Ethiopian empires – states outside Europe were not seen as equal to those in Europe. They could, and thus should, be conquered and colonized, and the principle of equality was applicable only to Christian countries. As time went on, more states were seen to come under the equality rule which, in our own century, applies to all states. The principles, norms, rules, and procedures are now largely codified, but it took 350 years for them to arrive at their present level of institutionalization, and we will not see their end for quite a few centuries to come.

## Parties and Positions

The need to start peace talks came at a time when all of the parties were stuck in hurting stalemates. None of the parties could win a decisive victory, with the exception perhaps of the Dutch, who were easily able to strike a favourable deal with their Spanish opponents. These stand-offs were particularly hurting the civil population, as human rights were violated on a grand scale. In the Palatinate, the French engaged in such systematic slaughter that it might well qualify as the first modern-day genocide. Why, then, were the countries of Western Europe so much at odds with each other? In order to understand this, and its consequences for the negotiations in Münster, an overview of the developments in and around the Westphalia Treaty has to set the stage. There is quite a lot of literature on the Münster negotiations (Dickmann, 1959; Anderson, 1963; and Duchhardt, 1993), especially in the Netherlands (Groenveld, 2000; Meerts, 2000; Rietbergen, 2000; Tromp, 2000; and Wilde, 2000), as it was a crucial negotiation, not only for Europe in general, but for the Netherlands as well. After all, it was in Münster that the European monarchs

allowed the Republic of the United Netherlands to be a sovereign state, although it had already been independent for half a century.

Although religious differences were seen as one of the engines of the Thirty Years' War, the Catholic French had no qualms about intervening on the side of the Protestant princes against their Catholic overlords. In that sense, rulers were often very pragmatic as far as religion was concerned; nor did they care about the fate of those who were close to them in terms of nationality or language. The Dutch had no compunction, for example, about blocking the River Scheldt and causing starvation to the Dutch-speaking Flemish population in Antwerp. Indeed, Amsterdam owed its wealth to the blockade and fall of Antwerp, which had once been the largest city in Europe and where Calvinism had a foothold long before it came to Amsterdam. In fact, Amsterdam remained Catholic and loyal to Spain for such a long time that the other Dutch cities made it the formal, but never *de facto*, capital of the Netherlands. To the present day, the Dutch head of state and the government reside in the city of The Hague which, in the seventeenth century, was a village and thus without city walls. Neither religion nor nationality, nor any other value-loaded reasons, were at the heart of these ongoing conflicts. They were really all about power politics, about who would have a dominant position, and what territory would be accepted as a legitimate state.

At the turn of the sixteenth and seventeenth centuries, the hurting stalemates were such that pre-negotiations, leading up to agreements to break the deadlocks, became unavoidable. The pre-negotiations between Spain and the Netherlands, starting in 1621 and becoming regular in character from 1626 onwards, were in themselves illustrative of the road to Westphalia. After 80 years of war, interrupted by a twelve-year truce, both parties were tired, but not everybody wanted peace. While some factions within both camps longed for peace, others saw it as most inappropriate. The principal adviser to Spanish King Philip IV, the Count-Duke of Olivares and San Lúcar, Don Gaspar de Guzmán, made the mistake of renewing hostilities against the Dutch after the Twelve Years' Truce, creating more disaster for Spain. When the count-duke was finally obliged to make good this error by suing for peace, he had to grant many concessions to bring the Dutch rebels to the negotiating table. One problem that arose was the question of where to meet the Dutch rebels and how to provide passports for them. After long negotiations, the Dutch accepted passports that mentioned the king of Spain as their protector rather than sovereign. This, in itself, was a major concession on the part of the Spaniards, and indicated that the Spanish king was willing to give up sovereignty over his Dutch provinces. A long discussion followed as to whether or not the king could describe himself as a protector in perpetuity (Poelhekke, 1948: 22).

On the Dutch side, Prince Frederik Hendrik of Orange, the lord governor or *stadtholder* of the United Provinces of the Netherlands, resisted the idea of a 'hasty peace', as his French allies – in return for their support – had asked the Netherlands not to conclude a separate peace agreement with Spain as this would weaken the French war effort. But while France needed the Dutch fleet in its war with Spain, French support for the uprising in Catalonia in 1640 had exacerbated relations with the Dutch. Prince Frederik Hendrik also needed the French, but not for his war effort; he needed the French as an ally within his own country. The Dutch fleet at that time was a mighty one that could plunder the Spanish colonies more or less at will; on the ground, however, Prince Frederik Hendrik

had destroyed the Spanish forces and made the northern part of the southern province of Brabant an effective land barrier. The merchants were in power in the major cities of the Netherlands and in the seven sovereign provinces, but Prince Frederik Hendrik's duty as governor was to maintain the unity of the country. He had no sovereign powers but was an appointee of the states-general, the representative body of the provinces. As he tried to become more independent of them, he was also in competition with the *Raadspensionaris*, the prime minister of the hegemonic province of Holland. Frederik Hendrik thus needed an ally in a struggle within his own country, and the French were available.

As France still had to consolidate its position as a result of new territorial acquisitions made from the house of Habsburg, especially in Germany, the war was prolonged. In the Netherlands, however, most of the provinces wanted peace. Although the war was profitable for provinces that earned a living by keeping Antwerp closed or by pirating Spanish and Portuguese possessions (notably the province of Zeeland), other provinces, especially Holland, which was paying more than 50 per cent of the war budget, wanted peace, because the war and the damage it was causing to merchant vessels were too costly. The necessity of maintaining land forces was a particular thorn in the side of the merchant families, partly because of the cost, and partly also because the army was the power base of the governor, so the merchants were consequently subsidizing the powerful arm of their political rival. Frederik Hendrik had inherited the army from his brother, Prince Maurits, who had modernized it to create one of the most effective forces in Europe. As the merchants were interested only in overseas trade, they even contemplated giving up the inland provinces to save money on the army, an extraordinary situation as there was no political or military need to do away with these territories. The House of Orange also resented these ideas, because it had hopes of playing a role in Germany again, where it had its Nassau possessions. It feared anyway that a peace treaty would mean a permanent separation between the Northern and the Southern Netherlands (De Schepper *et al.*, 1997: 5). Yet the House of Orange could not avoid peace negotiations forever and, slowly but surely, it was forced into contacts with Spain. It agreed to peace negotiations on the condition that the French would negotiate with Spain at the same time.

The French, for their part, had overcome their internal religious feuds. By the Edict of Nantes in 1598, the French Protestants (the Huguenots) were given equal rights with the Catholics, thus restoring internal unity to France, which would last over 100 years and provide the French King Henry IV with a basis for a more effective foreign policy. Henry used this opportunity to intervene in Habsburg affairs in Spain (by supporting the rebels in Catalonia), in the Spanish Netherlands (modern-day Belgium), and in Germany (mainly the Rhineland and Bavaria). French offensives came to a halt in the first half of the seventeenth century with the advent of the Thirty Years' War. Notwithstanding French alliances with the Protestants in Germany, Sweden and the Netherlands, their successes threatened to fade away, as Spain and Germany proved to be tough opponents. The French needed a peace agreement to divide their opponents. They were also in danger of losing their Dutch ally, as the Eighty Years' War with Spain was now drawing to a close. France had obviously not yet had its fill of warfare, but needed to buy time for more expansionist wars. That is why, for France, the Peace of Westphalia was a short-lived peace.

Westphalia was a forward-looking outcome in the sense that it gave birth to the new notion of sovereignty and did away with the old hierarchy of states that was headed by the Pope and the German emperor and its retinue of various monarchies and republics. It created self-ruling entities within Germany, thereby removing Germany as a central power from the European balance-of-power system for more than 200 years. France's intention of expanding its territory to the River Rhine, and into Italy and 'Belgium', was revealed after Westphalia in a succession of negotiations on warfare and peace that lasted more than 50 years to the beginning of the eighteenth century, for negotiation now served as a tool in warfare, instead of warfare as a tool in negotiation. In terms of ending all wars between all negotiating partners, however, Westphalia was not very forward-looking for the French–Spanish and French–German relationships, but a mere breathing space in a series of struggles for hegemonic power by Spain, France and Germany, as each party sought justice in its own quest for dominance.

The Spanish urgently needed peace, as their position of hegemony was declining under internal and external pressure. They were ripe for negotiation. Internally, they had to cope with the rebellions in the Netherlands, Catalonia and Portugal. The northern part of the Netherlands was out of their control by the end of the sixteenth century, but the Dutch had again subdued the southern part (present-day Belgium). Calvinism had taken root. As the south was far more important than the north, Spain was ready to sacrifice the north to keep its hands on the south. That part of the kingdom, however, was under threat from both the Dutch and the French. Moreover, the Thirty Years' War in the Holy Roman Empire and the hegemony of the Dutch–English fleets in the North Atlantic made it extremely difficult to defend 'Belgium' in an effective way. By destroying the home-bound armadas, pirating coastal areas, and even taking over colonies, the Dutch and English were draining Spain of revenues from its colonies in Latin America (with a large amount of gold and silver to pay the mercenaries falling into Dutch and English hands). The breakaway of Portugal with the Treaty of Tordesillas made things worse, both in the colonies and on the Iberian peninsula itself. Meanwhile, the French interventions in Catalonia threatened the very heart of the kingdom – the union between Castille and Aragon – as well as the Spanish (formerly Aragonese) possessions in southern Italy (Naples and Sicily).

For Spain, peace negotiations were not the tool for progressive warfare that they were for France, but were deemed indispensable in defending the status quo. At that time, Spain was ready to pay a high price for peace, both with the Netherlands and France. The Spanish strategy, however, was to conclude a peace agreement with the lesser danger, the Dutch, in order to have its hands free against the greater one, the French. As mentioned, however, the French had little interest in a peace treaty and therefore had considerable interest in keeping the Dutch at war against Spain and the Swedes at war against the German emperor. Both the Dutch and the Swedes were running out of steam, adding their contribution to the ripeness of the situation – for different reasons, however. The Dutch, because of the high costs of the war and the power that an agreement would give to the House of Orange, were ready to come to terms with Spain, and Spain was ready to come to terms with them (Meijer Drees, 1996). All the major concessions would come from the Spanish side, and the parties more or less had an agreement in the first weeks of the negotiations. They even signed an 'eternal cease-fire' in 1646, but final agreement took a further two years because of France, and even then a Spanish–French agreement

would have been rather unlikely had it not been for the considerable threat of a separate Spanish–Dutch agreement.

Sweden also had its own reasons for wanting a peace accord. At the beginning of the Thirty Years' War, Sweden had been relatively successful under the leadership of King Gustavus Adolphus, but Sweden was a country of limited resources. Its few colonies did not produce the silver and gold required to pay mercenaries; it was engaged in an ongoing competitive struggle with Denmark; and it also had to hold off Russia and defend its interests in the Polish kingdom. After the Union of Lublin with the Archduchy of Lithuania, Poland had gained enough strength to start to become a threat to Swedish hegemony in the Baltic, especially after the defeat of the German Teutonic knights by a Polish–Lithuanian force. The greatest threat to the Swedish possessions in Finland and the Baltic states, however, was tightening its claws around Swedish Ingermannland (the present-day St Petersburg area): the Russian bear was now waking up after freeing itself from the Mongol yoke.

The Baltic offset Sweden's lack of major colonies and was its economic power base, as well as an indispensable part of the economy of the main Swedish ally in the Baltic arena, the Republic of the Seven United Netherlands. The Dutch United Provinces and their fleets fought on Sweden's side against Denmark but, when Denmark became too weak, switched sides, joined the Danes, and defeated the Swedish fleet. As the Dutch Protestant ally became less and less reliable, the other Protestant allies – the Lutheran princes in northern Germany – came under growing pressure from the ever-more assertive armies of the German emperor and the German Catholic states. The fortunes of war in Germany were turning against Sweden, which did not have enough potential to maintain its northern dominance.

If anyone needed peace negotiations, it was the Germans. Germany had been devastated by the Thirty Years' War, and was a hopelessly divided country. Situated at the centre of Europe, the largest and wealthiest of all European states and the successor state of the western Roman Empire, it fell into disarray because of its feudal system. The decentralized state also fell victim to the growing importance of the seven electoral states that decided who would be the Holy Roman Emperor. As the major German states were virtually independent, with all the characteristics of sovereignty apart from formal acknowledgement of it by the highest authorities, the emperor sought to re-establish his power through centralization and, taking his cue from his opponents, tried to use religion as a tool. A peace treaty would not even mean a loss of the Netherlands, which was officially still part of the Holy Roman Empire, as it had already acknowledged its *de facto* independence at the Diet of Augsburg in 1548 (De Schepper and De Vet, 1997: 28) .

This introduced to the fight the ideological dimension of justice, which seemed to be a struggle between Catholicism and Protestantism but was, in fact, a struggle purely for power. Other players in Europe took advantage of this opportunity and became involved in the civil war, thereby turning it into an international war. As long as the outside powers still had a sufficient stake in the conflict, the war would rage on, even if the German states themselves were tired of the situation. It was only when the foreign powers also became war-weary that a negotiated solution became feasible. The hurting stalemate in the fourth decade of the seventeenth century created the opportunity at Westphalia, although the French still tried to procrastinate as much as possible. It is no coincidence

that many of the wars in the second half of the seventeenth century were initiated by the French, who were dissatisfied with their expansionist progress in the first half of the century.

## Procedures and Processes

The stage was thus set for one of the most important negotiations in the history to date of Western Europe, with all players ready to come to the table, eagerly or reluctantly, as victorious powers or victims. The peace negotiations were a turning point in the struggle for power in Europe, as the 'upwardly mobile' states – such as France, Sweden and the Netherlands – evened the score with the declining forces of the Holy See, the Holy Roman Empire of Germany, and Spain. Through international negotiation processes, this political change projected itself into changes in the formal relationships between the states of Western Europe. The formal inequality of states was transformed into formal equality. The pyramid structure was transformed into a flat one; formal hierarchy was replaced by an informal hierarchy. In a way, the state system was, at least formally, democratized. State sovereignty became a universally applicable way of creating an international order. These newly established principles of justice would pertain for the new international regime. For the moment, however, the negotiations would primarily create opportunities for a new European order where politics, not prerogative or religion, would determine the way in which the continent was ruled.

Adversaries negotiated backward-looking beginnings on the exchange of prisoners of war, and negotiations finally resulted in temporary truces such as the Twelve Years' Truce between Spain and the Netherlands from 1609–1621). During negotiations between the French and their Swedish allies in Hamburg in 1641, it was decided that peace negotiations should be started with their opponents. The Danes pleaded in favour of this proposal at the German imperial court, where Emperor Ferdinand III accepted the idea of peace talks, also on behalf of Spain, and it was decided to invite the Netherlands as well, even though it was not directly involved in the Thirty Years' War (Dickmann, 1959; and Groenveld, 2000).

Münster and Osnabrück were declared neutral. In Münster, negotiations were carried on by the German emperor, German Catholic states, France and Spain, and between Spain and the Netherlands. The German emperor, German Protestant states and Protestant Sweden did their bargaining in Osnabrück, and Denmark, Poland, the Swiss Confederation and several Italian states sent observers. In 1645, the French succeeded in having the representatives of both the Dutch and the German Electoral States accepted at a diplomatic level, which opened the final gate to Westphalia. In the end, more than 190 political entities – about as many as the members of the United Nations today – participated in the overall process. Of these, 109 sent their own envoys, while the others used their allies' ambassadors to monitor the meetings or to put their proposals forward. The negotiations at Westphalia started in 1644, two years later than planned, and were over in 1648.

It was the largest conference the world had ever seen. Only the Germans held plenary sessions: the Protestants in Osnabrück; and the Catholics in Münster. The bulk of the negotiations were bilateral, sometimes face-to-face, normally only through documents, but in the toughest cases through mediators. The role of the mediators in Westphalia was

clearly an active one. Not merely neutral brokers, they also had to steer the process, to promote a favourable climate and to propose helpful ways out of deadlocks. In Münster, the mediators were the Venetian envoy and the papal ambassador, or *nuncio*. Informal mediators intervened in many cases, and these were normally envoys of countries with an interest in a peace agreement between two other states. The Dutch, for example, often mediated between their French ally and their Spanish 'enemy' (Groenveld, 2000). They needed the French for a peace treaty with Spain, but they preferred a weak Spain as ruler in the southern Netherlands to a strong France taking over and therefore directly bordering on Dutch soil (something that would happen some 25 years later anyway when the ally became the enemy under French King Louis XIV).

Westphalia, and particularly the Münster agreement, can be viewed as a system of connected bilateral negotiations. It thus had a multilateral connotation, albeit not in the modern sense of the word. This study therefore proposes the term *multi-bilateral negotiation*, as the meetings had the character of a conference and led to many informal contacts between delegations that were not involved in formal negotiations with each other. It is interesting to note that this kind of transverse or *translateral negotiation*, in combination with regular *longitudinal negotiation*, is also common practice in today's conference diplomacy. In fact, the greater the number of participating parties and the more complicated and numerous the issues, the more translateral negotiations inside and outside the conference rooms are necessary to keep the process flowing. The process of European integration is one outstanding example of this. It is clear, however, that in a situation where multilateral negotiation is not performed and parallel bilateral negotiations between many actors abound, translateral negotiations are even more necessary to keep the fabric in place. Just as today's negotiators use the corridors extensively and the major decisions are often taken outside the conference room, 'at the Congress of Ryswick [in 1697], the English and French negotiators very nearly accomplished the work restoring peace to Christendom while walking up and down an alley under some apple trees' (Matveyev, 2000: 13) – an early version of the famous 'walk in the woods' of 1982 by US and Soviet arms-control negotiators.

At Westphalia there was a quadruple communication problem. First, the negotiators had no conference building at their disposal and had to negotiate in their lodgings. Second, the distance back to their superiors in the capital was enormous, in terms both of time – long distances on horseback through war-ridden regions – and of power, as they received their instructions from the monarchs themselves. Third, questions of rank and status hampered informal negotiations and often led to miscommunication, or even went as far as direct fighting. Fourth, negotiators were on the whole quite intransigent in their negotiation behaviour. In the virtual absence of mechanisms to provide assurances and safeguards, distrust was universal. Verification took a long time and was often highly inaccurate. These obstacles, together with the absence of the multilateral mode, gave birth to a slow and non-transparent process. The consequence of this 'scattered' form of negotiation, which remained the normal pattern until the Congress of Vienna some 170 years later, was a range of treaties without much interconnection, notwithstanding the use of translateral contacts.

The processes in Münster can be regarded as 'diplomatic negotiations', which are defined here as negotiations between official representatives of sovereign (or semi-

sovereign) units. At the Münster peace negotiations, the units in question were sovereign states, autonomous federal states, plus *de facto* independent states that were asking for recognition (in this case, the United Provinces of the Netherlands and the Swiss Confederation). 'Rebels' were also present, but only as part of one of the recognized delegations. The Catalans and the Portuguese, for example, were part of the French delegation. As was noted above, the most important actors – the German empire and its federal states, the kingdoms of France, Spain and Sweden, the republics of Venice (as co-mediator), Switzerland and the Netherlands and, last but not least, the Holy See (as co-mediator) – were never in the same room at any time during the negotiations.

As the negotiations were bilateral, taking place in turn at the residency of each of the parties directly involved, secrecy was more or less guaranteed, but so too was a power imbalance. This system of a set of partially linked parallel meetings, which was customary in the seventeenth and eighteenth centuries, afforded the larger party superior power. Simulations of the 1697 Congress of Ryswick by the Clingendael Institute in 1987 and 1997 have clearly shown how weak the coalitions were (Meerts, 1997b: 29). Their members were not only unable to communicate effectively, but weak transverse communication and negotiation enhanced the power of the stronger parties. While the procedures and processes of the negotiations at Westphalia favoured the larger countries, the smaller parties counted themselves fortunate to be invited. Without the gigantic gathering, they would have been left much more out in the cold, and this is one of the reasons in this day and age why small countries are so in favour of multilateral meetings while their bigger 'brothers' often prefer the bilateral mode. With regard to procedure and process, Westphalia can be seen as being between the old-fashioned bilateral interaction and the conference diplomacy of the twenty-first century.

At Westphalia, proposals could be put forward in three ways. The first was the most formal. An official letter would be sent to the mediator, which he was allowed to open and examine. He would then either forward the letter unaltered, or first negotiate alterations in the text with the sender. The second method of making a proposal involved official papers of a more exploratory nature, while the third method was to make tentative, informal proposals to which the parties did not yet wish to bind themselves. Complete treaty texts were agreed by reaching a series of sub-agreements. In some cases, these complete texts were published as proposals before the parties were allowed to give their opinion. Proposals remained provisional until an overall final agreement was reached (Poelhekke, 1948).

The lingua franca at the Münster negotiations was Latin, but French and Italian were also used. The main language used at Osnabrück, however, was German, a language in which the Swedes were also proficient. The Dutch and the Spanish negotiated mainly in their own languages. In direct contacts, negotiators of the smaller countries often agreed to use the language of the larger country, which added to the difficulties that negotiators already had in terms of power difference. Negotiating in a situation where one opponent can use his mother tongue and the other cannot is obviously advantageous to the former (Marcos, Eisma-Lubbers and Guimon, 1977). All in all, some 800 meetings were held, mostly during the winter. As the generals went off to battle again in summer, the diplomatic process more or less ground to a halt during the warmer weather. How did the negotiators deal with their problems, given the prevalence of warlords, the many

procedural restrictions, the non-transparency of the processes, the procrastinating tactics of the parties, their inflexible positions, and the multitude of problems at hand while a war was raging directly outside the neutral conference cities of Osnabrück and Münster?

The paradox of the negotiations in Münster was the undeniable backward-looking character of the negotiation process leading to forward-looking outcomes. The delegates did what they could to defend their states' interests without taking into account the interests of the collective whole in Europe. This strategy is notably different from the intra-European negotiations of today, where there is a greater balance between national and supranational interests than in the seventeenth century. The delegates had a far less flexible mandate than, for instance, the EU negotiators of our own time; their personal safety was much less well guaranteed; they had to cope with unrestricted power differences; and they were hindered by strict procedures mirroring those power differences. In this situation, they could do no more than negotiate an end to warfare and were denied the capability of working on a more lasting peace by building in forward-looking elements. The backward-looking agreements, however, would have been of no value whatsoever had the status of the negotiating parties remained fixed. In other words, no backward-looking peace deal could have been concluded if the Helvetian, Venetian and Dutch republics had not been acknowledged as genuine states, if the German empire and the Spanish kingdom had not been willing to accept France and others as equals, and if Protestantism had not been accepted as a branch of Christianity in its own right. It was only such structural changes that made situational agreements viable. As a consequence, the negotiation process had a backward-looking character that led to a forward-looking outcome.

### People and Posture

It is, of course, even more problematical to analyze the behaviour of the diplomatic negotiators of 350 years ago than of our own time (Kaufmann, 1989: 301). Nevertheless, we can say something useful about the negotiation behaviour during Westphalia, especially the Münster dealings, as extensive and detailed accounts are available. According to Johan Kaufmann, the conference diplomat had to be able to play many roles, including silent partner, lobbyist, orator and procedural specialist (Kaufmann, 1996: 124). Detailed accounts by J.J. Poelhekke, Fritz Dickmann and Simon Groenveld on the negotiation process and the behaviour of negotiators at Westphalia show that, in this sense, seventeenth-century diplomatic negotiators were not really different from those operating in our own time (Poelhekke, 1948; Dickmann, 1959; and Groenveld, 2000).

Negotiators and their governments were inclined to ask for more than they could reasonably expect to get (Fisher, 1971: 86). For several reasons, the willingness to make concessions at Münster was, by contemporary standards, extremely small. The first reason was fundamental: the stature of the participating states. It was extremely important for each actor not to lose face, a backward-looking consideration par excellence. At this conference, where the Europe of medieval unity was to be replaced by a Europe of sovereign states, each state needed to reflect its (supposed) sovereignty to the greatest possible degree in its rights and prerogatives. Every concession made by a state was considered to be detrimental to its own position. This applied most of all to the German

empire, which was about to lose both its internal and its external sovereignty, as well as the right, which it shared with the Holy See, to be the symbol of European unity. The Catholic Church was in the same position. Recognition of freedom of religion by individual states or sovereigns detracted from the notion that the Catholic Church was the sole authority in Western and Central European Christianity.

The same applied to the states that were trying to turn their *de facto* independence into sovereignty *de jure*, as well as to states that were already sovereign but fighting for the best position within Europe. All sovereign states were equal, but some were more equal than others. They bargained extensively over the problem of precedence, and not only in a peaceable fashion; it was not unusual in those days for there to be bloody encounters between delegates' assistants. States' insecurity about their own position led to a hardening of attitudes, reinforced by differences of opinion between the mediators and differences of vision and power within various delegations. These differences were turned into issues of status and resulted in positional negotiations. Hence, before the substance of the meeting could even be discussed, the parties argued at length about the formalities that they felt not only defined their positions, but also protected and defined the stature of the negotiator (read: of his superior). Form had priority over substance and obstructed smooth progress. In fact, the formal opening of the Münster talks was delayed for six months because of arguments about questions of precedence (Anderson, 1963). Before new borders could be defined, the boundaries between the negotiators had to be determined.

From the outset, this highly inflexible structure, which was dictated by the subject matter of the negotiations – namely, establishing the differences between the states rather than pursuing their interdependence – resulted in extremely distributive negotiations. One party's gain was another party's loss. Maximization was paramount. If Spain wanted peace, it would have to offer more than just recognition of the Dutch Republic. Moreover, the people of Amsterdam and Zeeland, demanding the blockade of the southern Netherlands, did not seem to care that this would be punishing former fellow compatriots who had themselves become victims of the Spanish *Reconquista*. If France wanted to increase its power, it had to be prepared to support the advance of Protestantism – an anathema within its own borders – in Germany and the Netherlands. Such opportunism was not considered at all unethical. The question was how tough a stance to adopt. Those who wanted peace needed to be more willing to make concessions than those who would benefit from the continued pursuit of justice through war. Thus, it was the various interests of the factions within the participating states that contributed to determining how willing the parties were to make concessions. War remained an alternative to an agreement.

Maximizing one's power through the use of force was an acceptable and even approved tool of diplomacy, as evidenced by the fact that the war continued to rage during the negotiations themselves. Negotiating was itself seen as something of an admission of weakness. It could lead to situations where the stronger party forced an agreement on the weaker party, resulting in the losing party remaining resentful towards the other side and waiting for a chance to exact revenge. The negotiation might be a success in the sense that a treaty had been concluded, but the aim of reaching a satisfactory resolution of the conflict for both sides was still light years away. If certain goals could not be achieved by force, only two options remained: negotiation; or avoidance. Negotiation was simply a way

of continuing the battle using other means and resulted, sometimes literally, in bellicose behaviour; there are many examples of carriage races and fights between servants, as happened between the Spanish and Portuguese delegations. It also resulted in a wait-and-see attitude, because the tide on the battlefield might turn, and a dominant position might help to enforce one's own demands.

The use of power outside the negotiation rooms thus resulted in a certain abstinence from power inside them. The negotiators of the more powerful parties often refrained from making use of their superior position because they were afraid that any agreements they might reach would be weaker than agreements dictated by military victory. Everyone waited for the battle tides to turn, and the negotiations in Münster can therefore be seen as encouraging the further use of force. The Treaty of Münster may – for some countries – even be viewed as a 'break' that was deliberately created for the purpose of achieving a better position in a renewed conflict, a forward-looking aspect of a negative character. The stronger parties could not yet overturn their weaker opponents. At issue was the 'power of the weak' (Jönsson, 2000: 18). Time was running out for them, however, so some of the stronger parties had to buy time through a treaty. Confirmation of this may be seen in the subsequent wars that the states fought to consolidate their own positions in the hierarchy of states.

An effective use of superior power was seen as completely legitimate within the peace talks, as the structure of the meetings implies. As argued above, the bilateral nature of the negotiations afforded the stronger party the chance to capitalize on its superior power – at least, if developments on the various battlefields warranted this. At Münster, virtually no coalitions were formed – the strict mandates of the negotiators left no room – although multilateral conferences are usually an outstanding opportunity for coalition-building. The meetings' formalities also restricted the informal formation of alliances. Some parties did, however, attempt to win over negotiators to their side by means that would be considered unethical today. For example, bribery was rife, but it usually had little effect. Payments were considered, rather, to be a security measure: states paid their own allies large sums of money to prevent them from accepting money from the opposition. In fact, it was also common practice to accept money from the opposition. The charms of the ambassadors' wives were also deployed to soften the position of some negotiators. The Spanish ambassador's wife, for instance, played just such a role at the Ryswick peace conference.

Everyone at Münster was constantly trying to affect the balance of power, but the net result was that the delegations suffered from a chronic lack of funds and only ended up worse off, with no real shifts in position having taken place. The real victims of this were the townspeople of Münster, for if an ambassador absconded and left large debts, it was almost impossible to recover them. The Münster conference was, in fact, little more than a means of communicating decisions that had been made elsewhere. Progress could be made only if the time was ripe for an agreement outside the negotiation rooms. Whereas the goal of negotiations nowadays is to reach an agreement, the aim of the Münster negotiations was to have a forum for sealing decisions that were made externally. In other words, whether any negotiations took place in the sense in which we understand the term today is seriously open to doubt. The balance of power at the negotiating table was therefore relatively irrelevant, because power was not going to be used there anyway. What mattered was the balance of political and military power outside Münster.

Münster was a conference of diplomats, not a conference of rulers or their direct political representatives (Dickmann, 1959). In that sense, Münster was different in principle from the conferences at Vienna and Versailles in later centuries. There was no direct possibility of any real compromises being agreed, and the difference in power between those mandated and those doing the mandating led to loss of power on the part of the envoy and, consequently, to a marginalization of Münster as a whole. This is illustrated by the problems that arose in communicating with the negotiating states' capitals. Although Prince von Thurn und Taxis established a regular postal service linking Münster, Vienna, Amsterdam, Cologne and Hamburg in 1643, messages were often intercepted, both by plundering soldiers and by the opposing party. Moreover, it took a very long time for an answer to be returned, which delayed the negotiating process even further. The geographical distance between the capital and Münster entailed long travelling times, which emphasized the difference in power between the diplomats and their masters.

The delegations consisted of all sorts and conditions of people, and their procedural conflicts reinforced the negotiations' backward-looking position politics. It was beyond dispute that the delegation's leader was formally in charge, if only because he was representing his sovereign. Delegation leaders representing kingdoms and republics were either members of the high nobility or the patrician class. They were sent to Münster for many different reasons, at best because of their experience and virtue, and at worst because their sovereigns wanted to get rid of them. The reason for their removal from court varied from the political, as in the case of the French, to the personal. The King of Spain, for instance, sent his ambassador because he wanted to separate him from his young wife in Madrid. Representatives of the Mediterranean countries, in particular, saw Münster as a punishment, on account of the cold weather, bad facilities, and the fact that it was situated far from the centres of power and in a country that was still partly at war – and dangerous. Although the town itself was safe, because the emperor had stationed a special regiment of soldiers there, there were still gangs of soldiers roaming about the countryside.

Some information is available about the behaviour of the delegation leaders. Count von Trauttmansdorff, the ambassador of Emperor Ferdinand III and chief representative of Germany, was described as decisive, yet friendly. The French ambassador, the Duke de Longueville, tried to improve the atmosphere by using his young wife's skills and charms. This put their residence at the centre of diplomatic life in Münster. Johan Oxenstierna, however, the Swedish ambassador and son of the Swedish chancellor, Axel Oxenstierna, was wavering, blunt and, even worse, uncontrolled. As self-control was considered an indispensable quality in negotiators, the last characteristic violated seventeenth-century standards. The Swedish ambassador also offended good taste with his extreme vanity: trumpets blared when he got out of bed, when he ate his meals, and when he went to bed again (Poelhekke, 1948).

In almost all cases, the delegations' 'seconds-in-command' were lawyers of great repute. There seems to be little doubt that these specialists had more influence than their official leaders, who were sometimes more interested in worldly pleasures than in substantive negotiations, in so far as we can speak of substantive negotiations at all. Pleasures were only sparingly available and were therefore created, at great expense,

by the gentlemen themselves. Bickering between ambassadors and their seconds-in-command was a common occurrence, partly because the former held the latter in such contempt.

In some cases, the seconds-in-command also had differences of opinion among themselves. For example, one of the two French seconds-in-command, the Count Claude d'Avaux, was, like the ambassador, an opponent of the French policy of supporting the German Protestant princes. The other, Abel Servien, found it less objectionable. Both men worked on the same files, a seemingly impractical arrangement, unless one considers that they were, in fact, being used to check on each other (Tischer, 2008). They each represented different factions of the court and continued their battle in Münster. They reported to the capital independently and tried to blacken each other's reputation as much as possible. Within the Swedish delegation, there were great frictions between Johan Oxenstierna, who represented his father, the chancellor's interests, and his second-in-command, Johan Adler Salvius, who promoted the interests of Queen Christina of Sweden. Adriaan Pauw, Godard van Reede and Johan de Knuyt, the Dutch diplomats, also clashed regularly, which is not surprising when one considers that they were each promoting completely different interests (those of Holland, Utrecht, and the governor of the Republic, respectively). Delegates also tried to stir up differences of opinion in other delegations to weaken their position, or to help restrain these opposing views if they were a hindrance to agreement (Poelhekke, 1948; Geurts, 1997).

Tensions between the delegations were expressed in all sorts of precedence disputes, which were sometimes settled by threats or the use of violence. Ambassadors seized every opportunity to show their precedence over others; and lower-ranked diplomats did all that they could to gain higher formal prestige. The electors eventually managed to have themselves considered as sovereigns for the duration of the talks, which immediately gave them a higher status. This temporary power of the electors was responsible for the inclusion in the final agreement of a number of conditions on the exercise of certain important imperial powers. Electors with an ecclesiastical status sometimes called upon this status to gain temporary precedence. The Church was ranked highest of all, so the papal nuncio (envoy) was the only one allowed to sit on a dais. By wearing their vestments, some electors with the rank of bishop managed to gain a better place during solemn ceremonies (Rietbergen, 2000: 92). The French tried to discriminate between monarchies and republics, with republics, of course, thought to be of a lower order. The French were not prepared to accept equality of status until, on one occasion, the representative of the Doge of Venice threatened to leave the conference permanently.

The French were apparently not primarily interested in stimulating a fruitful negotiating atmosphere, but preferred to give priority to prestige issues. For example, considering the Venetian mediator to be inferior in rank because he represented a republic and not a monarchy, they treated him with contempt by waiting for him at the foot of the stairs instead of at the door of his carriage. This ceremony was repeated upon his departure. The attitude shown by the French a few years earlier during talks on the continuation of the French–Dutch alliance was even more offensive: at every available opportunity, they made it clear in their ceremonial behaviour towards the Dutch that the Republic was of a lower standing than France. Indeed, irritation at this behaviour contributed to the Dutch decision to dissolve their alliance with France. The Spanish, by contrast, were much

smoother operators in this respect. At Münster, for instance, they went to sign the treaty at the quarters of the Dutch legation – an action that typified the attitude of Spain towards the Republic, for it was very much in Spain's interest that the Republic should withdraw from its alliance with France. The handling of questions of rank had a strong emotional effect on the players involved, and a decisive impact on the willingness of negotiators to compromise.

Nor, often, were relationships with the various home authorities very good. This was a result of chronic financial worries caused by expenditure on all the pomp and splendour that the delegations needed to emphasize their superiority, expenditure that the capitals were unwilling to cover in its entirety. The need to bribe other parties was another cause of financial troubles. Money was offered even to the highest nobles, who accepted it eagerly. The republics seemed to have more scruples in this matter than the monarchies. The representatives of the Dutch States-General, for example, prohibited the acceptance of gifts, but this was circumvented by directing the gifts to the negotiators' wives.

It cannot be said, therefore, that the delegations paid no attention to cultivating their relationships with other parties, but they went about it in such a way, and in such an atmosphere of mutual distrust and pomposity, that any positive effect on the mutual relationships was minimal. In a situation in which the mandates were severely restricted or non-existent, however, it is doubtful whether the relationships between the diplomats were of any real significance. In some cases, countries even refused to associate with each other during the conference or to use the translateral opportunities that were available. This is most clearly illustrated by the refusal of France and Sweden to meet at all, which was in part why the peace talks had to be located not only in Münster, but also in Osnabrück (Hamilton and Langhorne, 1995).

There were endless discussions and, in that sense, the parties can certainly be said to have explored the possibilities of reaching an agreement. It is doubtful, however, whether this really led to any outcome that integrated opposing viewpoints. The position-based manner in which the parties conducted the negotiations and the limited instructions that they were given did not leave much room for genuine forward-looking exploration of new options for both justice and peace. Furthermore, negotiations on details were left to lawyers of lower rank, who knew little about the agreement's overall structure. The ambassador of the Holy Roman Empire, Count von Trauttmansdorff, considered that these underlings only confused matters, and the Venetian mediator, Alvisi Contarini, deemed them completely incompetent to carry out the sort of negotiations involved. Exploration was more a question of espionage and intrigue than of any genuine search for new and creative solutions. If, however, we consider exploration as the interaction that takes place prior to the start of negotiations proper, there was indeed extensive exploration – or rather, the start of the negotiations proper was continually postponed. In fact, the whole process might better be described as 'playing for time' than 'exploratory negotiations' – playing for time that was intended to put the other party off balance and to strengthen one's own position (Poelhekke, 1948).

In general, the negotiations that took place in Münster were indirect, whereas those that took place in Osnabrück were direct. By the mid-seventeenth century, the use of mediators had become relatively unusual, but they were still employed at Münster. The papal nuncio Fabio Chigi, and the Venetian Alvisi Contarini, acted as mediators and, as far

as we know, they conducted themselves as neutral mediators, formally maintaining their distance from the negotiators (Poelhekke, 1948). They did not dine with them, nor did they accept any gifts. Up to a point, however, each mediator clearly had his own hidden agenda as well. For the nuncio, it was important that the power of the Protestant states be limited; for the Venetian, the main issue was peace on the continent, as the turmoil in Central Europe was not conducive to the Venetian transit trade. Furthermore, Venice was under threat from Turkey and would therefore welcome some military assistance. The other countries were well aware of these hidden agendas, and limited the role of the papal negotiator to mediation only between Roman Catholic countries.

The involvement of the two mediators made it both easier and more difficult to explore options. On the one hand, by creating a buffer in this way, direct encounters were avoided, which meant that options could be explored without the risk of immediate confrontation. On the other hand, it hindered any direct, informal contact, ruling out from the start much chance of flexibility in the negotiating process. Where face-to-face negotiations could be practised, for example between the Spaniards and the Dutch, the process ran much more smoothly, but this also had to do with the greater amount of common ground between them, so that cause and effect were circular.

## Prevention and Prospectiveness

What came out of the Westphalian negotiation processes and how forward-looking were they? Although there is no overall Westphalian peace agreement, but only a number of separate treaties between different parties, we can still describe the Peace of Westphalia in terms of different agreements with several common denominators that collectively changed the political theatre of Western Europe. The short-term common traits were backward-looking – that is, peace that was achieved through ending hostilities and settling conflicts that had bedevilled the Christian European states during the first half of the seventeenth century. The mid-term commonalities were that all of the pacts tried to create a peaceful situation and more fruitful cooperation for the remainder of the seventeenth century. The long-term effects were the establishment of new criteria of justice: a new regime and a new political order for Europe and, as it happened, for the world as well.

The states at the time saw the deteriorating political situation as a common problem needing a cooperative solution. It was not at all feasible to deal with this common issue in a multilateral setting, yet the countries envisaged the need for a gathering of all the parties involved, even those – such as Denmark and Poland – that were only indirectly affected by the disastrous Thirty Years' War. At the same time, they took the opportunity to settle other long-term conflicts, such as the Eighty Years' War. Translateral negotiations and coordinated mediation were effective enough to create a good deal of synergy to compensate for the lack of multilateral negotiation processes and very inflexible procedures.

Most of the agreements on international political matters confirmed the status quo of 1648 in Europe and overseas. On these issues, Münster and Osnabrück were forward-looking, as the political agreements that put an end to an unstable situation laid the foundations for new regimes. They were based on a status quo that, in its turn, was based on a 'mutual hurting stalemate', the only alternative to which was a peace pact.

The forward-looking outcomes, however, were based on backward-looking agreements, settling issues that had already been settled in reality, and an acceptance of painful concessions that were already lost, sometimes for decades.

In a century in which saving face was the most important characteristic of the ruler and his land, it was extremely difficult for the countries to accept changes that could be seen as losses. Even if one gained something else in return, losing was simply 'not done'. Negotiators could often only agree on maintaining the status quo; new solutions appeared to be intractable in nearly all short-term outcomes. As the restoration of a true status quo was impossible, however, new arrangements were made on national political and religious matters, and these outcomes would last for centuries. This was possible only in negotiations where the internal dimension had precedence over the external, where, in other words, more control could be exercised and deals could go beyond status-quo agreements.

The Eighty Years' War was ended by an agreement in Münster between Spain and the Netherlands, by which Spain gave up the sovereignty that it had lost half a century earlier over the northern part of the Netherlands. Both Spain and the Netherlands kept the overseas possessions that they held at the time of the agreement. The borders between 'Belgium' and the Republic remained unchanged, but had to be fixed in detail. This was a difficult question as the *de facto* borders cut through Flanders, Brabant and Limburg. To avoid problems, a *chambre mi-partie* (bilateral chamber) was established to fix the correct frontier and to decide on questions of ownership, and both parties were equally represented. This chamber is an interesting expression of the forward-looking outcome of a backward-looking, status quo-compliant process. The institution had a time limitation, but is nevertheless an interesting phenomenon, as institutionalized international cooperation, let alone inter-state arbitration, was nearly non-existent in seventeenth-century Europe.

The Dutch blockade of Antwerp came to an end, but only formally. In fact it remained, with high import and export tariffs being imposed not only on Antwerp but also on the other Flemish ports to avoid indirect trade with Antwerp itself – measures that still fuel Flemish resentment against the Dutch today. The peace treaty, however, can be characterized as forward-looking, settling issues so thoroughly that it provided for a stable peace. Indeed, Spain never really became the enemy of the Dutch again, in contrast with the French ally, which became an enemy of the Dutch state for the next 150 years. It should be noted, however, that this Spanish–Dutch treaty ended a war that had already ended by itself; it merely confirmed the existing peace, and this might have been the main reason for its forward-looking character.

A formal reason to characterize the Spanish–Dutch pact as forward-looking was the decision that all sovereignty ties, not only between the Netherlands and Spain but also between the Netherlands and Germany, would thenceforth be cut. It was in 1648 that the Dutch officially left the Holy Roman Empire, an empire that they had once provided them with a Roman king who was never enthroned, as he was killed by the Frisians. (As an interesting aside, some 200 years later, the Dutch were officially drawn once more into German affairs when the province of Limburg entered the German Confederation as compensation for the incorporation of western Luxembourg into Belgium.)

Another argument for labelling this treaty as forward-looking was the establishment of the *chambre mi-partie*. This can be seen as the creation of a very limited new regime, in the sense of an institution to guarantee peace and to help to solve currently unknown differences of opinion, a truly forward-looking outcome but on a backward-looking basis.

The peace agreements to end the Thirty Years' War, which continued to rage until the very last days of the negotiations, were on the whole quite forward-looking in creating peace for some decades at least, although it would not be too long before France and Spain became entangled in the Twenty Years' War. Here, it was the military and political situation that primarily determined the final agreements while, in the Spanish–Dutch case, judicial reasoning played a much larger role. In the negotiations between France and Spain in Münster, no agreement could be reached and the war continued for another ten years (until 1659). More successful, however, were the negotiations in Münster between France and Germany that dealt with German territories west of the River Rhine (which had already been in French hands for nearly 100 years). Some of these regions were owned by the Habsburg monarchy itself, so the Spanish resisted any concession on them. As this blocked any peace agreement, the Germans had to decide to cut ties with their Spanish ally on this matter, just as the Dutch had to break their alliance with France in order to be able to conclude an agreement with Spain.

The German peace agreement with Sweden in Osnabrück could also be attained only through German concessions, both on land and money. In contrast with the French deal, however, Sweden did not obtain sovereign rights over the territories along the Baltic coast, which remained nominally within the German realm. This had the advantage of bringing the Swedes into the German League, where they could now participate in the collective decision creating between the German states in a legitimate way. These agreements provided some stability, although not to the extent of the Spanish–Dutch pact, and legitimized future Swedish interventions in the affairs of another 'state'.

The agreements also led to the Osnabrück settlement of national political and religious differences within the Holy Roman Empire. It was not just a peace accord. It was a Christian peace, a *Pax Christiana*. Politics and religion were intertwined; they were now two sides of the same coin that bore the name 'peace'. The religions were distributed over the empire on the basis of the situation in 1624. In other words, the predominant religion in each fiefdom would be determined by the religion pertaining in that *Normaljahr* (particular year). Catholicism, Lutheranism and Calvinism were legitimized as official religions of the empire. A major change was the ending of the requirement that subjects automatically assumed their ruler's religion (*cuius regio, eius religio*) – a repudiation of the 1585 Treaty of Augsburg. If the ruler changed his/her religion, the people could not be forced to convert as well. This was an extremely forward-looking outcome that can be seen as a crack in the theory of monarchical sovereignty and a step in the direction of sovereignty of the people. It had pertained in republics such as Venice and the Netherlands, but never before in monarchies. Even in the republics, however, the devolution of sovereignty was slow, residing in the hands of the richest people.

Furthermore, the relationship between the emperor and the German states had been changed radically by the Osnabrück conference, not only in its outcome, but also in its process. The lords of the German states had negotiated with the sovereigns on a more or less equal basis, and it proved impossible to take back this prerogative later.

The lords already regarded themselves, and were in fact acknowledged, as sovereigns in their own domain. It should therefore be no surprise that, short of full sovereignty, the German states were given far-reaching mandates for home rule. They already had the *ius territorialis* (territorial rights), and now received the *ius foederis* (treaty rights) – another redefinition of justice, with the terms of an alliance coming into play. Germany now became a confederation of 'almost equals', retaining the difference between those states that had a say in the emperor's election and those that had not. The lords could now conclude alliances, conduct international relations and have their own foreign policy, with the only bar to full sovereignty being the precondition that their politics should not harm the interests of the Holy Roman Empire as a whole. From 1648 onwards, the German emperor could no longer claim to be the most important and highest monarch in Western Europe, the successor to the emperors of the western Roman Empire, just as the Russian tsar regarded himself as the inheritor of the eastern Roman Empire. The Westphalian talks resulted in peace but disunity in Germany and, in that sense, foreshadowed Bismarck's policy of reunification in the second half of the nineteenth century.

A negative element in this development was the enormous multiplication of actors in Europe's foreign affairs. This enhanced the risk of new frictions and new wars. Westphalia found a forward-looking solution, delegating France and Sweden as guarantors for keeping the peace in Germany. Both in the treaty between Germany and France, and between Germany and Sweden on 24 October 1648, these 'outside' powers were given the responsibility of upholding the treaties. To make this feasible, the treaties included an anti-protest clause that disallowed any protest by the Holy See against the treaties – another redefinition of justice. This was forward-looking indeed, as the Pope did protest, refusing to accept the religious terms of all the treaties, including the Spanish–Dutch treaty, which was even more forward-looking as it comprised the dissolution of the papal claim of religious sovereignty over Europe. Just as the emperor lost his claim to political monopoly, so the Pope lost his claim to religious monopoly. Not only were the states now equal, but so were the religions. The Pope *de jure* nullified the treaties for reasons of saving face, status, religion and politics. The Roman Catholic Church did, however, refrain from a *de facto* attempt to undo the peace agreements that had been attained (Rietbergen, 2000: 98).

Although the agreements can be seen as forward-looking and did end the ongoing conflicts in many areas, this did not mean that all problems were solved, for wars soon broke out as a consequence of other disputes. Nevertheless, Westphalia had become the basis of the peace treaties that followed. Until 1714, the peace treaties of Westphalia were referred to as the basis of later peace agreements, as the 'mother of all treaties', for at least the next 70 years. During that time, Westphalia was still seen as a moral guide for justice in dealing with international relations in Europe and its dependencies, until the French Revolution destroyed the old order. The hierarchy of states and religions was gone forever, and the equality of sovereign states and religions lives on to this day. These are the most forward-looking outcomes of all.

## In Conclusion

In the seventeenth century, the agreements to end the Eighty and Thirty Years' Wars established new regimes in Europe and its dependencies, most of them long-lived. This chapter has analyzed the negotiations in Westphalia that established the principle of the equality of states having full authority within, and only within, their own territory. It also created equality between religions and thus eliminated religion as the source of political power. It also did away with the highest political and religious authorities – the Holy Roman Emperor and the Pope – and, in that sense, it put a final end to the myth of the Roman Empire still being the overall European regime, albeit in a transcendent form. With republics now accepted as equal to monarchies, the norm of a ruler being the only power within each sovereign unit was weakened, and the seed of sovereignty of the people was planted. Indirectly, Westphalia contributed to the breakdown of absolutism and the growth of the first rudimentary roots of both democracy and nationalism.

Before Westphalia, war was the rule and negotiation the exception. The conference made it clear that peaceful methods of conflict resolution should be the rule for the future. It did not work that way, however, as the newly established balance of power was still highly unstable. The decline of Germany and Spain and the growth of France and Britain were still to reach their equilibrium. Seventeenth-century Westphalia was the eruption of the volcano, but there were many aftershocks to come before the Congress of Vienna in the early nineteenth century. The procedures established by Westphalia were weak, especially compared with those that regulate the relations between countries today. Westphalia did, however, create the forerunners of the sophisticated mechanisms of the twentieth century. It established some rules and regulations for the peaceful solution of conflicts by diplomatic means (Melissen and Van Staden, 2000: 10), for 'Implied in the Münster Treaty was the theory that […] Sweden and France had rights of intervention in the [German] empire' (Doran, 1971: 94). Westphalia came at a time when the social and economic situation in Europe was changing dramatically, and it constructed the political regime that fitted this societal evolution.

It should be noted, however, that this has been the outcome, but was not so much the intention of the negotiators:

> The peacemakers at Westphalia were not concerned with establishing a system or framework of international relations that would endure for centuries. What Westphalia did do [... was to envisage] Europe and […] the rest of the world […] as being made up of sovereign, autonomous states. What remained undecided was how those states ought to behave toward one another (Wright, 2006: 301).

The most important result – that is, the establishment of a system of equal sovereign states as the structuring principle of our world – is still relevant, even if sovereignty has a much more limited notion today than in 1648 (Schrijver, 1998: 141). The only way to put an end to the desynchronized situation of seventeenth-century Europe when armed conflict failed was through international negotiation by diplomats, in spite of the ineffectiveness of some of these processes at that time. That said, in view of the recent failures of important diplomatic international negotiations, such as those on climate change, we may have

reason to review how we negotiate today in complex settings where many countries try to find a common denominator.

The proliferation of nation-states, growing necessity of having treaties ratified, rising internal turmoil in many modern states, increasing regulation of international issues and the growing involvement of non-state actors create a multilateral complexity that seems to prohibit effective international negotiation processes and decision-making (Brower, 2000: 77–78). Comparing then and now, perhaps the Westphalia negotiation process was not so ineffective after all. That does not mean, however, that the regime that Westphalia established will be as suitable a framework for cultural, social and economic developments as it was in the mid-seventeenth century. After all, Westphalia was a typical European solution for European problems of centuries ago. The 'Eurocentric' character of the Westphalian system (Harding and Lim, 1999: 10) simply may not fit the globalized world of today and tomorrow.