

Chapter V

The Diversity of States and the Quest for the Unity of the World (c. 1450 – 1618)

Portugal, Spain and the Expansion of Rule beyond Europe

The transformation of Byzantium into Istanbul, from one of the centres of Roman imperial rule into the centre of government of the Ottoman Turkish Sultan, raised few direct responses at the time of its occurrence. The Ottomans had been a military and political factor in the Balkans since the fourteenth century as well as among West Asian states. The Byzantine government had issued calls for help to Latin Christendom against the expansion of Ottoman rule. As late as in 1439, the Council of Florence had met with participation of delegates not only from the Greek Orthodox, but also from the Ethiopian Church. But the council had failed to accomplish its declared goal of restoring unity to the various Christian churches.¹ Hence, the end of Roman rule in Byzantium did not come about suddenly. No one less than Pope Pius II (1458 – 1464) seemed to have pondered the idea of recognising Ottoman rule over Christians in Istanbul, the Balkans and West Asia. At least, the curia composed a lengthy text in 1458, styled as a letter by the Pope to Sultan Mehmet II. In the text, the Pope is made to propose papal recognition of Ottoman rule over the Balkans under the condition that the Sultan converts to Christianity. The drafters of the text may have been aware of the lack of implementability of the proposal, as the text does not seem to have left Rome at all. At least, there is no record of a reply from the Sultan. Nevertheless, the text testifies to the expectation of the papal curia that Ottoman Turkish rule over Byzantium and its surroundings were to last long. At the time of the writing of the text, no one in the papal curia demanded immediate military measures, such as a Crusade, against the Sultan. At the same time, the Senate of Venice dispatched Niccolò Sagundino (1402 – 1464) to the Sultan in 1456 to arrange for a peace between Venice and the Ottoman Turkish Empire. Sagundino reached the Sultan in Asia Minor and, upon his return he produced what has become the oldest Occidental survey of Ottoman history. He met the Pope in 1462. That seems to suggest that Pius II was well informed about Ottoman affairs.²

The perception of Ottoman Turkish rule in Latin Christendom changed from the 1480s, mainly in the states of the Iberian Peninsula, in Rome as well as in the immediate entourage of the Emperor. Mainly in Portugal, crusading strategies, which had been targeted there against Muslim rulers in West Asia since the eleventh and twelfth centuries, became intertwined with more far-reaching goals of the expansion of trade relations with markets in Africa, South, Southeast and East Asia. Supporters of these Portuguese plans for the establishment of a trading network linking Western Europe with Asian markets began to perceive Ottoman Turkish rule as equivalent of a barrier blocking direct access to Asia via the Mediterranean Sea. To circumvent this perceived barrier, military planners, traders and scholars working at Lisbon devised plans for the build-up of military cooperation between Christian rulers in Europe, the King of Ethiopia and rulers in South Asia, among whom scholars expected some to be Christians as well. The military cooperation was to facilitate a pincer movement attacking the Ottoman Turkish Empire simultaneously in its western, southern and eastern fronts.³ Because direct access from Portugal to Ethiopia was blocked by

¹ Giuseppe Alberigo, ed., *Christian Unity. The Council of Ferrara-Florence 1438/39* (Louvain, 1991).

² Pius II, Pope [Aeneas Silvius Piccolomini], *Epistola ad Mahometem II* [written in 1458], edited by Albert R. Baca (American University Studies, series 2, vol. 127) (New York, Berne, Frankfurt and Paris, 1989) [first printed (Cologne, 1470)]. Nicolaus Sagundinus [Secundinus], *De familia Otthomanorum seu De Turcarum Imperio historia origine et gestis Turcarum* [1456] (Vienna, 1551).

³ Carl Erdmann, 'Der Kreuzzugsgedanke in Portugal', in: *Historische Zeitschrift* 141 (1929), pp. 23-53. Günter Georg Kinzel, *Die rechtliche Begründung der frühen portugiesischen Landnahmen an der westafrikanischen Küste zur Zeit Heinrichs des Seefahrers* (Göppinger akademische Beiträge, 102) (Göppingen, 1976), pp. 141-167, 324-334. Erik Staedler, 'Die Cruciata Martins V. vom 4. April 1418', in: *Archiv für Urkundenforschung* 17 (1942), pp. 304-318. Charles-Martial de Witte, OSB, 'Les bulles pontificales et l'expansion portugaise au XVe siècle', in: *Revue d'histoire ecclésiastique*, vol. 48 (1953), S. 686-693, vol. 49 (1954), S. 438-461, vol. 51 (1956), S. 413-453,

Mamluk rule in Egypt and because, contrary to the late 1400s, no direct contacts existed any longer among Christian rulers in Europe and the King of Ethiopia,⁴ military planners proposed the great plan of circumnavigating Africa, in order to reach Ethiopia and South Asia. The seaway to South Asia would, at the same time, open access to lucrative South Asian spice markets. The implementation of the plan looked relatively simple, as it was drawn on the conventional type of world map current in Latin Christendom. These circular maps displayed the African continent with limited southern extension and supported the expectation that the circumnavigation of Africa from Portugal to South Asia was possible in a relatively short span of time. However, the implementability of the plan critically hinged upon proof that Africa was circumnavigable at all. The circular world maps, dominant in Latin Christendom, did display Africa as circumnavigable, and scholars working at Lisbon could avail themselves of nautical knowledge that Arab seafarers had acquired about the Indian Ocean since the eleventh century at the latest. Italian merchants, travelling in South Asia, had transmitted that knowledge around the middle of the fifteenth century.⁵ It appeared to confirm geographical information current since Greek Antiquity, according to which the Indian Subcontinent extended far southwards into the ocean.⁶ By 1459, this knowledge had been documented in a map of the world.⁷ The King of Portugal had commissioned the map, which was kept at Lisbon.⁸

However, the great plan appeared to meet serious obstacles during the fifteenth century. Throughout the century, a rival theory found supporters who fearfully surmised that Africa might connect with the Southern Continent believed to form the southern boundary of the globe. If such a land bridge existed, Africa was not circumnavigable and there was no seaway to South Asia. Fears that South Asia was not directly approachable by sea were laid down in the mid-fifteenth-century so-called Borgia map, extant in the Bibliotheca Apostolica Vaticana, and remained current to the end of the century. For one, the Nuremberg humanist Hartmann Schedel (1440 – 1514), who compiled a universal history printed in 1493, inserted a map into this lavishly illustrated book, which featured the Ptolemaic Southern Continent forming a land bridge between the southern tip of Africa and Southeast Asia. Schedel's skepticism resulted from the growth of knowledge about the physical shape of the African continent. As Portuguese navigators had penetrated southwards along the African coasts, they had found the southern extension of the continent to be longer than anticipated. Against scholarly theoretical expectations, the African continent did not allow passage to South Asia at the latitude of the Congo River delta, thereby forcing navigators to sail further to the south than conventional world maps of Latin Christendom were suggesting.⁹

From the 1480s, Portuguese kings ignored these skeptical views and vehemently mandated efforts to proceed with the circumnavigation of Africa. Thus, a fortress was built at El Mina in what is Ghana today in 1481.¹⁰ The fortress manifested Portuguese government determination to pursue the search for a seaway to South Asia not just as a project of academic exploration but mainly as a means to expand Portuguese rule beyond the confines of the European continent. Since 1488, Portuguese kings claimed the title "Lord of Africa" (Senhor do Guinea) for themselves.¹¹ Eventually, in 1498, Vasco da Gama (c. 1469 – 1524) succeeded not only in reaching the Eastern coasts of Africa

806-836, vol. 53 (1958), S. 5-46, 443-471.

⁴ As documented through the letter by: Henry IV, King of England, '[Letter to the King of Ethiopia, 1400]', in: Francis Charles Hingston, ed., *Royal and Historical Letters during the Reign of Henry the Fourth*, vol. 1 (London, 1860), pp. 421-422 [reprint (New, York, 1966)].

⁵ Angelo Conte de Gubernatis, *Memoria intorno ai viaggiatori Italiani nelle Indie Orientali dal secolo XII a tutto il XIV* (Florence, 1867). Waldemar Sensburg, 'Poggio Bracciolini und Nicolò de Conti in ihrer Bedeutung für die Geographie des Renaissancezeitalters', in: *Mitteilungen der K[aiserlich]-K[öniglichen] Geographischen Gesellschaft in Wien* 49 (1906), pp. 257-376 [Ph. D. Thesis (Munich: Institute of Technology, 1906)].

⁶ Strabo, *Geographika*, chap. XV/1, 13-14 [various edns].

⁷ Fra Mauro, *Il Mappamondo*, edited by Tullia Gasparini Leporace and Roberto Almagià (Rome, 1956).

⁸ For a study see: Wojciech Iwańczak, 'Entre l'espace ptolémaïque et l'empire. Les cartes de Fra Mauro', in: *Médiévales* 18 (1990), pp. 53-68.

⁹ World map according to Klaudios Ptolemaios [1493], printed in: Hartmann Schedel, *Das Buch der Cronicken vnd Gedechnus* (Nuremberg, 1493), fol. XII'-XIII' [Facsimile edn, edited by Stephan Füssel (Cologne, 2001)].

¹⁰ Günther Hamann, *Der Eintritt der südlichen Hemisphäre in die europäische Geschichte* (Sitzungsberichte der Österreichischen Akademie der Wissenschaften, Philos.-Hist. Kl., 260) (Vienna, 1968), pp. 127-129.

¹¹ *Descobrimentos portugueses*, vol. 3 (Lisbon, 1971), pp. 341-342 [reprint (Lisbon, 1988)].

but could also, with assistance from a Gujarati Muslim navigator named Ahmed ibn Māḡid, land landed at the port of Calicut on the southwestern coasts of South Asia. Interrogated by the ruler of Calicut, why he had come there, Vasco da Gama, according to his own report, replied that he had undertaken the voyage in search for Christians and spices.¹² The statement, if properly recorded, condensed in a nutshell the combined Portuguese strategies of forging an alliance for the planned Crusade and the promotion of trade. The strategies focused Portuguese government interest upon the coastlines of East Africa and upon South Asia. Apparently, Vasco saw statues in sacred buildings during his stay at Calicut and optimistically reported that in “India”, there were not only profitable markets for spices but also Christians.¹³ In contemporary European geographical diction, “India” was a conventional summary denomination for all parts of South, Southeast and East Asia and, prior to Vasco’s voyages, was located in European perspective immediately east of Ethiopia. Hence, Vasco’s voyages entailed immediate plans for the conquest of Palestine and the establishment of seaborne Portuguese contacts with Ethiopia at the turn towards the sixteenth century.¹⁴

The Spanish rulers Ferdinand of Aragón (1479 – 1516) and Isabella of Castile (1474 – 1504), styling themselves “Catholic Kings” and married to each other, did not share the Portuguese strategy of the overseas expansion of rule. Instead, they gave priority to the conquest of those parts of the Iberian Peninsula that were under Muslim rule (Reconquista). This process had begun in the twelfth century. It had advanced slowly during the thirteenth and fourteenth centuries, but was speeding up during the fifteenth century. In 1492, the Emir of Granada, the then only remaining Muslim ruler in the Iberian Peninsula, evacuated the city and withdrew to North Africa. The army of the “Catholic Kings” could then enter and occupy the city. The Reconquista, now completed, had been tied to strict measures of Catholicisation, applied not only against Muslims but also against

¹² Damião Peres, António Baião and Agustín de Magalhaes Basto, eds, *Diário da viagem de Vasco da Gama. Facsimile do código original*, 2 vols (Serie B. H., Serie Ultramarina 4) (Porto, 1945), pp. 47-48. Damião de Góis, *Cronica do felicissimo rei Dom Manuel* [1566], vol. 1, edited by Teixeira de Cavalho and David Lopes (Coimbra, 1926), chap. 38: on Vasco da Gama’s journey across the Indian Ocean. Šeikh Zeineddīn [Zinadin], *Tuhfat al-muḡāhidīn* [1579], edited by David Lopes (Lisbon, 1898) [English version s. t.: *Tohfut-ul-Mujahideen*, edited by M. J. Rowlandson (London, 1833)]: on Vasco da Gama’s stay at Calicut. For studies see: Franz Hümmerich, *Quellenuntersuchungen zur ersten Fahrt Indienfahrt Vasco da Gamas* (Munich, 1897). Hümmerich, ‘Studien zum “Roteiro” der Entdeckungsfahrt Vasco da Gamas. 1497 – 1499’, in: *Revista da Universidade de Coimbra* 10 (1927), pp. 53-302. Christine von Rohr, ed., *Neue Quellen zur zweiten Indienfahrt Vasco da Gamas* (Quellen und Forschungen zur Geschichte der Geographie und Völkerkunde, 3) (Leipzig, 1939). Gabriel Ferrand, ‘Le pilote arabe [Ahmed ibn Māḡid] de Vasco da Gama et les instructions nautiques des Arabes du XV siècle’, in: *Annales de géographie*, vol. 31, nr 172 (1922), pp. 289-307. Ferrand, *Instructions nautiques et routiers arabes et portugais des XV et XVI siècles*, vol. 3: Introduction à l’astronomie nautique arabe (Paris, 1928), pp. 183-190: on Ahmed ibn Māḡid and a translation from the al-Barq al-Yamāni (History of the Yemen) by Qutbeddin an-Nahrawālī. Edmont Zechlin, ‘Die Ankunft der Portugiesen in Indien, China und Japan als Problem der Universalgeschichte’, in: *Historische Zeitschrift* 157 (1938), pp. 491-526, at pp. 493-494: on Ahmed ibn Māḡid.

¹³ Peres, *Diário* (note 12), p. 45. In the Muslim world, Calicut had long been renowned for its busy port and the intensity of its trade with the Arabian Peninsula. See: Kamal-ud-Dīn Abd-ur Razzaq ibn Ishaq Samarkandi [Persian ambassador to Calicut, 1442 – 1445], [Report on Calicut], in: Razzaq, *Matia-us-Sadain wa Majma-ul-Bahrain* [English version s. t. ‘Narrative of the Voyage of Abd-er Razzak’, edited by Richard Henry Major, *India in the Fifteenth Century* (Works Issued by the Hakluyt Society, Series I, vol. 22) (London, 1857), nr I, pp. 13-20 (separate pagination); reprints of this edn (New York, 1970); (New Delhi, 1929; (Publicatons of the Institute for the History of Arabic-Islamic Science, 6) (Frankfurt, 1994); (Farnham, 2010)].

¹⁴ For Palestine see: Charles-Martial de Witte, OSB, ‘Un projet portugais de reconquête de la Terre-Sainte (1505 – 1510)’, in: *Actas do congresso internacional da historia dos descobrimentos*, vol. 5 (Lisbon, 1961), pp. 419-449. For Ethiopian-Portuguese relations see: Francisco Alvares, *The Prester John of the Indies. A True Relation of the Lands of the Prester John. Being the Narrative of the Portuguese Embassy to Ethiopia in 1520*, edited by Charles Fraser Beckingham and George Wynn Brereton Huntingford (Works Issued by the Hakluyt Society. Second Series, 114.115) (Cambridge, 1961). For continuing European perceptions of proximity between Ethiopia and “India” see: Juan Dos Santos, *Aethiopia orientalis*. Evora 1609; partly printed in German in: Carl Mauch and A. Merensky, ‘Carl Mauch’s Entdeckung der Ruinen von Zimbaoe, 5. September 1871’, in: *Mittheilungen aus Justus Perthes’ Geographischer Anstalt* 18 (1872), p. 124. Hiob Ludolf [= Job Leutholf], *Historia Aethiopica* (Frankfurt, 1681), p. 66 [reprint (Osnabrück, 1982)]. Dos Santos believed that the ruins of Zimbabwe were the storehouse of the Queen of Saba and Ludolf lamented the persistent utilisation of the name “India” for Ethiopia.

Jews. Believers of both religions were forced into emigration, unless they wanted to convert to Catholicism.

After the end of the Reconquista, there was no further target for the expansion of the rule left to the “Catholic Kings” within the Iberian Peninsula, while their Portuguese counterparts were occupying parts of Africa. Hence, it was a lucky coincidence that, while their troops were positioned outside Granada, an adventurer with the name Christopher Columbus (1451 – 1506), presumably of Genoese origin, approached the “Catholic Kings” with the plan of undertaking a westward traversal of the ocean to reach the eastern coasts of “India”. Portuguese scholars, whom Columbus had previously consulted, had rejected the plan, because Columbus had not been able to supply information about the distance to be covered through the oceanic traversal from Europe to “India”. Although the plan was less fanciful than it may have appeared to the Lisbon group of scholars, it stood in the way of the then ongoing Portuguese explorations of the coastlines of the African continent. In fact, Italian scholars had already assigned 270 longitudes to the circumference of the tri-continental landmass of Africa, Asia and Europe, leaving 90 longitudes for width of the ocean apparently separating Europe from “India”.¹⁵ This calculation became the basis for the work of cartographers, who produced world maps and globes in Ptolemaic style, among them Henricus Martellus, who worked in Italy between 1480 and 1496,¹⁶ and the Nuremberg sailor Martin Behaim (1459 – 1507), who appears to have used Martellus’s work.¹⁷ The Florentine mathematician Paolo dal Pozzo Toscanelli (1397 – 1482) assumed the same distribution of land and water on the surface of the planet earth, although he compiled a map only of a part of the entire globe.¹⁸ Essentially, the calculation grounded in geographical information contained in Marco Polo’s travel report and in Arab nautical knowledge. The postulated extension of the ocean across 90 longitudes appeared to allow its traversal. Already the Franciscan scholar Roger Bacon (1214 – 1292/4)¹⁹ had speculated about the possibility of the traversal, and Cardinal Pierre d’Ailly (Petrus Alliacus, c. 1330 – 1420)²⁰ had recently repeated it.²¹ At the end of the fifteenth century, the westward traversal of the ocean thus appeared no longer as mere speculation but to be drawn on empirical facts.²² Columbus had consulted Marco Polo’s report and Pierre d’Ailly’s cosmography and apparently had corresponded with Toscanelli. To the “Catholic Kings”, he mentioned Toscanelli’s idea that several islands were scattered throughout the ocean, among them the Canaries under Spanish control, the Azores under Portuguese rule, the island of Atlantis of ancient Greek geography and the island of Zipangu to which Marco Polo had referred.²³ Hence, the ocean traversal was equivalent of island hopping. The

¹⁵ Leonardus Qualea, *Astronomia medicinalis*. Ms. Paris: Bibliothèque nationale de France, Fonds lat. 10264, fol. 57^r-95^r, at fol. 62^r, 63^v. For a study of this text see: Klaus Anselm Vogel, *Sphaera terrae. Das mittelalterliche Bild der Erde und die kosmographische Revolution*. Ph. D. thesis, typescript (University of Göttingen, 1995), fol. 340-352.

¹⁶ Henricus Martellus, *Insularum illustratum liber* [1489]. Ms. London: British Library, Add. Ms 15760.; 213 ; 297 Alexander O. Vištor, ‘A Pre-Columbia Map of the World, circa 1489’, in: *Imago Mundi* 17 (1963), pp. 95-97.

¹⁷ Johannes Karl Wilhelm Willers, ed., *Focus Behaim Globus*, vol. 1 (Nuremberg, 1993), pp. 257-272.

¹⁸ Norbert Sumien, *La correspondance du savant florentin Paolo dal Pozzo Toscanelli avec Christophe Colomb* (Paris, 1927). Hermann Wagner, ‘Die Rekonstruktion der Toscanelli-Karte vom J[ahr] 1474 und die Pseudo-Facsimilien des Behaim-Globus vom J[ahr] 1492’, in: *Nachrichten von der Königlichen Gesellschaft der Wissenschaften zu Göttingen*, Philos.-Hist. Kl. (1894), pp. 208-312.

¹⁹ Roger Bacon, *Opus majus*, edited by John Henry Bridges, vol. 1 (Oxford, 1897), p. 290.

²⁰ Pierre d’Ailly, *Cosmographiae tractatus duo* [1414] (Louvain, c. 1480), fol. K3^r. Ailly, *Ymago mundi*, edited by Edmond Buron, vol. 1 (Paris, 1930), p. 206.

²¹ For studies see: Sebastiano Crinò, *La scoperta della carta originale di Paolo dal Pozzo Toscanelli che servi di guida a Cristoforo Colombo per il viaggio verso il nuovo mondo* (Florence, 1941). David Woodward and Herbert M. Howe, ‘Roger Bacon on Geography and Cartography’, in: *Roger Bacon and the Sciences. Commemorative Essays*, edited by Jeremiah Hackett (Leiden, New York and Cologne, 1997), pp. 199-222.

²² As summed up by: Hieronymus Müntzer, *De inventione Africae maritimae et occidentalis videlicet Geneae per Infantem Henricum Portugalliae*. Ms. Munich: Bayerische Staatsbibliothek, clm 431, fol. 280^r-290^v; edited by Friedrich Klunzmann, ‘Hieronymus Müntzer’s Bericht über die Entdeckung von Guinea’, in: *Abhandlungen der Philos.-Philol. Classe der Königlichen Akademie der Wissenschaften* 6 (1850), pp. 348-360.

²³ Marco Polo, *Liber de consuetudinibus et conditionibus orientalium regionum* (Antwerp, 1485) [reprint (Tokyo, 1949); further edns as *Le livre des merveilles* [Facsimile edn of Ms Paris, Bibliothèque nationale de France, Fonds

“Catholic Kings”, contrary to Lisbon scholars, were impressed by Columbus’s argument and, on 17 April 1492, authorised him to begin the westward voyage as their admiral under the condition that “all islands and firm lands”, he would find, would fall under Spanish rule.²⁴

Columbus departed in May 1492²⁵ and returned from his voyage in the following year. But awkward winds forced him to land at Lisbon. As he was travelling in Spanish service, he would not have been allowed to cross the demarcation line that had been agreed upon between the Portuguese and the “Catholic” kings in the Treaty of Alcáçovas of 1479 and drew a line demarcating a Portuguese from a Spanish zone of the ocean north of Lisbon.²⁶ This line reserved the southern hemisphere to Portuguese ships, in order to allow them to pursue the exploration of the coastline of the African continent without molestation. Within this hemisphere, Spanish ships were only entitled to shuttle between the Iberian Peninsula and the Canaries. However, Columbus had not returned to the Peninsula from the Canaries but from elsewhere. Hence, he had to face interrogation about his newly acquired knowledge of oceanic seaways and, at the request by the king, provided information about his voyage to Bartolomeu Diaz (c. 1450 – 1500), who was the Portuguese sailor most experienced in oceanic seafaring. Columbus was then allowed to proceed to Barcelona, where he met the “Catholic Kings”. In the course of his voyage, he had visited many islands not listed in any map of the world and mentioned nowhere in the geographical literature, not even in the standard fifteenth century handbooks of islands.²⁷ Columbus insisted that he had been close to Zipangu.²⁸

The “Catholic Kings” responded promptly and requested confirmation of their possession of the allegedly newly found “islands and firm lands” from the Pope. The papal curia was quick to issue a series of five edicts confirming Spanish control of these “islands and firm lands” with the proviso that the “Catholic Kings” supported missionary efforts in these areas.²⁹ In the first of these edicts, written out in the name of Pope Alexander VI (1492 – 1503), the curia revealed that the Pope had been grateful for the “reconquest” of Granada from Muslims termed “Saracens”, thereby classing the Reconquista as a Crusade. Then the Pope “donated” to the “Catholic Kings” (donamus, concedimus et assignamus) all “lands and islands”, known as well as unknown, which voyagers in Spanish service had found or were to going to find (omnes et singulas terras et insulas predictas sic ignotas et hactenus per nuntios vestros repertas et reperiendas).³⁰ Jurist Johannes Metellus (1510 – 1597) interpreted this and the following edicts as papal instructions for the spreading of Christianity in the “lands and islands”, with the inclusion of the use of military force. Metellus seems to have had access to archival materials, which are no longer extant, and provided the information that King

Franç. 2810] (Tokyo, 1998); *The Book of Sir Marco Polo, the Venetian, Concerning the Kingdoms and Marvels of the East*, edited by Henry Yule, third edn (London, 1929); first edn of this text (London, 1871); *Notes and Addenda*, by Henri Cordier (London, 1920); *Il libro di Marco Polo*, edited by Daniele Ponchirolì (Turin, 1982), pp. 161-165; *Der mittelhochdeutsche Marco Polo*, edited by Horst von Tscharnier (Berlin, 1935)].

²⁴ Martín Fernández de Navarrete, ed., *Colección de los viajes y descubrimientos que hicieron por mar los españoles desde fines del siglo XV*, vol. 2, second edn (Madrid, 1859), nr V, pp. 11-13.

²⁵ Christopher Columbus, *Diario de abordo*, edited by Luis Arranz (Madrid, 1985), p. 72.

²⁶ Treaty Castile – Portugal, Alcáçovas, 4 September 1479, in: Antonio de la Torre and Luiz Suárez Fernández, eds, *Documentos referentes a las relaciones con Portugal durante el reinado de los Reyes Católicos*, vol. 1 (Biblioteca „Reyes Católicos”, 7) (Valladolid, 1958), pp. 245-284; also in: Frances Gardiner Davenport, ed., *European Treaties Bearing on the History of the United States and Its Dependencies to 1648*, vol. 1 (Carnegie Institute of Washington, Publication, 254) (Washington, 1917), pp. 133-148.

²⁷ Henricus Martellus, Insularum (note 16). Niccolò Scyllacio, *De insulis meridiani atque Indici Maris nuper inventis*, edited by John Mulligan (New York, 1859). Domenico Silvestri, ‘De insulis et earum proprietatibus’, edited by Caruela Pecoraro, in: *Atti della Accademia di Scienze, Lettere ed Arti di Palermo*, series IV, vol. 14 (1954), pp. 5-319.

²⁸ Columbus, *Diario* (note 25), on 24 December 1492, at p. 106.

²⁹ Alexander VI, Pope, Bull ‘Inter caetera’ [3 May 1493], edited by Josef Metzler, *America Pontificia primi saeculi evangelizationis. 1493 – 1592*, nr 1, vol. 1 (Vatican City, 1991), pp. 72-75. Alexander VI, Bula ‘Eximiae devotionis’ [3 May 1493], *ibid.*, nr 2, pp. 76-78. Alexander VI, Bull ‘Inter cetera’ [4 May 1493], *ibid.*, nr 1, pp. 79-83. Alexander VI, Bull ‘Piis fidelium’ [25 June 1493], *ibid.*, nr 3, pp. 83-86.; 12 Alexander VI, Papst: Bulle Dudum siquidem [26 September 1493], *ibid.*, Nr 4, pp. 87-89. Alexander VI, Bull ‘Dudum siquidem’ [26 September 1493], *ibid.*, nr 5, pp. 87-89.

³⁰ Alexander VI, ‘Inter caetera’ (note 29), p. 74.

Ferdinand of Aragón had solicited the papal edicts (*supplicatio*).³¹ Subsequently, the Dominican missionary Bartolomé de Las Casas (1484/85 – 1566), working in areas under the control of the “Catholic Kings”, took up the formula of the first papal edict to the “Catholic Kings” of 1493 and referred to the papal act as a “donation and investiture” by authority of the Holy See, which, in his view, had invested the “Catholic Kings” with the “sovereign, imperial and universal suzerainty and rule ... over India” (*soberano, imperial e universal principado y señorío ... sobre las Indias*). He also claimed that the continuing “government, jurisdiction, rights and competences of the natural kings and rulers of the subjected peoples” (*compadece tener los reyes y señores naturales ... su administración, jurisdicción, derechos y dominios sobre sus pueblos súbditos*) were compatible with the papal investiture.³² Contrary to Metellus, Las Casas thus assumed that the “Catholic Kings” were mere holders of some kind of overlordship above states having existed under natural law, and he then expected that these states would continue to exist.

The timing for the Spanish supplication to the papal curia was favourable for the “Catholic Kings”, as the then reigning Pope Alexander VI was a member of the Borja (Borgia) family of Spanish origin. Even though it was far from obvious that Alexander VI personally interfered into the process of formulating the edicts issued in his name, the curia, in granting the privileges to the “Catholic Kings”, did effectively revoke its existing stance, by which it had previously given priority to the support of the crusading plans and resulting initiatives to expand Portuguese control over parts of Africa.³³ Hence, the papal edicts in favour of the “Catholic Kings” provoked hectic activity at Lisbon, where it seemed difficult to maintain the Alcáçovas demarcation line vis-à-vis the increasing military potential available to the “Catholic Kings”.³⁴ Moreover, Columbus’s voyage provoked fears of defeat, as, by 1493, the Portuguese explorations along the coastlines of the African continent had not reached a satisfying conclusion. Hence, Portuguese strategists believed that they were under time pressure, fearing to lose out in competition with the “Catholic Kings”. A further problem came up: If there were large numbers of “islands and firm lands” in the ocean, their location in relation to the Alcáçovas line would have to be ascertained. The treaty of 1479 fixed only the eastern end of the line, but left it undetermined in the West. Hence, conflict might arise in distant waters between the Portuguese and the “Catholic” kings over the control of these islands. At the time, the “Catholic Kings” appeared to be better prepared for these conflicts, as the Portuguese side would have to continue to send its largest vessels out on the voyage to Africa and South Asia. Therefore, both sides agreed on the renegotiation of the Alcáçovas line fairly quickly. In 1494, Portuguese and Spanish delegations met in the Spanish town of Tordesillas in the presence of the papal emissary, who, however, did not act as intermediary. The treaty concluded at Tordesillas in 1494 relocated the demarcation line, directing it north-southwards from the North to the South Pole.³⁵ The new line had definitive terminal points, separating the ocean into a Portuguese eastern and a Spanish western hemisphere. The new regulation, following the Treaty of Alcáçovas in exempting Spanish rights to approach the Canaries, benefited the Portuguese side. It not only permitted the unmolested continuation of the Portuguese exploration efforts, but also allocated Portuguese control to the hemisphere closest to Europe. Should there be any “islands and firms lands” in the southern part of

³¹ Johannes Metellus [Matalius], ‘Praefatio’, in: Hieronymus Osorius, *De rebvs Emmanvelis Lusitaniae Regis Invictissimi, virtute et avspicio Domi foriqve gestis libri dvodecim*, vol. 1 (Coimbra, 1791), pp. 1-204, at pp. 20-21 [first published (Cologne, 1580)].

³² Bartolomé de Las Casas, ‘Tratado comprobatorio del imperio sobverano y principado universal que los reyes de Castilla y León tienen sobre las Indias [22 October 1545]’, Second Main Conclusion, in: Las Casas, *Obras escogidas*, edited by Juan Pérez de Tudela Bueso, vol. 5 (Madrid, 1958), pp. 350-423, at p. 352. Las Casas, ‘Dreißig Rechtssätze’, in: Las Casas, *Werkauswahl*, vol. 3, part 1, edited by Norbert Brieskorn, Daniel Deckers, Mariano Delgado and Michael Sievernich SJ (Paderborn, 1996), pp. 182-205, at pp. 186-187, 196-197.

³³ Nicholas V, Pope, Bull ‘Romanus Pontifex’, 8 January 1455, in: *Monumenta Henricina*, vol. 12 (Coimbra, 1974), pp. 71-79, at pp. 72-73.

³⁴ As has been described by: René Quatrefages, *L’organisation militaire de l’Espagne (1492 – 1592)*. Ph. D. thesis, typescript, Microfiche edn (Paris: Sorbonne, 1989).

³⁵ Treaty Aragón/Castile – Portugal, Tordesillas, 7 June 1494, in: Wilhelm Carl Georg Grewe, ed., *Fontes historiae juris gentium*, vol. 2 (Berlin and New York, 1992), pp. 110-116; also in: Frances Gardiner Davenport, ed., *European Treaties Bearing on the History of the United States and Its Dependencies to 1648*, vol. 1 (Carnegie Institute of Washington, Publication, 254) (Washington, 1917), pp. 86-93.

the ocean, they were to become divided among both parties. The Catholic Church sanctioned the Treaty of Tordesillas by imposing church punishments against its violation. As such, the treaty bound only the King of Portugal, the “Catholic Kings” and their respective subjects. It would be left to both sides to enforce their respective access rights vis-à-vis third parties.

Columbus undertook four voyages altogether. In a letter addressed to Pope Alexander VI, he boasted of having found more than 1400 islands in 1502.³⁶ He interpreted his name as “Christoferens” (the bearer of Christ), thereby consociating his voyages with the idea of a Crusade against non-Christians inhabiting the “islands and firm lands”.³⁷ When, during his third voyage, he entered into the mouth of the River Orinoco in 1498, he identified this waterway as one of the rivers of paradise and concluded that he had reached the East Asian coast.³⁸ The “Catholic Kings” accepted the conclusion. They issued a privilege to Columbus for his fourth and final voyage, mandating him to establish relations with rulers in Asia and to meet Vasco da Gama, then in operating in South Asian waters.³⁹ A voyage of no more than a few days seemed to be required to proceed from the coast lines adjacent to the Orinoco delta to the mouth of the river Ganges as another believed river of paradise. Some maplets, attributed to Bartolomeo Colombo (1460 – 1514), the Admiral’s brother, locate both of these rivers of paradise in Asia and position the Columbian “islands and firm lands” in Asian coastal waters.⁴⁰

The Holy Roman Empire and the Politics of the Expansion of Rule

Whereas the Catholic Church quickly became involved with the Portuguese-Spanish policies of the expansion of rule, the highest representatives of the Holy Roman Empire initially responded with reluctance. At the time of Columbus’s first voyage, Emperor Frederick III was still in office, but had left the conduct of actual government affairs to his son and designated successor Maximilian I (1486/93 – 1519), who had been crowned in 1486 and endowed with the title of a “Roman King”. Maximilian’s mother Eleanor (1436 – 1467) was a Portuguese royal princess, familiarising her son with Portuguese court practices and politics. In the early 1490s, Maximilian joined the movement for a Crusade against the Ottoman Turkish Sultan and, to the end of bringing together an imperial fighting force, launched a program of reforms of the constitutional structure of the Empire. Contrary to previous programs for a Crusade against the Sultan, such as those of Pierre Dubois and George of Podebrad, Maximilian pursued the strategy of imposing himself as the supreme military commander of the crusading imperial army, rather than seeking to unite other rulers into a contractual agreement about the formation of the army. In Maximilian’s view, the Crusade was to become an exclusive

³⁶ Christopher Columbus, ‘[Letter to Pope Alexander VI, February 1502]’, in: Columbus, *Relazioni e lettere sul secondo, terzo e quarto viaggio*, edited by Paolo Emilio Taviani, Consuelo Varela, Juan Gil and Marina Conti, vol. 1 (Rome, 1992), p. 274.

³⁷ Christopher Columbus, ‘[Christo ferens]’, in: Columbus, ‘La historia del viaje qu’el Almirante Cristovál Colón hizo la tercera vez que vino a las Indias quando descubrio la tierra firme, como lo embió a los Reyes desde la Isla Española’, in: *Relazioni e lettere sul secondo, terzo e quarto viaggio*, edited by Paolo Emilio Taviani, Consuelo Varela, Juan Gil and Marina Conti, vol. 1 (Rome, 1992), p. 94.

³⁸ Christopher Columbus, ‘[Paradise]’, in: Columbus, ‘Relacion de Cuarto Viaje = Lettera rarissima [7. Juli 1503]’, in: Columbus, *Relazioni e lettere sul secondo, terzo e quarto viaggio*, edited by Paolo Emilio Taviani, Consuelo Varela, Juan Gil and Marina Conti, vol. 1 (Rome, 1992), p. 136. Also noted in an inscription entered into the portolan map by Juan de La Cosa, 1500; Madrid: Naval Museum.

³⁹ Privilege to Columbus by the Catholic Kings, 1502, in: Christopher Columbus, *Relazioni e lettere sul secondo, terzo e quarto viaggio*, edited by Paolo Emilio Taviani, Consuelo Varela, Juan Gil and Marina Conti, vol. 2 (Rome, 1992), p. 339.

⁴⁰ Franz Ritter von Wieser, ‘Die Karte des Bartolomeo Colombo über die vierte Reise des Admirals’, in: *Mitteilungen des Instituts für Österreichische Geschichtsforschung*, Ergänzungsband 4 (Vienna, 1893), following p. 498 [also in: John Bigelow, ‘The So-called Bartholomew Columbus Map of 1506’, in: *Geographical Review* 25 (1935), p. 653; George Emra Nunn, *The Geographical Conceptions of Columbus* (American Geographical Society Research Series, 14) (New York, 1924), pp. 66-68; reprints (North Stratford, NH, 1977); (Milwaukee, 1992); Nunn, ‘The Three Maplets Attributed to Bartholomew Columbus’, in: *Imago Mundi* 9 (1952), p. 14; Guglielmo Cavallo, ed. *Cristoforo Colombo e l’apertura degli spazi*, vol. 2 (Rome, 1992), p. 669].

matter of the Empire. His program demanded the effective restriction of the war-making capability of secondary rulers within the Empire together with the build-up of an efficient centralised and bureaucratic imperial administration based on the model of the government of cities. Accordingly, the decision about the Crusade was to take place within the legislative and governing institutions of the Empire, notably the Imperial Diet as the highest legislative assembly within the Empire. Soon after Frederick's death in 1493, Maximilian took initiative and convened a Diet in the Imperial city of Worms on the river Rhine for 1495. At Maximilian's request, the Diet approved not only of the "Perpetual Peace of the Land", obliging all rulers within the Empire to settle their disputes peacefully, but also enforced a new imperial tax to establish the financial base for the future imperial crusading army.⁴¹

The decisions made at Worms had a lasting impact on terminology by enhancing the shift from Latin to German as the standard means of communication used in imperial governing agencies. The "German Nation" was no longer the bearer of Roman imperial rule solely in terms of political theory, but with increasing frequency provided high-ranking staff to governing agencies.⁴² Vienna became the home to several of these agencies, even though Maximilian, like his predecessors, executed his imperial duties as an itinerant ruler. The reforms, which were brought on their way in 1495 and by 1500 led to the restructuring of the Empire into new districts called "Imperial Circles" (Reichskreise), pushed the Empire into the direction of becoming a state like the kingdoms surrounding it. The "Imperial Circles" imposed a system of stable internal district borders below the imperial government centre in Vienna, in turn a precondition for the operation of an efficient bureaucracy. However, the trend toward centralisation and bureaucratisation stood against the traditional imperial quest for universal rule.

At Worms, Maximilian already displayed willingness to support the trend toward the centralisation and bureaucratisation of the Empire, using marriage policy to strengthen the position of his own dynasty within the administrative framework of the Empire. While the Imperial Diet as going on, Maximilian intensified preparations for the marriage of his two children, Margaret (1480 – 1530) and Philipp (1478 – 1506) from his marriage with Mary Duchess of Burgundy (1477 – 1482), with Juan (1478 – 1497) and Juana (1479 – 1555), children of the "Catholic Kings". The plan had been considered for some time, but negotiations for the marriage treaties achieved a breakthrough only at Worms.⁴³ The treaties, which went into force in 1497, connected Maximilian with the kingdoms of Aragón and Castile, supplementing his family ties to the Portuguese court. He had reason to expect that his descendants could someday rule over a united Spanish kingdom and, with some luck, also over Portugal and Empire. He could claim for himself the position of the overlord over the then most rapidly expanding kingdoms in Europe. He did not confine himself to verbal claims but allowed himself to be portrayed as the lord of "Seven Kingdoms", namely "Spain [= Castile], Bohemia, Scotland, England, France and Aragón."⁴⁴ He further commissioned giant prints to propagate the ideology of universal rule. The prints featured "People of Calicut" parading immediately in front of the Triumphal Chariot seating the Emperor, as if they had been subjected to

⁴¹ Maximilian I, Roman Emperor, '[Mandate on the Preservation of Peace and the Law, 1495]', in: Hanns Hubert Hofmann, ed., *Quellen zum Verfassungsorganismus des Heiligen Römischen Reiches Deutscher Nation. 1495 – 1815* (Ausgewählte Quellen zur deutschen Geschichte der Neuzeit. Freiherr-vom-Stein-Gedächtnisausgabe, 13) (Darmstadt, 1976), p. 14. Maximilian I, Roman Emperor, '[Mandate on the Levy of an Imperial Tax, Worms, 7 August 1495]', in: Heinz Angermeier, ed., *Deutsche Reichstagsakten unter Maximilian I.*, vol. 5, part 1 (Deutsche Reichstagsakten, Mittlere Reihe, vol. 5) (Göttingen, 1981), pp. 89-116.

⁴² Charles V as Emperor issued a decree in 1519, according to which positions in the Imperial administration should be reserved for Germans and the German language, next to Latin, was to be the official language in the Empire: Charles V, Roman Emperor, *Die verschrybung vnd verwillingung des aller durchleuchtigsten, großmechtigsten Herrn, Herrn Karls Römischer vnd Hispanischer Kunig etc. gegen dem heiligen Reich das gar leblich zu hören yst* [3 July 1519] (s. l., 1519), fol. AIII^v.

⁴³ Peter Krendl, *König Maximilian I. und Spanien. 1477 – 1504*. Ph. D. thesis, typescript (University of Graz, 1970), fol. 30-49, 229-233. Maximilian I, Roman Emperor, '[Instructions to His Counsellours Ladron de Guevara and Florian Waldauf, 14 September 1495]', in: Heinz Angermeier, ed., *Deutsche Reichstagsakten unter Maximilian I.*, vol. 5, part 2 (Deutsche Reichstagsakten, Mittlere Reihe, vol. 5) (Göttingen, 1981), pp. 1278-1282.

⁴⁴ Maximilian I, Roman Emperor, '[Lord over Seven Kingdoms]', in: Ms. Vienna: Österreichische Nationalbibliothek, Cod. 2800, fol. 48^v.

Portuguese rule.⁴⁵ Next to these plans, Maximilian continued to keep an eye on the preparation of the Crusade against the Sultan and worked out comprehensive calculations for pincer movements aimed at the conquest of Istanbul.⁴⁶

But, the imperial reform did not advance as expected. Among secondary rulers within the Empire, dissatisfaction spread about the loss of the right to war, which the more powerful Imperial Estates sought to circumvent. Some even staged straightforward rebellions. After an unsuccessful military campaign against the Swiss Confederacy in 1499, Maximilian pledged to the Confederacy that he would not interfere into its domestic affairs.⁴⁷ It was easy business to put on ice plans for the Crusade by refusing to provide financing through the Imperial Diet. But even formalities turned into serious problems. Since 1493, Maximilian ruled the Empire. But he had not received an imperial coronation, which would customarily have to take place in Rome. For a long time, Maximilian could not find a proper opportunity for an expedition to the Eternal City due to his numerous other commitments. When finally he persuaded the Imperial Diet at Constance in 1507 to agree to his coronation,⁴⁸ and also the Pope was ready to perform the ceremony, the Republic of Venice thwarted the plan.⁴⁹ The Senate insisted upon its autonomy as granted and confirmed by previous emperors, and refused to give permission to Maximilian's army to cross Venetian territory on its march to Rome.⁵⁰ Moreover, Maximilian's pladge of non-intervention into Swiss matters practically meant that his army could not use Swiss Alpine mountain passes on its way to Rome. Because he could not reach Rome via Venetian territory either, he made arrangements with Pope Julius II (1503 – 1513) to receive the imperial crown in the Cathedral of Trient, the southernmost town under imperial control, on 4 February 1508. For the first time, the solemn coronation of the Roman Emperor in Latin Christendom took place outside the city of Rome. Henceforth, Maximilian bore the imperial title officially, but in the special form of "Elected Roman Emperor" in consequence of the lack of a formal coronation in Rome.⁵¹ Worse even, efforts to subject parts of the Italian Peninsula to the secular control of the Pope resulted in the formation of the so-called "Papal States", which extended northwards from Rome since the early sixteenth century. Henceforth, the papal curia took the view that the city of Rome was no longer part of the Holy Roman Empire but had become the capital of a sovereign state with the Pope as its head.

The formation of the "Papal States" was only one of several processes of the transformation of state administrative structures, which turned the Italian Peninsula into a playground for rival political interests and claims to rule. Not only local power holders competed among themselves, resorting to the use of force, but next to Maximilian also Ferdinand of Aragón and successive French kings. One of them, Charles VIII (1483 – 1498), hoped to be able to expand his control onto the Peninsula and, with support from some local rulers, launched a military

⁴⁵ Maximilian I, Roman Emperor, 'Triumphzug [after 1507]', in: *Jahrbuch der Kunsthistorischen Sammlungen des Allerhöchsten Kaiserhauses* 1 (Vienna, 1883); Franz Winzinger, ed., *Die Miniaturen zum Triumphzug Kaiser Maximilians*, 2 vols (Graz, 1972-1973).

⁴⁶ Maximilian I, Roman Emperor, 'Verordnung und vermanung zu der ritterschaft in die bruderschaft sant Jorgen wider die unmenschliche that und geschicht der Turgkken [12. November 1503]', in: *Historisch-literarisch-bibliographisches Magazin* 3 (1791), p. 39. Maximilian I, Anslag wider die Türcken [1517], Ms. Vienna: Österreichisches Staatsarchiv, Haus-, Hof- und Staatsarchiv, Fz 30B (1517) 2, fol. 131^v-140^v.

⁴⁷ Treaty Roman Emperor – Swiss Confederacy, Basle, 22 September 1499 (paraphrased), in: Hermann Wiesflecker, ed., *Ausgewählte Regesten des Kaisersreiches unter Maximilian I.*, vol. 3, nr 13766 (Regesta Imperii, 14) (Vienna, 1998), pp. 788-789.

⁴⁸ Johannes Janssen, ed., *Frankfurts Reichsrespondenz nebst verwandten Aktenstücken von 1376 – 1519*, vol. 2 (Freiburg, 1872), pp. 702-709. Johann Joachim Müller, ed., *Des Heiligen Römischen Reiches ... Deutscher Nation ReichstagsStaat von 1500 – 1508 unter Maximilians I. ... Regierung* (Jena, 1709), pp. 49-52.

⁴⁹ Francesco Guicciardini, 'Storia d'Italia', in: Guicciardini, *Opere*, edited by Vittorio de Caprariis (Milan and Naples, 1961), pp. 373-1066, at p. 374. Bernardus Rucellai [Oricellarius], *De bello Italico commentarius* (London, 1724), p. 3.

⁵⁰ Moritz Brosch, *Papst Julius II. und die Gründung des Kirchenstaates* (Gotha, 1878), pp. 333-334.

⁵¹ Maximilian I, Roman Emperor, '[Declaration on the Acceptance of the Title "Elected Roman Emperor", 8 February 1508]', edited by Hanns Hubert Hofmann, *Quellen zum Verfassungsorganismus des Heiligen Römischen Reiches Deutscher Nation. 1495 – 1815* (Ausgewählte Quellen zur deutschen Geschichte der Neuzeit, 13) (Darmstadt, 1976), pp. 32-33.

intervention in 1494. While Charles withdrew already in the following year, Ferdinand succeeded in establishing himself as ruler over territories south of Rome with Naples as the centre of Spanish government. From the beginning of the sixteenth century, then, Southern Alpine areas formed the fringes of the Empire, bordering on a system of many small sovereign states in the centre of the Peninsula, while the South formed a Spanish dependency. In short: two generations after the end of Roman rule in Byzantium, the Roman Empire of Latin Christendom was converted into a political community, which defied definition in terms of the ideology of universal rule and only grudgingly succumbed to the needs of centralisation and bureaucratisation. Maximilian, who died on 12 January 1519, did not have to take the pain of acknowledging that his program for the establishment of universal rule through kin relations among ruling dynasties was as illusionary as his plans for a Crusade against the Ottoman Turkish Sultan.

The Globalisation of the World Picture in Maps and the Beginning of the Establishment of European Colonial Rule

The illusionary features attached to the ideology of universal rule at the turn towards the sixteenth century became dramatically transparent from the revolutionary changes of the European world picture as laid down in maps during the fifteenth years following Columbus's first voyage. Probably already in 1493, the term "New World" came in use for the island worlds, into which Columbus appeared to have penetrated.⁵² Amerigo Vespucci (1451/4 – 1512), a navigator in Portuguese service, popularised the phrase in his report about an expedition, which had touched upon the northeastern coasts of South America in 1500.⁵³ This expedition, originally sent to East Asia, had been driven off its planned route by unexpected winds and, against its mandate, reached waters close to the island worlds Columbus had visited. This "New World" appeared to be separated by wide seaways from the tri-continental land mass of Africa, Asia and Europe, forming a myriad of islands in the ocean, the size of which increased exponentially in maps made during the first decade of the sixteenth century. For the first time in 1507, a map featured a new denotation for a part of these island worlds that were rapidly condensing into a "firm land" or a new continent. In this map, the denotation was inscribed into what purported to be a vast stretch of land placed roughly half way between the western coasts of Africa and Europe on the right and the eastern coasts of Asia on the left side. The denotation was derived from Vespucci's personal name and took the form "America",⁵⁴ southwest of Zipangu, the island that Columbus had been searching for but had never found. The new land quickly evolved into a fully-fledged continent dividing the ocean into a western and eastern part and touched upon or came close to the Ptolemaic Southern Continent, which several cartographers retained in their maps. Correspondingly, the tri-continental land mass of Africa, Asia and Europe shrank in size and formed just one part in a complicated variety of continents, island worlds and wider or smaller waterways among them. The new world picture that cartographers depicted during the first decade of the sixteenth century could no longer underpin an ideology of universal rule, because large ocean-faring

⁵² Peter Martyr d' Anghiera, *La scoperta del Nuovo Mondo negli scritti di Pietro Martie d'Anghiera*, book I, chap. 1, edited by Ernesto Lunardi, Elisa Magioncalda and Rosanna Mazzacane (Rome, 1988), p. 216.

⁵³ Amerigo Vespucci, *Mundus novus* [(Antwerp, 1504)]. Reprint, edited by Emil Sarnow and Kurt Trübenbach (Drucke und Holzschnitte des XV. und XVI. Jahrhunderts in getreuer Nachbildung, 9) (Strasbourg, 1903) [also edited by Mario Pozzi (Milan, 1984); second edn (Alessandria, 1993); also edited by Robert Wallisch, second edn (Wiener Studien, Beiheft 27 = Arbeiten zur mittel- und neulateinischen Philologie, 7) (Vienna, 2006); first published (Vienna, 2002); also edited by Norbert Schulz (Vivarium, Series neolatina 2) (Butjadingen, 2007); further early sixteenth-century prints: *Diss büchlen saget wie die zwe[n]durchlüchtigste[n] herre[n] Ferdinandus K[önig] zû Castilien vnd Herrn Emanuel K[önig] zû Portugal haben das weyte moer ersüchet vnnd funden vil Insulen vnnd ein Nuewe welt von wilden nackenden Leüten, vormals vnbeant* (Strasbourg: Grüninger, 1504; 1509); *Von der new gefunnden Region, die wol ein welt genennt mag werden, durch den Cristenlichen König von Portugall wunderbarlich erfunden* (Nuremberg, 1505)].

⁵⁴ Matthias Ringmann and Martin Waldseemüller, *Cosmographiae introductio* [(Strasbourg, 1507)]. Reprint, edited by Franz Ritter von Wieser (Drucke und Holzschnitte des XV. und XVI. Jahrhunderts in getreuer Nachbildung, 12) (Strasbourg, 1907).

vessels would have been required to allow communication within this seemingly disparate, no longer permeable world. But the Holy Roman Empire did not have a fleet ready to ply the ocean, and the waterways did not have inhabitants over whom the Roman Emperor might hold an entitlement to rule. Whoever thought of travelling from Europe to South Asia might have to follow Maximilian's advice and join one of the Portuguese expeditions.⁵⁵ Whoever dreamt of doing business in the "New World" without obtaining permission from the "Catholic Kings" ought to be prepared for confrontations with Spanish authorities. In England and France, some adventurers ran this risk, among them John Jay († 1505) and Jean Cabot (c. 1450 – 1498) at the end of the fifteenth century and penetrated into the far North of the "New World".⁵⁶ Meanwhile, theorists among cartographers as well as some adventurers stuck to the hope that the "New World" might in some way be connected with the tri-continental land mass of Africa, Asia and Europe and postulated a land bridge between the emerging continent and Asia. They positioned this land bridge in the far North of the globe and transformed the seaway termed "Pacific Ocean" or "South Sea" since 1513 into a huge Asian bay.⁵⁷ However, the names "Pacific Ocean" or "South Sea" first came in use only for the southern parts of the bay connecting with the imagined Southern Continent.

The "Catholic Kings" were quick to take up the challenge, which Columbus's voyage posed to them. They staffed Columbus's second voyage with priests and soldiers, thereby manifesting their intention to promote missionary work and to solidify their control over the "New World". By the first decade of the sixteenth century, the "Catholic Kings" succeeded in subjecting a number of islands in the so-called Caribbeans to their rule and placed them under the administrative control of an appointed governor. In 1519, the adventurer Hernán Cortés (1485 – 1547) started an expedition from there under the official instruction of searching for allegedly missing Spaniards. But in the course of the expedition, Cortés, at his own discretion, changed his commission and launched a campaign with the goal of conquering areas of the "firm land", which were totally unknown to him. Cortés styled this campaign as a Crusade,⁵⁸ purportedly the continuation of the Reconquista on the western side of the ocean, and declared that he wanted to convert the local population to Catholicism. The Spanish administration had established a procedure and enforced it in the form of an edict under the term "Requerimiento".⁵⁹ The "Requerimiento" authorised Spanish armed forces to conduct war against non-Christian inhabitants of the "new" island worlds, should they refuse to convert to Catholicism. But before resorting to the use of force, a formal inquiry had ascertain whether the inhabitants were willing to give up their religion or not, and a public notary had to attest that the inquiry had taken place and what kind of reply had been given. Cortés carefully implemented the "Requerimiento", even instructing one of his co-adventurers to play the role of the notary.⁶⁰ As the inhabitants refused to act in accordance with what appeared to them as a nonsensical request, Cortés attacked without any ado. At the end of the campaign in 1521, which, against all odds, even against

⁵⁵ Maximilian I, Roman Emperor, '[Instruction to His Secretary Cyprian von Serntein, 29 December 1503]', in: Innsbruck: Tiroler Landesarchiv, Autographen; edited by Alfred Kohler, 'Maximilian I. und das Reich der "1500 Inseln"', in: Elisabeth Zeilinger, ed., *Österreich und die Neue Welt* (Vienna, 1993), p. 6. Maximilian I, '[Letter to the King of Portugal, 24 March 1505]', in: *Mitteilungen des Vereins für Geschichte der Stadt Nürnberg* 1 (1879), pp. 100-102.

⁵⁶ James A. Williamson, ed., *The Cabot Voyages and Bristol Discoveries under Henry VII* (Works Issued by the Hakluyt Society, series 2, vol. 120) (Cambridge, 1962). John Jay, '[Voyage into the Ocean]', edited by William Worcestre, *Itinerarium*. Ms. Cambridge: Corpus Christi College, Ms 210, reedited by: Williamson, *Voyages* (as above), pp. 487-488; also in: David Beers Quinn, 'Edward IV and Exploration', in: *Mariner's Mirror* 21 (1935), pp. 283-284.

⁵⁷ Vasco Núñez de Balboa, *Life and Letters of Vasco Núñez de Balboa. Including the Conquest and Settlement of Darien and Panama, the Odyssey of the Discovery of the South Sea, a Description of the Splendid Armada to Castilla del oro and the Execution of the Adelantado at Acla*, edited by Charles Loftus Grant (New York, 1941) [reprint (Westport, CT, 1970)].

⁵⁸ Hernán Cortés, 'Primera Carta [10 July 1519]', in: Cortés, *Cartas y documentos*, edited by Mario Hernández Sanchez-Barba (Mexico, 1963), pp. 3-32, at pp. 7, 11-12, 24.

⁵⁹ Antonio de Herrera Tordesillas, *Historia general de los hechos de los Castellanos en las Islas y Tierra Firme del Mar Oceano* [1601], Decada I, chap. VII/4, edited by J. Natalacio González, vol. 2 (Asunción and Buenos Aires, 1944), pp. 170-172.

⁶⁰ Cortés, 'Carta' (note 58), pp. 15-17.

his own expectation, he concluded with the sack of Tenochtitlan, the capital city of the Aztec Empire, Cortés, together with about five hundred of his *desparados*, had destroyed the strongest state in the centre of the “new” continent, although there is no straightforward military reason for the Aztec defeat.⁶¹

Nevertheless, Cortés had acted against instructions by his superior and, upon his return, faced a high treason trial. The new King Charles I (1516/9 – 1555/8), who had grown up in Burgundy, was the grandson of Emperor Maximilian I and of the “Catholic Kings” and had just arrived in Spain, received five lengthy reports from Cortés, who was knowledgeable in legal matters. Anticipating the trial, Cortés drew for his defense on Bartolus’s fourteenth-century legal theory, which claimed that Roman emperors had, in previous times, voluntarily waived control over certain parts of the world through the issue of freedom privileges. Cortés now insisted that he had succeeded in restoring Roman rule to a remote part of the world.⁶² He claimed to have acted in accordance with natural law, Spanish municipal law and the interests of the emperors. Cortés wrote his reports expecting that Charles would be elected Roman Emperor in succession to Maximilian. He could not have known at the time that the election had actually occurred in 1519 and that the Spanish king had received the imperial title as Charles V. The reports did not fail to have the intended effect. Charles pardoned Cortés, appointed him governor of the newly conquered areas but dispatched an additional official to prevent future acts of disobedience. Cortés stayed in office until 1530. But Charles acted against the conqueror’s advice in placing the newly acquired territories under Spanish, rather than imperial administration. In doing so, Charles anticipated the later theoretical argument, which theologians Juan de la Peña (1513 – 1565) and Melchor Cano (1509 – 1560) proposed, namely that the emperor was not a universal ruler. According to Peña, the emperor could not compel non-Christians to subject themselves under the rule of the divinely willed natural law as interpreted by the Catholic Church in accordance with Christian theological dogma.⁶³ Nevertheless, the Spanish government had to implement the papal mandate to support missionary work in the “New World”. Hence, Peña concluded that the expansion of Spanish rule onto the “New world” could be legitimised in terms neither of divine nor of natural law, but only through Spanish municipal law and the papal edicts.

Cortés’s destruction of the Aztec Empire obliged the Spanish administration to make increasing efforts to establish itself in effective control over the conquered parts of the “New World”. In practical terms, the administration had to dispatch a growing number of Spanish subjects across the ocean to serve as colonists. The Spanish domestic population, notably in Andalusia, thinned out in consequence of large-scale emigration. In the “New World”, the colonisation, jointly with diseases

⁶¹ Ross Hassig, *Aztec Warfare* (Norman, OK, 1988). Hassig, ‘War, Politics and the Conquest of Mexico’, in: Jeremy Martin Black, ed., *War in the Early Modern World* (London, 1998, and Boulder, 1999), pp. 207-235. Hassig, ‘Aztec and Spanish Conquest in Mesoamerica’, in: R. Brian Ferguson and Neil L. Whitehead, eds, *War in the Tribal Zone* (Santa Fe, 2000), pp. 83-102.

⁶² Cortés, ‘Carta’ (note 58), p. 33.

⁶³ Juan de la Peña, ‘De bello contra insulanos’, in: *Intervención de España de Paz. Segunda generación. 1560 – 1585*, edited by Luciano Pereña Vicente (Corpus Hispanorum de pace, 9) (Madrid, 1982), pp. 172, 166. Melchor Cano, ‘[Relectio] de dominio Indorum [Alcalá, 1546; Hs. Bibliotheca Apostolica Vaticana, Vat. Lat. 4648, fol. 28-40]’, in: Juan de la Peña, *Intervención* (as above), pp. 555-581, at pp. 560-563, 567, 573 [also in: Luciano Pereña Vicente, *Misión de España in América* (Madrid, 1956), pp. 9-147]. Similarly: Balthasar Ayala, *De iure et officiis bellicis et disciplina militari libri tres* (Antwerp, 1597) [another edn (Louvain, 1648); reprint, edited by John Westlake (Washington, DC, 1912)]; partly printed (book I, chap. 2) in: Cornelis van Vollenhoven, ‘Grotius and Geneva. Lectures Delivered at Columbia University, July 1925’, in: *Bibliotheca Visseriana dissertationum ius internationale illustrantium*, vol. 6, nr 13 (Leiden, 1926), pp. 1-81 [reprinted in: Vollenhoven, *Mr. C. van Vollenhoven’s Verspreide Geschriften*, edited by Frederik Mari van Asbek, vol. 1 (Haarlem, 1934), pp. 406-460], Appendix F, pp. 442-443. Ferdinand Vazquez de Mendacha, *Illustrium controversiarum aliorumque usu frequentium libri tres* (Lyon, 1564) [further edns (Lyon, 1567; 1572; 1595-1599); (Frankfurt, 1606); reprint of the original edn (Valladolid, 1931-1934)]; partly printed (book I, chap. 20) in: Cornelis van Vollenhoven, ‘Grotius and Geneva. Lectures Delivered at Columbia University, July 1925’, in: *Bibliotheca Visseriana dissertationum ius internationale illustrantium*, vol. 6, nr 13 (Leiden, 1926), pp. 1-81 [reprinted in: Vollenhoven, *Mr. C. van Vollenhoven’s Verspreide Geschriften*, edited by Frederik Mari van Asbek, vol. 1 (Haarlem, 1934), pp. 406-460], Appendix E, p. 442.

that the colonisers brought with them and the application of military force against resistance forces, ushered in the genocide of the Native American population.⁶⁴ The first demographic survey, which the colonial administration in the “New World” compiled about the population groups subject to Spanish rule during the 1560, reported for some Caribbean islands, notably Hispaniola, that no Native American was alive there. The survey also stated that at the time of Columbus’s arrival on the island, 1.8 million Native Americans had settled there.⁶⁵ Following the destruction of the Inca Empire in 1532, Spanish rule quickly extended further onto the western part of the continent, while Portuguese control covered large parts of the eastern side. The Tordesillas line, which had been set to partition the ocean, was dividing the “new” continent.

Meanwhile, Portuguese expansion proceeded equally rapidly under King Emanuel I (1495 – 1521), while it remained tied more closely to the crusading idea than its Spanish counterpart. Except for areas coming under Portuguese control in the “New World”, the government did not give priority to gaining control over large chunks of land. Rather, the Portuguese government sought to “inflict as much damage upon Muslims as possible”, according to the King’s instruction.⁶⁶ In 1505, Emanuel ordered the building of fortresses on the eastern coasts of the African continent on the islands of Mozambique and Kilwa. In the same year, Portuguese armed forces took a position in the kingdom of Kandy (in present Sri Lanka), in 1510, Goa, Diu and Damian on the west coast of South Asia.⁶⁷ In 1511, a Portuguese squadron sacked the ancient trading spot Melaka (Malacca) on the Malay Peninsula. Portuguese commander Afonso de Albuquerque (1453 – 1515) prohibited Muslim traders from access to the market, thereby dealing a serious blow to the Southeast Asian trading network. The network ceased to exist in consequence of the further Portuguese advance into insular Southeast Asia during the second decade of the sixteenth century, when Emanuel had fortresses built in defense against Spanish penetration into the “South Sea”⁶⁸ on Amboina, Tidore and Ternate together with further fortifications in South Asia and on African coasts. In 1576, the completion of the fortress in Luanda (Angola) ended the series. Already in 1517, Portuguese had reached the fortified trading place Guǎngzhōu (Canton) on the Chinese coast and penetrated further into the „Pacific Ocean“. Throughout his reign, however, Manuel did not waive his overarching goal of conducting a Crusade. The embassy, which he dispatched to the King of Kings of Ethiopia (Shoa) in 1520, received instructions to negotiate an alliance between the two Christian rulers in what was announced to be an impending crusading campaign, and Lebna Dengel (1508 – 1540), the incumbent Ethiopian supreme ruler, though reluctantly, agreed to cooperate. In 1521, Manuel gave out parole that the conquest not only of Jerusalem but even of Mecca by a crusading army was imminent.⁶⁹

⁶⁴ For an early report see: Bartolomé de Las Casas, *The Spanish Colonie* (London, 1583) [reprint (The English Experience, 859) (Amsterdam and Norwood, NJ, 1977)].

⁶⁵ Antonio Vázquez de Espinosa, *Compendium and Description of the West Indies*, chap. II/1, edited by Charles Upson Clark, vol. 1 (Smithsonian Miscellaneous Collections, 102 = Publication, 3646) (Washington, 1942), p. 39.

⁶⁶ Manuel I., King of Portugal, *Copia de una littera del Re de Portogallo mandata a el Re de Castalle del viage e successo da India* (Rome, 1505) [reprint, edited by E. de Canto (Lisbon, 1906); also edited as: ‘Carta de El-Rei D. Manuel ao Rei Catholico, 1505’, in: *Documentos sobre os Portugueses em Mozambique e na Africa Central*, vol. 5 (Lisbon, 1966), p. 47; English version, edited by Sergio J. Pacifici, *Copy of a Letter of the King of Portugal Sent to the King of Castile Concerning the Voyage and Success of India* (Minneapolis, 1955)].

⁶⁷ Sinnappah Arasaratnam, ‘The Kingdom of Kandy. Aspects of Its External Relations and Commerce. 1658–1710’, in: *The Ceylon Journal of Historical and Social Studies* 3 (1960), pp. 109–127. R. A. L. H. Gunawardana, ‘Colonialism, Ethnicity and the Construction of the Past. The Changing “Ethnic Identity” of the Last Four Kings of the Kandyan Kingdom’, in: Martin van Bakel, ed., *Pivot Politics. Changing Cultural Identities in Early State Formation Processes* (Amsterdam, 1994), pp. 197–221. Geoffrey Powell, ‘The Fall of Kandy, 1815’, in: *The Ceylon Journal of Historical and Social Studies*, N. S. 1 (1971), pp. 114–122. Powell, *The Kandyan Wars. The British Army in Ceylon. 1803–1818* (Kandy, 1973) [reprint (New Delhi, 1984)].

⁶⁸ Antonio Pigafetta, *Magellan’s Voyage. A Narrative Account of the First Circumnavigation*, edited by Raleigh Ashlin Skelton (New Haven and London, 1969).

⁶⁹ Francisco Álvares, *Ho Preste Joam das Indias. Verdaderam informaçom das terras do Preste Joam, Segundo vio ed escreueo ho padre Aluarez capellã del Rey nosso senhor*, edited by Luis Rodriguez (Lisbon, 1540) [manuscripts in: Biblioteca Apostolica Vaticana, Codex Ottobonianus, Lat. 1104; 2789; Venice: Biblioteca Marciana, Cod. Lat. VI, 186; new edn, edited by Augusto Reis Machado (Lisbon, 1943); Italian version s. t. “Viaggio fatto nella Ethiopia”, in: Giovanni Battista Ramusio, *Navigazioni et viaggi*, vol. 1 (Venice, 1550); first English version, edited

Apparently in 1542, the shipwrecked crew of a vessel probably coming from China reached the island of Tanegashima in the South of the Japanese archipelago. Among the crew were some Portuguese.⁷⁰ Already around the middle of the sixteenth century, Portuguese cartographers had obtained knowledge of Japan and the Ryūkyū Islands (“Lequios” = Okinawa).⁷¹ By mistake, they placed the islands east of Amboina, but drew the western coastlines of North America with surprising exactitude. “Lequios” remained in Portuguese maps throughout the 1550s.⁷² It was not until the 1560s that the Japanese Archipelago, initially called “Japnas”, was identified with Marco Polo’s Zipangu and that, by consequence, Zipangu became dissociated from the “New World”.⁷³ While there may have been communication, even cooperation among Portuguese and Spanish sailors elsewhere in the “Pacific Ocean”, they clashed in the southern hemisphere already during the 1520s. The conflict between Portuguese and Spanish ships in the “South Sea” revealed the strategic defect of the Tordesillas line that demarcated Portuguese and Spanish zones west of Africa and Europe, but not east of Asia. With their Treaty of Zaragoza of 22 April 1529, the Portuguese and Spanish kings sought to remedy the defect by agreeing on an additional line of demarcation.⁷⁴ But, contrary to the Tordesillas line, the Zaragoza line had no binding effect. During the sixteenth century, Spanish rule expanded from “New World” onto the “South Sea”, even subjecting islands to Spanish control which, according to the Treaty of Zaragoza, were located in the Portuguese zone. This island world received the name Philippines in 1543 derived from the personal name of Philipp, son of Charles I/V.

Problems within the Holy Roman Empire

The changes of the European perception of the globe, as they were recorded in the transformation

by Lord Stanley of Alderley (London, 1881); revised English version s. t.: *The Prester John of the Indies. A True Relation of the Lands of the Prester John. Being the Narrative of the Portuguese Embassy to Ethiopia in 1520*, 2 vols, edited by Charles Fraser Beckingham and George Wynn Brereton Huntingford (Works Issued by the Hakluyt Society. Second Series, vols 114.115) (Cambridge: Hakluyt Society, 1961); vol. 2, pp. 415-416]. Lebna Dengel (= Dawit II, 1508 – 1540), King of Ethiopia, [Letter to König Emanuel of Portugal], in: *The Prester John of the Indies. A True Relation of the Lands of the Prester John. Being the Narrative of the Portuguese Embassy to Ethiopia in 1520*, edited by Charles Fraser Beckingham and George Wynn Brereton Huntingford, vol. 2 (Works Issued by the Hakluyt Society. Second Series, vol.115) (Cambridge: Hakluyt Society, 1961), pp. 494-501. Manuel I., King of Portugal, *Carta das novas que vieram a el rei mossã senhoe do descobrimento do preste João* (Lisbon, 1521), p. 122 [newly edited by Armando Cortesão (Lisbon, 1938)].

⁷⁰ Olof G. Lidin, *Tanegashima. The Arrival of Europe in Japan* (Nordic Institute of Asian Studies Monograph Series, 90) (Copenhagen, 2002) [reprint (Copenhagen, 2004)].

⁷¹ Armando Cortesão and Avelino Teixeira da Mota, eds, *Portugaliae monumenta cartographica*, nr 74, nr 80, vol. 1 (Lisbon, 1960) [reprint (Lisbon, 1987)]. Fernão Mendes Pinto, ‘Peregrinação’, chap. CXLIII, edited by Elisa Lopes da Costa, in: Jorge Manuel dos Santo Alves, ed., *Fernão Mendes Pinto and the Peregrinação*, vol. 2: Restored Portuguese Text (Lisbon, 2010), pp. 471-472. The first record refers to a map dated c. 1545, which features details of the western coastlines of the Baja California and stretches further to the North. As this part of the Pacific Ocean was off limits for Portuguese sailors, knowledge about the coastlines can only have found its way into a Portuguese map through exchanges between Portuguese and Spanish sailors cruising in the Pacific. The second record is contained in the report by one of the first Portuguese sailors landing as a shipwreck on the island of Tanegashima in the southern Japanese archipelago probably in 1543.

⁷² Ken’ichi Matsumoto, *Nanbon kōmō Nihon chizu shusei* (Tokyo 1975), nr IX, p. 33 (planisphere by Lopo Homem, 1554, Florence: Museo di Storia delle Scienze), nr XI/XII/XIII (world maps by Diogo Homem, 1558, London: British Library; Paris: Bibliothèque nationale de France); the latter also edited in: Teleki, Paul [Pál] Graf [Gróf]: *Atlas zur Geschichte der Kartographie der Japanischen Inseln* (Budapest, 1909), nr II (world map by Diogo Homem, 1558 [reprint (Nendeln, 1966)]).

⁷³ Cortesão, *Monumenta* (note 71), Nr 74]. Gerhard Marcator, *Atlas* [1569], in: Matsumoto, *Nanbon* (note 72), nr 25, p. 46: “Japan vel Zipangri olim Chryse”; also in: Abraham Ortelius, *Theatrum orbis* [1570], in: Matsumoto (as above), nr XXXI.

⁷⁴ Treaty Aragón/Castile – Portugal, Zaragoza, 22 April 1529, in: Wilhelm Carl Georg Grewe, ed., *Fontes historiae juris gentium*, vol. 2 (Berlin and New York, 1992), pp. 117-133; also in: Frances Gardiner Davenport, ed., *European Treaties Bearing on the History of the United States and Its Dependencies to 1648*, vol. 1 (Carnegie Institute of Washington, Publication, 254) (Washington, 1917), pp. 171-185.

world maps early in the sixteenth century, formed only one of several problems mounting in the Holy Roman Empire at the time. As Maximilian's successor Charles V not only stood at the helm of the Empire but was also the factually sole ruler over the kingdoms of Aragón and Castile, now united under his control, even though his mother Juana continued to hold the title Queen of Castile to her death in 1555. Moreover, Spanish rule extended onto the southern part of the Italian Peninsula and covered large parts of the "New World" by the middle of the sixteenth century. In Charles's perception, the Empire was merely one of his many dominions, not the most important one in terms of politics and, even less so, in terms of financing. This was so because Charles's government had to draw on Spanish revenue for the administration of the colonies of the "New World". By contrast, rulers in the Empire ignored calls for support to cover the expenses of overseas colonisation. Whereas Charles in his capacity as Spanish king ruled over territories widely scattered across the globe, the idea of universal rule was washed away as an empty phrase in the Empire. It was in Messina in 1536, that painter Polidoro da Caravaggio (c. 1492 – 1543) portrayed Charles above a globe divided in two hemispheres as part of a triumphal process, which placed a cart with Muslims in fetters ahead of Charles.⁷⁵ Messina also seems to have been the place of origin of the slogan that the sun never sets in Charles's realms. But these praises appeared in Sicily at the time, when Charles was visiting the area. By contrast, such praises for Charles had little if any impact in the Empire.

Instead, the Empire witnessed the reform movement under Martin Luther (1483 – 1546), who attracted a large number of rulers from 1522, because he appeared to boost their autonomy through the withdrawal from the spiritual authority of the pope. For the same reason, Luther's movement quickly found supporters in Scandinavia. Further reformist theologians, among them Ulrich Zwingli (1484 – 1531) and Jean Calvin (1509 – 1564) established their own churches, thereby again advancing the autonomy of rulers who joined them. In England, King Henry VIII (1509 – 1547) supported the formation of a separate church under his control. Charles as Emperor acted hectically, quickly imposed a ban upon Luther in 1521, but left it to his brother Ferdinand (1521/58 – 1564) to deal with the Lutherans, who were also called "Protestants" from 1529. Ferdinand took measures to strengthen the centre of imperial government in Vienna, while Charles visited the city only on rare occasions. As Emperor, he focused on the defence of the unity of the Catholic Church, the task that his predecessors since 800 had struggled hard to fulfill.

Moreover, the financial and other means of Charles's rule as Emperor were severely limited. Protestant rulers in the Empire refused to give support to Charles's call for a Crusade against the Ottoman Turkish Sultan, although Luther himself incised anti-Turkish sentiment in his sermons.⁷⁶ Immediate measures of military defence seemed required when a Turkish army under Sultan Suleiman the Magnificent (1520 – 1566) placed Vienna under siege in 1529. The government of the Sultan realised early in the sixteenth century that, given the rapid transformation of the world picture, any claim towards universal rule as control of the globe at large was vain in view of the complicated mix of land and water on the surface of the planet earth. Already in 1513, a Turkish world map incorporated information drawn on Columbus's voyages and documented the transformation of the world picture from a Turkish point of view.⁷⁷ Sultan Suleiman drew the pragmatic conclusions from these changes that Charles could under no circumstances uphold the claim of being the universal ruler just by capturing Palestine and that, by consequence, imperial plans for a Crusade were being hollow phrases. Hence, Suleiman started a counteroffensive. Rather than waiting for an imperial army to approach Palestine and prepare for defence, Suleiman tried to push the boundaries of his realm as far to the North as possible in the direction of Vienna. When in 1526 after the battle of Mohács large parts of Hungary fell under Ottoman Turkish control, Vienna was, so to speak, around the corner. However, the Sultan's strategic goal was not rule over Vienna

⁷⁵ Polidoro da Caravaggio, '[Triumph for Emperor Charles V, Messina 1536]', in: Berlin: Kupferstichkabinett, K.d.Z.26541.79 D 34; printed in: Roy Strong, *Art and Power. Renaissance Festivals* (Woodbridge, 1984), pp. 148-149.

⁷⁶ Martin Luther, 'Heerpredigt wider den Türken [28 October 1528]', in: *D. Martin Luthers Werke. Kritische Gesamtausgabe*, vol. 30 (Weimar, 1909), pp. 160-197 [reprint (Weimar, 1964)].

⁷⁷ Piri Reis, *Pirî Reis haritası* [1513]. Reprint, edited by Yusuf Akçura (Istanbul, 1933) [also edited by Afetinan, *The Oldest Map of America. Drawn by Pirî Reis* (Ankara, 1954); Svat Soucek, *Piri Reis and Turkish Mapmaking after Columbus* (London, 1996); Gregory C. McIntosh, *The Piri Reis Map of 1513* (Athens, GA, 2000)].

but the capability to threaten the city. The Sultan sought to make manifest the spatial limitations of rule, his own as well as the Emperor's, with the implication that the ideology of universal rule tied to the Roman Empire was bare of any foundation. In doing so, the Sultan could also supply force to the traditional doctrine of the Muslim law of war and peace, according to which peace was principally impossible with non-believers, while temporary arrangements based on consent remained desirable.

While Ferdinand was defending Vienna successfully against the Sultan's army without assistance from the Emperor, Charles involved himself in the domestic affairs of the Italian Peninsula in an attempt to secure the imperial coronation by Pope Clement VII (1523 – 1534). Charles did accomplish this goal in 1530, yet the coronation ceremony took place once again not in Rome but in Bologna on this occasion. It was the last imperial coronation ever to take place on Italian soil.⁷⁸ In 1555, Charles abdicated from all his offices, aged prematurely, left rule over Spain, the Low Countries and the overseas dependencies to his son Philipp and accepted the election and subsequent coronation of his brother Ferdinand as Emperor. With these decisions, Maximilian's grand design of constructing universal rule as a kind of overlordship based on a network of dynastic relations among kings finally failed. In Latin Christendom, Charles's abdication fuelled the expectation that the ideology of universal rule was no longer an instrument for the promotion and preservation of peace, but shabby propaganda apt to conceal machinations of power-greedy rulers.⁷⁹ Any hope that the universal ruler might eventually acquire the capability imposing the law of war and peace in the world at large, gave way in Latin Christendom to the critical analysis of power politics. The Holy Roman Empire changed into a territory of limited extension in Central Europe and under a legal framework that regulated some aspects of the relations among its rulers. In the course of the sixteenth century, imperial law converted into the equivalent of European law long before this term came into being.

Under Philipp II (1555 – 1598) the areas under the control of the Spanish king expanded not only in America but also in the "South Sea". When Philipp also became King of Portugal by hereditary succession in 1580, the combined control over Portuguese and Spanish overseas dependencies fell into his hands. He ruled over the entire Iberian Peninsula, the South of the Italian Peninsula and Sicily, the entirety of areas in Central and South America then colonised by European settlers, Portuguese strongholds on the coasts of Africa, the Arabian Peninsula, the Persian Gulf, South Asia, continental as well as insular Southeast Asia. European merchants doing business in China and Japan stood under Philipp's control as well. But there was rising resistance against that concentration of power already in the latter part of Philipp's reign. In the Low Countries, an alliance of local aristocrats and urban elites risked rebellion against Spanish rule.⁸⁰ In 1579, the rebels entered into a treaty pledging to establish a non-monarchical autonomous government⁸¹ and to force Philipp to give up his entitlements to rule over the Low Countries.⁸² In 1581, a resolution followed accusing Philipp of usurpation and the annihilation of ancient freedom privileges in the Low Countries.⁸³ Yet, the rebels intended to stay within the Holy Roman Empire, if only because they hoped for support from other Imperial Estates. The rebellion in the Low Countries soon evolved into open war, which lasted, with interruptions, until 1648. In 1585, Queen Elizabeth I of England (1558 – 1603) entered into the war on the side of the rebels, mainly because Philipp tried to obstruct the passage of English merchant ships to America, thereby excluding them from access to the mineral

⁷⁸ Henricus Cornelius Agrippa, *De duplici coronatione Caesaris apud Bononiam historiola* (Cologne, 1535). Gaetano Giordani, *Della venuta e dimora in Bologna del sommo pontefice Clemente VII per la coronazione di Carlo V imperatore celebrate l'anno 1530* (Bologna, 1842). Giuseppe Romano, ed., *Cronaca del soggiorno di Carlo V in Italia dal 26 giugno 1529 al 25 aprile 1530* (Milan, 1892).

⁷⁹ Franz Bosbach, *Monarchia universalis. Ein politischer Leitbegriff der frühen Neuzeit* (Schriftenreihe der Historischen Kommission bei der Bayerischen Historischen Akademie, 32) (Göttingen, 1988).

⁸⁰ Estates General of the Netherlands, 'Resolution [26 July 1581]', edited by Ernst Heinrich Kossman[n] and Albert Fredrik Mellink, *Texts Relating to the Revolt of the Netherlands* (London, 1974), pp. 216-228.

⁸¹ Martin van Gelderen, *Political Thought of the Dutch Revolt. 1550 – 1590* (Ideas in Context, 23) (Cambridge, 1992).

⁸² Utrecht: Union [29 January 1579], edited by Kossman[n], *Texts* (note 80), pp. 165-173.

⁸³ States General, *Resolution* (note 80), Sp. 217.

resources and trading opportunities.⁸⁴ Philipp responded to what he perceived as unlawful resistance against his legitimate rule by deploying a massive land army to the Low Countries⁸⁵ and an equally sizeable maritime force called “Invincible Armada” or “Great and Most Fortunate Armada” (Armada Invencible or Grande y Felicísima Armada) to conquer England. But the English navy inflicted heavy damage on the Armada in the English Channel in 1588, and only miserable remains returned to Spain. The war, which Philipp had begun with the dispatch of the “Armada”, continued and ended only with the London peace agreement of 18 / 28 August 1604.⁸⁶ At the latest with the unification of the crowns of England and Scotland under King James I of Great Britain (1567/1603 – 1625), the British government rightly assumed that Spanish power in Europe had been diminished through the defeat of the “Armada” and that unrestricted access to America had become possible. Probably in 1623, Francis Bacon (1561 – 1626), then Lord Chancellor in service to James I, underwrote this assessment of waning Spanish power in the text of an address to Parliament that was never delivered. In the text, Bacon contended without the slightest respect for the position of Spain in Europe that Philipp’s European realms were “thin sown of men” due to overseas emigration and resembled a bird, from whom everyone was picking a feather. The country, Bacon concluded, was not even worth the effort of pondering military occupation.⁸⁷

Imperial Law as Law of War and Peace and the Concept of Sovereignty

Within the Empire, the elevation of imperial law into an instrument to regulate relations among rulers was a lengthy and conflictual process. For one, the imperial army consisted of contingents, which had to be recruited from the “Imperial Circles”. It could be deployed in “Imperial Wars” only. The concept of the “Imperial War” was derived from the traditional theory of the just war as a purely defensive war, and the declaration of an “Imperial War” required approval by the Imperial Diet. On the occasion of the Turkish siege of Vienna in 1529, the Imperial Diet was immediately ready to agree, as the cause of the war was uncontestably defensive in kind. But with regard to conflicts within Latin Christendom, the involvement of the Imperial Diet could be bothersome and, consequently, categorising a military campaign as an “Imperial War” could result in strategic disadvantages, if there were time constraints. Hence, the imperial administration in Vienna used this instrument only rarely. As a rule, Charles I/V drew on Spanish resources for his campaigns, unless he conducted them against Protestants within the Empire. He himself did not regularly take the effective command. Most conspicuously, the greatest victory, which his troops ever gained, was won against King Francis I of France (1515 – 1547) at Pavia on 24 February 1525, the Emperor’s birthday. In Charles’s absence, the French army suffered a humiliating defeat, with Francis being taken prisoner of war and some northern parts of the Italian Peninsula, including the Duchy of Milan, temporarily coming under Spanish rule.⁸⁸ Ten years later, however, Charles was present, when Turkish naval commander and executive ruler Chair-ed-Din (1468 – 1547) of Tunis was removed from his office by local dissidents and the Spanish army could occupy the place. Charles received praise as the peace-bringing universal ruler, although disgruntled inhabitants of Tunis, but not Charles’s army, had driven Chair-ed-Din out of the city.⁸⁹ For Charles, the peace of the world was

⁸⁴ Robert Dudley Earl of Leicester, *A Brief Report of the Militarie Services Done in the Low Covntries* (London, 1587).

⁸⁵ Geoffrey Parker, *The Army of Flanders and the Spanish Road. The Logistics of Spanish Victory and Defeat in the Low Countries War* (Cambridge, 1972) [second edn (Cambridge, 2004)].

⁸⁶ Treaty Great Britain – Spain, London, 18 / 28 August 1604, in: Jean Dumont, Baron von Careels-Cron, *Corps diplomatique universel*, vol. 5, part 2 (The Hague, 1728), pp. 32-36; also in: Wilhelm Carl Georg Grewe (Hrsg.), *Fontes historiae juris gentium*, vol. 2 (Berlin and New York, 1992), pp. 49-61.

⁸⁷ Francis Bacon, ‘Notes for a Speech Considering a War with Spain [c. 1623]’, edited by Moorhead Wright, *Theory and Practice of the Balance of Power* (London and Totowa, 1975), pp. 27-31.

⁸⁸ Antonio Bonardi, *L’assedio e la battaglia di Pavia. Diario inedito* (Pavia, 1895). *Die Schlacht vor Pavia. Mit dem Kayser Carl dem funfften des namens. Und Kunig Francisco vonn Franckreich, geschehen auff den XXIII tag des Hornungs* [24 February 1525] (s. l., 1525).

⁸⁹ Auguste Castan, ed., *La conquête de Tunis en 1535, racontée par deux écrivains franç-comtois* (Besançon, 1891).

the issue of diplomatic maneuvering and political propaganda, rather than a sincerely pursued divinely-willed concern, and had thus become subject to human decision-making.

Likewise, the Imperial Court of Law had little leverage to oppose the drive of rulers within the Empire towards the strengthening of their legally guaranteed autonomy, even though it was busily deliberating cases. But imperial law did not penetrate into all legal issues within the Empire, left room for the codification of special set norms, such as the criminal code enacted in Charles's name in 1530,⁹⁰ and, more importantly, competed with norms flowing from the legislation of autonomous rulers within the Empire. These rulers, usually styled "Supreme Authorities" (*Oberkayten*) in German, had many competences, which were tantamount to those in legal possession of sovereigns outside the Empire. These *Oberkayten* were, in fact, sovereigns within the Empire,⁹¹ above whom the Emperor appeared to hold a kind of overlordship. According to this usage, then, the Emperor, rulers within the Empire, kings and other autonomous rulers outside the Empire, including the Ottoman Turkish Sultan, were all sovereign. Within this broad concept, sovereignty did not principally exclude imperial overlordship over other sovereigns, whence this broad concept of sovereignty became awkward for political theorists outside the Holy Roman Empire. This broad concept of sovereignty, transmitted from thirteenth-, fourteenth- and fifteenth-century political theory, entailed the difficulty that on the one side, sovereignty was defined as the legal capability of autonomous legislation and, on the other, did not exclude the subjection of an autonomous ruler to the legislative competence of a higher-ranking ruler. Hence, the concept admitted as possible the paradox that supreme legislative competence could be claimed over sovereigns. Already during Emperor Maximilian's reign, Heinrich Bebel (1472/73 – 1518), Professor of Rhetoric at the University of Tübingen and *poeta laureatus* for the Empire, had claimed that the Emperor had "highest and absolute power" (*summam habet et absolutam potestatem*), thereby applying the concept of sovereignty to the Emperor as the overlord of the Empire, while, a generation later, Bartolomé de Las Casas ascribed overlordship together with legislative competence above sovereign rulers even to the Spanish king, classing this suzerain legislative competence not only as "sovereign" but also as "imperial".⁹² According to Las Casas, the Spanish king was emperor in his kingdoms. He wrote at the time, when Charles I was King of Aragón and Castile and, as Charles V, also Roman Emperor.

In order to oppose such claims for suzerain legislative competence over sovereigns,

La Felice vittoria de Tunis i Goletta fatta de la Cesarea Maiesta de Carlo V. imperatore ([Milan], 1535). Jules Houdoy, *Tapisseries représentantes la conquête du royaume de Thunes* (Lille, 1873). Guillaume de Montoiche, 'Voyage et expedition de Charles-Quint au Pays de Tunis, de 1535', in: Louis Prosper Gachard, ed., *Collection des voyages des souverains des Pays-Bas*, vol. 3 (Brussels, 1875), pp. 317-403. Damiano Muoni, Tunesi. *Spedizione di Carlo V imperatore* (Milan, 1876). *Neue zeytung / von der Römischen Kay[serlichen] May[estät] zug / vnd erorberung des Künigsreyches Thunesse* (s. l., 1535). C[hristoph] S[cheurl] von Defersdorf, *Römischer Kayserlicher Maiestat Christenliche Kriegs Rüstung wider die Vnglaubigen / anzüg in Hispanien vnd Sardinien / Ankunfft in Africa / vnd eroberung des Ports zu Thunis / im Monat Junio / Anno 1535* (s. l., 1535). Wilfried Seipel, ed., *Der Kriegszug Kaiser Karls V. gegen Tunis. Kartons und Tapissereien* (Vienna, 2000). *Verteusch Schreiben von Kayserlicher Majestat wunderbarer Eroberung der Statt Tunis in Africa doselbst den XXIII Julij 1535* (Nuremberg, 1535).]

⁹⁰ *Carolina: die peinliche Gerichtsordnung Kaiser Karls V. von 1532*, edited by Gustav Radbruch (Stuttgart, 1962).

⁹¹ Lazarus Spengler, 'Bedencken [c. 1529]', edited by Wolfgang Steglich, *Deutsche Reichstagsakten unter Kaiser Karl V.*, vol. 8, part 1 (Deutsche Reichstagsakten. Jüngere Reihe, 8) (Göttingen, 1970), pp. 468-509, at pp. 502-503. Spengler, 'Verantwortung und auflösung etlicher vermeinter argument und ursachen, so zu widerstandt und verdruckung des wort Gottes und heiligen evangeliums von denen, die nitt Christen sein und sich doch Christennamens rühmen, täglich geprauchet werden' [print (Augsburg, 1524)], in: Spengler, *Schriften*, vol. 1, edited by Berndt Hamm and Wolfgang Huber (Quellen und Forschungen zur Reformationsgeschichte, 61) (Gütersloh, 1995), pp. 359-396, at p. 381.

⁹² Heinrich Bebel, 'Apologia Henrici Bebelii defensione imperatorum contra Leonhartum Iustinianum', in: Simon Schardius, ed., *Historicum opus in quatuor tomos divisum*, vol. 1: *Germaniae antiquae illustrationem continet* (Basle, 1574), pp. 243-254, at p. 243. Bartolomé de Las Casas, 'Tratado comprobatorio del imperio soberano y principado universal que los reyes de Castilla y León tienen sobre las Indias [22 October 1545]', First and Second Main Conclusion, in: Las Casas, *Obras escogidas*, edited by Juan Pérez de Tudela Bueso, vol. 5 (Madrid, 1958), pp. 350-423, at p. 352.

jurist Jean Bodin (1529/30 – 1596), in service to the King of France, tackled the problem of sovereignty in 1576 and solved it, so to speak, with a fanfare. His solution was simple but ingenious and one at that, which theorists of the law of war and peace had hitherto failed to consider. Bodin did not challenge the established definition of sovereignty as supreme legislative competence. Yet, recognising the empirically recorded coexistence of a pluralism of sovereigns as a matter of fact, he concluded that all sovereigns holding supreme legislative competence legitimately must all be ranked as legal equals among themselves. According to Bodin, then, legislative competence by some overlord over sovereigns was legally impossible. Should, he insisted, a sovereign acknowledge the legislative competence of a higher-ranking ruler, he was no longer sovereign. For Bodin, drawing this conclusion was a matter of simple logic following from the definition of a sovereign as the highest legislator. Simultaneously, Bodin even drew the further conclusion that no sovereign could be placed under the protection of another sovereign. He admitted that powerful rulers might articulate the desire to provide protection to less powerful sovereign rulers. Yet, he denounced such rhetoric as pure propaganda, which barely concealed the attempt to impose control. Therefore, what might be announced as “protection” was, in Bodin’s rendering, not genuine protection but the destruction of the sovereignty of another ruler.⁹³ Bodin was apparently the first theorist to combine the conventional concept of sovereignty with the notion of the legal equality of sovereigns. According to his theory, the sovereigns formed a kind of club, in which no member had the power and possibility to issue commands to another member. Bodin made clear his position that there could not be set legal norms above sovereigns and exempted from this principal rule only a few so-called “basic laws” (*lois fondamentales*). Among others, he included rules of hereditary succession into the “basic laws”, because they bound sovereigns but could not be changed at their discretion.⁹⁴ Consequently, Bodin did not position rule above the law, but insisted that legal norms binding sovereigns could only be legislated in accordance with their will.⁹⁵ Bodin’s book, originally published in French, thereby initially not being designed for the general European learned public, quickly received translations into Latin and many vernacular languages and thus had tremendous success immediately in states outside the Holy Roman Empire. In the Empire, however, the reception of Bodin’s theory would have demanded an answer to the question, whether the Emperor was the sole sovereign or whether the secondary rulers held sovereignty in the Empire instead of the Emperor. Bodin’s book did feed a mainly academic debate about this question, but a formal political decision was never reached to the end of Roman imperial rule at the beginning of the nineteenth century.

Expanding the Law of War and Peace to America

Not just Bodin’s book, but also the progressive subjection of Native Americans to European colonial rule stimulated the reconsideration of the possibility of deriving legal norms binding sovereigns, specifically the law of war and peace. Up to the beginning of the sixteenth century, the tri-continental block of Africa, Asia and Europe had formed the special base for supporting the belief that all human beings, seemingly tantamount to the inhabitants of this land mass, were divinely created and, despite their manifest diversity, would have the option of eventually congregating under the control of a universal ruler. However, with the removal of the world picture displaying the inhabitable part of the planet earth as an integrated permeable land mass, the question appeared on the agenda of Christian theologians, whether the inhabitants of the “New World” had the moral and legal status of human beings or whether they were purportedly “slaves by nature” living outside any political community. Theologians began to debate answers to this question in the second decade of the sixteenth century and continued to do so until the 1550s. A problem of the theory of the law of war provoked the debate, namely the issue whether Cortés’s use of force for the subjection of Native Americans to European rule was acceptable as legal and just. John Major (1470 – 1550), a

⁹³ Jean Bodin, *Les six livres de la République*, book I, chap. 7 [first published (Paris, 1576)]. Newly edited by Christiane Frémont, Marie-Dominique Couzinet and Alain Rochais (Paris, 1986), pp. 151-157.

⁹⁴ *Ibid.*, book I, chap. 8, pp. 212-217.

⁹⁵ *Ibid.*, book I, chap. 10, pp. 295-341.

theologian teaching in Paris, was one of the first to raise this question and provided the answer with recourse to Aristotle's theory that human beings outside the Greek world were "slaves by nature". Both for Aristotle and for Major, this concept implied perception that slaves were creatures with a human body but not with the moral status of human beings. From Aristotle's theory, Major drew the conclusion that "slaves by nature" could not be bearers of rights and that the killing of "slaves by nature" could not be a crime. He applied the theory to Native Americans, asserting, on the basis of early European travel reports,⁹⁶ that Native Americans did not live as human beings, were condemned to exist in hell and that, by consequence, missionary work among them was vain.⁹⁷ In making these claims, Major took issue with the edicts in the name of Pope Alexander VI, who had mandated missionary work on the "islands and firm lands" of the "New World".

Major's conclusion did not remain uncontested. Thomas de Vio from Gaeta (1469 – 1534), who called himself Cajetan, was among the most influential early sixteenth-century theologians and became Luther's most formidable critic on the side of the Catholic Church. Cajetan sharply attacked the theory of the "slaves by nature", demanded the unconditional recognition of the moral status of human beings in all parts of the globe and requested the dispatch of missionaries to Native Americans in accordance with the papal edicts.⁹⁸ Yet, Cajetan did not succeed in destroying the theoretical basis for Major's argument, even though Pope Paul III (1534 – 1549) renewed the mandate for missionary work in 1537.⁹⁹ Instead, Major's theory remained in use for the legitimization of the genocide of Native Americans¹⁰⁰ and was taken up again by the theologian and chronicler Juan Ginés de Sepúlveda (1490 – 1573) by the middle of the century.¹⁰¹ It was only missionary Bartolomé de Las Casas, who silenced theologians supporting the theory of "slaves by nature" by vehemently taking the position Cajetan had already argued,¹⁰² and by circulating reports about the

⁹⁶ For studies see: Dietrich Briesemeister, 'Frühe Berichte über die spanischen Eroberungen in deutschen Übersetzungen des 16. Jahrhunderts', in: Karl Kohut, ed., *Der eroberte Kontinent* (Frankfurt, 1991), pp. 246-259. Susi Colin, *Das Bild des Indianers im 16. Jahrhundert* (Beiträge zur Kunstgeschichte, 102) (Idstein, 1988). Hans-Joachim König, 'Barbar oder Symbol der Freiheit? Unmündiger oder Staatsbürger? Indiobild und Indianerpolitik in Hispanoamerika', in: König, Wolfgang Reinhard and Reinhardt Wendt, eds, *Der europäische Beobachter außereuropäischer Kulturen* (Zeitschrift für Historische Forschung, Beiheft 7) (Berlin, 1989), pp. 97-117. Annerose Menninger, 'Unter "Menschenfressern"? Das Indiobild der Südamerika-Reisenden Hans Staden und Ulrich Schmidt zwischen Dichtung und Wahrheit', in: Menninger, Thomas Beck and Thomas Schleich, eds, *Kolumbus' Erben. Europäische Expansion und überseeische Ethnien im Ersten Kolonialzeitalter. 1415 – 1815* (Darmstadt, 1992), pp. 63-98. Wolfgang Neuber, *Fremde Welt im europäischen Horizont. Zur Topik der deutschen Amerika-Reiseberichte der frühen Neuzeit* (Philologische Studien und Quellen, 121) (Berlin, 1991). Friedrich Wilhelm Sixel, 'Die deutsche Vorstellung vom Indianer in der ersten Hälfte des 16. Jahrhunderts', in *Annali del Pontificio Museo Missionario Etnologico* 30 (1966), pp. 9-230 [separately printed (Vatican City, 1966)]. William C. Sturtevant, 'First Visual Images of Native America', in: Fredi Chiapelli, ed., *First Images of America*, vol. 1 (Berkeley, 1976), pp. 417-454. Tzvetan Todorov, *The Conquest of America. The Question of the Other* (New York, 1984), pp. 59-185 [first published (Paris, 1982)].

⁹⁷ John Major, *In secvndvm librum sententiarvm* (Paris, 1519), fol. CLXXXVII^r.

⁹⁸ Cajetan [Tomasso de Vio from Gaeta, Cardinal], *Sancti Thomae Aquinatis doctoris angelica opera omnia cum commentariis*, vol. 9 (Rome, 1897), p. 94. Missionary Bernardino de Sahagún, *Historia general de la cosas de Nueva España*, edited by Angel María Garibay, vol. 1 (Mexico, 1969), p. 27, supported this position arguing: 'it is very certain that these people are all our brethren, proceeding like us from the stock of Adam. They are our fellow creatures, whom we are obliged to love as ourselves, *quid quid sit*. ... Then they are no less capable of learning our Christianity.'

⁹⁹ Paul III., Pope, Bull 'Sublimis Deus', 1 June 1537, edited by Alberto de la Hera, 'El derecho de los Indios a la libertad y a la fe. La bula "Sublimis Deus"', in: *Anuario de la historia del derecho Español* 36 (1956), pp. 161-162. Paul III., Bull 'Veritas Ipsa', 2 June 1537, in: Josef Metzler, ed., *América Pontificia primi saeculi evangelizationis. 1493 – 1592*, vol. 1 (Vatican City, 1991), pp. 364-366.

¹⁰⁰ Juan de Betáncos, [Revocation of his statement of 1534 that Native Americans were like children and not accessible by missionary efforts, 1549], edited by Manuel Giménez Fernández, *Fray Bartolomé de Las Casas, Tratado de Indias y el doctor Sepúlveda* (Caracas, 1962), pp. 184-186.

¹⁰¹ Juan Ginés de Sepúlveda, *Juan Ginés de Sepúlveda y su Crónica Indiana*, edited by Demetrio Ramos, Lucio Mijares and Jonas Castro Toledo (Valladolid, 1976), pp. 201-202.

¹⁰² Bartolomé de Las Casas, *Aquí se contiene vna disputa o controuersia entre el obispo don fray Bartholome de las Casas o Casaus Obispo que fue dela ciudad Real de Chiapa que es en las Indias parte dela nueva España, y el*

dreadful fate of brutally persecuted and murdered Native Americans. When Protestants started to use these reports to discredit the moral foundations of Catholic theological doctrine, the Catholic Church eventually took issue with Major's theory, but did so only after Native Americans had already become victims of genocide. However, negative heterostereotypes about Native Americans as allegedly intellectually feeble continued to be shared among the Catholic clergy working in America.¹⁰³

Against the backdrop of this debate, Spanish intellectuals, mainly theologians, of the sixteenth and early seventeenth centuries revisited the problem of determining criteria for the justice of war and gave answers, which were new in several respects. These intellectuals laid down their thoughts mainly in lectures delivered to university students and in specialised treatises of fragmentary scope, rather than in comprehensive compendia on the law of war and peace. The relevant work of Dominican theologian Francisco de Vitoria, teaching at the University of Salamanca, belongs to this category of texts. During the 1530s, Vitoria raised the question whether the Spanish conquests in America were just and included his answers in public lectures, which he delivered on special occasions (*Relectiones*). His starting point was the version of the theory of the law of war and peace that St Augustine and St Thomas Aquinas had advocated. Matter-of-factly, Vitoria applied their theory to the "New World" and used Paulus Vladmiri's principle to support his statement that Native Americans, *qua* divine creation, had the right of settlement in their territories. Likewise, Vitoria took for granted that Native Americans had the rights of self-government and self-defence. The fact that they were non-Christians was due to circumstances outside their responsibility.¹⁰⁴ Consequently, according to Vitoria, wars against Native Americans were unjust, as long as they were fought for the sole reason that Native Americans were non-Christians. Instead, he insisted, the difference of religion could not serve as the cause of a just war.¹⁰⁵ Moreover, Native Americans had, at no time up to the Spanish conquest, done anything wrong to anyone from Spain. Hence, the demand for the restitution of previously inflicted injustice was untenable. Thus, Vitoria denied the possibility that elements constituting the law of war and peace could be used for the purpose of legitimising the Spanish conquest.¹⁰⁶ Unless he wanted to straightforwardly condemn the conquest as unlawful, he had to resort to arguments that were not contained in the great tradition of the law of war and peace. In order to find these arguments, he first raised the principled question of how the criteria for the justice of war were to be determined. He based his answer to this question on the empirical observation that, from the fourteenth century at the latest, parties to a conflict would usually combine their preparations for a war with the publication of arguments, through which they

doctor Gines de Sepulveda Coronista del emperador nuestro señor, sobre que el doctor contendia que las conquistas delas Indias contra los Indios eran licitas y el Obispo por el contrario defendio y affirm auer si do y ser imposible no serlo tiranicas, injustas y iniquas (Valladolid, 1552) [newly edited (Barcelona, 1646). Reprint of the edn Barcelona 1646 (Zug, 1985). Also edited in: (Biblioteca de derecho internacional y ciencias auxiliares, 2) (Madrid, 1908)]. Las Casas, [Apologia, c. 1552. Ms. Paris: Bibliothèque nationale de France, Fonds Lat. 12926]. English version: *In Defense of the Indians. The Defense of the Most reverend Lord, Don Fray Bartolomé de Las Casas, of the Order of Prechers, Late Bishop of Chiapa, against the Persecutors and Slaunders of the Peoples of the New World Discovered across the Seas*, edited by Stafford Poole (DeKalb, IL, 1992). For a study see: Lewis Hanke, *All Mankind is One. A Study of the Disputation between Bartolomé de Las Casas and Juan Ginés de Sepúlveda in 1550 on the Intellectual and Religious Capacity of the American Indians* (DeKalb, IL, 1974).

¹⁰³ Las Casas, *Colonie* (note 64). José A. Llaguno, *La personalidad jurídica del Indio y el III Concilio Mexicano* (Mexico, 1963), pp. 13, 35.

¹⁰⁴ Francisco de Vitoria, *De Indis recenter inventis relectio prior*, book I, chap. 24, edited by Ernest Nys (Washington, 1917), pp. 217-268, at p. 232 [reprints (New York, 1964); (Buffalo, 1995); also in: Walter Schaetzel, ed., *Klassiker des Völkerrechts*, vol. 2 (Tübingen, 1954), pp. 18-117; Vitoria, *Vorlesungen*, edited by Ulrich Horst, vol. 2 (Theologie und Frieden, 8) (Stuttgart, 1997), pp. 370-541; Facsimile- edn of the Palencia Codex of 1539 (Madrid, 1989)].

¹⁰⁵ Francisco de Vitoria, *Relectiones theologicae XII*, chap. V/10, edited by Luciano Pereña Vicente, Jose Manuel Peres Prendes and Vicente Beltrán de Heredia (Corpus Hispanorum de pace, 5) (Madrid, 1967) [first published (Lyon, 1557); further edns (Lyon, 1580; 1586); also edited by Luis G. Getino, 3 vols (Madrid, 1933-1935)].

¹⁰⁶ Vitoria, *De Indis* (note 104), book II, chap. 1, p. 234. Similarly: Domingo de Soto, OP, *Relectio de dominio* [1534-1535], edited by Jaime Brufau Prats (Granada, 1964), p. 158 [English version in: Richard Tuck, *The Rights of War and Peace* (Oxford, 1999) [reprint (Oxford, 2001)], p. 73.

sought to prove the justice of their war aims and the seeming need to use military force. Vitoria noted that, in these cases, all warring parties proceeded in substantially the same way, although, as enemies, they had to take positions that were mutually irreconcilable. Hence, Vitoria concluded that it was possible for all warring parties to act upon the subjective assumption that their war aims were just.¹⁰⁷ Since Vitoria, then, the debate about the justice of war no longer focused on fully and wholly negating the justice of the war aims of the enemy; instead what then mattered was the presentation of arguments, which could support the partisan claims for the justice of the war aims more powerfully for one party than for all others. The debate on the justice of war, thus, shifted from the province of theologians to that of jurists.

Vitoria supplemented his observations on the promulgation of arguments in support of just causes of wars with the demand for the recognition of two legal norms, which he posited as “fundamental laws” binding sovereigns. The first norm concerned the *ius peregrinationis*, that is, the right of movement and settlement anywhere on the surface of the planet earth.¹⁰⁸ This norm, self-evident anyway according to the world picture enshrined in conventional world maps, was also to be binding for the “New World”, as Vitoria insisted, for Native Americans and Spaniards alike. According to this norm, none of the two parties was in a position to deny the *ius peregrinationis* to the other one, as this right appeared to be unset and universally valid. Vitoria went further in claiming that anyone, whose *ius peregrinationis* was restricted by whatever means, had the right to resist. Vitoria included into the *ius peregrinationis* to the right of trade at all locations.¹⁰⁹ Denying the right of trade provided an entitlement for the conduct of a just war. In employing the *ius peregrinationis*, Vitoria used the old principle that just wars could be conducted under the goal of seeking restitution for previously inflicted injustice, applied it to rights that had not been claimed explicitly in the great tradition of the law of war and peace. Vitoria argued that Native Americans had denied to Spaniards their *ius peregrinationis*, including the right of trade, and recognised Spanish warfare as just to the extent that the restoration of these rights was the goal. Later sixteenth-century theorists followed Vitoria’s argument.¹¹⁰ However, this argument did not suffice to justify conquest.

In his effort to justify conquest, Vitoria referred to the papal mandate, which imposed upon the Spanish rulers the obligation to promote the Christian mission. Vitoria did not just rely on the edicts in the name of Pope Alexander VI, but also based himself on the theological doctrine, which identified the obligation to undertake mission as a divine command and, in turn, was derived from the Holy Scriptures, mainly Acts of the Apostles, chapter 2. Vitoria postulated that Native Americans had sought to prevent Spanish missionaries from doing their work and had thereby acted against divine will. He concluded that the use of military force was just, if it occurred for the purpose of advancing the mission and, specifically, the protection of missionaries.¹¹¹ Moreover, Native Americans, whom Vitoria classed as “nomads”, appeared to act against the further divine command to cultivate the soil. This argument served Vitoria as the final instrument to justify the Spanish conquest. As, in his view, Native Americans were defying divine commands, while Spanish settlers were acting in their fulfillment, Spanish settlers had the legal entitlement not merely to defend themselves against aggression from the side of Native Americans but also to occupy Native

¹⁰⁷ Francisco de Vitoria, *De Indis sive de iure belli Hispanorum in barbaros relectio posterior*, chap. 32, edited by Ernest Nys (Washington, 1917), pp. 269-297, at p. 286 [reprints (New York, 1964); (Buffalo, 1995); also in: Walter Schaezel, ed., *Klassiker des Völkerrechts*, vol. 2 (Tübingen, 1954), pp. 118-171; Vitoria, *Vorlesungen*, edited by Ulrich Horst, vol. 2 (Theologie und Frieden, 8) (Stuttgart, 1997), pp. 542-605; Facsimile- edn of the Palencia Codex of 1539 (Madrid, 1989)].

¹⁰⁸ Vitoria, *De Indis* (note 104), book III, chap. 2, pp. 257-258.

¹⁰⁹ Ibid., book III, chap. 3, pp. 258-259.

¹¹⁰ Domingo de Soto, OP, *De iustitia et iure libri decem*, book VI, question VII, art. 1 (Salamanca, 1566) [further edns (Salamanca, 1569); (Lyon, 1558; 1569; 1582); (Venice, 1573; 1589; 1602; 1608); newly edited by Venancio Diego Carro, vol. 3 (Madrid, 1968), pp. 579-581]. Alonso de Veracruz, *De iusto bello contra Indos*, nr 1-2, edited by Carlos Baciero, Luis Baciero, F. Maseda and Luciano Pereña Vicente (Corpus Hispanorum de pace, series 2, vol. 4) (Madrid, 1997), p. 322.

¹¹¹ Vitoria, *De Indis* (note 104), book III, chap. 9-12, pp. 262-264.

American lands.¹¹² Vitoria arrived at this conclusion without inquiring about the law of war and peace current among Native Americans. In refusing to accept the principle that Native Americans might subjectively claim justice for their defence against the Spanish conquest, Vitoria denied to Native Americans the application of his demand that the subjective consciousness of the justice of war should be granted to all warring parties.

Despite his revision of the theory of the law of war and peace, Vitoria remained within the Roman tradition of the *ius gentium*, which he defined on the basis of the *Corpus iuris civilis*.¹¹³ However, he modified the *Corpus* definition that *ius gentium* was the law common to all humankind in accordance with natural reason (*naturalis ratio*). He did so by replacing the word *homines* (humans) with *gentes* (states), while deriving the *ius gentium* from the *ius naturale*.¹¹⁴ The exchange of words, for which he did not state a reason, does not support the argument that Vitoria intended to redefine the *ius gentium* in a new way.¹¹⁵ Rather, he repeated the word *gentes* within his own definition, thereby even establishing a tautology. Vitoria's own definition then came out as a formula, according to which the *ius gentium* was the law of the *gentes* without specifying the meaning of the word *gentes*. Moreover, the fact that Vitoria did not refer to the *ius civile* in this passage, followed from the lack of Vitoria's interest in Roman municipal law in this passage. Hence, the important message of the sentence does not consist in the somewhat clumsy replacement of the word *homines* by the word *gentes*, but in Vitoria's insistence that the *ius gentium* was part of the more comprehensive *ius naturale*.

However, Vitoria's derivation of the *ius gentium* from the *ius naturale* had the sole purpose of showing that the *ius peregrinationis* was part of the *ius gentium* and, consequently, common in all *gentes*. In support of this theory, Vitoria pointed out that all humankind considered as inhuman the reckless treatment of guests and foreigners. The *ius peregrinationis*, in conjunction with the divine command to ply the soil, was to be derived from the divinely willed natural law. The *ius peregrinationis*, therefore, did not have to be legislated and was binding by virtue of natural reason, not by enforcement of a ruler. Vitoria was unequivocal in contesting that either the Emperor or the Pope could hold the position of a legislating universal ruler.¹¹⁶ Hence, the *ius peregrinationis* was not just part of municipal law, as *ius civile*, but all humans could claim it, and no one could deny it to the Spaniards in the "New World". In sum, Vitoria remained within the great tradition of the law of war and peace in deriving the *ius gentium* from the *ius naturale*; yet he no longer positioned this tradition into a theory seeking to establish the need of universal rule; rather he used the tradition to justify the expansion of Spanish rule to America. The law of war and peace, in conjunction with the *ius gentium*, continued to be derived from divine will, even though divine will did not appear to be directly manifested through the law, but through natural reason and human customary practice. As the papal curia, fearful of the rigidity of Vitoria's arguments, placed Vitoria's works on the *Index*.¹¹⁷ Hence, Vitoria was largely forgotten by the middle of the seventeenth century. Even though the Helmstedt philosopher of Nature, physician, jurist and political theorist Hermann Conring (1606 – 1681) referred to Vitoria in his description of the Spanish state and ascribed to him the merit of

¹¹² Ibid., book I, chap. 1, nr 4-9, 24; book I, chap. 2, nr 15-16; book I, chap. 3, nr 3-4, pp. 222-227, 232, 250-255, 259-260.

¹¹³ *Corpus iuris civilis. Institutiones; Digesta*, Inst. I,2,1; partly newly edited by Okko Behrends, Rolf Küntel, Berthold Kupisch and Hans Hermann Seidel (Heidelberg, 1995), p. 2.

¹¹⁴ Vitoria, *De Indis* (note 104), book III, chap. 2, p. 257.

¹¹⁵ As suggested by: Jean Baumel, *Les problèmes de la colonization et de la guerre dans l'œuvre de Francisco de Vitoria* (Paris, 1936), p. 205. Ernest Nys, *Les origines du droit international* (Brussels and Paris, 1894), p. 11. James Brown Scott, *The Spanish Origin of International Law. Lectures on Francisco de Vitoria (1480 – 1546) and Francisco Suarez (1548 – 1617)* (Washington, 1928, and Oxford, 1934), p. 281 [reprint (Union, NJ, 2000)]. Alfred Verdross, *Völkerrecht* (Enzyklopädie der Rechts- und Staatswissenschaften. Abteilung Rechtswissenschaft, 30) (Vienna, 1937), p. 43. Herbert Francis Wright, *Francisci de Vitoria De iure belli relectio*. Ph. D. Thesis (Washington, DC: Catholic University of America, 1916), p. 16.

¹¹⁶ Vitoria, *De Indis* (note 104), book I, chap. 1-4, pp. 218-223.

¹¹⁷ *Index de Rome. 1590, 1593, 1596*, edited by Jesús Martínez de Bujanda and Marcella Richter (*Index des livres interdits*, 9) (Geneva, 1994), p. 399 [another edn: *Die Indices librorum prohibitorum des 16. Jahrhunderts*, edited by Franz Heinrich Reusch (Leipzig, 1886); reprint (Leipzig, 1936); *Der Index der verbotenen Bücher*, edited by Franz Heinrich Reusch, 2 vols (Leipzig, 1883-1885)].

having introduced problems of morality into jurisprudence,¹¹⁸ Vitoria's writings remained outside academic discourse about the law of war and peace up to the middle of the nineteenth century.¹¹⁹

At the middle of the sixteenth century, further Spanish theorists such as Fernando Vázquez de Menchaca (1509 – 1566) proceeded like Vitoria, even though Vázquez explicitly and sharply set the *ius gentium* apart from the *ius civile*. He did so with the argument that the *ius civile* was binding only for the members of a *gens* and its ruler, whereas the *ius gentium* was binding by virtue of its derivation from natural reason.¹²⁰ Jurists, focusing on the *ius civile* at the time, could even contest the validity of the basic norm of *pacta sunt servanda*. Franciscus Connanus (1508 – 1551), for one, believed that “promises” (promissiones) as such could not entail binding obligations, and treaties according to the law of war and peace were such “promises” to him. Rather, Connanus insisted, morality, not the law, obliged signatories to be considerate. The binding force of treaties resulted from the *ius gentium* alone, which, he believed, was beyond human control.¹²¹

Theorists no longer regarded as self-evident the task of establishing high thresholds for the recognition of wars as just, thereby seeking to increase the difficulties of launching wars. Juan de la Peña, for one, censured Luther for allegedly having agitated against opposing the Ottoman Turkish army and pointed to a passage in Luther's 1518 critique of the practice of indulgence.¹²² In this passage, Luther had complained that many people were dreaming of nothing but joining a war against the Ottoman Turkish army and that the Catholic Church was benefiting from these desires through the issue of letters of indulgence. Peña then condemned Luther for having tried to prevent the conduct of a just war against the Ottoman Turkish Sultan. A little later, he then even found that not merely a war against the Ottoman Turkish Sultan was just, but every war of Christians against Protestants.¹²³ According to this theological doctrine, Christian rulers did not even have to bother to argue why the wars they were fighting among themselves, should be just.

The Emergence of the Concept of the Law among States

Jurist Alberico Gentili (1552 – 1608), Protestant emigré in England and Professor of Law at the University of Oxford, restated Vitoria's theory of war in a more precise version at the turn towards the seventeenth century. At that time, Gentili belonged to the very few theorists, who laid down their thoughts in specialised academic monographs. Among them are his treatises on the law of diplomatic envoys (1594) and on the law of war (1598), a defense of the position the English government took in its war against Spain (c. 1605) and a volume of collected studies about special issues of the theory of the law of war and peace (1605). Gentili intended to treat the law of war comprehensively and, in order to do so, he began, different from Vitoria, with a formal definition of war. In analogy to the court trial, Gentili equated war with the “just contest with public weapons”, which two equals undertake in order to gain victory as if war was a duel among legal equals (*publicorum armorum iusta contentio quod inter duas aequales de victoria contenditur*), (*principes bellum gerunt*). Gentili further specified that “only sovereigns conduct war”.¹²⁴ Thus, according to Gentili as already to

¹¹⁸ Hermann Conring, ‘Examen rerum publicarum potiorum totius orbis’, in: Conring, *Opera*, vol. 4 (Brunswick, 1730), pp. 47-548, at p. 77.

¹¹⁹ Ernest Nys, *Le droit de la guerre et les précurseurs de Grotius* (Brussels, Leipzig, London, New York and Paris, 1882), p. 168; 192 Nys, *Le droit des gens et les anciens jurisconsultes espagnols* (The Hague, 1914), pp. 86-87. Scott, *Origin* (note 115), p. 281. Travers Twiss, ‘Albericus Gentilis on the Right of War’, in: *Law Magazine and Review* 227 (1878), pp. 137-161, at p. 140. Henry Wheaton, *History of the Law of Nations in Europe and America* (New York, 1845), pp. 34-42 [reprints (New York, 1973); (Buffalo, 1982)].

¹²⁰ Ernst Reibstein, *Die Anfänge des neueren Natur- und Völkerrechts. Studien zu den „Controversiae illustres“ des Fernandus Vasquius (1559)* (Berne, 1949), p. 72.

¹²¹ Franciscus Connanus, *Commentariorum juris civilis libri decem*, book I, chap. 6, nr 12 (Naples, 1724), pp. 21-22 [first published (Basle, 1557)].

¹²² Martin Luther, ‘Resolutiones disputationum de indulgentiarum virtute [1518]’, conclusion 5, in: *D. Martin Luthers Werke. Kritische Gesamtausgabe*, vol. 1 (Weimar, 1883), pp. 522-643, at p. 535 [reprint (Weimar, 1966)].

¹²³ Peña, ‘De bello’ (note 63), nr 2, 27, pp. 404, 476.

¹²⁴ Alberico Gentili, *De iure belli libri tres*, book I, chap. 2-3 (Hanau, 1598), pp. 17, 22-32 [further edn (1612);

Bodin, all sovereigns could enter into just wars. Nevertheless, launching a war required specific justification, because, Gentili insisted, sovereigns did not have the competence to conduct just wars without justification.¹²⁵ In cases, where both contending parties were claiming justice for their campaigns, it was not possible to decide whose claims were just and, by consequence, human insight could not reveal the justice of contending claims.¹²⁶ Like Vitoria, Gentili acknowledged the principle that the perception of the justice of war was subjective, while adding that the insurmountable subjectivity of mutually exclusive perceptions of justice was the inevitable result of the recognition of the sovereign equality of all warring parties. He derived this specification of war neither from Roman law nor from natural law theory but from the work of the jurist Baldus de Ubaldis (c. 1327 – 1400).¹²⁷

On the basis his definition of war, Gentili demanded that victors of wars had to apply restraints in their dealings with the vanquished, as wars could not be conducted to the complete destruction of one warring party.¹²⁸ Like Vitoria, Gentili further assumed that wars could not be undertaken for causes resulting from differences of religious beliefs.¹²⁹ He also argued that wars could not come about by dictates of nature, that, therefore, there could not be natural or archenemies and that this principle applied to the Ottoman Turkish Sultan as to all other warring sovereigns. According to Gentili, the Sultan was not a natural enemy of Christians but had to be opposed because he appeared to attack Christians. This is the same argument, applied to the Sultan, which Vitoria had used in his justification of Spanish wars against Native Americans in their alleged pursuit of some right to trade. However, Gentili vehemently rejected the conclusion that Vitoria had applied to Native Americans. He accused the Spaniards of fraud, insisting that they had proclaimed the establishment of the freedom of trade as their war aim merely as a pretext for conquest pure and simple.¹³⁰ Instead, Gentili explicitly conceded to sovereigns the right to regulate trade. Thus, the government of China, in his view, rightfully restricted access by foreign traders to border areas but kept them out of the interior of the state under its control. He would admit only purposeful disturbance of trading activities as the just cause of a war over trading issues. Hence, he claimed, war was just against sovereigns refusing to end a war, which obstructed trade.¹³¹ He added that the ocean could not be closed to seafaring, because it was open to all humankind, and even included coastal zones, rivers and river banks. This norm, he concluded, was valid, because nature had allocated neither air nor the water of rivers to the property of individuals.¹³² However, he did exempt from these norms so-called coastal waters up to a range of one hundred nautical miles and placed them under the exclusive control of the sovereign over adjacent territory.¹³³

Questions regarding accessibility of oceanic waters loomed large also in controversies about the binding force of the Treaty of Tordesillas of 1494 beyond the two contracting parties. The main issue of the controversies was the papal competence to acknowledge titles to sovereign rule. Both in his capacity as Spanish king and as Roman Emperor, Charles I/V tried, without success, to enforce access restrictions vis-à-vis subjects of King Francis I of France and based these measures on the Treaty of Tordesillas.¹³⁴ But these measures remained questionable. Through the edicts in his name, Pope Alexander VI had not granted an investiture in the sense of the

reprint (Oxford, 1933)].

¹²⁵ Ibid., book I, chap. 6, pp. 49-50.

¹²⁶ Ibid., book I, chap. 5, pp. 40-45.

¹²⁷ Baldus de Ubaldis, *Consiliorum sive responsionum liber*, nr CCCLVII, vol. 2 (Frankfurt, 1589), fol. 89^v.

¹²⁸ Gentili, *De iure* (note 124), book III, chap. 2, pp. 473-484.

¹²⁹ Ibid., book I, chap. 12, p. 92.

¹³⁰ Ibid., book I, chap. 19, p. 144.

¹³¹ Ibid., book I, chap. 19, pp. 145-146.

¹³² Ibid., book I, chap. 19, p. 146.

¹³³ Alberico Gentili, *Hispanicae Advocacionis libri duo* [c. 1605], edited by Scipio Gentili (Hanau, 1613).

¹³⁴ Philipp II., King of Spain, '[Letter to Emperor Charles V, 14 December 1544]', in: *Calender of Letters, Despatches, and State Papers Relating to the Negotiations between England and Spain*, nr 260, edited by G. A. Bergenroth and Pascal de Gayangos, vol. 7 (London, 1899), pp. 495-496 [reprint (London, 1969)]. For a study see: Gundolf Fahl, *Der Grundsatz der Freiheit der Meere in der Staatenpraxis von 1493 bis 1648* (Beiträge zum ausländischen öffentlichen Recht und Völkerrecht, 51) (Cologne, 1969).

issue of an entitlement to rule. He could not have done so because the island worlds Columbus had visited had never stood under papal jurisdiction before. If at all any ruler in Europe could have issued a privilege of rule, this ruler could only have been the Roman Emperor, provided Bartolus's theory of universal rule applied. But the Emperor had not acted. Moreover, the edicts did not give legal expression to a donation in the sense of Roman law. They could not have done so, because at the time, when the papal curia issued the edicts, it did not hold possession over the territories to which the edicts referred. But this was a necessary condition in terms of Roman law, which only allowed donations of things that were in the donor's actual possession. According to this logic and contrary to the view that Metellus had taken, the Pope had no possibility of sanctioning defiance against the papal edicts in favour of the "Catholic Kings", and all sovereigns not bound by the Treaty of Tordesillas were free to access the ocean as they pleased. King Francis I and his successors replied applied this logic against Charles I and Philipp II as rulers over Spain. Thus, the peace agreements of Crépy (1544)¹³⁵ and Cateau-Cambrésis (1559)¹³⁶ featured passages confirming the privilege of unrestricted access to the ocean to Francis I and his successor Henry II (1547 – 1559). Already in 1576, jurist John Dee (1527 – 1608) in England even stated matter-of-factly that natural law was the basis, on which the "British Empire" (*Brytanici Imperii*) existed, that the "British Empire" was thereby positioned outside the range of any papal edict that might have been issued, and that natural law guaranteed the expansion of English rule across the ocean.¹³⁷ And, through the British-Spanish peace treaty of 1604, King Philipp III of Spain (1598 – 1621) accepted British trade on the ocean, in territorial waters and everywhere on land, where English merchants had been engaged in trading activities in 1588.¹³⁸ The latter stipulation included the freedom of British merchants to cross the ocean and trade in America. But the treaty did not explicitly cover British penetration into Asian waters and the "South Sea" and kept the Spanish monopoly of the slave trade between Africa and America. British merchants responded quickly to the newly available possibilities and founded the society of London Merchant Adventurers already in 1606 with the goal of establishing colonial settlements on American soil. The society received a royal privilege referring to these settlements as a "colony" and mandated colonists to build a "plantation" at their "habitation". The privilege formed the legal basis for the foundation of a settlement at Jamestown.¹³⁹ Other British merchants, focusing their commercial interests on trade with South Asia, were not ready to sacrifice their plans by abidance to the British-Spanish peace treaty of 1604, as they had already in 1600 received a privilege from Queen Elizabeth I to set up an East India Company.¹⁴⁰ The Spanish administration did not perform better in preventing Dutch merchants from establishing trade relations with South and Southeast Asia. At that time, the United Netherlands were at war with the King of Spain, so that contractual obligations did not exist anyway. In 1602, the government of the United Netherlands used this opportunity to unite various local East India companies into the United East India Company (*Vereenigde Oost-Indische Compagnie*, VOC) and to issue a trading privilege for it.¹⁴¹

Like Vitoria, Gentili defined the *ius gentium* in accordance with Roman law. Like

¹³⁵ Treaty France – Roman Emperor (on behalf of Aragón/Castile), Crépy-en-Laonnais, 18 September 1544, in: Wilhelm Carl Georg Grewe, ed., *Fontes historiae juris gentium*, vol. 2 (Berlin and New York, 1992), pp. 3-18, at pp. 3-4.

¹³⁶ Treaty France – Spain, Cateau-Cambrésis, 3 April 1559, in: Jean Dumont, Baron de Carels-Croon, *Corps Universel diplomatique du droit des gens*, vol. 5, part 1 (The Hague, 1728), pp. 34-41; also in: Wilhelm Carl Georg Grewe, ed., *Fontes historiae juris gentium*, vol. 2 (Berlin and New York, 1992), pp. 19-38, at p. 21.

¹³⁷ John Dee, [*Brytanini Imperii limites*, 1576. London: British Library, Add. Ms. 59681, pp. 26-74] *Limits of the British Empire*, edited by Ken MacMillan and Jennifer Abeles (Westport, CT, and London, 2004), pp. 91-98.

¹³⁸ Treaty Great Britain (note 86), art. IX, p. 54]

¹³⁹ James I, Privilege, 10 April 1606 for the London Company of Merchant Adventurers on a planned settlement in America [http://avalon.law.yale.edu/17th_century/va01/asp].

¹⁴⁰ Elizabeth I, Charter for the English East India Company, 31 December 1600, in: Wilhelm Carl Georg Grewe, ed., *Fontes historiae juris gentium*, vol. 2 (Berlin and New York, 1992), pp. 165-170.

¹⁴¹ States General of the Netherlands, Charter for the Dutch Vereenigde Oost-Indische Compagnie, 20 March 1602, in: Wilhelm Carl Georg Grewe, ed., *Fontes historiae juris gentium*, vol. 2 (Berlin and New York, 1992), pp. 171-176; also in: Ella Gepken-Jäger, Gerard van Solinge and Levinus Timmermann, eds, *VOC 1602 – 2002. 400 Years of Company Law* (Law of Business and Finance, 6) (Deventer, 2005), pp. 23-24.

Vitoria, he quoted from the *Corpus iuris civilis*, but did so faithfully to the text, and insisted that all *gentes* used the *ius gentium*.¹⁴² He did not assume that the *ius gentium* had resulted from voluntary agreement among all *gentes*. This assumption, he contended, was neither necessary, as the *ius gentium* existed in accordance with divinely willed natural reason, nor possible, because the “innumerable” *gentes* would not be able to bring about such agreement due to the diversity of their languages and customs. Moreover, Gentili, suggested, the *ius gentium* was unwritten and customary and, in these respects, was positioned above the will of rulers.¹⁴³ Rulers, he concluded, were above state municipal law but subject to divine as well as natural law and the *ius gentium* (Princeps ... quid absolutus; nec absolutus legibus Dei, naturæ, gentium. Princeps ... supra ius, scilicet ciuile; infra ius scilicet naturale et gentium).¹⁴⁴ Hence, despite numerous controversies about topical political issues, Catholic and Protestant theorists jointly remained within the great tradition of the law of war and peace and postulated the validity of the tradition, even if they no longer tied it to the confidence in the law-enforcing capability of the universal ruler.

At the turn towards the seventeenth century, theologian Francisco Suárez (1548 – 1617) attempted a systematic survey of the debates that had taken place about the law of war and peace during the sixteenth century. For his survey, he applied a method, which the logician Pierre La Ramée (Petrus Ramus, 1515 – 1572) had proposed around the middle of the century. La Ramée had suggested that authors should describe the world as a whole or any of its parts in such a way that they divided them first in two mutually exclusive categories. As far as possible, the categories should not allow an intermediate position, so that all aspects under review should fall into either of the two categories, for example the opposition between animate beings and inanimate things. These large and hierarchically superior categories should then become subdivided into progressively smaller units, until no further divisions were logically possible.¹⁴⁵ The term “system” came into use for this ordering scheme, so that a systematic definition had to emerge from the skillful and logically consistent process of partitioning things of the world into ever smaller units and establishing a hierarchical order among these units. Early seventeenth century scholars took this hierarchical order, once it had been composed, to be inalterable, as it appeared to have resulted solely from the application of formal logic.¹⁴⁶ Suárez applied this method to the law. In the theoretical literature on basic aspects of the law available to him, he detected the tripartite division of law into *ius naturale*, *ius gentium* and *ius civile*. Within this scheme, the *ius gentium* appeared to be positioned between the *ius naturale*, derived from divine will, and the *ius civile*, resulting from human action. Suárez took this tripartite scheme to be imperfect, as it did not appear to conform to La Ramée’s pure doctrine. According to this doctrine, Suarez pointed out, law as a whole should be divided into *ius naturale* and *ius civile*, without allowing the *ius gentium* to operate as an intermediate category. At the second level of the hierarchy, Suárez assigned to the *ius naturale* norms valid either for all living beings or only for humankind, with *ius gentium* being the term for the latter.¹⁴⁷ Like sixteenth-century theorists, he took this term from Roman law.

Suárez proceeded to discuss the problem whether the divinely willed *ius naturale* was to be considered valid for all living beings. He pointed to various arguments against this perspective. One of these arguments was that human action was subject to certain restrictions, such as the prohibition of incest, which would not apply to animals. That being so, the prohibition of incest would have to be included under the *ius gentium*, but this inclusion would be totally absurd.¹⁴⁸ From this argument, Suárez drew the conclusion that the conceptual difference between *ius naturale* and *ius gentium* made sense only under the condition that both fields of law applied to humankind

¹⁴² Gentili, *De iure* (note 124), book I, chap. 1, p. 10.

¹⁴³ Ibid., book, chap. 1, pp. 10-11.

¹⁴⁴ Alberico Gentili, *Regales disputationes tres. Id est: De potestate regis absoluta. De vnione Regnorum Britanniae. De vi ciuium in regem semper iniusta*, disputation I (London, 1605), p. 17.

¹⁴⁵ Petrus Ramus, *Dialecticae libri duo* (Paris, 1572) [reprint, edited by Sebastian Lalla and Karlheinz Hülsner (Editionen zur Frühen Neuzeit, 2) (Stuttgart, 2011)].

¹⁴⁶ Bartholomaeus Keckermann, *Systema systematum* (Hanau, 1613).

¹⁴⁷ Francisco Suárez, SJ, *Ausgewählte Texte zum Völkerrecht*, book II, chap. 17, nr 4, edited by Josef Soder (Die Klassiker des Völkerrechts, 4) (Tübingen, 1965), p. 34.

¹⁴⁸ Ibid., book II, chap. 17, nr 6, pp. 36-38.

alone, and proposed to categorise *ius naturale* as divinely willed and *ius gentium* as human willed law.¹⁴⁹ He then specified three further factors separating *ius naturale* from *ius gentium*; first, the *ius gentium*, in contradistinction against the *ius naturale*, would not prohibit anything that was per se evil, rather, it would contain statutes prohibiting what was to be classed as evil; second, the divinely willed *ius naturale*, in Suárez's view, was completely unchangeable, whereas the *ius gentium* might be changed, because it resulted from human will; third, the *ius naturale*, contrary to the *ius gentium*, was principally valid for all humankind, even if it might be left unapplied due to human error and lack of faith; yet non-believers could not be forced to abide by the divinely willed *ius naturale*, but, according to Suárez, had to be led to accept it through sermons and theological disputations.¹⁵⁰ By contrast, the *ius gentium*, Suárez thought, agreed with the *ius naturale* in the respect that, unlike the *ius civile*, it was unwritten. But, he insisted, even unwritten law could result from human will (*ius gentium esse positivum humanum*).¹⁵¹ Finally, Suárez, contrary to his predecessors, differentiated between two sub-categories within the *ius gentium*; first, the law valid among all *gentes*, irrespective of the contents of its stipulations; second, the law, which states observed among themselves (*civitates vel regna intra se observant*) to regulate the relations among themselves. Suárez included into the latter sub-category the law of diplomatic envoys, trade law, and the right to war as well as the law of the making of truces and peace agreements.¹⁵² With regard to the first sub-category, he remained within the Roman legal tradition, but in introducing the second sub-category, he became one of the first theorists to define the law of relations among states as a distinct assemblage of municipal legal norms, which were mutually compatible nevertheless and valid in most states. Suárez's definition came close to that of the law among states (*ius inter gentes*), at the same time including an overarching the law of war and peace. Yet he lacked a word for this concept, with which he parted from the great tradition of the law of war and peace. He did so because the law among states, as he categorised it, did not flow from divine will, neither directly not indirectly, but exclusively from reasonable human action without the involvement of rulers as legislators. Hence, the validity of the law among states did not result from the will of some higher agent but, so to speak, as the contingent effect of the operation of natural reason and, by virtue of so being, was universal. According to Suárez, the law among states, as the result of natural reason, was binding for all humankind, including sovereigns. As he conceived it, the law among states was in need neither of purposeful acts of legislation nor of enforcement mechanisms. Yet, despite these innovations among conceptualisation, Suárez stuck to the conventions in his statements on the justice of war. With regard to these statements, he repeated Vitoria and Gentili in restricting the right to war to sovereigns (*bellum inter duos principes vel duas republicas*), positioning war as targeted against peace and solely justifying war as a sequence of acts in pursuit of the restitution of previously inflicted injustice.¹⁵³

Theories about the Establishment of Rule and the Perception of the World as an Ordered System

At the turn towards the seventeenth century, when theorists proposed the concept of the unwritten law among states, which was not derived from divine will but resulted from natural reason, they were in need of explaining, how this law could arise in view of the manifold conflictual relations

¹⁴⁹ Ibid., book II, chap. 17, nr 8, pp. 38-40.

¹⁵⁰ Francisco Suárez, SJ, 'De mediis quibus infideles possint licite ab hominibus ad fidem adduci', in: Suárez, *De bello contra insulanos* (Corpus Hispanorum de pace, 10) (Madrid, 1982), pp. 384-407.

¹⁵¹ Suárez, *Texte* (note 147), book II, chap. 19, nr 3, 6, pp. 56-58, 60-62.

¹⁵² Ibid., book II, chap. 19, nr 8, p. 64.

¹⁵³ Ibid., pp. 114, 118, 140. Suárez, *Tractatus de legibus* (1612); partly printed (book II, chap. 19, § 5) in: Cornelis van Vollenhoven, 'Grotius and Geneva. Lectures Delivered at Columbia University, July 1925', in: *Bibliotheca Visseriana dissertationum ius internationale illustrantium*, vol. 6, nr 13 (Leiden, 1926), pp. 1-81 [reprinted in: Vollenhoven, *Mr. C. van Vollenhoven's Verspreide Geschriften*, edited by Frederik Mari van Asbek, vol. 1 (Haarlem, 1934), pp. 406-460], Appendix K, p. 448: "quatenus [ius belli] fundatur in potestate quam una respublica vel monarchia suprema habet ad puniendam vel vindicandam aut reparandam injuriam sibi ab altera illatam, videtur proprie esse de jure gentium."

among governments and other types of power-holders. For efforts to solve this problem, they could draw on a contemporary movement then attracting many intellectuals. Protagonists of this movement argued that the world as a whole was a stable, hierarchically ordered system of interconnected units. In the perspective of these intellectuals, nature was itself ordered and comprised the entirety of inanimate things and animated beings, including even ruling institutions, which, by the apparent command of nature, could not be credited with the power of jeopardising the system. One of the protagonists of the movement, the Leiden historian and philologist Justus Lipsius (1547 – 1606), who built on his work on texts extant from Ancient Roman philosophers and historians, notably the younger Seneca (1 – 65 CE) and Tacitus. In the 1580s, he proposed a political theory focused on the state as a political community. He advocated his political theory through the then popular textual genre of the *Politica* as a type of academic literature, which combined practical advice with the discussion of principled institutional aspects of state and the moral responsibility of rulers. Contrary to jurists and theologians, Lipsius chose a plain language for the explication of his political theory through simple maxims. These *Politica* emerged as the standard medium of political theory in the course of the seventeenth century, and Lipsius then ranked among the most popular authors of this textual genre. The principal idea informing his political theory was that of constancy (*constantia*), to which he dedicated an entire monograph. By constancy he meant a general moral quality manifest in firmly established goals and indefatigable determination to accomplish these goals, combined with the flexibility to adapt to conditions emanating from the human environment. Specifically, Lipsius demanded constancy in this sense from sovereign rulers, whom he imagined as monarchs in the first place.¹⁵⁴ Lipsius also classed states as durable institutions which sovereigns were entitled to control, thereby defining states as lasting political communities that were not dependent on the moods or capabilities of their rulers.¹⁵⁵ Using the fourteenth-century theory of the government covenant, Lipsius traced the origin of these political communities back to a voluntary, yet irrevocable contract to the end of establishing government.¹⁵⁶ However, for Lipsius as a theorist working in the late sixteenth-century Netherlands, unlike earlier theorists, the theory of the government covenant was not the subject of mere philosophical speculation. Instead, Lipsius could rely on the established practice of the conclusion of actual contracts, among them the early sixteenth-century agreement between the Duke and the Estates of Württemberg in the Holy Roman Empire.¹⁵⁷ In Lipsius's own time, the leaders of the then ongoing Dutch rebellion against Spanish rule referred to the Great Privilege, through which Mary Duchess of Burgundy, daughter of Duke Charles the Bold (1467 – 1477) and wife of the Habsburg heir Maximilian I, had guaranteed rights of freedom to Burgundian aristocrats in 1477.¹⁵⁸ During the second half of the sixteenth century, the Dutch rebels claimed that the King of Spain had unjustly revoked these freedom privileges. They argued that the establishment of the autonomy of the Dutch Estates as “States General” by way of concluding a new government contract was the legal act of restoring the ancient freedom privileges. In the perspective of the Dutch rebels, then, the newly concluded government contract was replacing the existing, seemingly unjust rule.¹⁵⁹ That the Dutch rebels opted for a republican form of government state against existing

¹⁵⁴ Justus Lipsius, *De constantia libri duo* (Antwerp, 1584) [English version, edited by John Stradling (London, 1595); new edn of the English version, edited by Rudolf Kirk and Clayton Morris Hall (New Brunswick, 1939), pp. 79, 98; reprint of the edn by Stradling, edited by John Sellars (Exeter, 2006)].

¹⁵⁵ Justus Lipsius, *Politiorum sive de doctrina civilis libri sex* (Leiden, 1589) [newly edited by Jan Waszink (Assen, 2004), p. 540; reprint of the edn of 1704, edited by Wolfgang Weber (Hildesheim, 1998)].

¹⁵⁶ *Ibid.*, pp. 95-96.

¹⁵⁷ Treaty between Duke Ulrich and the Estates of Württemberg, Tübingen, 8 July 1514, edited by Götz Adriani and Andreas Schmauder, ‘Neu-Transkription der gedruckten Urkunde Herzog Ulrichs vom 23. April 1515 über den Vertrag vom 8. Juli 1514 zu Tübingen’, in: *1514. Macht – Gewalt – Freiheit. Der Vertrag zu Tübingen in Zeiten des Umbruchs* (Ostfildern, 2014), pp. 194-199 [the unpaginated facsimile edn of the original print has been added].

¹⁵⁸ Mary of Burgundy [Marie van Bourgondië], ‘Groot Privilege aan de Staten Generaal’ [14 March 1477], in: Anne Siberdinus de Blécourt and Nicolaas Japikse, eds, *Klein plakkaatboek van Nederland*, nr II (Groningen and The Hague, 1919), pp. 3-7.

¹⁵⁹ States General, Resolution (note 80), pp. 216-228. Pacification of Ghent [8 November 1576], in: Kossman[n], *Texts* (note 80), pp. 126-132. François Vranck, ‘Short Exposition of the Right Exercises from All Old Times by the Knighthood, Nobles and Towns of Holland and Westvriesland for the Maintenance of the Liberties, Rights, Privileges and Laudable Customs of the Country [1587]’, in: Martin van Gelderen, ed., *The Dutch Revolt*

monarchical rule brought Lipsius as a professed monarchist into conflict not only with his own views but also with the leaders of the rebellion. However, the political decisions of the rebels did not affect Lipsius's basic conviction that states were political communities that resulted not from divine will but from human activity and were stable institutions nevertheless. In so far, he indirectly endorsed the arguments, which the rebel leaders levelled against King Philipp II of Spain.¹⁶⁰ Due to their wide circulation, Lipsius's *Politica* boosted the popularity of the theory of the government covenant.¹⁶¹ Moreover, Lipsius integrated Bodin's theory of sovereignty into the theory of the government covenant and concluded that rulers as sovereigns could be subject neither to the law of other states nor to alterable legal norms above states, no matter of what origin they might be. Yet, Lipsius did acknowledge the empirical fact that relations among states, even in war, were under the rule of unset, that is, natural law.

At this point, Lipsius's political theory of constancy converged with the theory of relations among states. Thus, he gave voice to the principle that all sovereigns could start wars at their own discretion, whereas they could only terminate wars through peace agreements with their enemies. Like contemporary theorists of the law of war and peace, Lipsius continued to apply the Augustinian paradigmatic sequence of peace, war and again peace. As he took the existence of this paradigm for granted, he obliged sovereigns to limit the tactical means deployed in wars to levels that would not principally obstruct options of the restoration of peace among warring parties.¹⁶² Lipsius thus argued an ethics of self-constraint, which he, like Suárez, derived from the commands of natural reason. From his ethics of self-constraint, he derived the further request that sovereigns should voluntarily subject themselves to the law among states, even though no one could force them to do so. Sooner or later, Lipsius expected, sovereigns would realise that abiding by the law among states was in their own well-understood self-interest. Hence, Lipsius followed the great tradition of the law of war and peace, according to which this law existed, even though it was not enforceable through sovereign acts. But Lipsius conceived of the law in war as a feature of the world, which was ordered by nature. In his political theory, the law of war and peace as a whole was a set of legal norms that were self-enforcing by natural reason and the ethics of self-constraint. The binding force of the law of war and peace as part of the wider law among states, according to Lipsius, resulted from the insight, informed by natural reason, that the world existed in a durable order and that constancy should shape human action. Contemporary theorists, such as the Gdansk schoolmaster Bartholomäus Keckermann (c. 1572 – 1608), applied La Ramée's methodology in analyses of the world as a naturally willed system of hierarchically ordered and lasting systems, into which he subsumed political communities.¹⁶³

(Cambridge, 1993), pp. 227-238. Jacques van Wesenbeke, *De bewijsinghe van de ontschult van mijn here Philips baenherre van Montmorency, graaf van Hoorne* (s.l., 1568). William the Silent, Stadhouder for the Netherlands, 'Apology or Defence [1581]', in: Kossman[n], *Texts* (note 80), pp. 211-216.

¹⁶⁰ For a study see: Marianne Elizabeth Henriette Nicolette Mout, 'In het schip. Justus Lipsius en de Nederlandse opstand tot 1591', in: Mout and Simon Groenveld, eds, *Bestuurders en geleerden. Opstellen over onderwerpen uit de Nederlandse geschiedenis van de zestiende, zeventiende en achttiende eeuw, aangeboden aan Prof. Dr Jan Juliaan Woltjer bij zijn afscheid als hooghelaar van de Rijksuniversiteit te Leiden* (Amsterdam, 1985), pp. 55-64.

¹⁶¹ For other sixteenth- and early seventeenth-century versions of the theory see: Juan de Mariana, *De rege et regis institutione libri III*, book I, chap. 1 (Toledo, 1599), pp. 21-22 [reprint (Aalen, 1969)]. Francisco Suárez, SJ, *De legibus (III 1-16)*, book III, chap. 2, nr 4-6, edited by Luciano Pereña Vicente and Vidal Abril (Corpus Hispanorum de pace, 15) (Madrid, 1975), pp. 24-27. Richard Hooker, *Of the Lawes of Ecclesiasticall Politie. Eyght Bookes* (London, 1594), pp. 70-73 [reprint (Amsterdam and New York, 1971)]. Johannes Althusius [praes.], Hugo Pelletarius [resp.], *Disputatio politica de regno recte instituendo et administrando* (Herborn, 1602), theses 6-56, pp. 3-7. Althusius, *Politica*, book I, chap. 2, book I, chap. 7, book IX, chap. 12, book XIX, chap. 12, third edn (Herborn, 1614) [first published (Herborn, 1603); newly edited by Carl Joachim Friedrich (Cambridge, 1932), pp. 15, 16, 90, 161 [reprint of the original edn (Aalen, 1981); reprint of the edn by Friedrich (New York, 1979)].

¹⁶² Lipsius, *Politicorum* (note 155), p. 540.

¹⁶³ Keckermann, *Systema* (note 146).

The Ordered World and War

The perception of the world as a well-ordered system of systems did not remain confined to political theory but also impacted on the theory and practice of war early in the sixteenth century. In 1521, Niccolò Machiavelli (1469 – 1527), between 1506 and 1512 in charge of the defense of his native city of Florence, published a printed version of ordering tables, which, he thought, would allow the speedy composition and maneuvering of rank-and-file contingents of recruited militiamen.¹⁶⁴ These contingents were to integrate into one single tactical formation bearers of various types of weapons, mainly pikemen handling long offensive weapons and defensive shield-bearers, under the joint command of the leader of the contingent. Determining what the best proportion of the numbers of the various weapons bearers ought to be and how the militiamen in the contingent could be moved, appeared to require elaborate mathematical calculations. Machiavelli hoped that through these calculations, commanders could ensure the continuation of the order of the contingents even under the constraints of battle and wars could then be conducted according to strategic plans.¹⁶⁵

Machiavelli based the conception of his ordering scheme on tactical formations that Swiss warriors had practiced in their three victorious battles against Duke Charles the Bold of Burgundy at Grandson (1476), Murten (1477) and Nancy (1477). Swiss warriors had fought these battles in large contingents mainly of pikemen and few bearers of portable firearms and, retaining their combat order in the course of the battles, had overwhelmed Charles's highly mobile fighting force supported by an arsenal of highly sophisticated technical weapons. Machiavelli's ordering scheme became a standard feature of sixteenth-century military literature¹⁶⁶ and promoted the careful strategic planning not merely of battles, but of entire wars. Subsequent theorists produced comprehensive calculations for large contingents of warriors, with one treatise presenting ordering schemes for contingents of 70.000 men.¹⁶⁷ Already Machiavelli himself supported his demand that battles and even wars should become calculable, with the assertion that armies in the Roman Imperium of Antiquity had been successful due to the constant practice of military drill and the strict enforcement of discipline.¹⁶⁸ In numerous printed works, historians and theorists of war praised the allegedly insurmountable strength of Ancient Roman armies and claimed that the maintenance of the order of contingents as tactical formations, together with discipline¹⁶⁹ as the regulated action of every single warrior, ought to be recognised as core factors of planned and ordered wars and, if consistently applied, the prime condition of victory.¹⁷⁰ Justus Lipsius as well produced a two-volume treatise on military theory, praising the order and discipline of Ancient Roman armies.¹⁷¹ Lipsius belonged to the educators of Prince Maurice of Orange (1567 – 1625), who served as the military commander of the Dutch rebels from 1584 to his death. Maurice inherited the idea of order, while applying it in a novel fashion. Against the Spanish army, which practiced the conventional approach of leading large integrated contingents into battle, Maurice positioned small mobile units, which he arrayed like chessboard figures. These small units could advance forcefully,

¹⁶⁴ Niccolò Machiavelli, *Libro dell'Arte della Guerra* (Florence, 1521) [new edn in: (Machiavelli, Opere, vol. 2) (Verona, 1979)].

¹⁶⁵ Rank and Files for the Militia, in: Machiavelli, *Libro* (note 164), Plate II.

¹⁶⁶ John Rigby Hale, 'The Soldier in German Graphic Art of the Renaissance', in: *Journal of Interdisciplinary History* 17 (1986), pp. 85-114 [reprinted in: Robert I. Rotberg and Theodore K. Rabb, eds, *Art and History. Images and Their Meaning* (Cambridge, 1988), pp. 85-114].

¹⁶⁷ Hans Lhor, *Kriegs-Feldbüchlein* (Dillingen, 1569) [first published (Dillingen, 1565)].

¹⁶⁸ Machiavelli, *Libro* (note 165, edn of 1979), pp. 51-52.

¹⁶⁹ Balthasar Ayala, *De iure et officiis bellicis et disciplina militari libri tres* (Antwerp, 1597), pp. 161-167 [further edn (Louvain, 1648); reprint (Washington, 1912)]. Giorgio Basta, *Discorso del dovere de Capitane Generale* (Milan, 1603). Martin de Eguiluz, *Milicia. Discurso y regla militar* (Antwerp, 1595) [first published (Madrid, 1592)]. Bernardino de Escalante, *Dialogo del arte militar* (Brussels, 1595). Barnabe Rich, *Allarme to England* (London, 1578), fol. G^v. Johannes Antonius Valtrini, *De re militari veterum Romanorum libri VII* (Cologne, 1597), pp. 8-17.

¹⁷⁰ Pietrino Belli, *De re militari et bello tractatus* (Venice, 1563) [reprint (Oxford, 1936)]. Francesco Patrizi, *De paralleli militari*, 2 vols (Rome, 1594-1595), pp. 152 et al.

¹⁷¹ Justus Lipsius, *De militia Romana libri quinque* (Antwerp, 1595) [reprint of the edn. Antwerp, 1602, edited by Wolfgang Weber (Hildesheim, 2002), pp. 285-291].

but they could also turn and move in various directions on the battle field in attempts to jeopardise the order of the enemy. Maurice employed these tactics to overcome the Spanish contingents during the Battle of Nieuwpoort on 2 July 1600. The outcome of this battle appeared to confirm the doctrine that the maintenance of order in battle was the core condition of victory.¹⁷²

From the late fifteenth century, the same effort to preserve order in war also informed the practice of surrounding entire towns and cities with spacious geometrically shaped enceintes of stone, fitted with mortar. These fortifications were primarily built against heavy artillery, but beyond these tactical considerations also visualised the intention of constructing buildings in accordance with geometrical patterns, once again following Ancient Roman precedent. Roman models thus not only came to be used in civilian but also in military architecture.¹⁷³ Henceforth, a town or a city ranked as well protected, wherever and whenever it was possible to lay around it a geometrically shaped fortification. Maurice of Orange, for one, entrusted to his fortification architect Simon Stevin (1548/9 – 1620) that he was spending sleepless nights, when the landscape would not permit him to design a fortress according to geometrical patterns. The demands of aesthetics dictated to Maurice the needs of military planning.¹⁷⁴

Maintaining order and keeping discipline were also the main goals of setting and enforcing the law in war, which sovereigns, their appointed commanders and field marshals sought to accomplish through articles of war. Current since the twelfth century, articles of war became a flourishing genre of legal texts, complementing the theoretical literature from the fifteenth century. Through both textual genres, authors sought to regulate wars and promote abidance by the law in war.¹⁷⁵ Following the tradition, warriors were obliged to swear that they would respect the articles of war. During the sixteenth century, articles of war and theoretical war literature became combined into voluminous war manuals, such as those written by Duke Albrecht of Brandenburg (1525 – 1568)¹⁷⁶ or popular textbook author Lienhart Fronsperger (c. 1520 – 1575).¹⁷⁷ Efforts to subject the conduct of war to legal norms enhanced the conceptual distinction between combatants and non-combatants. The latter ought to be protected against combatants, as long as they remained peaceful and did not take up weapons. Infringements against articles of war could entail severe punishments, often no less brutal than the crime they were intended to sanction.

Obviously, these norms of the law in war could prevent neither gross excesses of violence nor attacks on non-combatants, such as the notorious Sack of Rome of 1527. At that time, marauding warriors in service of Emperor Charles V, who had defeated King Francis I of France two years before, at their own discretion, marched to Rome to plunder the treasures of the city. They even took Pope Clement VII prisoner. It took several months, before a hastily assembled relief corps could end the regime of terror of the soldatesca.¹⁷⁸ Nevertheless, the collections of legal norms of the law in war as well as the treatises on military theory should not be downgraded to mere propaganda. They did disseminate the image of war as an ordered and planned sequence of events.

¹⁷² Battle of Nieuwpoort, 2 July 1600. Print. Amsterdam, Rijksmuseum, Inv.-Nr RP-P-OB-77.518.

¹⁷³ Leon Battista Alberti, *De re aedificatoria* (Florence, 1485) [reprint, edited by Hans Karl Lücke (Veröffentlichungen des Zentralinstituts für Kunstgeschichte in München, 6) (Munich, 1975)]. Francesco di Giorgio Martini, *Trattati di architettura, ingegneria e arte militare* [written 1482 x 1495], 2 vols (Milan, 196).

¹⁷⁴ Simon Stevin, *Materiae politicae. Burgherlicke Stoffen, vervanghende Ghedachtenissen der Oeffeninghen des Doormachtigsten Prince Maurits van Orangie* (Leiden, 1660), p. 16.

¹⁷⁵ Maximilian I, Roman Emperor, 'Articuls-Brieff vom Jahr 1508', edited by Eugen von Frauenholz, *Das Heerwesen in der Zeit des freien Söldnertums*, part II: Das Heerwesen des Reiches in der Landsknechtszeit (Frauenholz, Entwicklungsgeschichte des deutschen Heerwesens, vol. 2) (Munich, 1937), pp. 182-183. Michael Ott von Echterdingen, 'Kriegsbuch', partly edited by August Jegel, 'Ein früher Vorläufer des Lazarus Schwendi. Ideen des kaiserlichen Artilleriegenerals Michel Otts von Echterdingen zur Reichs- und Adelsreform (1526)', in: *Archiv für Reformationsgeschichte* 40 (1973), pp. 121-171. Philipp of Cleves, *Borgundische Kriegsordnung* (Lich, 1559). John Smythe, *Instructions, Observations and Orders Mylitarie* (London, 1595). Reinhard zu Solms, *Kriegsbuch* (Lich, 1559).

¹⁷⁶ Albrecht Duke of Brandenburg, *Kriegsbuch* [1522]. Ms. Berlin: Staatsbibliothek zu Berlin, Ms. Boruss. Fol. 441.

¹⁷⁷ Lienhart Fronsperger, *Kriegßbuch* (Frankfurt, 1573).

¹⁷⁸ Georg von Frundsberg, 'Zug nach Rom [1527]', in: *Archiv für Geographie, Historie, Staats- und Kriegskunst* 3 (1812), pp. 425-431, 436-440, 445-449, 453-456. Hans Schulz, *Der Sacco di Roma* (Hallesche Abhandlungen zur Neueren Geschichte, 32) (Halle, 1894).

At the turn towards the seventeenth century, the market for writings on military theory expanded exponentially, as ever more rulers and high-ranking military commanders turned into readers of and writers on military matters, the printed book thus becoming the medium of debate over things military. The popularity of printed military literature at the turn towards the seventeenth century reflected the intensified debate about the most appropriate way of regulating war. Members of the House of Orange in the Netherlands and their relatives and alliance partners within the Holy Roman Empire and elsewhere in Europe prominently participated in this debate.¹⁷⁹ Theorists in service of or influenced by the House of Orange advocated the proposition that wars could become plannable through the enforcement of order and discipline through the regular training of warriors, whom they recruited as militiamen.¹⁸⁰

Commanders received instruction to read specialised military literature. German relatives of the House of Orange together with the King of France and even military entrepreneurs such as Albrecht von Wallenstein (1583 – 1634) established military academies at Siegen in 1613,¹⁸¹ at Metz in 1610¹⁸² and at Gitschin in 1624,¹⁸³ in order to promote not only the general education of commanders in mathematics, classical languages, law and philosophy but also the training in theoretical aspects of strategy and tactics. Rulers thus professionalised the military through the medium of the book, even though the seventeenth-century military academies closed after only a few years in operation.

The Ordered World and the Regulation of Peace

The law of peace in conjunction with the practice of diplomacy displayed even more

¹⁷⁹ Robert Baret, *The Theoricke and Practicke of Moderne Warres* (London, 1598). Humphrey Barwick, *A Breefe Discourse Concerning the Force and Effect of All Manuall Weapons of Fire and the Disability of the Long Bowe or Archery* (London, 1594). Adam van Breen, *De nassauische wapen-handelinge van schilt, spies, parrier ende targe* (The Hague, 1618). Wilhelm Dilich, *Kriegsbuch* (Kassel, 1607). Jacob de Gheyn, *Wapenhandelinge van roers, musketen ende spiessen* (The Hague, 1607) [reprint, edited by Johannes Bas Kist (Lochem, 1971); English versions (The Hague, 1607); (The Hague, 1616)]. Pierre Isselbourg, *Künstliche Waffenhandlung der Musqueten und Piquen oder langen Spiessen* (Nuremberg, 1620). John VII, Earl of Nassau-Siegen, *Die Heeresreform der Oranier. Das Kriegsbuch des Grafen Johann von Nassau-Siegen*, edited by Werner Hahlweg (Veröffentlichungen der Historischen Kommission für Nassau, 20) (Wiesbaden, 1973). Rich, *Allarme* (note 169). Rich, *A Path-Way to Military Practise* (London, 1587) [newly edited (London, 1846)]. *Scola militaris exercitationis* (Cologne, 1619). John Smythe, *Certain Discourses Concerning the Forming and Effects of Divers Sorts of Weapons* (London, 1590) [newly edited by John Rigby Hale (Ithaca, 1964)]. Smythe, *Instructions* (note 175). Thomas Styward, *Pathwaie to Martial Discipline* (London, 1581). Matthew Sutcliffe, *The Practice, Proceedings and Lawes of Armes* (London, 1593). Johann Jakobi von Wallhausen, *Alphabetum pro tyrone pedestri* (Frankfurt, 1615). Wallhausen, *Kriegskunst zu Fuß* (Frankfurt, 1615). Wallhausen, *Manuale militare* (Frankfurt, 1616). Wallhausen, *Programma scholae militaris* (Frankfurt, 1616). Roger Williams, *A Brief Discourse of Warre* (London, 1590) [newly edited by John X. Evans, in: Williams, *The Works* (Oxford, 1972), pp. 3-51].

¹⁸⁰ Markus zum Lamm, Trillerej [water colours, Palatinate, c. 1600]. Ms. Darmstadt: Hessische Landes- und Hochschulbibliothek, Thesaurus picturarum V, fol. 81^r-83^r [printed in: Frieder Hepp, *Religion und Herrschaft in der Kurpfalz um 1600. Aus der Sicht des Heidelberger Kirchenrats Dr. Marcus zum Lamm (1544 – 1606)* (Buchreihe der Stadt Heidelberg, 4) (Heidelberg, 1993), Fig. 50; Eduard Otto, *Zur Geschichte der Theorie der allgemeinen Wehrpflicht in Deutschland* (Sammlung allgemeinverständlicher wissenschaftlicher Vorträge. N. F., Bd 15) (Hamburg, 1900), p. 24]. John VII, Earl of Nassau-Siegen, *Die Heeresreform der Oranier. Das Kriegsbuch des Grafen Johann von Nassau-Siegen*, edited by Werner Hahlweg (Veröffentlichungen der Historischen Kommission für Nassau, 20) (Wiesbaden, 1973), p. 588. Johann Jakobi von Wallhausen, *Kriegskunst zu Fuß* (Frankfurt, 1615), pp. 35 et seq.

¹⁸¹ Ludwig Plathner, *Graf Johann von Nassau und die erste Kriegsschule*. Ph. D. Thesis (University of Berlin, 1913). Jan Willem Wijn, *Het Krijgswezen in den tijd van Prins Maurits* (Utrecht, 1934), pp. 77-80.

¹⁸² André Corvisier, *La France de Louis XIV. 1643 – 1714* (Paris, 1979), pp. 105-109 [second edn (Paris, 1981); fourth edn (Paris, 1994)]. Corvisier, *Louvois* (Paris, 1983), pp. 337-341 [new edn (Paris, 1998)].

¹⁸³ Friedrich Emanuel von Hurter, *Wallenstein's vier letzte Lebensjahre* (Vienna, 1862), pp. 322-324. Bruno Mahler, *Die Leibesübungen in den Ritterakademien*. Ph. D. Thesis, typescript (University of Erlangen, 1921) [printed in: *Zeitschrift für Geschichte der Erziehung und des Unterrichts* 8/9 (1918/19), pp. 170-219, at pp. 176, 189].

straightforwardly efforts towards the preservation of order. From the beginning of the sixteenth century, several intellectuals proposed projects of constituting general peace through a multilateral treaty under the law among states. Carrying on the tradition of the fifteenth-century Humanist *Complaints of Peace* (*Querelae Pacis*) by Andrea Biglia of 1423/24¹⁸⁴ and Sebastian Brant (1457/8 – 1521) of 1499,¹⁸⁵ the then Rotterdam based scholar Desiderius Erasmus (1466 – 1536), in 1517, composed yet another plan of a future general peace. He wrote this plan for Charles I, who was just in the process of taking up his office as King of Aragón, at the request from Charles's Burgundian chancellor. ¹⁸⁶ Like fifteenth-century critics of warfare, Erasmus commented harshly on contemporary military practice, which he chastised as excessively violent and for which he could find no justification. Erasmus concluded his *Complaint* with the demand that sovereigns should enter into a treaty about the general peace, not ending a specific war with no more than a fragile peace agreement but abolishing war once and forever. In submitting his demand to Charles I, Erasmus drew on the treaty, which the Republic of Venice had made with the so-called Holy League between Ferrara, Milan, Naples and the Vatican on 7 August 1484 on the establishment of a general peace as the foundation for a good life.¹⁸⁷ Erasmus combined his demand for the general peace with the request that sovereigns should henceforth oblige themselves to the settlement of their disputes through arbitration rather than through war. Contrary to George of Podebrad's similar proposal, Erasmus's *Complaint* had no connection with plans for a Crusade.

Charles I/V as well as his sometime friends King Henry VIII of England and King Francis I of France took up Erasmus's proposal and indeed signed a general peace treaty in London on 2 October 1518. The treaty did not end a war and served the sole purpose of abolishing war as such. Charles's grandfather Maximilian I as Emperor and the Pope acceded to the treaty.¹⁸⁸ Although the treaty did not result in changes of practical politics among the signatory parties, it remained an issue in diplomatic negotiations, in the course of which the parties mutually accused one another of having acted in breach of the agreement.¹⁸⁹ It was not until the victory of Charles's army over Francis I at Pavia in 1525 that the treaty vanished from diplomatic agenda. Thus, while the treaty did not usher in a general peace policy, it did put on record two principal peace perceptions, which the signatories shared. In the first place, they agreed on the expectation that general peace was possible as the object of legally binding agreements among sovereigns, seen as capable of subjecting themselves to some kind of higher order. Second, this order seemed to emerge from human regulatory action. Peace continued to appear as the divinely willed natural condition of the world, but human activity could lay the legal foundations, on which peace might no longer be broken and thereby exist in "perpetuity". Hence, the signatories understood their general peace treaty of 1518 as the starting point of a process, at the end of which the "perpetual" peace of the world at large would come about through human legislative action. The treaty thus anticipated in legal terms Justus Lipsius's later ethics of self-constraint. Subsequently, intellectuals expanded the logic of the treaty of

¹⁸⁴ Andrea Biglia, *Querellae pacis* [c. 1423-1424]. Ms. Milan: Biblioteca Ambrosiana, Cod. Ambr. N 280, sup.

¹⁸⁵ Sebastian Brant, *Klage des Friedens*. Single Sheet [1499], edited by John Rigby Hale, *Artists and Warfare in the Renaissance* (New Haven, 1991), pp. 208-209, Fig. 261.

¹⁸⁶ Desiderius Erasmus, 'Querela Pacis', in: Erasmus, *Opera omnia*, vol. 4 (Leiden, 1703), col. 625-642 [reprint (Hildesheim, 1962)].

¹⁸⁷ Treaty Ferrara/Florence/Milan/Modena/Naples/Vatican – Venice, 7 August 1484 [Holy League of Chiaveghi], in: Jean Dumont, Baron de Carels-Croon, *Corps Universel diplomatique du droit des gens*, vol. 3, part 2 (The Hague, 1726), pp. 128-135; also in: Jörg Fisch, *Krieg und Frieden im Friedensvertrag* (Sprache und Geschichte, 3) (Stuttgart, 1979), pp. 674-675.

¹⁸⁸ Treaty England/France/Aragón/Castile – Roman Emperor/Pope et al., London, 2 October 1518 (general peace treaty), in: Thomas Rymer, *Foedera, conventiones, literae et cuiuscunque generis acta publica inter reges Angliae et alios quosvis imperatores, reges, pontifices, principes vel communitates*, vol. 13 (London, 1714), pp. 624-649; also in: Jean Dumont, Baron von Carels-Cron, *Corps diplomatique universel*, vol. 4, part 1 (The Hague, 1726), pp. 269-275. For a study see: Garrett Mattingly, 'An Early Non-Aggression Pact', in: *Journal of Modern History* 10 (1938), pp. 1-30.

¹⁸⁹ Charles V, Roman Emperor, '[Letter to Gérard de Plaine, Seigneur de la Roche, Imperial Ambassador to the Holy See, 14 May 1524]', in: G. A. Bergenroth, ed., *Calendar of Letters, Despatches and State Papers Relating to the Negotiations between England and Spain. Preserved in the Archives at Simancas, Vienna, Brussels and Elsewhere*, vol. 2, nr 650 (London, 1862), pp. 629-638.

1518, retrieved from Ancient Roman law the doctrine that the Latin word *pax* for peace was derived from the root *pactio* for treaty, and postulated that peace could and even had to emerge from purposeful human action. In agreement with the Augustinian peace theology, they regarded the perpetuity of peace as the given condition of human existence and, in addition, urged sovereigns to make sure that they concluded treaties with the genuine intention to maintain peace rather than seeking to prevent someone from unreasonably breaking peace.¹⁹⁰

When he took office as King of Aragón and as Roman Emperor, Charles I/V identified himself as the bringer of peace, but, upon his abdication in 1555 had to admit that he had not been able to fulfill the task to which he had committed himself. On the occasion of an assembly of Burgundian Estate representatives at Brussels in October 1555, where he designated his son Philipp as successor as King of Spain and ruler of the Netherlands, he complained under tears that his enemies had not allowed him to execute his task as the bringer of peace.¹⁹¹ In the main, this complaint was sheer propaganda, yet its effects rested on the established expectation that the Emperor should succeed as an apostle of peace. In so far, Charles's complaint was tantamount to the admission of failure with regard to his core duty as Emperor, even though he tried to blame his enemies for the failure.

The general peace agreements of 1484 and 1518 followed the "composite" procedure of treaty-making. Hence, professional diplomats negotiated them before submitting them to approval by sovereigns or their chancelleries. In this respect, the treaties in themselves gave testimony of the increasing impact professional emissaries were gaining on the relations among states.¹⁹² By the sixteenth century, European diplomats habitually performed their duties within standing missions, which were interconnecting sovereigns into mutual relations within an increasingly tight network. The range of the network signalled the extension of the system, within which relations among states were usually being maintained. During the sixteenth century, the system excluded Russia and Ethiopia, even though special missions were exchanged on occasions.¹⁹³ Yet, the system included areas under the control of the Ottoman Turkish Sultan, albeit against opposition on the Christian side,¹⁹⁴ as well as Muslim sovereigns under Ottoman suzerainty in North Africa.¹⁹⁵ The inclusion of Muslim sovereigns into the network of European diplomats is documented in various agreements, among them the treaty of 4 August 1535 between Charles I/V and "King" (Emir) Muley Hassan of Tunis¹⁹⁶ and the treaties between the ruler of Hormuz and the King of Portugal of September 1507 and 15 July 1523.¹⁹⁷ Moreover, King Francis I of France met envoys from Tunis in 1533 and agreed on the draft of an alliance agreement with Sultan Suleiman

¹⁹⁰ Pierre [Petrus] Godolin [Goudelin, Gudelinus], *De iure pacis commentaries*, chap. I, III (Louvain, 1620), pp. 15, 22-23 [second edn (Louvain, 1641); third edn (Leiden, 1648); fourth edn (Cologne, 1663); further edns (Frankfurt, 1668; 1669)].

¹⁹¹ Charles V, Roman Emperor, '[Address to the States General of the Netherlands, Brussels, 25 October 1555]', edited by William Stirling, *The Cloister Life of the Emperor Charles the Fifth* (London, 1853), pp. 7-8.

¹⁹² Jean Hotman, Sieur de Villiers Saint-Paul, *The Ambassador* (London, 1603), fol. 1^r [French version: *De la charge et dignité de l'ambassadeur* (Paris, 1604); further edns (London, 1609); (Düsseldorf, 1613)].

¹⁹³ Michail A. Bojcov, 'Maximilian I. und sein Hof 1518. Von den russischen Gesandten her (nicht?) gesehen', in: Heinz Noflatscher, Michael A. Chisholm and Bertrand Schnerb, eds, *Maximilian I. (1459 – 1519). Wahrnehmung, Übersetzungen, Gender* (Innsbrucker Historische Studien, 27) (Innsbruck, Vienna and Bolzano, 2012), pp. 45-69.

¹⁹⁴ Ignace de Testa, ed., *Recueil de traités de la Porte Ottomane*, vol. 1 (Paris, 1864), pp. 15-21. Álvares, *Prestre* (note 69), vol. 2, pp. 376-377. gave a comprehensive account of the mission sent by the King of Portugal to the King of Kings of Ethiopia from 1520 to 1526; specifically, he noted that the Ethiopian side had not had the habit of exchanging written messages prior to the arrival of the Portuguese mission and that they drew on biblical models to draft their formal responses to the Portuguese request for a crusading alliance.

¹⁹⁵ Jörg Manfred Mössner, *Die Völkerrechtspersönlichkeit und die Völkerrechtspraxis der Barbareskenstaaten (Algier, Tripolis, Tunis, 1518 – 1830)* (Neue Kölner rechtswissenschaftliche Abhandlungen, 58) (Berlin, 1968).

¹⁹⁶ Muley Hassan, *Lettere inedite a Ferrante Gonzaga, vicere di sicilia (1537 – 1547)*, edited by Federico Odorici and Michele Amari (Modena, 1865).

¹⁹⁷ Treaty Hormuz – Portugal, September 1507, in: Julio Firmino Judice Baker, ed., *Collecção de tratados e concertos de pazes que o Estado de India Portuguesa fez com os Reis e Senhores, com quem teve relações nas partes da Asia e Africa Oriental*, vol. 1 (London, 1881), pp. 1-2. Treaty Hormuz – Portugal, 15 July 1523, in: *ibid.*, pp. 40-45.

the Magnificent in February 1535. The latter treaty obliged both sides consider “the wellbeing and repose brought through peace” against “the molestations resulting from war” and to give preference to the former over the latter. In accordance with the Muslim tradition of the law of war and peace, the treaty was to be valid only for the lifetime of the signatory rulers. It stipulated the accreditation of the standing French mission at the Sublime Porte, the freedom of trade and the freedom of religious practice for French subjects and their immunity against *cadi* jurisdiction, that is, the concession of consular jurisdiction to the French side in areas under the control of the Sultan.¹⁹⁸ Both sides regarded the draft of the treaty as valid, despite its lack of ratification. Envoys shuttled between Istanbul and Paris. In 1547, Sultan Suleiman even proposed a peace agreement to King Ferdinand I and suggested that the King’s brother, Emperor Charles V, should be included in the arrangement.¹⁹⁹ The Republic of Venice followed French precedent and entered into treaty obligations with the Sultan regarding the safety of Venetian ships and their crews.²⁰⁰ Likewise, the ratified French-Turkish treaty of 20 May 1604 provided for the inviolability of French diplomatic envoys and guaranteed the safety of French ships as well as their crews.²⁰¹ Further agreements stipulating the Turkish concession of consular jurisdiction followed during the late sixteenth and the early seventeenth century.²⁰² In recognition of this practice of the making of agreements among Muslim and Christian rulers, theologian Seraphim de Freitas, among other scholars, restated the position early in the seventeenth century that every state could enter into agreements with every other state, where it might be. Hence, treaties ought to be considered valid across the boundaries of religion and ought to be implemented, with the sole exception that legal entitlements necessitated their abrogation. Freitas classed the lack of fulfillment of treaty obligations as the cause of a just war.²⁰³

Within the systemic network of inter-state relations, diplomatic envoys moved in an arena that was regulated by legal norms, albeit insufficiently. One of these norms continued to constitute the capability of sending and receiving diplomatic missions as the exclusive privilege of sovereigns, if diplomats were to be commissioned to enter into “public” negotiations. Diplomatic envoys were to be authorised to speak on behalf of the sending sovereigns, including the authority to submit a declaration of war.²⁰⁴ As transmitters of bad news they continued to be placed under special protection of their own integrity as well as of their property, as already in Ancient Near

¹⁹⁸ Treaty France – Ottoman Empire, February 1535 [= 25 Chaban 941], in: Wilhelm Carl Georg Grewe, ed., *Fontes historiae juris gentium*, vol. 2 (Berlin and New York, 1992), pp. 71-80; also in: Gabriel Noradounghian, ed., *Recueil d’actes internationaux de l’Empire Ottoman*, vol. 1 (Paris, 1897), pp. 83-87 [reprint (Nendeln, 1978)].

¹⁹⁹ Petra Kruse, ed., *Kaiser Karl V. (1500 – 1558)* (Bonn, 2000), pp. 209-210. Ernst Dieter Petritsch, ed., *Regesten der osmanischen Dokumente im Österreichischen Staatsarchiv* (Mitteilungen des Österreichischen Staatsarchivs, Ergänzungsband 10, part 1) (Vienna, 1991), p. 52. Anton Kornelius Schaendlinger, *Das Schreiben Süleymans des Prächtigen an Karl V., Ferdinand I. und Maximilian II. aus dem Haus-, Hof- und Staatsarchiv Wien* (Denkschriften der Österreichischen Akademie der Wissenschaften, Philos.-Hist. Kl., 163) (Vienna, 1983).

²⁰⁰ Treaty Ottoman Empire – Republic of Venice, 7 March 1573, in: Jean Dumont, Baron von Careels-Cron, *Corps diplomatique universel*, vol. 5, part 1 (The Hague, 1726), pp. 218-219. Treaty Ottoman Empire – Republic of Venice, 10 August 1579, in: Jean Dumont, Baron von Careels-Cron, *Corps diplomatique universel*, vol. 5, part 1 (The Hague, 1728), pp. 244-247.

²⁰¹ Treaty France – Ottoman Empire, 20 May 1604 [= 20 Zilludje 1012], in: Jean Dumont, Baron von Careels-Cron, *Corps diplomatique universel*, vol. 5, part 2 (The Hague, 1728), pp. 39-43; also in: Gabriel Noradounghian, ed., *Recueil d’actes internationaux de l’Empire Ottoman*, vol. 1 (Paris, 1897), pp. 99-102 [reprint (Nendeln, 1978)].

²⁰² Alexander von Miltitz, *Manuel des consuls*, vol. 2, part 2 (London and Berlin, 1837), p. 788. Treaty Netherlands – Ottoman Empire, 6 July 1612, in: Jean Dumont, Baron von Careels-Cron, *Corps diplomatique universel*, vol. 5, part 2 (The Hague, 1726), p. 205.

²⁰³ Frei Serafim Freitas, *De iusto imperio Lusitanorum Asiatico Adversus Grotii Mare Liberum* [(Valladolid, 1625)]. Reprint, edited by Miguel Pinto de Meneses, nr 13, vol. 2 (Lisbon, 1983), p. 16. Octavianus Cacheranus, *Disputatio an principi christiano fas sit pro svi svorvmqve bonorvm tvtela foedus inire ac amitia infidelibus iungi* (s. l. 1569).

²⁰⁴ Christoph Besold, ‘De legatis eorumque jure’, chap. II, nr 4, in: Besold, *Spicilegia politico-juridica* (Strasbourg, 1624), pp. 3-98, at p. 15. Hermann Kirchner, *Legatus*, chap. II (Lich, 1604), pp. 358-403 [second edn (Marburg, 1610); third edn (Marburg, 1614)].

Eastern times,²⁰⁵ with the proviso that they did not take up weapons by themselves.²⁰⁶ This guarantee covered, at least in terms of theory, immunity against criminal accusations at their destinations. On the Muslim side, the command that emissaries were inviolable was enshrined in the Qur'an. When, for example, the French envoys Antonio Rincon and Cesare Fregoso were murdered on the River Po in July 1541, the crime was immediately accepted as despicable, precisely because the two diplomats had been on their way to Istanbul.²⁰⁷ In practice, however, the decision was left to sovereigns whether to expel or to imprison diplomats, who had been found to have committed some crime or had otherwise acted unprofessionally. For one, King Francis I, in 1528, had Antoine Perrenot de Granvelle (1517 – 1586), an imperial emissary, arrested, simply because the diplomat had enraged the King. In 1569 and again in 1572, Elizabeth I had two Spanish diplomats thrown into prison under the charge that they had planned assassination attempts against the Queen. In 1563, the English emissary in France ended in prison, because he was accused of having joined with followers of Jean Calvin in a plot against the King of France. But, even if prison sentences were imposed, the culprits somehow regularly succeeded in escaping from prison fairly quickly. During the second half of the seventeenth century, a theorist of diplomacy, well-versed in matters of diplomatic practice, extracted from these cases the rule that envoys should not commit themselves to acts, which nature abhorred, and should face just sanctions for violations of the law.²⁰⁸ However, such breaches of the law were not to be raised to the level of serious threats for the maintenance of relations among states within the system.

The practice of keeping standing missions demanded the conceptualisation of further legal norms regulating the activities of diplomats. As state representatives in standing missions, their foremost duty at their destinations was to report whatever they heard and saw. However, the most highly desired pieces of information often were not available on regular news markets but flew through informal secret channels. Hence, specifically standing diplomats were usually suspected of spying. Suspicions such as these opened the legal question what had to happen with emissaries having charged with espionage. Moreover, in order to spark turmoil in state intrigues, envoys sometimes committed acts of murder or high treason by themselves or provoked others to do so. Thus the first task was to establish the legal norm which prohibited diplomatic envoys from spying and outlawed support of rebellions. Theorists quickly accomplished agreement on the principle that, in such cases, diplomats should retain their immunity against criminal persecution but should be expelled. Yet, theorists knew well that this norm would not be enforceable under all circumstances.²⁰⁹ Indeed, it took considerable time to transfer norms such as this from the realm of legal theory into the practice of the conduct of relations among states.

A further problem arose with regard to postal services. Standing diplomats could execute their duty of reporting solely by way of sending written texts. As these messages contained relevant or even crucial information, diplomatic correspondence thus had to be carried back and forth between receiving and sending states, with these messages raising interest and attention among the transmitters as well as among rulers in control of territories through which the messages might have to pass. In order to protect their messages, senders would regularly seal their letters. The art of intercepting messages then consisted primarily in the skill to open sealed letters in ways assuring that the recipient remained unaware of the interception and the breach of secrecy. Intercepting diplomats thus were not only in need of techniques of cautiously opening envelopes but also had to

²⁰⁵ Pierre Ayrault [Petrus Aerodius], 'De legationibus', in: Ayrault, *Rerum ab omni antiquitate judicatarum libri X*, book X, title XV (Geneva, 1677), pp. 621-630, at pp. 625-626 [first published (Paris, 1573), pp. 701-709]. Hotman, *Ambassador* (note 192), fol. H2^[r]-H3^[r]. Kirchner, *Legatus* (note 204), chap. I, pp. 263-358.

²⁰⁶ Hotman, *Ambassador* (note 192), fol. II^[r]-I4^[r].

²⁰⁷ Roger Bigelow Merriman, *Suleiman the Magnificent. 1520 – 1566* (New York, 1966), p. 226 [first published (Cambridge, MA, 1944); reprint (Gloucester, 2007)].

²⁰⁸ Abraham de Wicquefort, *L'Ambassadeur et ses fonctions* (Cologne, 1677) [first published as: *Mémoires touchant les ambassadeurs et les ministres publics* (Cologne, 1676); English version (London, 1716), p. 277; reprint of the English version, edited by Maurice Keens-Soper (Leicester, 1997)].

²⁰⁹ Dominicus Arumaeus, *An legatus in principem ad quem missus est, conjurans puniri posit* (Jena, 1616). Richard Zouche, *Solutio quaestionis veteris et novae. Sive de legati delinquentis judice competente dissertatio* (Oxford, 1657).

have the capability of imitating seals. Although the interception and opening of diplomatic correspondence were recognised as unlawful acts, full protection against unauthorised access to diplomatic correspondence was impossible, even if the Duke of Modena established a special postal service only for diplomatic correspondence as early as in the fifteenth century. One remedy, applied in the Arab world already in the thirteenth century, was the use of cipher (cryptography), for which some scholars published printed keys early in the sixteenth century.²¹⁰ More importantly, the sheer quantity of diplomatic reports issued from standing missions, entailed the further demand that the receiving sovereigns had to establish special bureaucracies capable of deciphering, reading and evaluating incoming messages. These bureaucracies had to be staffed with reliable and sufficiently competent persons, so that critical information contained in the messages would not be leaked but allowed to impact on political decision-making. Specialised offices housing these bureaucracies came into existence first in Northern Italian cities, with Venice again taking the lead. From 1425, the Venetian Senate regularly kept archives of incoming diplomatic correspondence (*relazioni al Senato*).²¹¹ In other states, the same practice of continuous record keeping for diplomatic messages began at the turn towards the sixteenth century. The earliest special agency for foreign affairs was the Russian *posolski prikaz*, set up in 1549, even though the Russian Czar maintained few standing missions at that time. From the 1540s, the activity of diplomatic envoys became the object of elaborate theoretical treatises penned by jurists and theologians.²¹²

The increase in the numbers of standing diplomats raised the further problem of the settlement of the expenditures for missions. The dispatching sovereigns commonly took the view that the envoys themselves had to settle their budgets. Only on occasions, the papal curia paid for the nuncios it sent out. In a few cases, receiving sovereigns paid for envoys accredited at their courts. But the latter practice quickly resulted in suspicions that receiving sovereigns might use their payments to bribe foreign diplomats. Under these financial constraints, going on a diplomatic mission was not always a pleasant task, which many a Venetian appeared to have sought to avoid. Already in 1401, the Senate issued the prohibition of the compensation for fines that had been demanded from people refusing to go on a mission.²¹³ The lack of regular payments of envoys from sovereigns' budgets led diplomats to consider their missions not merely in political but also commercial terms. Many of them devised their activities during missions not only under the goal of receiving compensation for their expenditures but also with the hope of gaining profits for their private purses. As most diplomats undertook private businesses, while they were on missions, such activities did not count as objectionable. Specifically, it was customary to give and receive gifts in the course of a mission. In order to gain profits from gift giving, diplomats had to tax the value of the gifts they would present during their missions at a lower price than those that they could expect to be given. The capability of taxing gifts appropriately required detailed knowledge of local markets and pricing systems, and only years of experience might allow the gathering such knowledge. Consequently, the exchange of gifts evolved into a central feature of the diplomatic ceremonial in strict relation with the ranks of diplomats and the sovereigns dispatching them. Furthermore, the practice of exchanging gifts presupposed the expectation of stable market conditions in all states within the systemic network of relations among states. Early on, the practice of the exchange of gifts featured considerable size, as the Venetian Senate forbade its envoys to sell gifts at public

²¹⁰ Giovanni Battista Della Porta, *De furtivis litterarum notis, vulgo de zifferis libri III* (Naples, 1563). Johannes Tritheim, Abbot of Sponheim, *Polygraphiae libri sex* [written 1502] (Basle, 1518). Blaise de Vigenère, *Traicté des chiffres. Ou Secrètes manières d'écrire* (Paris, 1586). For studies see: Bartolomeo Cecchetti, 'Le scritture occulte nella diplomazia veneziana', in: *Atti del Real Istituto Veneto di scienze, lettere ed arti*, series III, vol. 14 (1868/69), pp. 1185-1213. Luigi Pasini, 'Elenco delle decifrazioni dei dispacci degli ambasciatori veneti', in: Bartolomeo Cecchetti, *Archivio di Stato in Venezia. 1876-80. Venedig* (Venice, 1881), pp. 202-204.

²¹¹ Donald Edward Queller, *Early Venetian Legislation on Ambassadors* (Geneva, 1966), pp. 86-87.

²¹² Conrad Braun, *De legationibus libri quinque* (Mainz, 1548) [Microfiche edn (Bibliotheca Palatina, F2948) (Munich, 1991); French version, edited by Dominique Gaurier (Cahiers de l'Institut d'Anthropologie Juridique, 18) (Limoges, 2008)]. Etienne Dolet, *De officio legati, quem vulgo ambassiatoem vocant* (Lyon, 1541) [edited by David Amherdt (Les classiques de la pensée politique, 23) (Geneva, 2010)]. Alberico Gentili, *De legationibus libri tres*. Reprint of the edn of 1594, edited by Ernest Nys (London, 1924).

²¹³ Queller, *Legislation* (note 211), pp. 85-86.

auctions.²¹⁴

The increasing intensity of the network of relations among states further expanded the range of legal norms applying to the law of diplomacy as part of the law among states.²¹⁵ Alberico Gentili was among the earliest jurists to devote a full monograph to this branch of the law of peace. Ascertaining the rank of sovereigns and envoys fuelled controversy over such practical matters of the ceremonial as the establishment of a seating order or of precedence of entrance into a room during negotiations. Such features of the ceremonial had to be read as indicators of the rank of envoys and the sovereigns sending them out. A virtually unlimited arsenal of arguments was available to anyone wishing to engage in controversies about precedence. For one, Gentili claimed that the King of England had precedence over the King of France, because the latter, as a Catholic sovereign, recognised the authority of the Pope in church matters. By contrast, Gentili insisted, the King of England was head of the Church of England and, in this capacity, united supreme religious and secular authority in his person.²¹⁶ The ranks appeared to manifest the stable and divinely willed world, over which human beings merely appeared to have an ordering competence.²¹⁷

Likewise, Gentili raised the difficult question whether diplomats could enjoy immunity and protection in states to which they had not been dispatched. He answered the question with the proposal of a norm, which revealed the complexity of the law of peace and potential for wars resulting from infringements upon that law. In detail, Gentili explained that a diplomat, lying about his assigned mission destination, could not request protection under the law of peace, but should be treated as a spy. By contrast, if he declared to have been dispatched to a state other than the one, on whose territory he happened to be, the sovereign of the latter state should apply courtesy and voluntarily grant protection and immunity, because this was the surest way of avoiding war. Gentili quoted the murder of the French envoys Rincon und Fregoso. He knew that King Francis I had accused Northern Italian sovereigns of plotting against the French-Turkish diplomatic rapprochement. Gentili reported that Francis I declared war on the charge of having authorised the murder.²¹⁸

The same case brought to light the further problem of whether, in view of the growing intensity of treaty relations within the system, Christian rulers could at all underwrite treaty obligations with Muslim rulers. On the basis of the draft treaty of 1535, Francis I had granted to the Ottoman Turkish navy the use of the French port of Toulon during the winter of 1543/44. Not just Charles V as Emperor but also Protestant sovereigns responded to the French policy of maintaining friendly relations with the Sultan by adducing the legal norm that diplomatic relations could not cross the boundaries of religions.²¹⁹ Yet, in taking this stance, they supported a lost cause. Francis's policy succeeded, if only because of the prevailing trade relations among Christian and Muslim states. At the Sublime Porte, the King of France occupied the highest rank among Christian sovereigns still in the eighteenth century, because he had been the first to take up treaty relations with the Sultan.²²⁰

Gentili justified the need of treaty relations among Muslim and Christian sovereigns with the argument that trade relations existed across the boundaries of religion and

²¹⁴ Ibid., p. 80.

²¹⁵ Hotman, *Ambassador* (note 192), fol. I1^[v].

²¹⁶ Alberico Gentili, *De legationibus libri tres*. Reprint of the edn of 1594, edited by Ernest Nys (London, 1924), pp. 9-10.

²¹⁷ Christoph Besold, 'De praecedentia et sessionis praerogativa', in: Besold, *Spicilegia politico-juridica* (Strasbourg, 1624), pp. 119-168. Hotman, *Ambassador* (note 192), fol. G6^r-H2^[r].

²¹⁸ Gentili, *De legationibus* (note 216), pp. 65-68. Hotman, *Ambassador* (note 192), fol. I4^[r]-I^[5v].

²¹⁹ Merriman, *Suleiman* (note 207), p. 229. According to the report by the Venetian representative to the Senate, Francis I defended his arrangements with Sultan Suleyman on the grounds that he was being compelled to find a counterpoise against the power of the emperor; see: Niccolò Tommaseo, ed., *Relations des ambassadeurs vénitiens sur les affaires de France au XVI^e siècle*, vol. 1 (Collection des documents inédits sur l'histoire de France, Sér. 1) (Paris, 1838), p. 67.

²²⁰ Gabriel Bonnot, Abbé de Mably, *Le droit public de l'Europe fondé sur les traités conclus jusqu'en l'année 1740* (Mably, Collection complète des œuvres, vol. 5) (Paris, 1794-1795), p. 37 [reprint (Aalen, 1977); first published (Amsterdam, 1748)].

required a firm legal basis to guarantee the security of traders. He listed six types of such legal instruments: first, general as well as special reciprocal trade agreements together with unequal, that is, non-reciprocal stipulations of privileges to the advantage of Christians, next contracts recruiting “infidels” into armies under Christian command, treaties obliging Christian rulers to pay tribute to the Sultan, and, finally, treaties featuring reciprocal military obligations for the Christian and the Muslim side. Gentili objected only to the last type of instrument with the argument that such treaties might force Christians to fight other Christians and referred to the French-Turkish agreement of 1535 as an example.²²¹ Even as a Protestant, Gentili was not ready to completely dissolve treaties under the law among states from ties to religion and, in hesitating to do so, stayed far behind the peace plan, which Erasmus had proposed early in the sixteenth century. However, Gentili left no doubt about his conviction that all treaties legally existing among Muslim and Christian signatories had the same binding force as treaties concluded among Christians only.²²² Hence, Gentili derived the basic legal norm *pacta sunt servanda* from natural law, thereby remaining within the great tradition of the law of war and peace.

At the turn towards the seventeenth century, Gentili’s conviction was not a matter of pure academic theory. This became clear through the treaty of 11 November 1606 between Sultan Ahmed I (1603 – 1617) and Emperor Rudolf (1576 – 1612). By this agreement, which was the first ever made out between the Sultan and the Emperor and became renewed on 1 May 1616, both parties established “peace at all places under their respective control” (*pax sit in omnibus locis ad eos nempe Imperatores pertinentibus*), explicitly recognised the legal equality of their rank by granting reciprocally the use of the title “Imperator” and simultaneously rejected as inappropriate the use of the title “Rex”. In his ratification instrument, Rudolf styled his treaty partner as “Sultan Ahmed, Emperor of the Turks in Asia as well as in Greece” (*Sultanus Achimetes Imperator Turcarum ac Asiae et Graeciae*), thereby recognising Ottoman rule over the parts of the Balkans.²²³ At the turn towards the seventeenth century, the use of the imperial title for the Ottoman Turkish Sultan was not uncommon. Already in 1532, the printed version of a report on a mission to Istanbul had referred to the Sultan as the “Turkish Emperor” (*Türkischer keiser*).²²⁴ And in 1542, the Basle city council had corresponded with the Strasbourg city council about some purportedly impending attack of an army under the command of the “Turkish Emperor” (*türkisch Keiser*).²²⁵ Shortly before the conclusion of the treaty between Sultan and Emperor, the King of France had referred to the Sultan as “L’Empereur Ahmed” in the French-Turkish treaty of the same year 1604.²²⁶ Likewise, the imperial title came to be applied in formal European diplomatic messages sent to rulers in other parts of the world. For one, King James I of Great Britain addressed Shōgun Ieyasu Tokugawa (1603 – 1616) in Edo as “Emperor of Japan” in his letter of January 1611. In this letter, the King revealed to the Shōgun that he had authorised Captain John Saris (c. 1580 – 1643) to go on a mission to Japan to negotiate conditions for trade between Great Britain and Japan.²²⁷ The Japanese version of James’s

²²¹ Gentili, *De iure belli* (note 216), book III, chap. 19, pp. 659-660.

²²² Ibid., books III, chap. 22, pp. 675-690.

²²³ Treaty Ahmed I, Ottoman Turkish Sultan – Rudolf II, Roman Emperor, Zsitva Torok, 11 November 1606, art. III, art. II, in: Gabriel Noradounghian, ed., *Recueil d’actes internationaux de l’Empire Ottoman*, vol. 1 (Paris, 1897), pp. 103-108, at p. 104 [reprint (Nendeln, 1978)]. Renewed, 1 May 1616, in: ibid., pp. 113-120 [contemporary German rendering of the Italian version of the Turkish s. t.: *Des türckischen Kaysers Ahmeti Primi Friedenscapitulation, so von Constantinopel durch den Herren Ambassatorn Adamum von Herberstein, Freyherren, etc. nach Österreich gebracht* = Ratification charter of Ahmed I, dated 20 October 1608 = 1 Regipp 1017, edited by Karl Nehring, *Adam Freiherr zu Herbersteins Gesandtschaft nach Konstantinopel. Ein Beitrag zum Frieden von Zsitvatorok (1606)* (Südosteuropäische Arbeiten, 78) (Munich, 1983), pp. 199-207].

²²⁴ Jan Ulrich Büttner and Mark Feuerle, eds, ‘Schilderung des Balkan 1530/1531. Edition einer bislang unbekannten Handschrift der Herzog-August-Bibliothek Wolfenbüttel’ [a collection of bellicist treatises by Benedict Curispeschitz (1530); printed as *Itinerarium Wegraysz Kün[igliche] May[estät] potschafft gen Constantinopel zu dem Türckischen keiser Soleyman* (s. l., 1531)], in: *Wolfenbütteler Beiträge* 13 (2005), pp. 49-147.

²²⁵ XIII Herren of Basle, ‘[Letter to the XIII Herren of Strasbourg]’, edited by Otto Winckelmann, *Politische Correspondenz der Stadt Strassburg im Zeitalter der Reformation*, nr 251, vol. 2 (Strasbourg, 1887), pp. 265-266.

²²⁶ Treaty France 1604 (note 201), nr 3, p. 93.

²²⁷ James I, King of Great Britain, ‘[Letter to Ieyasu Tokugawa, Shōgun of Japan, Januar 1611]’, in: Ernest Mason Satow, ed., *The Voyage of Captain John Saris to Japan, 1613. Edited from Contemporary Records* (Works Issued

letter featured the title “Shōgun” in lieu of “Emperor”, and Ieyasu, in his reply dated 14 November 1613, granted trading privileges to James’s subjects.²²⁸ Moreover, in the instruction for his mission to Great Moghul Shah Jahāngir (1569 – 1627, in office since 1605) of 1614, James asked for the establishment of trade relations between Great Britain and Moghul’s territories. In the text of his letter, James used the formula “Great Monarche”, which may have been equivalent of the imperial title.²²⁹ The draft version of a treaty, dated 26 March 1616, however, styled the Moghul “King of India”. The treaty claimed to establish friendship and trade relations together with “perfect love”, an alliance and peace between both sovereigns and their respective subjects.²³⁰ The text of the treaty recognised both signatories as legal equals in its first article, while it featured only non-reciprocal privileges to be granted by the Moghul ruler to British merchants. Thus, the draft represented an early form of a peace-establishing treaty on friendship and trade between an Asian and a European ruler. During the rest of the seventeenth and most of the eighteenth centuries, it had hardly any successor.²³¹

Nevertheless, the law of treaties among states left ample space for controversy. This was so, because the insight followed from Bodin’s theory of sovereignty that rulers could not be compelled to honour treaties. The insight imposed doubts about all kinds of peace agreements supposedly being unreliable legal instruments. In previous periods, this insight had not been uncommon. Yet it then had stimulated the practices of swearing oaths before divine agents and the producing of hostages as a means of the enforcement of treaties.²³² But the faith in the omniscient divine agent, to whom breaches of treaty could not be concealed, was rapidly waning in Latin Christendom, even though the same faith remained in the Muslim world. In the perspective of Latin Christian jurists, human beings as signatories to treaties had to rely on their own powers to prevent breaches of treaties from happening. Hence, there seemed to be no legal basis for the confidence that parties to treaties could be forced to act in accordance with treaties, even if they had sworn oaths. Moreover, the now regularly practiced “composite” treaty-making procedure, providing for the exchange of specific ratification instruments, stood against the swearing of oaths to confirm agreements that had just been concluded. Oath-swearing under these procedural constraints became difficult because negotiators would draft the texts of treaties, which became legally valid through the exchange of ratification instruments. But the negotiators would not meet again on these occasions. If oaths were sworn at all under the “composite” procedure of treaty-making, the obligation to ratify agreements would have to be entered into the texts of the treaties themselves. Yet, this was hardly ever the case. Consequently, Jean Bodin commented sarcastically about what he took to be the naive expectation that treaties might be honoured, and classed this expectation as a simple means of propaganda.²³³

by the Hakluyt Society, series II, vol. 5) (London, 1900), pp. LXXVI-LXXVII [reprint (Nendeln, 1967)]; Japanese version in: *Dai Nihon Shōgyō-shi* (Tokyo, 1892), p. 514.

²²⁸ Privilege Issued in the Name of Ieyasu Tokugawa, Shōgun of Japan, for the English East India Company, 1613, in: *Minutes of Evidence*, in: *Report of the Select Committee of the House of Commons on Commerical relations with China* (London, 1847), s. p.; also in: Thomas Rundall, *Memorials of the Empire of Japan* (Works Issued by the Hakluyt Society, series I, vol. 8) (London, 1850), Notes, s. p. [reprint (New York, 1963)].

²²⁹ James I, King of Great Britain, ‘[Letter to Shāh Jahāngir (Salīm), Great Moghul, 1614]’, in: Thomas Roe, *The Embassy of Sir Thomas Roe to India 1615-19*, edited by William Foster (London, 1926), pp. 553-554, at p. 553 [reprint (Delhi 1990)]; first published as: *The Embassy to the Court of the Great Mogul* (Works Issued by the Hakluyt Society, series 2, vol. 1 (London, 1899); reprint of this edn (Nendeln, 1967)).

²³⁰ Articles of Amitye, Commerce and Entercourse betweene the Two most High and Mighty Princes, the Great Mogull, King of India, and the King of Great Brittain, France and Ireland, 26 March 1616 [draft], art. 1, in: Roe, *Embassy* (note 229), p. 152.

²³¹ *Ibid.*, pp. 152-156. The Suaheli Chronicle of Pāte [AD 1470 – AD 1888, ms. written by Muhammad bin Fumo Omar, who completed the writing on 21 April 1903], edited and translated by Alice Werner, ‘A Swahili History of Pate’, in: *Journal of the African Society* 14 (1914/1915), pp. 148-161, 278-297, 392-413, at p. 281, reports a peace treaty having been made between the Sultan of Pate in what is Kenya today, and the King of Portugal in 1650. On the Portuguese practice of treaty-making in Africa see: Beatrix Heintze, ‘Der portugiesisch-afrikanische Vasallenvertrag in Angola im 17. Jahrhundert’, in: *Paideuma* 25 (1979), pp. 195-223.

²³² For the sixteenth century still recorded in: *Treaty France* (note 136), pp. 19, 37.

²³³ Bodin, *Livres* (note 93), book V, chap. 6, pp. 191-192.

The case in point adduced in support of such skepticism was again an affair concerning King Francis I of France. During his captivity as prisoner of war after the battle of Pavia, he had agreed on the Treaty of Madrid of 14 January 1526, through which he had made wide-ranging concessions to the Emperor to accomplish his release.²³⁴ Charles had hesitated to let Francis go, before he had actually implemented his promises. But Francis had argued that he would only be able to implement the treaty if he was back in power and had returned to his kingdom.²³⁵ The row over the implementation had protracted the negotiations, until Francis had fallen ill in captivity. Charles had feared to lose his captive and had let him return to France. Back in power, Francis had argued that he had been pressured to sign the peace accord and that agreements made under force were invalid. Consequently, he declared his promises null and void. Charles had not resorted to war to enforce the treaty, albeit insisting upon its validity. Eventually, Louise of Savoy (1476 – 1531), mother of Francis I, and Margaret of Austria (1480 – 1530), Charles's aunt and regent of the Netherlands, had arranged the so-called “Ladies Peace” at Cambrai on 5 August 1529 on behalf of the King and the Emperor.²³⁶ In retrospect, Gentili used the case to argue that Francis's action had been unlawful, as sovereigns, concluding treaties in captivity, would do so voluntarily, as they might as well opt to remain prisoners of war.²³⁷

Trade in the Well-Ordered World and the European States System

The practice of conducting trade put on record already at the turn towards the seventeenth century that the norms of the law of peace accepted as valid within the European states system and the network of standing diplomatic missions were effective in other parts of the world as well. The American continent as the target of colonial rule was included into the European states system through the trans-oceanic migration of settlers who, as a rule, remained subjects of rulers of the states from which they had left. When King Philipp III, through the British-Spanish treaty of 1604, conceded to the British subjects of King James I the right of unrestricted movement to America and the Caribbean, thereby renouncing his claim to authoritative regulation of access to the ocean, the relations among states within the European system appeared to have been expanded to the “New World”. By consequence, the legal norms governing relations among states within the European system would have to accept as applicable in America and the Caribbean as well. Nevertheless, relations between Europe on the one side, Africa and Asia on the other, continued to remain outside the European states system. This was so for the main reason that the long-distance trading companies, which European sovereigns were privileging at the turn towards the seventeenth century, not only carried monopolies for trade in and with states in Africa and Asia but also the legal entitlements to conduct war at their own discretion and risk, to conclude peace and maintain all kinds of official relations with sovereigns in Africa and Asia. Hence, with the exceptions of the King of Portugal and, from 1580, also the King of Spain, European sovereigns did as a rule not perform as direct actors in the relations with states in Africa and Asia. The English East India Company (EIC) received its privilege in 1600, the Dutch “United East India Company” (Verenigde Oostindische Compagnie, VOC) in 1602.²³⁸ Further companies followed holding privileges for trade, in the Netherlands in 1621, in France in 1664, in Denmark in 1671 and in Brandenburg in 1682. Among these companies, the VOC obtained the most extensive privilege upon its amalgamation in 1602. The States General of the Netherlands even pledged to the company, not to use their own ships in or enter in any other way the areas, over which the company held the trade monopoly. That concession applied to all places east of the Cape of Good Hope. In these areas, the VOC had the right to act as a sovereign,

²³⁴ Treaty Roman Emperor – France, Madrid, 14 January 1526, in: Jean Dumont, Baron von Careels-Cron, *Corps diplomatique universel*, vol. 4, part 1 (The Hague, 1726), pp. 399-412.

²³⁵ Aimé Champollion-Figierac, ed., *Captivité du roi François Ier* (Paris, 1847).

²³⁶ Treaty Roman Emperor – France (Ladies' Peace), Cambrai, 5 August 1529, in: Jean Dumont, Baron von Careels-Cron, *Corps diplomatique universel*, vol. 4, part 2 (The Hague, 1726), pp. 7-15.

²³⁷ Protestation by Francis I, in: Treaty Madrid (note 233), pp. 412-416. Gentili, *De iure belli* (note 124), book III, chap. 14, p. 596.

²³⁸ Elizabeth I, Charter (note 140), pp. 165-170. Charter VOC (note 141), pp. 171-176.

even though it did not hold control over any state in Europe, and entered into treaty relations with rulers in Southeast Asia already during the first decade of the seventeenth century.²³⁹ The EIC received a similar entitlement from King Charles II (1660 – 1685) in 1661.

These privileges based European trans-continental trade upon legal norms and monopolies. European sovereigns tacitly agreed not to leave the trade between the European states system and the rest of the world to the mechanism of the free market, but to subject it to legal norms. In compliance with this legal basis, the long-distance trading companies established complex bureaucracies, which registered trade and other businesses carefully, sometimes even on a daily basis. European sovereigns unilaterally took the decision to conduct the trade and further emerging aspects of state relations under legal norms, and, in doing so, did not, as a rule, consider the option of entering into specific agreements with rulers in Africa and Asia setting the legal norms for the conduct of relations. In taking this stance, they could not anticipate that there was no discrepancy of perception between them and sovereigns in Africa and Asia regarding the principle that trade should be regulated. Therefore, the European trading companies did not encounter resistance or objections relating to their request that sovereigns should privilege traders operating in areas under their control.²⁴⁰ For one, Shōgun Ieyasu in Japan took for granted that he was legitimised to regulate trade relations with the EIC and the VOC and had the power to privilege these companies.²⁴¹ On occasions, the trading companies did deploy military force. Thus, the VOC conquered and occupied the stronghold Jayakarta on Java in 1619 under the intention of creating its headquarters for the trading areas, over which it received its monopoly. Yet, wars of this kind against sovereigns in Africa and Asia remained the exception, while trading companies used most of their military potential against their European competitors.

Moreover, other types of European power holder displayed a similar degree of restraint, when it came to deliberate the use of military force against sovereigns in Africa and Asia. Already at the beginning of the sixteenth century, the arrival of Portuguese ships on the Chinese coast had triggered the question of whether the King of Portugal had the right to intervene militarily against China, should the need to do so arise in Portuguese perspective. The answer appeared to be urgent. In 1520, Chinese authorities arrested the Portuguese emissary Tomas Pires (c. 1465 – c. 1530) on charges of having violated Chinese laws. Pires sent angry letters to the Portuguese king,

²³⁹ Treaty Johor –VOC (Dutch East India Company), 17 May 1606, in: Jan Ernst Heeres, ed., *Corpus diplomaticum Neerlandico-Indicum* (Bijdragen tot de Taal-, Land- en Volkenkunde van Nederlandsch-Indië, 57) (The Hague, 1907), pp. 41-45; also in: Elisa Netscher, *Nederlanders in Djohor en Siak* (Verhandelingen van het Koninklijk Bataviaasch Genootschap van Kunsten en Wetenschappen, 35) (Batavia, 1870), pp. 13-14. Treaty Johor –VOC, 23 September 1606, in: Heeres, (as above), pp. 47-48. Treaty Aceh –VOC, 17 January 1607, in: Heeres, *Corpus* (as above), pp. 48-50. VOC, 'Instructie der XVII Herren an Admiral Pieter Willemszoon Verhoeff, 13 October 1607', edited by Johan Karel Jakob de Jonge, *Opkomst van het Nederlandsch gezag in Oost-Indië. Verzameling van onuitgegeven stukken uit het Oud-Coloniaal Archief*, vol. 3 (The Hague, 1885), p. 72. For a study see: Roman Sieber, 'Ein Kaufmann als Diplomat. Pieter van den Broecke als Vertreter der Niederländischen Ostindien-Gesellschaft in Arabien und Indien. 1615 – 1629', in: Ralph Kauz, Giorgio Rota and Jan Paul Niederkorn, eds, *Diplomatisches Zeremoniell in Europa und im mittleren Osten in der frühen Neuzeit* (Sitzungsberichte der Österreichischen Akademie der Wissenschaften, Philos.-Hist. Kl. 796 = Archiv für Österreichische Geschichte, 141 = Veröffentlichungen zur Iranistik, 52) (Vienna, 2009), pp. 323-348.

²⁴⁰ For a study see: Heinhard Steiger, 'Recht zwischen Europa und Asien im 16. und 17. Jahrhundert?', in: Klaus Bußmann and Elke Anna Werner, eds, *Europa im 17. Jahrhundert. Ein politischer Mythos und seine Bilder* (Stuttgart, 2004), pp. 95-118 [reprinted in: Steiger, *Von der Staatengesellschaft zur Weltrepublik? Aufsätze zur Geschichte des Völkerrechts aus vierzig Jahren* (Studien zur Geschichte des Völkerrechts, 22) (Baden-Baden, 2009), pp. 267-291].

²⁴¹ Privilege Issued in the Name of Ieyasu Tokugawa, Shōgun of Japan, for the Dutch East India Company (VOC), 25 August 1609, in: Jan Ernst Heeres, ed., *Corpus diplomaticum Neerlandico-Indicum*, Deel 1 (Bijdragen tot de Taal-, Land- en Volkenkunde van Nederlandsch-Indië, 87) (The Hague, 1931), pp. 69-70; also in: Ulrich Gerard Lauts, *Japan in zijne staatkundige en burgerlijke inrigtingen en het verkeer met Europeesche natiën* (Amsterdam, 1847), pp. 171; also in: Oskar Nachod, *Die Beziehungen der Niederländischen Ostindischen Kompagnie zu Japan im siebzehnten Jahrhundert* (Leipzig, 1897), pp. XVII-XVIII; renewed by Shōgun Hidetada Tokugawa, 15 September 1617, in: Heeres (as above), p. 133; also in: Lauts (as above), pp. 181-182; Nachod (as above), pp. IL-L. Privilege for the English East India Company, 1613 (note 228).

protesting his imprisonment and demanding the dispatch of some cannon boats. A few of them, he promised, would suffice to sack the fortified city of Canton (Guangdong). As Canton, in Pires's view, was a place of crucial significance for China as a whole, the occupation of that city would allow the Portuguese king to conquer all of China.²⁴² But the king did not respond, and Pires died in prison. Moreover, the Ming government requested the resettlement of Portuguese merchants from Canton to the peninsula of Macao in 1557, where they received permission to conduct trade under close surveillance by Chinese government officials. The isolated location of Macao would not allow Portuguese merchants to penetrate into the interior of China. The decision to resettle Portuguese traders to Macao indicated the determination of the Ming government to restrict access to the Chinese mainland for Portuguese traders and regulate their businesses. The King of Portugal complied with the decision of the Ming government, thereby recognising the legitimacy of the decision. Among both governments, there was thus no dissent concerning the right of sovereigns to regulate trade. The Ming government even retained its claim to universal rule and assigned to the King of Portugal a lower rank than to itself. The Portuguese did not openly protest. There have not been military conflicts between China and Portugal.

The restraint of long-distance companies with regard to the use of military force was based on good reason. These companies had the legal structure of share-holding enterprises bent on the maximisation of stake-holder profits.²⁴³ Although there was competition among the trading companies, they tried, as far as it was left to their own decision, to minimise conflict by carving out zones, from which they could exclude competitors. As long as all competitors remained within the boundaries of these zones, the potential for military conflict was small and the companies could keep military expenditures low. Nevertheless, wars did occur, specifically over strongholds under the Portuguese or Portuguese-Spanish control. Among others, Prince Maurice of Orange obliged the VOC to deploy its ships against Portuguese-Spanish positions on Asian coasts. Yet, trading companies, in contradistinction to Portuguese and Spanish emissaries, sought to further minimise the risk of military confrontations by instructing their employees to accept the legal and political conditions dominating the local markets and to avoid strife with the governments controlling the markets.²⁴⁴ Likewise, they differed from Portuguese and Spanish envoys by refraining from missionary activities as a rule.²⁴⁵ Trading companies thus did not call into question the given structure of rule in the states, where they were operating, and did not hesitate to recognise the sovereignty of the rulers, who were their trading partners. They did not raise the demand for consular jurisdiction, again in sharp contradistinction against rulers of Latin Christendom. Despite occasional disagreement about details of locally enforced conditions of trade and a number of military confrontations, such as the conquest of Jayakarta, such disputes did not stand against the agreement among trading companies and sovereigns in Africa and Asia over the principle that trade should be regulated. This principle was nowhere laid down in the legal instruments, which the companies obtained. It was simply taken for granted, thereby putting on record that, still at the turn towards the seventeenth century, the great tradition of the law of war and peace was accepted as a valid assemblage of unset norms shaping relations between Europe on the one side, Africa and Asia on the other. The mutual acceptance of trade as a regulated enterprise did not suffer from the often arising discrepancy of the status, which the trading partners assigned to each other. For example, the trading companies regarded themselves as holders of derived sovereignty, not, as a rule, by their own right, sovereigns in Africa and Asia usually classed the trading companies, appearing in territories under their sway, as emissaries dispatched by European sovereigns. The legal norm that sovereigns should

²⁴² Tome Pires, *The Suma Oriental*, chap. 1, edited by Armando Cortesão (Works Issued by the Hakluyt Society, series II, vol. 89) (London, 1944), pp. 41-42, 45.

²⁴³ Kirti Narayan Chaudhuri, *The English East India Company. The Study of an Early Joint-Stock Company. 1600 – 1640* (London, 1965) [reprint (London and New York, 1999)].

²⁴⁴ Andreas Cleyer, '[Diary]', edited by Eva S. Kraft, *Tagebuch des Kontors zu Nagasaki auf der Insel Deshima* (Bonner Zeitschrift für Japanologie, 6) (Bonn, 1985), pp. 189-190.

²⁴⁵ Léon Blussé, 'Dutch Protestant Missionaries as Protagonists of the Territorial Expansion of the VOC in Formosa', in: Dick Kooiman, Otto Diederik van den Muijzenberg and Pieter Tijtse van der Meer, eds, *Conversion, Competition and Conflict. Essays on the Role of Religion in Asia* (Amsterdam, 1984), pp. 155-183. William Campbell, *Formosa under the Dutch* (London, 1903) [reprint (Taipei, 1967)].

be entitled to regulate trade in accordance with their own standards, remained accepted despite these discrepancies.

The main trading goods, which the European trading companies shipped to Europe from eastern coasts of Africa and the Asian coasts, were spices, precious metals and high-quality manufactured products, such as pottery. With regard to these trading goods, the so-called “East India” companies differed from the enterprises doing business in America. The latter, so-called “West India” companies were integrated into the “triangular trade”, by which manufactured products moved from Europe to Africa, Africans were deported as slaves from Africa to America and raw materials produced by slaves in America came to Europe.²⁴⁶ However, the trading companies were not the only participants in the slave trade, over which they competed with traders engaged in this business under the authority of the kings of Portugal and Spain. Specifically, the King of Spain demanded recognition of his entitlement to license slave traders by giving out privileges (Asiento) to private persons. Upon the restoration of the Portuguese state in 1640, both the kings of Portugal and of Spain issued these Asiento privileges to “West India” companies.²⁴⁷ On the basis of these privileges, these companies began to operate as rulers in America next to European rulers, mainly in trading spots and strongholds on the coasts of North and South America and in the Caribbean. In these areas, the “West India” companies subjected far larger territories and population groups to their control than the “East India” companies did on the coasts of Africa and Asia. As a result of this policy, the profitability of the “West India” companies lagged far behind that of their “East India” sister enterprises.

These differences in the type of the regulation of trade conditioned the emergence in Europe of the tripartite division of the world into the European states system equivalent of the network of standing diplomatic missions, the coastal zones of Africa and Asia and the “New World” of America. Consequently, relations among European states, states in Africa, on the one side and states in Asia as well as the “New World” on the other, stood under the rule of legal norms flowing from different sources. For the “East India” companies, their rights were set in chartered privileges and were contained in the unset law of war and peace, merging with the newly conceived law among states. In the “New World”, European sovereigns either imposed the municipal law of the states under their control or set specific norms valid only for colonial settlements. That is to say that, within the European states system as well as with regard to the relations between Europe, Africa and Asia, Bodin’s principle of the legal equality of sovereigns found general acceptance. However, European colonial rulers applied the principle of legal inequality to their relations with Native Americans, who were forced into the status of objects of European rule. Moreover, the European slave traders denied to deported Africans the moral status of human beings, classing them as a trading good. Although the theory of purportedly “natural” slavery was no longer used against Native Americans from the middle of the sixteenth century, Africans deported to America remained exploited and tortured under the lawless status of imposed slavery. Neither European slave traders nor American slave holders were willing to admit scruples regarding the lawless and morally corrupt practices of slave trading and slave holding.

Summary

The time span between c. 1450 and 1618, so to speak the long sixteenth century, witnessed the process of the globalisation of the world picture, both in Latin Christendom and in the Muslim world. With regard to the world picture, globalisation was both, the technical process of the making gores and other types of maps representing the planet earth as a globe and the more fundamental process of the formulation of some legal norms set up to regulate communication across the globe at large. To be sure, the consciousness that the planet earth was a globe was on record from pictorial sources

²⁴⁶ Herbert S. Klein, *The Middle Passage. Comparative Studies in the Slave Trade* (Princeton, 1978). Joseph Calder Miller, *Way of Death. Merchant Capitalism and the Angolan Slave Trade. 1730 – 1830* (Madison, 1988).

²⁴⁷ Enriqueta Vila Vilar, ‘Los asientos Portugueses y el contrabando de negros’, in: *Anuario de estudios Americanos* 30 (1973), pp. 557-609. Andrea Weindl, ‘The Asiento de Negros and International Law’, in: *Journal of the History of International Law* 10 (2008), pp. 229-257.

since the tenth and in written texts from the eleventh century.²⁴⁸ But the world picture went through a revolutionary transformation at the turn towards the sixteenth century. At the time, a tradition of representing the inhabitable world as a permeable land mass, then about two thousand years old as the platform for the construction and articulation of ideologies of universal rule, disappeared in the Mediterranean area and in Europe within a few years. These maps had not only visualised geographical information but had also communicated religious dogmata and visions of the beginning and future end of the world. The new maps, appearing from the turn towards the sixteenth century, contained no more than dry information about the location of places and distances among them, were, in this respect, embodiments of secular knowledge, useful for navigators, merchants, mathematicians and geographers. Navigators, merchants and missionaries carried the new type of maps in their luggage, wherever they went during the sixteenth century, thereby globalising this type of map. For one, Jesuit missionary Matteo Ricci (1552 – 1610) composed a two-dimensional map of the world in China but followed the new European pattern of map-making. While doing so, he yet adapted the European model to the interests of his Chinese audience. Whereas European world maps of the new type would position the newly emerging Atlantic Ocean in their centre, Ricci grouped areas on the Pacific coast in the central portion of his map. Whereas European maps would divide the Pacific Ocean, featuring it on their left and right margins, Ricci's map split the Atlantic Ocean in two parts. The habit of projecting that part of the world, from which it originated, into the centre of a two-dimensional world map was part of the European map-making convention. If Ricci wanted to apply this habit to a world map for an East Asian audience, he had to shift centricity from the Atlantic to the Pacific Ocean, so as to display the latter water way as an integrated area. Yet, next to Ricci's type of map, the traditional Chinese style of map-making remained in practice well into the eighteenth century as an instrument for the documentation of claims to universal rule.²⁴⁹

The revolution of map-making had effects well beyond cartographic techniques, as becomes evident from two details. To the beginning of the fifteenth century, conventional world maps of Latin Christendom did not show a water way separating Africa from Asia, thereby omitting the Indian Ocean. However, this very water way was home to perhaps the most active maritime trading network on the entire globe from the eleventh century at the latest,²⁵⁰ where Arab, South Asian (Gujarati), Southeast Asian (Aceh), Chinese and Japanese merchants were cruising.²⁵¹ The network allowed the shipment of Chinese pottery to East Africa²⁵² and even impacted upon the Eurasian continental block through the spice trade. The purported “discovery” of the Indian Ocean by Portuguese sailors suggested to European map-makers that there was pluralism of oceans and, by consequence, enhanced the building of ocean-faring vessels to facilitate communication with remote parts of the world. The alleged “discoverers” assumed that, in order to maintain communication across long distances, they needed to control the routes through the building of fortified strongholds in the first place. Therefore, military considerations drove these “discoverers” rather than the pursuit of profits from trade. The immediate consequence of the “discovery”, then, was the military occupation of strategic nodal points in the network, from which Muslim traders came to be excluded. Thus, the alleged “discovery” of the Indian Ocean resulted in the breakdown of the existing trading network. The Indian Ocean came under European control, even though the long-distance trading

²⁴⁸ Abu 'r-Raiḥān Muḥammad Ibn Aḥmad al-Bīrūnī, *The Determination of the Coordinates of Positions for the Correction of Distances between Cities*. From the Arabic of al-Biruni's *Kitab Tahdīd al-Amākin*, edited by Jamil Ali (Beirut, 1967), pp. 23, 120-121 [reprint (Publications of the Institute for the History of Arabic-Islamic Science, Islamic Geography 26) (Frankfurt, 1992)].

²⁴⁹ Matteo Ricci, *Map of the Myriad of the States of the World* (wàn guó quán tú). 1602, edited in: *Il mappamondo cinese del P. Matteo Ricci S. I.*, edited by Pasquale M. d'Elia (Vatican City, 1938).

²⁵⁰ Michael Naylor Pearson, *The Indian Ocean* (London and New York, 2003).

²⁵¹ George Fadlo Hourani, *Arab Seafaring in the Indian Ocean* (Princeton, 1951). Friedrich Irth and William Woodville Rockhill, *Chau Ju-Kua. His Work on the Chinese and Arab Trade in the Twelfth and Thirteenth Centuries, Entitled Chu-fan-chi* (St Petersburg, 1911) [reprint (Taipei, 1970)].

²⁵² Hubert Neville Chittick, 'Kilwa. A Preliminary Report', in: *Azania* 1 (1966), pp. 1-36. Chittick, 'Discoveries in Lamu Archipelago', in: *Azania* 2 (1967), pp. 37-67. Chittick, *Kilwa. An Islamic Trading City on the East African Coast*, 2 vols (Nairobi, 1974). Chittick, *East Africa and the Orient. Cultural Synthesis in Pre-Colonial Times* (New York, 1975).

companies respected the sovereignty of states bordering on the ocean.

Moreover, not only the European map-making style was globalised but also some of the information contained in the maps. The most crucial part of that information was the making of the continents. “Africa” and “Asia” had once been the names of provinces of the Roman Imperium of Antiquity, applied to parts of the permeable land mass, and had been carried on in Christian world maps to the end of the fifteenth century as mere geographical constructs with shapes that existed in maps only. By contrast, from the beginning of the sixteenth century, the new constructs of continents, which could be reached by crossing wide waterways, travelled with navigators, merchants, missionaries and even settler colonists around the globe and quickly became applied as spatial platforms for the fixing of seemingly unconnected continental collective identities of local residents. The logic of this process of the superimposition of continental names upon collective identities of population groups was the same, wherever Europeans turned up as visitors, traders, missionaries, settlers or rulers. The name “Africa” served as the label for the perception of the entire continent as one single unit, no matter what the subjective consciousnesses of local residents on the ground were and even though they might not feature the perception of the continental unity of Africa at all. The same principle applied to Asia, even though the European name for this continent has never been compatible with any relevant self-perception of populations groups settling in Asia. With regard to “New World”, the European name America for this continent gained currency anyway only outside territories under Portuguese and Spanish control during the sixteenth century, because the colonial administrations in these parts of the continent refused to apply the name. The name has never conveyed any meaning for the population groups now referred to as “Native Americans”. Hence, the perception of Africa, Asia and America as continental unities has remained a specifically European construct.

We know only from China, how members of cultures other than those of Latin Christendom and Islam responded in their own times to the changes of the world picture. In China, the Ming government continued to articulate its claim towards universal rule, while admitting the use of European style of map-making among Christian missionaries. As the Ming government permitted regulated trade under the conditions it set, it took a pragmatic stance towards the changes of the world picture and simultaneously retained its traditional perspectives and perceptions. The interior of the territories under Ming government control were closed to foreign traders, and the King of Portugal recognised the right of his Chinese counterpart to regulate and restrict trade. The long-distance trading companies proceeded in the same way, when they established trade relations with Japan early in the seventeenth century. Likewise, sovereigns of states on the coasts of Africa, South and Southeast Asia, appear to have pursued similar policies. Hence, the interior of East and West Africa, South, Southeast and East Asia remained unaffected by European influence and continued to be so to the eighteenth and nineteenth centuries. However, the establishment of Spanish colonial control over the island world coming to be called the Philippines manifested the most burdensome exception.

Some theorists of the law of war and peace in Latin Christendom, among them Francisco de Vitoria and Alberico Gentili reflected upon the expansion of European colonial rule taking place during the sixteenth century. They encountered serious difficulty in their attempts to justify, in terms of the established theory of the law of war and peace, the subjection of large overseas areas to the control of European rulers. In order to become able to do so, they had to move away from the great tradition of the law of war and peace. Whereas Vitoria tried to avoid this move, Gentili had no scruples to devise the theoretical projection of the law of war and peace as the outflow of natural reason, which he took to be valid in humankind at large, and categorised the law of war and peace as the human-made part of natural law. In doing so, Gentili refused to adhere to the expectation that the law of war and peace could become generally valid, once universal rule would have been imposed upon the entire globe. Gentili had to take this stance, because it would have been naive to expect that all humankind could at their own discretion agree on the same norms of the law of war and peace. Other theorists followed suit, removed the echaolotigal dimension from the Holy Roman Empire and integrated it into the European states system.²⁵³ At the same time, the imperial

²⁵³ Miguel de Ulcurrum, *Catholicum opus imperiale regiminis mundi* (Zaragossa, 1525), fol. XXV, XXVIII, XXXI,

title lost its exclusive ties with the Holy Roman Empire in Latin Christendom. Consequently, the imperial title became applicable to rulers anywhere on the globe. Moreover, during the sixteenth century, “Universal Monarchy” (*Monarchia universalis*) turned into a slogan in propaganda wars against sovereigns accused of excessive pursuit of power.²⁵⁴ Indeed, some sovereigns, usually holders of the royal title, made efforts to round off territories under their sway and to draw straightforwardly recognisable borders against territories under the control of neighbouring sovereigns. Even the Holy Roman Empire did not stay aloof of this process of the territorialisation of rule, as many of its neighbours to the West, North and East stood under centralised bureaucratic types of rule by the end of the sixteenth century. The word “state” came in use as a generic term for this type of territorial rule.²⁵⁵ To the end of the eighteenth century, word and concept of “state” categorised institutions of rule as ordered, stable and legitimate. Already at the turn towards the seventeenth century, Francisco Suárez no longer equated the law of war and peace with the *ius gentium*, but conceived it as the law among states with binding effects on sovereigns. By contrast, the great tradition of the law of war and peace continued in the Muslim world and in East Asia.

The redefinition of the law of war and peace as the law among states, thus, remained confined to Latin Christendom, even though most European theorists continued perceive it as universally valid for all humankind. They insisted that the validity of the law among states could be only become restricted in spatial terms, if such restrictions had been agreed upon in treaties between states. Hence, the several agreements, which Spanish kings made with the kings of France and England or Great Britain relating to access rights over the ocean during the sixteenth and early seventeenth centuries, still rested on the traditional assumption that the law of war and peace was principally valid anywhere as an assemblage of unset norms. This assumption was a necessary precondition for the otherwise perplexing fact that some sovereigns entered into agreements about lines, beyond which the law of war and peace should be not considered applicable.²⁵⁶ In retrospect, these so-called amity lines have triggered concern among historically minded twentieth-century legal theorists, referring to the French-Spanish Treaty of Cateau-Cambrésis of 3 April 1559²⁵⁷ and the British-Spanish Treaty of London of 18 / 28 August 1604.²⁵⁸ These theorists adduced these treaties intending to prove that the law of war and peace, in European perspective, had become restricted to Europe and nearby oceanic waters.²⁵⁹ Yet, this conclusion is far from self-evident, because the so-called amity lines not only did not call into question the postulate of the general validity of the law of war and peace, but explicitly confirmed its validity by stipulating exemptions, the so-called amity lines. For one, the British-Spanish treaty of 1604 declared the willingness of both signatory parties to guarantee the safety of trade generally, without restriction to any part of the globe.²⁶⁰

XXXIII, XXXVIII. Ulcurrum, Excerpts from the *Tractatus universi iuris*, vol. 1 (Venice, 1584), fol. XXII^v, edited by Luciano Pereña Vicente, ‘Miguel de Ulcurrun. El emperador organo y garantia del derecho de gentes positivo’, in: *Revista Española de Derecho Internacional* 6 (1953), pp. 320-321. Jacob de Antonisz, *De praecellentia potestatis Imperatoriae* (Antwerp, 1503), fol. C2, D5, E6.

²⁵⁴ Franz Bosbach, *Monarchia universalis. Ein politischer Leitbegriff der frühen Neuzeit* (Schriftenreihe der Historischen Kommission bei der Bayerischen Historischen Akademie, 32) (Göttingen, 1988).

²⁵⁵ Giovanni Botero, *De ratione status* (Venice, 1619) [another edn (Helmstedt, 1666)].

²⁵⁶ Louis XIII, King of France, ‘[Decree, dated 1 July 1634, written by Armand Jean Du Plessis, Cardinal de Richelieu]’, edited by Louis-Elie Moreau de Saint-Méry, *Loix et constitutions des colonies françaises de l’Amérique sous le vent*, vol. 1 (Paris, 1784), pp. 25-27.

²⁵⁷ Treaty France 1559 (note 136).

²⁵⁸ Treaty Great Britain 1604 (note 86).

²⁵⁹ Wilhelm Georg Carl Grewe, *Epochen der Völkerrechtsgeschichte*, second edn (Baden-Baden, 1988), pp. 187-188 [first printed unpublished edn (Leipzig, 1945); first book trade edn (Baden-Baden, 1984); English version (Berlin, 2000)]. Carl Schmitt, *Der Nomos der Erde im Völkerrecht des Jus Publicum Europeum* [main parts written before the end of World War II, 1945] (Cologne, 1950), pp. 60-61 [reprints (Berlin, 1974; 1988; 1997)].

²⁶⁰ Treaty Great Britain 1604 (note 86), art. XXIII, p. 35.