The Westphalia Peace Treaties and the Development of the Tradition of Great European Peace Settlements prior to 1648

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1. The triple significance of the Westphalia peace settlement

According to modern scholarship, the two peace treaties signed at Münster between the Empire and France and at Osnabrück between the Empire and Sweden on October 24th, 1648 constitute a major turning point in German and European political, religious and legal history. The significance of the treaties is clearly triple. The treaties were more than just normal peace settlements. They also implied important constitutional and religious settlements regarding the Empire.

According to the text of the treaties themselves, the peace settlements were to be considered as imperial laws and even as part of the constitution of the Holy Roman Empire. In addition to the establishment of the principle of territorial sovereignty for each of the more than three hundred Stände that made up the Empire, the treaties recognized the right of the Stände to participate in all decisions regarding the Empire and restored their right to form alliances with each other or with foreign powers, as long as these alliances were not directed against the emperor, the Empire or the public peace.

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2 The Osnabrück treaty will be referred to as IPo, the Münster treaty as IPM. The quotations and subdivision in articles and paragraphs are taken from the Parry edition. The numbers for the paragraphs of the Münster treaty are those from the English translation in that edition: Clive Parry, The Consolidated Treaty Series I (Dobbs Ferry 1969).
   Art. 17, par. 2 IPo. Par. 120 IPM. See also: Albrecht Randelzhofer, Völkerrechtliche Aspekte des Heiligen Römischen Reiches nach 1648 (Berlin, 1988) 54–62.
3 With this last term the treaties themselves were meant. Art. 8, par. 1 and 2 IPo. Par. 64 and 65 IPM. The right to form alliances had been abolished by the peace treaty of Prague signed on 30 May 1635 between the Emperor and Saxony, to which most of the German powers subsequently acceded. Art. 27. Jean DuMont, Corps universel diplomatique du
Furthermore, the peace treaties brought an end to the religious struggle within the German Empire, among other things by establishing equality between princes and Stände regardless of their religion.\(^4\) Taken together, the constitutional and religious settlement amounted to the construction of a highly federative Empire based on the principles of territorial sovereignty and sovereign equality of the Stände. In that way, the 1648 settlement determined the constitutional and religious constellation of the Empire for the rest of its existence.\(^5\)

But most of all, emphasis has been paid to the fundamental significance of the Westphalia peace treaties for the historical development of the modern law of nations and the classical European order. The broad majority of nineteenth and twentieth century specialists of international law and its history consider the 1648 treaties - next to Grotius’ De Iure Belli ac Pacis libri tres (1625) - as the very birth of the classical ius publicum Europaeum. Most authors thereby point to the same innovations to support such an assessment of the treaties.

Though this principle was not present in the text, the treaties introduced the idea of sovereign equality among the states of Europe. This was however a broad extension of the recognition of the equality of the German Stände regardless of their religion.\(^6\) Secondly, the recognition of the equality of religions led to the secularization of European politics.\(^7\) And thirdly, the peace treaties

droit des gens (Amsterdam, 1726) IV, 1, 97 (further referred to as DM). See also: Ernst-Wolfgang Böckenförde, 'Der Westfälische Friede und das Bündnisrecht der Reichsstände,' Der Staat, VIII (1969) 458–475.

\(^4\) Art. 5, par. 1 and art. 7 iPo.

