

## **A CRITICAL REVIEW ON THE CONSENSUS AROUND THE "WESTPHALIAN SYSTEM"**

**Luís Moita**

[lmoita@ual.pt](mailto:lmoita@ual.pt)

Full Professor and Director of the Department of International Relations of Universidade Autónoma de Lisboa, Director of OBSERVARE, Observatory of External Relations and of JANUS.NET, *e-journal of International Relations*.  
Deputy Rector of Universidade Autónoma de Lisboa between 1992 and 2009

### **Summary**

The Thirty Years' War, which devastated Europe between 1618 and 1648, was a complex conflict: it was a religious war; it involved the main powers of the time, dynasty rivalries and rebellions from princes against the Emperor of the Holy Roman-German Empire. There is a consensus in viewing the Peace of Westphalia, which ended the war, as a decisive moment in the history of international relations and the majority of authors considers it the starting point of the modern State-Nation system, sovereign states which have jurisdiction over a territory, which were usually secular and related to one another according to the principle of the balance of power. A critical review of this consensus leads to question each of the above mentioned topics and conclude that the common interpretation has retrospectively transposed political processes which took place only later. In fact, it is likely that, in the 17<sup>th</sup> century, the pre-modern princely State is still dominant, which will then lead to the modern State-Nation system, a consequence of the emergence of industrial society and nationalism. One may even consider that the Peace of Westphalia delayed the constitution of national States, as far as Germany is concerned. Therefore, to use the terms "Westphalian state" and "Westphalian system" seems rather unadvisable.

### **Keywords:**

Peace of Westphalia; sovereignty; territory; Westphalian system; State-Nation

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## A CRITICAL REVIEW ON THE CONSENSUS AROUND THE "WESTPHALIAN SYSTEM"

Luís Moita<sup>1</sup>

Those who go through specialized bibliography in International Relations will soon become familiar with a generalized opinion: that the Treaties of Westphalia in 1648 were the origin of the modern State-Nation system, sovereign states with territorial boundaries. The term "Westphalian State" became common and a consensus was created around this supposed feature within the genetic code of the interstate setting which lasted until today. Herein could we find all the elements of an enshrined equation: nationality + state political organization + sovereignty + territory. Westphalia was the moment of transition from nebulous medieval Christianity to modern power states, thus the term "Westphalian state".

In specialized literature we easily find emphatic statements such as: "In 1648, the peacemakers of Westphalia did not realize they had just created a new world order"<sup>2</sup>, or: "The Peace of Westphalia has achieved the status of founding moment of today's sovereign state political system"<sup>3</sup>, or yet: "The Peace of Westphalia, for better or worse, marks the end of an epoch and the opening of another. It represents the majestic portal which leads from the old into the new world"<sup>4</sup>.

In a less simplified way, some authors intelligently describe the complexity of the "Westphalia" phenomenon and its plethora of meanings. An example of this is the following page by the great American legal expert, Richard Falk:

*"«Westphalia» is simultaneously used to identify an event, an idea, a process, and a normative score sheet. As event, Westphalia refers to the peace settlement negotiated at the end of the Thirty Years War (1618–1648), which has also served as establishing the structural frame for world order that has endured, with modifications from time to time,*

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<sup>2</sup> Arnaud Blin, 1648, *La Paix de Westphalie ou la naissance de l'Europe politique moderne*, Bruxelles: Éditions Complexe, 2006, p.166.

<sup>3</sup> João Marques de Almeida. "A paz de Westfália, a história do sistema de Estados modernos e a teoria das relações internacionais", *Política Internacional*, vol. 2, n.º 18 Outono-Inverno (1998), 45-78, p. 45.

<sup>4</sup> Leo Gross. "The Peace of Westphalia, 1648-1948", *The American Journal of International Law*, Vol. 42, No. 1 (Jan., 1948), pp. 20-41, p.28. According to some, the paper by Leo Gross is greatly responsible for this thesis.



*until the present. As idea, Westphalia refers to the state-centric character of world order premised on full participatory membership being accorded exclusively to territorially-based sovereign states. As process, Westphalia refers to the changing character of the state and statecraft as it has evolved during more than 350 years since the treaties were negotiated, with crucial developments as both colonialism and decolonization, the advent of weaponry of mass destruction, the establishment of international institutions, the rise of global market forces, and the emergence of global civil society. As normative score sheet, Westphalia refers to the strengths and weaknesses, as conditioned by historical circumstances, of such a sovereignty based system, shielding oppressive states from accountability and exposing weak and economically disadvantaged states to intervention and severe forms of material deprivation”<sup>5</sup>.*

No matter how respectable and well-founded these points of view may be, the truth is that they are included in a wide consensus among scholars in International Relations. We believe, however, that such a consensus<sup>6</sup> is, at least, debatable, and we may even say that Westphalia is perhaps “one of the most misrepresented events by scholars of ‘international’”<sup>7</sup>. Thus, the advantage of a critical review. We state that the Treaties of Westphalia should not be considered the origin of the modern State or the State-Nation and, consequently, the term “Westphalian state” should no longer be used. To support that, we reiterate: Westphalia did not create the concept of sovereignty; Westphalia was not the origin of national State with territorial borders; it is probably abusive to claim that the Treaties of 1648 founded the European system of State-Nations. The analysis of these issues will force us to briefly describe the Thirty Years’ War and the Treaties that ended it, as well as its consequences for Europe.

### **The Thirty Years’ War**

The Thirty Years’ War, which devastated central Europe between 1618 and 1648 (the majority of the German population was killed), was a large and complex conflict. It was simultaneously a religious war, a confrontation among the powers of the time, a clash between dynastic interests and a rebellion of German princes against the Holy Roman Emperor (a kind of civil war within the German territory). These dimensions of the war overlapped and cross-connected, sometimes in a rather contradictory way. A brief overview of this complexity will surely help to understand the scope of the peace of Westphalia and how it affected the international system.

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<sup>5</sup> Richard Falk (2002). “Revisiting Westphalia, Discovering Post-Westphalia”, *The Journal of Ethics* 6: 311-352, p. 312. See also José Manuel Pureza (1998). “Eternalizing Westphalia? International Law in a Period of Turbulence”, *Nação e Defesa*, Outono 1998 – nº 87 – 2ª série, pp. 31-48.

<sup>6</sup> The consensus is so wide that it is rather superfluous to provide examples. In some cases, the phrase “Keynesian-Westphalian frame” (plus control of national economy by the State), as is the case of Nancy Frasier (2009). *Scales of Justice*, New York: Columbia University Press.

<sup>7</sup> Brazilian scholar Lucas Freire, professor at the University of Exeter, in the UK, was the first to use this expression at a conference in Belo Horizonte, Brazil, in 2008, in a paper on the impact of Westphalia in new political order, “O Impacto de Westphalia na Montagem de uma Nova Ordem na Política Mundial”, available. in [http://exeter.academia.edu/lucasfreire/Papers/196168/O\\_Impacto\\_de\\_Westphalia\\_na\\_Montagem\\_de\\_uma\\_Nova\\_Ordem\\_na\\_Politica\\_Mundial](http://exeter.academia.edu/lucasfreire/Papers/196168/O_Impacto_de_Westphalia_na_Montagem_de_uma_Nova_Ordem_na_Politica_Mundial), retrieved on 11.12.2011 (quote authorized by the author).



First and foremost, it was a religious war. Let us briefly go over its major events and their consequences. In 1517, Luther publishes his 95 Theses on the door of the Wittenberg Cathedral, an action which represents the beginning of Protestant Reform. The new anti-catholic confession spreads rapidly through wide areas of northern and central Europe and is adopted by many German princes, by the kingdom of Sweden and in Scandinavia in general. Soon, Calvin proposes a doctrine closer to that of Luther and Calvinism spreads from Geneva to the north of France (the Huguenots) and the United Provinces of Flanders. The religious conflict became rather violent as authorities either reacted in a very strict (see the Diet of Worms in 1521 which condemns Luther) or in a tolerant way (see the Edict of Nantes by French king Henry IV which ended the Huguenot massacre, in 1598). Meanwhile, the Protestant princes had united in the so-called Liga of Esmalcalda against Charles V, Emperor of the Holy Empire. In 1555, in Augsburg, the two parties signed a Treaty, the famous Peace of Augsburg, which gave religious freedom to Lutherans (the agreement did not refer to Calvinists). From this moment onwards, as well as in the Treaties we will later analyze, Lutherans are usually referred to as the Augsburg Confession. The Peace of Augsburg, however, did not prevent the reigniting of religious conflicts, as evidenced in the episode known as "Prague Defenestration" (a symbolic moment representing the start of the protestant rebellion in 1618), made more serious due to the war for Sweden, which supported the Lutheran princes, as well as the intervention by France and the involvement of England<sup>8</sup> at a later stage.

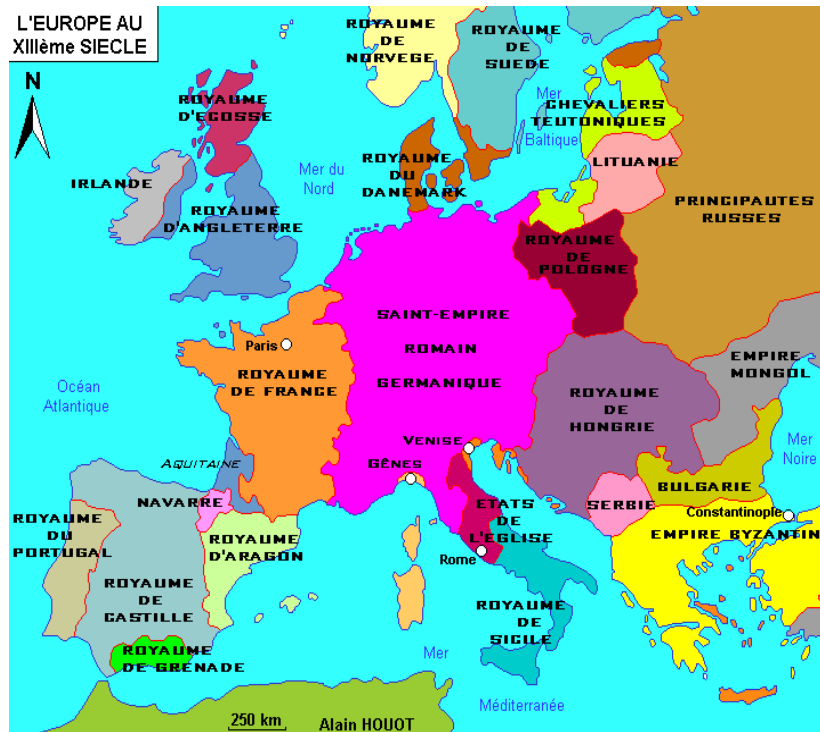
The latter reference allows us to move on in our analysis: the Thirty Years' War was not merely a religious war; it was also a conflict between the powers of the time. Sweden's role in the conflict is partly explained by its claim to being a European power, in an attempt to weaken the German empire and expand its influence to the whole of Scandinavia, the Baltic and to northern Europe. The United Provinces of Flanders, where Calvinism was predominant and which had become free from Spanish domination, also participated in the war, as did Bohemia and later Denmark. The powerful French participation, together with Sweden, the Swiss cantons and some Italian States, is explained by French desire to defy the hegemony of the Holy Roman Empire and of Spain and become the first European power. Cardinal Richelieu, prime-minister to Louis XIII, personified that ambition and, in the name of *Raison d'état*, did not hesitate to fight against its Catholic friends, a fact which evidences that the interests of the State far outranked religious solidarity. Their objective was indeed achieved and France became much more powerful, to the point of being the most important nation of the time, also due to its great internal development fostered by Colbert's mercantile policy during the reign of Louis XIV. To summarize, the Thirty Years' War represented a confrontation among the main powers of the 17<sup>th</sup> century, one of the innumerable convulsions and confrontations among these powers in the transition from the 16<sup>th</sup> to the 17<sup>th</sup> centuries. Examples of this are the Turkish siege to Vienna in 1529, the war against the Ottoman Empire, which lasted decades, the war of Spain in Flanders (between 1560 and 1648, the so-called Eighty Years' War), and the war of France against Spain (which was only over in 1659 with the Treaty of the Pyrenees).

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<sup>8</sup> In this short summary there is no room for details on the conflict's development or a description of the several post-war periods: the Palatine-Bohemian period (1618-1625), the Danish period (1625-1630), the Swedish period (1630-1635), and the French period (1635-16648).



Map 1 – The Holy Roman Empire in the 18th century <sup>9</sup>



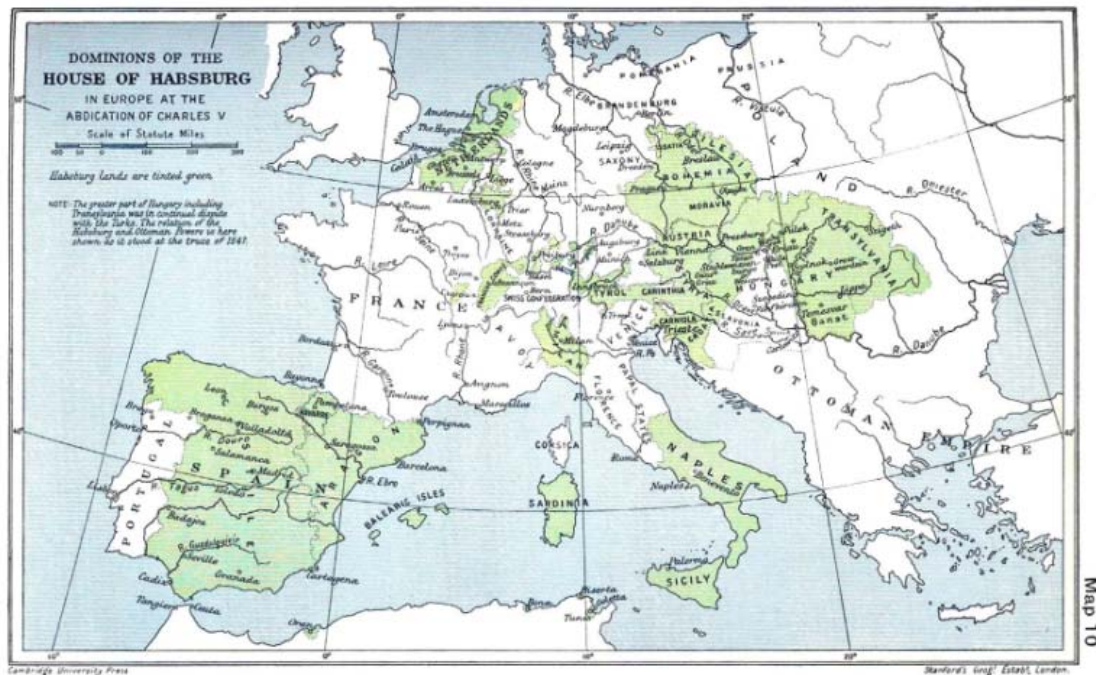
In this confrontation, dynastic rivalries had a significant relevance. The interests of the European reigning families were traditionally managed through a wedding policy, which represented alliances but ultimately could lead to confrontation. In the 18<sup>th</sup> century, the powerful Bourbon dynasty, which ruled France since the 16<sup>th</sup> century with Henry IV, began a serious confrontation against the Habsburgs, the Austrian Family<sup>10</sup>. The latter, who would rule the Austrian-Hungarian Empire, was at the head of the Holy Roman Empire from the 12<sup>th</sup> century to 1806. The Empire's most powerful time was under Charles V, who was both the King of Spain and the Holy Roman Emperor. After his death, the Empire is left to his brother, Ferdinand I, and Spain to his son, Philip II.

<sup>9</sup> Source: <http://lartdesmets.e-monsite.com/pages/atlas-histoire-medievale-cartes/l-europe-au-xiii-siecle.html>, retrieved on 28.2.2012.

<sup>10</sup> Writing about the Habsburgs, Koenigsberger declared: "Already in the 15<sup>th</sup> century, the Habsburg Emperor, Frederick I, adopted the motto AEIOU, *Austria est imperare orbi universo* (*Alles Erdreich ist Österreich untertan*: the entire world in under Austrian rule)" - H.G. Koenigsberger "Marte y Venus: Guerra y relaciones internacionales de la Casa de Austria" *Revista Pedralbes*, 19 (1999), 27-52, p. 45.



**Map 2 – The Habsburg territory <sup>11</sup>**



When the Thirty Years' War breaks out in 1618, the German princes rebel against the before mentioned emperor. The Holy Roman Emperor was an odd political organization which maintained the dream of the classical Roman Empire, a dream the empire of Charles Magne, king of the Francs, had already attempted to recover in medieval Christianity (in the 12<sup>th</sup> century). This new replica, under the name "Holy", had constantly changed borders but basically occupied Germany, its centre being Vienna, and encompassed a wide area of central Europe, from Brandenburg (in today's Germany) to Lombardy (in the north of Italy) and from Burgundy (in today's France) to Bohemia (now the Czech Republic). The princes who ruled this wide area were submitted to two powers: to the Pope, the spiritual power, and to the Emperor, the secular power, the latter elected by a group of important figures. Historically, the Christian kings gradually became independent from Pope Authority and the Peace of Westphalia is a symbolic moment of emancipation by the German princes in regards to the Emperor. The erosion of imperial power became inevitable and the emperor's role gradually became symbolic until Napoleon Bonaparte forced its dissolution.

### The Peace of Westphalia

This brief overview of the main facts within the Thirty Years' War and the several types of conflicts at play allow us to proceed to analyzing the Treaties of Westphalia based on several sources: the Treaties<sup>12</sup> themselves, for logical reasons, as well as other

<sup>11</sup> Source: <http://www.bookdrum.com/books/dracula/9780141439846/bookmarks-26-50.html>, retrieved on 28.2.2012.

<sup>12</sup> The original Treaty, in Latin, as well as the several old translations of the Treaties, is available in Die Westfälischen Friedensverträge vom 24. Oktober 1648. Texte und Übersetzungen (Acta Pacis Westphalicae. Supplementa electronica, 1): <http://www.pax-westphalica.de/>, retrieved on 24/2/2012. The references made are based on the numbering of these documents. Full-text of the Treaties is also available in other websites such as The Avalon Project at Yale Law School:



documents, some ancient and other contemporary. The oldest sources are *Histoire abrégée des traités de paix, Les puissances de l'Europe depuis la Paix de Westphalie*, by Christophe-Guillaume de Koch, an Alsatian historian whose four volumes were first published in Basel in 1796 and 1797, and then reedited in Paris in 1837<sup>13</sup>, and the fourth volume of *Tableau des révolutions du système politique en Europe depuis la fin du quinzième siècle* by M.F. Ancillon<sup>14</sup>. Among the more modern works, mention should be made to a special volume of the journal *Pedralbes, Revista d'Història Moderna*, from the University of Barcelona<sup>15</sup>, published right after 1998, the 350th anniversary of the Treaties of Westphalia<sup>16</sup>.

As it is widely known, the Peace of Westphalia<sup>17</sup> was established through two treaties signed at the same time, on 24 October 1648, one in Münster (120 paragraphs long) and the other in Osnabrück (divided into 17 chapters). In both, one of the signatures is that of the Emperor of the Holy Roman Empire. Yet, his opponents refused to meet and preferred to sign the Treaties separately: the kingdom of France (catholic) signed in Münster and the kingdom of Sweden (Reformed or Protestant)<sup>18</sup> in Osnabrück.

The Treaties – mediated by the Republic of Venice – ended the war and, as a consequence, the religious conflict<sup>19</sup>. They ordered the end of hostilities to the military authorities, decreed a general amnesty of previous infractions and upheavals, regulated the restitution and redistribution of material goods in compliance with the new division of power as well as solemnly proclaimed a "Christian, universal and eternal peace"<sup>20</sup>. Religious freedom was preserved from then on and no one could be persecuted because of their faith. Each prince could freely opt either for the Christian faith or for the "Augsburg Confession" (i.e. Lutheranism) or for Calvinism and – most importantly – that would become the option of the land's inhabitants, in accordance with the principle *cuius regio, eius religio*<sup>21</sup>. The political power would, then, determine the predominant

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[http://avalon.law.yale.edu/17th\\_century/westphal.asp](http://avalon.law.yale.edu/17th_century/westphal.asp); and in French (Digithèque de matériaux juridiques et politiques): <http://mjp.univ-perp.fr/traites/1648westphalie.htm>; <http://mjp.univ-perp.fr/traites/1648osnabruck.htm>.

<sup>13</sup> Tome premier, Bruxelles: Meline, Cans et Compagnie. This 1837 edition was revised and completed by F. Schoell, ambassador of Prussia in France who, in his long preface, justifies the changes he introduced. Available in [http://www.google.pt/books?id=kOKtAAAAMAAJ&printsec=frontcover&hl=pt-PT&source=gbs\\_ge\\_summary\\_r&cad=0#v=onepage&q&f=false](http://www.google.pt/books?id=kOKtAAAAMAAJ&printsec=frontcover&hl=pt-PT&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false), retrieved on 23.4.2011.

<sup>14</sup> Paris, Imprimerie de la Harpe, 1806, available in [http://books.google.pt/books?id=rWEPAAAAQAAJ&pg=PP7&dq=ancillon+tableau+tome+quatrième&hl=pt-PT&ei=FidZT6jHCs6t8QPfMZOD&sa=X&oi=book\\_result&ct=book\\_thumbnail&resnum=2&ved=0CDOQ6wEwAQ#v=onepage&q&f=false](http://books.google.pt/books?id=rWEPAAAAQAAJ&pg=PP7&dq=ancillon+tableau+tome+quatrième&hl=pt-PT&ei=FidZT6jHCs6t8QPfMZOD&sa=X&oi=book_result&ct=book_thumbnail&resnum=2&ved=0CDOQ6wEwAQ#v=onepage&q&f=false), retrieved on 6.6.2011.

<sup>15</sup> Available in <http://www.raco.cat/index.php/Pedralbes/issue/view/8335/showToc>, retrieved on 27.5.2011.

<sup>16</sup> Those readers who understand German may find further information in "Wesfälische Geschichte" in [http://www.lwl.org/westfaelische-geschichte/portal/Internet/input\\_felder/langDatensatzEbene4.php?urlID=461&url\\_tabelle=tab\\_websegmente#bd1](http://www.lwl.org/westfaelische-geschichte/portal/Internet/input_felder/langDatensatzEbene4.php?urlID=461&url_tabelle=tab_websegmente#bd1), retrieved on 17.2.2012.

<sup>17</sup> For a brief summary in Portuguese, see Hermínio Esteves and Nancy Gomes "O Congresso de Vestefália", *JANUS* 2008, p. 50-51.

<sup>18</sup> Due to the exceptionally long negotiation period, the main actors died before seeing the product of their effort, their successors signed the Treaties: Ferdinand II and Ferdinand III for the Empire; Louis XIII and Louis XIV for France; Gustav Adolf and Queen Christina for Sweden.

<sup>19</sup> Even though peace was precarious. In 1685, Louis XIV of France revoked the Edict of Nantes in which Henry IV guaranteed tolerance towards Protestants in 1598. Not only did religious persecutions continued but, in the next century, important conflicts broke out, from succession wars in Europe to those of colonization in other continents.

<sup>20</sup> Statement included in the first articles of both Treaties.

<sup>21</sup> This expression had already been used in previous situations and is not taken up literally in the Treaties of Westphalia. Often it is mistranslated as "in a specific region, a specific religion", this way emphasizing territory. However, its true meaning is "Whose realm, his religion".



confession within its jurisdiction. Yet, its subjects, in case they disagreed with the religious option, could immigrate to areas in which their confession was predominant<sup>22</sup>.

Having regulated the religious issue thus, the Treaties of Westphalia also include innumerable provisions on territory, imposed by the rebalancing of powers due to the long conflict. The usual power game is at play: at the time, one of the natural consequences of war was a geographical expansion of territory by the winner and territorial loss by the losing party. Therefore, the Emperor and the Austrian family gave France a few territories: bishoprics (Metz, Toul, Verdun...), free cities, boroughs, castles, mines and pastures, and areas such as Alsace. On the other hand, the Queen of Sweden was given territories such as a part of Pomerania, the city and the port of Wismar, the archbishopric of Bremen, the city of Wilshofen and so on, all of which belonged to the Holy Empire before the war. In these geopolitical rearrangements, it is also noteworthy to mention the independence of two territories: the United Provinces of Flanders (Holland), already free from Spanish rule, and the Swiss Confederation, represented by the city of Basel on behalf of the other cantons<sup>23</sup>.

As we have seen, this power correlation was closely connected with the rivalries among the predominant dynasties. The Peace of Westphalia obviously represented a victory of the Bourbons over the Habsburgs. The first, who occupied the throne of France, in alliance with Sweden, opposed to the latter's attempt to rule Europe and make the borders of Christianity coincide with their own Empire. A geopolitical change thus took place, in which the Scandinavian and western countries won (Sweden, England, Holland, France, Switzerland) over the central-southern axis, Vienna-Madrid.

This was not the only area in which the role of the Habsburg Emperor was weakened. In fact, not only did the Holy Roman Empire lose territory and power in the confrontation with its opponents but its role became much less relevant due to the relative emancipation of the princes in relation to the Emperor. Westphalia thus represents an important breaking point from medieval Christianity and its duality, in which the local powers were submitted to the Pope, the spiritual power, and the Emperor, the secular power<sup>24</sup>.

According to most scholars, the historical relevance of the Peace of Westphalia lies exactly in this transition: the end of the old European (medieval) order and the emergence of a new (modern) order, no longer based on a nebulous of a supposed universal Christian kingdom – the Christian Republic –, but in the existence of the sovereign State-Nations, with territorial borders, i.e., "Westphalian States". This thesis, however, must undergo thorough critical analysis.

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<sup>22</sup> Imperial cities could include two religions – see art. V, 11, of the Treaty of Osnabrück. This Treaty describes in detail the guaranties of relocation for those who do not agree with the prince's religion: all "State subjects whose religion is not that of the Lord are entitled to change residency" (art. V, 12). They have a period of no relocate for no less than five years.

<sup>23</sup> On this matter, see the reservations towards the "independency" of both Holland and the Swiss Confederation stated by Andreas Osiander in "Sovereignty, International Relations, and the Westphalian Myth", *International Organization* 55, 2, Spring 2001, 251-287, p. 267.

<sup>24</sup> See Jacques Le Goff (1983). *A civilização do Ocidente Medieval*, volume II, Lisboa: Editorial Estampa, transl. by Manuel Ruas, p.19- : "Christianity is dual. It has two heads: the Pope and the emperor. But medieval history is rather composed of misunderstandings and wars than of understandings"; and later: "The duality in medieval Christianity is less the duality of the Pope and the emperor than that of the Pope and the king (king-emperor), or, as the historical formula states, the duality of the priesthood and the Empire, of spiritual and secular powers, of the priest and the warrior".





## A critical review

The Treaties of Münster and Osnabrück were undoubtedly extremely important moments in European history, for all the already mentioned reasons. The Congress of Westphalia was a long three-year negotiation and represented a kind of pan-European conference, perhaps the first in the continent. It brought peace, though precarious, on the religious issue, it practically abolished the power of the Holy Roman Emperor to supervise the princes, weakened both the Austrian and the Spanish branches of the Habsburg dynasty, made France and Sweden stronger and allowed for wider autonomy of would-be Holland and Switzerland.

However, we do not believe that the geopolitical alterations in Europe allow for the expression "Westphalian system" (meaning the state-centered system which would dominate international life) nor that these alterations represented the emergence of the sovereign State-Nation, with territorial jurisdiction, often compared to the "modern State"<sup>25</sup>. Let us analyze this issue step by step.

## The idea of State-Nation

Many historians declare this was the time the State-Nation in Europe was becoming consolidated. Paul Kennedy, an authority on this matter, affirms:

*"Between the late fifteenth and the late seventeenth centuries, most European countries witnessed a centralization of political and military authority, usually under the monarch (but in some places under the local prince or a mercantile oligarchy) accompanied by increased powers and methods of state taxation, and carried out by a much more elaborate bureaucratic machinery (...) There were various causes for this evolution of the European nation-state. Economic change had already undermined much of the old feudal order (...). The Reformation, in dividing Christendom (...) extended secularism on a national basis. The decline of Latin and the growing use of vernacular language by politicians, lawyers, bureaucrats, and poets accentuated this secular trend. (...) it was no wonder that many philosophers and other writers of the time held the nation-state to be the natural and best form of civil society, (...). But it was the war, and the consequences of the war, that provided a much more urgent and continuous pressure toward 'nation building' than these philosophical considerations and slowly evolving social tendencies"<sup>26</sup>.*

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<sup>25</sup> We cannot ignore the innumerable debates and controversies on the idea of State "modernity". On this matter, see the proceedings of a conference cycle held at Universidade Autónoma de Lisboa in the academic year of 1996-97, when, on this matter, important texts were written, namely by Jean-Philippe Genet, "La Genèse de l'État Moderne" and by António M. Hespanha, "O Estado Moderno na recente historiografia portuguesa", in *A génese do Estado Moderno no Portugal Tardo-Medieval (séculos XIII-XV)*, Lisboa: EDIUAL (1999).

<sup>26</sup> Kennedy (1989), pp. 89-90.



Kennedy, when he mentions "philosophers and writers" is referring to Machiavelli, probably the first to use – still in the early sixteenth century – the term "State"<sup>27</sup> in its modern meaning, or to Grotius, who, in 1625 – in the middle of the Thirty Years' War – publishes his masterpiece *The Rights to War and Peace*, in which he describes States as legal persons and establishes one of the legal basis of international law (*ius gentium*)<sup>28</sup>. Later, in 1651, already after the Peace of Westphalia, the English philosopher Thomas Hobbes develops a complex theory on State in his famous work, *Leviathan*<sup>29</sup>.

Yet, did the Treaties of Münster e Osnabrück found the State-Nation or the Nation-State (to use Paul Kennedy's term)? Certainly not. If, at that time, the European societies were moving towards power centralization, the truth is that the State-Nation appears, in some cases, much before Westphalia and, in others, much after Westphalia. In some of these processes, the Nation precedes the State, in terms of a community with its own identity, which is organized politically as a State. In others, however, the process is reversed and the State precedes the Nation<sup>30</sup>. The Treaties did not found the secular State either<sup>31</sup> and we must not forget that being secular is one of the features of the modern State. The Treaties may have undermined the sacredness of political power, yet, their most immediate effect was not the secularization of institutions but exactly the opposite, namely the link between belonging to a confession and to a political community, based on the referred principle of *cuius regio, eius religio*.

In fact, observing Europe's political map in this period allows for interesting conclusions. To the west and the north, we can see several kingdoms, some reasonably established in terms of identity and territorial borders, as is the case of Scotland, England, France, the United Provinces, Portugal and Spain, Denmark and Sweden. To the East, besides the Polish-Lithuanian kingdom, we find mostly empires, in particular the Russian, the Turkish-Ottoman and later the Austrian-Hungarian. On the other hand, in the wide area of Central Europe, in the German and Italian areas, namely in the Holy Roman Empire, there is huge fragmentation of policies. This fragmentation is due to the already mentioned autonomy of the princes in regards to the emperor as well as due to the traditional fragmentation of the Italian peninsula. Therefore, the Peace of Westphalia, rather than lead to the generalization of the State-Nation in Europe, led to the pulverization of political centers, to hundreds of principalities. Observing the two maps allows us to describe the evolution of Europe between 1600 and 1660, and

<sup>27</sup> In the first line of his work, *O Príncipe*, Lisboa: Publicações Europa-América (1972), transl. Fernanda Pinto Rodrigues.

<sup>28</sup> I used the French edition (1999), *Le droit de la guerre et de la paix*, Paris : Presses Universitaires de France, transl. P. Pradier-Fodéré. On page 7, he states: "this area of law which regulates the relations among peoples or chiefs of State, whose rules are either based on their own nature, or established by divine law or by custom or by tactical convention have been analyzed by few authors (...) though this is an important work for humankind".

<sup>29</sup> Published in Portuguese by Imprensa Nacional Casa da Moeda, transl. João Paulo Monteiro and Maria Beatriz Nizza da Silva, Lisboa (1995).

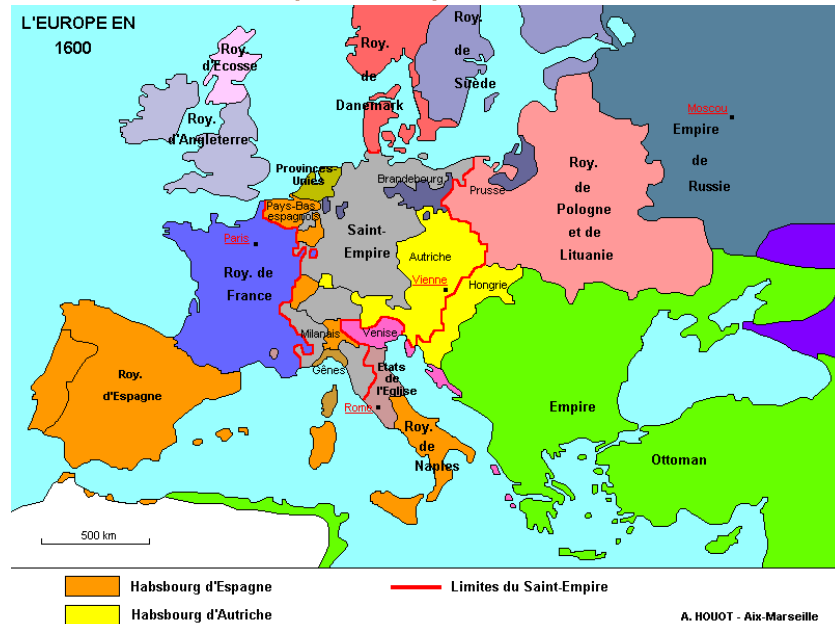
<sup>30</sup> This is undoubtedly the case of Portugal: "Portugal was not founded (...) based on ethnicity but on political and administrative status, i.e., contrary to what was generally accepted during the nationalist period, Portugal started as a State type of political formation and slowly became a Nation. (...) The Portuguese state annexed a series of separate territories which had little in common in terms of culture and living conditions. Portugal's unity resulted from continuity in political power which ruled the territories in a firm and very centralized manner" – José Mattoso (1998). *A Identidade Nacional*, Lisboa: Gradiva, p. 67.

<sup>31</sup> However, Raymond Aron's opinion should be taken into account: "The neutrality or secularism of State in Europe was a result of the Wars of Religion" – *Paix et guerre entre les nations*, Paris: Calman-Lévy (1984), p.374. A similar opinion is that expressed in: "the Renaissance, the decline of the Roman Church, the development of humanistic ideas paved the way to national secularization": Jacques Huntzinger (1991). *Introdução às Relações Internacionais*, Lisboa: PE Edições, transl. Carlos Aboim de Brito, p. 87.

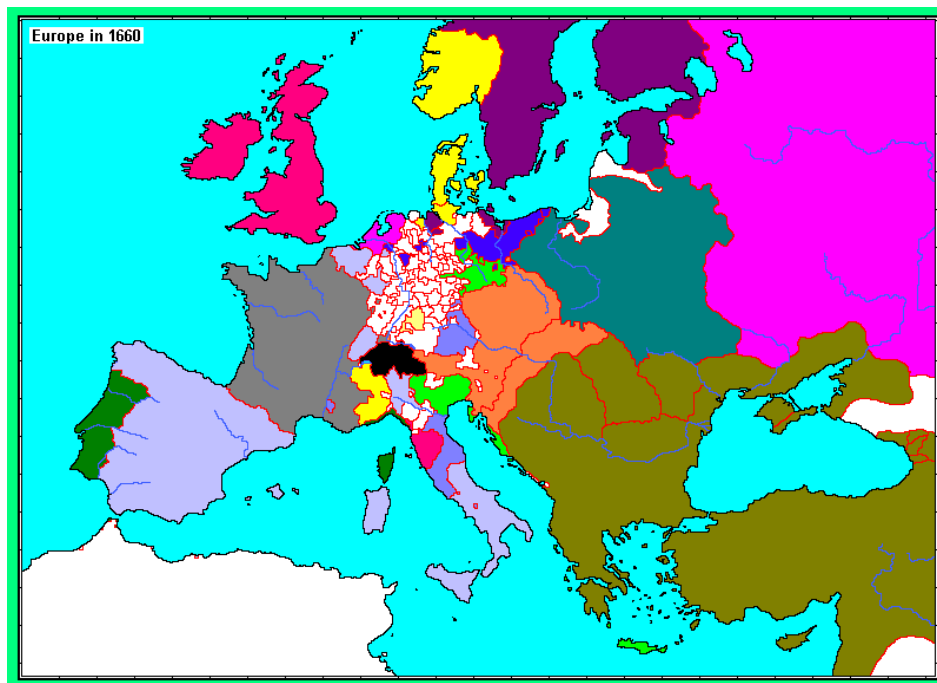


realize that the Thirty Years' War and the Treaties of Westphalia did not lead to the generalization of the State-Nations and rather delayed that process.

Map 3 – Europe in 1600<sup>32</sup>



Map 4 – Europe in 1660<sup>33</sup>



In fact, the relative independence of the princes towards the supervision of the emperor led to political fragmentation and delayed by two centuries the emergence of

<sup>32</sup> Source: [http://perso.numericable.fr/alhouot/alain.houot/Hist/ancien\\_R/ancien7.html](http://perso.numericable.fr/alhouot/alain.houot/Hist/ancien_R/ancien7.html), retrieved on 28.2.2012.

<sup>33</sup> Source: <http://www.zum.de/whkmla/region/xeuropa1718.html>, retrieved on 28.2.2012.



the German State<sup>34</sup>. Actually, we have to wait until the mid 19th century for the unification of two great European countries, Italy, in 1860-70, and Germany, in 187<sup>35</sup>. At that time, as we will see, the State-Nation system is already predominant in European geopolitics.

What Westphalia establishes is not so much the State-Nation but the 'princely State', as Jacques Huntzinger describes:

*"(...) the State becomes the princely State. The state cities could be either just cities or empires, having gradually conquered and annexed territories (...). The princely States, however, belong to a single owner, the prince, whose power reins over a defined and well-limited territory. Princely authority is so encompassing that everyone feels it as a central power. (...) The princely State extends to the whole of Europe along the sixteenth and seventeenth centuries. In the eighteenth century, a new development takes place and the princely State is replaced by the State-Nation"*<sup>36</sup>.

This development from the princely State to the modern State-Nation is closely linked with the issue of sovereignty. The sovereign State, therefore, is not a consequence of the Peace of Westphalia either.

### **The concept of sovereignty and territorial jurisdiction**

Frequently, books on International Relations refer the Treaties of Münster and Osnabrück as the supposed origin of the sovereign State is rather difficult to

<sup>34</sup> German historiography tends to emphasize this fact, unlike French historiography, which tends to omit it. The study of that historiography allows us to conclude that: "From the early nineteenth century, the confrontational perspective of peace was exacerbated in all those who tried to explain the delay in forming the State-nation, which would only be formed fully after 1871. The Catholic-inspired paradigm saw the war as a constitutional conflict which opposed the Imperial States to the Emperor, thus delaying the development of the imperial State of 'great Germany'. The Protestant-inspired perspective viewed the war as a Catholic counter-Reformation action and a confrontation between territorial States which delayed the foundation of a nation under Prussian ruling – 'little Germany'" – Claire Gantet, "Le 'tournant westphalien'", *Critique Internationale*, 2000, n.º 9, 52-58, p. 54, also available in [http://www.persee.fr/web/revues/home/prescript/article/criti\\_12907839\\_2000\\_num\\_9\\_1\\_1621](http://www.persee.fr/web/revues/home/prescript/article/criti_12907839_2000_num_9_1_1621), retrieved on 6.3.2012. A similar opinion is expressed next: "German fragmentation pulverized the power of the Viennesian Habsburgs and made it possible for the dynasty of the Hohenzollern, from Prussia and Brandenburg, after receiving the territories to the north of the Holy Empire, to initiate a policy of rivalry towards the Austrians. One of the highlights of the Hohenzollern strategy was the implementation of the German Border Union (Zollverein) by Prussia in the nineteenth century" – Marcilio Toscano Franca Filho, "Historia y razón del paradigma westfaliano", *Revista de Estudios Políticos*, 131, Madrid, enero/marzo 2006, 87-111, p. 99.

<sup>35</sup> "The German nationalists argued that the peace treaty prevented the establishment of a German union and led Germany to two centuries of impotence, to the benefit of France." – J.H. Elliott, "Europa después de la Paz de Westfalia", *Revista Pedralbes*, 19 (1999), 131-146, p. 132. In the same journal, see the opinions of Heinz Duchhardt who supports this point of view: "the Peace of Westphalia played an absolutely crucial role, marked the beginning of a disastrous time of external control over the German Empire by its most powerful neighbors and represented a victory of particularism and regionalism over a centralized policy" - Heinz Duchhardt, "La paz de Westfalia como *lieu de mémoire* en Alemania y Europa", *Revista Pedralbes*, 19 (1999), 147-155, p.149. According to this author, and in opposition to the version of nineteenth century French historians, the Spanish considered Westphalia "a low period in their history" and the Swedish "where generations, accounting for their success, tend to consider the peace of Westphalia as a turning point towards its decadence" (p. 155).

<sup>36</sup> *O. Cit.*, p. 87.



comprehend. The explanation may lie in the fact that, as we have seen, many policies in central Europe gained relative independence towards the imperial supervision of the House of Austria. The proliferation of independent principalities<sup>37</sup> led to the diffusion of powers and awarded them some of the prerogatives of sovereignty, since they were partially free from medieval supreme powers, those of the pope and of the emperor.

Those prerogatives are described in the Treaties of Münster and Osnabrück:

*"They shall enjoy without contradiction, the Right of Suffrage in all Deliberations touching the Affairs of the Empire; but above all, when the Business in hand shall be the making or interpreting of Laws, the declaring of Wars, imposing of Taxes, levying or quartering of Soldiers, erecting new Fortifications in the Territory of the States, or reinforcing the old Garrisons; as also when a Peace of Alliance is to be concluded, and treated about, or the like, none of these, or the like things shall be acted for the future, without the Suffrage and Consent of the Free Assembly of all the States of the Empire: Above all, it shall be free perpetually to each of the States of the Empire, to make Alliances with Strangers for their Preservation and Safety; provided, nevertheless, such Alliances be not against the Emperor, and the Empire, nor against the Public Peace, and this Treaty, and without prejudice to the Oath by which everyone is bound to the Emperor and the Empire"<sup>38</sup>.*

To legislate, collect taxes, levy soldiers and make war are all powers of a sovereign. Finally, the right to build alliances is another very symbolic prerogative of the princes' sovereignty. These are the arguments which have supported many authors' theses on the Peace of Westphalia being the origin of the sovereign State.

However, this is probably a rash and badly-founded conclusion. The concept and the practice of sovereignty existed before Westphalia<sup>39</sup>. The expression *rex in regno suo est imperator* had been in use since the late Middle Ages in Europe:

*"Since the early 12th century, English and Spanish as well as French canonists, deny that their kings are subjects of the emperor and subject to imperial laws. (...) In 1208, a canonist declared that «every king*

<sup>37</sup> Though formally they still "shall render Obedience, and be faithful to his Imperial Majesty" (§ 22 Treaty of Münster = art. IV, 14 Treaty of Osnabrück).

<sup>38</sup> § 63 of the Treaty of Münster = Art. VIII,2 of the Treaty of Osnabrück: *"Gaudeant sine contradictione iure suffragii in omnibus deliberationibus super negociis Imperii, praesertim ubi leges ferendae vel interpretandae, bellum decernendum, tributa indicenda, delectus aut hospitaciones militum instituendae, nova munimenta intra statuum ditiones exstruenda nomine publico veterave firmanda praesidiis nec non ubi pax aut foedera faciendae aliave eiusmodi negotia peragenda fuerint. (...) Cumprimis vero ius faciendi inter se et cum exteris foedera pro sua cuiusque conservacione ac securitate singulis statibus perpetuo liberum esto, ita tamen, ne eiusmodi foedera sint contra Imperatorem et Imperium pacemque eius publicam vel hanc imprimis transactionem fiantque salvo per omnia iuramento, quo quisque Imperatori et Imperio obstrictus est"*.

<sup>39</sup> See the thorough study by Dieter Wyduckel, "La Soberanía en la Historia de la Dogmática Alemana", transl. from German into Spanish, available in <http://www.unioviado.es/constitucional/fundamentos/primero/pdf/wyducke.pdf>, retrieved on 2.1.2012: "The origins of sovereignty as a relevant legal concept may be: in legal Roman law, in canon law and in monarchical and State law" (p.2).



*enjoys the same powers as the Empire's emperor within his kingdom»<sup>40</sup>.*

Jean Bodin's influence on the theoretical concept of sovereignty is widely known, namely in his work *Les six livres de la République*<sup>41</sup>, published in 1576, seventy years before the congress of Westphalia. Machiavelli's thesis on the prince's sovereignty also dates from the 16<sup>th</sup> century:

*"When Machiavelli published The Prince in 1527, he was the first to give an overview of international society (...). He begins by pointing out that principalities do not recognize a law or power above theirs, thus declaring the uselessness of the cultural heritage of the medieval Christian Republic"<sup>42</sup>.*

Besides, the model of sovereignty in force at the time was that of royal or princely absolutism<sup>43</sup>, very far from "modern State", in which sovereignty is no longer detained by the monarch but by the Nation as a legal person who delegates the right of government in its representatives (we will later discuss this idea).

We may argue that the fact that Westphalia acknowledges princes' right to establish alliances in order to ensure security is a feature of the modern sovereign State, associated to the right to make war, a kind of supreme power or a demonstration of sovereignty. That is true. Yet, we cannot ignore the evidence that neither the Thirty Years' War, nor the Treaties of Münster and Osnabrück, represented any innovation in this matter because the tradition to build alliances is rather old, from the classical and famous alliance system among City-States in ancient Greece either for or against Athens and Sparta in the Peloponnese War<sup>44</sup>. The more so if you consider that the German princes, long before Westphalia, already conducted autonomous external policies and signed alliances<sup>45</sup>.

Moreover, it is debatable that the Treaties only established the sovereignty of princes. Klaus Malettke, German historian from the University of Marburg, explains very thoroughly in what this new prerogative of Imperial States consists, as well as their restrictions in terms of authority. He begins by quoting E. Böckenförde:

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<sup>40</sup> Jacques Le Goff, *o.cit.* p. 21.

<sup>41</sup> The fac-simile of the original edition is available in <http://www.e-rara.ch/doi/10.3931/e-rara-6726>, retrieved on 2.3.2012. For an easier reading, see [http://classiques.uqac.ca/classiques/bodin\\_jean/six\\_livres\\_republique/six\\_livres\\_republique.html](http://classiques.uqac.ca/classiques/bodin_jean/six_livres_republique/six_livres_republique.html), retrieved on 2.3.2012.

<sup>42</sup> Adriano Moreira (1997). *Teoria das Relações Internacionais*, 2.<sup>a</sup> edição, Coimbra: Almedina p. 256.

<sup>43</sup> On the nature and evolution of absolutism see <http://www.wikiberal.org/wiki/Absolutisme>, retrieved on 2.3.2012.

<sup>44</sup> See Thucydides (1987). *História da Guerra do Peloponeso*, Brasília: Editora da Universidade de Brasília, transl. by Mário da Gama Kury.

<sup>45</sup> See, for example, the words of Stéphane Beaulac in "The Westphalian Legal Orthodoxy – Myth or Reality?", *Journal of the History of International Law*, 2: 148-177, 2000, p. 168: "Moreover, it appears that these Treaty articles merely recognized a practice which had already been in existence for almost half a century. Indeed, the powerful German Princes were conducting their own foreign policy long before Westphalia. Palatinate and Brandenburg, for instance, struck alliances with the United Provinces of the Netherlands in 1604 and 1605 respectively".



*“«When the right to establish alliances is added to territorial superiority, that not only results in a supplementary royal right but in a real external power. (...) They are reinforcing and consolidating each other and become a governmental power in the true sense of the word». (...) However, the Imperial States do not become sovereign States. In the peace negotiations, the Emperor blatantly refused to accept the sovereignty of the Imperial States because sovereignty was incompatible with the existence of an Emperor at the head of the Empire”<sup>46</sup>.*

Claire Gantet, a French historian from the Sorbonne, complements this idea based on several German authors and reinterprets the technical terms:

*“Recent studies have shown that, on the one hand, the word chosen for ‘sovereignty’ by the national historiography corresponded, in the Treaties, to superioritas/Landeshoheit, which designated a ‘specific government quality’ in a territory without affecting in any way the loyalty towards the Empire or the Emperor; and, on the other hand, the clause which awarded the Empire the possibility to establish alliances did not lead to the dismembering of Germany: the restriction to this right – the alliances should not be against the Emperor or the Empire – was rather far-reaching”<sup>47</sup>.*

Based on all this, the thesis that Westphalia is at the root of the sovereign State seems to be rather unfounded<sup>48</sup>.

The previous quote by Malettke broaches an important aspect, considering that another common concept is that the Peace of Westphalia is at the root of the ‘territorialized State’. The author refers to “territorial superiority”, *jus territoriale*<sup>49</sup>, but adds the following restrictions

*“They are not incorporated as they do not introduce a novelty in the Empire. However, by officially stipulating ‘the territorial power of the*

<sup>46</sup> Klaus Malettke, « Les traités de paix de Westphalie et l'organisation politique du Saint Empire romain germanique », *Dix-septième siècle*, 2001/1 n° 210, p. 113-144. DOI : 10.3917/dss.011.0113, p. 129, also available in <http://www.cairn.info/revue-dix-septieme-siecle-2001-1-page-113.htm>, retrieved on 6.3.2012. Quote by Ernst W. Böckenförde, «Der Westfälische Frieden. Das Bündnisrecht der Reichsstände», *Der Staat*, n° 8, 1969, 449-478, p. 473.

<sup>47</sup> *O.cit.* p. 55-56. On this matter, see also: “The German fragmentation pulverized the power of the Vienna Habsburgs and allowed the dynasty of the Hohenzollern, founded in Prussia and in Brandenburg, upon receiving territories at the north of the Holy Empire, to implement its rivalry policy against the ‘Austrians’”, in Marcílio Toscano Franca Filho, “Historia y Razón del Paradigma Westfaliano”, *Revista de Estudios Políticos*, n.º 131, Madrid, enero-marzo (2006), pp. 87-111, p.99.

<sup>48</sup> To better understand the issue of sovereignty, see T.J. Biersteker and C. Weber (1996) *State sovereignty as social construct*, Cambridge: University Press. On p. 2 it is said that: “... sovereignty remains an ambiguous concept. Attention to sovereignty tends to raise more questions than answers about international relations.”

<sup>49</sup> See Art. VIII, Treaty Osnabrück.



*Imperial States' they definitely prevented the chances of the Empire becoming a monarchic system"<sup>50</sup>.*

It is our contention that there has frequently been misunderstanding in considering that the Treaties of Münster and Osnabrück were a turning point in the territorialization of policies. There was, as we have seen, a territorial demarcation of religious faith defined by the princes, but Westphalia did not "invent" territory as a political reference space, nor did it create a control boundary. An author who has been studying this theme, Bertrand Badie, emphatically affirms that "the belle epoch of territoriality probably reached its peak at the signing of the Treaty of Westphalia"<sup>51</sup>. Before, though, his claims were more cautious:

*"Nobody would dare state that, in the mid seventeenth century, the Peace of Westphalia founded a new territorial order which was not subsequently contested or reverted. That would be a naïve statement, as imperial and state-national logic were intertwined and colonial adventures often made these relations even more complex. However, for almost three hundred years, the Westphalian concept of territory was clearly predominant and, perhaps, federative of an emerging international order"<sup>52</sup>.*

Actually, the meaning of the supposed "Westphalian concept of territory" is never completely clear. We know that Europe's geopolitical design changed and that the territorial share limiting the prince's faith was carefully planned and we also know that subjects were awarded the right to immigrate to a territory in which the community shared their religious beliefs. Yet, none of these facts proves that the peace in 1648 led to the birth of a new State whose sovereignty extends to a certain territory<sup>53</sup>.

### **The idea of "new order" and "Westphalian system"**

Let us resume the idea of general consensus by international relations specialists as far as the Peace of Westphalia being at the root of national, sovereign, secular, territorialized State, i.e., the modern State. If that is so, this event would have founded a new international order. We have questioned the grounds for these opinions, and shown that, in the mid 17th century, we are still far from the modern State. Though

<sup>50</sup> Malettke, *op.cit*, pp.128-129.

<sup>51</sup> B. Badie (1995). *La fin des territoires*, Paris: Fayard, p. 45.

<sup>52</sup> *Ib.* p.13.

<sup>53</sup> See Benno Teschke's important paper, "Theorizing the Westphalian System of States: International Relations from Absolutism to Capitalism", *European Journal of International Relations* 2002 Vol. 8(1): 5-48, his thoughts on this matter: "I suggest that proprietary kingship imposed a rather different territorial logic upon the spatial configuration of early modern geopolitics. First, territoriality remained a function of private dynastic practices of territorial accumulation and circulation, frustrating a generic identity or fixity between state and territory. Second, given the imperfect nature of absolutist sovereignty and the survival of feudal and patrimonial practices, territoriality remained non-exclusive and administratively non-uniform. Third, the diversity of early modern sovereign actors — hereditary and elective monarchies, merchant republics, confederations, aristocratic republics, constitutional monarchy, cities, states of estates — precludes any functional similarity, not to speak of equality, of contemporary actors. Consequently, fourth, the chronology of the formation of the modern system of states, based on exclusive territoriality operated by a depersonalized state, falls into the 19th century. p. 22.





the progress from medieval society is remarkable, only later, as we will see, the State-Nation spreads through Europe. A reference to nationalism would be anachronistic. Sovereignty is not a creation of Westphalia either. The State is a principality. The regime is absolutist. The prince has dynastic hereditary legitimacy (and a patrimonial control over the subjects and the land), completely different from the future legitimacy of the modern State-Nation. Very unlike secularized State, there is confessionalization of political belonging linked to religious belonging, though the protestant Reformation undermines the already fragile authority of the Pope<sup>54</sup> and religious faith paves the way to future secularity.

Despite all this evidence, many authors reiterate the novelty brought about by the so-called "Westphalian system", a system which would be so consistent that it lasted until recently<sup>55</sup>. The features of this supposedly homogeneous "system" are easy to list: state-centered, formed – as we have reiterated – by sovereign national States, all equal, protected by the principles of non-interference, with centralized administrations and secularized institutions; the relations between these State actors would abide to the principle of the balance of power and would be ruled by international law; finally, the system would be Eurocentric, leaving out whole continents subject to colonization.

These topics have been critically analyzed and we have just reviewed the dubious basis of many of these assumptions. Considering it would be impossible to explore all aspects of this possible "system", we shall focus on two of its distinctive features: being state-centered and homogenous, and the principle of the balance of power.

First of all, we must briefly discuss the idea of international "system". Neo-realist schools of thought favor the systemic analysis of international relations, and scholars frequently refer to a system as a result of the order established after the Peace of Westphalia. Yet, if indeed there was a "Westphalian system", it would have been one of many systems. A comparison with other historical formulas would have been rather interesting, for instance with the system in Philadelphia, USA<sup>56</sup>, especially so as some

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<sup>54</sup> Evidence of this is the reaction of Pope Innocent X to the Treaties of Westphalia, made public in Rome on 20 November 1648: the agréments represented an "extremely serious offence to Catholic religion, to divine devotion, to the Holy See and to other lesser churches and to Holy Orders", therefore being "void, null, unfair and should be so considered by all". Full text available in Italian in [http://it.wikipedia.org/wiki/Pace\\_di\\_Vestfalia](http://it.wikipedia.org/wiki/Pace_di_Vestfalia), retrieved on 20.3.2012.

<sup>55</sup> Or even until today. See, for example, statements such as: "The appearance, in the end of the 20th century, of a global international system which, for the first time in history, has replaced the Eurocentric system in force since the Treaty of Westphalia in 1648 until the 20thc (...)" – J.E. Dougherty, R.L. Pfaltzgraff, Jr. (2003). *Relações Internacionais – As teorias em confronto*, Lisboa: Gradiva, transl. M.F. Ferreira, M.S. Ferro, M.J. Ferreira, p. 141. A previously mentioned author also declares: "This break establishes the core of the new legal-political thought, in which central government, hard borders, exclusive internal sovereignty and formal interstate diplomacy dominate. Thus, the Teaties of Westphalia represent the clearest transition point in international history towards the rule of territorial sovereignty and secularism as the foundations of a true multipolar system of States with temporal concerns. The use of the word "system" already conveys the apparent unity of many individualized diversity" – Marcílio T.F. Filho, *o.c.*, p. 102.

<sup>56</sup> For a comparative analysis of the Philadelphia system, see Daniel Deudney "Binding sovereigns: authorities, structures and geopolitics in Philadelphian Systems", in T.J. Biersteker and C. Weber, *o.c.*, pp. 190-239. Noteworthy is the statement: "Because the modern European system has expanded globally over the last half millennium, students of international politics have focused on the Westphalian system of sovereign states as a paradigm so much that it seems inevitable and universal. (...)Although in the Westphalian system of authority and power has been hegemonic in modern world politics, it has not been universal. At the periphery and in the gaps of the Westphalian system, there have existed different political orders. Most notable of these are the Hanseatic League, the Swiss Confederation, the Holy Roman Empire, the Iroquois Confederation, the Concert of Europe, and the early United States. (...) Of the politics not fitting the Westphalian model, the Philadelphian system in the United States of America



authors – in our opinion, wrongly – attribute a confederal character to post-Westphalian order<sup>57</sup>.

### **A state-centered system?**

It is our contention that the European order after Westphalia is not a homogenous state-centered system. The situation in Europe from the mid 19<sup>th</sup> century onwards is mixed – some national States are state-centered, reminiscences of the Holy Empire which kept many of its structures, and hundreds of other policies with different degrees of autonomy. The pulverization of geographical and political space in Europe is made evident by the diversity in the names of these policies: Lordships, Imperial Cities, Counties, Baronies, Principalities, Duchies, Landgraviates, Imperial Valleys, Kingdoms, Free cities, Archduchies, Abbacies, Bishoprics, Archbishoprics, Margraviates, Bailiwicks and Provostries<sup>58</sup>.

Klaus Malettke, the already mentioned German historian, describes the German territory at the time as follows:

*"The whole Empire included, in the 17th century, over a thousand more or less autonomous polities. On the one hand, this group encompassed about three hundred States or similar structures whose lords – secular and non-secular elected lords, princes, imperial counts and abbots, magistrates of the imperial free cities – all had territorial jurisdiction over their territories under the direct dependency of the Empire, i.e., they had the right of representation in the Empire Diet. On the other, it included the Imperial cavalry, which had no representation or right to vote in the Empire Diet, but had jurisdiction over their small, even micro-, territories, special lordships, in a total of more than a thousand"*<sup>59</sup>.

The author adds, quoting R. Vierhaus, "Therefore, we may conclude that 'all the Imperial States becoming legally equal would be a fiction in political terms'"<sup>60</sup>. Moreover, as the study by Malettke demonstrates, the institutions of the Holy Empire continued after Westphalia: though the imperial army had only defensive functions, the Diet still held legislative power and influenced the Empire management, the Aulic Council, in Vienna, was an imperial court and, above all, the Imperial Chamber of Justice, which was less subordinate to the Emperor but still a court of the Empire and thus ensuring cohesion and stability<sup>61</sup>. Besides this, "a more thorough exam of Emperor's governmental powers shows a division. The sovereign rights were the

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between the establishment of the Union (1791-89) and the Civil War (1861-65) is of particular interest" pp.190-191.

<sup>57</sup> Bertrand Badie, for example, *op.cit.* p. p. 42, states that: "This sovereignty includes the right to federate (*jus foederationis*)", apparently mixing the right of alliance with the possibility of a State federation.

<sup>58</sup> The only source in which a list of the States of the Roman Empire is [http://en.wikipedia.org/wiki/List\\_of\\_states\\_in\\_the\\_Holy\\_Roman\\_Empire](http://en.wikipedia.org/wiki/List_of_states_in_the_Holy_Roman_Empire), retrieved on 11/3/2012. The list of 533 States which were ever under direct authority of the Emperor is available here.

<sup>59</sup> *O.cit.* p. 116.

<sup>60</sup> *Ib.* p. 117.

<sup>61</sup> *Ib.* pp. 120 ss.



Emperor's, either *together* with the Imperial States or *alone*<sup>62</sup>. These opinions are corroborated by two specialists, the Canadian Stéphane Beaulac, in an already mentioned paper from the *Journal of the History of International Law*, 2000<sup>63</sup>, and the German Andreas Osiander, who, in 2001, published a paper in *International Organisation*<sup>64</sup>. Both of these papers refer to the "Westphalian myth" and deconstruct the consensus in specialized literature.

To sum up, after the Treaties of Münster and Osnabrück, there were several polities in Europe, some separated, others overlapping, some were States, other parts of the Empire, some small, even micro-territories, which leads us to conclude there is no reason to describe this as a homogenous and state-centered system.

### Balance of power?

The treaties of 1648 are also attributed the balance of power, which, according to some, is one of the pillars of the Peace of Westphalia<sup>65</sup>, as "the balance of power had, already during the negotiations, been understood as the rule to the procedural 'setting up' of alliances"<sup>66</sup>.

We do not believe this is a debatable point of view, since all sources agree on this matter. According to Ancillon, "this peace was an experiment in terms of a less imperfect counter-power system than previous ones"<sup>67</sup>. Geoffrey Parker recalls curious details in the positions of Adler Salvius and Jean Oxenstierna, Swedish plenipotentiaries in Osnabrück:

*"As Count Salvius reported in exasperation to his principals from the Congress late in 1646: 'People are beginning to see the power of Sweden as dangerous to the "balance of power" (Gleichgewicht). Their first rule of politics is that the security of all depends on the equilibrium of the individuals. When one begins to become powerful ... the others place themselves, through unions or alliances, into the opposite balance in order to maintain the equipoise.' But the idea was scarcely new. As early as 1632 the Papal Curia had advised its diplomats abroad that 'the interest of Roman church' was better served by a balance of power than by the victory of any individual state. And this was a principle that Sweden herself had invoked in former days often enough: in 1633*

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<sup>62</sup> *Ib.* p. 124. Author's italics. At the end of the paper, on p. 144, the historian concludes, referring to several authors, that: "The Empire kept its hierarchical structure and did not become a confederation of States. (...) Only in 1803-1806 did the German princes complete their revolution, their territorial jurisdiction became State sovereignty. (...) In opposition to the 19th century perception that the Treaties of Westphalia consolidated the Holy Empire". On the constitution of the Empire, see also Koch, *o. cit.*, p. 89. Do not forget that, before Westphalia "The German constitution, like most constitutions in Europe, were the result of circumstance, momentary needs, interests and passions. Most issues were regulated by custom and not by written laws" – Ancillon, *o.cit.*, pp. 259-260.

<sup>63</sup> S. Beaulac, *o.cit.*

<sup>64</sup> Andreas Osiander, "Sovereignty, International Relations, and the Westphalian Myth" in *International Organization* 55, 2, Spring 2001, 251–287.

<sup>65</sup> The term is Arnaud Blin's in "La paix de Westphalie : le nouvel ordre mondial", *Revista Historia* (2006) em <http://www.historia.fr/mensuel/720/la-paix-de-westphalie-le-nouvel-ordre-mondial-01-12-2006-59850>, retrieved on 2.1.2012.

<sup>66</sup> L. Freire, *o. cit.*, p. 20. Noteworthy is this author's idea of the "setting up" of the international system.

<sup>67</sup> *O.cit.*, p. 257.



*Chancellor Oxenstierna claimed to a foreign dignitary that the chief for Sweden intervention in Germany was 'to preserve the aequilibrium in all Europe'<sup>68</sup>.*

We may, once again, question the originality of the Treaties of Westphalia, considering that preventing excess of hegemony of a power through alliances among its rivals is a rather ancient practice. There are innumerable examples of situations in which, in the absence of an "order" ensured by an imperial system and before there was a collective security system, the balance of power was a means to maintain a balance in the relationship among powers. In the 18<sup>th</sup> century, the famous Scottish philosopher David Hume wrote an interesting essay on the balance of power included in *Essays, Moral, Political, and Literary*, in which he listed several examples of this principle being used since ancient times<sup>69</sup>.

We may even question the direct link between the Peace of Westphalia and the principle of balance of power. A reference by Randall Lesaffer, professor of History of Law in Holland and Belgium, quotes the thought of German specialist, Heinz Duchardt for whom "the European balance of power does not derive from the treaties of Westphalia but only emerged in Europe at the end of the 17<sup>th</sup> century when the boost of France forced the other European states to join forces against Louis XIV (1643-1715)"<sup>70</sup>. Admittedly, the principle of balance of power is present in the logic of the Thirty Years' War and in the European territorial reorganization which followed. However, that does not imply that there was in fact a "Westphalian system", and that the referred principle was one of its original elements.

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<sup>68</sup> Geoffrey Parker (1988). *The Thirty Years' War*. New York: Routledge & Kegan Paul Inc. p. 184.

<sup>69</sup> Text available in <http://www.econlib.org/library/LFBooks/Hume/hmMPL30.html#Part%20II.%20Essay%20VII.%20OF%20THE%20BALANCE%20OF%20POWER>, retrieved on 8.3.2012.

<sup>70</sup> Due to its relevance, we transcribe the whole passage: "Since the 18<sup>th</sup> century, the common opinion in historiography was that the two treaties of Westphalia of 24 October 1648 between the Empire and France, on the one hand, and between the Empire and Sweden, on the other, constituted the basis for modern international law in Europe. The Westphalian system was, according to popular opinion, founded on the principles of absolute sovereignty and legal equality of States – especially in religious terms – as well as on the theory of balance of power in Europe. Consequently, all the essential elements of 17<sup>th</sup> and 18<sup>th</sup> century *ius publicum europaeum* would already exist. The treaties of Westphalia would therefore be the heralds of State freedom and sovereignty.

More recently, some historians have questioned popular opinion and reached opposing conclusions. Firstly, Heinz Duchardt, 17<sup>th</sup> and 18<sup>th</sup> century international relations German specialist, declared in 1989 that the European balance of power does not derive from the treaties of Westphalia but only emerged in Europe at the end of the 17<sup>th</sup> century, when France's economic boost forced the other western European States to join forces against Louis XIV (1643-1715). Secondly, from a legal point of view, the treaties of Westphalia in 1648, when compared to preceding peace treaties, were not very original and, more importantly, the principles of sovereignty, of religious equality and balance of power among princes and States were not included in the treaties as principles of international law but as basic constitutional principles of the Holy Empire. This legal analysis leads to the conclusion that the treaties of Westphalia are viewed retrospectively as constitutional elements of the system and of international law in Europe rather than a system of rules of the Empire which were transposed to the whole of Europe. Thus, the Westphalian system as an international system based on the referred three principles was created after the treaties of Westphalia". - Randall Lesaffer, "Paix et guerre dans les grands traités du dix-huitième Siècle », *Journal of the History of International Law* Volume 7, Number 1, 2005 , pp. 25-42 (18), available in <http://www.ingentaconnect.com/content/mnp/jhil/2005/00000007/00000001/art00002>, Retrieved on 2.1.2012. The reference is H. Duchardt's, "Westfälischer Friede und internationale Beziehungen im Ancien Régime".



## Conclusion

We have called it a misunderstanding to the anachronism in the belief that the Treaties of Westphalia in 1648 gave origin to the modern State-Nation system; some sort of retroactive interpretation of a process which took place after the 17th century, considering that, to quote Huntzinger again, only "the 18<sup>th</sup> century puts in motion a new evolution, from the princely state to the State-Nation", the more so because "the American and French revolutions are a crucial step in the creation of the State-Nation"<sup>71</sup>.

There is a debate on the origin of the international system of national State and the truth is that some authors consider that its origin is further back<sup>72</sup>, while others place it in the Congress of Vienna in 1815.

We prefer the second thesis, according to which the State-Nation, in the modern sense of the term, is the result of a confluence of elements: on the one hand, the end of the *ancien régime* at the hands of the French revolution; on the other, the emergence of industrial capitalism. The first element emphasizes the political and institutional dimension of the process; the second, its social and economic dimension. Andreas Osiander, who has a similar opinion, declares that "the most significant transition occurred with the French Revolution and the onset of industrialization, not with the Peace of Westphalia"<sup>73</sup>, widely supported by the reasoning of Benno Teschke, who contradicts the "realistic conventional" perspective on Westphalia and proposes a reinterpretation and to "completely opposite conclusions":

*"I argue that the Westphalian system was characterized by distinctly non-modern relations between dynastic and other pre-modern political communities that were rooted in pre-capitalist social property relations. The logic of inter-dynastic relations structured early modern European politics until the regionally highly uneven 19th-century transition to international modernity"*<sup>74</sup>.

If the European scenario in the mid 17<sup>th</sup> century was dominated by policies based on pre-modern structure, then to place the origin of modern international system at that time does not seem defensible. There are princely, dynastic and absolutist States, as well as micro-structures from the Holy Empire and hundreds of more or less autonomous micro-territories. Only in the 18<sup>th</sup> and 19<sup>th</sup> centuries will national States be consolidated including, as referred before, the unified Italian and German States. Only

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<sup>71</sup> *O. cit.*, pp. 87-88.

<sup>72</sup> An example is: Fábio Pestana Ramos, "O sistema Westfaliano e as relações internacionais na Europa", *Para entender a história...* ISSN 2179-4111. Ano 1, Volume Ago., Série 27/08, 2010, p.01-09, available in <http://fabiopestanaramos.blogspot.com/2010/08/0-sistema-westfaliano-e-as-relacoes.html>, retrieved on 9.3.2012: "Giovanni Arrighi, the American author famous for the 'long 29th century', goes further back to demonstrate that the origin of modern international relations lie in the 13th century; interstate systems were being formed at that time, based on Genovese hegemony of East -West trade and the financing of Portuguese seafaring expeditions, later replaced by Dutch hegemony, ensured by its control of trading posts, strategic in terms of trade flow."

<sup>73</sup> *O. cit.*, p. 281.

<sup>74</sup> *O. cit.*, p. 6.



then will there be a European system of State-Nations as the result of a social construction which has taken decades or even centuries.

We cannot develop that interesting theme here but, in 2009, we made a presentation at a conference from the *Internationale Gesellschaft Hegel-Marx für dialektisches Denken* (Lisbon, 28-30 May), in which we defended that the origin of the modern State-Nation lies in the confluence of nationalism and the emergence of industrial society. In that presentation, we stated that "the structure of industrial production may have led to the redimensioning of the territories over which there was political control." Why? Perhaps because, in the period of mercantile capitalism, the centrality of city-states prevailed but "the extremely small scale of the City-State can no longer ensure the control over the new economic space shaped by industrialization". Thus, unlike in the previous "world economy, the most adequate political organization for industrial capitalism was the State-Nation, when the home market, controlled by political power, was the framework for accumulation of capital". In fact, "the economic space in industrial society is linked to a home market of a significant size and one which is based on regulation provided by the State".

On the other hand, the transition towards the modern State-Nation imposed the resolution of a crucial issue – the legitimacy of power – considering that the traditional source of legitimacy (dynasty, heredity, heritage and sacredness) was abandoned. Thus, the importance of culture as a means to ensure the legitimacy of power. Sovereignty is no longer in the monarch but in the people, in the community and, therefore, the State "is supported by the feeling of nationalism, which is the source of legitimacy for the power of the new bourgeoisie"<sup>75</sup>.

As a result, we may conclude that the modern State-Nation system is only truly founded in the transition societies went through when they broke away from the *ancien régime*, namely France (with echoes on the other side of the Atlantic, in the United States of America), and the countries where industrial production was increasingly dominant, a process which takes place in the 18<sup>th</sup> and 19<sup>th</sup> centuries.

This type of approach is necessarily critical of the consensus around the peace of Westphalia as the founding moment of modern international order. We are, therefore, inclined to share Lucas Freire's conclusion: "Though it is clear that Westphalia was not completely irrelevant, we cannot say that the series of events were the starting point of the modern political world"<sup>76</sup>.

For all the reasons mentioned, we believe the expressions "Westphalian State" or "Westphalian system" should be avoided.

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<sup>75</sup> Luis Moita, "Espaços económicos e configurações políticas", D. Losurdo, J. Barata-Moura, S. Azzarà (ed.s), *Universalism, National Question and Conflicts Concerning Hegemony*, Napoli: La Città del Sole, (2009) 315-322, p. 317-318. My thoughts on the problem of nationalism are based on Gellner, E. (1993), *Nações e nacionalismo*, Lisboa: Gradiva, to whom "Nationalism is, in effect, deeply rooted in the distinctive structural requirements of industrial society" (p. 60).

<sup>76</sup> *O. cit.*, p. 22.



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