THE HOLY SEE AND THE TREATIES OF WESTPHALIA

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SUMMARY: I. *Introduction*. II. *Westphalia 1648*. III. *Pope Innocent X's Protest against the Treaties of Westphalia*. IV. *The Role Played by the Holy See at Westphalia*. V. *Conclusions*. VI. *Bibliography*.

I. INTRODUCTION

When I first met the honoree of these essays between the end of 1980 and the beginning of 1981, both Manuel and I were students of the late Grigory Ivanovich Tunkin at Moscow State University M. Lomonosov, where I was spending several months on a scholarship administered by the Italian Ministry of Foreign Affairs. My first instinct had therefore been to offer Manuel a contribution reflecting on that experience. However, I had already contributed an article along those lines to another book of essays, namely the one in honor of the late Georgian internationalist Levan Alexidze,[1] whom I am sure Manuel had met during his time in the former Soviet Union. I therefore decided to change the focus of this contribution completely, paying due regard to Manuel's intellectual interest in the past and the glorious Christian history of his country. I dedicate this modest contribution to him in that friendship which, for Saint Thomas Aquinas, is the "paradigm ideal for the relationships that rational beings should cultivate",[2] whereby we are called to be friends with fellow human beings, with angels, and with God, the beatific vision of whom is our final end.

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1 Ragazzi, M., "Alexidze on Jus Cogens (Selected Considerations)", in *Theory and Practice of Contemporary International Law. Essays in Honour of Professor Levan Alexidze on the 80th Birthday Anniversary*, Tbilisi, 2007, pp. 25-38.

2 Schwartz, D., *Aquinas on Friendship*, Oxford, 2007, p. 1.

II. Westphalia 1648

Everything connected with what happened in Westphalia in 1648 has acquired almost mythical proportions, making it difficult to separate reality from legend:[3] the peace that was reached was "the greatest and most important peace that has ever been concluded";[4] the negotiations that led to it, in addition to the eight or nine years of preliminary negotiations that "cannot properly be separated from the four years of negotiations at the congress itself",[5] were "probably the longest continuous peace conference in modern history",[6] a "sort of political

[3] The work of reference for the peace of Westphalia remains the thorough German monograph by Fritz Dickmann, originally published in 1959 and now in its 8th edition: *Der Westphälische Frieden*, Münster 2013. Works up to the middle 1990s are listed in this comprehensive bibliography: Duchhardt, H., *Bibliographie zum Westphälischen Frieden*, Münster, 1996. In English, the writings by D. Croxton, cited below, stand out. The main continuing series on the sources of the Westphalia negotiations, now available also on-line, is the Acta Pacis Westphalicae, Münster 1962. (See Repgen, K., "Über die Publikation Acta Pacis Westphalicae", *Dreißigjähriger Krieg und Westphälischer Friede. Studien und Quellen*, Paderborn, 2015, pp. 231-258.) The Acta Pacis Westphalicae are closely linked to the name of Konrad Repgen (1923-2017), author of a monumental contribution to this branch of historical studies, and in particular to many aspects regarding papal diplomacy, as will emerge from the bibliographical references below.

[4] Langer, H., *1648. Der Westphälische Frieden: Pax Europaea und Neuordnung des Reiches*, Berlin, 1994, p. 63, citing the classic work on the peace of Westphalia by Johann Gottfried von Meiern (1692-1745): "große un wichtigste Frieden, welcher nicht nur jemahls… in der gantzen Welt geschlossen worden ist".

[5] Colegrove, K., "Diplomatic Procedure Preliminary to the Congress of Westphalia", *American Journal if International Law*, vol. 13, 1919, p. 482. At p. 470 in the same article, the author notes that the term "congress" had been in diplomatic use before the congress of Westphalia. In the first edition of Ernest Satow's classic treatise on diplomacy, one reads that, in international law, there is "no essential difference between Congresses and Conferences", in that they are both "meetings of plenipotentiaries for the discussion and settlement of international affairs" (*A Guide to Diplomatic Practice*, London, 1917, vol. 2, para. 439; the same point is made in the introduction to Scott, J. B. (ed.), *The Reports to the Hague Conferences of 1899 and 1907*, Oxford, 1917, p. xviii: "Attempts have been made to state the difference between an international congress and an international conference, but the difference is one of name, not of fact"). In the centenary edition of Satow's treatise, the editor acknowledges that the term "congress" is now "entirely out of use". Roberts, I. (ed.), *Satow's Diplomatic Practice*, 7th ed., Oxford, 2017, para. 30.2.

[6] Croxton, D., *The Last Christian Peace. The Congress of Westphalia as a Baroque Event*, New York, 2013, p. 3. The same author writes, at p. 185, that the congress had no formal beginning and no formal ending (as many representatives continued negotiating on various matters even after the signing of the peace treaties), "but it certainly had a long middle". As Konrad Repgen has rightly noted, there was never a plenary session among the participants, and this "is one reason why the question of when the peace conference of Westphalia «began» and «ended» cannot be answered simply by naming two specific dates. Rather, the «conference» began *via facti*, through the successive arrivals of envoys between 1643 and 1646, and it ended

council" comparable, in its universality, to a Church council;[7] and the Thirty Years War, which was the parties' intention to end (even though this outcome did not immediately follow the signing of the Westphalia peace treaties),[8] "has been justly called the first world war", and remained "the symbol for an international all-destructive war until 1914".[9]

Quite an ample literature has emerged, among historians, lawyers, and political scientists, on what was the core of the Westphalia peace treaties and what long-term significance these treaties had for international relations. For example, the Russian diplomat Fedor Fedorovich de Martens thus summarized the key provisions of the treaties: *i)* the mutual relations between Catholics and Protestants were determined by reference to the situation existing as of January 1st, 1624; *ii)* the Augsburg treaty from 1555 was confirmed; *iii)* the 355 states of the German empire were declared independent; *iv)* the Swiss confederation and the Netherlands acquired formal independence; and *v)* France and Sweden, as winning powers, had territorial gains. As to the importance of the treaties for international relations, Martens flagged *i)* the union of European states into a single community, *ii)* the consequences

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in a similarly unspectacular way with the departure of the negotiators between 1647 and 1649. It was probably in the period from January 1646 to July 1647 that the largest number of diplomats were present". *Negotiating the Peace of Westphalia: A Survey with an Examination of the Major Problems*, in Bussmann, K. and Schilling, H. (eds.), *1648. War and Peace in Europe*, Münster, 2013, p. 356.

7 One of the French negotiators, Abel Servien, regarding this congress as a political council, even proposed to utilize the same ceremonial that had been used at Church councils. (See Bély, L., *L'art de la paix en Europe. Naissance de la diplomatie moderne XVIe-XVIIIe siècle*, Paris, 2007, p. 225).

8 "The peace was indeed signed, but it was long before its blessings came to the tortured people". Gindely, A., *History of the Thirty Years' War* (A. ten Brook trans.), New York, 1884, vol. 2, p. 377. The same words appear at p. 207 of vol. 3 in the 1882-1883 edition of the original German text: Id., *Geschichte des dreissigjährigen Krieges*, 3 vols., Prague 1882-1883.

9 Croxton, D. and Tischer, A., *The Peace of Westphalia. A Historical Dictionary*, Westport and London, 2002, p. xx. The complexity of this war (with conflicts between France and Spain, between France and the Emperor, between Spain and Northern Netherlands, and between Sweden and the Emperor, just to name the major ones) has led André Corvisier to speak of Thirty Years "Wars", in the plural (as reported in Bély, L., *L'art de la paix…*, *cit.*, p. 157). The exact number of casualties and extent of destruction remain a matter of disagreement among historians (Holsti, K. J., *Peace and War: Armed Conflicts and International Order 1648-1989*, Cambridge, 1991, pp. 28-29). The bibliography on the Thirty Years War is of course enormous. Among the more recent surveys, in English, see Wilson, P. H., *Europe's Tragedy: A History of the Thirty Years War*, London, 2009; Parker, G. (ed.), *The Thirty Years' War*, 2nd ed., London, 1997. In French, see Wrede, M., *La guerre de Trente Ans. Le premier conflit européen*, Malakoff-Paris, 2021, and, fifty years earlier, Pagès, G., *La guerre de Trente Ans 1618-1648*, Paris, 1972.

flowing from the Protestant schism, *iii)* the weakening of Germany, and *iv)* the supremacy of France and, for a while, of Sweden.[10]

There have also been dubious interpretations, which have long been discredited as a "Westphalian myth",[11] claiming that 1648 would have been the birthdate of international law. This is why, in his introduction to a collection of historical pontifical acts regarding international law, the well-known italian jurist Balladore Pallieri felt compelled to show how unacceptable this assertion was.[12] This whole discussion of the legal and political meaning of Westphalia (with critical accents by several Catholic authors)[13] is certainly relevant to studying the very concept and history of international law, and the contribution to its development by the Holy See, but the focus here is more limited, and is about the role that the Holy See played in bringing about peace at Westphalia.

The expression "peace of Westphalia" identifies two treaties, which were both signed in Münster on October 24, 1648: the *Instrumentum Pacis Monasteriensis* (IPM) between France and the Empire, which was both negotiated and signed in Münster , and the *Instrumentum Pacis Osnabrugensis* (IPO) between Sweden and the Empire, which was also signed in Münster, but had been negotiated in nearby Osnabrück, about 30 miles away from Münster.[14]

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[10] Martens, F. de, *Traité de droit international*, tr. by A. Léo., Paris, 1883, vol. 1, pp. 116-118. This russian author (1845-1909), who gave his name to the "Martens clause" in international humanitarian law, is obviously not to be confused with the German jurist and diplomat Georg Friedrich von Martens (1756-1821), well known for his collection of treaties and, like the other Martens, for his writings on international law.

[11] Lesaffer, R., *Peace Treaties from Lodi to Westphalia*, in *Peace Treaties and International Law in European History: From the Late Middle Ages to World War One*, Cambridge, 2004, p. 9.

[12] Balladore Pallieri, G. and Vismara, G., *Acta pontificia juris gentium usque ad annum MCCCIV*, Milan, 1946, pp. xiii-xxx (introduction by Balladore Pallieri). Another well-known Italian international lawyer, Angelo Piero Sereni, is likewise firm in his conclusion: "The truth is that this overevaluation of the Peace of Westphalia is repugnant to the historical sense of our generation… it is only fair to recognize that [the Peace of Westphalia] represented a single step in the slow and continuous evolution of international law and that it would be wrong to ignore all that it owes to the practice and the theory of the preceding ages". *The Italian Conception of International Law*, New York, 1943, p. 124. Bruno Paradisi attributes to legal positivism the idea that international law began at Westphalia, as for positivism *i)* the starting point is the modern State, and *ii)* international law is the fruit of the free will of states. (*Civitas Maxima. Studi di storia del diritto internazionale*, Florence, 1974, vol. 1, p. 32.)

[13] See, for example, the Jesuit father Brière, Y. de la, *La "Société des Nations"? Essai Historique et Juridique*, 2nd ed., Paris, 1918, pp. 51-70 (which is the chapter headed "Les Traités de Westphalie et la Politique d'Équilibre" that had already appeared in the French Jesuit journal *Études* 153 [1917] 380-394).

[14] The Latin original and English translation of the two treaties are available in Parry's *Consolidated*, vol. 1, pp. 119-269 (IPO) and 271-356 (IPM). The original Latin texts, with translations into several European languages, are also available on-line: *Die Westfälischen Friedensver-*

Of these two treaties, the IPM is divided into paragraphs, while the IPO is divided into articles and further subdivided into paragraphs. The extent to which, in addition to this presentational difference, the two treaties also differ in substance can easily be verified through the helpful comparison provided in Schoell's revised edition of the abridged history of peace treaties by the diplomat Christoph Wilhelm von Koch.[15]

In the literature, sometimes the treaties coming into play are three, as the expression "peace of Westphalia" may also be meant to include the earlier treaty between Spain and the Netherlands (the United Provinces) that was intended to end the Eighty Years War and was signed in Münster on January 30, 1648.[16] But there is no need to consider here this earlier treaty.

That the negotiations that led to the two treaties of October 24, 1648, would take place in separate cities was mainly a consequence of the ceremonial etiquette of the time, whereby a power like Sweden would not accept situations in which it would have a lower position than France. That the two cities in question would be Münster (where only Catholic worship was permitted) and Osnabrück (a bi-denominational Catholic and Lutheran city, then occupied by Swedish military forces) was reflected in a Preliminary Treaty signed in Hamburg on December 25, 1641.[17] This treaty also specified that the peace congress should still be regarded as one single

träge vom 24. Oktober 1648. Texte und Übersetzungen (Acta Pacis Westphalicae. Supplementa electronica, 1), <*http://www.pax-westphalica.de*>. These translations are significant because, as it has rightly been observed, the understanding of the peace of Westphalia "is influenced not only by the actual Latin text, but also by its translations". Croxton, D. and Tischer, A., *op. cit.*, p. 162. In Dumont's *Corps*, the two treaties are in vol. 6, part I, pp. 450-461 (IPM, in Latin) and 469-490 (IPO, in French). On the history and persistent merits of Dumont's collection, see M. Toscano, *The History of Treaties and International Politics*, Baltimore 1966, vol. 1, pp. 59-62.

[15] Koch, C. G. de, *Histoire abrégée des traités de paix entre les puissances de l'Europe depuis la paix de Westphalie* (F. Schoell ed.), vol. 1, Bruxelles 1837, pp. 112-117. (This comparison is preceded by a detailed summary of the two treaties, at pp. 86-112).

[16] The text of this earlier treaty, in its Latin original and French translation, can be found in Parry's *Consolidated*, vol. 1, at pp. 3-69 and 70-118, respectively. In Dumont's *Corps*, a French translation, with connected documents, is in vol. 6, part I, pp. 429-441. In his introductory note to the treaty, Clive Parry wrote that this treaty is "not formally a component of the Peace of Westphalia" (Parry's *Consolidated*, vol. 1, p. 1). As an aside, the painting currently held at the National Gallery in London, headed *The Swearing of the Oath of Ratification of the Treaty of Münster* by Gerard ter Borch (who was present at the event and converted to Catholicism soon afterwards), captures the solemn ceremony of ratification of this earlier treaty (not of the two October 24 treaties), which took place at the Münster council chamber on May 15, 1648. See McNeil Kettering, A., *Gerard ter Borch and the Treaty of Münster*, The Hague and Zwolle, 1998 (where, at page 46, the author also explains the meaning of the sculpted figure of the Virgin Mary at the front of the candelabrum).

[17] Dumont's *Corps*, vol. 6, part I, pp. 231-233. See also the earlier Hamburg treaty, dated January 31, 1641, article VII, *ibidem*, p. 207.

congress, though divided between the two cities.[18] Despite a broad division between negotiations involving Catholic powers in Münster and negotiations involving Protestant powers in Osnabrück, the reality was more nuanced: "ambassador and envoys of the (Catholic) Emperor and of the (Calvinist) Hesse-Kassel stayed in both Münster and Osnabrück, the (Calvinist) Dutch delegation was in Münster with their allies and their enemies, and Sweden at least had a resident".[19] After all, the representatives of almost all the powers of the time converged into the two Westphalian cities, the exceptions being Poland, Russia, England, Turkey, Switzerland, Parma and Genoa,[20] in addition to Ferrara:[21] it would practically have been impossible to maintain a rigid division between Catholics and Protestants.

III. Pope Innocent X's Protest Against the Treaties of Westphalia

The Holy See's critical attitude to the Westphalia peace treaties was unequivocal. Even though protests had been ruled out from the treaties themselves,[22] Pope Innocent X condemned the religious clauses of the peace treaties in the brief *Zelo domus Dei*, dated November 26, 1648,[23] but published almost two

[18] See article II of the treaty, and article I of the section regarding Osnabrück.

[19] Croxton, D. and Tischer, A., *op. cit.*, p. 199.

[20] See Combes, F., *Histoire générale de la diplomatie européenne. Histoire de la formation de l'équilibre européen par les Traités de Westphalie et des Pyrénées*, Paris, 1854, p. 233. However, in Rapisardi Mirabelli, A., "Le Congrès de Westphalie", in *Bibliotheca visseriana dissertationum ius internationale illustrantium*, Leiden, 1929, vol. 8, p. 8, note 3, one reads that the kingdoms of England and Poland, and the Grand Duchy of Moscow, while their representatives were absent from the Westphalia negotiations, were included in the Osnabrück treaty as "allies or adherents". Therefore, in the words of David Hill, "practically the whole of Europe was included in the peace, except the Ottoman Empire" (*A History of Diplomacy in the International Development of Europe*, London, 1914, vol. 2, p. 604, note 2).

[21] Though the Duchy of Ferrara was not represented, curiously all the Pope's representatives who were appointed in succession to contribute to what became the peace of Westphalia were linked to that city, in one way or another: Marzio Ginetti (legate to Ferrara), Francesco Machiavelli (bishop of Ferrara), Carlo Rossetti (born in Ferrara), and Fabio Chigi (vice-legate to Ferrara).

[22] The anti-protest clauses are in IPM, para. 113, and, in IPO, article XVII, para. 3. On these clauses, and the protests that were nonetheless raised against the peace treaties by a number of powers, see Eckhardt, C. C., *The Papacy and World Affairs as Reflected in the Secularization of Politics*, Chicago, 1937, pp. 137-153. See also Koch, C. G. de, *op. cit.*, p. 117 and, for a list of other protests than those by the Pope and his Nuncio, see *Die Urkunden der Friedensschlüsse zu Osnabrück und Münster, nach authentischen Quellen*, Zürich, 1848, pp. 370-372.

[23] The Latin text of the brief (often inaccurately labeled as a bull) is in *Magnum Bullarium Romanum SS. Pontificum Urbani VIII. & Innocentii XI. Constitutiones complectens* (A. Cherubini ed.),

years later:[24] the brief "did not condemn the peace as such, nor all its articles, but only those which injured the Church".[25] More specifically, provisions contained in the treaties having to do with Catholic religion, divine worship, the salvation of souls, the Apostolic See, lesser churches, the ecclesiastical order and estate, as well as their persons, members and affairs, possessions, jurisdiction, authority, immunities, liberties, privileges, prerogatives and rights:

> …are and shall be from the legal point of view perpetually null, void, invalid, wicked, unjust, condemned, reprobated, futile, and without strength and effect; and… no one is bound to observe them all or any of them, even if they have been strengthened by an oath, and… no one has been or is or shall be able to acquire or to claim on their basis for himself at any time any right or function, or valid title, or prescriptive right, even if possession during a long and immemorial time follows without break or interruption, nor are his claims to have any status in law, so that they are to be counted for ever as if they did not exist or as if they had never been made or approved.[26]

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vol. 4, Leiden 1655, pp. 269-270. A French translation is in Dumont's *Corps*, vol. 6, part I, pp. 463-464. (For an English translation, see the reference below.) On the brief, see Heckel, M., *"Zelo domus Dei"? Fragen zum Protest des Heiligen Stuhls gegen den Westphälischen Frieden*, in Kern, B. R. *et al.* (eds.), *Humaniora Medizin —Recht— Geschichte. Festschrift für Adolf Laufs zum 70. Geburtstag*, Berlin and Heidelberg, 2006, pp. 93-121; Feldkamp, M. F., "Das Breve "Zelo domus Dei" vom 26. November 1648", *Archivum Historiae Pontificiae*, vol. 31, 1993, pp. 293-305; Repgen, K., "Die Proteste Chigis und der päpstliche Protest gegen den Westphälischen Frieden (1648/50). Vier Kapitel über das Breve *Zelo domus Dei*", *Dreißigjähriger…*, *cit.*, pp. 729-751; Repgen, K., "Drei Korollarien zum Breve Zelo domus Dei (26. November 1648): Editionstechnik, Nackdruckgeschichte, Vorgeschichte", *ibidem.*, pp. 813-834; Repgen, K., "Der päpstliche Protest gegen den Westphälischen Frieden und die Friedenspolitik Urbans VIII", in Spörl, J. (ed.), *Historisches Jahrbuch*, Munich, Freiburg, 1956, pp. 94-122. Among the very early writings, see Hoornbeeck, J., *Examen Bullæ Papalis, qua P. Innocentius X. Abrogare nititur Pacem Germaniæ*, Utrecht, 1652.

[24] The brief was made public on August 20, 1650, only after the ending of the recess of the Diet in Nuremberg for the execution of the two peace treaties of Westphalia: "Le pape tenait à parler en dernier". Minnerath, R., "Le Saint-Siège, l'Europe et les Traités de Westphalie", in Kintz, J. P. and Livet, G. (eds.), *350e anniversaire Traités de Westphalie 1648-1998. Une genèse de l'Europe, une société à reconstruire*, Strasbourg, 1999, p. 386.

[25] Pastor, L. von, *The History of the Popes from the Close of the Middle Ages*, tr. by E. Graf, London, 1940, vol. 30: Innocent X (1624-1655), p. 130. In footnote 6, at the same page, the author warns that the Latin text from the *Bullarium* he cites contains "several misprints which alter the meaning". When deciding which collections to cite here, for the texts of the peace treaties and the Holy See protest in various languages, the only consideration was the authority of the collections in question in the international literature, with no verification of their accuracy. This task would in fact have proved impossible, in that it would have required a comprehensive inventory of the available manuscripts and their critical analysis.

[26] This is the English translation provided in Ehler, S. Z. and Morrall, J. B., (eds.), *Church and State Through the Centuries. A Collection of Historic Documents with Commentaries*, New York, 1967, pp.

As if these words were not explicit enough, the Pope added that the Holy See condemned and deprived of any effect all those things in the treaties that were prejudicial, as had just been stated, and protested against them declaring their nullity in God's sight.[27]

IV. The Role Played by the Holy See at Westphalia

Does this firm opposition to the peace of Westphalia imply that the Holy See had no role in bringing it about? Not at all.

The French historian Bernard Barbiche has conveniently summarized the role played by the Pope in the diplomatic context of the 17th century, as well as his means of action and main objectives.[28] The Pope was invested with the triple role of *i)* head of the Church, *ii)* sovereign of the pontifical States, and *iii)* head of Catholic Christianity. The main objectives of his diplomacy were *i)* defending Catholic faith against Protestant heresy, *ii)* maintaining or re-establishing peace among Catholic powers, and *iii)* uniting them in a military league against the Turks. Against this background, it is not surprising that the Popes of the time should embrace their responsibility as heads of Catholic Christianity (and even of impartial fathers of the whole

196-197 (the English translation of the whole brief, with introductory commentary, is at pp. 193-198). The quoted passage, in its original Latin text, reads as follows: "ipso jure nulla, irrita, invalida, iniqua, injusta, damnata, reprobata, inania, viribusque & effectu vacua omnino fuisse, esse, & perpetuo fore, neminemque ad illorum & cujuslibet eorum, etiamsi juramento vallata sint, observantiam teneri, neque ex illis cuiquam aliquod jus, vel actionem, aut titulum coloratum, vel causam præscribendi, etiamsi longissimi, & immemorabilis temporis possessio, seu quasi possessio, etiam citra ullam interpellationem, seu interruptionem subsequatur, acquisitum fuisse, nec esse, minusve ullo tempore acquiri, & competere posse, neque ulla ullum statum facere, vel fecisse, atque perinde, ac si nequaquam emanassent, pro non extantibus, & non factis perpetuo haberi debere, tenore earundem præsentium decernimus, & declaramus".

[27] Relying on the studies by Repgen, Guido Braun has written that the protest was "a conscious decision" by Innocent XI, not "forced on him by previous commitments". With this protest, the Pope positioned himself "as a canonist, from the point of view of Church law, in view of a future caveat. However, contrary to Chigi's demand, the Pope and the Secretariat of State avoided a theological examination of the peace of Westphalia by the Holy Office and thus a theologically binding positioning to its canonistic provisions". Braun, G., "The Papacy", in Asbach, O. and Schröder, P. (eds.), *The Ashgate Research Companion to the Thirty Years' War*, Farnham and Burlington, 2014, p. 111.

[28] "La diplomatie pontificale au XVIIe siècle", in *Armées et diplomatie dans l'Europe du XVIIe siècle. Actes du colloque de* 1991, Association des Historiens Modernistes, Bulletin num.16, Paris 1992, pp. 109-127.

of Christendom), and should spare no effort in breaking peace among the powers fighting each other in the Thirty Years War.[29]

Three Popes were linked to the peace of Westphalia: Urban VIII (whose reign from 1623 to 1644 was coextensive with the Thirty Years War), Innocent X (who reigned from 1644 to 1655, and was therefore pontiff during the congress of Münster and Osnabrück and, as was recalled above, raised his formal protest against the final text of the treaties), and Alexander VII (who was Innocent's successor and, even before he was made a cardinal, had played a key role in Westphalia as extraordinary nuncio). All three were lawyers by training.

That Urban VIII was at the origin of what would become the congress of Westphalia is not a matter for debate. Auguste Leman, whose doctoral dissertation was on that Pope,[30] acknowledged, in an article from 1923, that Urban VIII had the clear merit of having undertaken the efforts that would lead to end the Thirty Years War, starting from conceiving the "project of a pontifical congress" in the 1630ies.[31]

Having delivered a spirited appeal to peace in 1632,[32] several years later Pope Urban VIII appointed cardinal Marzio Ginetti as legate *a latere* to participate in that congress at Cologne, which the Pope hoped would bring about peace among the worrying European powers.[33] When, in 1640, Cardinal Ginetti asked to be recalled for health-related reasons, Pope Urban VIII appointed Bishop Francesco Maria Machiavelli (who was already a member of Cardinal Ginetti's delegation to Cologne) as extraordinary nuncio. He lasted

[29] Within the broader context of papal diplomacy during the Renaissance and Counter-Reformation, Alain Tallon has stressed the link between the figure of the Pope as "common father" of Catholic rulers and his role as privileged mediator, if not ultimate judge, of their conflicts. "Conflits et médiations dans la politique international de la papauté", in Visceglia, M. A. (ed.), *Papato e politica internazionale nella prima età moderna*, Rome, 2013, p. 117.

[30] Leman, A., *Urbain VIII et la rivalité de la France et de la Maison d'Autriche de 1631 à 1635*, Thèse pour le doctorat ès-lettres. Présentée à la Faculté des Lettres de l'Université de Paris, Lille and Paris, 1919.

[31] Leman, A., "Urbain VIII et les origins du congrès de Cologne de 1636", *Revue d'Histoire Ecclésiastique*, 1923, vol. 19, pp. 370 and 383. To quote another author, Urban VIII "était à l'origine du congrès de Westphalie". Gantet, C., "Pax civile, affirmation religieuse, neutralization politique: La perception catholique des traités de Westphalie", in Kintz, J.-P. and Livet, G. (eds.), *op. cit.*, p. 74.

[32] *Urbanus VIII. Papa, Pia et pastoralis adhortatio* (April 1, 1632), in *Magnum Bullarium Romanum SS. Pontificum Urbani VIII. & Innocentii XI*, p. 186; also in Müller, J., *Das Friedenswerk der Kirche in den letzten drei Jahrunderten*, vol. 1 (Die Friedensvermittlungen und Schiedssprüche des Vatikans bis zum Weltkriege 1917), Berlin, 1927, pp. 165-166.

[33] On cardinal Ginetti's instructions for this task, see Repgen, K., "Die Hauptinstruktion Ginettis für den Kölner Kongress (1636)", *Quellen und Forschungen aus italienischen Archiven und Bibliotheken*, 1954, vol. 34, pp. 250-287 (also in Repgen, K., *Dreißigjähriger…*, *cit.*, pp. 613-646).

for only one year and he too, for health-related reasons, was replaced in that same position by the extraordinary nuncio Carlo Rossetti, who, in 1643, was elevated to the cardinalate and became legate *a latere*. Several months later, he was himself recalled from Cologne. Finally, Fabio Chigi, who had been nuncio to Cologne since 1639 and would later be elevated to the papacy with the name of Alexander VII, became the Pope's representative at the congress, with the title of "extraordinary nuncio for the treaty on universal peace among christian princes".[34]

The different titles held by the Pope's representatives to the peace congress signal an important development in papal diplomacy that took place at that time. Legates *a latere* (or *de latere*) had historically been the Pope's principal envoys. The expression dates back to ancient times, when legates *a latere* were selected out of the court of the Roman emperor himself.[35] The diplomatic practice of the Holy See, especially in modern times, had been to reserve that title to cardinals:[36] this was easily understandable as *a latere* (literally "from the side") meant that, in a certain way, they belonged to the very body of the Pontiff,[37] with the consequence that their legation was "a kind of temporary decentralized annex of the Roman curia".[38] On the other hand, nuncios were prelates, who could either be ordinary nuncios (exercising their functions in a dozen permanent nunciatures) or extraordinary nuncios (charged with a single mission). And it was precisely the pontificate of Urban VIII that marked a "turning point" in the development whereby the Pope would "entrust nuncios with assignments previously executed by legates".[39] The Jesuit father Pierre Blet has cogently summarized this development when

[34] *Nuntius extraordinarius ad tractatus pacis universalis inter principes christianos*, as reported in Koller, A., *Fabio Chigi-Nunzio e mediatore di pace in Germania*, Istituto Storico Diocesano Siena, Annuario 2000-2001, p. 42.

[35] Moroni, G., *Dizionario di erudizione storico-ecclesiastica da S. Pietro sino ai nostri giorni*, Venice, 1846, vol. 37, p. 265 ("Legato").

[36] Luca, G. B. De, "la pratica moderna d'alcuni secoli à questa parte insegna… che… questa Carica almeno di fatto… convenga dirsi Cardinalizia", *Il cardinale della S. R. Chiesa pratico*, Rome, 1680, p. 174.

[37] "…detti furono *a latere Legati*, perché, come Eugenio IV, nella più volte citata lettera riflette, appartenendo eglino al corpo del Romano Pontefice, si dicevano staccati *a latere summi Pontificis*". Tamagna, G., *Origini e prerogative de' cardinali della S. R. C.*, part I, Rome, 1790, p. 177, footnote omitted.

[38] "…une sorte d'annexe décentralisée temporaire de la curie romaine". Barbiche, B. and Dainville Barbiche, S. de, "La diplomatie pontificale de la paix de Vervins aux traités de Westphalie (1598-1648). Permanences et ruptures", in Bély, L. and Richefort, I. (eds.), *L'Europe des traités de Westphalie. Esprit la diplomatie et diplomatie de l'esprit*, Paris, 2000, p. 112.

[39] Koller, A., "Cardinal Legates and Nuncios", in Hollingsworth, M. *et al.* (eds.), *A Companion to the Early Modern Cardinal*, Leiden and Boston, 2020, pp. 186 and 187.

he wrote that, by changing its diplomatic structures and replacing legates with nuncios, the Holy See was adapting to new political realities: "when the absolute monarchies of the modern era replaced feudal monarchies, the papacy too would replace its legates *a latere* with permanent nuncios, whose powers were more limited and whose action had greater constancy, thus better corresponding to the new State forms".[40]

In any event, irrespective of the diplomatic level of representation, the substance of what was expected of the Pope's representative at the peace congress was the same: the instructions to Cardinal Rossetti specified that he should not prejudice the role of the Pope as "common prince", nor should he sit in judgment of the political interests of the parties;[41] likewise, the instructions given to the nuncio Fabio Chigi expected of him to further peace without injury to the Church, and to ensure that duty to God would prevail over human considerations.[42]

Given these premises, it is not surprising that Chigi would end up articulating the Holy See's objections to the texts of the peace treaties by lodging

[40] "L'absence d'un légat au congrès de Münster en 1648 représente une étape dans l'évolution des structures diplomatiques du Saint Siège. Les légats de la Chrétienté cedent le pas aux nonces ordinaires et extraordinaires de la Chrétienté catholique. Le Saint Siège adaptait plus ou moins consciemment ses institutions aux nouvelles formes politiques. Au moment où les monarchies absolues de l'âge moderne remplaçaient les monarchies féodales, la Papauté remplaçait aussi ses légats *a latere* par ses nonces permanents, dont les pouvoirs plus limités et l'action plus constante correspondaient mieux aux nouvelles formes de l'État". Blet, P., *Histoire de la Représentation Diplomatique du Saint Siège des origines à l'aube du XIX*e *siècle*, Vatican City, 1982, p. 354. On the same development, see also Barbiche, B. and Dainville Barbiche, S. de, *op. cit.*, pp. 555-566.

[41] "…non pigli sopra di se arbitrio di decidere cosa veruna, né che vi impegni Sua Santità, che non vuole uscire di posto di Principe Comune, conforme alle obbligazioni che gli impongono il grado che tiene nella chiesa di Dio, ed in questa maniera Ella avvertirà di non diventare di mediatore, giudice degli interessi politici. Quando però le parti volessero uscire di qualche impegno e confidassero in Lei le proposte ed il giudizio da darsi, ed Ella con il loro consenso comprendesse di camminare al sicuro, in tal caso non dovrà mancare di giovare e cooperare al pubblico beneficio". Ferraro, G., "Relazione del nunzio pontificio Carlo Rossetti intorno gli affari di Germania nel 1642-44", *Atti e Memorie della R. Deputazione di Storia Patria per le Provincie di Romagna*, Terza Serie, Bologna, 1886, vol. IV, pp. 199-200 (*Istruzione al sig. Cardinale Rossetti legato apostolico per il congresso di pace*). Some of the notes by Ferraro, accompanying the text, are far from convincing, but what counts here is the text of the Instruction.

[42] Pope Innocent X, "Christianae fidei atque ecclesiasticae immunitati periculum damnumve conflare ullo pacto possit… humanas quascumque rationes Dei causae omnino a nobis posthaberi", Brief, October 5, 1944, reproduced in Brom, G., *Archivalia in Italië*, The Hague, 1914, vol. 3, pp. 388-389; Extensively, on Chigi's instructions, see Repgen, K., *Fabio Chigis Instruktion für den Westfälischen Friedenskongreß. Ein Beitrag zum kurialen Instruktionswesen im Dreißigjährigen Krieg*, in Repgen, K., *Dreißigjähriger…*, *cit.*, pp. 647-675.

three protests,[43] and by ensuring "that neither his own name nor that of the Pope appeared in the instrument of a peace by which, as he lamented, a deep wound was inflicted on the Catholic religion every time it was mentioned".[44]

This firm attitude by the Holy See, however, did not preclude the incisive contribution by the Pope's representative to the peace negotiations. This contribution is well documented: as Ludwig von Pastor remarked, the material regarding Chigi's activity in Westphalia is "extraordinarily plentiful, and it has been preserved in its entirety", so much so that whatever Chigi wrote, read, "or had on its table during his stay at Münster, is almost completely before us".[45]

For the peace negotiations, there were two official mediators: Fabio Chigi representing the Pope, and Alvise Contarini representing Venice.[46] It is true that Contarini's mediation was more extensive, as it included contacts with both Catholics and Protestants, contrary to the limitation imposed on Chigi, who would not entertain relations with Protestants. But, compared to that of his Venetian colleague, Chigi's mediation had greater weight in Catholic affairs, which is why he alone would receive the plenipotentiaries' proposals and replies, and it was at his residence that the plenipotentiaries would meet.[47]

In our times, mediation, which entails a more active role by the representative of a neutral State, tends to be clearly distinguished from good offices, which limits the role of the intermediary. The United Nations handbook on peaceful settlement captures this different degree of involvement when de-

[43] The first protest, 1648, related to the Osnabrück treaty; the second one, dated October 26, 1648, related to both treaties signed on October 24; and the third one, dated February 19, 1649, was a general protest against the ratification of both treaties. These three protests are summarized in Pastor, L. von, *The History of the* Popes, vol. 30, pp. 125-126, with references, in the footnotes, to the main publications reproducing them. Klaus Jaitner appropriately flags a fourth protest, which Chigi had lodged on May 18, 1648, against the January 30 Spanish-Dutch peace treaty, *The Popes and the Struggle for Power During the Sixteenth and Seventeenth Centuries*, in Bussmann, K. and Schilling, H. (eds.), *op. cit.*, p. 67.

[44] Pastor, L. von, *op. cit.*, pp. 120 and 121.

[45] *Ibidem*, p. 415, Among the indispensable materials on Chigi, see Kybal, V. and Incisa Della Rocchetta, G. (eds.), *La nunziatura di Fabio Chigi (1640-1651)*, Rome, 1943, vol. I, part I, and Rome 1946, vol. I, part II; Repgen, K. (ed.), *Diarium Chigi (1639-1651)*, part 1, Münster 1984.

[46] Contarini wrote a final report on the peace congress: *Relazione del Congresso di Münster del Cavaliere Alvise Contarini*, Venice 1864. On Contarini, see Bettanini, A. M., "Alvise Contarini Ambasciatore Veneto (1597-1651)", *Rivista di Studi Politici Internazionali*, 1942, vol. 9, núm. 3, pp. 371-416; On his mediation, see Andretta, S., "La diplomazia veneziana e la pace di Vestfalia (1643-1648)", *Annuario dell'Istituto storico italiano per l'età moderna e contemporanea*, 1975-1976, pp. 3-128; Bussi, L., "Growth of international law and the mediation of the Republic of Venice in the Peace of Westphalia", *Parliaments, Estates and Representation*, 1999, vol. 19, no. 1, pp. 73-87.

[47] See Garden, G., *Histoire générale des traités de paix et autres transactions principales entre toutes les puissances de l'Europe depuis la paix de Westphalie*, Paris, vol.1, 1848, pp. 93 and 94.

fining good offices as a procedure whereby a third party "normally seeks to encourage the parties to the dispute to resume negotiations, thus providing them with a channel of communication"; this differs from mediation, which is defined as the method of dispute settlement in which the third party "intervenes to reconcile the claims of the contending parties and to advance his own proposals aimed at a mutually acceptable compromised solution".[48]

"The jurists of the seventeenth century, however, were not so explicit in the use of these terms".[49] From this, it follows that what at the Westphalia negotiations was called "mediation" was in reality much closer to "good offices". There is no denying that, by his instructions as those of his predecessors, Fabio Chigi was kept to observe tight neutrality, his role being limited to facilitating the communication between the parties and, at most, exercising moral pressure to bring about peace. It is likewise true, though, that each of Chigi and Contarini ended up pursuing "a more active role as mediator than his government would have liked".[50] In the case of Chigi, this is all the more understandable, as he "promoted peace not only as a diplomat, but also as a priest".[51]

V. Conclusions

To sum up, despite the final protests against the peace of Westphalia lodged by the Holy See, and the absence (at Chigi's own insistence) of any reference in the peace treaties to the mediation exercised by the Pope's representatives, the facts remain that *i)* it was Pope Urban VIII who initiated the negotiations that would end the Thirty Years War, and *ii)* it was the Holy See that, mainly thanks to Chigi, succeeded in "keeping alive the Congress of Münster" throughout the complex negotiations that led to the treaties of Westphalia.[52]

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[48] *United Nations Handbook on the Peaceful Settlement of Disputes between States*, New York, 1992, pp. 33 and 40.

[49] Colegrove, K., *op. cit.*, p. 451.

[50] Croxton, D., *op. cit.*, p. 174, citing Andretta, S., *op. cit.*

[51] Rodén, M. L., "Fabio Chigi's Observations on the Practice of Diplomacy in Westphalia", in Rodén, M. L. (ed.), *Ab Aquilone. Nordic Studies in Honour and Memory of Leonard E. Boyle, O.P.*, Stockholm, 1999, p. 139. On Chigi's Salesian spirituality, see Dupront, A., "De la Chrétienté à l'Europe: La passion westphalienne du nonce Fabio Chigi", in *Forschungen und Studien zur Geschichte des Westfälischen Friedens. Vorträge bei dem Colloquium französischer und deutscher Historiker, vom 28, April 1963* in Münster, 1965, pp. 55 and 56, including footnote 5, where the author refers to several passages from Cardinal Sforza-Pallavicino's classic biography on Fabio Chigi (Pope Alexander VII).

[52] L. Schiavi, "Paciera malevisa e fra i contendenti costantemente battuta, la Chiesa ferma e tenace, era riuscita, per virtù principalmente del Chigi, a tenere in piedi quel Congresso

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