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Diplomatic negotiation : essence and evolution

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CHAPTER VII

The Eighteenth Century: Behaviour of Negotiators

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CHAPTER VII: THE EIGHTEENTH CENTURY: BEHAVIOUR OF NEGOTIATORS

The Peace of Utrecht – in fact a series of bilateral treaties – put an end to the Spanish War of Succession from 1702–1713, a war that affected nearly all of Western and Central Europe, as well as parts of Asia, Africa and the Americas through their European colonies (Bruin, De, 2013; Onnekink and De Bruin, 2013). The Spanish War of Succession has even been labelled the first world war in history because of its spread over the world (Onnekink and de Bruin, 2013: 42). It was also the ‘first peace settlement to include an express reference to the “balance of power” in treaties’ (Lesaffer, 2013). Others refer to it as a ‘replay of the Westphalian drama’ (Holsti, 1991: 72). It is anyway a ‘series of compromises, a settlement without clear winners or losers, at least in the short term’ (Ghervas, 2013: 28). This chapter will analyze these negotiations, comparing them with other negotiations in the Netherlands around the turn of the seventeenth and eighteenth centuries, with a special eye to the behaviour of the diplomatic negotiators in comparison to those of the twenty-first century. Furthermore, the ‘Utrecht’ negotiations will be compared to two other important negotiations on Dutch soil: those of Nijmegen; and Ryswick.

What was it about?

[T]he essential purpose of a peace is to protect the independence of the dynastic sovereigns by limiting hegemonic designs and policies. The purpose of the Utrecht settlements was not so much to avoid future wars as to resolve the issue of hegemony – a replay of the Westphalian drama (Holsti, 1991: 72).

Holsti identifies the 1713 Peace of Utrecht as one of the five major peace settlements in Europe since the Peace of Westphalia in 1648. Of these five (the remaining three – as mentioned in Part One – are Vienna, Versailles and San Francisco), he values Utrecht as the negotiation process with the feeblest outcome. He identifies eight prerequisites (Holsti, 1991: 340) for a forward-looking outcome (Zartman and Kremenyuk, 2005), meaning a substantial agreement creating a regime for effective management of future conflicts: governance; legitimacy; assimilation; deterrent; conflict resolution; war; peaceful change; and future issues. In Holsti’s view, Utrecht only satisfies the first two factors, but these are still of great importance, as governance and the assimilation of states into a common agreement are stepping stones in the direction of some kind of proto-European regime that Westphalia hardly created. After all, while Westphalia changed the meaning of sovereignty in Europe, it did not clearly define it. Sovereignty in the seventeenth and eighteenth centuries is not as watertight as it is today (Schrijver, 1998: 141), although developments at the end of the twentieth century indicate that sovereign rights are

eroding, which might mean that we are – in the long run – heading towards the same unclear situation as 300 years ago. The condition of sovereign rights 300 years ago was of great importance to the question of the behaviour of states and their negotiators, as ‘norms surrounding the institutions of diplomacy were very much tangled up with the issue of sovereignty and the status of the dynast’ (Holsti, 2004: 185).

This chapter views the Peace of Utrecht from the perspective of its contribution to a better organized Europe, where conflicts might be solved through peaceful means as much as possible. Peaceful contributions to the European equilibrium could only be made by ‘periodic consultation and negotiation among the great powers, and by some degree of willingness to allow every strong power at least a little scope for its ambition to add to its territories and its influence’ (Roberts, 1947: 3). We look at the Peace of Utrecht here as a forerunner of present-day international negotiation processes, asking ourselves what they have in common and where they differ.

Although Westphalia changed the relationships between the European states, making them all equal in principle, some remained more equal than others. This is, of course, still true today, but the problem is not so much the power differences, but the question of how to regulate them in such a way that the constellation of states and the positions of their rulers will not be in constant danger. This poses the issue of hegemony and how to manage it. The question of hegemony is a major problem in European history, especially after the breakdown of the medieval system whereby the Pope and the Emperor of the Holy Roman Empire were the supreme sovereigns in Europe. As successors of the western Roman Empire, they were the spiritual and political hegemony. When they lost their religious and political legitimacy respectively, the scramble for dominance became the focal point of inter-state relationships. Westphalia created religious peaceful coexistence; Utrecht had to do the same for the political arena, establishing some kind of regulatory regime. As pointed out in the previous chapter, Münster and Osnabrück produced an embryonic facility – the *chambre mi-partie* – appointing France and Sweden as guarantors of the agreement (Meerts, 2005b: 34–35). With the peace negotiations in Utrecht during 1712 and 1713 putting an end to the Spanish War of Succession, dynasties and states tried to settle the issue of power balance on the continent and abroad, which does not mean that the Peace of Utrecht can be seen as a conscious attempt to create some kind of regime to settle differences (Roberts, 1947: 240). However, it was an important benchmark in a century of constant *renversement* (reversal) of alliances, making it hard to understand the diplomatic history of the eighteenth century (Aalbers, 1980: 35). ‘The Utrecht settlements do provide insights into the problems of international relations in an environment of anarchy. Unlike the other multilateral conferences that preceded it, the diplomats [...] were concerned with order and stability’ (Holsti, 1991: 72). Moreover, Utrecht did work when the first serious threat to its integrity, the Spanish attempts to unite the crowns of France and Spain after the death of French King Louis XIV, was countered by the 1717 Triple Alliance of France, England and Holland (Veenendaal, 1956: 29).

How, then, to settle the issue? Through war or negotiation? In the seventeenth and eighteenth centuries, war was the dominant mechanism in settling external disputes. This did not mean that negotiation had no role to play, but it is very much seen as being a sub-tool of warfare. Louis XIV of France used peace negotiations in order to create pauses in his wars; he needed breaks to regroup, to prepare for the next war. Slowly and truly,

however, the process of negotiation gained more respect, albeit in connection to the use of violence. The best way to peace is through war, the German emperor said, as the War of Spanish Succession raged through Europe (Doesburg, 1886: 120). The hard-fought last-ditch French victory in this war, at Denain in July 1712, created a 'mutual hurting stalemate', thereby opening the road to Utrecht. Without this victory, the war might have dragged on and more damage would have been done before the states accepted the necessity of negotiating a final and lasting peace. Perhaps negotiation is war by other means, but the two are anyway interconnected in a symbiotic relationship (Meerts, 2006b) and in 1712 it was up to the negotiators to take the heat. Meanwhile, the war did not come to a full stop.

The Political Context

The big question in the early eighteenth century was: who will dominate Europe as the Habsburgs lose their grip on their lands and thereby on the surrounding states? The erosion of Spanish power and the gradual dissolution of the German empire created a power vacuum in Western Europe, with France in the wings to fill that gap. Stability and equilibrium on the continent was of great importance, not only to the continental dynasties, but also to the European sea powers: Britain; and the Republic of the United Netherlands. Britain was still struggling with itself in the second half of the seventeenth century, but came to the fore at the beginning of the eighteenth century. The Republic of the United Netherlands, which dominated trade and was a maritime world power – was losing ground at the beginning of the eighteenth century, partly because of its outdated political system, which was a confederal system that supported the expansion of its commercial interests as long as no other power competed with it in a serious way. This became obsolete in a massive confrontation with France on the continent itself. France, which was regaining strength by suppressing the Huguenots and centralizing power in the hands of an absolute monarch, could now turn to the outside world. France could now radiate energy, which had been used for managing internal problems, into its international environment. As France began to expand its zone of influence and territory, the continental (German empire) and maritime balancers (the Republic of the United Netherlands and the British Kingdom) had to act again. This new counter-offensive resulted in the War of Spanish Succession at the start of the eighteenth century, which cannot be understood without its immediate pre-history, of course.

One starting point could be the beginning of what some call the Forty Years' French–Dutch War (1672–1712) (Deursen, 2005: 163). However, as our time-span should not be too wide and as this chapter deals with negotiators and their behaviour, we will begin with one of the two important international negotiations on Dutch soil: the Peace of Ryswick in 1697. The Peace of Ryswick was mediated by the Swedish diplomat Niels Eosander, Baron of Lillienrot, and concluded the Nine Years' War (1688–1697). Several treaties were signed, but none of them had the same wording. However, all of them indicated that – at least in a formal sense – this peace should be seen as forward-looking. Terms such as 'fruitful and inviolable', 'religiously and sincerely observed', and 'universal and perpetual' (Clark, 1970: 381) indicated the political intention to go for peaceful relations between the sovereigns. François de Callières', one of French King Louis XIV's *envoyés extraordinaires plénipotentiaires* (special envoys), was impressed by the value of this negotiation process

and wrote a book on lessons learned for other diplomats, including how to behave in an international conference like this and which techniques would help to conclude a good agreement, for example by putting the diplomats in *quarantaine* (quarantine) (Lempereur, 2002: 11). Notwithstanding the high-brow phraseology of the Ryswick Treaties, however, the French were fighting again within four years. In hindsight, these negotiations were a tool in French warfare, and they provided breathing time. More importantly, provisions for dealing with future conflicts – or at least diminishing the prospects of war – were lacking altogether. The French kept their forces on the same strength as during the war.

Ryswick did not solve an important problem: the question of the Spanish Succession, which had been the focal point of French foreign policy ever since 1665, the year when the Spanish King, Philip IV of Habsburg, had died. He was succeeded by a four-year old frail child, Charles II. Numerous attempts were made to solve the Spanish question through negotiations, but to no avail. When Charles II died in the year 1700, he left all of Spain and its overseas possessions to Philip of Anjou, a grandson of Louis XIV, King of France, the reason being that he did not want the ailing Spanish Empire to crumble further. The danger of Spain and France becoming united under kings of the same dynasty – and perhaps under one crown in the future – caused the War of Spanish Succession from 1701–1714, defending the Austrian claims to the Spanish throne. The main continental and sea powers (the German empire, and Britain and the Netherlands, respectively) united in a new Great Alliance in 1701 to contain France within its borders. This was yet another step in the struggle for hegemony in Western Europe, a repetition of all the other wars with France and its direct neighbours, albeit with another label. The actual war – with the German emperor, Britain, the Netherlands, Hanover, Prussia, Portugal and Savoy on one hand, and France, Spain, Bavaria and Cologne on the other – only started in 1702 and would come to an end in 1713. Peace negotiations in Utrecht in 1713) and Rastatt in 1714) would conclude the conflict. Both sides had their victories and suffered their defeats, and at the very end not much had changed. Louis XIV did not succeed in expanding France, thanks to allied generals such as the Duke of Marlborough. But at the same time, France could not be decisively defeated. A compromise on Spanish Succession was reached: Philip remained king, but the thrones of Spain and France remained separated for eternity (Onnekink, 2013).

This is not a surprising outcome. The first reason is that none of the belligerent parties outmatched the other in military strength. In general the French were stronger on land, and the British and Dutch at sea. Only when the sea powers upgraded their land forces to the extent that they – together with the Austrians/Germans – outnumbered the French on the continent did the war come to a grinding halt. Exhausted parties started to look for peace in secret preliminaries. The second factor here is the mutual distrust of the allies. After the death in 1702 of William III, King of England and Lord Governor of the Republic of the United Netherlands, old rivalries between the British and Dutch over trade came to the fore again. They had always been there, and they were the source of numerous Dutch–British sea battles during the seventeenth century, but had been contained by the political framework under the House of Orange and the ‘French threat’. The Dutch were afraid of a separate peace between France and England, which indeed occurred, giving the British trade concessions on Spanish continental and colonial soil. The British wanted to keep Dutch power limited in order to keep competition at a low level. Meanwhile,

the Habsburgs, having lost all of Spain, had an interest in keeping at least part of it: the Southern Netherlands (today's Belgium). The Southern Netherlands therefore shifted from Spanish to Austrian rule in 1701, while the Republic of the United Netherlands demanded a long-promised substantial barrier of fortresses in that area (Onnekink, 2013). The French then tried to keep the balance of power between the sea powers intact, in order to prevent either one becoming the hegemon of the sea – a wise policy, because after the waning of Dutch trade dominance at the start of the eighteenth century, Britain became France's main competitor until the resurrection of Germany at the end of the nineteenth century.

Pre-negotiations

Negotiations about the Spanish Succession had been ongoing since 1661, but gained momentum in November 1700 with the death of Spanish King Charles II of Habsburg and the beginning of the Spanish War of Succession in its aftermath. Talks in 1700 between the States-General (representatives of the seven sovereign united Dutch provinces) and Count d'Avaux (Tischer, 2008), the ambassador of Louis XIV in The Hague, did not work out well (Doesburg, 1886: 5) and could not prevent the war from starting. Later, while the war raged on, both sides sent peace signals. In 1705, the French made some indirect peace proposals to the Dutch, with the aim of turning around those Dutch merchants who saw the war as a threat to their commerce and trade. The proposals were very advantageous to the Dutch (Doesburg, 1886: 9–11). In reaction, the Dutch worked out a secret peace plan in 1705 to be discussed with the British, with the intention of sending it to the French if the British did not oppose these ideas. The war government in London despised the plan, however (Stork-Penning, 1958: 40–41). The Dutch initiative by Willem Buys, who was the representative of the city of Amsterdam, raised suspicion among the British: were the Dutch, and especially the merchants of the powerful port of Amsterdam, heading towards unilateral peace with the French King Louis? The British were worried as the Dutch conditions were not very favourable for England, while they were quite mild on the French.

After these failed negotiations, the French made a serious attempt to court the Dutch again in 1709, especially after the French defeat at Malplaquet at the hands of John Churchill, Duke of Marlborough, a Tory who was in line with the war politics of the Whigs. Secret French–Dutch negotiations ensued. The French seemed to be ready to accept all of the allies' demands. The French envoy Antoine Louis Rouillé bargained in secret with the Dutch representatives Buys and van der Dussen in the Dutch town of Geertruidenberg. Interesting enough, they were instructed and mandated by the Dutch Raadspensionaris (prime minister) Antonius Heinsius, but not by the States-General (supreme authority). In order to show their seriousness, the French Minister of Foreign Affairs, Colbert de Torcy, paid an incognito visit to Heinsius. Both the British and the Austrians became involved in these negotiations and, together with the French ambassador, the allies worked out a peace agreement in 40 preliminary articles (Veenendaal, 1956: 24). However, France's King Louis XIV refused to agree to article 37: to convince his grandson Philip V – if need be by force – to hand over the throne to the Habsburgs. This created turmoil in the alliance. Those who had warned the negotiators about a French ploy to use bargaining time to win time for war preparations gained strength. At the same time, British suspicions of a Dutch *Alleingang* (going it alone) gained momentum again. This round of negotiations had

started with a French–Dutch *à deux* after all. The French and Dutch went on to negotiate bilaterally in 1710, trying to find a solution for the French '*non*', but no outcome could be reached (Veenendaal, 1956). A last attempt by the French, to have an armistice for France but to continue Spain's war, was attractive to Prince Eugenius of Austria, but rejected by the British and Dutch.

In the third important preliminary negotiation, it was the turn of the British to try back-channel bargaining with the French. After the fall of Britain's Whig government of Godolphin, the Tory minister St John Bolingbroke took the initiative for secret negotiations with France. This had to do with the 'blind' trust of Heinsius in the 'paper promises' of the Whig government in London (Stork-Penning, 1946: 194–197) and the absence of a permanent representation of the Republic of the United Netherlands in London after the death of Ambassador Marinas van Vrijbergen in 1711 – a serious mistake, as the French and British made their deal in 1711 and nothing could change that anymore (Onnekink, 2005: 53). Both the Dutch and the Austrians were outraged, as their options were now severely limited. They felt betrayed by the *Perfide Albion* (perfidious England). The outcome of the French–British negotiations was very favourable to Britain, at the expense of its allies. The war continued, but now without the British. After the French victory at Denain, the Dutch gave up and joined the English in their armistice, though the Austrians did not yet yield. The German emperor continued his fight, but his general Prince Eugene of Savoy limited himself to skirmishes at the fringes. Open warfare was over. The French tactic finally worked: approach one of the allies, give them a good deal, and the war will be over, one reason being that a pact with the powerful British made more sense than an agreement with the weaker Dutch Republic. The stage for the Peace of Utrecht negotiations was set, as was the outline of the upcoming peace agreement. The conference could start, although it was only at Rastatt in 1714 that France and the Holy Roman Empire settled their differences.

Negotiations

The Congress of Utrecht attracted much attention, with people crowding into the city for amusement or profit. Utrecht's City Council introduced regulations to protect the envoys against the townspeople, ordering the citizens not:

[...] to rail against, slander or abuse, by any word or deed whatsoever, the said Lords, the Public Ministers or those of their retinue; and all transgressing was to be punished arbitrarily and corporeally, according to the exigency of the case. Provisions and agreements were made to prevent rivalries and quarrels between the pages, coachmen and domestic servants of the respective representatives, who were prohibited from carrying sticks, swords and arms of any kind. The respective Plenipotentiaries were to come to the conferences in coach, with not over two horses and in a small retinue (Gerard, 1885: 227–228).

The attending diplomats came from Great Britain, Austria, France and the Republic of the United Netherlands, as well as Hanover, Poland, Saxony, the German empire, Portugal, Prussia, the Papal States, Savoy, Sweden, the Swiss Confederation, Tuscany, Bavaria,

Venice, Geneva, Lorraine, Cologne, the Palatinate, Modena, the Protestant Swiss Cantons, and many lesser principalities. A total number of 83 plenipotentiaries arrived in Utrecht. The chief negotiators were the Marquis d'Huxelles, the Abbé Polignac and the Chevalier de Mesnager for France; the Bishop of Bristol John Robinson and the Earl of Strafford Thomas Wentworth for Britain; Buys, van der Dussen and the Count of Rechteren for the Republic of the United Netherlands; while the Count of Sinzendorf and Herr Consbruck from the German empire played a role behind the scenes (Doesburg, 1886: 99). Many other personages attended the conference, representing their own interests or those of petty potentates (Gerard, 1885: 228–229).

Protocol inside the conference hall was of even more importance than outside. In a 'total make-over' the hall had been refurbished in such a way that no delegation could even give the impression of sitting in a place where they had preference over others. At the opening session on 29 January 1712, French and British negotiators were the first to enter the conference hall. As usual for the era, they entered at the same time and same speed, saluting each other in a great show and sitting down at the table at the same moment. The others followed suit. But it was clear who would dominate the conference, and indeed nothing could be decided upon without Anglo-French consent. If there was not to be one hegemonic power in Western Europe, there were effectively two of them, pre-cooking the conference results.

The fifteen months of the Utrecht negotiations were part of an ongoing European negotiation process, with unclear beginnings and fuzzy endings: a process without a protecting regime, like in the European Union of today. Utrecht has been described as 'a useful clearing-house for the ratification of decisions arrived at by much more devious processes' (Pitt, 1970: 446). It confirmed the agreements made in London and Paris in 1711 (Frey and Frey, 1995), but not right away, as the Dutch and Austrians were not willing to accept the outcomes of the secret French-English negotiations at face value, meaning the continuation of warfare while the diplomats were negotiating (Veenendaal, 1970: 443). Until mid-March 1712, a general session between France and the allies was held twice a week at 10 o'clock in the morning. In the nine months that followed, plenary sessions were hardly held any more. Intense bilateral negotiations dominated the scene, both between delegations in Utrecht itself, and between the conference negotiators and their capitals. The meetings were rocketed by external developments, such as the death of the French *dauphin* (crown prince) and his two potential successors within a few months of each other, as well as the failing health of Queen Anne of Great Britain, thus forcing the British to speed up the negotiations. Queen Anne's Hanoverian successor, George I, was known as an enemy to France and his reign would thus have precluded any Utrecht Peace Agreement. There was so much time constraint at the end, and so much fatigue, that in the last stages French and British negotiators sometimes decided on the formulation of certain phrases by throwing a dice (Gerard, 1885: 283). Interestingly enough, Utrecht did not end with a formal signing session; the Treaties were just handed over to the Dutch secretariat of the Utrecht congress (Hamilton, 1995: 80–81). There were festivities in several countries, however. In London a service was held in St Paul's, under the tones of *cantate* by Georg Friedrich Händel that had been specifically written for the occasion of the conclusion of the Peace of Utrecht: *Utrecht Te Deum*; and *Jubileum* (Weber, 1891: 399). The informal ending of the congress stands in sharp contrast to the formalities seen

in Münster, Osnabrück, Nijmegen and Ryswick, and seems to mark the beginning of the end of congresses as general assemblies. After Utrecht, there was a 'growing tendency for congresses to break down, or to meet so sketchy a way as not to be congresses at all' (Hamilton, 1995: 80–81).

Including the Treaty of Rastatt in 1714, the 'Pacification of Utrecht' contained 23 treaties. The five main outcomes were the separate treaties between France on the one hand, and Britain, The Netherlands, Portugal, Prussia and Savoy on the other. In 1713, an additional series of treaties, which were connected to Utrecht, followed suit. Spain, which was represented by France, was absent in Utrecht, but it concluded treaties with Britain, The Netherlands and Portugal. Germany made an agreement with France and The Netherlands, and The Netherlands with Britain. Besides these outcomes, there were also minor treaties, as well as a 'Memorial of the Protestants', particularly for the relief of the Huguenots in France. However, the Protestants were not happy with the substance of this memorial, and they filed a complaint with the magistrates of Utrecht about the unwillingness of the plenipotentiaries to act as mediators between them and French King Louis XIV. The treaties mainly dealt with land issues – that is, which territory belonged to whom under which conditions – such as the secession of Gibraltar and Minorca to Britain and the creation of a barrier of Dutch fortresses in the Austrian Netherlands against future French adventures. Yet they also settled commercial and other issues, such as the right of Britain to 'supply the Spanish West Indies with negro slaves, for the space of thirty years, to the extent of 144,000 negroes, at the rate of 4,800 yearly' (Gerard, 1885: 292), or freeing Huguenots who were galley slaves in France, on the condition that they would not return to their home country. At the other end of the political spectrum, one of the Utrecht treaties brought about the international recognition of the King of Prussia.

Negotiators

The British were the most assertive negotiators. Moreover, they had a solid plan as they had to defend what they had gained in the Franco–British agreement of 1711, while the Dutch were reluctant to negotiate because of what they saw as British betrayal. Notwithstanding the fact that the Dutch had tried to come to bilateral terms with France twice before, they felt no ownership of the political frame in which the Utrecht negotiations had to evolve. Moreover, they were irritated by British opportunism during the Congress of Utrecht itself: 'St John [Bolingbroke, the Tory minister] hardly distinguished between the weapons of war and diplomacy, or between ally and enemy' (Pitt, 1970: 461). It was only at the end of the negotiations that British–Dutch relations took a turn for the better. The Dutch were not the only ones who were critical of British negotiation behaviour. Two English historians once noted that the British had forsaken the Dutch, betrayed the Catalans, while the great loss of Britain was its loss of honour (Gerard, 1885: 309–310). Others spoke of 'Tory betrayal' (Aalbers, 1977: 80); and in sketching the behaviour of British politician Robert Harley, Alastair MacLachlan notes that his approach was not geared by 'intended perfidy, but because his opportunism, his hypocrisy and his pragmatism seemed to be that to more exacting mentalities' (MacLachlan, 1969: 213). The Brits did not trust the Dutch either: 'The Dutch are our Rivals in trade, and have Cheated us' (Coombs, 1958: 376).

While the Republic of the United Netherlands had done most of the fighting, with the biggest army in the field, the British took the spoils at Utrecht, thus humiliating and finishing off the Dutch, and contributing to the decline of the republic as a world power (Geyl, 1937: 189–190; and Schutte, 1978: 276), with the main cause being the decline of Dutch trade (Israël, 1989: 374–377). Whether the British strategies and tactics were wise in the long run is another matter, as it endangered ‘Anglo-Dutch friendship, the bulwark of the Protestant Succession [in England]’ (Hatton, 1970: 93). This did not come as a surprise. The British and Dutch ambassadors, Strafford and Buys, had an enormous quarrel even before the negotiations started. It was clear that the Dutch had to fear their ally, not their enemy (Onnekink, 2005: 59). Interestingly enough, however, the use of threats and blackmail could have positive effects on trustworthiness as well. The Duke of Marlborough, writing to Harley in 1706, disclosed that ‘Your letter to M. Buys has had its effect, for he is in extreme good humour and has really acted like an honest man to Her Majesty and England’ (Stork-Penning, 1958: 63).

The French, because of their alliance with England and their final military successes as a consequence of British abstention, had increased their diplomatic strength to the extent that they were seen as arrogant by their fellow negotiators. As representatives of an absolute monarch with permanent diplomatic positions in Paris, they were less dependent on the outcomes of the negotiations than their British colleagues, whose tenure in office was only linked to the duration of the peace negotiations. They tried, by the way, to extract more concessions from their English allies at the very last moments of the Utrecht negotiations, when the text was in fact finalized, which truly irritated the British. As British diplomat/politician Bolingbroke wrote: ‘They act neither fairly, nor wisely [...] they chicaned with us, concerning the most essential article of our treaty’ (Gerard, 1885: 280).

The Dutch were stubborn and on the whole this lack of flexibility was contra-productive (Geyl, 1937: 219). They were determined to stick to their guns. In a way they had done this for too long in the pre-negotiation phase, thereby losing the opportunity to side with the British at the end of the secret French–British preliminaries, but their inflexibility did sometimes pay off in the Utrecht negotiations. The French once attempted to bulldoze them, supported by English manoeuvres to outflank them by setting up the Prussians and the Hanoverians, but the Germans did not let the Dutch down, and the French bluff failed. The Dutch could also be arrogant at times, but when they threatened to quit the negotiations, the French called their bluff. One of the French envoys, the Abbé Polignac, spoke the famous words – still cited in Dutch history books today: ‘*Messieurs, Les circonstances sont changées – il faut changer de ton. Nous traiterons chez vous – de vous – et sans vous*’ (Sirs, the circumstances have changed – it is necessary to change tone. We will deal with you – about you – and without you) (Gerard, 1885: 275–276). Had inflexibility really been the main reason for Dutch negotiation ineffectiveness? David Onnekink is of the opinion that internal quarrels, bad assessments and denial of sound advice were the real reasons for its failure (Onnekink, 2005: 65). Interestingly enough, these are the same factors that caused the demise of the Dutch draft for a 1991 Maastricht Treaty (Van den Bos, 2008).

Other Congresses on Dutch Soil

Comparing Utrecht to the two major peace conferences on Dutch soil after Westphalia – Nijmegen and Rijswijk – is not something new. British and French diplomats studied the Nijmegen negotiations in order to be well prepared for Rijswijk and Utrecht (Hatton, 1980: 3–4). Comparisons showed the same kinds of negotiation procedures, process and behaviour. Procedures were tight, and fighting for precedence was a threat to the success of the negotiation. The Utrecht conference organizers thus learned how to prevent such clashes before they could even take place. In Nijmegen, the City Council had made a rule about the traffic of diplomatic carriages in the city streets; Ryswick kept the opponents apart by building two new bridges to cross the ditch leading to the conference hall; and Utrecht, as already discussed, tried to prevent clashes between the general public and the honourable envoys. Nijmegen was the first conference after Westphalia where Catholics and Protestants could sit together (Hatton, 1980: 7). Looking at the three processes, however, one gets the impression that procedures were less important in Utrecht than in Nijmegen and Ryswick. For sure, they were there at the beginning and at the end, but during the actual negotiations they did not really play a role.

Utrecht, Ryswick and Nijmegen had their official meetings, but just like today, progress was made in the corridors. In Ryswick, the decisive step was taken completely outside the negotiations, and by the way, by diplomats of a military background. When the negotiations did not move forward, the French Marshall Boufflers and the Dutch envoy Bentinck (the Count of Portland) made the deal on which the negotiations could be finalized. This led to Boufflers' remark 'While the ambassadors wage war, the generals conclude peace' (Keens Soper, 1997a: 38).

The processes were different in the sense that in Nijmegen and Ryswick, the preliminaries were much less substantial than in Utrecht. The consequence of this was extensive wheeling and dealing with the home front, which took time and energy. These negotiations with the constituencies distorted the negotiation process at the location, resulting in loss of time and procrastination. As Utrecht was a kind of formalization of the preceding bilateral agreements, the bargaining could gain and keep momentum much more easily. This might have been one of the reasons for the relative forward-looking outlook of the Utrecht Treaties. The past was done with; the treaties had to regulate the relationships for the future. Yet there is a human dimension to this forward-looking aspect as well. At Nijmegen, French King Louis XIV was at the height of his power, having invaded the Republic of the Seven United Netherlands, having built a strong alliance with the British and Germans, and occupying the city of Utrecht and celebrating mass in its cathedral, thus threatening the Dutch heartland itself: the province of Holland and the city of Amsterdam. In Ryswick, however, Louis had a hard time against an overwhelming alliance of Britain, Spain, The Netherlands, The Holy Roman Empire and others. In Utrecht, he was back in business, but exhausted at the same time. Moreover, he had become an old man. The end of his reign was in sight and Europe was preparing for that. Utrecht was thus a more inclusive peace process and inclusiveness tends to support forward-looking aspects.

Both Nijmegen and Ryswick had mediators, trying to help to create a smooth negotiation process: in Nijmegen these were – as in Münster – papal representatives, who were only

allowed to transfer documents (Rietbergen, 1980: 44), at least officially; in Ryswick the role of mediator was with the Swedish chair (Huising, 1997: 16). Utrecht had to do without – at least official – neutral intermediaries. Why could those peace negotiations do without mediation? After all, the number of actors in Utrecht was far larger than in Nijmegen or Ryswick, thereby creating more complexity. The main reason for the absence of mediators was the dominance of Britain and France over the Utrecht procedures. A mediator would have been an unwanted ‘stand-in-the-way’. The negotiations were already more or less decided by the last Franco–British preliminaries, meaning a quite clear-cut framework for Utrecht, and although the absence of mediators might have attributed to the rudeness of the Utrecht negotiations, it also prevented indirectness. Mediators such as the Italians in the Münster negotiations (Meerts, 2005b: 32) can also complicate matters. Direct negotiations can lead more easily to clashes, but they can also speed up the process, averting miscommunications, deliberate or not. Here we have an interesting connection between behaviour and procedure. The more brutal the behaviour, the more strict and formal procedural aspects we may find (Mastenbroek, 2002). It might have to do with something else as well: the connection between warfare and negotiation as tools in international relations. Both negotiation and warfare were seen as an art to be performed (Neveu, 1980: 242). To show off at the battlefield might help one side to win, as it could impress the opponent to such an extent that he might give up without much fighting. The same seems to be true for the bluff poker of the French in the Utrecht bargaining process and the harshness of the Dutch defence against this kind of behaviour.

The Peace of Utrecht in a Broader Perspective

In order to value the evolution of diplomatic negotiation in Western and Central Europe, we distinguish five factors influencing the process of international negotiation since the second half of the seventeenth and first half of the eighteenth centuries: the number of European states and their connectedness to each other and to the world; the rule of law and the respect for human rights; the societal–political and professional cultures; the level of popular participation in policy-making; and the level of welfare and technology.

Do we have more or fewer states in Western/Central European negotiations than three centuries ago? Are they more or less connected to each other and to the world? The numbers have not really changed. Europe had a multitude of sovereign or semi-sovereign entities at the time of Utrecht, Ryswick and Nijmegen, as we have today. The difference is in the clarity of their status. Three centuries ago the status of countries was not always clear and the question of which dynasties owned those lands was a dominant factor in negotiations. It meant that lands could easily be tossed around and traded off against other territories. Land was a commodity that could be traded. Having more trade-offs available, negotiations were more easy-going than today. Diplomats could package trade benefits and regions in the offering. During Utrecht, for example, the Italian lands were seed money to smooth the negotiation process. Trading colonies for colonies was another popular game, helping to make intra-European bargaining easier.

States were less dependent on each other, so could more easily use warfare in competition with negotiation. This diminished the value of the negotiation process as a tool in international relations compared with inter-state relations nowadays. Actually,

negotiation could be seen as a tool in warfare, while nowadays we tend to take the opposite viewpoint: warfare might be a tool in a negotiation process.

The lack of rule of law bedevilled the negotiations at the time. Procedures had to compensate for that, but could not manage. Managing an anarchical situation through a peaceful process like negotiation is a very difficult task. Negotiators were relatively helpless in this, with the effect that negotiation had a quite meaningless role in international politics at the time of the Utrecht negotiations. Diplomats and their rulers were aware of the negative effects of international lawlessness on international relations and give-and-take processes. The dilemma was a chicken-and-egg problem, however. Trust could have helped in compensating for a lack of rules and regulations, but trust itself was problematic: 'states are only willing to enter [...] negotiations when they are able to trust their opponent to stick to an agreement' (Ghosn, 2010: 1058). 'Trust is a most difficult condition to build' (Faure, 2012: 371).

Although negotiation regimes had to be created, as they were lacking, negotiation itself could not be seen as an effective methodology. Being aware of this, especially after the successful but incomplete Westphalia talks, countries tried to regulate their relations more and better through the Utrecht agreements, understanding that the quest for hegemony threatened the stability of Europe and thereby of its dynasties. There is, of course, an enormous difference in respect for human rights between now and then. On the one hand, this made negotiations smooth: people could just be traded for another 'commodity'. Yet it also meant that negotiators did not really respect each other, notwithstanding the neat manners of the diplomatic noblemen, which led to a kind of warlike negotiation process in which the important factor of trust was lacking. Moreover, the rule of law to compensate for this lack of trust was not yet around: the rule of power existed, but not much of law.

Societal, political and professional cultures were less 'civilized' than today. Brutality distorted stable and trustworthy negotiation processes. The mob could threaten the envoy, envoys' servants fought with each other on several occasions, and negotiators showed contempt to each other. None of this enhanced a fruitful atmosphere at and around the table. We have already remarked upon the Dutch angeriness about Britain's secretive attitude, but have also commented that the Dutch themselves came close to a separate peace agreement with France on two occasions. They were obviously not more reliable than the British, nor the French for that matter. Nevertheless, there was a diplomatic culture, which was synonymous with the culture of nobility. There were certain norms and values and a certain etiquette to help negotiators work with each other. There was also their lingua franca – quite literally, as French was the dominant language at the conference table. Actually, many diplomats preferred to speak French among themselves, even if they were not from a *francophone* country. The Dutch diplomats, not being of noble birth, had French as their first foreign language, and had problems speaking, reading and writing English. This situation was quite normal until the middle of the twentieth century, and gave French diplomacy the advantageous position that the British (and Americans, etc.) have nowadays.

Limited popular participation in politics – other than peasant revolutions – made life easier on the negotiators, although there were remarkable differences between French absolutism on the one hand and English parliamentarism and Dutch particularism on the other. In Britain and the Republic of the United Netherlands, party elites and city council

oligarchs respectively did intervene indirectly in the Utrecht peace negotiations, while the French elite had to hide behind the back of their absolutist ruler. The problem of constituency bargaining was quite non-existent for the French delegation, as they had to obey the monarch's direct orders, while the Dutch and British situation could be described as being more multiform: negotiators had to take into account the opinions of different elite factions. Still, however, in comparison with present-day diplomatic bargaining, negotiations were seldom interrupted by political parties and parliament, let alone by public opinion. Negotiators were quite dependent on monarchs and ruling elites, who could be extremely whimsical. Negotiators also lacked a protected position *vis-à-vis* their bosses, and as we have already seen, a more permanent position could translate into a more influential one.

Nowadays diplomats can use public opinion as a tool to apply pressure on their opponents or as an excuse not to implement the agreement (Rosoux, 2003: 45–55). Not having this weapon, not being able to play divide-and-rule between different internal power centres, being in a very dependent position, and sometime fearing for their lives, the legal position of individual diplomats was much weaker than today. This then affected the process of bargaining, as their insecurity and limited mandate hardly made creative solutions to negotiation problems feasible. On the other hand, the closeness of the negotiating elite made life easier sometimes, as there was much less control of the negotiator's behaviour:

In the eighteenth century, a member of the European nobility would have more in common with members of his own class in another country than with a different class in his own. Even when non-nobles served as representatives, they accepted the aristocratic precepts of the ambassadorial corps and perpetuated the traditions with civilité (Frey and Frey, 1999: 212).

Yet at the same time it was difficult to be effective and to have substantial outcomes if you were so dependent on your ruler, your ruler's character and his or her own private – and thereby not always state – interests. The limited room for manoeuvre and creativity stifled negotiation processes, as diplomats were extremely dependent on their sovereign's instructions. The main statement of the famous book *The Ambassador and his Functions*, by Abraham de Wicquefort (1606–1682), is that the diplomat of his time should have a wider mandate – being more autonomous – in order to be effective (Keens-Soper, 1997b).

Technology and welfare make an enormous difference for the diplomatic negotiator today and yesterday. The lack of efficient communications in the past meant a huge loss of time, creating a reservoir of misunderstandings and misinterpretations. In the meantime, the war raged on and every battle lost or won had its impact on the progress of the negotiation process. Wars were waged to get a better position at the table, leaving ample time for serious bargaining, unless parties became completely exhausted. Yet as long as they had resources, the combatants preferred weapons over words. Time was therefore, in general, not favourable to the negotiation process, especially not the summertime, as wars could then easily be fought. Negotiations came to a grinding halt, and then resumed in wintertime. As people's well-being was at a low level, wars over resources were abundant, and more wars meant more work for the negotiators and less possibilities to come to

grips with the international situation. On the other hand, the exhaustion of resources gave negotiations a chance. Negotiators, by the way, spent lots of money to show off to other negotiators, and most became indebted to local shopkeepers, who could not sue them because of diplomatic immunity.

Past and Present: The Effective Negotiator

Another angle for comparison between the past and present has been offered by Bernard Bot, former Permanent Representative at the European Union and former Minister of Foreign Affairs of the Netherlands, in a speech commemorating 300 years since the Peace of Ryswick (Bot, 1997: 51–57). Bot described the features of the effective diplomatic negotiator: (1) The negotiator should have a trusting relationship with his or her constituency. This was probably even more important in the seventeenth and eighteenth centuries than today, as ambassadors were acting in relative isolation on the basis of a direct mandate from their country's sovereign. Apart from trust between the negotiator and the home front, we have the problem of trustworthiness between the negotiators. Treacherous behaviour caused the same uproar in the past as today, but seemed to be a much more common practice than in the twenty-first century. (2) The negotiator should feel empathy for the other party's position. This seems to be more self-evident today than in the past. (3) The negotiator should know their dossier. This was important in both the past and present, with the additional remark that substance today is much more complicated in quality and quantity, requiring management skills that diplomatic negotiators of the past did not have or need. (4) The negotiator should maintain excellent networks. This is very important nowadays, even more important than in Utrecht, Ryswick and Nijmegen. Without the alternative means and sources that are provided by modern technology, personal relationships were the heart of diplomatic bargaining at the time. Paradoxically, the distributive negotiation mentality did not always help to create the understanding and trust that were needed to move forward. As we have already seen, treason was a commonly used tool, probably more than nowadays, as secrecy today is even more difficult to guarantee than yesterday. (5) The negotiator should have a good feel for the political context and the ability to see through political bluff. This is important now, and was even more important in the past, in a period when bluff and power-play were more regular features of international negotiation than in present-day life, in a much more insecure political environment. (6) The negotiator should prevent loss-of-face of his or her opponent. This was certainly much more important than in today's Europe, as face played an overriding role in European bargaining. (7) The negotiator should be a stage actor. Again, this was very important in the seventeenth and eighteenth centuries, much more so than nowadays. (8) The negotiator should have endurance, a quality really needed in today's marathon meetings in Brussels and New York, but the pace of negotiations 300 years ago was much slower and endless general sessions hardly happened. (9) The negotiator should have a good sense of timing and knowing when to give in – important then and now. The Dutch did not grab the opportunity to team up with the French and the British in the final pre-negotiation phase of the Peace of Utrecht and it cost them dearly. Dutch stubbornness is a regular feature in Dutch negotiation behaviour, including today.

(10) The negotiator should be true to him or herself and stick to their personal style. This seems to be of equal importance in both eras, then and now.

Willem Mastenbroek is of the opinion that effective negotiation can be measured within four main dimensions: interests/substance; power/influence; climate/relationships; and flexibility/exploration (Mastenbroek, 1989). Comparisons between the seventeenth-century Westphalia negotiations and those of the present, made on the basis of these four levels, indicate quite a few differences in the management of diplomatic negotiation processes in the seventeenth and twentieth centuries (Meerts, 2000: 78–84). Reframing the four paradoxes produced five conclusions concerning the similarities and disparities. More than today, negotiations at the time: (1) were a by-product of warfare; (2) tended to be more competitive; (3) seemed to be less value-added; (4) had outcomes of a more distributive and backward-looking nature, sowing some seeds for future peace and stability and some for upcoming wars and volatility; and (5) were of a bilateral more than a multilateral nature, with ambassadors having stricter mandates and a more treacherous negotiation style than today (Meerts, 2000: 85).

Differences between the past and present are numerous. As noted in chapter III, the relevance of the negotiation process has changed over time. While warfare was the preferred means in conflict resolution in the seventeenth and eighteenth centuries, a slow transformation in the direction of bargaining evolved in the nineteenth and especially the twentieth century – from negotiation as a tool in warfare to warfare as a tool in negotiation. What did not change is the interplay between the two instruments; the change is in their relative weight. This thesis notes the importance of technological changes and their impact on the balance between ‘words and war’. Technology upgrades the instruments of negotiation and warfare, but the effects are completely different. Technology has been an impetus to more effectiveness in non-violent conflict resolution through mediation and negotiation, while technological evolution has equally created more disastrous outcomes of violent conflict resolution, thus enhancing the costs of warfare and the benefits of negotiation.

Another issue mentioned in chapter III is the evolution of – and the linkage between – regime-building and trust. As has been noted, the lack of regimes prevented actors from using organizational trust to compensate for a structural lack of trust. Trust has always been a problem, as are imperfect organizational constructions. Yet trust is more of a problem if parties cannot be contained by external factors like international organizations and substantial international law. Lack of trust also gives precedence to back-channel over front-channel bargaining. Less trust inspires less transparency, and less transparency plus less containment equals instability, for example in coalition-building. A change of coalitions – as occurred before the actual Utrecht conference as the British–Dutch (or actually Britain–Holland) coalition gave way to a British–French caucus – has much more impact in a context where regimes are lacking. These coalitions throw their weight around, but the effect can hardly be corrected if other forces are of limited significance. The self-evident and widely accepted constantly changing coalitions of today’s European Union, which creates a ‘natural’ equilibrium between contending parties, would have been unthinkable in the past. One could therefore hardly speak of a stable international system, although the Treaty of Utrecht is a tiny step in the direction of a more stable and transparent web of international political relationships.

Chapter III of this thesis also stated that power is another major factor of influence in the evolution of inter-state negotiation processes. Power differences in the seventeenth and eighteenth centuries were less constrained by an international community, or by some state structures. Autocratic and plutocratic regimes dominated the scene 300 years ago; today they are balanced by polyarchic and democratic political systems in which negotiators are held responsible, through their political superiors, for their deeds towards representatives of their societies. This has an impact on their attitude and behaviour. On the one hand, negotiators are more protected in the sense that they, as professionals, have a fixed position in a bureaucratic bulwark and normally they do not fear for their lives. On the other hand, they lose flexibility. Negotiators representing dictatorships do not need to worry too much about the home front. On average, it is clear what the demands of their masters are, unless the dictator is an unpredictable ruler. The 'democratic' negotiator, meanwhile, has to struggle with the political forces and stakeholders back home. The outcome of internal negotiations is often unclear and when it finally materializes in a mandate, that instruction could be overhauled completely if elections overturn the government. The home front is therefore of more importance today than in the past. This distribution creates a more complex negotiation process, and more complexity often diminishes effectiveness.

Another difference between the past and present has to do with the role of culture. Better communication might create better understanding, but it can also enhance civilization clashes. While the negotiators of the seventeenth and eighteenth centuries were often amateurs, they did share the culture of the nobility. This created strong bonds and limited the impact of cultural divides. However, the negotiations often suffered from the vanity of the negotiators (Stücheli, 2013: 80). One could argue that today the professional diplomatic corps – with its norms and values, and rules and regulations – helps to soften cultural contradictions. This is true indeed, but we also see an influx of non-diplomatic negotiators in today's world, both from the political and the bureaucratic side, and the public and private sectors. The nature of the impact of culture on the negotiation process changed, but not in such a way that it has a more positive or negative influence on the process comparing the past and present. Limiting culture to language does not provide us with a different conclusion. After all, as English serves as the bargaining lingua franca today, French (and before that Latin) performed that role for the noble and upper-class diplomats who negotiated the treaties of Europe between Westphalia and San Francisco.

In Conclusion

The process of inter-state negotiation evolved over time, particularly in the last three centuries. This chapter has presented the Peace of Utrecht as a case study to shed light on the progress made, for example by comparing negotiation behaviour in the eighteenth and twenty-first centuries. Daring to say that the bargaining process improved, the question remains of in what respect and why. Inter-state negotiation does better today than at the time of Utrecht because of its output. Things that could then only be decided by warfare can now be solved through negotiation. In other words, the productivity of the negotiation process has risen substantially, as has the productivity

of society. Does this mean that we can be satisfied about the evolution of diplomatic negotiation and its contribution to international relations? There is a counterbalancing factor that diminishes the optimistic picture just sketched, for with the growth of interconnectedness between states, the number of conflicts grew as well. Therefore, more negotiation effectiveness is indeed needed, but it remains difficult to cope with the *mass* of problems and actors – including public opinion, parliament and lobby groups – that we face today. Life at the time of the Utrecht negotiations was less complicated and easier to handle, even with the more primitive tools of the time. The instruments at the disposal of negotiators have been refined, but the quantity of the problems has multiplied. There are more conflicts to deal with, although we have more – and more effective – negotiators available to tackle them. The characteristics of an effective negotiator in the seventeenth and eighteenth centuries were more or less the same as those of the twenty-first century diplomatic bargainer, but there are variations. Seven out of ten effectiveness traits were of different importance in the past or present.

Why did the negotiation process evolve as it did? We can think of several reasons. First, the development of regimes, international organizations, and a system of international rules and regulations embedded the negotiation process in such a way that processes became smoother and outcomes more assured (Meerts, 2006a). Second, the alternative tool in international relations – violence – became too costly to be effective under all circumstances. This made negotiation more valuable. Third, the negotiators are professionals now, not noble amateurs, and are better educated and better managed people from much broader strata of society, more rooted in the country that they are representing. It should not be forgotten that many negotiators of the seventeenth and eighteenth centuries were a kind of mercenary working for whichever monarch was in need of them. Loyalty to their ruler prevailed, but they were not embedded in an organization supporting them in being effective negotiators. Fourth, peaceful relationships and communication are much more the norm today than in the past. As we have seen, waging war was seen as the best way to create peace. Such an attitude may have been standard at the time, but today it would cause a diplomatic scandal. This evolution helps negotiation to be effective and efficient, as it is the main tool of diplomacy, the blood of the international system. Finally, fifth, negotiation became integrated into society, making it a self-evident tool to be used in cases of conflicts.

Did the Treaty of Utrecht contribute to a less conflictual era thereafter? According to Charles Doran, it did: 'From 1713 to 1740, Europe enjoyed a peace broken only by minor conflicts. This situation is generally said to have been an indication of the success of the Treaty of Utrecht' (Doran, 1971: 109).

