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**“Cannon Law”: French Power Politics in the Bidasoa Border and the Crisis of the Customary Law of Nations in the Time of the *Politique des réunions***

**[Violet Soen (ed.), *Barriers and Borders in the Habsburg World: A transregional perspective*, Brepols, Turnhout (in press)]**

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I.

The so-called time of the *politique des réunions* is considered a momentous period in the long reign of Louis XIV. It marked the apparently unstoppable rise of France to European hegemony, but also its fall into hubris. The story is well known. In 1679 the Peace of Nijmegen had put an end to the Franco-Dutch War, but Louis XIV did not feel satisfied with the outcome of the negotiations. Thus after the signing of the treaty he took advantage of his superior power to proceed to the annexation (*réunion*) of certain territories on the northern and eastern borders of his kingdom. In order to give an appearance of legitimacy to what basically were acts of arbitrary aggression in peacetime, he established a number of special courts (*chambres de réunion*) with the only purpose of fabricating legal justifications for the occupations. This display of force ended up alienating most European powers. The result was the complete diplomatic isolation of France. The Nine Years War, also known as the War of the League of Augsburg (1688-1697), made the Sun King return to a more prudent foreign policy. In this sense, the *politique des réunions* marked the peak of his power but also his limit.

The *politique des réunions* has puzzled historians for a long time. It is generally acknowledged that it was a milestone in the increasingly assertive foreign policy of Louis XIV since the beginning of his personal rule in 1660. However, contrary to the remarkable achievements of the French armies on the battlefield, the *réunions* could hardly be a motive for celebration. The annexations themselves were problematic to say the least. They were not the result of legitimate succession rights or spoils of a just war,<sup>1</sup> but rather of chicanery and aggression executed in peacetime. On the other hand, in spite of its initial success the *politique des réunions* ended up in failure. Louis XIV's power politics provoked a long, costly war at the end of which he was compelled to renounce the vast majority of his territorial acquisitions. It is no coincidence if researchers have dedicated much more time to its condemnation (or

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<sup>1</sup> James Q. Whitman, *The Verdict of Battle: The Law of Victory and the Making of Modern War* (Cambridge MA: Harvard University Press, 2012), p. 95-132.

justification) than to the study of its real historical implications. For many historians it remains the most intriguing and embarrassing episode of Louis's XIV reign. If for Bluche the *réunions* were unproblematic,<sup>2</sup> for Lossky they were the consequence of some kind of state of transitory mental confusion;<sup>3</sup> for some they were a sort of war crimes,<sup>4</sup> while for others it was more a question of *manners* than of legitimacy.<sup>5</sup> In an attempt to save the king's reputation some authors have opted to blame somebody else for what was a brutal and dishonourable strategy that ended badly. This is the origin of the French historiographical obsession with attribution of responsibility. Louvois, the minister of war, and Croissy, the minister of foreign affairs, are the usual suspects.<sup>6</sup> But since Louis XIV took part in all relevant decisions and apparently all these issues were widely discussed among high-ranking ministers and senior advisors, these judgements *ad personam* seem quite pointless.<sup>7</sup>

Beyond this moralising approach there have been some attempts to explain the *réunions* on more grounded bases. Military historians considered them a by-product of the *stratégie de cabinet* –that is, the tight control and central planning of all military matters from the French court.<sup>8</sup> The most widely accepted explanation is that it was a defensive (even if aggressive) policy intended to impose some order on the, supposedly chaotic, northern and eastern frontiers.<sup>9</sup> In this sense the *réunions* seem linked to Vauban's doctrine of the *pré carré* –the plan envisaged by Louis XIV's

<sup>2</sup> François Bluche, *Louis XIV*, (Paris: Fayard, 1986), p. 412-429.

<sup>3</sup> Andrew Lossky, "The Intellectual Development of Louis XIV from 1661 to 1715", in *Louis XIV and Absolutism*, ed. by Ragnhild Hatton (London: Macmillan, 1976), 101-29 (p. 114-15 and 117-18)

<sup>4</sup> John B. Wolf, *Louis XIV*, (London: Victor Gollancz, 1968), see chapter 25: "A policy of violence and terror".

<sup>5</sup> William F. Church, "Louis XIV and Reason of State", in *Louis XIV and the craft of Kingship*, ed. by John C. Rule (Columbus: Ohio State University Press, 1969), 362-406 (p. 388-89)

<sup>6</sup> Camille Rousset, *Histoire de Louvois et de son administration politique et militaire depuis la paix de Nimègue*, 4 vols. (Paris: Didier et Cie, 1861-1863; 1863), I, p. 1-6. Émile Bourgeois, "Louvois et Colbert de Croissy (les Chambres de réunion)", *Revue historique*, 34 (1887), 413-18. Gaston Zeller, "Louvois, Colbert de Croissy et les Réunions de Metz", *Revue historique*, 131 (1919), 267-275. Louis André, *Louis XIV et L'Europe*, (Paris: Albin Michel, 1950), p. 188-190. Interestingly, according to this author Croissy was responsible for the plan, while Pomponne and Louvois were the executors. André Corvisier, *Louvois*, (Paris: Fayard, 1983), pp. 437-44, also acknowledged the indirect participation of Vauban.

<sup>7</sup> Nowadays it is generally accepted the shared responsibility of Louis XIV, Louvois and Croissy, with the indirect participation of other senior officials, like Vauban and Chamlay. A recent reappraisal of this question in Jean-Philippe Cénat, *Le roi stratège: Louis XIV et la direction de la guerre, 1661-1715*, (Rennes: Presses Universitaires de Rennes, 2010), p. 127-128, see also his appreciation on the responsibility for the ravaging of the Palatinate, p. 146-148. About Louis XIV's personal involvement in all decisions concerning war and foreign affairs see: Lossky, "The Intellectual Development of Louis XIV", p. 106, and also: John C. Rule, "Louis XIV, Roi-Bureaucrate", in Rule (ed.), *Louis XIV and the craft of Kingship*, 3-101 (p. 28-30).

<sup>8</sup> Cénat, *Le roi stratège*, p. 127 and following, and on the origin of the "stratégie de cabinet" p. 99 and 110-11. A critical discussion of the concept in Guy Rowlands, *The Dynastic State and the Army under Louis XIV. Royal Service and Private Interest, 1661-1701*, (Cambridge: Cambridge University Press, 2002), p. 286-295.

<sup>9</sup> Building on a remark by Rousset, Corvisier defined the *politique des réunions* as "défense agressive", Corvisier, *Louvois*, p. 435 y ff. Although Corvisier's interpretation is generally accepted, some historians preferred the expression "paix armée" to refer to the same phenomenon, Bluche, *Louis XIV*, p. 412, followed by Lucien Bély, *Les relations internationales en Europe, XVII<sup>e</sup>-XVIII<sup>e</sup> siècles*, (Paris: PUF, 1992), p. 276.

chief military engineer to secure the territory of France consisting of a simplification of its borders and an overhaul of its defences (the famous *ceinture de fer*).<sup>10</sup> However, as some authors have pointed out, we should not take this pretension of rationality too far.<sup>11</sup> The annexations were not carried out consistently, and in some cases they proved counterproductive. In any case, since they were implemented in peacetime and did not involve the clash of large armies they have barely received any attention by diplomatic and military historians. As expected, their approach has privileged the study of military administration and warfare over the less formalised, low-scale forms of aggression that prevailed during the 1680s.

One of the reasons for this lack of attention may have been the alleged “pettiness” of these affairs. Historians are often perplexed by the disproportionate display of violence of the *réunions* in relation with their minuscule strategic aims.<sup>12</sup> These acts of aggression and intimidation were always implemented in very specific geographical spaces. This is probably why there is no modern comprehensive study on the *politique des réunions*. Besides, since most of the *réunions* ended up being ephemeral, researchers have focused mainly on those cases of special significance for the narrative of the formation of the national territory of modern France (i.e. Alsace).<sup>13</sup> As a result the *réunions* have been studied mainly as regional phenomena in which borders are treated as mere landmarks in the process of nation-state building instead of scenarios of complex interactions at different levels.<sup>14</sup> After all, it was at borders where rival polities clashed, loyalties were tested, and sovereignty turned problematic. None of these “local” questions can be dismissed as “petty”. On the contrary, they were at the core of the political concerns of the time. That is why the real and most relevant implications of Louis XIV’s aggressive policies during the 1680s are better understood from the border than from the king’s cabinet.

This regional focus has diverted attention from other forms of aggression implemented all along the French borders that did not necessarily lead to formal territorial annexations and cannot be easily explained by the defensive rationale. In

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<sup>10</sup> Michèle Virol, *Vauban. De la gloire du roi au service de l'état*, (Paris: Champ Vallon, 2003), p. 93-105.

<sup>11</sup> Andrew Lossky, “Maxims of State in Louis XIV’s Foreign Policy in the 1680s”, in *William III and Louis XIV. Essays, 1680-1720*, by and for Mark A. Thomson, ed. by Ragnhild Hatton and John S. Bromley (Liverpool: Liverpool University Press, 1968), 7-23.

<sup>12</sup> Andrew Lossky, *Louis XIV and the French Monarchy*, (New Brunswick NJ: Rutgers University Press, 1994), p. 172.

<sup>13</sup> See for example: George Livet, *L'intendance d'Alsace sous Louis XIV 1648-1715*, (Paris: Publications de la Faculté des Lettres de l'Université de Strasbourg, 1956). The origin of this traditional focus on Alsace, and particularly on Strasbourg, is directly related with the “Alsace-Lorraine question” between the final decades of the XIX and the beginning of the XX centuries, Arsène Legrelle, *Louis XIV et Strasbourg. Essai sur la politique de la France en Alsace, d'après des documents officiels et inédits*, (Paris: Hachette, 3rd ed. 1883), “Avant-propos”, p. VII.

<sup>14</sup> See for example: Nelly Girard d'Albissin, *Genèse de la frontière franco-belge. Les variations des limites septentrionales de la France de 1659 à 1789*, (Paris: A. & J. Picard, 1970). Ultimately, this approach is rooted in the old and currently much discredited idea of the “natural frontiers” of France, about this see: Gaston Zeller, “La monarchie d'Ancien Régime et les frontières naturelles”, *Revue d'histoire moderne*, t. 8, n° 9, (1933), 305-333, Peter Sahlins, “Natural Frontiers Revisited: France's Boundaries since the Seventeenth Century”, *American Historical Review*, v. 95, n° 5, (1990), 1423-1451, and Daniel Nordman, *Frontières de France. De l'espace au territoire XVI<sup>e</sup>-XIX<sup>e</sup> siècle*, (Paris: Gallimard, 1998).

fact, the *politique des réunions* embraced but was not limited to the *réunions* themselves. In this sense it is better understood as a form of power politics than as a form of military strategy. The *politique des réunions* was a way to impose Louis XIV's views by force in particular contexts, instead of by established peaceful means. It implied the use of direct violence in various degrees but always limited in scale and scope in order to avoid the outbreak of war. It is important to note that this strategy was effective precisely because it was applied at a local scale and in various places simultaneously on weaker targets that could not afford an open confrontation with the king of France. It is what Schwarzenberger called a *Status Mixtum*, an undefined state in-between peace and war that could be prolonged as long as the victim continued to maintain peaceful relations with the aggressor.<sup>15</sup> The aim of this form of power politics was not limited to obtaining an advantage *de facto* (i.e. occupy a territory) but was aimed at imposing by coercive force the acceptance of new terms and conditions *de jure* (i.e. compelling your opponent to “voluntarily” renounce his territorial rights), without the uncertainties and costs of a full-fledged war and the constraints inherent to peace talks.

In this paper I will try to give some insight into the disturbing implications that this form of power politics had not only for border affairs but also more generally for the rule of *ius gentium*. My paper however will not focus on the northern or eastern borders where the *chambres de réunion* were formally established. Instead, my attention turns to the southwest, particularly to the French-Spanish border in the Basque-speaking Bidasoa River region situated between the Gulf of Biscay and the western Pyrenees. Unlike Flanders, Alsace or the Franche-Comté, the Bidasoa was far from being a strategic priority for Louis XIV. In fact, military activity in the region was consistently low during the whole period. The Sun King never attempted to invade Castile –the heartland of the Spanish Monarchy, like the latter used to menace Paris from the Low Countries. This is more striking if we take into account that the Pyrenean border was frequently ill defended. On the contrary, the king even gave permission to his vassals to establish treaties of amity or *bonne correspondance* during wartime. As a consequence, French and Spanish neighbouring communities could continue to enjoy peaceful relations and trade even when their respective sovereigns were at war. The reason alleged for this permission was the extreme poverty of those provinces, whose population could only survive by the import of foodstuffs. For the same reason maintenance of a large army on these territories resulted too complicated from a logistical point of view. For all these reasons, the kings of France and Spain were more than happy to accept the “neutralisation” of the Basque border in order to concentrate their war efforts on other fronts –like the Low Countries.<sup>16</sup>

In spite of all this, during the 1680s the Bidasoa suffered the brutal consequences of French power politics just like other strategic border regions. Far from being

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<sup>15</sup> Georg Schwarzenberger, “Jus Pacis ac Belli? Prolegomena to a Sociology of International Law”, *American Journal of International Law*, v. 37, n° 3 (1943), 460-479.

<sup>16</sup> Fernando Chavarría Múgica, “Por codicia o necesidad: la exención aduanera vascongada y el sistema fronterizo de conversas a finales del siglo XVII” in *Los ámbitos de la fiscalidad: fronteras, territorio y percepción de tributos en los imperios ibéricos (siglos XV-XVIII)*, ed. by Luis Salas Almela (Madrid: Instituto de Estudios Fiscales, 2011), 77-105.

considered a minor question, it was the object of intense and persistent attention by Louis XIV's foreign service.<sup>17</sup> My research makes evident that the *politique des réunions* was not directed uniquely to highly strategic positions, and consequently it was not motivated by defensive concerns only. Furthermore, it shows that the brutal methods applied in the north and the east were actually common practice all along the French borders, implying a coordinated effort from the court. Finally, I hope to demonstrate that even if every aggression was justified by opportunistic *ad hoc* arguments, French power politics were informed by a more general political doctrine that intended to legitimate the sovereign's arbitrary use of force. The result was the debasing of both the rule of border customary law and *ius gentium* in general, including traditional ways of settling disputes between border communities.

I will begin explaining briefly the legal and cultural background of border relations in the Bidasoa. Secondly, I will expose the devastating effects of French power politics during the 1680s. Finally, I will analyse French justifications and their consequences in the background of the crisis of authority of the Law of Nations at the end of the seventeenth century.

## II.

Despite *bonne correspondance* the Bidasoa region was far from being a peaceful oasis. As in many other local contexts there were some deep-rooted tensions among neighbouring communities. In our case the main issue was the dominant position of the Spanish "city" of Fonterabie over the river Bidasoa itself.<sup>18</sup> Traditionally, its jurisdiction embraced the entire course of the river from the limits of the Kingdom of Navarre to its mouth in the Gulf of Biscay. That included not only its own shore, but also the opposite side of the river (that is, the "French" shore) and any islet in between. In practice, this meant that Fonterabie could impose very restrictive conditions on navigation, trade, building, and access to natural resources on the Bidasoa to the inhabitants of neighbouring villages, including the people from the French village of Hendaye on the other side of the river. Its rights were founded on the "right of first occupant" because Fonterabie claimed his foundation went back to Roman times while the small village of Hendaye existed only since the late Middle

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<sup>17</sup> The Bidasoa affair was a recurrent theme on the correspondance between Louis XIV and his ambassadors in Madrid, Ana Álvarez López, *La fabricación de un imaginario: los embajadores de Luis XIV y España*, (Madrid: Cátedra, 2008), p. 121; Alfred Morel-Fatio (ed.), *Marquis of Villars, Mémoires de la cour d'Espagne, de 1679 à 1681*, (Paris: Plon, 1893), p. 137 and 217-18.

<sup>18</sup> Philip IV of Spain granted the title of "city" to Fonterabie as a reward for its heroic resistance during the French siege of 1638. In spite of this highly regarded title Fonterabie continued to be a community of modest size, wealth and influence compared with other towns in the province of Guipúzcoa, Susana Truchuelo, *La representación de las corporaciones locales guipuzcoanas en el entramado político provincial (siglos XVI-XVII)*, (San Sebastián: Diputación de Guipúzcoa, 1997). Nevertheless Fonterabie's jurisdiction embraced a relatively extense territory from the river Bidasoa to the eastern bank of the estuary of Pasajes, comprising villages like Irún-Iranzu (just few kilometers up to the river Bidasoa), as well as the port of San Juan and the small village of Lezo (both in the estuary of Pasajes). Fonterabie maintained serious controversies not only with the French village of Hendaye but also with the communities under its direct jurisdiction, particularly with Irún-Iranzu. See Marta Truchuelo García, *Irún y Hondarribia: dos entidades locales durante la Edad Moderna*, (Irún: Ayuntamiento de Irún, 2004).

Ages.<sup>19</sup> These claims were partially sanctioned at the beginning of the sixteenth century by a cross-border commission entitled to clarify the situation after a series of clashes between the two border communities.<sup>20</sup> Fonterabie was also powerful enough to enforce its claims due to the intimidating presence of its fortress and permanent garrison, even if small.

Although Fonterabie's hegemony over the Bidasoa was not seriously challenged for more than a century, rights over the use of the river were of course a recurrent source of tensions between the two border communities. Setting more fishing traps in prohibited places or cultivating along the riverbanks or on the islets were common infringements. Navigating the river in forbidden vessels (that is, any ship with a keel), building any kind of structure on the shore, or skipping the compulsory disembarking of merchandise on Fonterabie's dock (and payment of the corresponding fees) were more serious faults. In any case, the transgressions that caused most concern were those that could have lasting and pernicious consequences for Fonterabie's claims in the Bidasoa.<sup>21</sup>

In more exceptional occasions, the threat came not from formal transgressions but from highly symbolic performances intended to question and, when possible, erode the *status quo*.<sup>22</sup> Defiance could easily lead to violent clashes. In fact, violence played a very important role in the assertion or contestation of rights. That is why these kinds of confrontations were far from being spontaneous or uncontrolled. They were strictly regulated by custom and followed a precise script. Violence hence was not only limited but also highly ritualised. In most cases it was mainly symbolic rather than purely physical. It was also communal. No matter how many people were involved (a few fishermen or a hundred townsmen), in this kind of conflicts what was at stake was the right and honour of the community as a whole. The aim of these violent acts was the enforcement, assertion, or contestation of rights and not plunder, conquest, or annihilation. Fatal encounters were rare and serious wounds infrequent. The seizure and ritual destruction of tools and vessels were much more common. Escalation was of course still possible. This is an inherent risk to any violent exchange. But border communities had incentives to prevent spirals of aggression. After all they were neighbours. They were compelled to live side by side and to share

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<sup>19</sup> About this see Hugo Grotius, *De jure belli ac pacis libri tres*, (The Classics of International Law, ed. by James Brown Scott, Carnegie Endowment of International Peace, 2 vols., Oxford: Clarendon Press, 1913), v. I, lib. II, cap. III: "De acquisitione originaria rerum, ubi de mari et fluminibus", particularly n<sup>o</sup> XVIII. Fonterabie claimed that the Oiasso, Oiasona or Oiarso quoted by Ptolomy, Strabo, and Pliny, was actually his direct Roman predecessor. However the neighbouring communities of Irún-Iranzu, San Sebastián, and the valley of Oiarzun claimed the very same thing. Nowadays, the scientific consensus is that Oiasso was actually Irún.

<sup>20</sup> A copy of the provisory sentence issued by the French and the Spanish commissioners in St.-Jean-de-Luz, 10 April 1510 in AHN [Archivo Histórico Nacional, Madrid], Estado, libro 659, f.4-7. About these early, provisory negotiations: Théodorice Legrand, *Essai sur les différends de Fontarabie avec le Labourd du XV<sup>me</sup> au XVIII<sup>me</sup> siècle*, (Pau: J. Empérouger, 1905), p. 3-23.

<sup>21</sup> For example, if for some families cultivating along the riverbanks was a way to assure their survival, from the point of view of the community the mere act of harvesting could be used as a valid legal argument to claim possession over land considered abandoned. It was mainly for this legal reason, and not for economic interests, that destroying Hendaye's crops along the Bidasoa was important for Fonterabie.

<sup>22</sup> See for example: AMF [Archivo Municipal de Fuenterrabía], E-6-VI-6-16: Fonterabie to the King of Spain, 1 July 1598.

(even if unequally) spaces and resources. Despite the frequent conflicts, this contributed to maintain the *status quo*.<sup>23</sup>

There was a specific way to deal with each of these issues, but the general principle was that they were local affairs that had to be managed by local authorities following local custom. Consequently, it was expected that all agents involved in this kind of border affair had to be locals. This is not to say that border communities acted without at least the implicit consent of royal officials. The King of Spain had a particular interest in favouring the *status quo*. Fonterabie held a small garrison paid for by the royal treasury and a fortress that constituted the first line of defence against the enemy in case of invasion. Fonterabie's dominant position in the Bidasoa hindered the possibility of a surprise attack or any other unexpected threat from across the border. This was important because the Basque border was much more close to the Spanish heartland than it was to the French political core. Royal interference in border affairs was not entirely precluded, but it remained quite exceptional. Even in these cases royal authorities preferred to keep a low profile to prevent escalation and avoid any undesired engagement. Ordinarily, the management, enforcement, contestation, and eventual negotiation of rights in border spaces remained in the hands of local authorities.<sup>24</sup>

In certain occasions sovereigns interfered in border affairs unintentionally. Since the end of the fifteenth century the Bidasoa had become a place of encounter for the Spanish and French monarchs. During this period the river was the scenario of various meetings and exchanges between kings, queens, and other members of the ruling families of Spain and France. In such occasions the ordinary jurisdictional border between territories was transformed into a ceremonial border between royal courts. In principle, the selection of the Bidasoa as the most appropriate place to stage these extraordinary events was motivated by practical reasons that had nothing to do with the local context. However, since the presence of the sovereign was an act of sovereignty in itself,<sup>25</sup> the way in which court ceremonies were staged and performed was extraordinarily important for the assertion or refusal of any jurisdictional claim.<sup>26</sup> That could be the case even if the purpose of the king's presence at the border was completely different from the one envisaged by local

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<sup>23</sup> As one inhabitant of Hendaye said in 1663: "más querían mucho menos de voluntad de Fonterabie que mucho más que se les pudiese dar por otra vía, pues así se obligaría y cumpliría mejor y en tiempo de paz y guerra tendrían toda comunicación, sin la qual confesó y repitió no podían vivir", AGS [Archivo General de Simancas], Estado, leg. K-1670, nº 53.

<sup>24</sup> This was a common feature of border communities, see Fernando Chavarría Múgica, "En los confines de la soberanía. Facerías, escalas de poder y relaciones de fuerza transfronterizas en el Pirineo Navarro (1400-1615)" in *Les sociétés de frontière de la Méditerranée à l'Atlantique (XVIe-XVIIIe siècle)*, ed. by Michel Bertrand and Natividad Planas (Madrid: Casa de Velázquez, 2011), 193-217, and Fernando Chavarría Múgica, "El 'ruido' de los confines de Navarra: servicio, reputación y disimulación durante la negociación del intercambio de princesas (1609-1615)", in *Servir al rey en la Monarquía de los Austrias: Medios, fines y logros del servicio al soberano en los siglos XVI y XVII*, ed. by Alicia Esteban Estríngana (Madrid: Sílex, 2012), 227-259.

<sup>25</sup> Peter Sahlins, *Boundaries: The Making of France and Spain in the Pyrenees*, (Berkeley: University of California Press, 1989), p. 27-28.

<sup>26</sup> See María José del Río Barredo, "Imágenes para una ceremonia de frontera. El intercambio de las princesas entre las cortes de Francia y España en 1615", in *La historia imaginada: Construcciones visuales del pasado en la Edad Moderna*, ed. by Joan Lluís Palos and Diana Carrió-Invernizzi (Madrid: CEEH, 2008), p. 153-182.



communities. That was exactly what happened during the famous negotiation of the Peace of the Pyrenees in 1659. The plenipotentiaries of the kings of Spain and France met during several weeks on an islet in the middle of the Bidasoa. The islet was appropriately prepared not only to make the meetings as comfortable as possible but also to represent an exact symmetry between the two monarchies. These protocolary arrangements were intended to signify the equal status of the kings of Spain and France. In order to reinforce this idea the islet itself was declared “neutral”. Thus nobody could allege a position of superiority over the other party during the negotiations. By this means the islet became a pure ceremonial space where ordinary territorial jurisdiction was temporarily suspended.<sup>27</sup> Or at least that was the initial intention of the two monarchs.

Of course, locals had a different opinion. From a ceremonial point of view, the encounter of the two plenipotentiaries (or the sovereigns themselves, as would happen in 1660) on an islet in the middle of the river seemed very convenient. But this insistence on symmetry between monarchies had a disturbing effect on border communities. It constituted a potentially dangerous precedent for Fonterabie’s claims over the whole river. On the other hand, for Hendaye it was an excellent opportunity to push for renegotiation of the conditions of use of the river. Following an established principle, the plenipotentiaries negotiating a peace treaty on behalf of their respective sovereigns did not get involved in a local quarrel completely unrelated with the war that they were trying to finish. They limited themselves to acting as mediators between the two parties. The Bidasoa affair was never part of the official agenda. However it seems that Hendaye was persuasive enough to engage Cardinal Mazarin in the defence of its rights.<sup>28</sup>

At the very end of the negotiation the French plenipotentiary pushed for the introduction of a secret clause expressing the willingness of both sides to reach an amicable settlement of any dispute between border communities on the Bidasoa. By this means the plenipotentiaries enabled the Lieutenant General of Guyenne, in France, and the Captain General of Guipúzcoa, in Spain (the highest royal officials at provincial level) to encourage a peaceful solution between Hendaye and Fonterabie. Only in the case of no agreement between the two border communities would the French and Spanish royal officials have to agree to an appropriate settlement “after hearing the claims of both parties”. The content of the secret clause was in line with customary doctrine. In principle, it respected the distinction between local affairs and the superior sphere of sovereignty. It was expected that border communities would arrive at some kind of agreement following customary arrangements. The role of royal officials was limited to mediation and, in the last instance, co-arbitration.<sup>29</sup>

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<sup>27</sup> BNF [Bibliothèque Nationale de France], Occid., Ms. Français 7156, ff. 26-27v and 34: Mazarino to Le Tellier, Saint-Jean-de-Luz, 30 July 1659, and 4 August 1659, respectively. See also Daniel Séré, *La Paix des Pyrénées: Vingt-quatre ans de négociations entre la France et l’Espagne (1635-1659)*, (Paris: Honoré Champion, 2007), p. 450-455.

<sup>28</sup> A detailed discussion of this episode in Fernando Chavarría Múgica, “La frontera ceremonial y la frontera real: El tratado de los Pirineos y la reavivación del conflicto por el dominio del río Bidasoa (1659-1668)”, in *Del tractat dels Pirineus a l’Europa del segle XXI: un model en construcció?*, ed. by Oscar Janè, (Barcelona: Museu d’Història de Catalunya, 2010), 75-86.

<sup>29</sup> The text of the secret clause both in Spanish and French in José Antonio Abreu, *Colección de los tratados de paz, alianza, neutralidad, garantía, protección, tregua, mediación, accessión,*

Still, the introduction of a clause of this kind in a treaty of the importance of the Peace of the Pyrenees was an unexpected entanglement of sovereigns in an apparently petty jurisdictional affair. Thus the quarrels between Fonterabie and Hendaye in the Bidasoa slid into the sphere of diplomacy and high politics. In fact, after a few unfruitful attempts at mediation, royal officials decided to resort to their respective masters. At this stage local authorities of both border communities lost the lead role in favour of high-ranking ministers. The question was reviewed at the Spanish court by petition of the French ambassador. From the beginning it became clear that the positions of the two sides differed sharply. On the one hand, the Spanish were willing to hear Hendaye's accusations against Fonterabie for alleged abuses in the Bidasoa and, if necessary, to correct any wrongdoing. On the other hand, the representative of the King of France wanted to initiate an open-ended discussion about jurisdiction on the Bidasoa itself. That was of course a red line for the Spanish. The French began to treat the affair not as a conventional controversy between townsfolk but as a matter of State. This shift was particularly dangerous because Louis XIV could then feel justified to intervene directly in the Bidasoa in defence of his sovereignty. The Spanish alleged that this approach violated the content of the secret clause, and the Bidasoa affair was redirected again to the local level.

Two commissioners were then appointed to deal with the matter on the ground. During the following months French and Spanish representatives met at the same islet in the middle of the Bidasoa as the royal plenipotentiaries during the peace negotiations, but in a much less glamorous fashion. However, the position of the two commissions was so distant that not only was agreement impossible, but further border tensions were actually encouraged. In fact, infractions became so obvious and the French commissioners so lenient towards them that the Spanish suspected they were actually encouraged from above. This suspicion seemed to be confirmed by the reluctance of the French commissioners to leave the negotiations entirely in the hands of the locals, as was first proposed by the Spanish. The building of a fortified tower in Hendaye to survey the tract of the river closest to the village was another clear signal that the negotiations were condemned to failure from the very beginning. Instead of a common arbitration each party ended up proclaiming separately the legitimacy of their respective claims. Sometime afterwards a new war broke out between the French and Spanish monarchies.

In the following years the *status quo* remained the same and Fonterabie continued to enjoy a dominant position on the border. Nonetheless, developments around the secret clause had other serious even if subtle consequences. By declaration of the French commissioner, confirmed by Louis XIV in January 1668 (that is, when the War of Devolution was already declared), the king reserved the right to retaliate against Fonterabie if it obstructed Hendaye's alleged jurisdiction on

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*reglamento de límites, comercio, navegación, etc., hechos por los pueblos, reyes y príncipes de España [...] Reinado del señor D. Felipe IV. Parte VII*, (Madrid: Antonio Marín, Juan de Zúñiga y viuda de Peralta, 1751), p. 258-259.

the Bidasoa.<sup>30</sup> Although the threat did not materialise at that time, it undermined a fundamental value of customary order on the border: trust between neighbouring communities. For this reason, this time Fonterabie was very reluctant to participate in the customary treaty of *bonne correspondance* negotiated by provincial representatives from both sides of the border. Even if Louis XIV never questioned the validity of these traditional agreements, implementation of power politics on the Basque border disrupted this traditional mechanism of mutual obligation that prevented violence between neighbouring communities and made possible cross-border cooperation during wartime. Eventually, pressures by provincial representatives and royal authorities convinced them to join in.

Louis XIV's proclamation of his retaliatory rights was made during wartime and, in principle, it ceased being in force after the signing of the Peace of Aix-la-Chapelle in May 1668. However, the King's declaration made clear that he did not renounce direct intervention in border affairs. In fact, he ordered his new ambassador at the court of Spain to reinitiate negotiations at the highest level about jurisdiction on the Bidasoa. His proposal was based on the assumption that since the peace agreement explicitly confirmed the content of the Treaty of the Pyrenees (including the secret clause on the Bidasoa) it was legitimate to treat it through diplomatic channels instead of through local customary arrangements. But this time the Spanish refused to deal with the question at all. They continued to encourage Fonterabie to enforce its rights as usual, always taking care to not compromise the honour of the King of Spain.<sup>31</sup> In any case, a few years later the peace broke down again and a new treaty of *bonne correspondance* was established on the Bidasoa border. But these agreements were only valid as long as the war lasted. Once the war was over a year later border tensions re-flourished.

Knowing about the unprecedented violence deployed by the French in the Bidasoa during the 1680s, it may be easy to acknowledge that Fonterabie's mistrust was well founded. It could be argued that in Louis XIV's attitude during these years it was possible to get a glimpse of what was about to come. There is no doubt that the unprecedented inclusion of the Bidasoa affair in the Treaty of the Pyrenees, even in the discrete terms in which it was done, gave the King of France the excuse to transform a local border affair into a diplomatic incident. However, the truth is that, in general terms, until that moment Louis XIV had followed established formalities, conventions, and procedures. His policy towards the Bidasoa may have been surprisingly bold but it was not necessarily illegitimate. After the Peace of Nijmegen everything changed.

### III.

The Peace of Nijmegen (1679) between Spain and France was to be sealed by a royal wedding. Again a courtly representation at the Bidasoa River prepared a new meeting between the two monarchs and the delivery of Princess Marie-Louise of

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<sup>30</sup> AHN, Estado, libro 655, f. 187-88: [Print] Sentence on the Bidasoa affair by the French commissioners d'Artagnan and St. Martin-Barrez (issued in 26 February 1667, and confirmed by Louis XIV in 25 January 1668)

<sup>31</sup> AGS, Estado, leg. K-1411, n<sup>o</sup> 90, Mariana of Habsburg, Regent Queen of Spain, to Fonterabie (Madrid, 16 February 1669) [draft letter]

Orleans to the king of Spain.<sup>32</sup> As we have already seen, these extraordinary events presented numerous opportunities to challenge the *status quo* in the border. We cannot forget that, though the event was planned to its minimal detail at the royal courts, the people in charge of the preparations were locals. That is why Fonterabie was particularly attentive that events preceding the ceremony not be used as an excuse for undermining its jurisdiction. There were of course various incidents between the two border communities during the preparations, but care was taken to not to disturb the development of the official ceremony.<sup>33</sup>

In the weeks following the royal meeting, border tensions mounted rapidly. Hendaye's acts of defiance became not only frequent but also much more serious. The Spanish were surprised to see how their fishmongers were beaten, their vessels shot, and their fish traps destroyed. Hendaye even dared to capture one of their boats and sent their occupants to the city of Bayonne as prisoners, "mistreated like in wartime".<sup>34</sup> These acts went well beyond customary usage at the border. The sudden escalation of violence in the Bidasoa and renewed pressures by the French ambassador convinced Spanish authorities that these tensions were encouraged on purpose "by superior order".<sup>35</sup> According to the Council of State in Madrid, Louis XIV's aim was to provoke a violent response from Fonterabie in order to have a pretext to resume hostilities. This suspicion was not founded uniquely in the Bidasoa case but more in general in "French restlessness and in what they attempt everywhere" ("*inquiétude de franceses y de los tentativos que hacen por todas partes*").<sup>36</sup> In fact, the exacerbation of local tensions all along the French borders was so characteristic of the *politique des réunions*.

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<sup>32</sup> The delivery of the princess took place in the Behobia pass on 3 November 1679, AGS, Estado, leg. K-1636/37, n<sup>o</sup> 88.

<sup>33</sup> For instance, one day a French boat entered into the river from the sea. Apparently the boat came from the nearby port of Saint-Jean-de-Luz to survey the works. It happened that the boat had a keel – a forbidden vessel for the French in the Bidasoa. Consequently, Fonterabie seized it. In accordance with customary practice the boat had to be set publicly on fire on the shore – otherwise the seizure could be interpreted as an act of piracy. The aim was the enforcement of jurisdictional rights, not plundering. However, in order to avoid any disruption of the royal ceremony authorities delayed the performance of this punishment until courtiers of both sides had left the border. Once the ceremony finished Fonterabie could finally show that, no matter what, its jurisdiction over the Bidasoa continued to be in force, AHN, Estado, libro 628, f. 21: Fonterabie to the King of Spain, 13 January 1680; French ministers accused later Fonterabie of having burned the French royal banner together with the boat, AHN, Estado, libro 628, f. 139-41. Other incidents during the preparations: AGS, Estado, leg. K-1636/37, n<sup>o</sup> 82.

<sup>34</sup> AAE [Archive des Affaires Étrangères], CP [Correspondance Politique], Espagne, n<sup>o</sup> 63, f. 84r-113r, 117r-118v, 133r-v, 134r-138r, and 151r. AHN, Estado, libro 628, f. 13-14. The Spanish protested through ordinary diplomatic channels, AAE, CP, Espagne, n<sup>o</sup>65, f. 59r-60v: Marquis of the Balbases to the Marquis of Villars, Madrid, 6 April 1680.

<sup>35</sup> AHN, Estado, libro 628, f. 22: D. Diego de Portugal (Captain General of the Province of Guipúzcoa) to the secretary Gerónimo de Eguía, San Sebastián, 26 February 1680. The Spanish presented an official complaint before the Marquis of Villars, French ambassador in Madrid, and the Council of State ordered to do the same through the Spanish ambassador in France, the Duke of Jubenazo, AGS, Estado, leg. K-1646, n<sup>o</sup>142 (5 December 1679), and n<sup>o</sup> 147b (Madrid, 11 December 1680)

<sup>36</sup> AHN, Estado, libro 628, ff. 13-20: *Consulta* of the Council of State, Madrid, 23 March 1680.

Initially, the main concern of the Spanish ministers in Madrid was to avoid an apparently minor incident being used as a *casus belli*.<sup>37</sup> Consequently they concentrated their efforts on preventing any violent response against Hendaye's provocations.<sup>38</sup> They asked Fonterabie to enforce its jurisdiction in a "moderate" manner.<sup>39</sup> Moreover, any involvement of the garrison and the local authorities in the conflict was explicitly prohibited. Nonetheless, the increasing hostility of Hendaye and soldiers' willingness to help their friends and relatives in town made these instructions difficult to implement.<sup>40</sup> Eventually the soldiery and the royal officials, who could be directly accountable, were compelled to obey but, as the Captain General of Guipúzcoa warned, the same could not be imposed on the common people.<sup>41</sup> The ministers were alarmed to learn that townsfolk deployed pieces of artillery on the dock to stop any attempt by Hendaye to recover seized vessels.<sup>42</sup> These disturbances were enough for Louis XIV to accuse Fonterabie of very serious crimes, including the destruction of houses and even a church, committed allegedly to prevent partition of the river decreed by him. The King of France, through his ambassador in Madrid, the Marquis of Villars, and his minister of foreign affairs in Paris, Colbert de Croissy, demanded exemplary punishment for the damages suffered by Hendaye.<sup>43</sup> The demand was backed by military threats. Vauban's plan to renew the fortifications of the city of Bayonne, the provincial capital, included the construction of new defences for Hendaye with the explicit purpose of counterbalancing Fonterabie's power in the Bidasoa.<sup>44</sup> At the same time, an unusual amount of troops concentrated in the southwest of France.<sup>45</sup> In fact, the commander of this contingent threatened retaliation if the King's demands were not met.<sup>46</sup>

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<sup>37</sup> This fear was not limited to border affairs only, see for example the declaration of the Marquis of Los Balbases, Spanish ambassador in France, on the customary salute among royal navies, AGS, Estado, K-1646, n<sup>o</sup>57 (Paris, 25 June 1679).

<sup>38</sup> "Que no se recelava tanto de las hostilidades de franceses, como del ardor de los de Fuenterrabía, que pretendían el auxilio de los militares y que estuviesen a su arbitrio las puertas y usan la artillería", *Consulta* of the War Council, Madrid, 26 January 1680, AHN, Estado, libro 628, f. 16.

<sup>39</sup> "Que no se dispute con las armas este negocio, aunque motiven a ello franceses, sino que los de Fuenterrabia se valgan de los actos y protestas jurídicos haciendo siempre esta causa propia de entre los vecinos de una y otra frontera, sin mezclar mi autoridad, nombre, ni armas", AHN, Consejos, Castilla, leg. 7119, n<sup>o</sup> 103: The King of Spain to the Governor of the Council of Castile, Madrid, 18 April 1680. AHN, Estado, libro 628, f. 21: Fonterabie to the King of Spain, 13 January 1680.

<sup>40</sup> AHN, Estado, libro 628, f. 3-4: D. Diego de Portugal to the King of Spain, San Sebastián, 5 January 1680.

<sup>41</sup> According to the Captain General of Guipúzcoa: "esto con la gente del pueblo no se puede reducir a razón", refusing any liability for the riotous behavior of the common people ("algunas resoluciones que tumultuariamente tomaron los vecinos de menos obligaciones"), AHN, Estado, libro 628, f. 137-8: D. Diego de Portugal to the Council of State, San Sebastián, 5 May 1680.

<sup>42</sup> AHN, Estado, libro 628, f. 139-141: Memorandum presented by the Marquis of Villars.

<sup>43</sup> AHN, Estado, libro 628, f. 25-28: Memorandum presented by the Marquis of Villars.

<sup>44</sup> AHN, Estado, libro 628, f. 127v. Vauban himself visited Hendaye, AHN, Estado, libro 628, f. 125 (news from Bayonne, 4 May 1680). About Vauban's plans for the defence of the province of Labourd see Pierre Hourmat, *Histoire de Bayonne. Des origines à la Révolution française de 1789*, (Bayonne: Société des sciences, lettres et arts de Bayonne, 1987), p. 357-8.

<sup>45</sup> AHN, Estado, libro 628, f. 48-56: Council of State, Madrid, 27 April 1680.

<sup>46</sup> AHN, Estado, libro 628, f. 88: *Maréchal* Lambert to D. Alonso Jordán, Governor of the fortress of Fonterabie, Hendaye, 28 April 1680.

Rumours were heard that Louis XIV would send warships to Fonterabie with the same purpose.<sup>47</sup>

Rumours became reality at the beginning of May 1680 with the arrival of three war brigantines in front of Fonterabie. From the beginning the commander of the French *flotilla* made clear his mission: his king ordered him to seize any vessel sailing in or out of the Bidasoa until receiving reparations for damages caused by Fonterabie.<sup>48</sup> They met the threats some days later, capturing a boat and sending their occupants to Bayonne as prisoners. A maritime blockade was formally established. From this point on, Fonterabie could only be supplied by land. This was not a minor issue for a town that depended on sea trade for affordable foodstuffs. At first sight the French *flotilla* was not particularly impressive: few brigantines (or “small frigates”) supported by some pinnaces and armed boats. In fact, the people of Fonterabie asked for permission to oust them at their expense.<sup>49</sup> We cannot forget that the Spanish town was well known for its corsair activity.<sup>50</sup> They had the power and the experience to do it. Nevertheless, the proposal was kindly rejected because it would certainly have put an abrupt end to the peace so recently signed –and sealed with a royal wedding! Instead they decided to satisfy French demands by appointing a judge-commissioner to investigate and, if necessary, punish the alleged crimes against (in the saying of the French) the defenceless people of Hendaye, in the confidence that Louis XIV would do the same with his subjects.<sup>51</sup>

After some weeks of investigation the Spanish judge-commissioner concluded that all the alleged accusations against Fonterabie were simply false. Of course he acknowledged that there had been some quite violent quarrels and maybe some abuses, but there were no bombed houses or burned churches as the French said. On the contrary, if somebody had to be accused it should be Hendaye for its numerous infringements in the Bidasoa.<sup>52</sup> Louis XIV did not think the same. He actually sent a commissioner to the border but his mission was not to investigate

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<sup>47</sup> AHN, Estado, libro 638, f. 24 (news from Bayonne, 24 February 1680), and f. 89-90 (news from Fonterabie, 28 April 1680).

<sup>48</sup> “Memoire instructif au sr. du Rivau capitaine de frigate legere commandant les quatre pinasses que le Roy fait armer au port de Bayonne”, AAE, CP, Espagne, nº 65, f. 65-66. AHN, Estado, libro 628, f. 126. However, Rivau was substituted by Roux just days after being appointed because the king was informed that he was a Huguenot, ANF [Archives Nationales de France], Marine, B 2 42, f. 198r (“Billet a la main” 6 May 1680)

<sup>49</sup> AHN, Estado, libro 628, f. 260r-v: *Consulta* of the Council of State, Madrid, 22 August 1680.

<sup>50</sup> Enrique Otero Lana, *Los corsarios españoles durante la decadencia de los Austrias. El corso español del Atlántico peninsular en el siglo XVII (1621-1697)*, (Madrid: Ministerio de Defensa, 1992). José Ramón Guevara, “El corso Hondarribiarra (1690-1714)”, *Boletín de Estudios del Bidasoa*, 15, (1997), 35-116. The French described the people of Fonterabie as “pirates sans quartier”, AAE, CP, Espagne, nº 67, f. 69r: Lespes de Hureaux to Croissy, from the river pass, 7 May 1681.

<sup>51</sup> The appointed judge-commissioner was Fernando Ramírez de Alcántara, *oidor* of the *Chancillería* of Grenade, AHN, Estado, libro 628, f. 111-17: Council of State, Madrid, 12 May 1680. The decision was immediately communicated to the French court, AHN, Estado, libro 628, f. 176-77: The King of Spain to the Duke of Jubenazo, ambassador in France, Madrid, 31 May 1680.

<sup>52</sup> “Y últimamente [...] no haberse arruinado templos, ni casas de los de Andaya ni muerto ningún hombre, antes bien se ha hallado que los promotores de estos enquentros han sido siempre los de Andaya y que los de Fuenterrabía no han movido sino es precisados de la natural defensa de sus vidas y haciendas”, AHN, Estado, libro 628, f. 180-3: *Consulta* of the Council of State, Madrid, 4 June 1680.

any wrongdoing, but rather to claim reparations for the alleged damages suffered by the people of Hendaye.<sup>53</sup> The disparity of their respective missions made any agreement impossible, but the Spanish hoped that establishment of some sort of formal contacts between commissioners would at least relax French pressure on the border.<sup>54</sup> Needless to say, the Spanish misread Louis XIV's intentions.

The violence in the Bidasoa did not diminish. The maritime blockade was in place for more than three years. The warships only left their positions to get supplies or when bad weather made sailing extremely dangerous –as in the winter months. In the meantime few boats from Fonterabie ventured to fish in the surrounding waters.<sup>55</sup> Hendaye had gained full control of the Bidasoa. Things got even worse when one morning the corpses of eleven inhabitants of Hendaye appeared close to Fonterabie.<sup>56</sup> They were the occupants of a boat that had visited the French brigantines the day before. Apparently it seemed a shipwreck –not an infrequent accident in the turbulent waters of the Gulf of Biscay, but French authorities accused the people of Fonterabie of murder.<sup>57</sup> As was expected they demanded extraordinary punishments. They even used this episode as a diplomatic tool, presenting the case in foreign courts as an example of the unjust treatment that France was receiving from Spain.<sup>58</sup> Unsatisfied with the explanations from Madrid, Louis XIV ordered retaliation. Immediately the *flotilla* extended its range of action to the nearby port of Pasajes, which was also under the jurisdiction of Fonterabie though not in the mouth of the Bidasoa. They captured more fishermen and sailors.<sup>59</sup>

The situation for Fonterabie was unbearable. The border city was under extraordinary pressure. It suffered a war-like maritime blockade and had lost control of its own jurisdiction in the Bidasoa. However, what was most humiliating was the passivity forced on them by their own authorities. Not only did the king not protect them, he even prohibited responding to any aggression.<sup>60</sup> They were also accused of horrendous crimes. What was worse, they were treated with suspicion by their own

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<sup>53</sup> The commissioner appointed by the French to deal with the Bidasoa affair was Joseph de Lespes de Hureaux, *lieutenant général du sénéchal* of Bayonne, AAE, CP, Espagne, n° 65, f. 76-77.

<sup>54</sup> AHN, Estado, libro 628, f. 233-4: Fernando Ramírez de Alcántara to the King of Spain, Fonterabie, 20 July 1680, and f. 250-2: the same to the Marquis of Canales, Fonterabie, 30 July 1680.

<sup>55</sup> The sardine fishery was very important for the local economy, particularly for the poorest people, AAE, CP, Espagne, n° 67, f. 35v-36v: Lespes de Hureaux to Croissy, from the pass of Behobia, 12 Mach 1681. AHN, Estado, libro 628, f. 309: D. Diego de Portugal to Juan Antonio de Zárate, San Sebastián, 20 August 1680. A general overview on inshore fishing in the Basque coast in Xabier Alberdi, "La pesca en el litoral de Gipuzkoa durante la Edad Moderna", *Itsas Memoria: Revista de Estudios Marítimos del País Vasco*, 3, (2000), 99-129.

<sup>56</sup> Initially, Francisco Ramírez de Alcántara left the case in the hands of the ordinary justice system, but the Viceroy of Navarre informed the Spanish court that French authorities denied the possibility of an accident "and they have sent false reports to the Most Christian King", AHN, Estado, libro 629, f. 70, and 72v-73v: Consulta of the Council of State, Madrid, 17 May 1681.

<sup>57</sup> AAE, CP, Espagne, n° 66, f. 98v-99r: Louis XIV to the Marquis of Villars, Versailles 8 June 1681.

<sup>58</sup> See for example: BNF, Ms. Occ., Clairambault 589, f. 317: Croissy to d'Estrades, Versailles, French ambassador in Savoy, 6 June 1681. By that time, the Spanish government had already instructed his ambassadors in Rome, Germany, England, and Holland, AHN, Estado, libro 628, f. 371v-372r: *Consulta* of the Council of State, Madrid, 11 October 1680.

<sup>59</sup> AHN, Estado, libro 629, f. 251-2: Fonterabie to the King of Spain, 18 June 1681.

<sup>60</sup> AHN, Estado, libro 628, f. 260r-v, and 389.

people.<sup>61</sup> Representatives of Guipúzcoa, the province in which Fonterabie was located, wanted the border city to attend to all French demands to avoid further retaliation.<sup>62</sup> The King of Spain sent a second judge-commissioner endowed with special powers to investigate and punish the alleged murders in the Bidasoa.<sup>63</sup> This was an extraordinary measure that was only applied against public malefactors, and that could be interpreted as a presumption of culpability.<sup>64</sup> But again, he was not able to find any evidence of the crimes. After that, the court sent a member of the Council of Castile (the most prestigious judicial institution of the Spanish monarchy) as new judge-commissioner with identical results.<sup>65</sup> The Spanish ministers were afraid of losing complete control of the situation. In seeking to appease Louis XIV they pushed Fonterabie to the brink of open rebellion.<sup>66</sup>

The only way to appease Louis XIV was of course bowing to his demands. In spite of his complaints for the lack of extraordinary punishments his main interest was not to find the culprits of the alleged murders. In fact, his demands remained the same before and after this incident: recognition of Hendaye's right to fish, navigate, and trade freely in the Bidasoa, and complete jurisdiction over his own shore. His argumentation did not change either. The French King accused Fonterabie of various violent crimes and abuses ever since 1679. Every single border incident, past and present, was interpreted as an arbitrary aggression against the "defenceless" people of Hendaye. "The affair of the drowned men" (as the Spanish authorities put it) reinforced the rhetoric of victimisation at the core of the French strategy in the Bidasoa. It was also used to justify strengthening the retaliatory measures already in place, namely the maritime blockade and the capture of prisoners.

The criminalisation of Fonterabie was instrumental for the legitimization of the French claims on the Bidasoa. Since armed intervention in a common controversy between local communities was hardly justifiable in ordinary legal terms Louis XIV resorted to arguments taken from other spheres of law. Part of his justification was based on the right of reprisal.<sup>67</sup> In principle, a reprisal was a legal measure by which authorities gave permission to a private person to seize property and hostages from the country from which he failed to obtain justice, as compensation for his losses. French authorities presented themselves as enforcers of Hendaye's compensation

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<sup>61</sup> AAE, CP, Espagne, n<sup>o</sup> 67, f. 161: Lespes de Hureaux To Croissy, Bayonne 25 June 1681.

<sup>62</sup> AHN, Estado, libro 628, ff. 91-92: D. Diego de Portugal to the King of Spain, 1 May 1680.

<sup>63</sup> The new judge-commissioner was José Rodríguez Portocarrero y Silva, Marquis of Castrillo, *alcalde de casa y corte* (that is, member of the Royal High Court of Madrid), AHN, Estado, libro 629, f. 294-98: *Consulta* of the Council of State, Madrid, 24 August 1681. Meanwhile, the French King sent the intendant Faucon de Ris to Hendaye in order to find the culprits of the alleged murders, AAE, CP, Espagne, n<sup>o</sup> 66, f. 137 y ss.

<sup>64</sup> Juan de Hevia Bolaños, *Curia filipica, primera y segunda parte*, (Madrid: Imprenta Real por Mateo Llanos, Madrid, 1684; first published in Lima, 1603), parte tercera, p. 134.

<sup>65</sup> The third judge-commissioner was a very respected jurist, D. Juan del Corral, member of the Council of Castile, AAE, CP, Espagne, n<sup>o</sup> 66, f. 142 and following: Marquis of Villars to Louis XIV, Madrid, 11 July 1681; the French ambassador described him as "ministre fort integre" (f.148r-v)

<sup>66</sup> See for example, AHN, Estado, libro 629, f. 375-9: *Consulta* of the Council of State, Madrid 10 November 1681.

<sup>67</sup> AAE, CP, Espagne, n<sup>o</sup>65, f. 20r-v: Louis XIV to the Marquis of Villars, St. Germain, 30 Janvier 1680 [draft letter]. A general overview on this aspect from the point of view of the theorists of the time in Stephen C. Neff, *War and the Law of Nations: A General History*, (Cambridge: Cambridge University, 2008), p. 76-82, and 122-126.



claims. As they said, they were compelled to intervene directly because French villagers were not powerful enough to defend themselves against the abuses of *Fonterabie*. This argumentation was seriously flawed for several reasons. Resort to the right of reprisal was only legitimate when it was not possible to obtain justice by other means, and that was not the case. After all, the kings of France and Spain were at peace. They even sealed their alliance with a royal marriage. According to the terms of the Peace of Nijmegen, any dispute among the vassals of the two monarchies had to be settled by amicable means, as was explicitly stated in the secret article on the Bidasoa of the Treaty of the Pyrenees (1659) and confirmed again in the latest negotiations.<sup>68</sup> Besides, Louis XIV had no reason to doubt the goodwill of the Spanish king –at least from a formal point of view. In fact, the king of Spain sent not one nor two but three judge-commissioners entitled to punish and repair any wrongdoing. Furthermore, French claims remained extremely vague. Reprisals were only legitimate if the value of the seized goods did not surpass the claimant's economic losses, and no attempt was made to quantify the value of the damages. Finally, certain aggressive measures like the maritime blockade, treating hostages like prisoners of war, or the violent exclusion of *Fonterabie* from the Bidasoa could hardly be justified as acts of reprisal intended to obtain compensation. In fact, the direct intervention of the king of France in an ordinary quarrel between border communities were more likely to be perceived as an act of war.<sup>69</sup>

Since the right of reprisal was insufficient to justify the French acts of hostility in the Bidasoa, Louis XIV resorted to other legal arguments, namely the right of retaliation. Unlike reprisal, there was no ambiguity in retaliation: it was an unequivocal act of aggression and as such it was subject to the laws of war. While reprisals were mainly compensatory, retaliation was about punishment of a serious wrongdoing. The final aim however was to deter the opposite party from harmful action considered unacceptable. In order to be effective the target of the retaliatory act had to be clearly stated and the aggression had to be proportional to the one previously enacted by the enemy. In this sense retaliation was a limited act of war with a limited purpose: re-establishment of a certain *status quo ante*. Retaliatory

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<sup>68</sup> The Peace of Nijmegen signed between Spain and France did not make any explicit mention to the Bidasoa affair, but the treaty explicitly stated that the Peace of the Pyrenees continued to be in force (Art. XXVI), Abreu, *Colección de los tratados de paz [...] Reynado del señor rey D. Carlos II. Parte II*, (Madrid: Antonio Marín, Juan de Zúñiga y viuda de Peralta, Madrid, 1752), p. 347-8. The Spanish negotiators at Nijmegen were specifically instructed to not permit any change with respect to the *status quo* in the Bidasoa, AGS, Estado, leg. K-1670, n<sup>o</sup>152: *minuta* "Relación del principio que tuvieron las diferencias [...] sobre el uso del río Vidasoa [...] hasta el tiempo presente con lo que Su Majestad ha resuelto se obre en ella por los plenipotenciarios de la paz en consulta de 11 de enero de este año de 1676".

<sup>69</sup> Interestingly, according to the French minister of maritime affairs, the mission of the *flotilla* was precisely "faire la guerre aux habitants de Fontarabie", ANF, Marine, B 2 43, f. 200r-v: Seignelay to Mauclerc, St. Germain, 14 April 1680. This approach caused some initial confusion to the commander in charge of the maritime blockade, who was seriously reprimanded for accepting the validity of licences and passports issued by the Spanish royal authority: "Le Roy a esté fort surpris d'apprendre que vous ayez laissé passer les chaloupes et barques chargées de munitions et vivres pour Fontarabie sous pretexte que les patrons estoient porteurs des passeports du gouverneur de Guipuscoa [...] ne manquez donc pas d'exécuter ponctuellement les orders que vous avez reçue et ne vous meslez jamais de les interpreter", ANF, Marine B 2 43, f. 281v: Seignelay to Roux, Fontainebleau, 4 June 1680.

acts were intended to cease as soon as the enemy stopped his harmful behaviour. Needless to say, French authorities' resort to this kind of justification was problematic. On the one hand, Louis XIV was not interested in the re-establishment of the old order in the Bidasoa, but in the imposition of an entirely new one more beneficial for the French. From a legal point of view, the right of retaliation could not be used to justify such pretensions. On the other hand, retaliation was by definition a response to a previous aggression –it presupposes a state of war or at least of open hostility.<sup>70</sup> That contradicted Louis XIV's official declarations of friendship to the Spanish monarchy.

In fact, it was not clear to which aggression exactly Louis XIV was responding. He was rather vague in this respect. Ever since 1679 the French accused Fonterabie of continuous wrongdoings, abuses, and aggressions but they were rarely specified. It seems that every incident was used as a pretext for retaliation, including customary enforcement of fishing and navigation rights. Since ordinary quarrels between border communities could hardly justify such a disproportionate response, it was necessary to present Fonterabie's actions as arbitrarily violent and in fact criminal. As tensions mounted there were some specific circumstances that helped the French to justify their harsh treatment of the Spanish border city. The most serious of them was the deployment of artillery. The use of "cannons" against the people of Hendaye, as the French put it, was considered an illegitimate aggression that required a military response –that is, retaliation.<sup>71</sup> Needless to say the affair of the "drowned men" was used as a confirmation of the criminal condition of Fonterabie,<sup>72</sup> but it is worth bearing in mind that the maritime blockade and the capture of prisoners, not to mention aggressions in other frontier territories, began well before this incident.<sup>73</sup> The retaliatory argument was credible only insofar as Fonterabie was presented as a cruel and powerful aggressor. Otherwise French hostility would be nothing more than an arbitrary breach of peace.

The resort to reprisal and retaliation was hardly justified but they were more than opportunistic pretexts for brute force. The criminalisation of Fonterabie was instrumental not only in providing the excuse for armed intervention but also for the advancement of French claims in the Bidasoa. French legal argumentation was based on the idea that Fonterabie's jurisdiction was unlawful because it was founded on naked force only. Thanks to its military superiority Fonterabie would have imposed

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<sup>70</sup> Neff, *War and the Law of Nations*, p. 123-124.

<sup>71</sup> AHN, Estado, libro 628, f. 16: Consulta of the War Council, Madrid, 26 January 1680, and f. 139-141: Memorandum of the Marquis of Villars. AAE, CP, Espagne, n<sup>o</sup> 65, f. 238: Report of Lespes de Heureaux on the Bidasoa conferences of 23 and 26 November 1680.

<sup>72</sup> "Je vous despesche ce courier expres pour vous instruire de la plus noire et de la plus horrible cruatuté qui ayt jamais esté exercée pur les nations les plus barbares", AAE, CP, Espagne, n<sup>o</sup> 66, f. 87r: Louis XIV to the Marquis of Villars, Versailles 17 May 1681. The formal protest of the French ambassador in: AHN, Estado, libro 629, f. 99-100. His successor at the embassy, La Vauguyon, was specifically instructed by Louis XIV to demand an exemplary punishment for the culprits "d'une barbarie si énorme", Alfred Morel-Fatio, *Recueil des instructions donnés aux ambassadeurs et ministres de France depuis les Traités de Westphalie jusqu'a la Révolution Française. XI. Espagne*, (Paris: Félix Alcan, 1894), t. I, p. 312-3.

<sup>73</sup> As the Duke of Osuna said, "que en Flandes no les han muerto ningunos vasallos y están obrando lo que obran". Interestingly, Osuna believed that Fonterabie was actually guilty, AHN, E, libro 629, f. 216-238: *Consulta* of the Council of State, Madrid 2 July 1681 (f. 224r-v).

its terms and conditions on the Bidasoa, while Hendaye and other border communities were too weak and too scared to contest their claims effectively. This reasoning was not entirely new but it had never been used before as a legal argument. A French memorandum written at the beginning of the seventeenth century considered Fonterabie's possession of the Bidasoa illegitimate because it was supported only "by mere force and the law of arms" since the "Spanish" had "usurped" the whole province of Guipúzcoa from the king of Navarre in 1200.<sup>74</sup> It also refers to the threat of the Fonterabie and Behobia fortresses (the latter demolished a century earlier) from which the Spanish fired their cannons against any French who approached in vessels with a keel. The author was particularly ironical about this point. According to him, the Spanish based their rights more on canon than on civil law, due to the continuing gunshots ("*continuelle canonades*") fired against the French –making puns with the French homonym words "cannon" (artillery) and "canon" (Church law).<sup>75</sup> The memorandum seemed to be written to encourage Henry IV of France to take action in the Bidasoa at a moment when a declaration of war against Spain seemed imminent.<sup>76</sup> A partial copy of this memorandum was among the papers of the historian François Eudes de Mézeray (d.1683).<sup>77</sup> The same argument was timidly re-proposed by the French ambassador during the failed negotiations that followed the Peace of the Pyrenees.<sup>78</sup> Some years later Louis XIV would base his strategy in the Bidasoa on the same principle. From this point of view, retaliation against Fonterabie was justified not only by recent events but also by centuries of violent occupation.

From a strictly juridical point of view the French authorities' reasoning remained weak. In principle, rights of reprisal and retaliation were limited to obtaining compensation for incurred losses and the restoration of a *status quo ante*. Louis XIV's aims did not fit well into this definition. Apparently his purpose was simply to justify his right to the use of force to impose a new order instead of defending legitimate claims in a lawful manner. In fact, the French explicitly avoided entering into any legal controversy. This approach caused some confusion to Lespes de Heureaux, the French commissioner sent to the Bidasoa.<sup>79</sup> As a loyal subject he surely had no reason to doubt his master's rightful intention. This is precisely why he was willing to support Louis XIV's claims on solid legal grounds. Much to his surprise he received a serious reprimand for having agreed with the Spanish commissioner to review the proceedings and other legal instruments from past negotiations.<sup>80</sup> That was, of course, ordinary practice. Instead Lespes de Heureaux was specifically

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<sup>74</sup> About this historical episode: Angel Canellas López, "De la incorporación de Guipúzcoa a la Corona de Castilla", *En la España Medieval. Estudios en memoria del Profesor D. Salvador de Moxó*, (Madrid: Universidad Complutense, 1982), II, p. 11-20.

<sup>75</sup> BNF, Ms. Occ., Ms. François 15846, f. 97-116: "Memoire touchant la Riviere de Bidasso qui separe la France dance l'Espagne".

<sup>76</sup> Antonio Eiras Roel, "Política francesa de Felipe III: Las tensiones con Enrique IV", *Hispania: Revista Española de Historia*, n° 118 (1971), 245-336.

<sup>77</sup> BNF, Ms. Occ., Ms. Français 20771, f. 222r-224v: "Rivière de Bidasso".

<sup>78</sup> Chavarría Múgica, "La frontera ceremonial", p. 82.

<sup>79</sup> AAE, CP, Espagne, f. 185r-186v.

<sup>80</sup> AAE, CP, Espagne, n°65, f. 201r-204r: Lespes de Heureaux to Croissy, Urrugne, 9 and 10 October 1680; f. 226: D. Fernando Ramírez de Alcántara to Lespes de Heureaux, Fonterabie, 17 November 1680; and, f. 233: Lespes de Heureaux to Croissy, Urrugne, 23 November 1680.

instructed to simply present the French demands to the Spanish authorities and wait for orders.<sup>81</sup>

Louis XIV did not present any valid proof to back up his claims. That could partly be explained by the inconsistency of French legal arguments. The truth is that most of them would not stand up to scrutiny. That was exactly what happened in 1661 when Francisco Ramírez de Prado, a respected jurist of the Council of Castile, demolished the allegations presented by the former French ambassador in Madrid.<sup>82</sup> The only legal instrument alleged by Louis XIV to legitimate his actions in the Bidasoa during the 1680s was the sentence dictated by his commissioners in 1667 and confirmed by himself at the beginning of the following year once the War of Devolution had already broken out. The sentence, however, was not a valid legal justification because the jurisdiction of French judges did not extend to foreign territory. In fact, Spanish commissioners had dictated a similar sentence asserting their own rights that, in turn, could only be effective in their own territory. This was common practice in border controversies. It was a way of declaring that both sides were right and that neither would renounce their respective claims –in other words, it meant that the border conflict remained unsettled. The only case in which the French sentence could have any legal effect over the Spanish would be if, for any reason, Spain failed to issue its own sentence. An explicit renunciation of the Spanish could then be interpreted as implicit recognition of the French. And that was exactly Louis XIV's line of argument. According to him, Spanish commissioners had failed to dictate their sentence in due form.<sup>83</sup> That was, of course, false. The final stage of the Bidasoa negotiations of the 1660s was characterised by a lack of communication between the respective commissioners, but that did not prevent the Spanish from actually dictating their own sentence. Obviously, the French ministers knew that.<sup>84</sup> That is why they prohibited Lespes de Heureaux from reviewing the proceedings of the former commissioners.<sup>85</sup> Otherwise the only legal instrument presented by the French in support of their claims would be immediately invalidated.<sup>86</sup>

The same could be said with respect to the alleged violent possession of the Bidasoa –what the French ironically called “cannon law”. It is true that enforcement of *Fronterabie's* rights required a certain degree of violence. Along the years there were numerous acts of defiance by the people of Hendaye. Sometimes tensions could lead to violent clashes. However, as we have seen, all these limited conflicts were managed according to customary law. The truth is that *Fronterabie's* jurisdiction

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<sup>81</sup> “Sa Majesté ne voulan pas que vous entrez dans la discution des droits de possession de ceux d'Andaye qui sont suffisament confirmez par le dit jugement duquel sa majesté ne veu pas sousbir quel soit donné la moindre attente”, AAE, CP, Espagne, f. 170-171v: Croissy a Lespes de Heureaux, Versailles, 29 September 1680, and f. 180 y 181: Faucon de Ris to Lespes de Heureaux, Paris, 5 October 1680.

<sup>82</sup> Chavarría Múgica, “La frontera ceremonial”, p. 80-82.

<sup>83</sup> AAE, CP, Espagne, n<sup>o</sup> 65, f. 20r-21v: Louis XIV to Marquis of Villars, St. Germain, 30 January 1680, [draft letter]

<sup>84</sup> “Memoire des affaires que le roy a recommandées a ses ambassadeurs en Espagne et quilz ont traitées en cette cour depuis la paix de Nimegue jusqu'à la ruptura arrivée au mois de mars 1689 a l'exception de celles qui regardent le commerce”, AAE, CP, Espagne, n<sup>o</sup> 63, f. 165r-188v: “Pesches et navigation dans la riviere de Bidassoa”, f. 178v-181v. (“cahier”, p. 26-30).

<sup>85</sup> AAE, CP, Espagne, n<sup>o</sup> 65, f. 128: Louis XIV to Lespes de Heureaux, Calais, 21 July 1680.

<sup>86</sup> AAE, CP, Espagne, n<sup>o</sup>65, f. 209r-v: Lespes de Heureaux to Croissy, Urrugne, 19 October 1680.

was not seriously questioned for a very long time. Obviously the relative Spanish military superiority at the border (thanks to its fortress and artillery) played a part in that. But their power was backed by strong legal legitimation: they had the written consent of the French. The rights of Fonterabie in the Bidasoa were founded on a series of bilateral settlements between the French and the Spanish established at the beginning of the sixteenth century. In other words, for more than a century and a half the French had voluntarily accepted Fonterabie's jurisdiction.<sup>87</sup> That is why presenting allegations based on these agreements could be counter-productive. In this context Fonterabie's acts of violence in the Bidasoa could only be interpreted in two ways: as legitimate enforcement of its rights, or as abusive enforcement of the same rights. The former were supposedly provoked by Hendaye's trespassing's, and the latter may have led to a right to compensation, but in neither case could Fonterabie's right to enforce its jurisdiction be questioned. Only a systematically disproportionate and arbitrary use of force could delegitimize its status in the Bidasoa. And that seems to have been the rationale behind Louis XIV's criminalisation of Fonterabie.

#### IV.

The escalation of Louis XIV's aggressions and his use of the language of reprisal, retaliation, and absolute sovereign power seemed to be a prelude to an official resumption of hostilities. Certainly it was not only the Bidasoa that was at stake. As we have already said at the beginning of this work, French strategic priorities lay elsewhere. Actually, the vast majority of Louis XIV's acts of aggressions during this period, including systematic pillage, violent occupations and unilateral annexations, were committed in the Spanish Low Countries and the Rhineland.<sup>88</sup> The arguments used to justify all these aggressions were not very different from the ones used in the Bidasoa.<sup>89</sup> Reprisal, retaliation, and absolute sovereign power were the common language of the *politique des réunions*. The sentences from the *chambres de réunion*

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<sup>87</sup> A fact acknowledged even by the French commissioner himself: "cette pernicieuse sentence provisionnelle de l'an 1510 laquelle adiuagea aux espagnols l'usage de la riviere et navigation avec toute sorte de vaisseaux et aux nostre seulement avec des batteaux sans quille", AAE, CP, Espagne, n° 67, f. 9r-v: Lespes de Hureaux to Croissy, Urrugne, 25 January 1681.

<sup>88</sup> According to Jeanmougin, just in the region between the Meuse and the Moselle rivers, around 8,000 square kilometres of territory were annexed, home to tens of thousands of inhabitants. In just 1680 and 1681 the infamous chambre de réunion of Metz, the most active of these special courts, issued around fifty orders of annexation of different territories mostly in the Empire, including the county of Deux-Ponts (Zweibrücken) belonging to the King of Sweden himself, but sometimes also in the Spanish Low Countries, like in the case of the county of Chiny in the duchy of Luxembourg. But some of the most remarkable annexations, like the réunions of the "Décapole" of Alsace and the annexation of the imperial city of Strasbourg (September 1681), took place by order of the Sovereign Council of Besançon. In other cases annexations were conducted without recurring to any particular formality, a general overview in Bertrand Jeanmougin, *Louis XIV à la conquête des Pays-Bas espagnols. La guerre oubliée, 1678-1684*, (Paris: Economica, 2005).

<sup>89</sup> "Songerom a reparer toutes les violences quilz ont exercées tant aux environce de Fontarabie que dans le Luxembourg mais comme j'ay desja donné les ordres necessaires pour me faire faire raison sur cette derniere affaire je n'atendre aussy que le retour du Courier que je vous ay despesché pour faire ressentir aux habitans de Fontarabie la peinte que merite les hostilitez et les cruautés quilz ont exercé contre mes sujets", AAE, CP, Espagne, n° 66, f. 293r-v: Louis XIV to Marquis of Villars, St. Germain, 7 December 1681.

had the same function as the declaration of the French commissioners in 1667. In both cases these formalities were used as pretexts to trigger direct, armed intervention cloaked as regular enforcement of rulings by ordinary justice. They were also based on the same methods and the same principles –only on a different scale. The judicial pronouncement attributed the object of contention (determined by the French authorities themselves) to the King of France (or his vassals), who was then entitled to take possession of the said territory and rights claimed. At this point Louis XIV was “legitimised” to make complete use of his absolute sovereign power to enforce his authority and defend his rights against any “rebellious” or “foreign” intervention in a territory that was now formally considered part of the Kingdom of France. When necessary, the same principle was applied to the implementation of the Peace of Nijmegen. In that case, a biased, unilateral interpretation was enough to resort to unilateral annexation of territories or, if demands were not immediately met, to reprisals.

The violence of the *politique des réunions* was not only juridical it was very physical too. The *réunions* were always conducted under threat of expropriation, imprisonment, and pillage. In all cases threats were backed by military force. Sometimes bullying was enough to force feudal lords and town authorities to change allegiance. But frequently, as in the territories under sovereignty of the King of Spain, feudatories and provincial governors refused to bend to French demands. However, in the face of superior military forces and the explicit threat of general reprisals they had no other option than to give up. Needless to say, formal protestations and judicial allegations were completely useless. On the contrary, any kind of resistance to French demands (which, as we have said, were formally presented as sentences or enforcement of treaty clauses) were utilised to legitimate further reprisals. When the General Governor of the Low Countries refused an “amicable” proposal to exchange the recently annexed county of Chiny for another Spanish territory of “equivalent” value, Louis XIV responded by ordering the establishment of a full land blockade on Luxembourg that lasted for two years.<sup>90</sup>

Oddly enough, Louis XIV continued his aggressions without ever declaring war.<sup>91</sup> On the contrary, he continued to affirm his goodwill, his moderate behaviour, and even his love for peace. Obviously, his actions contradicted his words. The escalation and spread of hostility along the French frontiers seemed to indicate an imminent war.<sup>92</sup> In fact, as soon as the spring of 1680 Spain signed an alliance with the king of England. At the end of the same year the Estates General of the United Provinces began to reconsider their position of neutrality. The king of Sweden, offended by the

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<sup>90</sup> Jeanmougin, *Louis XIV à la conquête*, p. 77-88.

<sup>91</sup> AAE, CP, Espagne, n° 66, f. 293r: Louis XIV to Marquis of Villars, St. Germain, 7 December 1681, and again, f. 302r-v: Louis XIV to Marquis of Villars, St. Germain, 4 January 1682: “comme la guerre qu’ils croyent inevitable en Flandres n’est fondée que sur l’apprehension qu’ils en peuvent avoir, je sçauray bien aussy sans la recommencer punir les lieux coupables des violences et hostilités commises et les faire repentir de n’avoir pas donné la juste satisfaction que vous avez demandé de ma part”.

<sup>92</sup> “On ne parle icy sire que de guerre, et l’on ne doute pas que la paix n’aye esté rompue en Flandres”. In the same letter the French ambassador acknowledges the reception of the news of the annexations of Strasbourg and Casale, AAE, CP, Espagne, n°66, f. 261r-v: Marquis of Villars to Louis XIV, Madrid 13 November 1681.

*réunion* of Deux-Ponts, abandoned his traditional alliance with the French to sign another with the Dutch (October, 1681). In February and May of 1682 the Emperor and the King of Spain joined them. However, in spite of all this frantic diplomatic activity the alliance fell apart quickly, victim of domestic unrest, disparate interests, and the fear of French retaliation (as in the case of the United Provinces, England, and the German principalities), or major external threats (as in the case of the Emperor). In fact, the siege of Vienna by the Ottomans and the Hungarian revolt, secretly supported by Louis XIV, diverted attention from the French frontier.<sup>93</sup> When the international situation reached a dangerous point the Sun King suddenly relaxed the pressure, creating even more confusion among the allies. In March 1682 he put an end to the land blockade of Luxembourg and the maritime blockade of Fuenterrabía and announced the submission of all his claims to the arbitration of King Charles II of England.<sup>94</sup> The Spanish pretended to accept the proposal but they actually considered it another ruse. After few months temporising, Croissy gave an ultimatum to meet his master's demands. In the summer of 1683 a French army again entered Flanders. This time they demanded an exorbitant 100,000 florins from the local communities to avoid being ransacked. When the Spanish military authorities began to authorise raids in reprisal, the French responded with new retaliatory measures. Louis XIV ordered attacks on Spanish strongholds to punish the stubborn opposition of the Spanish to his offerings. Finally, the Governor General of the Spanish Low Countries declared war on the King of France on 11 December 1683.<sup>95</sup>

The declaration of war was motivated by desperation and sense of honour more than by any military concern. The result was complete disaster. Abandoned by their allies, the Spanish alone could not cope with French military superiority. For the French however, the War of the Reunions was the shortest and most successful military campaign of Louis XIV's reign. The French concentrated their efforts on Luxembourg, which was first bombed and then besieged. After some resistance the Prince of Chimay, governor of this important stronghold, was compelled to surrender. Interestingly enough, war also extended to the distant Bidasoa border. This time, there was no agreement of *bonne correspondance*. As soon as the declaration of war was confirmed the military governor of Fonterabie fired his artillery against the new fortifications that the French were building in Hendaye. Much to his surprise, the French responded with a massive shelling with mortar bombs that destroyed a large part of the Spanish city.<sup>96</sup> It is worth bearing in mind that there was a difference in intention between the two kinds of bombardments.

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<sup>93</sup> Philippe Roy, *Louis XIV et le Second siège de Vienne (1683)*, (Paris: Honoré Champion, 1999).

<sup>94</sup> AAE, CP, Espagne, n<sup>o</sup> 68, f. 29-30: Louis XIV to Count of La Vauguyon, St. Germain, 15 February 1681. See also: AAE, CP, Espagne, n<sup>o</sup> 69, f. 71, 84, and 105. On the continuation of Fonterabie's blockade, AAE, CP, Espagne, n<sup>o</sup> 68, f. 137r-138v: Louis XIV to La Vauguyon, 21 June 1682.

<sup>95</sup> Jeanmougin, *Louis XIV à la conquête*, p. 138-169.

<sup>96</sup> A description of the bombing of Fonterabie from the beginning of the eighteenth century in: ANF, leg. M/658, n<sup>o</sup>63: "Fontarabie. Renvois ou memorie abregé sur la ville de Fontarabie relatif au deux plans de cette place" (map legend: "50. Redoutte ou fort d'Andaye bastie en 1682"). See also: Serapio Múgica, *Monografía histórica de la villa de Irún*, (Irún: Viuda de B. Valverde, 1903), p. 148-9, and Carlos Rilova, *Marte Cristianísimo: guerra y paz en la frontera del Bidasoa (1661-1714)*, (Irún: Ayuntamiento de Irún, 1999), p. 50-1.

While ordinary artillery was designed to fire horizontally against walls or specific targets, mortars (which developed dramatically during this period) were specifically conceived to fire explosive or incendiary bombs in a parabolic manner.<sup>97</sup> Since mortar bombs were fired from much longer distances and they were not as accurate as ordinary artillery, from a strictly military point of view they were not very effective against walls and fortifications –at that time their main purpose was to cause the greatest damage and spread havoc among the population.<sup>98</sup> As it is well known, during this period the French made extensive use of this kind of weapon. In a matter of months the Spanish were forced to sign a dishonourable truce.

The Truce of Ratisbon was signed in 15 August 1684. French demands were accepted unconditionally.<sup>99</sup> The terms were harsh. As expected, the strategic stronghold of Luxembourg remained in Louis XIV's hands by right of conquest. Moreover, the King of Spain was forced to recognise all the *réunions* made before 30 August 1683 –in practice, almost the totality of them. From a legal point of view this fact was of very serious consequence. It was not only about territorial losses. By this means the arbitrary justifications and violent methods used by Louis XIV to advance his claims became legitimised. In practical terms the *politique des réunions* was equated to *ius victorium* –the right of conquest that awaited the victor of a just war. According to the agreement, from then onwards the *réunions* would be considered legal and honourable territorial acquisitions just as if they were taken from the enemy during wartime instead of being snatched from a friend by coercive means during peacetime. Fortunately for the Spanish monarchy, the agreement was only a truce, meaning it was only a provisory agreement intended to last for twenty years that did not have the same legal status as a formal peace treaty.

The truce however did not satisfy all French claims. The Bidasoa affair remained unsettled. To Fonterabie's dismay, with the arrival of the spring a new French *flotilla* anchored in front of its harbour.<sup>100</sup> After some days of tense expectation a new violent incident triggered a new wave of reprisals.<sup>101</sup> The French ships took more

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<sup>97</sup> About the technological development of mortar bombs in this period: Michel Blay, "Le développement de la balistique et la pratique du jet de bombes en France a la mort de Colbert" in *De la mort de Colbert a la revocation de l'edit de Nantes: un monde nouveau?*, ed. by Louise Godard de Donville (Marseille: Centre Méridional de Rencontres sur le XVII<sup>e</sup> siècle, 1985), 33-51, and Jean Peter, *L'artillerie et les fonderies de la marine sous Louis XIV*, (Paris: Economica, 1995).

<sup>98</sup> Chevalier de Saint-Julien, *La forge de vulcain ou l'appareil des machines de guerre*, (The Hague: Guillaume de Voys, 1710), 68-69 and 77-78. See also: Guillaume le Blond, *L'Artillerie raisonnée contenant la Description et l'Usage des différentes bouches à feu, avec les principaux moyens qu'on a employés pour les perfectionner, la Théorie et la Pratique des Mines, et du Jet des Bombes, et l'Essentiel de tout ce que l'Artillerie a de plus intéressant depuis l'invention de la Poudre à canon*, (Paris: Charles-Antoine Jombert, 1761), p. 157-8 and 221-3.

<sup>99</sup> Jeanmougin, *Louis XIV à la conquête*, p. 177-188.

<sup>100</sup> AHN, Estado, libro 630, f. 1-8: *Consulta* of the Council of State, Madrid, 18 May 1685. The *flotilla* was composed by three small frigates (36 cannons and 150 crewmen), and it would be reinforced with four ships "que llaman travesones", and several pinnaces and armed boats (*chalupas*), AHN, Estado, libro 630, f. 176-177: Fonterabie to the King of Spain, 19 June 1685, and f. 264-271: *Consulta* of the Council of State, Madrid, 30 June 1685.

<sup>101</sup> AHN, Estado, libro 630, f. 23-41: *Consulta* of the Council of State, Madrid, 29 May 1685, and f. 94-95: Fonterabie to the King of Spain, 25 May 1685.



prisoners and re-established the maritime blockade.<sup>102</sup> The people of Fonterabie, humiliated and badly damaged by the recent bombings, were in complete despair.<sup>103</sup> Under this circumstance the Spanish ministers had no other choice than to bow to Louis XIV's demands.<sup>104</sup> As a matter of fact, the Spanish ministers had already been thinking about giving up for some time.<sup>105</sup> In the Autumn of 1680 Croissy had proposed lifting the maritime blockade if the Spanish agreed to discuss possession of the Bidasoa.<sup>106</sup> His only condition was that the people of Hendaye enjoyed the river freely during the duration of the negotiations. The Spanish ministers realized that the only way of relaxing the pressure over Fonterabie was accepting Croissy's offer, even if they knew that "negotiation" was a euphemism for "concession". The major concerns were how to minimise the legal consequences of the agreement. It was in this context that the Council of State, the highest political institution of the Spanish monarchy (where major decisions were taken), asked the Council of Castile (the highest juridical institution of the Spanish monarchy) for advice. The jurists' answer was very disappointing: they limited themselves to re-affirming Fonterabie's rights based on the legal arguments already known. According to them, since the law was on the side of the King of Spain no other answer was possible.<sup>107</sup> What the Council of Castile seemed not to understand is that the king had been forced to renounce his exclusive jurisdiction in the Bidasoa and badly needed a convenient justification to present his decision publicly. It was not about being right anymore, but about saving the king's honour. The two disparate approaches of the Council of Castile and the Council of State are symptomatic of the state of confusion created by the *politique des réunions*.

At that time no final decision was taken because war seemed imminent.<sup>108</sup> In the spring of 1685 the situation was completely different. The Spanish were finally ready to make concessions, but they still raised many objections.<sup>109</sup> Croissy tried to speed

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<sup>102</sup> AHN, Estado, libro 630, f. 119-120: "Extraict d'une letter de M. de Boufflers de Bayonne le 24<sup>e</sup> May 1685"

<sup>103</sup> Again the major concern was to prevent a violent, desperate reaction by the people of Fonterabie, AHN, Estado, libro 630, f. 9-12: *Consulta* of the Council of State, Madrid 22 May 1685. However, Fonterabie acknowledged his impotence, AHN, Estado, libro 630, f. 176-7: Fonterabie to the King of Spain, 19 June 1685.

<sup>104</sup> "Razonamiento desynteressado", memorandum presented by the French ambassador, AHN, Estado, libro 630, f. 474, and the *consulta* of the Council of State, Madrid, 28 Julio 1685, AHN, Estado, libro 630, f. 340v-341v.

<sup>105</sup> AAE, CP, Espagne, n<sup>o</sup> 66, f. 42r-43r: Marquis of Villars to Louis XIV, Madrid 6 Mars 1681.

<sup>106</sup> AHN, Estado, libro 628, ff. 522-526: Report of the Marquis of La Fuente, Spanish ambassador in France, for the King of Spain about his meetings with Colbert de Croissy, Paris, 13 October 1680.

<sup>107</sup> AHN, Estado, libro 629, f. 449-454: *Consulta* of the Council of State, Madrid, 2 December 1681. The commissioner Fernando Ramírez de Alcántara was also against any concession to the French in the Bidasoa because it would cause irremediable damage to Fonterabie's rights, AHN, Estado, libro 629, f. 13-18: Fernando Ramírez de Alcántara to the King of Spain, Fonterabie, 12 January 1681.

<sup>108</sup> AAE, CP, Espagne, n<sup>o</sup> 66, f. 296v-299v: Marquis of Villars to Louis XIV [encrypted]

<sup>109</sup> One of the main concerns was that an eventual division of the river in two halves would leave the symbolically important isle of Pheasants (the islet in which the royal ceremonies were staged) on the French side, opening the door to a retrospective interpretation of the royal encounter of 1660 as an act of sovereign assertion by the French, AHN, Estado, libro 630, f. 460-

up the process by threatening “with accustomed force and exaggeration” (“*con la fuerza y exageración acostumbradas*”) to throw “four or five thousand bombs” over Fonterabie if they continued to refuse Louis XIV’s demands.<sup>110</sup> The French demanded a formal declaration in writing officially confirmed by the two monarchs –that is, something very similar to an official treaty. Even if the Spanish could not refuse this request, they made every possible effort to avoid juridical terminology and formality in order to make the agreement appear as unofficial as possible. This was not what the French intended.<sup>111</sup> After long negotiations at the French court, the final version took the form of an amicable agreement valid for twenty years, just like the Truce of Ratisbon.<sup>112</sup> Border communities were practically absent of the negotiation process.<sup>113</sup> In fact, Fonterabie refused any contact with Hendaye if not directly ordered by the King himself.<sup>114</sup> In the end, Louis XIV obtained exactly what he wanted –at least temporarily. Hendaye gained access to the river in equal terms with Fonterabie. In spite of it all, it is not very clear what advantage Louis XIV obtained, apart from humiliating the Spanish monarchy. The new French fortification continued to be too modest to constitute a real military threat. The situation of Hendaye itself seemed not to have changed significantly. It continued to be what it always had been: a small fishing village.

As a matter of fact reprisals continued in other border contexts, like in the mountains of Navarre, not far away from Fonterabie.<sup>115</sup> However during the

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1: Vote of the Duke of Alba in the Council of State, Madrid 7 October 1685; similar concerns were previously expressed by D. Vicente Gonzaga, Madrid, 28 July 1685, f. 321-27.

<sup>110</sup> AHN, Estado, libro 630, ff. 593-594: Report of the Marquis of Los Balbases to the King of Spain, Paris 7 October 1685.

<sup>111</sup> Significantly, the French version of the Bidasoa agreement was printed and later included on the official diplomatic collection of Frédéric Léonard, *Recueil des Traitez de Paix, de treve, de neutralité, de confederation, d’alliance, et de commerce, faits par les rois de France, avec tous les princes, et potentats de l’Europe, et autres, depuis pres de trois siecles*, (Paris: Léonard, imprimeur du Roi et de Monseigneur le Daupin, 1693), IV, s.f.: *Convention faite entre le Marquis of Feuquieres, et le Marquis of Los Balbases. Pour la liberté de la Pesche, et de la Navigation dans la Riviere de Bidassoa, en faveur des Sujets de Sa Majesté, et de ceux du Roi d’Espagne, avec toutes sortes de Vaisseaux, sans distinction* (dated in 1683 instead of 1685 –obviously a typo). On the other hand, the Spanish version of the agreement was never printed.

<sup>112</sup> A preliminary agreement was achieved by mid-October, AHN, Estado, libro 630, f. 543-550 and 558-560; however, the French introduced many corrections, AGS, Estado, leg. K-1652, n<sup>o</sup> 117, 119-122, 133, and 135.

<sup>113</sup> AHN, Estado, libro 628, f. 130: *Consulta* of the Council of State, Madrid, 12 May 1680. The Count of Chinchón disapproved the agreement because he thought it would provoke Fonterabie’s rebellion, AHN, Estado, libro 630, f. 317-327, *Consulta* of the Council of State, Madrid 28 July 1685. However, Fonterabie accepted the agreement with few minor objections, AHN, Estado, libro 630, f. 686-7, *Consulta* of the Council of State, Madrid, 24 November 1685. After the official approval of the agreement the two border communities were ordered to discuss on the ground the implementation of some minor issues like the re-deployment of fishing-traps, “Artículos de los vezinos de Endaya y delos de Fonterabie conbenidos amigablemente entresí para entretener en adelante una buena yntelijencia en execussion del tratado echo en Madrid entre las coronas de España y Françia para el uso del río Vidasoa devajo del buen gusto de los reyes y sin perjudiciar al dicho tratado ni al derecho de las coronas ni a los derechos de los particulares de la una y otra parte que puedan pretender y todos los capítulos seande entender durante la tregua”, signed “in the middle of the Bidasoa river”, 20 December 1685, AHN, Estado, libro 630, f. 831-2.

<sup>114</sup> AHN, Estado, libro 630, f. 301-8.

<sup>115</sup> AAE, CP, Espagne, n<sup>o</sup> 69, f. 285: “Copie des trois mémoires donnéz a M. de Los Balbases, le 23 fevrier 1686”.

following years there was no significant violence in the Bidasoa, even if tensions persisted. Some incidents in particular sparked strong protests by the French ambassador.<sup>116</sup> Nonetheless, this time Louis XIV reacted with moderation. At that moment a much more important issue demanded his attention. The already delicate health of King Charles II of Spain was worsening and everything suggested that he would die without an heir. That made of Louis XIV a plausible candidate for the succession to the Spanish monarchy. The new scenario required a new diplomatic approach to Spain, but despite some efforts in this direction the French king did not develop a consistent strategy practically until the end of the Nine Years War.<sup>117</sup>

## V.

As we have already said, the period after 1679 is traditionally considered a turning point in Louis XIV's reign. The *réunions* are normally presented in an ambivalent way as evidence of the great power achieved by the Sun King but also of his arrogance. It was then when plans were made to implement a large coalition to oppose France's bid for European hegemony. However, this "grand alliance", known as the League of Augsburg, did not materialise until after Louis XIV's expulsion of the Huguenots from France in 1685, and did not open hostilities until 1689, when the French had already occupied and ravaged the Palatinate. Nine years later, after a long and costly war, the Peace of Ryswick (1697) re-established the *status quo ante*. Louis XIV was compelled to renounce all *réunions* and past conquests –with the important exception of Strasbourg. From this perspective, the main consequence of the *politique des reunions* was the encouragement of preliminary realignments and rapprochements among the European powers to keep new French ambitions at bay. Nonetheless, there were also other repercussions at a deeper level that went beyond the contingent world of diplomatic relations. After all, there was nothing particularly exceptional in the formation of alliances to counter the rise of a threatening power. It could be said that this was actually an intrinsic characteristic of the Early Modern European "international" system. In our view the disturbing effects of French power politics during the 1680s cannot be properly understood without taking into account its subtler legal implications at various levels.

As a matter of fact, the *politique des reunions* allowed for the continuation of a low-profile war without the costs and risks inherent to a general confrontation –as

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<sup>116</sup> There were two serious incidents. The first almost put an abrupt end to the negotiations: a rogue-shot fired from the Spanish side almost hit commander Boufflers while accompanying Vauban along Hendaye's riverside, AHN, Estado, libro 630, f. 687v-689, see also: the Duke of Canzano to the Duke of Canales, San Sebastián, 20 October 1685, AHN, Estado, libro 630, f. 708-709; Marquis of the Balbases to Crispín Botello, Madrid, 1 December 1685, AGS, Estado, leg. K-1652, n<sup>o</sup> 131; and, *Consulta* of the Council of State, Madrid, 14 February 1686, AHN, Estado, libro 631, f. 117-121. One more time the King of Spain was compelled to send a judge-commissioner to investigate this incident (again with no result), Antonio de Argüelles to Crispín González Botello, Fonterabie 3 February 1686, AHN, Estado, libro 631, f. 130-1. The second serious incident was provoked by the division of two whales in 1688, AGS, Estado, leg. K-1657, N<sup>o</sup> 60-61, 84, and 99.

<sup>117</sup> The bombing of Fonterabie was of course in deep contradiction with Louis XIV's aspiration to be elected successor to the Spanish crown, Lossky, *Louis XIV*, p. 178-9. About the arguments and strategies used by French diplomacy to convince the Spaniards see Alvarez, *La fabricación de un imaginario*.

Louis XIV had experienced during the Dutch War.<sup>118</sup> However, it also jeopardised the fundamental distinction between war and peace. This distinction was judicially and politically relevant. The Sun King was already strongly criticised for his dubious legal arguments in favour of declaring the War of Devolution against Spain in 1668; he was again criticised for declaring war against the Dutch Republic without even providing any legal pretext.<sup>119</sup> However, in spite of it all nobody could deny the King of France's right to make war in defence of what he thought were rightful demands – even if his justifications were feeble. War was a sovereign prerogative reserved to rulers who did not recognize any earthly superior and hence could not resort to a higher authority to decide their disputes. Of course, it was expected that a just and Christian king would defend his rights by amicable means and well-founded arguments. But if diplomacy, arbitration, and formal protest failed he had the right to resort to war – which in the early modern period continued to be considered simply as “the continuation of litigation by other means”.<sup>120</sup> If war was conducted in “due form” the victorious side was entitled to claim attribution of the object of contention (by law of conquest or *ius victorium*). Everybody agreed on that. What was unprecedented was Louis XIV's hybrid combination of warlike hostility during peacetime, coercive diplomacy, legal arbitrariness, and a complete disdain for compromise, reciprocity, and proportionality. By refusing a formal declaration of war while carrying out continuous acts of aggression, Louis XIV was precluding himself from the possibility of legitimating his annexations by *ius victorium*. Instead, in order to maintain the appearance of peace he was compelled to justify his continued resort to force with dubious legal arguments that make him appear as a tyrant. Ironically, the desperate declaration of war of Spain at the end of 1683 allowed the French to formally legitimise (at least temporarily) their usurpations in the Truce of Ratisbon.

The most scandalous aspect of the *politique des réunions* was not the use of violence *per se*, but the abuse, fabrication and sophisticated manipulation of established legal principles, conventions, and customs to justify the arbitrary, unilateral advancement of Louis XIV's claims by force during peacetime. In fact, French power politics was not only a threat for European peace, as is commonly acknowledged, but also for the very concept of *ius gentium* –that is, the international legal order as understood by Early Modern statesmen. The *politique des réunions* consciously ignored or debased basic principles established by both customary law and formal conventions that regulated relations among sovereign princes in both war and peace.

Louis XIV debased the legitimacy of negotiation, arbitration or litigation as ordinary ways to settle disputes or at least to find workable agreements peacefully. When required, he complied with the established custom of appointing commissioners to deal with foreign homologues concerning local controversies or

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<sup>118</sup> Carl J. Ekberg, *The Failure of Louis XIV's Dutch War*, (Chapel Hill: The University of North Carolina Press, 1979).

<sup>119</sup> Paul Sonnino, *Louis XIV and the origins of the Dutch War* (Cambridge: Cambridge University Press, 1988)

<sup>120</sup> Jeremy Black, *European Warfare, 1494-1660*, (London and New York: Routledge, 2002), p. 22. Waging war was actually a key concept in the articulation of Kingship, Joël Cornette, *Le Roi de guerre. Essai sur la souveraineté dans la France du Grand Siècle*, (Paris: Payot, 1993).

the implementation of specific peace clauses on the ground.<sup>121</sup> However, he immediately emptied these conferences of any content, like in the case of the French commissioners in the Bidasoa and the conference of Courtrai following the Peace of Nijmegen of 1679.<sup>122</sup> Louis XIV's refusal of any amicable settlement was generally the result of a skewed, unilateral interpretation of clauses and claims that made compromise pointless. The French ministers substituted negotiation with a very disturbing mix of explicit threats, continuous ultimatums, and expedient methods with the only purpose of forcing immediate recognition of Louis XIV's claims. This method was used indistinctly against royal officials and local authorities.

This attitude was ordinarily accompanied by an exalted interpretation of the superiority of the absolute sovereign power of French monarchs. This also had deep legal implications. On the one hand, the sentences of annexation (*arrêt de réunion*) were based precisely on the principle that sovereignty was imprescriptible no matter the circumstances or the lapse of time, even if that implied an infringement of other monarchs' absolute sovereign power. On the other hand, total superiority of sovereign power was also used to justify direct intervention in local affairs, thus debasing legal border orders largely based on customary arrangements. Louis XIV's violent imposition of a new order in the Bidasoa undermined underlying principles of trust, reciprocity and mutual recognition that prevailed between border communities. That became particularly evident with the reluctance of Fonterabie to participate in the agreements of *bonne correspondance* of 1668 and 1674, its complete refusal in 1684, and the many restrictions imposed by the Spanish monarchy between 1690 and 1694.<sup>123</sup>

Clearly, there was something troubling about Louis XIV's policies that went beyond ordinary diplomatic and military concerns. His continuous, arbitrary, and disproportionate aggressions were an invitation to other powers to act the same way.<sup>124</sup> Even more troubling was Louis XIV's systematic exploitation and manipulation of existing legal contradictions, uncertainties, and loopholes at various levels. Although, French ministers avoided any form of formal litigation, they made an extensive use of judicial reasoning. Their aim nonetheless was not to build well-founded arguments to back their claims, but more simply to find pretexts to prompt unilateral, and frequently violent, action –as in the case of the criminalization of

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<sup>121</sup> About the role of these “micronégociations” in the diplomatic practice of the time: Lucien Bély, *L'art de la paix en Europe. Naissance de la diplomatie moderne, XVIè-XVIIIè siècle*, (Paris: PUF, 2007), p. 328-333.

<sup>122</sup> Jeanmougin, *Louis XIV à la conquête*, p. 21-24.

<sup>123</sup> Chavarría Múgica, “Por codicia o necesidad”.

<sup>124</sup> That is exactly what happened during the Nine Years War when the so-called “maritime powers” (England and the Dutch Republic) extended their maritime blockade on France to all neutral or even allied vessels that maintained any trade with the enemy, alleging that Louis XIV was doing exactly the same. As part of this strategy they pressured the Spanish government into forbidding the customary treaties of *bonne correspondance* at the Basque border region. This was of course a serious breaching of the law of nations not only because it implied to treat everyone as an enemy, but also because it supposed the infringement of formal or customary navigation treaties, the arbitrary invalidation of passports and licences, and even serious prejudices to own vassals. From the Basque point of view it was also a breach of natural law since the initial purpose of *bonne correspondance* was guarantying an affordable supply of basic foodstuffs (generally imported from France). For all these reasons the Spanish Monarchy refused to adhere to this strategy, Chavarría Múgica, “Por codicia o necesidad”.

Fonterabie, or the many judicial rulings issued by the chambers of *réunion* of Metz and the Sovereign Councils of Brisach and Besançon justifying the annexation of particular territories in Flanders and the Rhineland. French ministers made a loose, arbitrary use of local customs, feudal law, antiquarianism, and general principles of *ius commune* when convenient, but they were always ready to neglect them at will.<sup>125</sup> Ultimately, it was force that made prevail Louis XIV's rights. In doing so he debased the established practice of formal litigation based on the presentation and validation of written legal instruments.

At the heart of the French attitude lay an interpretation of the law of nations that contradicted well-established conventions. In this sense the argumentation given by Croissy, Louis XIV's minister of foreign affairs, to the Spanish ambassador in a series of conversations held in the autumn of 1680 is very revealing.<sup>126</sup> When the Marquis of la Fuente asked him to stop coercive measures in order to permit commissioners to settle the Bidasoa dispute peacefully, "it being impossible that justice and violence concur at once" ("*siendo imposible concordar a un mismo tiempo la justicia y la violencia*"), he simply answered that he would do so as soon as the Spanish met all his demands. Clearly, he was not interested in seeking a fair settlement or entering into negotiations, but in imposing a *diktat*. More interestingly, he elaborated a justification for the use of force to explain recent developments in the Bidasoa –and presumably also in the rest of Europe. According to Croissy, in controversies as old as the one about the Bidasoa border, where it was practically impossible to present unquestionable titles of possession, the attribution of rights was based uniquely on the dynamic relation of forces between the two opposite sides over time. If until that moment Fonterabie enjoyed a privileged position it was precisely because for a long time its superiority could not be contested. But since the French were now unquestionably more powerful, they were entitled to impose new terms and conditions in the Bidasoa. Interestingly enough, in saying this the minister subverted the meaning of the "cannon law" argument traditionally used to delegitimize the Spanish side. In his view, Fonterabie's rights were illegitimate not because of his violent possession but because of his lack of strength to maintain his hegemonic position. This answer went beyond the crude, cynical views ordinarily attributed to Croissy and Louvois. With this statement, he was declaring null the established legal order between nations, the *ius gentium* based entirely on customs and conventions as was practised by statesmen, and replaced it with a sort of "mechanistic" state of nature. Apparently, in Croissy's view there was no contradiction between justice and violence.

Vauban, the chief engineer and senior military advisor of Louis XIV, had already formulated the doctrine that military superiority was sufficient to legitimate French claims, many years before Croissy did so. In a letter addressed to Louvois in August 1668 he wholeheartedly recommended ignoring the recently signed Peace of Aix-la-

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<sup>125</sup> Interestingly, Lespes de Hureaux recurred to the same kind of pseudo-legal, antiquarian argumentation used by the *chambre de réunions* of Metz to justify an eventual *réunion* of the province of Guipúzcoa (or, at least part of it) alleging some rights supposedly enjoyed by the ancients Viscounts of Labourd in the XI century!, AAE, CP, Espagne, n<sup>o</sup> 67, f. 395v-396v: Lespes de Hureaux to Croissy, Bayonne, 31 December 1681.

<sup>126</sup> AHN, Estado, libro 628, ff. 522-526: Report of the Marquis of La Fuente for the King of Spain, Paris, 13 October 1680.

Chapelle to take the town of Condé, thus opportunistically prolonging the legality of the laws of war to peacetime.<sup>127</sup> Once the town was captured, the enemy's allegations would be of no consequence because the object of contention would already be in the king's hands ("*vous plaiderez mains garnies*"). Vauban used a sophisticated metaphor to justify his proposal. According to him, there were no more equitable judges for his rightful claims than the cannons, because they did not lose time and could not be corrupted. If the king wanted to obtain swift and fair justice he should nominate them as arbiters. He should not trust any other judge. This was a strong statement for various reasons. Traditionally just wars were considered a kind of arbitration to decide disputes between sovereigns. In this sense battlegrounds were like courts of justice presided over by the most "equitable" of all judges: God himself. The outcome of a decisive battle or siege was equivalent to a judicial ruling issued by Divine Providence –or, in Machiavellian terms, by Fortune, an equally uncontrollable and hence "equitable" force. Vauban substituted the inscrutable judgement of Heaven with the largely predictable judgement of cannons. By denying the validity of an officially approved peace treaty, he extended the jurisdiction of cannons beyond the battlefield. Vauban's ideas had very disturbing implications. The elevation of cannons to the superior moral category of judges, both in peace and wartime, implied that military superiority was enough to legitimate the use of force at any time. From this point of view, and for the same reason, peace talks and negotiations, in which there was no place for judge-cannons, were seen more as hindrances to justice than as legitimate ways to settle disputes.

Vauban's positive consideration of "cannons" is particularly significant because it marked a deep contrast with the traditional view of artillery as an intrinsically evil and dishonourable, even if useful and necessary instrument of war. Loathing the invention of artillery was a common theme in Renaissance literature.<sup>128</sup> However, by the end of the seventeenth century this perception had changed dramatically. Thanks to the new prestige acquired by the natural sciences and the mechanical philosophy, cannons and other war machines began to be considered inventions worth of praise.<sup>129</sup> This was due partly to the development of the study of ballistics.<sup>130</sup> Artillery began to be seen not as mere practical activity but as a science

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<sup>127</sup> "Prenons Condé sans faire tant de cérémonies: quinze jours de temps en feront l'affaire, et après cela, vous plaiderez mains garnies. Il n'y a point de juges plus équitables que les canons, ceux-là vont droit au but et ne sont point corruptibles; faites que le roi les prenne pour arbitres, s'il veut avoir bonne et brève justice de ses justes prétentions. Dans l'état où il est, tous autres juges lui doivent être suspects.", Vauban to Louvois, [s.l.] 13 August 1668, in Rousset, *Histoire de Louvois*, vol. I, p. 158-9.

<sup>128</sup> See for example the entries "Arcabuz" and "Artilleria" in Sebastián de Covarrubias Horozco, *Tesoro de la lengua castellana o española*, (Madrid: Luís Sánchez, 1611), f. 83r-84r and 93v, respectively.

<sup>129</sup> Saint-Julien, *La forge de vulcain*, p. 1-2. See also the entry "Artillerie" in Denis Diderot and Jean le Rond d'Alembert, *Encyclopédie ou dictionnaire raisonné des sciences, des arts et des métiers*, (Bern and Lausanne: Sociétés Typographiques, 1781), p. 561 and 563. On the consideration of machines in general see Gérard Simon, "Les machines au XVII<sup>e</sup> siècle: usage, typologie, résonances syboliques", *Revue des Sciences Humaines*, v. LVIII, n<sup>o</sup> 186-187 (1982), 9-31.

<sup>130</sup> Domenico Bertolini Meli, *Thinking with Objects: The Transformation of Mechanics in the Seventeenth Century*, (Baltimore: Johns Hopkins University Press, 2006), pp. 202-204.

that could be systematised following the principles of physics and geometry.<sup>131</sup> The new prestige of the artillery can be assessed in Louis XIV's appointment of the engineer and mathematician François Blondel as instructor of the *Grand Dauphine* with the specific purpose of teaching him mathematics and geometry. Blondel was the author of a famous treaty on bomb shelling (*L'art de jeter les bombes*, Langlois, Paris, 1683), which he dedicated to the Sun King. In fact, during this period the French armed forces, both by land and by sea, excelled in the "art of shelling", and Louis XIV resorted frequently to this expedient when he wanted to punish an enemy city—as Fontenoy experienced in his own flesh.

Interestingly, French power politics addressed in practical terms some of the philosophical and moral concerns at the core of seventeenth-century intellectual debates. In particular, there were two major legal questions that sparked vivid debate among contemporary thinkers. On the one hand, the unclear status of the customary *ius gentium* in relation with the *ius naturale*, and on the other, the ambiguous relation between the concepts of law, justice, and force. It is commonplace in current historiography to approach these topics through the study of a short list of canonical texts. In many respects, our knowledge of the Early Modern law of nations continues to be articulated around a genealogical narrative of intertextual references with little connection with the actual political, legal, and cultural practices of the time.<sup>132</sup> That explains the enduring divide between, on the one hand, practitioners of Political and Military History, and on the other hand, historians of Early Modern Political and Legal Thought. I am not going to discuss here the many complexities of this issue. What I would like to stress instead is that authors like Grotius, Hobbes, Pufendorf, or Leibniz were trying to respond to the deep crisis of authority in which the traditional concept of *ius gentium* had fallen.<sup>133</sup> That means that a correct understanding of the Law of Nations during the seventeenth century should begin with the analysis of the role played by important agents like Louis XIV in defining and challenging contemporary customary behaviour among sovereigns—instead of the other way around. This seems to have also been the opinion of such relevant figures as Leibniz and Pufendorf, since they dedicated a large part of their intellectual efforts to write libels and other political works in the service of their respective masters—some of them, as we have seen, with the explicit purpose of counter Louis XIV's ambitions.

The author who best explained the serious consequences of Louis XIV's doctrine of power politics was one of his most fervent critics: G. W. Leibniz.<sup>134</sup> A

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<sup>131</sup> F. Blondel, *L'art de jeter les bombes*, (Paris: Nicolas Langlois, 1683), première partie, livre I, chapitre III, p. 7-9. M. Virol, *Vauban*, p. 42-48.

<sup>132</sup> A recent example is Neff, *War and the Law of Nations*. About this see the book-review by David A. Bell in *The Journal of Modern History*, 80, 2, (2008), 380-2.

<sup>133</sup> Jan Schröder, "The Concept of (Natural) Law in the Doctrine of Law and Natural Law of the Early Modern Era", in Lorraine Daston and Michael Stolleis (eds.), *Natural Law and Laws of Nature in Early Modern Europe. Jurisprudence, Theology, Moral and Natural Philosophy*, (Farnham: Ashgate, 2008), 57-71. Randall Lesaffer, "Peace treaties from Lodi to Westphalia", in Lesaffer (ed.), *Peace Treaties and International Law in European History from the Late Middle Ages to World War One*, (Cambridge: Cambridge University Press, 2004), 9-44.

<sup>134</sup> Patrick Riley, *Leibniz' Universal Jurisprudence: Justice and the Charity of the Wise*, (Cambridge MA: Harvard University Press, 1996); André Robinet, *Le meilleur des mondes possibles par la balance de l'Europe*, (Paris: PUF, 1994).



philosopher by vocation, and a jurist by education, he was also deeply involved in the political affairs of the time at the service of different potentates of the Holy Roman Empire, including the Emperor himself. Leibniz was also fully acquainted with French affairs. His major philosophical treatises are well known but he also wrote other kind of works, like libels and memoranda with specific political purposes. As in the case of other contemporary thinkers, his varied intellectual interests and his experience of worldly affairs went hand in hand.<sup>135</sup> Leibniz exposed the serious juridical implications of the *politique des réunions* in a famous libel entitled *Mars Christianissimus Autore Germano Gallo-Graeco, Ou Apologie des Armes du Roy Tres-Chrestien Contre Les Chrestiens*, written before the end of the siege of Vienna of 1683, and published the following year in Cologne.<sup>136</sup> The libel is a parody presented as an apology, a *reductio ad absurdum* of Louis XIV's justifications for the *politique des réunions*. In the text Leibniz impersonates an anonymous "Gallo-Greek German" – that is, one of the traditional allies of the French monarchy in the Holy Roman Empire. The author intends to demonstrate how Louis XIV's blatantly unlawful and arbitrary aggressions were actually just and Christian. His main argument was that since prophecies and miracles had clearly shown that the King of France was divinely elected as General Vicar of God on earth, ordinary notions of justice did not apply to him. His sovereign power was not subjected to any law, jurisdiction, convention, or vow. At the contrary, his will defined what was just and unjust. The Sun King had the right to enforce whatever came to his mind as far as it served to enlarge his *grandeur*, and consequently whatever he did in this respect was just by default. From this perspective, the libel ironically concluded, it had to be acknowledged that Louis XIV acted very moderately.

According to the libel this "new jurisprudence" (that seems pretty similar to the "cannon law" doctrine sketched by Croissy and Vauban) contradicted established principles of *ius commune*. That explains why it was so difficult for the French to justify Louis XIV's policies with ordinary legal arguments. For this reason, the smartest among them preferred to limit themselves to talk as "*politiques*" instead of entering into any legal dispute. In any case, litigation was pointless because the greatness of the King of France prevailed over every law and vow. That was of course a matter of much concern for his enemies. The libel describes the disturbing consequences of this "new jurisprudence". If any annexation could be justified with imaginary rights from a remote past, there would be no need of negotiating treaties like the ones of Münster or Nijmegen. If Louis XIV failed to respect his own promises so easily and so blatantly it would make no sense to give any credit to the rule of law and honesty. If violence was to be exercised so arbitrarily, then good faith and the law of nations were useless.

Leibniz's target audience was not Louis XIV entourage, but the real "Gallo-Greek Germans" –that is, the princes of the Holy Roman Empire that in spite of all continued to be allied with France. Eventually, even those would change their minds.

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<sup>135</sup> Tetsuya Toyoda, *Theory and Politics of the Law of Nations: Political Bias in International Law Discourse of Seven German Court Councilors in the Seventeenth and Eighteenth Centuries*, (Leiden and Boston: Martinus Nijhoff, 2011), p. XII, and particularly on Leibniz see chapter 4.

<sup>136</sup> Translated in English as "Mars Christianissimus (Most Christian War-God)" in *Leibniz: Political Writings*, edited by Patrick Riley, (Cambridge: Cambridge University Press, 1988), pp. 121-145.

It is possible to see this shift in the writings of another prestigious jurist of the time: Samuel von Pufendorf. Like Leibniz, Pufendorf was deeply involved in politics. He served as counsellor, jurist, and official historiographer of the King of Sweden until 1688, when he accepted an invitation of the Elector of Brandenburg to move to Berlin. Initially, both Pufendorf's masters were supporters of France and fierce opponents of the Habsburgs. In his *Introduction to the History of the Principal Kingdoms and States of Europe*, Pufendorf still considered Louis XIV in a positive manner as the most powerful king and actually the arbiter of Europe.<sup>137</sup> His opinion was in line with the traditional protestant view of France as a necessary counterbalance power against the Catholic hegemony of the Habsburg dynasty. However, his dissertation stopped at the Peace of Nijmegen, that is, before the full implementation of the *politique des réunions*. By the end of 1680, Pufendorf's views have changed. He wrote for the king of Sweden *De occasionibus foederum inter Sueciam et Galliam et quam parum illa ex parte Galliae observata sint* to justify the rupture of his traditional alliance with France. Some years later Pufendorf denounced the revocation of the Edict of Nantes in his *De habitu religionis christianae ad vitam civilem*, in which he invited Prince-Elector Friedrich-Wilhelm of Brandenburg to sever his opportunistic alliance with France in order to lead a Protestant coalition against the unholy tyranny of Louis XIV.<sup>138</sup> It is fair to say that all these writings were part of propaganda campaigns orchestrated by Louis XIV's enemies.<sup>139</sup> And yet, they were more than libels. Both Leibniz and Pufendorf had a genuine interest on the argument beyond the political agendas of their respective masters.<sup>140</sup>

## VI.

In many respects the *politique des réunions* was the confirmation of the deep crisis of authority in which the customary *ius gentium* had fallen by the end of the seventeenth century. At the core of this issue was the problem of legal certainty (*certitudo*).<sup>141</sup> That was particularly truth in the case of customary legal orders like the law of nations, in which there were no clear obligation to adhere to established rules. This lack of confidence on the traditional juridical culture was shared not only by Louis XIV's ministers but also by an increasingly number of jurists. Leibniz, Pufendorf, and other contemporary authors, hoped to overcome legal uncertainty

<sup>137</sup> First published in German as *Einleitung zur Geschichte der vornehmsten Staaten Europas*, Frankfurt, 1682, as a response to a previews unauthorised version of 1680 based on lecture notes taken by his students. We quote from the English edition by Gilliflower and Newborough, London, 1697.

<sup>138</sup> David Saunders, "Hegemon History: Pufendorf's Shifting Perspective on France and French Power", in Olaf Asbach and Peter Schröder (eds), *War, the State and International Law in Seventeenth-Century Europe*, (Farnham: Ashgate, 2010), 211-230.

<sup>139</sup> Jean Schillinger, *Les pamphétaires allemands et la France de Louis XIV*, (Bern: Peter Lang, 1999)

<sup>140</sup> Peter Schröder, "Un politique peut dire ce qu'un prince devrait faire. Les concepts de paix et d'équilibre dans la pensée politique de Leibniz", in Lucien Bély, Bertrand Haan, and Stéphane Jettot (eds.), *La paix des Pyrénées (1659) ou le triomphe de la raison politique*, (Paris: Classiques Garnier, 2015), 109-132.

<sup>141</sup> Heinz Mohnhaupt, "Lex certa and ius certum: The Search for Legal Certainty and Security", in Daston and Stolleis (eds.), *Natural Law and Laws of Nature in Early Modern Europe*, 73-88.

by applying to natural law a “scientific” method comparable to the one used in natural sciences in order to establish clear, universal legal principles (the so-called *more geometrico*).<sup>142</sup> In particular, Louis XIV’s power politics prompted Leibniz to propose a universal jurisprudence based on the idea of “justice as the charity of the wise” that he significantly stated for the first time in the introduction to his *Codex juris gentium diplomaticus* (Hannover: Samuelis Ammonii, 1693) –a compilation of documents reunited in response to French *réunions* and territorial claims in the Holy Roman Empire. But even him acknowledged that the law of nations was nothing more than a collection of formalities deprived of intrinsic moral sense that changed throughout history, as it could be easily learnt from reading ancient peace treaties and other official documents.<sup>143</sup> In a world of continuous competition among sovereigns in which the law of nations tended to be equated with natural law, fear of God did not work as a deterrent anymore –thus vows and promises lost their traditional value. In such a world the responsibility of keeping an ambitious and powerful ruler as Louis XIV at bay lay on a society of sovereign peers (and in Pufendorf’s opinion, particularly protestants)<sup>144</sup> willing to punish any breaching of the established order. In this sense, the challenge of the *politique des réunions* pushed for a refashioning of the old doctrine of the balance of power as the only viable way to re-establish if not legal certainty, at least political stability in Europe after Louis XIV’s death in 1715.

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<sup>142</sup> Alfred Dufour, “L’influence de la méthodologie des sciences physiques et mathématiques sur les Fondateurs de l’Ecole du Droit naturel moderne (Grotius, Hobbes, Puffendorf)”, in Dufour (ed.), *Droits de l’homme, droit naturel et histoire*, (Paris: PUF, 1991), 93-110. Klaus Luig, “Leibniz’s Concept of jus naturale and lex naturalis -defined ‘with geometric certainty’”, in Daston and Stolleis (eds.), *Natural Law and Laws of Nature in Early Modern Europe*, p. 183-198.

<sup>143</sup> An English translation of the preface in *Leibniz: Political Writings*, 165-176.

<sup>144</sup> As we have already mentioned in the case of his *De habitu religionis christianae ad vitam civilem*; an argument that he would develop further in his posthumous *Jus feziale divinum sive de consensu et dissensu Protestantium*, (Lübeck: A.S.R., 1695).