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Prefaces and Authorship in International Law. The Example of Vitoria's De Indis

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Prefaces and Authorship in International Law. The Example of Vitoria's De Indis

Abstract

In this article, I study the role of prefatory texts in international law. Based on Gerard Genette's analysis of paratexts, I examine how prefaces shape the expectations of the reader through indications of genre, method and authorship. The first section introduces the notion of 'paratext' and provides some illustrations in treaties and documents of the International Court of Justice. The second section focuses specifically on a work that has broadly been regarded as foundational for the discipline of international law: Vitoria's *De Indis Et De Iure Belli*. Through its analysis of paratext, this article provides a new lens on textual products and the creation of authorship in international law.

Prefaces and Authorship in International Law. The Example of Vitoria's *De Indis*

Wouter Werner

Preface

Before I begin, let me state the obvious: it is not common to include prefaces to academic journal articles. Prefaces can be found in books and dissertations, not in journal articles. Their absence was the starting point of this article. For me, it was yet another illustration of the way in which the presentation of a text shapes the expectations of the reader. Books are often presented through prefaces, articles through abstracts. I have been interested in such paratextual elements for a longer period, and I had made some preliminary attempts to analyse them in journal abstracts and manuals in the field of humanitarian law. The invitation to contribute to this special issue was a welcome encouragement to dig deeper into the presentation of texts in international law. I therefore would like to thank the editors of this special issue for their invitation and their support of my initial idea. The text below is the result of my digging into paratexts in different forms of international legal writing: court decisions, treaties and, most of all, a scholarly text that is broadly seen as foundational for the discipline. I hope my article alerts the reader to the ways in which she encounters legal texts, as well as to the importance of genre in international law.

March 13, 2019

1 Introduction

'To indicate what is at stake, we can ask one simple question as an example: limited to the text alone and without a guiding set of directions, how would we read Joyce's *Ulysses* if it were not entitled *Ulysses*?' (Genette 1997: 2).

Genette's example points to an important aspect of the way readers encounter texts. As the start of this article already indicates, texts are never 'just there': they carry titles, lay-out, author names, prefaces or abstracts, acknowledgments etc. These so-called 'paratextual elements' are understudied in the field of international law, yet they are crucial in making sense of the multitude of written products that are studied, analyzed, produced and disputed on a daily basis. To paraphrase Genette: 'limited to the text alone, and without a set of guiding directions, how would we read the United Nations Charter if it were not entitled "United Nations Charter"?' In this essay, I explore some of paratextual elements in international law, with a special focus on prefaces. I will show how prefaces have helped to present the authorship, identity and authority of legal texts. I will do so by *first*, explaining the concept and workings of paratexts more in general and *second*, by focusing on the way paratext has helped to present a text as a foundational text in international law, Francesco de Vitoria's *De Indis*. In this way, I seek to answer one of the core questions that Hyo Yoon Kang and Sara Kendall identified for research into legal materiality: how do "materials configure [as] 'matters of concern' for law: that is, [...] how law is informed by material conditions and mediated through interpretive and text-based practices" (Kang and Kendall 2019). I take up this question in relation to the self-understanding of the discipline of international law, asking how prefaces configure as matters of concern for the stories international lawyers have told about their origins. Paraphrasing Kang and Kendall, I argue that prefaces have functioned as 'conditions of possibility in and through which Vitoria has arisen as founding father of international law.'

2 Paratext and Prefaces

In international law, the status of a text matters a great deal. Legal counsels before the International Court of Justice (ICJ), for example, would preferably rely on treaty provisions rather than scholarly writings or reports by non-governmental organizations. In similar fashion, they would rather rely on documents that carry binding legal obligations than on documents that are hortatory. Professors in law schools spend considerable time teaching students the difference between ‘Articles’ written by the International Law Commission and ‘articles’ that appear in binding treaties, or between ‘opinions’ of scholars and ‘opinions’ of the ICJ. Distinguishing legally valid obligations from extra-legal obligations or non-binding law is one of the core skills that international lawyers need to master. In terms of speech act theory, lawyers are trained to identify the illocutionary force of a specific utterance or written product. The same propositional content can be used to produce different legal effects: to create enforceable rights, to express future ambitions and hopes, to make knowledge claims, recommendations, etc.

This raises the question how lawyers recognize (or assign) the status of a text. What is it that makes one text so different from the other? One of the tools used to assign different status to different texts is what Genette has called ‘paratext’. Paratexts are immediately visible when one picks up a written work. As I set out in the introduction, paratext includes elements such as titles, the name of the author, logos and layout, prefaces and preambles or acknowledgments. Genette introduced the term ‘paratext’ as follows: ‘text rarely appears in its naked state, without the reinforcement and accompaniment of a certain number of productions, themselves verbal or not, like an author’s name, a title, a preface or illustrations. One does not always know if one should consider that they belong to the text or not, but in any case they surround it and prolong it, precisely to *present* it, in the usual sense of the verb, but also in its strongest meaning: to *make it present*, to assure its presence in the world, its “reception”’ (Genette 1991: 261).

Genette’s analysis was limited to literary works, and in particular

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books. However, there is no reason to confine the examination of paratext to such works. On the contrary: paratexts occur in virtually all texts and actually help to distinguish literary works from other sorts of books (just think of the names of those who write blurbs on the cover of books—a clear indication of the type of book one has picked up). By now, paratexts have been analyzed in relation to several other written products, including academic publications (Hyland 2004, Jackson 2000) or the packaging and promotion of medical products (Tweed and Scott 2018). Although the concept of paratext has thus moved beyond the world of literary novels, (international) lawyers have by and large neglected the concept and functions of paratext (Boer 2017 is an exception). However, there are examples of research that have analysed paratextual elements without reference to the concept as such (see for instance D'Aspremont and Brabandere 2018, and Cristobal 2016). This is remarkable, since paratext in law is arguably even more important than in literary works. In literary works, Genette argues, one of the functions of paratext is to indicate the genre to which the written product belongs (e.g. novel, biography, tragedy). Genette describes the use of paratext in this context as a 'pact', but immediately qualifies the use of this metaphor: 'the term pact is evidently somewhat optimistic with regard to the role of the reader, who has signed nothing and must either take it or leave it. But the generic or other markings *commit* the author, who, under penalty of being misunderstood, respects them more frequently than one might expect' (Genette 1997: 430). This shows that paratext cannot be viewed as simply an instrument available to the author. It is a (material) condition that makes it possible for text, context and author to appear.

In law, even Genette's qualification is not always applicable: if those in power label their written products as 'law', or as 'binding obligations', this not only binds the authors, but the addressees as well. After all, where legal texts create and introduce authors, they also present formal *authorities*. How paratexts categorize signals the binding or non-binding nature of their written products, which matters a great deal. Take for example the genre indications that can be found at the International Court of Justice. In October 2018, the Court took a decision in the

case between Bolivia and Chili on the obligation to negotiate access to the Pacific Ocean. The binding judgment itself was presented in the traditional fashion, with an opening that contains elements such as date, list number, and the name of the case. The same judgment was also communicated via a press release, whose heading looked as follows:



INTERNATIONAL COURT OF JUSTICE

Peace Palace, Carnegieplein 2, 2517 KJ The Hague, Netherlands
Tel.: +31 (0)70 302 2323 Fax: +31 (0)70 364 9928
Website: www.icj-cij.org Twitter Account: @CIJ_ICJ YouTube Channel: CIJICJ
LinkedIn page: International Court of Justice (ICJ)

Press Release

Unofficial

No. 2018/49
1 October 2018

Obligation to Negotiate Access to the Pacific Ocean
(Bolivia v. Chile)

The Court finds that the Republic of Chile did not undertake a legal obligation
to negotiate a sovereign access to the Pacific Ocean
for the Plurinational State of Bolivia

The press release presents itself in a way that suggests authority and lack of binding character at the same time. The logo and the name clearly identify the author: the International Court of Justice. Yet the authority of the Court is used to inform the reader that this document is ‘unofficial’—a paratextual (and somewhat paradoxical) element that precludes the reader from using the press release as if it contained binding obligations.

In this article I will focus more specifically on one of the classical examples of paratext: the preface. For Genette, the preface was the archetypical example of paratext, which helps explain why he devoted a few chapters to this element, whereas other paratextual elements were dealt with in a single chapter or even a part thereof. The general point of the preface, Genette argued, is ‘to ensure that the text is read properly’ (Genette 1987: 197), an ambition that combines two elements: to ensure that the text is *read*, and to ensure that it is read *in the proper way*. Prefaces, in other words, contain promotional and instructive elements. To this end, they combine different elements such as an

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explication of the importance of the topic, the invocation of tradition, the indication of the genre, an emphasis on the novelty of the topic or a reflection on the genesis and method of the text itself. What is more, the preface offers the opportunity to introduce and present the author in the text. In international law, similar functions are performed in preambles to treaties and decisions or resolutions by international organizations (the topic of preambles is relatively understudied in international law. For two excellent analyses, however, see Klabbers 2018 and Koskenniemi 1999). Take for example the recently adopted 'Global Compact on Migration' (Global Compact for Safe, Orderly, and Regular Migration 2018). The preamble to this document stamps it with the authority of 'We, the heads of States and Government and High Representatives', thus creating an author of the text that follows. It also sets out the underlying rationale of the document, in an attempt to mediate between the text and the context in which it is to operate. The preamble then invokes tradition and a thick body of norms and principles upon which it is founded, including the UN Charter and a multitude of treaties in the fields of human rights, migration and environmental protection. The end of the preamble is particularly interesting, as it contains explicit pointers as to its own status. After paragraph six makes it known that 'This Global Compact is a milestone in the history of the global dialogue and international cooperation on migration', the final paragraph explicitly sets out the genre and status of the document by stressing 'This Global Compact presents a non-legally binding, cooperative framework that builds on the commitments agreed upon by Member States in the New York Declaration for Refugees and Migrants'. The preamble does not spell out in further detail what this qualification entails, which has led to intense political discussions as to its precise status in law. Especially the supporters of the Global Compact had frequent recourse to the way it presented itself in the preamble: as a non-legally binding text. Based on the preamble, they argued that the Compact did not create new legal obligations, but merely restated, in a legally non-binding way, already existing duties and responsibilities of States. They derived, in other words, the legal status of the Compact from its preamble, thus elevating the latter to the

level of a determinate (and apparently ‘binding’) guide (Peters 2018).

Before the invention of the printing press, prefaces did not appear as separate texts. Instead, they were present without specific pointers (such as the title ‘preface’), concealing their existence, as it were, ‘by depriving it of the means of drawing attention to itself with an appearance *en exergu*’ (Genette 1997: 163). Genette here refers to the example of Homers’ *Iliad*, which starts with ‘the invocation of the muse, announcement of the subject (the wrath of Achilles...), and establishment of the narrative starting point (for the *Iliad*, the quarrel between Achilles and Agamemnon...)’ (Genette 1997: 164). However, modern readers typically encounter the *Iliad* in a very different way. Their *Iliad* does not start right away, but comes to them in mediated form, preceded by one or more prefatory texts written by experts who reflect on the translation or contextualize and explain the work that follows. Take for instance the 1928 translation and reprint of the *Iliad*, published in New York and London (Homer 1928). This edition starts with a prefatory introduction, which contextualizes the work, secures Homer’s authorship of the works that follow and, most of all, informs readers how to read the *Iliad* properly (See for example the following instructions: ‘No less necessary to a right understanding of the *Iliad* and the *Odyssey* is it that we should comprehend the poet’s technique, and especially the way in which this was conditioned by the fact that the poems were recited, not each in its entirety, but in successive rhapsodies.’ (at x); ‘Lastly, he who would know Homer must approach him with an open mind and lend himself to the guidance of the poet himself.’ (at xiv)).

Such prefaces written by third persons (‘allographic prefaces’, to use Genette’s term) do something important to the text and the author: in an allographic preface, both the work and the author of the work are turned into *subjects* of another text which presents them. This effect was lucidly illustrated in Jorge Borges’ essay ‘Pierre Menard, Author of the *Quixote*’. The essay describes the attempt of Pierre Menard, a French writer in the early 20th century, to write *the Quixote*. His ambition was not to copy the *Quixote*, nor to create another, contemporary *Quixote*.

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Instead 'His admirable ambition was to produce a number of pages which coincided – word for word and line for line – with those of Miguel de Cervantes' (Borges 1999: 93). In other words: he wanted to write the *Quixote* exactly like Cervantes, but this time as a text written by Menard. This ambition made it impossible for him to add a prologue (or preface), as this 'would have meant creating another character – "Cervantes" – and also presenting *Quixote* through that character's eyes, not Pierre Menard's' (Borges 1999: 93). This once more shows the importance of prefaces, as ways to guide the reader's reception of a text—prefaces not only instruct how to read the text properly, they sometimes also instruct how to make sense of the author.

3 Creating the Missing Father: Vitoria and the Allographic Preface

Pierre Menard's problem is not just an invention of Borges. The transformation of 'author' into 'character' can be witnessed concretely in international law as well, for example in the presentation of the work of Francesco de Vitoria. Vitoria has been labeled one of the 'founding fathers of international law' by admirers and critics alike (Scott 1934; Anghie 2005; Fitzpatrick 2008a). More generally, Vitoria is treated as someone who has produced 'political writings' (Vitoria 1991), and as an author who laid down his views in his 'teachings', 'work' or even 'jurisprudence'. Anghie, for example, presents Vitoria as an acting subject who 'focuses on social and cultural practices', 'assesses and formulates the rights and duties' and 'confronts the problem' of creating law between radically different societies (Anghie 2002). Another example is the search machine 'world cat', which explicitly lists Vitoria as the 'author' of *De Indis*, just like the website of 'Amazon' does.¹

1.	<p>De Indis et De Iure belli relectiones : being parts of Relecciones Theologicas III</p> <p>Auteur: Francisco de Vitoria, Carnegie Endowment for International Peace, Division of International Law.</p>	<p>Latijn 1917</p> <p>Gebruik (Gazon)</p> <p>boek</p>
2.	<p>De Indis et de Iure belli relectiones : being parts of Relecciones Theologicas III</p> <p>Auteur: Franciscus de Victoria, Ernest Nys</p>	<p>Engels 1917</p> <p>Gebruik D.C. Carnegie Institution of Washington</p> <p>boek</p>
3.	<p>De Indis et de Iure belli relectiones : being parts of Relecciones Theologicas III</p> <p>Auteur: Francisco de Vitoria, Herbert Francis Wright, John Pawley Bate, Ernest Nys</p>	<p>Engels 1917</p> <p>Gebruik Carnegie Institution</p> <p>boek</p>



Las relecciones de Indis y de Iure belli Paperback – 1963

by Francisco de Vitoria (Author)

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It is certainly correct to assume that there was a person named Francisco (or was it Francesco, Franciscus, or Francisci?) de Vitoria (or was it Victoria?) (all these different variations in the name can be found in Nys ed 1917), who lived from approximately 1483 until 1546. It is also safe to assume that this person voiced his opinions about matters concerning colonialism and natural law in public lectures delivered in 1532. However, the fact of the matter is that this same person *never wrote down* these opinions in the works that are available to us today. Vitoria's 'works' are based on notes that were taken by students who attended his so-called lectures and relectiones, public (re)-lectures that were given at the end of a course to a college of learned colleagues. The

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relectiones were, by their nature, spoken text, not meant for publication. We lack, in other words, the authorial voice of the alleged father of the discipline. We even lack the mediated voice of the sons of the father, as also the notes made by the students are no longer available today. Wright, who re-edited a 17th century edition of *De Indis*, even doubts whether the original notes could have been from the relectiones or whether they were taken at the regular lectures instead (193). The first print of the relectiones was published in Lyon (1557, eleven years after Vitoria's death), followed by a second and different print in Salamanca (1565) and a third in Ingolstadt in 1580 (reprinted in 1696 in Cologne and Frankfurt). The latter print is the basis for several subsequent translations and reprints, including the classical version of Vitoria's relectiones in English by the Carnegie Foundation in 1917.

Absent the authorial voice of the father himself, all versions have to secure somehow that they actually print the words of Vitoria. One of the tools to secure the authority of the manuscript is the inclusion of paratext, such as the name of the alleged author, followed by titles, summaries and subtitles (even though Vitoria himself most likely did not include all these elements). This is done in the 1580/1696 print of the relectiones, resulting in an opening image of the book that suggests both authorship and authorial voice:

302 REVERENDI PATRIS, FRATRIS FRANCISCI DE VICTORIA
DE INDIS RECENTER INVENTIS¹
RELECTIO PRIOR.

*Locus relegendus est ex Matthaeo, "Docete omnes gentes, baptizantes eo
in nomine Patris, et Filii, et Spiritus sancti," Matth., ult. cap.²*

SECTIONIS PRIMAE SVMMA.³

1. Dubius in rebus, ut sit tutus in conscientia, quomodo debeat consulere illo ad quos spectat haec docere.

Another way of securing (and qualifying) authorship is through the inclusion of prefaces. The edition I have worked with for this essay contains no less than six prefatory texts, layer for layer building a sense of authenticity and authorship, while at the same time pointing at the limits of Vitoria's presence in the text. My edition of the *relecciones* is a modern reproduction of the 1917 edition that was published by the Carnegie institution (Scott ed 1917, photo-reproduction by Columbia Planograph Co., Washington). The first page after the cover informs the reader: 'You are holding a copy of an original work that was published before 1923 (...). This book may have occasional imperfections such as missing or blurred pages, poor pictures, errant marks, etc. that were either part of the original artefact, or were introduced by the scanning process. We believe this work is culturally important, and despite the imperfections, have elected it bring it back into print and part of our continuing commitment to the preservation of printed works worldwide'. The preface thus starts out with a disclaimer, which at the same time works as a stamp of authenticity: you are holding a copy that looks exactly like the original, apart from mistakes that may have occurred in the scanning process.

- a. So what it is the reader is holding in her hands? As the book has quite a complex structure, let me list the different parts below:
- b. The last part of the 1917 edition contains a photographic reproduction of the (Latin) 1696 edition of *De Indis*. As I have set out above, the 1696 edition itself was also a reprint, this time of the 1580 edition printed in Ingolstadt. The reader is thus able to directly access the 16th and 17th century texts herself via the 1917 reprint. The 1696 edition is preceded by a small prefatory remark by Francis Herbert Wright, as well as by a longer preface by the editor of the 1580 edition.
- c. In addition to the photographic copy of the 1696 edition, the book contains a revised and re-edited Latin version of *De Indis* put together by Herbert Francis Wright. This edition is not only revised in Latin, but also appears with (English and

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Latin) explanatory commentaries in footnotes, which set out, *inter alia*, possible sources on which the original text relied, choices made by previous editors and differences between the 1696 print and earlier prints of Vitoria's relectiones. The 1696 print, in other words, is presented again to the reader, with new and extensive paratextual elements included. The revised and re-edited version by Wright is preceded by a preface in English.

- d. The relectiones are also printed in translated form (translated by John Pawley Bate), preceded by an introduction written by Ernest Nys. Nys' preface is printed in French, directly followed by its translation into English.
- e. The different parts of the book set out above are preceded by a preface written by James Brown Scott.

A The prefatory comment preceding the photocopy

As I said earlier, the photographic reproduction of the 1696 print is preceded by a small prefatory comment by Herbert Francis Wright. This comment contains a remark that is of interest for the topic of my discussion here: 'As a matter of historical interest, the Preface of the original volume is reproduced, although not essential for this publication' (299). This remark suggests that 'the publication' is somehow separable from the preface, as if the text assigned to Vitoria speaks for itself. This is quite a bold statement, especially if the *content* of the preface of the 1580 edition is taken into account.

B The preface of the 1580 edition

The author of the preface presents himself as the person who is also responsible for the 1580 print of the relectiones. His name is unknown, but he describes himself as 'one of the Doctors of Sacred Theology at Ingolstadt'. The 1580 preface can be read as an extensive attempt to secure authenticity and authorship of the (then) newly printed edition of the relectiones. The preface begins by reaffirming the greatness of

‘Franciscus de Victoria, who was by far the most learned theologian of the highly flourishing University of Salamanca within the memory of our fathers...’. The preface then continues to explain the hard work put into the publication and the need for coming up with a third print so shortly after the earlier editions of 1557 (Lyon) and 1565 (Salamanca). The editor felt the need to come up with a new version, as he initially assumed that only the 1557 Lyon version of the relectiones had survived. This version, he points out rather bluntly, contained many ‘blunders’ and ‘was hopelessly corrupt’. However, when the first five sheets of the 1580 edition were printed, the editor quite unexpectedly encountered the 1557 Salamanca version of the relectiones. The Salamanca version itself also contains a preface, which critiques the Lyon version even more harshly, denouncing it as ‘a little book with a most imposing title, but containing countless horrible misprints, absurdities which were disgraceful and insulting to the author (sic) as well as to the whole theological school’. The 1557 print even stated on the title page that the edition ‘had been purged of the prodigious and countless mistakes’ of the first edition (82).

So why not stop editing the Lyon print and just reprint the 1557 Salamanca version of the relectiones? The reason given in the Ingolstadt preface is quite straightforward: although the Salamanca version is to be praised (‘so clean, so clear, so gilded’), it too contains ‘blunders and faults neither few nor trivial’. Despite its harsh critique of the Lyon version, the preface argues, the Salamanca version suffers from some of the same mistakes, while adding faults of its own. This leads up to the main topic of the first part of the preface: how has the editor secured that the voice of Vitoria is heard on the pages that follow? Whereas the editors of the Lyon and Salamanca versions could still consult the original notes taken by Vitoria’s students, the editor of the Ingolstadt version only had the two apparently faulted editions of Vitoria’s relectiones. The student notes themselves were no longer available. The preface sets out how the Ingolstadt editor went about:

- i. First, in cooperation with a ‘wise colleague’, the Ingolstadt doctor corrected the Lyon version on the basis of the Salamanca

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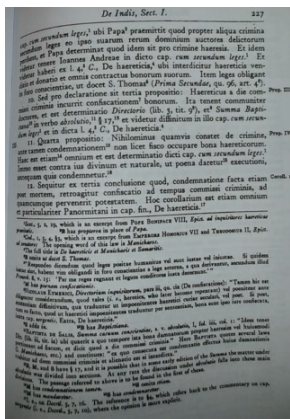
- version, but only where he found no obvious errors in the latter.
- ii. Secondly, where the Salamanca version contained 'more trifling blunders', the Ingolstadt doctor relied on his own judgment and removed those parts.
 - iii. Thirdly, where the version contained, in the editor's opinion, 'serious and manifest fault', he 'took counsel with the most skillful theologians and philosophers, in order that the fault might be corrected by the common judgment of many'. He adds that nevertheless, 'sometimes all of us together could hardly find a principle or method for the restoration of some corrupt passage'.
 - iv. Finally, the five pages that had already been printed were corrected by adding a list of errata.

The 1580 preface thus shows how the absent author is made present again: through comparison, personal judgment and collegial deliberations (In this context, it is worth mentioning that there is one more text in-between the preface and the first *relectio*—a text that probably goes back to the 1565 Salamanca edition. The text is entitled 'A Poem to the Reader in Praise of the Work'. Although the title suggests that the reader is addressed, the text often directly addresses Vitoria as the author of important teachings. It states, for example: 'This Franciscus de Vitoria is the first part of thy work, and that is so far too, the cost of our gratitude for they deed').

C The preface to the revision by Wright

Wright's preface further solidifies the claim to authorship developed in the Ingolstadt reprint. It is actually somewhat remarkable to see how much Wright builds on the Ingolstadt preface, which he, as I set out above, also labeled as 'of historical interest, although not essential for this publication' (see above, under (a)). Wright's preface begins by recalling that Vitoria's lectures were never intended for publication and that the titles given to them are all added later by editors and publishers. He also basically retells the story of the three editions of Vitoria's *relectiones* of 1557, 1565 and 1580. The 1557 Lyon version

is discredited as faulty, and the Salamanca version is praised for its improvements but eventually also discredited for its faults and mistakes. However, Wright’s preface adds something important to the preface of the Ingolstadt edition. Although the Lyon and Salamanca versions contained several mistakes, he argues, they nevertheless provide a solid basis for the Ingolstadt version, which takes the two earlier editions as its starting point. This is the case, because the two earlier editions were based on the notes taken by several students of Vitoria. This means, according to Wright, that the first two editions represent the common denominator of what could be found in the several notes (‘manuscripts’) taken by the students: ‘...it is the consensus of the manuscripts that would give what the author (sic) probably dictated. This consensus is represented by the first and second editions (...)’ (193). In addition, Wright points to the fact that Boyer, who edited the Lyon edition, was personally acquainted with Vitoria and thus must have known what the latter had said during the relectiones. The Salamanca edition, in turn, was edited by Alonso Muñoz in consultation with two of Vitoria’s former students. Wright describes Muñoz’ method as follows: ‘[Muñoz] persuaded a fellow-religious (...) to read aloud the text of Boyer, while he ran over in his mind simultaneously the manuscript copies. When any discrepancy occurred they halted and supplied what was wanting or corrected what was wrong. Doubtful matters were settled by consulting manuscripts, for there was an abundance of them, and when these failed, by having recourse to the sources used by the author (sic). All of this was done a second time and a third time, so that the editor finally gives the work to the reader with great confidence’ (196). Yet Muñoz did not simply follow what was in the manuscripts. Wright points out that he also made additions and modifications, most likely in order to prevent Vitoria’s work from



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seeming 'illogical, incomplete or inelegant' (197).

The editor of the Ingolstadt edition, Wright argues, could therefore take the Lyon and Salamanca editions as his starting point for an improved print of the relectiones. Wright credits the Ingolstadt edition for having made 'good emendations' (199), which help explain why subsequent prints basically followed this edition of the relectiones (Wright points at the editions of Lyon (1586 and 1587), Antwerp (1604), Venice (1626), Salamanca (1680), Cologne and Frankfurt (1696) and Madrid (1765)). However, just like his predecessors in the 16th century, Wright finds the most accurate edition of the relectiones still deficient. After having praised the Ingolstadt print, Wright continues by stating that the 'text contains the self-same kinds of errors which he (sic) chides the editors of [Lyon and Salamanca]' (199). This warrants yet another revision, as provided by Wright in the text that follows. In this text, Wright has added footnotes and brief commentaries, which show differences between the Lyon, Salamanca and Ingolstadt interpretations and quotations, and which explains possible mismatches between quotations and original texts. Wright's text thus literally shows how the 'author' Vitoria is created through layers of text: he takes the Ingolstadt version as his starting point, but visually opens up other choices and possible mistakes that (could) have been made:

D The Preface by Nys to the Translation

The English translation of the Ingolstadt edition is preceded by an introduction written by Ernest Nys. Nys' text was written in French, and translated by John Pawley. Both Nys' French text and Pawley's translation are included in the Carnegie publication. Nys' introduction reads more like an extensive book chapter (45 pages) than a traditional preface. It takes the reader on a broad tour through the history of the *Respublica Christiana*, the traditions on which Vitoria built, some bibliographic information, the main points of the relectiones as well as Vitoria's place and reputation in intellectual, religious and governmental circles. The introduction is rather brief on the authenticity and authorship of the relectiones. Nys acknowledges that

the editions printed so far 'left much to be desired' but emphasizes that this is a small matter since 'the mistakes, after all, were mistakes in printing, which the reader can correct' (81). According to Nys, the more important question is whether the lectures as printed are complete. To this, Nys admits, 'no decisive answer can be given', but again, this is not something that should bother the reader too much, because 'it is certain that the dissertations, such as we now see them, are enough to give us an idea of the opinions of the master and, even as regards their form, they enable us to appreciate the elegance, the clearness, the charm of the Latin diction employed by the professor of Salamanca' (81). Nys' introduction thus assures and qualifies the authorship of Vitoria. While we don't know whether the printed words are indeed that of 'the master', we are comforted by the idea that they certainly give a sense of the words he must have said and the beautiful way in which he has articulated those words.

E The preface to the book as a whole by Brown Scott

The volume as a whole (the term 'volume as a whole' includes all the different texts I discussed above: the photocopy of the 1696 edition, the revised edition prepared by Wright, the English translation of the 1696 edition and all the prefaces) is preceded by a preface by James Brown Scott, the general editor of the series 'Classics of International Law'. The preface is short compared to the others included in the volume (only two pages), and more than half of it is spent on explaining the rationale of the series as a whole. However, the preface also brings up questions of authorship and authenticity, albeit in a somewhat contradictory way. The preface acknowledges that the relectiones were not written by Vitoria himself, but 'based upon these two readings taken down by a pupil and published after his death, without the professor's revision and in a very summary form' (5). As I have set out above, this is still quite an optimistic assessment, as the 1696 edition that is republished by the Carnegie institution was not even based on notes by pupils, but on two printed editions that were based on notes that may or may not have been taken during the

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relectiones. The preface also acknowledges that the 1696 edition was faulty. This is the reason, Brown Scott argues, to come up with the revised edition by Wright that is also published in the Carnegie edition of the relectiones (5). Still, the preface continues to present Vitoria as a person ('the broad-minded and generous-hearted Dominican') as well as a character, 'one of the founders of International Law' (5). The preface also presents the printed relectiones as 'the tractates [of the generous-hearted Dominican]', that have become 'as Thucydides would say, a perpetual possession to the international lawyer' (5). In this way, the preface presents Vitoria as the missing founding father, who, through the reprinted texts, nevertheless is perpetually present in the field he helped to create.

4 Postface: 'Let's Have a Chat'

(...) many readers apparently prefer to read the preface after the text, when they will know "what it's all about." The logic of this situation should then lead the author to acknowledge such an impulse and offer a postface instead; here he could expatiate on his subject knowing that both sides were fully informed: "Now you know as much about it as I, so let's have a chat." (Genette 1997: 237).

Our chat should probably start with a disclaimer: there are not many books in international law that are put together by an unnamed editor, who claims to speak on behalf of an absent writer, on the basis of two earlier texts that he labels as faulty. Nevertheless, the discussion of the several prefaces to (of) Vitoria's reprinted relectiones does tell something about the way in which some authors are turned into characters in the field of international law. The work of Grotius or Vattel, for example, while being written and introduced by themselves, seldom appears without allographic prefaces that present them as a main character in the story of international law. More generally, my discussion of the presentation of Vitoria and his work has shown the importance of paratextual elements in international law. International law, just like other fields, cannot exist in the form of 'naked texts', without a multitude of paratextual elements that present it to the reader and

make it present in the world. I hope that my analysis of the somewhat curious story of Vitoria's *De Indis* has alerted international lawyers to the essential role of paratext, and to the way in which they encounter and make sense of textual products. Prefaces have functioned as a mode through which Vitoria could be presented, and be *made present*, as a foundational figure for international law. Prefaces, just like other liminal texts such as preambles, mediate between the text and its context, as they act as a 'mode by which concrete matters come to be enlisted as a matter of law' (Kang 2018).

Endnotes

1. World Cat 2019 <[https://www.worldcat.org/title/francisci-de-victoria-de-indis-et-de-ivire-belli-relectiones/oclc/683687/editions?referer=di&conditionsView=true](https://www.worldcat.org/title/francisci-de-victoria-de-indis-et-de-ivire-belli-relectiones/oclc/683687/editions?referer=di&conditionsView=true;); Amazon 2019: https://www.amazon.com/s?k=francisco+de+vitoria&i=stripbooks-intl-ship&lo=list&page=3&crid=KKR2L1HWNKD&qid=1552292080&srefix=Franscesco+de+%2Cstripbooks-intl-ship%2C205&ref=sr_pg_2>

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