

# Conflict, campaigns and commercial law: the legal strategies of Castilian merchants in the Low Countries (fifteenth-sixteenth centuries)

Gijs Dreijer, University of Exeter / Vrije Universiteit Brussel <sup>1</sup>

## Abstract

This article studies the legal strategies of the Castilian community in the Low Countries during the fifteenth and sixteenth century, using the case study as a proxy for debates on how merchants managed mercantile conflict in medieval and early Europe. Through a detailed archival study, the article offers two important take-aways: first, building on the literature on mercantile conflict management, it argues that Castilian merchants in the late medieval Low Countries used a wide variety of legal and non-legal strategies to manage conflicts, emphasising the social embeddedness of mercantile conflict and contradicting the idea that they only solved conflicts internally. Second, the article goes beyond this literature by showing that the Castilians also actively lobbied for new legislation to adapt commercial law towards their needs. The article therefore shows the importance of understanding the jurisdictionally complex and legal-pluralistic nature of late medieval and early modern Europe serious in studies of mercantile conflict management.

## Introduction

How do foreign merchants influence the development the legal system backing up trade and commerce? In the late medieval and early modern Low Countries, the arrival of foreign merchants significantly altered the political and legal landscape, from the arrival of Hanseatic merchants in the twelfth century onwards to Bruges' and Antwerp's 'Golden Ages' of the fifteenth and sixteenth centuries. The presence of foreign merchants in the city of Bruges required the incorporation of foreigners into a (largely) custom-based existing legal system.<sup>2</sup> Bruges facilitated the establishment of foreign merchant communities, who often created guild-like organisations to structure commercial, social and political ties when arriving between the twelfth and fourteenth centuries.<sup>3</sup> These organisational vehicles, often headed by elected consuls, were called *nationes* (singular *natio*).<sup>4</sup> In the historical literature, these foreign merchant guilds have been presented both as efficient solutions to long-distance trading and as rent-seeking obstacles to an open-access market.<sup>5</sup>

---

<sup>1</sup> The author wants to thank Maria Fusaro, Lewis Wade, Dave De ruysscher and Albrecht Cordes, as well as the participants in the 'Citizenship, Identity and Commercial Law' workshop in Brussels (November 2019), the participants of the HOST Seminar (October 2020) and the participants in the 'Commerce, Conflicts and Diplomacy in Medieval and Early Modern Europe' session at the ESSHC 2021 conference for valuable feedback on earlier drafts of this essay. Financial support for this essay has been granted by the European Research Council under Grant Agreement 724544 (AveTransRisk).

<sup>2</sup> See also for this question of Bruges' municipal law and foreign merchants: Bart Lambert, 'A legal world market? The exchange of commercial law in fifteenth-century Bruges', in *Migrating words, migrating merchants, migrating law: trading routes and the development of commercial law* eds. Stefania Gialdroni, Albrecht Cordes, Serge Dauchy, Dave De ruysscher and Heikki Pihlajamäki (Leiden and Boston: Brill, 2019), 163-175.

<sup>3</sup> Frédéric Mauro, 'Merchant communities, 1350-1750', in *The rise of merchant empires: long-distance trade in the early modern world, 1350-1750* ed. James D. Tracy (Cambridge: Cambridge University Press, 1990), 255-286; Edwin S. Hunt and Jamie M. Murray, *A history of business in medieval Europe, 1200-1550* (Cambridge: Cambridge University Press, 1999), 52-57.

<sup>4</sup> See for an overview of foreign merchant communities in the Low Countries: Bruno Blondé, Oscar C. Gelderblom and Peter Stabel, 'Foreign merchant communities in Bruges, Antwerp and Amsterdam', in *Cultural exchange in early modern Europe. Volume 2: cities and cultural exchange in Europe, 1400-1700* eds. Donatella Calabi and Stephen T. Christensen (eds.), (Cambridge: Cambridge University Press, 2013), 154-174.

<sup>5</sup> See for a positive assessment: Regina Grafe and Gelderblom, 'The rise and fall of merchant guilds: re-thinking the comparative study of commercial institutions in premodern Europe' (2010), 40 *Journal of Interdisciplinary*

Their supposed ability in solving internal conflicts has in particular been both praised (as efficient) and criticised (as denying the opportunity for using various legal strategies).<sup>6</sup>

It may however be no wonder that organisations of foreign merchant communities formed all over Europe to navigate the complex political and legal situation, bargaining for privileges and protecting its members from arbitrary imprisonment.<sup>7</sup> The *nationes* formed a crucial link in adopting new business techniques and offered legal support when disputes arose with other merchants, as this was probably too difficult for a single merchant to master all the necessarily skills in a jurisdictionally complex and legal-pluralistic environment. Until cities, such as Antwerp or Amsterdam, or central states, such as England, consolidated jurisdiction over mercantile proceedings and impose a relatively unanimous legal procedure, *nationes* thus remained a crucial link in mercantile conflict resolution.<sup>8</sup> To retroactively judge the lack of harmonisation and jurisdictional unity as ‘non-efficient’ ignores the fact that even in such a situation *nationes* were able to offer their members proper legal support and choose legal strategies as suited them.<sup>9</sup>

Forum shopping, jurisdictional complexity and legal pluralism were common elements of the late medieval European legal system, which makes the study of mercantile conflict complex and exciting at the same time.<sup>10</sup> This paper therefore investigates the consequences of the arrival of foreign merchants – specifically, Castilian merchants – on the social and legal structure of (commercial) conflict and contract enforcement, and how this subsequently influenced the development of commercial and maritime law in the Low Countries. By connecting the literature on the foreign merchant guilds and the legal strategies of those same foreign merchants, this paper also reconciles economic-historical and legal-historical approaches towards foreign merchant guilds and the development of commercial law. The contribution of the paper is twofold: first, building on the literature on conflict management that emphasises that legal pluralism and jurisdictional complexity were an asset for mercantile conflict management rather than an obstacle, this essay shows that the Castilians used a wide array of strategies to deal with conflict.<sup>11</sup> Second, it goes beyond this

---

History 477. A negative assessment can be found in: Sheilagh Ogilvie, *Institutions and European trade: merchant guilds, 1000-1800* (Cambridge: Cambridge University Press, 2011), especially 94-159.

<sup>6</sup> Ogilvie, *Institutions and European trade*, 250-314.

<sup>7</sup> This is also the argument of: Grafe and Gelderblom, ‘The rise and fall of merchant guilds’.

<sup>8</sup> Gelderblom, *Cities of commerce: the institutional foundations of international trade in the Low Countries, 1250-1650* (Princeton, NJ and Oxford: Princeton University Press, 2013), 102-140; North & R.P. Thomas, *The rise of the Western world: a new economic history* (Cambridge: Cambridge University Press 1973).

<sup>9</sup> Albrecht Cordes and Philip Höhn, ‘Extra-legal and legal conflict management among long-distance traders (1250-1650)’, in *The Oxford Handbook of European Legal History* eds. Pihlajamäki, Marcus D. Dubber and Mark Godfrey (Oxford: Oxford University Press, 2018), 509-528

<sup>10</sup> Sean P. Donlan and Dirk Heirbaut, ‘“A patchwork of accommodations”: European legal hybridity and jurisdictional complexity – an introduction’, in *The Laws’ many bodies: studies in legal hybridity and jurisdictional complexity, c. 1600-1900* eds. Donlan and Heirbaut (Berlin: Dunckler und Humblot 2015), 9-34 and William Twining, ‘Normative and legal pluralism: a global perspective’, (2010) 22 *Duke Journal of Comparative and International Law* 473.

<sup>11</sup> See for the most recent literature: Gelderblom, *Cities of commerce*, 102-140; Jan Dumolyn and Lambert, ‘Cities of Commerce, cities of constraints: international trade, government institutions and the law of commerce in later medieval Bruges and the Burgundian state’ (2014) 11 *Tijdschrift voor Sociale en Economische Geschiedenis* 95. Louis H.J. Sicking, ‘Introduction: maritime conflict management, diplomacy and international law, 1100-1800’, (2017) 5 *Comparative Legal History* 2; Alain A. Wijffels, ‘Introduction: commercial quarrels – and how to (not) handle them’, (2017) 32 *Continuity and Change* 1; Wijffels and Justyna J. Wubs-Mrozewicz, ‘Diplomacy and advocacy: the case of the *King of Denmark v. Dutch Skippers* before the Danzig City Council (1564-1567)’, (2016) 84 *Tijdschrift voor Rechtsgeschiedenis* 1; Wubs-Mrozewicz, ‘The late medieval and early modern Hanse as an institution of conflict management’, (2017) 32 *Continuity and Change*

literature to argue for the importance of lobbying to bend rules in the favour of merchants, a strategy still often neglected in the literature on conflict management.

It is well known that Iberian and Italian merchants made a lasting impact in the development of commerce and maritime trade in the Low Countries between the fourteenth and eighteenth centuries. Besides their commercial importance, they also brought marine insurance, banking and various organisational innovations, such as the *commenda*, to the region.<sup>12</sup> Their impact on the development of the modes of (legal and extra-legal) conflict resolution developed has not been systematically researched, however. The Castilian merchants kept their *natio* in Bruges until 1705, long after most other foreign merchant communities had moved to Antwerp. A large Spanish (both Castilian and non-Castilian) colony was however also present in Antwerp during its 'Golden Age'.<sup>13</sup> Even if much is already known about the legal, social and economic status of Castilian merchants in the Low Countries, their legal strategies have not yet been investigated.<sup>14</sup> Given that Castilian merchants integrated relatively well into the sixteenth-century Low Countries, their case can teach us something about the relationship between their self-identification, legal status and choice of legal strategies. What makes their case particularly interesting is that from the late fifteenth century onwards, the Low Countries were in a composite monarchy with their home region under Charles V and Philip II, providing them with political support and influence.<sup>15</sup> Because of the wealth of archival material and the longevity of their presence in the Low Countries, the Castilians serve as an excellent

---

59; Flavio Miranda, 'Conflict management in western Europe: the case of Portuguese merchants in England, Flanders and Normandy, 1250-1500' (2017) 32 *Continuity and Change* 11; Wubs-Mrozewicz, 'Conflict management and interdisciplinary history', (2018) 15 *Tijdschrift voor Sociale en Economische Geschiedenis* 89; Höhn and Cordes, 'Extra-legal and legal conflict management'; *Conflict Management in the Mediterranean and the Atlantic, 1000-1800*, eds. Sicking and Wijffels (Leiden and Boston: Brill, 2020). Most of the inspiration is drawn from the work of Georg Simmel, who emphasised the social embeddedness of conflict: Georg Simmel, *Soziologie: Untersuchungen über die Formen der Vergesellschaftung* (Berlin: Dunckler und Humblot, 1908), 186-255.

<sup>12</sup> See for insurance: Dave De ruysscher, 'Antwerp 1490-1590: insurance and speculation', in *Marine insurance: Origins and institutions, 1300-1850* ed. Adrian P. Leonard (Basingstoke: Palgrave Macmillan, 2016), 79-105. See for banking: Raymond De Roover, *Money, banking and credit in mediaeval Bruges* (Cambridge MA: Mediaeval Academy of America, 1948). Ron Harris has used the *commenda* as an example of a "migratory institution" across the early modern world. See: Ron Harris, *Going the distance: Eurasian trade and the rise of the business corporation, 1400-1700* (Princeton NJ: Princeton University Press, 2020), 130-170.

<sup>13</sup> Jan-Albert Goris, *Étude sur les colonies marchandes méridionales (Portugais, Espagnols, Italiens) à Anvers de 1488 à 1567* (Louvain: Librairie Universitaire, 1925), 57-66.

<sup>14</sup> The bibliography is huge. A non-exhaustive list follows here: Hilario Casado Alonso, 'La nation en le quartier des Castillians de Bruges (XVe et XVIe siècles)', (1996) 133 *Handelingen van het Genootschap voor Geschiedenis* 61; Jos Maréchal, 'La colonie espagnole de Bruges du XIVe au XVIe siècle' (1953) 35 *Revue du Nord* 5; Maréchal, 'Le depart de Bruges des marchands étrangers (XVe et XVIe siècle)' (2005) 88 *Handelingen van het Genootschap voor Geschiedenis* 26; André Vandewalle, 'De vreemde naties in Brugge', in *Hanzekooplui en Medicibankiers: Brugge, wisselmarkt van Europese culturen* ed. Vandewalle (Oostkamp: Stichting Kunstboek, 2002), 27-42; Vandewalle, 'Brugge en het Iberisch schiereiland', in *Brugge en Europa* ed. Valentin Vermeersch, (Antwerp: Mercatorfonds, 1992), 158-181; Raymond Fagel, 'Spanish merchants in the Low Countries: Stabilitas Loci or Peregrinatio?', in *International trade in the Low Countries (14<sup>th</sup>-16<sup>th</sup> centuries): merchants, organisation, infrastructure* eds. Stabel, Blondé and Anke Greve (Louvain: Garant, 2000), 87-103; Fagel, *De Hispano-Vlaamse wereld: de contacten tussen Spanjaarden en Nederlanders 1496-1555* (Brussels and Nijmegen: Archief- en Bibliotheekwezen in België, 1996); Goris, *Étude*, 55-70; José D. González Arce, 'La Universidad de mercaderes de Burgos y el consulado castellano en Brujas durante el siglo XV', (2010) 33 *En el España Medieval* 161; Jean-Marie Yante, 'Le commerce espagnol dans les Pays-Bas (XVe-XVIe siècles)', (2011) 51 *Publications du Centre Européen d'Etudes Bourguignonnes* 217.

<sup>15</sup> See: Helmut G. Koenigsberger, *Monarchies, States Generals and Parliaments: the Netherlands in the fifteenth and sixteenth centuries* (Cambridge: Cambridge University Press, 2011).

case for foreigners' different judicial options and the ways in which modes of conflict were regulated.<sup>16</sup> Moreover, their experience can tell us how cities like Bruges and Antwerp tailored their economic and social policies to accommodate foreign merchants, and how legal developments were intertwined within this process.<sup>17</sup> Where appropriate, the essay will make comparisons with other 'Spanish' merchant communities in the Low Countries, such as the Biscayers and Catalan-Aragonese, who both had their own *natio*.<sup>18</sup>

### The legal system of the Low Countries

Jurisdictional complexity and legal pluralism were at the heart of medieval and early modern political-legal systems.<sup>19</sup> A complex hierarchy of laws was furthermore a fact of life in the Middle Ages and, for the greater part, during the early modern period.<sup>20</sup> This is also of particular relevance to the jurisdictional and legal situation in the (Southern) Low Countries. Jurisdictional complexity was a hallmark of the Low Countries, even if state formation under the Burgundian and Habsburg sovereigns proceeded at pace.<sup>21</sup> The municipal courts were for most mercantile cases the first instance courts, but most foreign merchant communities (the *nationes*) also possessed the privilege to judge intra-*natio* cases within the community, the so-called consular jurisdictions.<sup>22</sup> Moreover, regional and central courts, particularly the Great Council of Mechlin, acted as courts of appeal but under the complex legal procedures of the time, foreign merchants were often also privileged litigants who could seek first instance judgements.<sup>23</sup> In general, merchants solved mercantile disputes in the consular courts or the municipal courts for time and cost reasons, but they could seek to have important privileges confirmed by a central court to safeguard those in a wider legal-political entity.<sup>24</sup>

---

<sup>16</sup> See for example the source edition of Louis Gilliodts-Van Severen, which has not yet been studied in detail: Louis Gilliodts-Van Severen, *Espagne de l'ancien consulat d'Espagne à Bruges: recueil de documents concernant le commerce maritime et intérieur, le droit des gens public et privé, et l'histoire économique de la Flandre* (Bruges: Louis de Plancke, 1901-1902) (hereafter: *Espagne*). Moreover, this essay relies on notarial records and court cases from the Great Council of Mechlin.

<sup>17</sup> This is a popular topic in the literature. See: Gelderblom, *Cities of commerce*, especially 102-140.

<sup>18</sup> See for an overview of the various "Spanish" *nationes*: Maréchal, 'La colonie espagnole'.

<sup>19</sup> See footnote 10.

<sup>20</sup> Cordes and Höhn, 'Legal and extra-legal conflict management', 511.

<sup>21</sup> Robert Stein, *Magnanimous dukes and rising states: the unification of the Burgundian Netherlands, 1380-1480* (Oxford: Oxford University Press, 2017), 152-225; Wim P. Blockmans, *Metropolen aan de Noordzee: De geschiedenis van Nederland, 1100-1650* (Amsterdam: Bert Bakker, 2010), 594.

<sup>22</sup> Jeroen Puttevils, *Merchants and Trading in the Sixteenth Century: The Golden Age of Antwerp* (London: Pickering & Chatto 2015), 138-150; Gelderblom, *Cities of commerce*, 109-121.

<sup>23</sup> Remco C.H. Van Rhee, *Litigation and legislation: civil procedure at first instance in the Great Council for the Netherlands in Malines (1522-1559)* (Brussels: Algemeen Rijksarchief en Rijksarchief in de Provincieën, 1997), 41.

<sup>24</sup> In line with: Dumolyn and Lambert, 'Cities of commerce'.

**TABLE 1: JURISDICTIONAL COMPLEXITY IN THE LOW COUNTRIES (FIFTEENTH-SIXTEENTH CENTURY)**

LEVEL	FOR WHOM?	COMPETENCE
<b>CONSULAR</b>	Foreign merchants organised in <i>nationes</i>	Contract litigation between merchants of the same <i>natio</i>
<b>MUNICIPAL</b>	Citizens and (foreign) merchants of the city	First instance court for almost everything, often appeal court for consular jurisdiction
<b>REGIONAL</b>	(Wealthy) Citizens of the regions, foreign merchants sometimes as privileged litigants	Appeals court to municipal courts, first instance cases for disputes between municipalities
<b>CENTRAL (GREAT COUNCIL)</b>	Citizens of the Low Countries, foreign merchants privileged litigants	Appeals courts to either municipal or regional court: first instance court for privileged litigants, also jurisdiction <i>ratione materiae</i> over various cases
<b>CENTRAL (SECRET COUNCIL)</b>	Privileged litigants (i.e nobility)	Petitions possible to complain about decisions made by Great Council (1500 onwards); first instance court for privileged litigants
<b>ADMIRALTY</b>	Litigants under limited jurisdiction	Prize Law, criminal law on ships, wages in maritime cases

### The Castilian community in the Low Countries

In the Low Countries, Bruges was among the first cities to give privileges to foreign merchant communities. Foreign merchant communities, such as the Hanseatic merchants and the various regional groups from the Italian and Iberian Peninsulas were among the earliest groups to receive privileges in the city, the major commercial city of the Low Countries until the late fifteenth century.<sup>25</sup> Not only Bruges was willing to provide merchants with privileges. Foreign merchants often sought confirmation at the level of the Count of Flanders or, after 1480, from the Burgundian rulers of the Low Countries.<sup>26</sup> These privileges often included autonomy in judicial matters, such as jurisdiction over civil matters in internal disputes. Foreign merchants were, however, not citizens of the city of Bruges (neither *de facto* nor *de jure*). Members of the *natio* could nevertheless claim legal protection from both the Bruges aldermen and the Flemish Counts and were often privileged litigants at various courts in the Low Countries.<sup>27</sup> Within the *natio*, the consuls were tasked with fostering a social bond between the members.

The first record of privileges for Castilian merchants in Bruges dates from 1343. Both Bruges, as a member of the so-called *Drie Leden* (Three Members), a collective of Bruges, Ghent, and Ypres,

<sup>25</sup> See for the Low Countries: Blondé, Gelderblom and Stabel, 'Foreign merchant communities in Bruges, Antwerp and Amsterdam', 154-174. A more general introduction can be found in: Miri Rubin, *Cities of strangers: making lives in medieval Europe* (Cambridge: Cambridge University Press, 2020). See for Bruges as a commercial city: Murray, *Bruges, cradle of capitalism, 1280-1390* (Cambridge: Cambridge University Press, 2005).

<sup>26</sup> Stabel *et al*, 'Production markets and socio-economic structures II: c. 1320-c. 1500', in *Medieval Bruges, c. 850-c. 1550* eds. Andrew Brown and Dumolyn (Cambridge: Cambridge University Press, 2018), 210-218.

<sup>27</sup> Van Rhee, *Litigation and legislation*, 41.

and the Count of Flanders granted these privileges. These privileges mainly concerned protection against arbitrary imprisonment for Castilian merchants.<sup>28</sup> Further privileges, from 1348, 1421 and 1428 both confirmed and expanded on the previous ones. The 1348 privileges, for example, expanded the legal protection for Spanish merchants, stipulating that individual Castilian merchants could not face reprisal for the debts of other Castilian merchants, and gave them the so-called staple rights (the right to pay taxes, duties, and tolls in one place only).<sup>29</sup> Already in 1389, Aragonese merchants also received their own privileges to trade to and from the Low Countries.<sup>30</sup> These included a reciprocal clause that Flemish merchants would have the same rights in Aragon. In 1447, merchants from Biscay negotiated their own privileges.<sup>31</sup> Despite protests from the Castilians, further developments meant that from 1494 onwards, 'Spanish' merchants were divided into three *naciones*: the Castilian, Biscayer and Catalan-Aragonese.<sup>32</sup> In 1500, the Andalusians also received privileges in Antwerp, before moving to Middelburg (Zeeland) in 1505.<sup>33</sup> The Navarrese also received privileges in 1530.<sup>34</sup> These privileges strongly differed from each other; the Castilian *natio*, the self-styled *primus inter pares*, received the most extensive ones, including a wide jurisdiction in civil matters, with the Bruges municipal court only nominally involved with the decisions made in the consular court.<sup>35</sup> [Both the Castilian and Biscayer merchants had the privilege to levy the \*avería de naçion\*, a compulsory contribution on the imports and exports of their members.](#)<sup>36</sup>

Many *naciones* moved from Bruges to Antwerp between 1484 and 1488, after the Habsburg sovereign Maximilian of Austria ordered them to do so at the start of the Flemish Revolt in 1482. Although some *naciones* briefly returned to Bruges around 1490 after the Revolt ended, most of them moved to Antwerp permanently during the first half of the sixteenth century. These events were the final acts in a gradual shift in commercial *gravitas* from Bruges to Antwerp.<sup>37</sup> The Genoese, for example, transferred their Consulate in 1509, followed by the Portuguese in 1511.<sup>38</sup> Because many Spanish merchants resided in Antwerp for business purposes (e.g. acting as insurers), a significant part of the Castilian community in the Low Countries also pushed for moving the *natio* to Antwerp. Both Bruges and the Habsburg central government, however, saw the role of Castilian and Biscayer merchants in the wool trade as vital and forced them to stay in Bruges for practical reasons.<sup>39</sup> The Castilian and Biscayers *naciones* remained there during the sixteenth and seventeenth centuries,

<sup>28</sup> Gilliodts-Van Severen, *Espagne*, 8-12.

<sup>29</sup> Ibid., 13.

<sup>30</sup> Ibid., 19-21.

<sup>31</sup> Ibid., 31.

<sup>32</sup> The standard work on the Spanish *naciones* is still: Maréchal, 'La colonie espagnole de Bruges', especially 7-10. See also: Maréchal, 'Le depart de Bruges', 26-74; Casado Alonso, 'La colonie', 233-251; Casado Alonso, 'La nation', 61-77.

<sup>33</sup> Fagel, 'Spaanse kooplieden in Middelburg vóór de Opstand: succesvolle integratie met behoud van eigen identiteit', in *Nieuwe Nederlanders. Vestiging van migranten door de eeuwen heen* eds. Marjolein C. 't Hart and Jan Lucassen (Amsterdam: Stichting beer IISG, 1996), 22-23.

<sup>34</sup> Gilliodts-Van Severen, *Espagne*, 282-284 and 370-371.

<sup>35</sup> De ruysscher, *Gedisciplineerde vrijheid: een geschiedenis van het handels- en economisch recht* (Antwerp and Apeldoorn: Garant, 2013), 33.

<sup>36</sup> [Gilliodts-Van Severen, \*Espagne\*, 594-596.](#)

<sup>37</sup> The literature on this subject is enormous. A good overview is: Puttevils, Blondé and Botho Verbist, 'Een eenduidig pad van modernisering van het handelsverkeer: van het liberale Brugge naar het gereguleerde Antwerpen?', in *Overheid en economie: geschiedenissen van een spanningsveld* eds. Blondé, Henk de Smaele, Hilde Greefs, Ilja van Damme and Maarten van Ginderachter (Antwerp: Uitgeverij UPA, 2014), 39-54.

<sup>38</sup> Goris, *Étude*, 48-51 and 75-78.

<sup>39</sup> Ibid., 57-66.

even if the Castilian merchants in Antwerp desperately tried to form a Consulate of their own in Antwerp around 1550.<sup>40</sup> The Catalan-Aragonese *natio* decided to remain in Antwerp after the Flemish Revolt and transferred the Consulate officially to the city in 1527.<sup>41</sup>

In both cities, Castilian and other Iberian merchants fulfilled a pivotal role in commercial life, particularly in the wool trade.<sup>42</sup> Yet the literature on citizenship in medieval and early modern Europe has, in general, not particularly grappled well with the influences of foreign merchants on political and legal structures.<sup>43</sup> Castilians married Flemish women to a relatively high extent compared to other foreign merchants, whereby some even bought or were awarded *poorterschap* (citizenship) in either Bruges or Antwerp. Around 25% of the Castilian merchants became either a citizen or an *ingezetene* (inhabitant or denizen) of either Bruges or Antwerp during the sixteenth century.<sup>44</sup> Only of Genoese merchants comparable numbers are known, as they also became citizens in Bruges to a relatively high extent during the fifteenth century.<sup>45</sup> On the other hand, the Castilian merchants limited participation in local social life or in governmental posts even after acquiring citizenship.<sup>46</sup> Most of the Castilian merchants in Antwerp therefore still mostly stuck to their compatriots for trade, insurance, and loans, as notarial records show.<sup>47</sup> Rules set by the Consulate even stated that Castilian merchants were still under the control of that Consulate, even if they married a local woman.<sup>48</sup> Only from the seventeenth century onwards, Castilians integrated to a more significant extent into the Bruges and Antwerp ruling classes as the Southern Low Countries remained under Spanish control after the Dutch Revolt.<sup>49</sup>

In many respects, Castilian merchants were not particularly different from other foreign merchant communities, for example the Genoese merchants in the Low Countries.<sup>50</sup> Yet they stood in two respects: in their willingness to use the variety of local courts and in their ability to influence

---

<sup>40</sup> Ibid.

<sup>41</sup> Maréchal, 'La colonie espagnole', 7-11. They were less-well integrated into society than the Castilians. See: Pablo D. Bielsa, 'El Consulado Catalán de Brujas (1330-1488)', in *Aragón en la Edad Media, XIV-XV. Homenaje a la profesora Carmen Orcástegui* ed. Carmen Orcástegui Gros (Zaragoza: Universidad de Zaragoza, 1999), 387-388.

<sup>42</sup> Carla R. Philips, 'Spanish merchants and the wool trade in the sixteenth century', (1983) 14 *The Sixteenth Century Journal* 259 and William D. Philips jr., 'Merchants of the fleece: Castilians in Bruges and the wool trade', in *International trade in the Low Countries*, 75-86.

<sup>43</sup> See for example: Rubin, *Cities of strangers*, which discusses more general trends but largely neglects merchants.

<sup>44</sup> Philips jr., 'Local integration and long-distance ties: the Castilian community in sixteenth-century Bruges', (1986) 17 *The Sixteenth Century Journal* 33; Fagel, *De Hispano-Vlaamse wereld*, 107-122; Fagel, 'Spanish merchants in the Low Countries', 87-104.

<sup>45</sup> Stabel, 'De gewenste vreemdeling', (2001) 4 *Jaarboek voor Middeleeuwse geschiedenis* 189, there 206-207.

<sup>46</sup> Brown, 'Cities, nations and divine service: identifying Spanish merchants in late medieval Bruges', (2017) 44 *Urban History* 166, there 183-184.

<sup>47</sup> For the notaries, see: Fagel, *De Hispano-Vlaamse wereld*, 71-72; Municipal archives of Antwerp (hereafter BE-SAA), Notariaat Streijt, inv. N#1232 and N#1233; Notariaat 's-Hertoghen, inv. N#2070-N#2078; Rijksarchief Antwerpen (hereafter BE-RAA), inv. R02, Notariaat De Platea, I, fol. 63r-64r. See also for the Castilian insurer Juan Henriquez: Casado Alonso, 'Juan Henriquez, un corredor de seguros de Amberes a mediados del Siglo XVI', in *Palabras de archivo: homenaje a Milagros Moratinos Palomero* ed. Juan C. Pérez Manrique (Burgos: Ayuntamiento de Burgos, 2018), 49-68.

<sup>48</sup> Ogilvie, *Institutions and European trade*, 12.

<sup>49</sup> For Bruges, see: Casado Alonso, 'La nation', 70-72. For Antwerp, see: Roland Baetens, *De nazomer van Antwerpens welvaart: de diaspora en het handelshuis De Groote tijdens de eerste helft der 17<sup>e</sup> eeuw* (Vol. 1) (Brussels: Gemeentekrediet van België, 1976), 229-230.

<sup>50</sup> See for example Colette Beck, 'Éléments sociaux et économiques de la vie des marchands génois a Anvers entre 1528 et 1555', (1982), 64 *Revue du Nord* 759-784; Baetens, *De nazomer* (Vol. 1), 229-230.



legislation in the Low Countries. As Albrecht Cordes and Philip Höhn have noted, the defence of negotiated privileges is the key to understand the legal strategies of many foreign merchants.<sup>51</sup> This insight is also key to understanding the legal activity of the Castilian merchants in the Low Countries. The wealth of material permits us to study their strategies in-depth, including normally neglected extra-legal strategies such as lobbying. This allowed the Castilian merchants to influence the development of maritime and commercial law, as they lobbied for changes in various princely *Ordonnances* and published their own collection of customs on insurance law.

### Intra-Castilian conflicts

The analysis of strategies to deal with conflict concern multiple aspects and should also take into account alternative options, such as violence. Castilian merchants had several options at their disposal, for example violence, arbitration, negotiations, lobbying and litigation. Moreover, sovereigns or other high-ranked officials could also intervene in disputes, for example engaging in diplomacy in certain cases.<sup>52</sup> Sources have survived for most of these options. Even if a merchant decided to litigate, there was still a wide variety of options to choose from, because the jurisdictional setting in the Low Countries was complex.<sup>53</sup> A Castilian merchant could bring their cases before their consular court, but they also had the right to go before the municipal courts of either Bruges or Antwerp, depending on where they were based. Moreover, foreign merchants were privileged litigants at the Council of Flanders, Council of Brabant and the Great Council of Mechlin, the provincial and central superior courts, which granted them the right to initiate first instance cases there. Since Castilian merchants were formally under control of the Consulate (*Consulado*) of their home city, which supervised their respective *naciones*, it may have been possible to litigate cases back in Bilbao or Burgos, where these organisations were based.<sup>54</sup> This option for legal pluralism seems, however, not to have been used, perhaps for time or enforcement reasons.

For disputes between Castilian merchants, most were solved by litigation before the consular court or by arbitration. In Bruges, potentially 75% of intra-Spanish cases were arbitrated at the end of the fifteenth century.<sup>55</sup> In principle, the consuls heard all first instance cases between Castilian merchants. Since the community of Castilian merchants in Bruges was fairly small (between 40 and 60 at most at any given time<sup>56</sup>) this was not necessarily a very formal affair. One could probably best describe these disputes as a halfway house between arbitration and a formal court case, whereby the elected consuls acted as arbiters or judges. Most of these cases concerned commercial law.<sup>57</sup> There were however also formal limitations to the competence of the consular court. Its first instance competence, for example, was formally limited to cases between Castilian merchants, although foreign merchants could also voluntarily subject themselves to the authority of

---

<sup>51</sup> Cordes and Höhn, 'Extra-legal and legal conflict management', 514-515.

<sup>52</sup> Sicking, 'Introduction'.

<sup>53</sup> See for an overview of the options foreign merchants used during the fifteenth century: Dumolyn and Lambert, 'Cities of commerce', 89. See for the complex jurisdictional situation in the courts of the central government: Hugo De Schepper, 'De Grote Raad van Mechelen, hoogste rechtscollège in de Nederlanden?', (1978) 93 *Bijdragen en Mededelingen voor de Geschiedenis der Nederlanden* 389.

<sup>54</sup> De ruysscher, *Gedisciplineerde vrijheid*, 36. See also for a general overview of the Spanish *Consulados*: Robert S. Smith, *The Spanish guild merchant: a history of the Consulado, 1250-1700* (Durham NC: Duke University Press, 1940).

<sup>55</sup> Gilliodts-Van Severen, *Espagne*, 35. Gilliodts-Van Severen does however not provide statistical backup for his claim, necessitating scholars to tread cautiously in accepting the claim.

<sup>56</sup> Fagel, *De Hispano-Vlaamse wereld*, 15.

<sup>57</sup> Stadsarchief Brugge (hereafter BE-SAB), Spaanse Natie, inv. 304, *Libro de pleytos ordinarios* (1546-1561).



the court. This happened twice during the 1540s with Portuguese merchants, who claimed a right to be heard under the *Ius Gentium* (Law of Nations).<sup>58</sup> The consular court was also subjected to the formal control of the Bruges municipal court, which meant that appeals had to be made there, but this seems to have been just a theoretical possibility.<sup>59</sup> In Bruges, Castilian merchants were often appointed as arbiters in commercial disputes, because Bruges aldermen lacked the expertise to deal with disputes of commercial or maritime law. Portuguese and Hanseatic merchants were also regularly appointed as arbiters.<sup>60</sup> Although the Bruges municipal court was formally exercising oversight, Castilian and other foreign merchants were permitted to find acceptable solutions on commercial law. The situation in Antwerp was slightly different: the municipal court heard cases of commercial law and had ultimate authority, particularly after 1550.<sup>61</sup> The city did organise the system of the so-called *enquête par turbe*, whereby a panel of merchants was summoned to decide of what a mercantile 'custom' consisted.<sup>62</sup> This also provided Castilian merchants an opportunity to influence the development of Antwerp municipal law, for example on insurance.

Of course, Castilian merchants could voluntarily appoint arbiters to judge their disputes, which was already a preferred mode of conflict resolution in Bruges. In Antwerp, where they lacked the formal backing of a Consulate, this became the default mode of conflict resolution for conflicts between Castilian merchants. They often appointed a notary from a small group of trusted and specialised notaries, who were in turn under oath of the Antwerp aldermen.<sup>63</sup> In the notarial archives in Antwerp, one can find freight contracts, testaments, and decisions made by notaries employed by Castilian merchants to solve disputes, for example on insurance.<sup>64</sup> The notary Willem Streyt appeared to be the choice of most Castilian merchants in Antwerp to solve their internal disputes.<sup>65</sup> In the absence of the Consulate, Castilian merchants therefore opted for a largely private-order solution to judge intra-Castilian disputes.<sup>66</sup> In Bruges, the in-house notary of the *natio*, Paredes, was also regularly employed to adjudicate internal disputes.<sup>67</sup> Besides notaries, trustworthy compatriots could also act as arbiters. Of course, there was still the opportunity to bring the case to the municipal court, but it seems that many Spanish merchants did not want to breach the trust between the close-knit community of their closest trading partners and merchants.

This solution did however not always work, especially after Antwerp started clawing back the consular jurisdictions from the *nationes* around 1570.<sup>68</sup> For example, the two Castilian

---

<sup>58</sup> Ibid, fol. 11r-v and 46v. This was not uncommon, because Flemish merchants also appeared before the Portuguese consular court. See: Miranda, 'Commerce, conflits et justice: les marchands portugais en Flandre à la fin du Moyen Âge' (2010), 117 *Annales de Bretagne et des Pays de l'Ouest* 1, there 8-9.

<sup>59</sup> See for an example: Gilliodts-Van Severen, *Espagne*, 34.

<sup>60</sup> This was for example the case in a 1487 dispute between the Castilian *natio* and a Catalan merchant. See: Gilliodts-Van Severen, *Espagne*, 137-139. See also below, section IV.2.1. See for other cases where arbiters were appointed: Ibidem, 73-75 and 95-97.

<sup>61</sup> De ruysscher, "*Naer het Romeinsch recht alsmede den stiel mercantiel*". *Handel en recht in de Antwerpse rechtbank (16<sup>e</sup>-17<sup>e</sup> eeuw)* (Kortrijk: UGA, 2009), 106-116 & 126-133.

<sup>62</sup> See for an overview: Laurent Waelkens, 'Origine de l'enquete par turbe', (1985) 53 *Tijdschrift voor Rechtsgeschiedenis* 337. See for *turben* in Antwerp and its role in the 1582 and 1608 *Costuymen*: De ruysscher, "*Naer het Romeinsch recht*", 94-95.

<sup>63</sup> Fagel, *De Hispano-Vlaamse wereld*, 72-73 & 100-107.

<sup>64</sup> See for example: BE-SAA, Notariaat Streyt, inv. N#1232, fols. 56r-57v, 57v-58r, 70r, 71r-72r; N#1233, fol. 165r-166r.

<sup>65</sup> Fagel, *De Hispano-Vlaamse wereld*, 72-73 & 100-107.

<sup>66</sup> Goris, *Étude*, 66-67.

<sup>67</sup> The records are studied in: Philips jr., 'Local integration and long-distance ties', 33-49.

<sup>68</sup> De ruysscher, "*Naer het Romeinsch recht*", 117-121 and 125-133.

merchants Alonso and Juan De Palma filed a request in January 1568 with the Antwerp aldermen to appoint an official of the city to aid the notary Jan de Berlaymont to adjust a general average (GA) claim resulting from damages on a joint Castilian-Portuguese venture from São Tomé to Antwerp.<sup>69</sup> Initially, the Antwerp aldermen granted this request, so that the adjustment could be sent to Spain, noting that De Berlaymont indeed had a good reputation in the city as a capable notary, and appointed the secretary Hendrik de Moy to aid him. The Portuguese consuls in Antwerp protested against this decision, arguing that jurisdiction on this matter was part of the privileges of the Portuguese *natio* in the city. Since the Castilian *natio* in Bruges also possessed a similar privilege, the Portuguese secretary of the *natio*, Jehan Fernandes, argued that the Castilian merchants who filed the request should have known this. The Antwerp Magistrate then decided that the Portuguese consuls would indeed have the right to draw up the average adjustment based on this privilege. Even though the Castilian merchants had tried to appoint their own notary to draw up the GA calculus and to legitimise this by seeking the blessing of the municipal court, this shrewd political move failed because the Portuguese *natio* was able to persuade the aldermen to uphold its privileges.

### Litigation against other (foreign) merchants

Conflicts with other (foreign) merchants often fell into two categories: business dealings (e.g. reclaiming a debt) or to defend privileges. Even if a case was brought by an individual merchant, Castilian consuls supported their members with money and legal support. Castilian merchants in Bruges even filed regular cases against other Iberian merchants on various commercial matters. One case from 1455, for example, concerned a Venetian ship that had both Genoese and Castilian goods on board and was on its way to Bruges.<sup>70</sup> Catalan privateers took it on the grounds that the ship carried Genoese cargo and Catalonia and Genoa were then at war. The Castilian merchant Jehan de Seville argued that the Catalans in Bruges would have to reimburse him for his loss, but the municipal court did not allow this on the grounds that he could have known that Genoese cargo was on the ship, which meant that this was a lawful Prize for the Catalans.<sup>71</sup> Although the court declined to rule for De Seville, it did promise to send a letter to the Catalan-Aragonese King, John II, to inquire about the whereabouts of the Castilian cargo and the decision made by the Prize Court in Barcelona.<sup>72</sup> Another 1487 case saw the Catalan merchant Jan Pasqual summoned before the Bruges municipal court for not paying the customary contribution to the *natio* (the so-called *avería de naçion*) for the protection costs of a ship.<sup>73</sup> The Castilian consuls argued that only the Castilian *natio* had the right to levy the contribution on merchants from the Iberian Peninsula. A jury of Hanseatic, Portuguese and local merchants, however, decided that the Catalan merchant did not have to pay the contribution. There existed animosity especially between the Castilians and the Catalans in Bruges, even after the 1469 personal union between the Crowns.<sup>74</sup> Similar cases abound in the archives, both against individual Iberian merchants and cases jointly filed by the Castilians and the

<sup>69</sup> BE-SAA, inv. PK#640, fol. 148v-149v. See also: Henry L.V. De Groote, *De zeeassurantie te Antwerpen en te Brugge in de zestiende eeuw* (Antwerp: Marine Academie, 1975), 22-23.

<sup>70</sup> Gilliodts-Van Severen, *Espagne*, 67-68.

<sup>71</sup> For the legal distinctions of privateering and piracy and the development thereof: Nicholas A.M. Rodger, 'The Law and Language of Private Naval Warfare', (2014) 100 *Mariner's Mirror* 5.

<sup>72</sup> Gilliodts-Van Severen, *Espagne*, 68.

<sup>73</sup> *Ibid.*, 137-139.

<sup>74</sup> Other examples of Catalan-Castilian conflict in Bruges can be found in: *Ibid.*, 54-56 and 65-66.

Biscayers.<sup>75</sup>

The importance of defending privileges, such as the *avería de naçion*, can be observed in a major case that was litigated before various courts in the Low Countries between 1511 and 1549. The Castilian *natio* was often at odds with the Genoese *natio* about this contribution, which was both used for ordinary expenses of the *natio* and to pay for the ships' protection costs. This Great Council case of 1515 already had a precedent in a 1472 case litigated before the Bruges municipal court.<sup>76</sup> In this 1472 case the Castilian shipmaster Michel de Sacle, with the support of the Castilian consuls, brought a claim against the Genoese consuls in Bruges. De Sacle wanted Genoese merchants to pay their contribution for transporting Genoese cargo on his ship. In counter to this, the Genoese argued that they were only allowed to pay the contribution concluded under the rules of their privileges granted by the Genoese *Senato* (their so-called Statute), which stipulated that this contribution could only be paid to Genoese shipmasters.<sup>77</sup> The Castilian consuls however argued that the payment of maritime averages functioned as a sort of warranty, so that the Genoese merchants could not simply run off when the cargo was delivered. The municipal court decided in favour of De Sacle, meaning the Genoese merchants had to pay the master before De Sacle sailed off to the Iberian Peninsula. Since enforcement remained relatively easy because the two *nationes* were still based in Bruges, this case did not lead to any further litigation. This was again the case in 1482, when the Genoese merchant Jean Baptiste Spinulli was forced to pay the *avería de naçion*.<sup>78</sup>

In 1511 and 1515, the Castilian consuls decided to support the Biscayer consuls to pursue a similar case and even enlisted Castilian merchants in Antwerp to start litigation against three Genoese merchants and one Florentine merchants, all based in Antwerp.<sup>79</sup> After having opened cases both in Bruges and Antwerp in 1511, the Castilian and Biscayer *nationes* also filed a first instance case at the Great Council of Mechlin in 1515, when jurisdictional issues prevented them from getting a favourable result: the Biscayers had won the case before the municipal court of Bruges but lost in Antwerp. This meant that they had no way to enforce the judgements from Flanders, as most Genoese merchants at this point had moved to Antwerp, even if the *natio* was still based in Bruges until 1522.<sup>80</sup> Even if the case concerned a small sum (it, again, concerned a contribution to mutual protection costs by three Genoese and one Florentine merchant(s)), the case would linger on from 1511 to 1549 moving between various courts. Eventually, the Castilian and Biscayer *nationes* could proclaim victory, even if it took over thirty-five years to get a favourable judgement and, more importantly, a judicial order to proceed with its enforcement.<sup>81</sup> Interestingly,

---

<sup>75</sup> See for example: *Ibid.*, 79-80, 111, 122-124, 197-198.

<sup>76</sup> As described in: *Ibid.*, 111.

<sup>77</sup> *Ibid.* The Genoese Statute were essentially the privileges and corresponding instructions from the Genoese *Senato*. See for an explanation by the Genoese themselves: *Ibid.*, 233-234. See also: *Documenti riguardanti le relazioni di Genova col Brabante, La Fiandra e la Borgogna: raccolti ed ordinati* eds. Cornelio Desimoni & Luigi T. Belgrano (Genoa: Istituto Sordo-Muti, 1871), 455-457.

<sup>78</sup> Gilliodts-Van Severen, *Espagne*, 122-124.

<sup>79</sup> See Algemeen Rijksarchief Brussel (hereafter BE-ARB), Grote Raad der Nederlanden te Mechelen. *Processen in eerste aanleg*, inv. T 138, nrs. 294 and 3519; *Registers*, inv. T 107, nrs. 815.12 (fol. 70-88), 815.13 (fol. 90-106), 818.28 (pp. 283-309) 818.35 (pp. 391-405), 823.68 (pp. 547-560), 824.83 (pp. 749-755), 826.68 (pp. 567-574). It should be noted that some of the cases, until 1515, contain folio and the post-1515 cases contain pages in the archival pieces. The first instance cases that are studied below are unfoliated and only contain dates and are as such referred to.

<sup>80</sup> Goris, *Étude*, 75.

<sup>81</sup> The case, including the long aftermath, is also briefly described in: Wijffels, 'Justitia in commerciis: public governance and commercial litigation before the Great Council of Mechlin in the late fifteenth and early

the Castilians filed a separate case against both the Biscayers and Genoese in 1518 on the *avería de nação*, further emphasising the opportunistic behaviour of the Castilians.<sup>82</sup>

In 1515 the Genoese presented exactly the same arguments as in 1472, pointing to their Statute that only permitted them to pay for maritime averages when Genoese ships were used.<sup>83</sup> This time, enforcement had become a major problem, which obliged the Great Council to make multiple judgements to enforce its initial judgement. This was partly because the Secret Council, formally the highest judicial authority in the Low Countries, agreed to hear a petition by the Genoese *natio* about this case.<sup>84</sup> The Biscayers protested this petition to no avail, since the Secret Council decided that the Great Council had to explain its judgement, implying that its judgement was incorrect. This gave the Genoese another option to file a case. In the end, the Biscayer and Castilian merchants could proclaim formal victory, even if enforcement was still an issue up to 1549 when the archives go silent. The move to Antwerp severely complicated things, which necessitated both the Biscayer and Genoese merchants to creatively find new avenues for litigation at the various courts in the Low Countries. The Genoese merchants were especially creative in finding new ways to delay the execution of the judgement, even filing an appeal to the Admiralty Court:<sup>85</sup> but they did only do so when forced to do so, otherwise preferring other modes of conflict resolution. Political support played a key role during this case. While the Spanish merchants were supported by their Habsburg sovereign and therefore trusted the Low Countries court system, the Genoese tried to solve the case via delays and negotiations until the early 1530s. The 1529 Peace of Cambrai however restored peace between Genoa and the Habsburg Empire, shifting the political situation of the Genoese in the Low Countries as well. This may explain their lengthy appeals in the 1530s and 1540s, as the political winds blew their way.

### The secret ingredient: lobbying

Even if most Castilian merchants were not citizens, they displayed a remarkable ability to influence legislation in the sixteenth-century Low Countries. Two examples stand out: the 1551 *Ordonnance* and the 1569 *Hordenanzas*. Following from the 1550 *Ordonnance* on the same topic, the 1551 *Ordonnance* was issued by Charles V to address the challenges of navigating to the Iberian Peninsula. This navigation was threatened by Scottish and French pirates, especially in the English Channel.<sup>86</sup> The 1550 *Ordonnance* was concerned with the equipment and protection of ships, and laid down rules for sailing between the Low Countries and the Iberian Peninsula, for example obligatory artillery and other protective measures.<sup>87</sup> In doing this, the central government hoped to discourage

---

sixteenth century', in *Understanding the sources of early modern and modern commercial law: courts, statutes, contracts, and legal scholarship* eds. Pihlajamäki, Cordes, Dauchy and De ruysscher (Leiden and Boston: Brill, 2018), 32-54, there 48-49.

<sup>82</sup> Gilliodts-Van Severen, *Espagne*, 245.

<sup>83</sup> Desimoni & Belgrano, *Documenti*, 469-470; Gilliodts-Van Severen, *Espagne*, 230-240, especially 233-234.

<sup>84</sup> See: BE-ARB, *Registers*, nrs. 823.68 (pp. 547-560), 824.83 (pp. 749-755), 826.68 (pp. 567-574). The complex jurisdictional situation between the Secret Council and the Great Council is described in: De Schepper, 'De Grote Raad van Mechelen'.

<sup>85</sup> BE-ARB, *Processen*, nr. 294 (12/12/1533).

<sup>86</sup> Sicking, *Neptune and the Netherlands*, 243-245.

<sup>87</sup> See: Jo Craeybeckx, 'De organisatie en de konvooiering van de koopvaardijvloot op het einde van de regering van Karel V', (1949) 3 *Bijdragen tot de Geschiedenis der Nederlanden* 179; Sicking, 'Les marchands espagnols et portugais aux Pays-Bas et la navigation à l'époque de Charles Quint: gestion des risques et législation' (2011) 51 *Publications du Centre Européen d'Etudes Bourguignonnes* 253; Sicking, 'A wider spread of risk: a key to understanding Holland's domination of eastward and westward seafaring from the Low Countries in the

the use of insurance and bottomry, two tools the government viewed as detrimental to risk management.<sup>88</sup> The 1550 *Ordonnance* was only aimed at small ships sailing westwards, which meant that the Spanish and Portuguese merchants were exempted from the new rules because they already used larger and better-protected ships.<sup>89</sup> As the *Ordonnance* did not immediately reach its intended effect, Charles V promulgated a second *Ordonnance* in 1551 with additional rules, which this time also applied to Iberian merchants, and included regulations on private maritime law as well. In the archives of the Brussels Admiralty and the Antwerp municipal archives, drafts of the 1551 *Ordonnance* survive with Spanish and Portuguese merchants' comments.<sup>90</sup> The draft *Ordonnance* was also sent out to other maritime interest groups, including Dutch skippers, Antwerp skippers, Antwerp merchants and Bruges merchants.<sup>91</sup>

The 1551 *Ordonnance* subjected all westward seafaring (i.e. to the Iberian Peninsula) to the same regime. This included obligatory convoys and artillery for protection.<sup>92</sup> Since the central government did not contribute to these extra protection costs, these proposals would lead to an enormous rise in transaction costs for merchants, which most groups vehemently opposed and protested. Moreover, the 1551 *Ordonnance* strongly limited the use of insurance (as shall be discussed below), which hit Castilian merchants extraordinarily hard given their widespread use of the technique.<sup>93</sup> Following an additional proposal to tax merchants to pay for the obligatory protection measures, Castilian merchants immediately entered into negotiations over the tax with Cornelis de Schepper, the main civil servant in charge of maritime affairs in the Low Countries.<sup>94</sup> The Castilian merchants agreed to a 2% tax in 1552, down from the 3% originally proposed. They also negotiated a contribution by the central government to pay for part of the protection costs.<sup>95</sup> In their written feedback, both Castilian and Portuguese merchants also made the case that standard tools of risk management, such as insurance and general average (GA), could suffice to counter the risks of pirates, provided that the *natio* covered additional protection measures.<sup>96</sup> In the end, the 1551 *Ordonnance* included a clause that allowed for GA to be declared when sailors were wounded or had died after fighting a pirate attack.<sup>97</sup> The Castilians argued that a precedent existed in Roman law that allowed for GA after a pirate attack, namely when a ransom payment was made to pirates to save the venture.<sup>98</sup> Subsequently, the 1563 *Ordonnance* issued by Philip II also included this

---

sixteenth century', in *The dynamics of economic culture in the North Sea- and Baltic region* eds. Hanno Brand and Leos Müller (Hilversum: Verloren, 2007), 122-135.

<sup>88</sup> Sicking, *Neptune and the Netherlands*, 247-253.

<sup>89</sup> Ibid.; Roger Degryse, 'Brugge en de pilotage van de Spaanse vloot in het Zwin in de XVIde eeuw', (1980) 67 *Handelingen voor het Genootschap voor Geschiedenis*, 105 and 227.

<sup>90</sup> BE- ARB, Admiraliteitsarchief, inv. T 094, nrs. 106-107; also BE-SAA, Privilegiekamer, Verzameling 'Raeckende den Handel', nr. PK 1021.

<sup>91</sup> Sicking, 'A wider spread of risk', 125-126.

<sup>92</sup> Santa M. Coronas González, 'Carlos V, asegurador: una propuesta original de los comerciales de Amberes (1551)', in *Centralismo y autonomismo en los Siglos XVI-XVII. Hommenaje al Professore Jesús Lalinde Aladía* eds. Aquilino Iglesia Ferreirós and Sixto Sánchez-Lauro (Barcelona: Universidad de Barcelona, 1989), 121-130.

<sup>93</sup> 1551 *Ordonnance*, Article 18. The *Ordonnance* can be found in: *Collection de lois, maritimes antérieures au XVIIIe siècle* (Vol. 4), eds. Jean-Marie Pardessus (Paris: Imprimerie Royale, 1828), 44-63.

<sup>94</sup> Sicking, *Neptune and the Netherlands*, 250-252.

<sup>95</sup> Ibidem, 257-258.

<sup>96</sup> BE-ARB, Admiraliteitsarchief, nr. 107, *sine folio* (1549).

<sup>97</sup> 1551 *Ordonnance*, Art. 28.

<sup>98</sup> D. 14.2.2.3 of Justinian's Digest stated this.

clause.<sup>99</sup> By creating an ad-hoc coalition with the Portuguese *natio*, Castilian merchants had been able to negotiate the contents of the *Ordonnance* to significant effect. Since the Castilian consuls had jurisdictional control in the consular court over GA proceedings, this also benefited the *natio*.

Another example of successful lobbying concerned the publication of the so-called *Ordenanzas* of 1569 by the Castilian *natio* in Bruges. The *Ordenanzas* concerned insurance and was published at a delicate time. Since 1558, when the Piedmontese merchant Giovanni Batista Ferrufini proposed to create a central insurance brokers' office, lengthy negotiations between stakeholders in the insurance business in the Low Countries had been going on to create workable legal norms.<sup>100</sup> Castilian merchants, the principal insurers in Antwerp, of course also participated in these negotiations, which mainly took place between various merchant communities, the city of Antwerp and the central government under Philip II. The latter's representative in the Low Countries, the Duke of Alva, was so frustrated with the lack of progress that he promulgated the 1569 *Ordonnance* prohibiting all insurances.<sup>101</sup> As opposed to the 1550 and 1551 *Ordonnances*, when Charles V had obtained a more or less favourable result through negotiations, Alva and Philip II shut down negotiations when no compromise could be reached. Merchants protested against this decision with the support of the Antwerp aldermen, and the central government was soon forced to back down, publishing two more *Ordonnances* in 1570 and 1571 on insurance which, with the input of merchants, stipulated basic rules and standard policies for cargo and hull insurance.<sup>102</sup> This was partly based on the standard policies promulgated in the *Ordenanzas*, along with the Florentine insurance policies of the time. In 1571, Philip II even formally enshrined the *Ordenanzas* into princely legislation, a remarkable about-face compared to only two years earlier.<sup>103</sup>

The Castilian merchants claimed that the *Ordenanzas* were based on the 'customs of the Antwerp stock exchange and those of London'.<sup>104</sup> Guido Rossi and other scholars have strongly questioned this claim, primarily because many of the clauses were taken from the insurance *Ordonnances* promulgated for the Burgos and Seville *Consulados* in 1538 and 1556.<sup>105</sup> Moreover, the *Ordenanzas* were mainly used to regulate insurance policies for the route between Burgos and Bruges, where the Castilian *natio* was established. Indeed, most of the rules contained in the *Ordenanzas* were specifically targeted at the wool trade between the Iberian Peninsula and the Low Countries, including separate chapters for how to deal with damaged wool. Even if the *Ordenanzas* did not contain the customs of the Antwerp stock exchange, the influence of the work was still significant. In the 1608 *Compilatae* of Antwerp, a major collection of customary municipal

---

<sup>99</sup> 1563 *Ordonnance*, Title IV, Art. 2. The 1563 *Ordonnance* can be found in: *Collection de lois* (Vol. 4), eds. Pardessus, 64-102.

<sup>100</sup> See for the documents regarding this proposal: Pieter Génard, *Jean-Baptiste Ferrufini et les assurances maritimes à Anvers au XVI<sup>e</sup> siècle* (Antwerp: Imprimerie Veuve de Bakker, 1882).

<sup>101</sup> Charles F. Reatz, 'Ordonnances du duc d'Albe sur les assurances maritimes de 1569, 1570, 1571, avec un précis de l'histoire du droit d'assurance maritime dans les Pays-Bas', (1878) 5 *Compte-rendu des séances de la commission royale d'histoire*, Deuxième Série 41, there 74-79.

<sup>102</sup> De ruysscher, 'Antwerp 1490-1590', 94-96.

<sup>103</sup> Gilliodts-Van Severen, *Espagne*, 431-434.

<sup>104</sup> The text is printed in: Charles Verlinden, *Código de seguros marítimos según la costumbre de Amberes: promulgado por le Consulado Español de Brujas en 1569* (Buenos Aires: Facultad de Filosofía y Letras, 1947).

<sup>105</sup> Guido Rossi, *Insurance in Elizabethan England: the London Code* (Cambridge: Cambridge University Press 2016), 20-21; Coronas González, 'La Ordenanza de seguros marítimos del Consulado de la Nación de España en Brujas', (1984) 54 *Anuario de Historia del Derecho español* 385; De Groote, *De zeeassurantie*, 52-58. See for the *Consulados*: Robert S. Smith, *The Spanish guild merchant: a history of the Consulado, 1250-1700* (Durham, NC: Duke University Press, 1940).

law compiled between 1592 and 1608, almost 25% of the clauses on maritime law were directly taken from the *Hordenanzas*, according to the writers of the *Costuymen* themselves.<sup>106</sup> Although there was some contemporary criticism on the *Costuymen* of 1608 for not adequately reflecting the customs of Antwerp, it is clear that the jurists drawing up the *Compilatae* drew extensively from the *Hordenanzas*. This should also be considered a form of lobbying, especially since Castilian merchants were the principal players in the sixteenth-century Antwerp insurance business. Castilian insurers profited from the incorporation of ‘their’ rules into the corpus dealing with commercial and maritime law in the Low Countries (e.g. in royal legislation and Antwerp municipal law).

## Conclusion

Building and expanding on the literature on mercantile conflict management, this article has shown that the Castilian merchants in the Low Countries used a wide array of strategies to manage mercantile conflict, including forum shopping to defend their privileges and lobbying to change laws in their favour. Given the wide availability of sources, the Castilians offer an excellent case study for research into the legal strategies of foreign merchants in major commercial cities like Bruges and Antwerp during the sixteenth century. Whereas the previous scholarly discussion has primarily centred on the issue of “efficiency” in internal conflict resolution, the lesson from this article is that historians need to move beyond these questions and start studying conflict from the premises that conflict was always socially and politically embedded, as well as taking place in an ever-changing complex legal landscape. Taking into account the political, legal and social status of a foreign merchant community therefore offers the most promising way to move the debate forward.

---

<sup>106</sup> Bram Van Hofstraeten, ‘Recording customs in early modern Antwerp, a commercial metropolis’, (2016) 24 *Rechtsgeschiede* 288, there 292-293.