

**'Imperium in Imperio?'**

**Sovereign Powers of the First Dutch West India Company**



**Masterthesis History**  
**European Expansion and Globalisation**  
W.B. den Blanken  
0512931  
Papengracht 3C  
2311 TV Leiden

## **Contents**

<b>Introduction</b>	<b>2.</b>
<b>I Historiography</b>	<b>5.</b>
<b>II The WIC Charter and the 1629 Order of Government</b>	<b>21.</b>
<b>III 'Creaturen van de Compagnie' The Seizure of the Ship Alckmaer</b>	<b>28.</b>
<b>IV The Trial of Isaac Coymans</b>	<b>37.</b>
<b>V Dispute with the Danish Crown</b>	<b>52.</b>
<b>Conclusion</b>	<b>61.</b>
<b>Literature and Sources</b>	<b>63.</b>

## Introduction

One of the principal characteristics of European overseas expansion was the foundation of commercial trading companies, charged with the advancement of their commercial interests in both the East and the West. This institutional arrangement was new to the existing local trading networks. Whereas the Portuguese, pioneers in the Eastern trade, had expressly organized their *Estado da Índia* as being part of the state, the English and Dutch East India Companies in contrast were granted extensive public powers by their respective governments.<sup>1</sup> These powers included the right to conclude alliances with foreign Princes and Peoples, the right to maintain armies and the right to administer justice. Competencies that are nowadays considered to be the sole prerogative of the sovereign state. The *West Indische Compagnie* (WIC) and the *Vereenigde Oost Indische Compagnie* (VOC) laid the foundations for the later Dutch colonial empire. The companies are sometimes regarded as the first limited liability companies in history. Considering that the companies carried this public authority, while being private entities, the question is raised how we should evaluate their legal status.<sup>2</sup>

Today, the WIC is mostly known for its role in the Atlantic slave trade. However, this was not what the Company was created for. Its original purposes should be understood in the context of the Eighty Years war. At the time of its founding, the Twelve Year Truce had just expired and the hostilities with Spain were resumed. One of the main purposes of the WIC was to damage the Spanish commercial empire in the Atlantic through warfare and trade. Because of this public interest, the Company had been granted a trading monopoly. Another important purpose was the establishment of colonies in the Americas, as had been advocated by the spiritual father of the Company, Willem Usselinx. In order to achieve these purposes, to maintain its monopoly and to govern the anticipated colonies, the WIC would have to be able to yield state like, or sovereign, powers: to issue laws, administer justice and maintain foreign relations. The main question addressed in this thesis revolves about the concept of sovereignty in a world where these kind of corporations were active.<sup>3</sup>

The legal dimensions of the Dutch expansion overseas were the subject of study by the Netherlands' most famous legal scholar, Hugo Grotius (1583-1645). Grotius' most widely read works, *Mare Liberum* and *De Iure Belli ac Pacis*, earned him great fame already during his own lifetime. He retained this status through the ages and today he is widely considered to be one of the founding

---

<sup>1</sup> James D. Tracy, 'Introduction' in: James D. Tracy ed., *The Political Economy of Merchant Empires. State Power and World Trade 1350-1750* (Cambridge 1991) 1-21, 2-3.

<sup>2</sup> Henk den Heijer, *De geotrooieerde compagnie. De VOC en de WIC als voorlopers van de naamloze vennootschap* (Deventer 2005) 1-8.

<sup>3</sup> Henk den Heijer, *De geschiedenis van de WIC* (Second edition; Zutphen 2002) 21-30.

fathers of our modern system of international law. Recently however, historians and political scientists have argued that his theories also provided the legal justification for European overseas expansion.<sup>4</sup>

J.A. Somers has undertaken a comprehensive study on the legal status of the VOC in international law. Should we consider the VOC to be a sovereign entity, not subject to any higher authority in the East Indies? He concludes that the view of the Company as a *de iure* sovereign entity has to be rejected.<sup>5</sup> This affirms the conclusion drawn by arbitrator Max Huber in a 1928 case between the Netherlands and the United States. The case concerned the claim of sovereignty over the small island of Palmas, situated between Indonesia and the Philippines. The U.S. claimed to be the rightful successor to Spain, which had ceded the island in a 1898 treaty. The Netherlands had based their claim on colonisation by the VOC, which they argued, had exercised sovereignty since at least 1677. Agreements concluded with the rulers of the Island of Sangi by the VOC established Dutch suzerainty over Palmas.<sup>6</sup> Arbitrator Max Huber stated in the judgement: "The acts of the East India Company in view of occupying or colonizing the regions at issue in the present affairs must in international law, be entirely assimilated to acts of the Netherlands state itself".<sup>7</sup> This classification should also be considered to apply to the WIC.<sup>8</sup> Recent research on the legal aspects of early modern European expansion show however that the reality was more complex. To what extent was the WIC able to operate as a *de facto* state overseas? In order to delineate the extent of the sovereignty exercised by the First Dutch West India Company in the course of the seventeenth century, I will conduct three case studies, the events of which take place in the two most important areas of Company activity: in Brazil and on the coast of West Africa. The selected cases shed some light on how the issue of the Company's constitutional position became relevant and how this was discussed in the various conflicts that arose in the history of the First WIC; a position that is hard to define in the oligarchic 'federal' Republic, that lacked a constitution or any other governing legal statute.

The cases are put into the context of the problems that the Company was facing at that time. Crushing debt and fierce international competition made that the WIC was less successful in its Atlantic endeavours than the VOC would be in Asia. A second focus point of this thesis is to show that the legal status of the WIC was not just an academic issue, but that it was also a matter of practical importance within the Republic, turning up in court cases in which the WIC was a party. Lastly, in a broader context the abovementioned themes tie into the concept of sovereignty in early modern

---

<sup>4</sup> Martine Julia van Ittersum, *Profit and Principle. Hugo Grotius, Natural Rights Theories and the Rise of Dutch Powers in the East Indies 1595-1615* (Leiden 2006) xxvii-xxviii.

<sup>5</sup> J.A. Somers, *De VOC als volkenrechtelijke actor* (Rotterdam 2001) 249-250.

<sup>6</sup> Permanent Court of Arbitration, (United States v. USA) *Island of Palmas case*, Reports of International Arbitral Awards II, XX, (4 April 1928) 829-871, 837-838.

<sup>7</sup> *Ibidem*, 858.

<sup>8</sup> Den Heijer, *De geocrooieerde compagnie*, 172.

Europe. The notion of imperial sovereignty, one of the defining characteristics of which was its divisibility, does not accord with our idea of state sovereignty as it was developed in nineteenth century Europe, termed the Westphalian model of sovereignty. Crucial in the imperial system of Europe were a decentralized organization and the delegation of sovereign powers to sub-state entities.

In Chapter I, a historiographical overview on the issues of chartered companies and sovereignty will be given. The views of two contemporary scholars, Hugo Grotius and Pieter de la Court, will also be discussed. They held opposing views on the utility and legality of the Dutch chartered companies. Chapter II will then shortly discuss the founding history of the WIC and the laws that laid out the extent of its public powers. The last three chapters will be devoted to the case studies. The first case is about the seizure of a Dutch merchant ship in Recife by Company authorities. When the captain and owners of the ship question the integrity of the judicial proceedings that follow the seizure, the case is brought under the attention of the States-General. The resulting discussion gives insight in the extent of the judicial jurisdiction of the Company. The second case deals with an episode in WIC history during the 1660s, when the Company was faced with increasing competition from other European states. Two competing Scandinavian companies turned out to be Amsterdam operations, conducted under a foreign flag. The trial of Isaac Coymans, one of the financiers of the Danish Africa Company, is about the nature of treason and the question whether this offence can be committed against a private trading company. In the last case, in the same context of 'Danish' competition, the diplomatic consequences of a crackdown by the WIC against the Danish company will be discussed. To what extent can the state be held responsible for any offences perpetrated by the WIC against foreign companies? What happens when company interests do not align with state interests and foreign policy? Discussion of these cases is based on legal opinions by Dutch jurists. Shared characteristics in all these cases are first, the central position of arguments derived from the works of Grotius. Secondly, as will be shown, the opaque constitutional structure in the Republic provides different interest groups and their advocates with a lot of space to develop various legal arguments as justification for their operations. Still, these legal scholars share similar concerns about the legal status of the WIC and its relationship with the States-General.

## I Historiography

Before turning to the central subject of this thesis, the Dutch West India Company, this chapter will start with a broad look at a selection of recent literature on the early modern perception of sovereignty. It touches upon the history of the sovereign state as we know it today and the supposed development of an international community of equal and independent states. Subsequently we will turn specifically to the chartered company as a bearer of sovereign power. To put the issue in a comparative perspective, the relation of the English East India Company (EIC) with the English crown will be addressed. The chapter will be concluded by looking at the views of Pieter de la Court and Hugo Grotius on the functions and competences of the Dutch trading companies.

Contemporary international law is for the most part characterized by the interactions between sovereign states belonging to an international community. The fundamental legal principle underlying this community is sovereign equality. This principle is codified in what some have called the 'constitution' of this international system, the United Nations Charter. Moreover, article 2(4) of the Charter prohibits the 'threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.'<sup>9</sup> Conventionally, the origins of this system are dated back to the Peace of Westphalia in 1648, the conclusion of the Thirty Years War, when the principle of non-intervention was instituted and sovereignty was understood as having the supreme authority within a territory.<sup>10</sup> Now, under the influence of globalization and the proliferation of inter- and supranational organization, some academics have signalled the dawn of a post-Westphalian order: 'In this post-Westphalian order, there is marked shift towards heterarchy—a divided authority system—in which states seek to share the tasks of governance with a complex array of institutions, public and private, local, regional, transnational and global, representing the emergence of 'overlapping communities of fate'.'<sup>11</sup> There is a growing realization that the nation state 'may not be the final stage in some historical development. It may just turn out to be only one political agency among many.' This has led certain scholars to engage in a reevaluation of the concept of sovereignty as an indivisible bundle of rights.<sup>12</sup>

The historical development sketched here depicts the orthodox view in the history of international relations. In the past ten years, scholars of international relations have started to

---

<sup>9</sup> United Nations Charter Articles 2(1) and (4).

<sup>10</sup> Samantha Besson, 'Sovereignty', *Max Planck Encyclopedia of Public International Law*, 13; consulted on 06-08-2012.

<sup>11</sup> David Held and Anthony McGrew, 'The End of the Old Order? Globalization and the Prospects for World Order', *Review of International Studies* 24 (1998) 219-245, 221.

<sup>12</sup> Anthony Pagden, 'Introduction' in: Anthony Pagden ed., *The Idea of Europe From Antiquity to the European Union* (Cambridge 2002) 1-32, there: 20-28.

oppose the idea that the Westphalian system, with the nation-state at its core, is only just now starting to change, under the influence of supranational organizations and globalization.

In his book *Beyond Anarchical Society* Edward Keene presents a challenge to the idea of the 'Westphalian order' and its centrality of the society of states by pointing out the existence of divisible sovereignty in early modern Europe. How can we live in a post-Westphalian order if the old one was not Westphalian? The abovementioned scholars of international relations have stressed that the idea of divided sovereignty is a very modern, or Post-Westphalian, development. Thereby neglecting the fact that there were many entities in early modern times that carried a selection of sovereign powers. One of these entities was, it is argued in this thesis, the Dutch West India Company.<sup>13</sup> Keene's arguments build upon the works of Hugo Grotius, arguing that the Dutch scholar himself recognized the existence of divisible sovereignty. He posits that Grotius' views have been misconstrued by nineteenth century thinkers who tried to use them as a defence of the old European monarchies against the advancing armies of Napoleon.<sup>14</sup> Historical alternatives to the state-system have not gotten enough attention in analyses of international order. Moreover, he argues that the European states imposed their system outside of Europe in order to delegitimize any alternative form of political organization.<sup>15</sup>

Late medieval Europe was characterized by a diverse set of different entities that exercised territorial sovereignty and competed with each other. Hendrik Spruyt argues that the process of change from feudalism to the sovereign state cannot be described as inevitable and unilinear. The waning feudal society resulted in city-states, city leagues and monarchies existing alongside each other.<sup>16</sup> Spruyt analyzes the emergence of the territorial sovereign state as a form of survival of the fittest. The biological process of evolution is similar to the way in which the sovereign state as an institutional arrangement prevailed over alternative options, like city states or leagues: 'The sovereign, territorial state emerged because it happened to be better than its alternatives, not because it was the result of some necessary unilinear process. [...]'. Divided sovereignty, he argues, lead to unpredictable and therefore inefficient conduct of international relations. In Spruyt's analysis, the most inefficient modes of organization would over time, necessarily, become extinct.<sup>17</sup> What does this mean for the future of the sovereign state? What are the forces that determine the most efficient ordering of a polity?

---

<sup>13</sup> Edward Keene, *Beyond the Anarchical Society. Grotius, Colonialism and Order in World Politics* (Cambridge 2002) xi-2.

<sup>14</sup> Keene, *Beyond the Anarchical Society*, 38.

<sup>15</sup> *Ibidem*, 146-148.

<sup>16</sup> Hendrik Spruyt, *The Sovereign State and its Competitors: An Analysis of Systems Change* (Princeton 1994) 3-4.

<sup>17</sup> *Ibidem*, 193-194.

'Economic and environmental forces in and of themselves thus do not indicate the nature of future institutional evolution. Indeed, I argue that there are serious impediments to changing the de iure nature of the state system. But such forces do provide incentives and sets of ideas for actors who are unwilling to make do with the present.'<sup>18</sup>

This observation seems to be prescient in light of the current debate in Europe over the future of the European Union. We can see now that, pressured by an economic crisis, European statesmen are forced to consider the transfer of more and more elements of its state sovereignty to Brussels.

These developments notwithstanding, it must be emphasized that the concept of territoriality still resides at the heart of international law. There can be no state, no sovereignty and no jurisdiction, without territory. Even if there are developments that signal a decline in this centrality as a consequence of globalization, like concerns over human rights and the environment, which transcend national boundaries.<sup>19</sup> Charles Tilly gives a sociological definition of the state in *Coercion, Capital, and European States, AD 990-1992* which also contains this condition of territoriality: 'Let us define states as coercion-wielding organizations that are distinct from households and kinship groups and exercise clear priority in some respects over all other organizations within substantial territories. The term therefore includes city-states, empires, theocracies, and many other forms of government, but excludes tribes, lineages, firms, and churches as such.'<sup>20</sup> In line with abovementioned authors, Tilly notes that the state seems to be in the final stage of its development and will remain the dominant system of political organization, while at the same time rival forms have materialized, like international organizations and transnational corporations.<sup>21</sup>

However, accounts of the development of the territorial nation-state are flawed, as Lauren Benton shows in her book *A Search for Sovereignty. Law and Geography in European Empires, 1400-1900*. The necessary connection between sovereignty and territoriality that we make today does not give a correct depiction of sovereignty in the early modern world.<sup>22</sup> European expansion in the early modern period was highly dependent on portable subjecthood, not only by state officials, but also by a variety of non-official explorers, like merchants, missionaries or settlers who carried legal authority. Because of the limited capacity of the early modern state, the extension of imperial sovereignty to overseas territories necessarily relied, on the one hand, on the delegation of legal powers to these

---

<sup>18</sup> Ibidem, 193.

<sup>19</sup> Malcolm N. Shaw, *International Law* (Sixth Edition; Cambridge 2010) 487-488.

<sup>20</sup> Charles Tilly, *Coercion, Capital, and European States, AD 990-1992* (Revised paperback edition, Malden 1992) 1-2.

<sup>21</sup> Ibidem, 3-4.

<sup>22</sup> Benton, *A Search for Sovereignty. Law and Geography in European Empires, 1400-1900* (New York 2010) 280.



non-state entities or persons. On the other hand, those travellers were often very eager to claim to be an agent or subject of a certain sovereign in their dealings with foreign rulers.<sup>23</sup>

The resulting 'system' can be defined as one of layered and divided sovereignty, in which there were many areas of overlap. Trading companies functioned in this imperial world as agents to which sovereignty was delegated. Their role was not focused on territorial control, rather at exercising authority over subjects. The asymmetrically organized empires also provided a fertile environment for the development of new legal theories, to be used as justification for imperial expansion.

Benton challenges the history of the territorial nation-state as told by, amongst others, Tilly. Aside from the tendency for territorial rule, she draws attention to this parallel process in which layered and divided sovereignty were employed by European states to govern their empires.<sup>24</sup> Moreover, she shows that the spread of legal culture is tied up with geographical features.<sup>25</sup> By dislodging the view of empires as contiguous stretches of land centrally governed by a European power and replacing it with one of asymmetrical patches and 'corridors' of jurisdiction and sovereignty, Benton makes us more aware of the complex nature of these concepts in the early modern period.<sup>26</sup>

The seventeenth century Dutch trading companies were unique institutions. Aside from the innovative way in which capital was raised for the overseas trade, one of their defining traits was that they were of a mixed private/public character. This innovation was mainly the result of pragmatic considerations and a flexible interaction between governmental and commercial concerns. A necessity for the weak pre-modern state, in particular in the federally organized Republic where a lack of centralized power created a fragmented power structure, was to share sovereign power with other organized bodies including guilds, corporations and, within the context of overseas expansion, trading companies.<sup>27</sup> Charles Tilly's explanatory model for European state formation centres on the dynamics between states wielding coercive powers and cities as centres of capital accumulation. Characteristic for the development of the Dutch Republic would then be the predominance of a capitalist elite providing the financial basis for expanding state operations, while at the same time resisting the formation of a centralized state wielding coercive powers.<sup>28</sup> His fiscal-military model entails that capital intensive, coercion intensive, and those states that followed a path in-between, eventually all developed into territorial nation-states as a result of warfare. Military innovation

---

<sup>23</sup> Ibidem, 3.

<sup>24</sup> Ibidem, 280-281.

<sup>25</sup> Ibidem, 33-36.

<sup>26</sup> Ibidem, 279-290.

<sup>27</sup> Julia Adams, *The Familial State. Ruling Families and Merchant Capitalism in Early Modern Europe* (Ithaca 2005) 13-14.

<sup>28</sup> Tilly, *Coercion, Capital and European States*, 60-66.

increasingly required states to raise capital and maintain standing armies, which was only possible through the creation of a state bureaucracy levying taxes.<sup>29</sup>

While subscribing to Tilly's fiscal-military theory, Julia Adams argues that this model of explanation has to be amended. She argues that patrimonialism was essential for both the rise and decline of the Dutch Republic and an essential element in the history of Dutch state building:

'Patrimonial rulers typically rule, and consolidate and extend their reach, by granting politico-economic privileges to followers or agents of some sort. In Europe, where corporate groups had long-established legitimacy, those agents were likely to be corporate groups or estates, which were then liable for certain reciprocal obligations to the ruler. This hoary practice enabled rulers in early modern Europe to gather funds and deploy power while corporate elites, in turn, got economic concessions, political representation, derived symbolic status, and, crucially, family advancement.'<sup>30</sup>

As mentioned, the Netherlands had inherited a state with a weak political infrastructure. Remnants of feudal times necessitated that sovereignty was shared not only between state institutions but also guilds and corporations. In that context it might be less surprising that the newly created joint stock companies were endowed with extensive public powers. These institutions were subsequently controlled by elite regent families in a patriarchal fashion. The families were continuously trying to expand their respective power through clientelism and venal office-holding.<sup>31</sup> In both government and in the chartered companies, embedded familial interests could be determinative of the course that would be taken and often these interests would clash with each other. Yet, Adams argues, it was also this familial governance that set the Republic apart in the seventeenth century, because coordination between families provided a certain stability that eventually led to the Dutch Golden Age.<sup>32</sup>

As will be shown in this thesis, the flexibility that resulted from the patrimonial organization did not function flawlessly and could lead to legal uncertainty and conflict. Moreover, these characteristics turned out to be more suitable in the Asian trading world, than in the Atlantic. Asia had known a sophisticated and well functioning trading system for centuries in which the newly arriving Europeans had to find creative ways of participating. In the Atlantic, however, the European

---

<sup>29</sup> Tilly, *Coercion, Capital and European states*, 190-191.

<sup>30</sup> Adams, *The Familial State*, 16.

<sup>31</sup> *Ibidem*, 22-28, 104-105.

<sup>32</sup> *Ibidem*, 197-198.

powers were faced with familiar competition from each other.<sup>33</sup> In Asia, trading companies were able to "plug into" an existing Asian system of suzerainties and hierarchy between local rulers. Not necessarily starting on top of the pyramid, the companies were eventually able to replace some of those local rulers with their own colonial administrations.<sup>34</sup> Because of this difference between trade in the East and in the West, most literature on the legal aspects of Dutch trading companies concern the VOC (Aside from the fact that the history of the WIC has not nearly been as thoroughly researched as that of the VOC).

### *Company sovereignty*

In a classic study on the subject, *Introduction to the history of the law of nations in the East Indies*, C.R. Alexandrowicz describes how relations between European and non-European attributed to the development of the law of nations during a period of expanding world trade. In the early years of European expansion the Portuguese encountered problems with regards to their legal title on overseas territories. They had based their titles on the Papal donation in the bull *Inter Caetera* (1492), which had divided the world outside Europe into a Spanish and a Portuguese sphere of influence. However, with regards to Asian rulers and European competition, this position became untenable. It overlooked the legal status of the local rulers, who were often entangled in hierarchical suzerain relationships with neighboring powers. How were these rulers to be classified for the purpose of maintaining diplomatic relations?<sup>35</sup> Conversely, Asian rulers were unsure how to approach European trading companies. In the early seventeenth century they sent envoys to deal directly with European governments. Later, they were dealing directly with the companies, as replacing some of their fellow Asian suzerains.<sup>36</sup>

Alexandrowicz classifies the powers given to the trading companies in their charters as quasi-sovereign powers and he connects this to current examples of non-State entities carrying sovereignty.<sup>37</sup> What is the status of the treaties concluded in the first half of the seventeenth century under the law of nations? The author regards these treaties to be agreements concluded between equal parties and valid under international law: 'Thus in the East Indies, a confrontation between two worlds took place on a footing of equality and the ensuing commercial and political transactions, far

---

<sup>33</sup> Niels Steensgaard, 'Companies as a specific institution' in: Blusse, L. and Femme Gaastra eds., *Companies and Trade. Essays on Overseas Trading Companies during the Ancien Régime* (Leiden 1981) 245-264, there: 247-254.

<sup>34</sup> Keene, *Beyond the Anarchical Society*, 70-80.

<sup>35</sup> C.R., Alexandrowicz, *An Introduction to the History of the Law of Nations in the East Indies. (16th, 17th and 18th Centuries)* (Oxford 1967) 14, 47.

<sup>36</sup> *Ibidem*, 26-31.

<sup>37</sup> *Ibidem*, 28-29.

from being in a legal vacuum, were governed by the law of nations as adjusted to local interstate custom.<sup>38</sup>

It is the validity and relevancy of this last statement that is expressly questioned by J.A. Somers. In his dissertation, Somers makes an elaborate analysis of the formal legal position of the Dutch East India Company. His purpose is to clearly demarcate the discrepancy between the *de facto* position of the Company on the one hand, and its formal legal status under the law of nations. It can be seriously doubted whether Asian princes concluding treaties with VOC representatives were aware of the full meaning of the often ambiguously worded documents, the provisions of which were drafted in Western legal language.<sup>39</sup> No fully grown system of international law existed in the East Indies yet, and Asian potentates considered the agreements more like unilateral grants of privilege and not contracts that created reciprocal rights and obligations.<sup>40</sup>

Similar to the commercial activities conducted by the EIC in India, trading by the VOC on the basis of its charter would incrementally lead to the establishment of an administrative body intended to govern a commercial empire. Nevertheless, Somers draws the conclusion that, *de iure*, the VOC cannot be classified as a sovereign subject of international law. A close reading of the treaties concluded with Asian rulers and the wording of the articles of the VOC Charter, opposes such a classification. However, *de facto*, the Company functioned as a sovereign; a view shared by the Asian rulers over which the Company exercised suzerain authority. The conclusion drawn by Somers and Max Huber, arbitrator in the *Island of Palmas* case is that the VOC was acting as an agent of the state when exercising their public powers (e.g. when concluding treaties).

However, with this conclusion the issue cannot be dismissed. How should we evaluate the *de facto* situation when looked at through the prism of divisible sovereignty? *The Company-State* written by Philip J. Stern addresses the issue of corporate sovereignty. It looks at the seventeenth century history of the English East India Company and its mixed private/public character. Just as the Dutch West and East India Companies, the EIC was governed by a charter, granted in 1600 by the Crown, in which its powers were laid down.<sup>41</sup> The latter Company was in many respects more independent from the Crown than the WIC was from the States-General.<sup>42</sup> Still, the constitutive Charter was equipped with powers similar to those of the WIC and VOC, aimed at providing the necessary security for a prosperous overseas trade. It was not anticipated that these companies would lay the foundations for an eventual colonial empire in the course of the eighteenth and

---

<sup>38</sup> Ibidem, 224.

<sup>39</sup> Somers, *De VOC als volkenrechtelijke actor*, 231-242.

<sup>40</sup> Ibidem, 116-117.

<sup>41</sup> Philip J. Stern, *The Company-State. Corporate Sovereignty and the Early Modern Foundations of the British Empire in India* (New York 2011) 12.

<sup>42</sup> Lindley, M.F., *The acquisition and government of backward territory in international law: being a treatise on the law and practice relating to colonial expansion* (London 1926) 98-99.

nineteenth centuries.<sup>43</sup> Stern argues that the delegation of powers by the English Crown to the EIC in fact often amounted to a limitation of royal power as the Company assumed full control over English subjects within its overseas realm: 'From the Charter flowed an intertwined jurisdiction over trade, people, places, and passageways within a vast and often fungible hemispheric jurisdiction.' Specifically, the EIC succeeded in gradually increasing its authority in its battle against English interlopers. Starting in the 1680s, it employed a legal division charged with bringing civil claims against violators of the Charter in London. A notable case in this regard is that of *East India Company v. Thomas Sandys* (1682) (Also known as the Great Case of the Monopolies). The Sandys case gave rise to a debate in England on the purposes of the East India Company, the necessity of a trading monopoly and the character of its public or private authority.<sup>44</sup> The advocates of the EIC grounded their arguments on the premise that the Company had a special character and encompassed more than a mere private corporation granted with a trading monopoly. One of the argumentations behind the necessity of a monopoly was that it was important to maintain stable relationships with local Asian rulers and that one common policy was to be preferred over a multitude of conflicting messages.<sup>45</sup> The Chief Justice, in agreeing with this position, stated:

'Would it not be monstrous, that when the King is entered into League with any Sovereign Prince in a matter of trade, very advantageous to his People, to have it in the power of any one of his subjects to destroy it?'<sup>46</sup>

In formulating their response, Sandys' lawyers turned to the same prominent European jurists whose arguments their continental colleagues had already been using for decades, as will be shown in the case studies. Scholars like Hugo Grotius and the Portuguese Seraphim de Freitas had been discussing the issues of trade in Asia since the end of the sixteenth and beginning of the seventeenth century.

After the ruling against Thomas Sandys was handed down in 1685, advocates of the English East India Company started to find new ways to expand the powers of their employer. In order to effectively combat interloping in India, a revision of the Charter in 1686 granted by James II, explicitly granted the Company the power to set up courts and appoint judges.<sup>47</sup> In the *Sandys* case, some important links are established between the state's authority and the company. In his motivation of

---

<sup>43</sup> Somers, *De VOC als volkenrechtelijke actor*, 74.

<sup>44</sup> Stern, *The Company-State*, 47.

<sup>45</sup> *Ibidem*, 50-51.

<sup>46</sup> The argument of the lord chief justice of the Court of king's bench [George Jeffrey, baron Jeffreys]: concerning the great case of monopolies, between the East-India Company, plaintiff, and Thomas Sandys, defendant (1689) 13.

<sup>47</sup> Stern, *The Company-State*, 59-60.

the judgment, the Lord Chief Justice of the Court of King's Bench first acknowledges that in principle, monopolies are prohibited:

'I premise onely this, that in all those Countreys where Societies of Trade are erected by the Supreme Power exclusive of all others, as the Case at the Bar, Monopolies are forbidden, and are as severely punished by their laws as they can be by the Common and statute laws of England, viz. in Holland, Germany, France and Spain &c.<sup>48</sup>

There are several exceptions, however, that warrant the grant of a monopoly to a company. A monopoly is allowed if it serves the public interest and if foreign commerce, like that to the East Indies, can only be profitable through companies. If this is the case, others should not be able to profit from the costly venture of securing this trade by those companies. The Justice turns specifically to the Dutch chartered companies as evidence for the legitimacy of the EIC monopoly:<sup>49</sup>

'In the *United Provinces*, the Laws against Monopolies are the same, yet there always were several Trading Corporations exclusive of all others, 3 June 1621. In the Charter of the Dutch West-India Company, it is granted thus; And in any case any one shall go to or negotiate in any of the aforesaid Places granted to this Company, without consent of the said Company, it shall be upon pain and forfeiture of such Ship and Goods, as shall be found to Trade in those Coasts and Places, which being presently and on all sides on the behalf of the said Company fet upon, taken, and as forfeited, shall be and remain to the Use of the said Company.<sup>50</sup>

A second line of defence for Sandys' lawyers had been to question the Company's standing. In order for the case to be admissible, they argued, the Company would have to show that the actions of Sandys had resulted in quantifiable damages. Was the EIC actually deprived of any profit by the his actions, or was there enough surplus trading opportunity to leave room for others? Thomas Sandys' lawyer pleaded that the injured party in this case was not actually the Company, rather it would have been the Crown because of the violation of a royal charter. This argument was rejected on the grounds that the Crown was not a party to this case.<sup>51</sup> A similar discussion takes place in the opinions about the Coymans trial, as will be discussed in Chapter IV.

---

<sup>48</sup> The Great case of monopolies, 18.

<sup>49</sup> Ibidem, 18-23

<sup>50</sup> Ibidem, 23.

<sup>51</sup> Stern, *The Company-State*, 55.

### *Views of contemporary scholars*

In many studies about the origins of the modern state, the Dutch Republic occupies a special position. Born out of the Eighty Years War, the Republic has taken a particular path of development that set it apart from other European states. The war gave rise to many discussions on the nature of sovereignty and autonomy; about the way power was distributed amongst cities, provinces, the Stadtholder and the States-General. The resulting scholarship did not unambiguously point towards the model of indivisible sovereignty propagated by French philosopher Jean Bodin.<sup>52</sup>

The innovation of the chartered trading companies and the juridical challenges that it presented in overseas territories can be characterized as a 'legal anomaly'. At their inception, the legal status of the companies was unclear and hard to categorize and the grant of trading monopolies and sovereign privileges to the European trading companies did not go uncontested.

Quickly however, European scholars took up the task of analyzing and trying to clarify this legal status, thereby touching on the principles of sovereignty and jurisdiction.<sup>53</sup> A general reaction of legal scholars to the sweeping claims made by Spain and Portugal based on the Papal grants, was a turn away from canon law towards the use of Roman law sources for international law in the course of the sixteenth century.<sup>54</sup> Prominent among these scholars was of course Hugo Grotius, who provided a legal justification for Dutch trading ventures in both the East and the West Indies.<sup>55</sup> Dutch commercial expansion and the institutional innovation of the chartered trading company sparked an intellectual debate, not only in the Republic, but in the whole of Europe. A debate that dominated the discipline of political thought and connected commerce with traditional issues of sovereignty, jurisdiction and empire. The Dutch contributions to this discourse caught the attention of politicians around Europe, who looked to imitate the success of its growing commercial power.<sup>56</sup>

### *Pieter de la Court*

Whereas Grotius defended the freedom of the seas from a natural rights point of view, another (lesser known) Dutch thinker, Pieter de la Court took an economic approach to the subject.

---

<sup>52</sup> Martin van Gelderen, 'The state and its rivals in early-modern Europe' in: Quentin Skinner and Bo Stråth eds., *States & Citizens. History, Theory, Prospects* (Cambridge 2003) 79-96, there: 83-86.

<sup>53</sup> Benton, *A Search for Sovereignty*, 29.

<sup>54</sup> Lauren and Benjamin Straumann, 'Acquiring Empire by Law: From Roman Doctrine to Early Modern European Practice', *Law and History Review* 28 (2010) 1-38, 9.

<sup>55</sup> Martine van Ittersum has shown that Grotius' interest was not limited to the East Indies; Martine Julia van Ittersum, 'Mare Liberum in the West Indies? Hugo Grotius and the Case of the *Swimming Lion*, a Dutch Pirate in the Caribbean at the Turn of the Seventeenth Century', *Itinerario XXXI* (2007) 59-94.

<sup>56</sup> Erik Thomson, 'The Dutch Miracle, Modified. Hugo Grotius' *Mare Liberum*, Commercial Governance and Imperial War in the Early-Seventeenth Century', *Grotiana* 30 (2009) 107-130, 108-112

Pieter de la Court (1618 - 1685), by some considered as a precursor to Adam Smith, was a fervent opponent of the chartered companies.<sup>57</sup> However, in contrast to the theories of Hugo Grotius', which were held in high esteem in the Republic even after his conviction in 1618, Pieter de la Court's ideas did not get much attention in his homeland. His works would eventually be picked up in England in France in the course of the eighteenth century.<sup>58</sup>

De la Court realized the wealth of trading opportunities that the favorable geographical position in a river delta and on the coast of the North Sea, offered to Holland. Overseas trade had become the foremost source of wealth for the province. In his view, in order to maintain this prosperity, protection of shipping lanes against piracy, establishing more overseas colonies, upholding neutrality in international relations and concluding favorable trade treaties were warranted.<sup>59</sup> His main arguments against the prevalence of the company monopolies concerned the exclusion of many capable people wishing to participate in this trade. Moreover, he argues, the people that are not excluded become unproductive and idle because they do not have to worry about competition. The chartered companies will only trade in those goods that yield the highest profits, but at the same time they exclude others from trading in less valuable goods. Lastly, the greedy companies are tempted to engage in pernicious practices like the willful destruction of goods in order to drive up prices. To sum up, de la Court agitates against the inefficient use of valuable labour and capital.<sup>60</sup> However, his advocacy for free trade must not be understood as the promotion of a global free trade regime. His only concern was with the citizens of the United Provinces, for whom every artificial impediment to engage in overseas trade should be taken away.<sup>61</sup> De la Court acknowledged the merits of the foundation of the VOC in 1602 for a united defense against the Spanish but he was of the opinion that it had grown into a harmful institution that only served the self interest of the Directors.<sup>62</sup>

His neutrality principle did not preclude him from enumerating a number of possible reasons for Holland to engage in warfare. Unlike the just causes for war as laid out in the works of Grotius, de la Court does not give any real legal foundations for these reasons in his treatise *Aanwijzing der politike gronden en maximen van de republike van Holland en West-Vriesland*. His just causes for war

---

<sup>57</sup> Otto Van Rees, *Aanwijzing der politike gronden en maximen van de republike van Holland en West-Vriesland = Verhandeling over de: Aanwijzing der politike gronden en maximen van de Republike van Holland en West-Vriesland, van Pieter de la Court* (Utrecht 1851) LVI; Blom, Hans W., 'Patriots, contracts and other patterns of trust in a polyarchic society: the Dutch 17th century' in: Robert von Friedeburg, *'Patria' und 'Patrioten' vor dem Patriotismus. Pflichten, Rechte, Glauben und die Rekonfigurierung europäischer Gemeinwesen im 17. Jahrhundert* (Wiesbaden 2005) 193-213, there: 197.

<sup>58</sup> A.J.M Kunst, *Recht, commercie en kolonialisme in West-Indië. Vanaf de zestiende tot in de negentiende eeuw* (Zutphen 1981) 105.

<sup>59</sup> van Rees, *Aanwijzing*, 26-34.

<sup>60</sup> Ibidem, 61-63.

<sup>61</sup> Ibidem, 59-60.

<sup>62</sup> Ibidem, 69-70.



were the protection of the states' borders, to force foreign states to lift excessive tolls and duties, and the necessity to restore the balance of power in Europe.<sup>63</sup> They mainly differ from Grotius' just causes for war (advanced in *De Iure Praedae* and later in *De Iure Belli ac Pacis*) in that the latter legitimizes the waging of private war when there is no public sovereign to administer justice. The private war can be waged to end a violation of (property) rights and to get compensation and inflict punishment for damages caused in the course of warfare. These rights were first laid out in reaction to the capture of the *Santa Catarina* and they give private trading companies a broad discretion to use violence in their overseas activities.<sup>64</sup>

In the third part of his treatise, de la Court considers the ideal political arrangement for the state of Holland. In analyzing the constitutional relation of the companies towards the state he expresses the fear that the granted charters potentially made the companies too powerful and thus dangerous to the state:

'[...] Ende hoewel men tot heeden nog geene oproeren uit de Geoctroyeerde Compagnien ontstaende heeft vernomen, soo is nogtans waarhaftig, dat deselve niet min, maar meer ten voordeele van eenige seer *weinig*, ende ten nadeele *aller* andere van dien Koophandel uitgeslootene Ingesetenen strekken, ende de *gronden van Regeeringe in eene Regeeringe* sig hebben, ende dat men dienvolgende metter tijd ook meer oproeren uit dien Hoofde, voornementlijk onder eene Vrye Regeering, moet verwagten.<sup>65</sup>

De la Court argued that the intertwinement of commercial and public interest in the Dutch government was starting to take the shape of a *government within a government*. His proposed solution was to reign in the companies with the grant of a new charter that would make the Directors more accountable.<sup>66</sup> The concern for a parallel government was a recurrent issue shared by others, as will be shown when we turn to the case studies discussed in later chapters.

### *Hugo Grotius*

Hugo Grotius (1583-1645) was, as will appear in the following chapters when the cases are discussed, central in all matters concerning the Dutch chartered companies. As a scholar and as a legal professional Grotius would be involved with defending the practices of the Dutch trading companies

---

<sup>63</sup> Ibidem, 97.

<sup>64</sup> Borschberg, *Hugo Grotius, the Portuguese and Free Trade*, 162-163.

<sup>65</sup> Pieter de la Court, *Aanwijzing der heilsame politike Gronden en Maximen van de Republike van Holland en West-Vriesland* (Leiden 1669) 410-411.

<sup>66</sup> Van Rees, *Aanwijzing*, 142.

during his whole working life.<sup>67</sup> For a good understanding of the legal underpinnings of these companies it is therefore necessary to take a look at his work and the extensive body of literature that has been written about it. Ever since he had been commissioned by the VOC in 1604 to write a defence of the Company's policy in the East Indies, Grotius had been a proponent of trading company involvement in overseas expansion.<sup>68</sup> In his vision, the maintenance of a Dutch mercantile empire overseas could only be accomplished through the VOC and WIC as autonomous trading companies. Grotius distanced himself from his old friend van Oldenbarnevelt in his views on the trading companies. The latter had been a staunch opponent of the establishment of a West India Company, particularly in the context of Truce negotiations with Spain.<sup>69</sup> The work Grotius was asked to write by the VOC in 1604 is titled *De Iure Praedae Commentarius* (Commentary on the Law of Prize and Booty) and the cause for this commission was the taking of a Portuguese carrack, the *Santa Catarina*, in the Strait of Singapore by Admiral Jacob van Heemskerck. *De Iure Praedae* was never published as an original work and it may never have been meant to be: in his correspondence, Grotius merely expresses the wish to further explore and build upon the specific subjects of the laws of war and natural law that he employs in the treatise. However, a revised version of chapter XII of the treatise was published in 1609 as *Mare Liberum*, expressly to influence the Dutch-Spanish treaty negotiations.<sup>70</sup> *Mare Liberum* is one Grotius' most famous works, in which he advocates the freedom of navigation on the high seas and the freedom of trade with foreign rulers based on natural law.

The manuscript of *De Iure Praedae* remained in possession of the de Groot family after his death in 1645 and was only rediscovered in 1864 and auctioned off by Martinus Nijhoff to Leiden University. Robert Fruin would be the first to write an article about its supposed purpose and the implications for the valuation of Grotius' later works.<sup>71</sup> In *De Iure Praedae*, Grotius' view on company monopolies is expounded. The treatise attacks the Portuguese for exploiting their trading partners and for excluding other Europeans from trade in East Asia. He argues that in general, monopolies are prohibited. They are only allowed under the conditions that the monopolist will refrain from extracting excessive profits and that he excludes all other parties without exception.<sup>72</sup>

---

<sup>67</sup> Martine Julia van Ittersum, 'The long goodbye: Hugo Grotius' justification of Dutch expansion overseas, 1615-1645', *History of European Ideas* 36 (2010) 386-411, 386-393.

<sup>68</sup> Van Ittersum, *Mare Liberum in the West Indies?*, 60.

<sup>69</sup> Jan den Tex, *Oldenbarnevelt II* (Cambridge 1973) 667.

<sup>70</sup> Martine Julia van Ittersum, 'Preparing *Mare Liberum* for the Press: Hugo Grotius' Rewriting of Chapter 12 of *De iure praedae* in November-December 1608', in: Hans W. Blom ed., *Property, Piracy and Punishment. Hugo Grotius on War and Booty in De iure praedae - Concepts and Contexts* (Leiden 2009), 246-280, there: 249-256.

<sup>71</sup> *Ibidem*, 250-251.

<sup>72</sup> Peter Borschberg, *Hugo Grotius, the Portuguese and Free Trade in the East Indies* (Singapore 2011) 101-102.

### *Recent scholarship on De Iure Praedae*

Recent years have seen a surge in the number of studies on Hugo Grotius and his early writings. These studies are part of a revisionism on the view of Hugo Grotius as the 'father of modern International Law'. A position he mainly owed to the works of two Dutch jurists, C. van Vollenhoven and W.J.M. van Eysinga, early twentieth century proponents of the international arbitration movement.<sup>73</sup> Contrary to the portrayal of Grotius as idealistic prophet of peace, as it was constructed by these nineteenth century jurists, he was more concerned with stating the law as it stood, rather than what it should be. Who possessed the rights to perform certain actions of public authority? Not necessarily the state. Public authority, in Grotius's view consisted of a number of rights, like the waging of war, make laws and administer justice.<sup>74</sup> In his work *De Iure Belli ac Pacis* he also introduced the notion that an individual in its natural state carried the same rights as a state. The implication being that in situations where states were legally allowed to use force, an individual (and thus also the corporation) was equally in its right to do so.<sup>75</sup>

According to Peter Borschberg: 'Sovereignty is the foundation for understanding the theoretical construct of Grotius.' He argues that his notion of divisible sovereignty is indispensable for his legitimization of the design of the Dutch Republic itself and also for the operation of the trading companies overseas.<sup>76</sup> In her book *Profit and Principle*, Martine van Ittersum engages in a rereading of *De Iure Praedae* in the context of the struggle of the Republic against subsequently Portugal, Spain and England. She reveals that one of the motives behind the writing of the treatise was to convince the States-General of the importance of supporting the VOC in its military and financial struggles in the East Indies. Her approach puts Grotius' theories in the context of historical events and by doing so van Ittersum shows that these acclaimed theories were very much grounded in practical concerns of the VOC and were immediately aimed at improving the Company's international standing.<sup>77</sup>

With regards to the issue of corporate sovereignty and the VOC, Eric Wilson has argued that *De Iure Praedae* has to be seen as reflecting the workings of the early modern World-System and the rise of a capitalist world-economy. He highlights the fact that Grotius managed to combine two 'foundational pillars of International Law', being the concepts of the just war and the free seas. These two elements served as the legal underpinning for Dutch naval domination, the foundation of its

---

<sup>73</sup> Van Ittersum, *Profit and Principle*, xxxii-xxxiv.

<sup>74</sup> Keene, *Beyond the Anarchical Society*, 38-42.

<sup>75</sup> Richard Tuck, , *The Rights of War and Peace. Political Thought and the International Order From Grotius to Kant* (New York 1999) 82-85.

<sup>76</sup> Peter Borschberg, *Hugo Grotius, the Portuguese and Free Trade in the East Indies* (Singapore 2011), 153-154.

<sup>77</sup> Van Ittersum, *Profit and Principle*, liii-lv.

status as hegemon in the early modern World-System.<sup>78</sup> First and foremost, Wilson argues, the treatise must be seen as aimed at gearing up the VOC, a private corporation, with public legal authority.<sup>79</sup> This reading of *De Iure Praedae* obviously contradicts the view of Grotius as the founding father of the modern system of sovereign and equal states, the Westphalian state system. He makes an important point in explaining the seeming paradox between the view of Grotius as the father of this traditional Westphalian state-system, and the fact that *De Iure Praedae* was commissioned by the VOC to defend the interests of a private joint stock company. As the States-General realized the importance of the VOC in the war against Spain, the company was invested with an international legal personality and sovereignty, which in the traditional view of international law are only attributed to states and international organizations. This attribution of powers led to a interdependency between the State and the VOC and a balance between commercial and public interests.

Despite his concern for the rights of the Dutch trading companies under the law of nations and natural law, Grotius recognized that these applied mostly to the dealings of the companies in their competition with other European states. His view on the internal relation between the companies and the Dutch state was that the States-General was the competent body to issue and enact laws for the territories that the VOC and WIC had laid claims on. The sovereign powers of the companies would, in his view, be mostly limited to the external sovereignty: how to maintain relations with other states.<sup>80</sup> Wilson points out however, that although Grotius considers the VOC to be subordinate to the States-General, in practice both bodies constituted 'a unified *de facto* organizational entity.' The political oligarchy and the Heeren XVII were 'one and the same, indistinguishable from each other and indeed often consisting of the same people. This was the reason for the apparent autonomy from metropolitan political control that the VOC enjoyed.' The oligarchic organization of the Republic was mirrored in the structure of the VOC.<sup>81</sup>

Together with Van Ittersum and Borschberg, Wilson finally arrives at the conclusion that *De Iure Praedae* was an important tool in the promotion of European imperialism. Their overarching conclusion is that Grotius' natural rights and contracts theory, by emphasizing absolute property rights and the freedom of the seas alongside the inviolability of contracts and the private right to punish transgressions in absence of public power, had laid the intellectual foundation for colonialism and imperialism.<sup>82</sup> Additionally, Wilson calls attention to the similarities between the seventeenth

---

<sup>78</sup> Wilson, *Savage Republic*, 158.

<sup>79</sup> Wilson, *The VOC, Corporate Sovereignty, and the Republican Sub-Text of De iure praedae*, 313.

<sup>80</sup> Van Ittersum, *The Long Goodbye*, 400.

<sup>81</sup> Wilson, *Savage Republic*, 232-233.

<sup>82</sup> Wilson, *Savage Republic*, 523-524; Van Ittersum, *Profit and Principle*, lxi; Borschberg, *Hugo Grotius, the Portuguese and Free Trade in the East Indies*, 168-169.

century and twenty-first century world system and the merging of public and private spheres.<sup>83</sup> His point is that two of the most important developments in international relations today are, firstly the gradual transfer of sovereignty to international organizations by states. Secondly, that neo-liberal theory, dominant in the West since the 1990s, has propagated the privatization of state activities. This includes activities that can be seen as constituting the core of state prerogative, like the waging of war. As an example, one could point to the use of mercenaries by the United States in the Iraq and Afghanistan wars. The observation of these similarities might provide us with a starting point to rethink some of our old assumptions about the nature of the international state-system. I would argue that the value of that comparison can be questioned, as the differences between the seventeenth century Republic and the twenty-first century United States are too numerous to warrant a real comparison. To name one important difference: the Republic was an oligarchically ruled state, as opposed to the democratic federation of the United States founded on a constitution that clearly demarcates the limits of public powers.

---

<sup>83</sup> Ibidem

## II WIC Charter and the 1629 Order of Government

This chapter will shortly outline the provisions of the WIC Charter and related legislation issued by the States-General, that contain its public powers. First however, a short outline of the founding history of the WIC will be given for an understanding of the conditions under which the Company was conceived.

The Dutch had been trading on the west coast of Africa and America since the second half of the sixteenth century. A greater variety of merchandise, for which there was more demand in Europe, and shorter and safer journeys made this enterprise accessible to individual traders and smaller trading firms, as the initial investments were smaller and so were the risks.<sup>84</sup> Impressed by the yields of a returning expedition from Asia, in August 1600, Land's Advocate Johan van Oldenbarnevelt saw the promise of these overseas ventures. Sharp rivalry between the *voorcompagnieën* was however considered as a threat to the future of the business, especially while the Republic was faced with the ongoing war with Spain and Portugal. Van Oldenbarnevelt started lobbying for a unified company, able to defend itself in Asian waters, able to keep out interlopers and with enough capital to set up trading posts. His motivations were mainly of a military and political nature, as evinced by a speech he gave at a meeting of the States-General in 1601, where he stressed the importance of cooperation between the merchants, who: <sup>85</sup> 'being agreed and united should put their means and equipment together, under one rule and joint dealing, [...] for injury to the enemy and for the security of the country.'<sup>86</sup> Van Oldenbarnevelt acknowledged the utility of a company that would be able to defend state interests, yet would be funded by private capital. During negotiation over the establishment of the *Vereenigde Oost Indische Compagnie*, Willem Usselincx' plans for a similar West Indian counterpart to this Company also resurfaced. However, the abundance of Spanish competition in the Atlantic trade made sure that Dutch participation in this trade in itself was not affecting market prices. So competition amongst Dutch traders did not lead to unwanted and inefficient results. Moreover, Spanish control over American harbors favored the use of small and agile convoys over heavily guarded fleet of traders.<sup>87</sup>

In 1602, the Charter to the United East India Company (VOC) was granted by the States-General. During the negotiations for a Truce between Spain and the Republic, Oldenbarnevelt was experiencing difficulties with merchants that were served by a war with their commercial adversaries. At the same time, Spain was threatened by exploratory plans for a Dutch West India

---

<sup>84</sup> Drooglever, P.J., 'The Netherlands Colonial Empire: Historical Outline and Some Legal Aspects' in: H.F. van Panhuys e.a. eds., *International Law in the Netherlands I* (The Hague 1978) 129-130.

<sup>85</sup> Jan den Tex, *Oldenbarnevelt I* (Cambridge 1973) 300-307.

<sup>86</sup> *Ibidem*, 306.

<sup>87</sup> *Ibidem*, 302.

Company.<sup>88</sup> Eventually, the pressing demand for a Truce with Spain moved van Oldenbarnevelt to shelve Dutch plans for a West India Company as part of a compromise that allowed him to secure continued trade in Asia.<sup>89</sup> Before the conclusion of the 1609 Truce, the Spanish had been troubled by Dutch traders targeting the riches of Spanish America, including sugar, tobacco, timber and salt. Dutch trading convoys were accompanied by privateers hunting down Spanish vessels. Following the expiration of the Truce, the Dutch were planning on returning to this lucrative enterprise.<sup>90</sup> After the trial of van Oldenbarnevelt in 1618, interested parties again saw their chance to attempt an appeal to the States-General for a charter. Differences between the Provinces and cities on the distribution of Chambers and participation delayed the foundation of the WIC a few more years, but eventually, in 1621, the States-General issued a charter modeled on that of the VOC. It was decreed that the duration of the WIC Charter would be 24 years and the granted geographical limits of the monopoly roughly covered North and South America and the coast of Africa south of the Tropic of Cancer.<sup>91</sup>

Compared to the successful VOC, the WIC would turn out to be a disappointment. Whereas the VOC was founded principally for commerce, the WIC was for a large part intended to be an instrument of war and its constant struggle with Spain and Portugal detracted from its function as a trading company. Despite these differences, concerning the issue of imperial sovereignty it is interesting to see that the States-General decided to pursue its political and military aims through the establishment of two joint stock companies. Thereby in essence privatizing one of the core functions of the early modern state: the waging of war.

### *The Company Charter*

The constitutional position of the Dutch chartered companies was becoming a point of attention for scholars in the nineteenth and early twentieth century, at a time when the Dutch constitutional monarchy was taking shape. In 1841, J. Tak defended his dissertation at the Leiden University Faculty of law. Titled *History of the Colonial Laws issued by the States-General of the Republic of the United Netherlands*, it was translated from Latin in 1932 under the supervision of Cornelis van Vollenhoven, a renowned Dutch legal scholar who had done much groundbreaking work in the study of local Indonesian *adat* law. Van Vollenhoven acknowledged the importance of conducting more thorough research into the constitutional history of the Dutch West- and East-India Companies.<sup>92</sup> Tak's promotor was the famous Dutch liberal Thorbecke, draftsman of the 1848 Dutch Constitution.

---

<sup>88</sup> den Tex, *Oldenbarnevelt*, 359-361, 388.

<sup>89</sup> Henk den Heijer, *De geschiedenis van de WIC*, 26.

<sup>90</sup> Wim Klooster, *Illicit Riches: Dutch Trade in the Caribbean, 1648-1795* (Leiden 1998) 24-31.

<sup>91</sup> Den Heijer, *De geschiedenis van de WIC*, 30-31.

<sup>92</sup> Van Vollenhoven, *Staatsrecht Overzee* (Leiden 1934) 10.

Thorbecke's interest in the matter was to argue that the States-General, and not the Dutch monarch, had been the lawful legislator for the Dutch East and West Indies and Tak's dissertation was written precisely in defense of these statements.<sup>93</sup>

The grant of a charter to a trading company by the government was, in itself, not an innovation. The English Crown had preceded the States-General in this regard by granting a charter to the Senegal Adventurers in 1588. More importantly, they had granted a charter to the East India Company in 1600, differing from the Dutch VOC and WIC Charters in this regard, that the EIC Charter only concerned an exclusive trading concession for individual merchants equipping voyages to the East: no permanent capital was provided by the participants.<sup>94</sup>

The most important provisions in the WIC Charter containing its public powers are Article I and II. The first article functions as a kind of preamble, laying out the principal goals the States-General in establishing a West India Company:

'Be it known, that we knowing the prosperity of these countries, and the welfare of their inhabitants depends principally on navigation and trade, which in all former times by the said Countries were carried on happily, and with a great blessing to all countries and kingdoms; and desiring that the aforesaid inhabitants should not only be preserved in their former navigation, traffic, and trade, but also that their trade may be encreased as much as possible in special conformity to the treaties, alliances, leagues and covenants for traffic and navigation formerly made with other princes, republics and people, which we give them to understand must be in all parts punctually kept and adhered to [...]'<sup>95</sup>

Furthermore, the article states that any violation of the monopoly will result in forfeit of the ship and cargo to the Company.<sup>96</sup> Article II of the West India Company Charter granted by the States-General on June 3, 1621, embodies the bulk of its public powers. It grants the Company the authority to conclude treaties with foreign princes, to build fortifications and appoint military, judicial and civilian officials for the administration of its territories.<sup>97</sup> The 1621 WIC Charter was modeled on that of the VOC and although the WIC is often seen as the Atlantic mirror image of the VOC, in practice there were important differences. Whereas the VOC monopoly, as laid down in the charter, could consistently be maintained, the WIC monopoly was subject to amendments, gradually opening up

---

<sup>93</sup> J. Tak, *Geschiedenis van de koloniale wetgeving der Staten-Generaal van de Republiek der Vereenigde Nederlanden* (Leiden 1932) 1-2.

<sup>94</sup> Den Heijer, *De geöctrooieerde compagnie*, 50.

<sup>95</sup> WIC Charter article I.

<sup>96</sup> *Ibidem*.

<sup>97</sup> WIC Charter article II.



parts of the Atlantic domain to outsiders. One of the main reasons for this development was that the WIC was constantly at war with the Spanish and Portuguese, which considerably weakened its position. These circumstances created the opportunity for individual merchants to disregard the monopoly without having much fear of getting caught. It resulted in continuous pressure to partially eliminate the monopoly. As successful trade in Asia was relying on the large capital investments which could be provided by a united company, undermining of the VOC monopoly was much harder for individual traders.<sup>98</sup> The successful Dutch Atlantic trade that had existed before the founding of the WIC proved to be a debilitating factor in its operation. Some towns were disgruntled that they had been forced to give up their lucrative trade, for instance the salt trade in Venezuela. The greatest damage to WIC unity was caused by disagreement between the Chambers of Zeeland and Amsterdam. The Zeeland Chamber insisted on maintaining the monopoly in full force, whereas Amsterdam preferred to let private merchants be active within the Limits of the WIC Charter against payment. The dissension led to a partial lifting of the monopoly for Brazil in 1638.<sup>99</sup>

A second distinction between the WIC and VOC lies in the amount of government support both companies were receiving. The VOC, according to its charter was obliged to recompense the States-General in exchange for receiving a trading monopoly. No mention was made of possible financial backing by the government in the Charter. Although in the early decades of its existence the Company *did* receive a subsidy, after 1623 the state was actually profiting from the VOC payments. The WIC Charter, in contrast, contained some provisions guaranteeing military support.<sup>100</sup> Article V of the Charter stipulates that the States-General shall make sure to provide the necessary soldiers (on Company payroll). In addition, Article XL, provides that in case of war, the WIC shall receive sixteen warships and four yachts, well outfitted and equipped with the necessary ammunitions.<sup>101</sup> Financial support had been given to the WIC since its founding. The state bought half a million guilders in stock and granted another half million as a gift. Throughout most of its history, the Company would remain dependent on additional backing, even after its dissolution and subsequent reestablishment in 1674.<sup>102</sup>

In light of these differences in financial well-being between the two chartered companies, it has been stated that the WIC, other than was the case with the VOC, was actively controlled and supervised by the government as a kind of state enterprise. However, the states ownership of the Company did not exceed 7 percent of its total capital. The rest of the capital was provided by private

---

<sup>98</sup> Den Heijer, *De geotrooieerde compagnie*, 51-54.

<sup>99</sup> Piet Emmer, 'The West India Company, 1621-1791: Dutch or Atlantic?' in: L. Blussé and F. Gaastra eds., *Companies and Trade. Essays on Overseas Trading Companies during the Ancien Régime* (Leiden 1981) 71-95 there: 78-79.

<sup>100</sup> Den Heijer, *De geotrooieerde compagnie*, 55-56.

<sup>101</sup> WIC Charter Articles 5 and 40.

<sup>102</sup> Den Heijer, *De geotrooieerde compagnie*, 56-57.

investors.<sup>103</sup> Nevertheless, it took the WIC considerably more time and effort to attract the required capital. Decisive in finally achieving this was the decision by the States-General to include the salt trade on Punta de Araya into the Limits of the monopoly in 1622.<sup>104</sup> Another conclusion concerning the involvement of the state, that was drawn in Tak's dissertation, is that the States-General apparently were more involved in the government of the WIC than in that of the VOC because one of the primary goals of the WIC was to govern overseas settlements.<sup>105</sup> Despite this involvement by the States-General, at large distance from the metropolitan centre it would have been easy for colonial administrators to disregard government decrees in favor of pursuing their own interests, or the interests of the Company.<sup>106</sup>

A number of articles in the Charter were designed to prevent excessive entangling of private and public interests. Article VIII states that there was no reciprocal obligation for the WIC to support the Republic with military forces in times of need. In Article XIX it is laid down that all important decisions concerning Company interests shall be taken by the General Assembly of the Directors. Only in cases of war, the States-General would have to be consulted.<sup>107</sup> The Governors and other administrative officials were required to take an oath of loyalty to both the States-General and the Company (Article III). As were soldiers and military commanders in Company employment (Article VI). These were provisions aimed at keeping a degree of control over Company policy in overseas territory. Not surprisingly though, this seems to have been a dead letter requirement in practice.<sup>108</sup>

#### *Order of Government of 13 October 1629*

At the end of the first decade of its history, hopes for the future of the Company were high. Territories in Brazil were taken from the Portuguese and in the West Indies Curaçao, Bonaire and Aruba in 1634 were captured. The WIC Directors aspired to bring these and future possessions under a uniform statute, the *Ordre van Regieringe soo in Policie als Justitie, inde Plaetsen veroverd, ende te veroveren in West-Indien* (Order of Government), enacted on 13 October 1629.<sup>109</sup> The Order of Government was passed by the States-General and is generally regarded to be the operational statute of the WIC Charter. It can thus be considered to be the 'Constitution' of the West India

---

<sup>103</sup> Tak, *Geschiedenis van de koloniale wetgeving*, 3, n1; Klooster, *Illicit Riches*, 21.

<sup>104</sup> Den Heijer, *De geoctrooieerde compagnie*, 62.

<sup>105</sup> Kunst, *Recht, Commercie en Kolonialisme*, 46-47.

<sup>106</sup> Benton, *A Search for Sovereignty*, 24.

<sup>107</sup> WIC Charter, Articles 8 and 19.

<sup>108</sup> Den Heijer, *De geschiedenis van de WIC*, 83.

<sup>109</sup> Jacob A. Schiltkamp, 'Legislation, Government, Jurisprudence, and Law in the Dutch West Indian Colonies: The Order of Government of 1629', *Pro Memorie* 5 (2003) 320-334, 320-321; Groot placquet-boeck, vervattende de placaten, ordonnantien ende edicten van de Staten Generael der Vereenighde Nederlanden, ende van de Staten van Hollandt en West-Vrieslant, mitsgaders vande Staten van Zeelandt / by een verzameld door Cornelis Cau II (The Hague 1664) 1235-1248.

Company. The Order flows from the articles of the Charter and provides the material rules of government in the West Indies.<sup>110</sup> It served a twofold purpose: as a legal foundation for a centralized government in the West Indies; and secondly, to maintain a degree of uniformity between the laws in the Republic, and the law in the colonies. (Although the Provinces all had their own, separate systems of law). The Order sub-delegates the public powers contained in the Charter to a central Council in seated in Brazil. The Council would get authority over the making of treaties with foreign rulers (art. XV), the administration of justice and maintenance of public order (art. LVIII) and the issuance of local decrees (art. LXII).<sup>111</sup> However, as the conquests in Brazil started to suffer from a kind of 'mission creep' under continuing struggles with the Portuguese, without succeeding in expansion of the Brazilian colony, the ambitions of the Directors and the States-General to create a more uniform legal system for its territories in the West Indies eventually faded away. The experience accords with Lauren Benton's statements on the export of legal culture: 'Metropolitan efforts to construct internally consistent legal orders were desultory at best. Periods of energetic and often ineffective imperial legal planning interrupted longer spans of time when metropolitan officials mainly reacted to shifting circumstances and recognized the advantages of ad hoc solutions in loosely conforming to systems of law.'<sup>112</sup>

#### *Merger plans VOC and WIC*

In the end, the statesmen of the United Provinces always had several ways at their disposal in order to control and influence Company policy. Many of the *regenten* were able to hold more than one office at a time and were thus able to have both a seat in one of the Chambers of the WIC and to fulfill a political function.<sup>113</sup> Another instrument was the temporary nature of the Charter granted by the States-General. The WIC charter was granted for a period of 24 years and whenever the expiration date drew near, there was the possibility of renegotiating the terms on which the Company was able to operate. In the 1640s, a public discussion was held about the possibility of a merger between the VOC and the WIC. The duration of its first Charter was nearing its end and the Company had not produced the results that had been expected at its inception. Anticipating the negotiations with the States-General for prolongation of the Charter, the WIC Directors came up with a bold plan. In 1644 they proposed a merger between their Company and the successful VOC, arguing that its success was to a large part owed to WIC activity in the Atlantic:<sup>114</sup>

---

<sup>110</sup> A.J.M. Kunst, *Recht, Commercie en Kolonialisme*, 56-57.

<sup>111</sup> Schiltkamp, *Legislation, Government, Jurisprudence, and Law*, 322.

<sup>112</sup> Benton, *A Search for Sovereignty*, 24.

<sup>113</sup> Den Heijer, *De geectrooieerde compagnie*, 163.

<sup>114</sup> *Pamphlet Knuttel* 5114, 'Remonstrantie ende Consideratien aengaende De Vereeninghe vande Oost ende West-Indische Compagnien' (The Hague 1644).

'Nu en kan niemandt ontkennen dat onse hoochste betrachtinge, na de behoudenisse van onse Vryheyte en Godsdiensticheyt, behoort te zijn de bescherminge, vermeerderinghe, en bevestinghe van de Negotie, en Zeevaart deser Landen, ende consequentlijck de welvaert der Ingesetenen van dien, als de derde pilaer van desen Staet, door wiens kracht d'andere twee werden beschermt, bevesticht, en bewaert.<sup>115</sup>

The VOC Directors were however not willing to go along with this plan which, if realized, would result in a devaluation of their share price. The temporary character of the WIC and VOC Charters was a powerful tool in the hands of the States-General to align their interests with those of the state. So in the years leading up to the expiration of the charters, the States-General, and specifically the powerful States of Holland could exert their influence over Company policy. Yet still, the Directors of the VOC, backed by Amsterdam regent family interests, were able to resist demands for a company merger.<sup>116</sup> When it became clear that the merger plans between the VOC and WIC were not going to work out, the States of Holland settled for a new proposal: the VOC would have to compensate the WIC financially. The required sum amounted to 1,5 million guilders, and after both companies had agreed, their charters were extended in July 1647.<sup>117</sup>

Wilson and Adams attribute the eventual decline of the WIC largely to the intercorporate competition and clashing familial interests. Now, if you define sovereignty as having '*supreme authority within a territory*', the European chartered companies cannot be described as being sovereign entities. However, the merger episode shows that the States-General apparently could not just impose their will on the Directors of the VOC and WIC and were forced to engage in bargaining with the different interest groups involved.<sup>118</sup> Secondly, concerning the autonomy of overseas areas, it can be said that for the duration of the Charter, the state retreated from some areas of government, like control over the overseas movement of its subjects, thereby limiting itself in its exercise of government.<sup>119</sup> The trading posts and settlements could function as little pockets of sovereignty, resisting outside influences, while governance and administration of justice were entrusted to the bureaucracy of the companies in those settlements.<sup>120</sup>

---

<sup>115</sup> *Pamphlet Knuttel* 5119, "Schaede die Den Staet der Vereenichde Nederlanden en d'Inghesetenen van dien, is aenstaende, by de versuymenisse van d'Oost en West-Indische Negotie onder een Octroy en Societeyt te begrijpen." (The Hague 1644) 36.

<sup>116</sup> Adams, *The Familial State*, 60-63.

<sup>117</sup> Den Heijer, *De geschiedenis van de WIC*, 101-102.

<sup>118</sup> Adams, *The Familial State*, 59-63; Wilson, *Savage Republic*, 314.

<sup>119</sup> Stern, *The Company-State*, 42.

<sup>120</sup> H.J. Leue, 'Legal Expansion in the Age of the Companies: Aspects of the Administration of Justice in the English and Dutch Settlements of Maritime Asia, c. 1600-1750' in: W.J. Mommsen and J.A. de Moor, *European*

### III 'Creaturen van de Compagnie'. The Seizure of the Ship Alckmaer

The case that is central to this chapter concerns a jurisdictional conflict between the WIC government in Brazil and a private trader sailing the Atlantic with a letter of commission from the Company. Seizure of the ship by the colonial government started a dispute about the legitimacy of the judicial jurisdiction of the WIC, that would eventually lead to intervention in the case by the States-General. The starting point for the case consists of a number of legal opinion by Dutch jurists, to be found in the archive of the States-General and in the *Consultatien, Advijzen en Advertissementen. gegeven ende geschreven by verscheyden treffelijcke rechts-geleerden in Hollandt*. The *Consultatien* is a six volume collection of legal advices and opinions by prominent Dutch legal scholars and lawyers, printed in the years between 1645 and 1666. It contains texts by jurists such as Hugo Grotius and Quirijn van Strijen.<sup>121</sup>

Despite initial troubles in gaining enough capital, the WIC got a financial windfall when Piet Heyn captured a Spanish fleet loaded with silver in 1628. This allowed the Company to launch an attack on Portuguese territories in Brazil. In 1630, the Dutch attacked the captaincy of Pernambuco, a wealthy sugar producing province. The towns of Olinda and Recife were quickly captured, however, it took another five years to subdue the Portuguese resistance in the entire territory.<sup>122</sup> Administration of the captured territories was put in the hands of the 'Political Council', an assembly of nine civilian officials, as regulated by the aforementioned 1629 Order of Government. However, this arrangement often impeded resolute and decisive action.<sup>123</sup> Years spent fighting over Pernambuco put a heavy financial strain on the Company and greatly enlarged its debt. In order to get the necessary return on investment, the colony would have to be put under a reliable administration to make it stable and profitable. The Company directors decided to appoint Count Johan Maurits as governor-general in Brazil.<sup>124</sup> He had been expressly commissioned to uphold the WIC trading monopoly as laid down in the Charter.<sup>125</sup> The arrival of Johan Maurits in January 1637 was accompanied by some reforms in the colonial administration. The governor would preside over a newly established body of four (including himself), the *Hooghe en Secreete Raad* (High and Secret

---

*Expansion and Law. The Encounter of European and Indigenous Law in 19th- and 20th-Century Africa and Asia* (Oxford 1992) 129-158, there: 137-139.

<sup>121</sup> Consultatien, advijzen en advertissementen, / gegeven ende geschreven by verscheyden treffelijcke rechts-geleerden in Hollandt I-VI (Rotterdam 1645-1666); A.J. Van der Aa, *Biographisch Woordenboek der Nederlanden* (Haarlem 1877) XVII, 1055.

<sup>122</sup> C.R. Boxer, *The Dutch in Brazil 1624-1654* (Oxford 1957) 30-31.

<sup>123</sup> Den Heijer, *De geschiedenis van de WIC*, 40-43.

<sup>124</sup> Boxer, *The Dutch in Brazil*, 65-66.

<sup>125</sup> L. Blussé, "Ver sacrum' Hoe 't Verzuymd Brazil en 't Verwaerloosde Formosa verloren gingen' in: Maurits Ebben, Henk den Heijer en Joost Schokkenbroek eds., *Alles streken van het kompas. Maritieme geschiedenis in Nederland. Opstellen over maritieme geschiedenis in Nederland. Aangeboden aan Femme S. Gaastra bij zijn afscheid als hoogleraar zeegschiedenis aan de Universiteit Leiden* (Zutphen 2010) 147-173, there: 155-156.

Council).<sup>126</sup> The Political Council also remained in existence, but it was expanded and tasked mainly with the administration of justice in civil and criminal cases, both in first instance and in the appeals phase. In accordance with the 1629 Order, the judges of the Political Council (or Council of Justice) would be applying Roman law and Dutch custom.<sup>127</sup> The restructured government was based on an Instruction issued by the States-General in August 1636. It was a successor to the Order of Government, yet only aimed at administration of the colony of Brazil.<sup>128</sup>

Since the start of the attacks on Brazil 1630, the discussion about the Company's trading monopoly had flared up. The main proponents for maintaining the monopoly in the West Indies were the directors of the Chamber of Zeeland, de Maze and Stad en Lande. They had been able to convince the States-General to renew this privilege in 1636.<sup>129</sup> As mentioned in the last chapter, their adversaries in this discussion were the Directors from Amsterdam, whose attitude towards the WIC had been hesitant since its foundation in 1621. Yet in 1638, they succeeded in bringing around the States-General on the issue of sanctioning free trade on Brazil.<sup>130</sup> Unfortunately for the crew and owners of the ship *Alckmaer*, this occurred just a few months after the arrest and subsequent auctioning off of the ship and cargo.

Before sailing from the Netherlands in 1637 the ship's captain, Cornelis Pietersz. Croeger had secured a license from The Directors of the Chamber of Maze in Dordrecht which permitted him to travel to São Thomé in return for a payment of the required fees. The agreement stipulated that in the event that there was no possibility to trade on São Thomé, the captain was allowed to sail to the West Indies to trade in timber, salt and tobacco to make up for their losses. These goods were exempt from the monopoly by the *Heeren XIX*. The salt trade within the Company's chartered limits had been liberalized in 1622, with the notable exception of the rich salt pans of Puncto del Rey. The timber, tobacco and cotton trade followed in 1637 by decree of the States-General and the Company Directors. The requirements to participate in this trade were authorisation from one of the WIC chambers, the payment of a recognition fee, and keeping a daily journal of all the ships activities.<sup>131</sup> On arrival of the *Alckmaer* at São Thomé, five men disembarked to negotiate a trade with the people residing on the island. They did not succeed in concluding any agreement and were instead captured

---

<sup>126</sup> Boxer, *The Dutch in Brazil*, 68-69.

<sup>127</sup> Boxer, *The Dutch in Brazil*, 69.

<sup>128</sup> Groot placaet-boeck, vervattende de placaten, ordonnantien ende edicten van de Staten Generael der Vereenighde Nederlanden, ende van de Staten van Hollandt en West-Vrieslandt, mitsgaders vande Staten van Zeelandt II (The Hague 1664) 1247-1264.

<sup>129</sup> Den Heijer, *De geschiedenis van de WIC*, 45.

<sup>130</sup> Den Heijer, *De geotrooieerde Compagnie*, 150.

<sup>131</sup> Nader ordre ende Reglement vande Ho: Mo: Heeren Staten Generael der Vereenighde Nederlanden/ gearresteert bij advijs ende deliberatie vande Bewint-hebberen van de generale geotrooieerde West-Indische Compagnie, Nationaal Archief Den Haag (NaA), Archive Staten-Generaal 1.01.02 (SG), inv. nr. 12564.18.

and detained by the residents. In accordance with the contract and in order to secure their cargo, the captain subsequently decided to sail on to Pernambuco.<sup>132</sup>

The captain's secondary objective, as included in the agreement with the Maze Chamber, was to try to interfere with the Spanish trade in the West Indies: 'om den Cooninck van Spagnien affbreuck te doen'. In addition to granting this permission to Croeger, the Directors had given him a pack of missives addressed to Johan Maurits. These documents were handed over to the supracargo of the ship, *De Bruijn*, the official employed by the WIC who was charged with making sure that the captain of the ship stayed within the legally allowed limits of his license. On arrival in Pernambuco on 25 August 1638, a delegation disembarked the ship and went to the High and Secret Council. They notified the Council of their intentions and requested to replenish their fresh water supply, unload, and sell the cargo before heading to the West Indies.<sup>133</sup> The authorities of the Council decided to agree to the request and to let the ship resume its journey afterwards.<sup>134</sup> However, while the captain and his *commies* Quesnoij were on land to deliver their letter, the local authorities had sent out a ship, the *Vriesche Jager*, to bring the *Alckmaer* into the harbor of Recife. Despite the commission granted by the Chamber of the Mase, the Political Council had approved the seizure of the ship. In their view, captain Croeger had overstepped his commission (which was limited to trade in timber, salt and tobacco) by bringing other goods, like wine and brandy to Brazil. To avoid any resistance by the crew that had remained on the *Alckmaer*, the crewmembers were promised to receive their monthly salaries, while the captain and his *commies* were arrested for violating the Company Charter. Despite protests by the accused over the impartiality of the judges, the Council decided on 18 September that the ship and cargo would be forfeited to the Company, in accordance with Article I of the Charter.<sup>135</sup> The convicted captain immediately made clear that he planned to seek revision of his sentence back in the Netherlands, to which the Council quickly reacted by sending the *Heeren XIX* a letter explaining what had occurred and why they had decided on seizing the ship.<sup>136</sup>

The owners of the ship, back in the Republic, claimed that the WIC had profited considerably from the sale. According to their calculation the sum of their loss amounts to more than 250.000 guilders if lost interests would be taken into account.<sup>137</sup> An appeal in June 1640 to the Directors of the WIC by the owners, led by Antonio Hendricxz., was rejected, which prompted them to turn to the

---

<sup>132</sup> Request Reders, NaA, SG, 12564.18, f. 1r.

<sup>133</sup> Request (kopie) van gemene reders van het Schip Alckmaer overhandigd aan de Staten Generaal, NaA, SG, inv. nr. 12564.18.

<sup>134</sup> Request, NaA SG 12564.18, f. 1v.

<sup>135</sup> Overgekomen brieven en papieren uit Brazilië, Kamer Zeeland, 1638, NaA, Archive Oude West-Indische Compagnie 1.05.01.01 (OWIC), inv. nr. 53.

<sup>136</sup> Extract uit een brief van de Hoge Raad aan de Heren XIX over de gebeurtenissen rond de inbeslagname van het schip Alckmaer, NaA, SG, inv. nr. 12564.18.

<sup>137</sup> NaA, SG, inv. nr. 12564.18.

States-General.<sup>138</sup> During the assembly of the States-General on September 8, 1641 the case was taken into consideration. The representatives were of the opinion that it was not just a matter of importance for the injured party or for the West India Company. It could also set a precedent for future disputes and it was thus imperative that an accommodation would be reached. So, the States-General sent the message to the *Heren XIX*, that they had to try to renegotiate a settlement. No resolution could be agreed upon. In 1643, the States-General decided to intervene on behalf of the owners of the ship *Alckmaer*. They ordered the *Heren XIX* to discuss the matter at their assembly and to look for an equitable solution to the conflict. Preferably one that would not lead to a judicial procedure. The resolution acknowledged the problem that had been put forward by the complainants: the Company being prosecutor, judge and beneficiary in the case of the ship's expropriation, which violated elementary principles of justice.

'[...]de Westindische Compagnie in sulcken geval souden sijn aenclaegers, confisqueerders, Rechters, ende Genieters die niemants hooger jurisdictie en souden sijn, om alsoo tegens alle recht ende equiteit te genieten (soo als men in desen van hun supplianten soeckt te doen) der goede luiden hunne Schepen, goederen, ende middelen, derhalven ende aengesien haer ho: mo: goede intentie niet en wert voltrocken ende de voors; accomodatie bij de gemelte Compagnie hoe langer hoe verder vande hant wert geworpen ende t'enemael vruchteloos gestelt.'<sup>139</sup>

The *Heeren XIX* kept emphasizing that there already existed a proper procedure for revision of the sentence, as laid down by the States-General in their instruction to the High Government of Brazil from August 23, 1636.<sup>140</sup> And in case this would not result in a satisfactory solution, they would work to come to an amicable settlement as had been agreed on with the main participants in 1623. This policy was aimed at avoiding any judicial involvement in case of disputes.<sup>141</sup>

#### *Cloeck, Roch and Witte*

In November 1639, the States-General had received a brief prepared by Dutch legal scholars Joan W. Witte, Petrus Cloeck and Hercules Roch, all attorneys in Amsterdam. It contained a defense of captain Croeger, his crew and the ship-owners.<sup>142</sup> They put forth a number of arguments in favor of

---

<sup>138</sup> Request, NaA, SG, inv. nr. 12564.18, f. 2v-3r.

<sup>139</sup> Resolutie 12-05-1643, NaA, SG, inv. nr. 12564.18.

<sup>140</sup> Resolutie vergadering Heeren XIX, 16- and 17-10-1643, NaA, SG, inv. nr. 12564.18.

<sup>141</sup> Accoord tusschen de Bewint-hebberen ende Hooft-participanten vande West-Indische Compagnie, met approbatie vande Ho: ende Mog: Heeren Staten Generael gemaect, Groot Placaetboeck II.

<sup>142</sup> On Joan W Witte, van der Aa, *Biographisch Woordenboek* XX, 397; On Petrus Cloeck and Hercules Roch, see Johan E. Elias, *De Vroedschap van Amsterdam, 1578-1795 I* (Amsterdam 1963) 407, 450.



allowing the appellants to turn to either the High Court or the Provincial Court of Holland, Zeeland and West Friesland.

Their first line of attack concerns the impartiality of the WIC judges. Citing the Roman law adage *ne quis sua iuducet vel sibi ius dicat* (no one shall be judge to his own cause), the authors question the judicial panel's impartiality in the case, because the Political Council, as representative of the WIC, served both as a beneficiary party in the case and as the judge casting the verdict.

'Overmidts de Westindische Compagnie en de bewinthebbers der selver in alle gevallen gene hoge overicheydt sijn maer soo wel ondersaten van de hooge overheydt als de geinteresseerde in desen. Ende sulcx de voorsegde executie in saken van de hoge overicheydt plaetse hebbende, geensints tot andere particuliere personen, hoe machtich dat deselve mogen sijn, en mach werden geextendeert.'<sup>143</sup>

They state that, as the interested party in the case, the WIC does not possess supreme authority, but is *subject to* the supreme authority, just as any individual. Therefore they cannot be said to have legitimately expropriated the owners of the *Alckmaer*. Moreover, they argued, the WIC authorities have acted in bad faith by deceitfully leading the ship *Alckmaer* into the harbor in the absence of captain Croeger and chief merchant Quesnoij, who were in a meeting with Count Johan Maurits while the ship and its cargo were commandeered into the harbor and the crew was arrested. The third argument they put forward, turns to the law of nations. Taking the ship without a subpoena or any prior notice to the rightful owners, amounts to a violation of all divine, natural and international laws. Although Croeger and Quesnoij had been summoned to appear before court, the authors argue that the ship's captain and *commijs* were neither qualified, nor authorized to defend the interests of the ship's owners before the Political Council. Their mandate was limited to control over the ships course. There was no form of due process granted to the defendant, who had not been able to appear before the court with proper representation.<sup>144</sup>

Most importantly of course, the authors point to the license granted to the ship's captain by the WIC Chamber of the Maze. This should have constituted the required consent as mentioned in the article I of the Charter. Furthermore, the Charter prohibits sailing and conducting trade without consent within the Limits of the Charter. However, as the ship had only sailed near, but not traded on, the coast of Brazil it is argued that the Company had no right of confiscation. Surely, the Company cannot pretend to have incurred any damage by the mere sailing of the ship within the

---

<sup>143</sup> Open brief van Witte, Petrus Cloeck en Hercules Roch betreffende bijzonderheden van de zaak van het schip Alkmaer, NaA, SG, inv. nr. 12564.18, f. 3r.

<sup>144</sup> Ibidem, f. 3r-4v.

limits. The documents brought on the ship by the supracargo stipulated that the *Alckmaer* was allowed to navigate to Brazil in order to buy timber, tobacco, salt and cotton. Trading in any other goods within the territories falling under the WIC Charter was still prohibited for private traders, but by staying out of the harbor of Recife the captain clearly expressed his intention not to do so. The Company cannot claim to have trading privileges on the open sea: 'alsoo de Compagnie immers in zee eygentlijck gene negotie heeft'. There is nothing in the Charter suggesting a prohibition to go onto land when there is no intention to conduct any trading activities. In fact, in order to deliver the missive to Johan Maurits, Croeger had no other option but to go onto land. And the secondary objective, to try to do as much damage to Spanish commerce as possible, gave them the right to navigate the Atlantic ocean.<sup>145</sup> Moreover, they had a natural right to do so, the jurists argued referring to Grotius' *Mare Liberum*: because the ship *Alckmaer* was in open water and had not entered the harbor of Pernambuco, the guileful seizure of the ship had been committed contrary to the law of nations, natural law and general custom.<sup>146</sup> Finally, it appears from the testimonies given by the ship's crew, that since their departure from São Thomé, the ship had been short on fresh water. It had already been rationed and it would not have been possible to return to Holland without first stopping in either Brazil or the West Indies to restock. Fear of looming mutiny and growing resentment against the ship's officers led them to decide to take a detour to Pernambuco after consulting with *supracargo* de Bruijn. So despite any finding by the prosecutor on the (il)legality of sailing to Brazil: 'noot breeckt Weth'. The state of necessity overrules the provisions of the Charter.<sup>147</sup> Returning to the necessity of a revision of the sentence, Cloeck and Witte conclude that any potential judges presiding over an appeals trial in Brazil, can equally considered to be '*Creaturen van de Compagnie*', as they would also be drawn from the WIC government in Brazil. Citing precedents from cases that played before the Provincial Court of Utrecht and a case between the Magellan Company and the VOC, they point out that the States-General has shown itself willing to order a revision in the past.<sup>148</sup>

The complaints voiced in this brief give an insight in the difficulties that could arise with the regards to the governmental powers exercised by the WIC in their territories. Although one cannot compare the seventeenth century judicial practice with that of today, which is distinguished by a strict regard for separation of powers and a guarantee of due process, it appears that exercise of sovereign powers by a private company could very easily lead to conflicts of interest, and that these problems were recognized and of concern to contemporaries.

---

<sup>145</sup> Ibidem.

<sup>146</sup> Ibidem

<sup>147</sup> NaA SG 12564.18, f. 5r-13v.

<sup>148</sup> NaA SG 12564.18 f. 16r-17r.

A second significant point is the fact that the Amsterdam lawyers refer to Grotius' *Mare Liberum*, a treatise originally published to defend Dutch trading interests against foreign interference.<sup>149</sup> This brief shows that the authoritative work by Grotius was not only useful in the context of international disputes on the freedom of the seas; the law of nations was also used in conflicts between the WIC and Dutch citizens.

#### *Consultatien, Advijzen & Advertissementen*

The second legal advice concerning this case can be found in the Volume V of the *Consultatien* which contains a short treatise by a man named P. van Peene on the matter of jurisdiction of the Political Council in Brazil. Together with D. de Jonge, J. van Andel and Ijsbrant Craft (most likely all four were lawyers from The Hague)<sup>150</sup>, van Peene had written an earlier legal opinion on the case, presented to the States-General on 9 December 1639.<sup>151</sup>

The first question he addresses concerns the competency of the judges in first instance in a dispute between the WIC and the owners and captain of the *Alckmaer*. Van Peene emphasizes the fact that the Instruction of 1636, regulating the judicial authority of the Government of Brazil, was granted by the States-General. Ergo, all powers exercised by this Government are derived from the sovereign power of the States-General.<sup>152</sup> Articles 42 to 56 of the Instruction deal with the criminal and civil jurisdiction exercised by the Political Council.<sup>153</sup> Articles 42 and 50 stipulate that the competence of the Political Council as judicial body is limited to criminal cases in first instance and civil cases in appeal. Moreover, this competence is limited to inhabitants of the settlements and outposts occupied by the WIC and those who do business within these territories, so the Political Council had overstepped the boundaries of its jurisdiction. The fact that the *Alckmaer* was towed into the harbor by the *Vriesche Jaeger* under false pretense excludes the competency of the Council in this case. Van Peene goes on to state that Article 1 of the WIC Charter does not stipulate that every ship violating the limits of the Charter is automatically forfeited to the Company after arrest by the authorities. It must be read to say that such a ship may be arrested in order to initiate judicial proceedings before the competent court in the Netherlands.<sup>154</sup> The second argument again denies that Croeger and Quesnoij enjoyed the mandate to defend the interests of the ship's owners in court.

---

<sup>149</sup> Van Ittersum, *Profit and Principle*, 356-358.

<sup>150</sup> Van der Aa, *Biographisch Woordenboek* IX, 190.

<sup>151</sup> Declaration by J. de Jonge, J. van Andel, P. van Peene and Ijsbrant Craft 09-12-1639, NaA, SG, inv. nr. 12564.18.

<sup>152</sup> Consultatien V, 347.

<sup>153</sup> Groot Placaetboek II, 1254-1256.

<sup>154</sup> Consultatien V, 347-348.

Any arrest of ships or goods has to be followed by the ordinary legal procedure at the competent court, in this case being a court in the Republic, against the rightful defendants, in this case being the owners of the ship.<sup>155</sup>

Finally on January 27 1646, the States-General concluded that the conflict between the owners of the ship and the WIC should be brought before a court back in the Netherlands. The case would be tried in revision, before a mixed court of judges, drawn from both the Provincial and High Courts of Holland and Zeeland. The resolution calls for both parties to submit their evidence and legal briefs to the judges of the Court.<sup>156</sup> Unfortunately, I have not been able to find any evidence of the proceedings or verdict of this case, so it is impossible to say what the fate of the owners and captain of the ship has been. From the findings in chapter II one could draw the conclusion that the States-General exercised more authority over the WIC and its territories than they did over the VOC because the founding of the former company was more tied up with the state's purpose of waging war against the Iberian power. Paradoxically however, by designing a 'constitution' for these territories, the state was also withdrawing from areas that are the prerogative of the sovereign. Leaving the administration of justice in the hands of a private company led to a situation in which a private company could be judge in his own cause, easily letting its own commercial interests prevail. Although it has been concluded in the last chapter that the WIC was, *de iure*, not a sovereign entity, the reality seems to be more complicated, as brought to the attention by Wilson: 'The state is vacating traditional areas of concern, creating pockets of empty juridico-political spaces that are increasingly coming to be occupied by corporations or other forms of 'private actors'.<sup>157</sup> Judges and legislators were often drawn from the same pool of *regenten* and combined different functions. Conflicts of jurisdiction were inevitable in an informal system which lacked clarity on the position of the Company courts in relations to the domestic courts of the Republic.<sup>158</sup> Apparently the mismanagement in this case was recognized by the States-General, which tried to repair the situation by intervening in the present case. But it might also be that Antonio Hendricxz. had powerful friends in either the States of Holland or the States-General, who could move the assembly in this direction. Presumably there would have been more cases, similar to this one, where the lack of a proper appeals mechanism allowed the overseas administrators of the WIC to judge arbitrarily and without proper motivations. Then why did this particular case end up on the agenda of the States-General? This in itself is probably also a show of arbitrariness and purely based on personal connections between the ship's owners and powerful members of the regent class: the powerful bond between merchant and government interests that lay at the basis of the young

---

<sup>155</sup> Ibidem, 348.

<sup>156</sup> Statement by States-General 27-01-1646, NaA, SG, inv. nr. 12564.18.

<sup>157</sup> Wilson, *The VOC, Corporate Sovereignty and the Republican Sub-Text of De iure praedae*, 332.

<sup>158</sup> Van Ittersum, *Mare Liberum in the West Indies?*, 68.

Republic's functioning. For this case, and similarly for the Coymans trial, we see that in the decision to prosecute, or in the decision by the States-General to intervene, what mattered most was not a sense of justice or a concern for the constitutional guarantees of the legal system. In the end these decisions depended on the split interests within the ruling class of the *regenten*.<sup>159</sup> The dominance of commercial interests within the government, resulted in an oligarchic and weak central government and it can be argued that it was precisely this dominance that has led to Dutch success, especially in Asia. It guaranteed that the Dutch trading companies would be free from too much government interference thereby securing the favorable conditions needed for prosperous trade.<sup>160</sup>

---

<sup>159</sup> Wilson, *The VOC, Corporate Sovereignty and the Republican Sub-Text of De iure praedae*, 329.

<sup>160</sup> Pearson, M.N., 'Merchants and States' in: James D. Tracy ed., *The Political Economy of Merchant Empires* (New York 1991) 41-116, there: 84-85.

#### IV The Trial of Isaac Coymans

Whereas the dispute in the last chapter took place against the background of the struggle by the WIC to defend its colony in Brazil, the case of Isaac Coymans has its origins in another contested area, the coast of West-Africa. Again, the significance of this case will appear from a number of legal opinions by Dutch jurists. They show us that the exact legal dimensions of the Company were a topic of concern and ongoing debate. Their frequent use of Hugo Grotius' treatises reaffirms his prominence in the seventeenth century Republic. For historical context, I will first give a short outline of the history of the WIC with regard to its activities in this region.

The first European presence in the region was formed by the Portuguese, who arrived there at the end of the 15th century establishing trading posts and contacts with the local African kingdoms. In the following centuries the Portuguese would be followed by the Dutch, English, Swedes and Danes. The European powers were drawn to the region by lucrative trade in gold, ivory and slaves. The Portuguese were soon chased out by the competing and increasingly powerful European powers. Dutch possessions on the west coast of Africa had been administered by the States-General in the first few years since the founding of the WIC. The Company finally got control over these possessions in 1624. The main trading Portuguese trading posts and forts lay on the Gold Coast and in Angola, from where they could provide their plantations in Brazil with slaves. In the years between 1625 and 1637 the WIC succeeded in securing a foothold on the Gold Coast providing the opportunity to get involved with the transatlantic slave and gold trade. Besides the use of military force, the Company employed the tactic of building alliances with local kingdoms, by concluding treaties with its leaders, in order to build opposition to the Portuguese presence.<sup>161</sup>

A second important focus point of their strategy in Africa was the capture of St. Paolo de Loanda in Angola, a major slave station. In 1640 a newly independent Portugal had expressed the wish to come to a peace settlement, pressuring Johan Maurits to act swiftly, as he desired to expand the WIC territory in Africa. The maintenance of these positions turned out to be too expensive, however, and in 1648 Loanda and Sao Thomé were returned to the Portuguese.<sup>162</sup> After the capture of Loanda, Count Johan Maurits tried to persuade the States-General and the WIC Directors to put the newly acquired territory under the governance of the Government of Brazil, regulated by the 1629 Order of Government. To no avail, as it was decided that the new territory would fall under direct jurisdiction of the Chambers in the Republic.<sup>163</sup> Meanwhile, the Dutch outposts on the Gold Coast were coming under increasing pressure from new competition: English and Scandinavian

---

<sup>161</sup> Den Heijer, *De geschiedenis van de WIC*, 69-73.

<sup>162</sup> *Ibidem*, 76-77.

<sup>163</sup> Schiltkamp, *Legislation, Government, Jurisprudence, and Law*, 326.

trading companies. It was the founding of the Swedish and Danish Africa Companies that would set the stage for the events of the Coymans case, and the conflict between Denmark and the Republic discussed in chapter V.<sup>164</sup>

The episode of the conflict between Denmark, Sweden and the Republic starts with a group of venturesome merchants from Amsterdam, to which Coymans belonged, seeking ways to participate in the lucrative African trade outside of the limits imposed by the WIC Charter. In an article published in 1889, N. de Roever delves into the history of the Scandinavian companies. With unequivocal disapproval he writes about the likes of Isaac Coymans, who tried to undercut the WIC monopoly on the Coast of Guinea:

'Waar alzoo met onmiskenbare duidelijkheid bewezen wordt, dat de vaderlandsche zaak met den bloei der Compagniën verwant werd geacht, daar mag men vragen, welk oordeel moet worden uitgesproken over hollandsche kooplieden, die enkel en alleen uit winstbejag het hunne er toe bijdragen, om de welvaart en het prestige van de West-Indische Compagniën te ondermijnen in Afrika op een oogenblik, dat zij de handen vol had in Amerika'<sup>165</sup>

However one might value this judgment, the author is right assessing the awkward situation both the States-General and the WIC were confronted with, as the Amsterdammers were conducting their operation under the flags of the Swedish and Danish Crowns, allies of the Republic.

Although the Swedish and Danish Africa Companies were only small in comparison to the WIC, they tried to gain the favour of local ruling elites, whose support they needed against the military power of the Dutch.<sup>166</sup> Central in this strategy was a man named Hendrick Caerloff, a German former WIC employee that had started his career on the island of São Thomé and who quickly gained much experience in the African trade acting as a liaison with local rulers. In 1649, while Caerloff resided in Amsterdam, he was employed by the Swedish Africa Company founded by Dutch industrialist Lodewijk de Geer in 1647. In the service of the SAC, Hendrick went back to the Gold Coast to negotiate with African chiefs and acquire the rights to build trading posts and forts. However, after the death of de Geer things went downhill for Caerloff's 'Swedish' career.<sup>167</sup>

---

<sup>164</sup> Den Heijer, *De geschiedenis van de WIC*, 78.

<sup>165</sup> N. de Roever, 'Twee Concurrenten van de Eerste West-Indische Compagnie', *Oud Holland. Nieuwe bijdragen voor de geschiedenis der Nederlandsche kunst, letterkunde, nijverheid enz.* 7 (1889) 195-222, 198.

<sup>166</sup> György Nováky, *Handelskompanier och kompanihandel. Svenska Afrikakompaniet 1649-1663 En studie i feodal handel* (Uppsala 1990) 241.

<sup>167</sup> Henk den Heijer, 'Een dienaar van vele heren. De Atlantische carrière van Hendrick Caerloff' in: J. Thomas Lindblad and Alicia Schrikker eds., *Het Verre Gezicht. Politieke en culturele relaties tussen Nederland en Azië, Afrika en Amerika. Opstellen aangeboden aan Prof. Dr. Leonard Blussé* (Franeker 2011) 162-180, aldaar: 162-169; De Roever, *Twee Concurrenten*, 199.

After a falling out with the Directors of the Swedish Africa Company (SAC) in 1657, a disgruntled Caerloff decided to use his considerable experience within the WIC and the SAC to set up a new enterprise. First, he obtained a privateering commission from the Danish king Frederik III to sail to West Africa and retake the settlements he had initially obtained for the Swedes. During his departure from the port of Glückstadt, the kingdom of Sweden and Denmark were at war with each other. However, in his absence they signed a peace treaty, brokered by the Dutch and English, and on his return in to Glückstadt in 1658 the Swedes had issued a warrant for his arrest. Caerloff managed to escape to Amsterdam and decided to order his representative on the African Coast, Samuel Smidt to sign over the possessions (as Caerloff regarded himself the rightful owner) to WIC Director-General Jasper van Heussen.<sup>168</sup> His actions in no way proved to be an obstacle for the opportunistic Caerloff to subsequently turn to the Danish authorities only a few days later and set up the Danish Africa Company in participation with Jan de Swaen, Nicolaas Pancras and Isaac Coymans, all merchants from Amsterdam. This decision turned out to be the starting point for conflict between the WIC and the DAC concerning sovereignty over the outposts. Also, the WIC was starting to get worried about the Danish competition and looked for ways to dispose of the Dutch participants.<sup>169</sup>

#### *Isaac Coymans*

On January 24, 1662, the merchant from Amsterdam named Isaac Coymans was convicted by the Amsterdam *Schepenen* Court and condemned to serve six years in prison. In addition to his imprisonment he had to pay a fine of 20.000 Carolus guilders and he would be banished from the city after serving out his sentence. It was a surprisingly light sentencing, considering the crime that he had been found guilty of: the crime of treason. A crime that would normally result in a death sentence.<sup>170</sup> The trial, which was highly publicized in the Republic, was part of a newfound persistency to maintain the WIC trading monopoly in the face of fierce competition on the coast of Guinea by Sweden, Denmark and England.<sup>171</sup>

Isaac Coymans, born in Amsterdam in 1620, belonged to a well known merchant family from Hamburg. In 1638 he moved to Guinea in the employment of the WIC. Starting out as an assistant, during the 1640s he moved up the ranks and became an accountant and later deputy *commies*.<sup>172</sup> He is frequently mentioned in *Vijf dagregisters van het kasteel São Jorge da Mina*, an account of WIC activities in West Africa in the years between 1645 and 1647. It provides us with an outline of his

---

<sup>168</sup> Novaky, *Handelskompanier*, 206-207; Den Heijer, *Een dienaar van vele heren*, 169-170.

<sup>169</sup> Den Heijer, *Een dienaar van vele heren*, 170-171.

<sup>170</sup> Missivenboeken van de Hoofdofficier, 05-02-1662, Stadsarchief Amsterdam (SAA), Archief van Schout en Schepenen (SS) 5061, inv. nr. 2

<sup>171</sup> Den Heijer, *Een dienaar van vele heren*, 171.

<sup>172</sup> Elias, *De Vroedschap van Amsterdam*, 759-760.



career advancements and his activities as accountant and negotiator with local rulers. During his years on the African outpost, Coymans would meet Hendrik Caerloff, his future partner in the Danish Africa Company.<sup>173</sup> His career resembled that of Caerloff, who had also started as an administrative servant of the Company, and was soon promoted to management positions on the coast of Guinea.<sup>174</sup> Coymans' experience in the service of the WIC would serve him well later in life, on his return to Amsterdam after 1649, when he became involved in the Scandinavian episode.<sup>175</sup> Together with Coymans, a companion of his, named Gerard van Tets, was arrested and charged with the treason. Van Tets had also been working in the service of the WIC in Guinea during the 1640s in a number of capacities. He had been deputy *commies* at Fort Nassau, later moving to fort Chama as *commies*.<sup>176</sup>

Coymans' arrest resulted from the capture of the Danish ship *Postillon van Venetien* by the WIC. The ship was carrying two letters written by Coymans to Joost Cramer, commander of the Danish regiment at Cabo Corso.<sup>177</sup> In the first letter, dated 25 March 1660, Coymans writes about some rumours he picked up, that the WIC was equipping ships to take fort Cabo Cors from the Danish Company by force. He advises Cramer to hire locals to help him fend off company attacks, after assuring him that the WIC has no rightful claims on the fort. A second letter, dated 13 July 1660, further clarified Dutch plans. They were looking to get rid of the Acrosan Jan Claessen, an African who controlled trade from the kingdom of Futu with the European merchants. More specifically: 'dat de Compagnie op middelen dencken om Jan Klaesz. vergift te doen suypen, oft wel anders den hals te laten breecken.' Coymans urged Cramer to warn Claessen and to let him attack nearby Fort Nassau, as revenge in case of a Dutch strike.<sup>178</sup>

The verdict by the court was based on these two letters and a confession by Coymans on 6 January 1660 in which his aims in writing those letters were further explained. During the interrogation of Coymans by the *Schepenen* court, the question of territorial sovereignty over territories on the Coast of Guinea becomes a point of discussion. Asked about whether he knew that Fort Nassau would be occupied by Company soldiers, Isaac replied that he was aware of this, however:

---

<sup>173</sup> K. Ratelband, *Vijf dagregisters van het kasteel São Jorge da Mina (Elmina) aan de Goudkust 1645-1647* (The Hague 1953) xliv, 134, 266-270.

<sup>174</sup> Den Heijer, *Een dienaar van vele heren*, 163-164.

<sup>175</sup> Elias, *De Vroedschap van Amsterdam*, 760.

<sup>176</sup> Ratelband, *Vijf Dagregisters*, 172, 209.

<sup>177</sup> Specificatie van het geene de Deensche Africaensche op deser landen Westindische Compagnie voor toegevoegde schade ende naerdeel met alle gevolgenisse pretendeert. Michiel ten Hove, 27-06-1666, NaA, SG, inv. nr. 12564.58.

<sup>178</sup> Brieven, confessie; mitsgaders, advisen van verscheyden rechtsgeleerden in de saeck van Isaac Coymans gegeven; als mede de sententie daer op gevolgt (Rotterdam 1662) 4.

'Maer dat de Compagnie daer vorders niet een wet eygen heeft alsoo alles staet ondergebiet vande Swarten ofte koning van Sabou. Segt oock te verstaen dat de Compagnie noch eigendom noch superioriteijt in dat landt heeft, maer dat sij maer alleen hebben een vergunninge van negotie die haer van de inwoonders wert toegelaten.<sup>179</sup>

Thereby rejecting Company claims of sovereignty in this region. As will be discussed later, this accords with the general position that would be taken by the lawyers of the Danish Africa Company in their petitions to the States-General to rein in the privateering activities of the WIC.

### *Legal consults*

The trial against Coymans was highly publicized and caught the attention of legal scholars throughout the Republic. The opinions of these legal scholars, both opponents and proponents of the arrest and subsequent charges, were published in a pamphlet: *Brieven, confessie; mitsgaders, advisen van verscheyden rechtsgeleerden in de saeck van Isaac Coymans gegeven; als mede de sententie daer op gevolgt* printed in Rotterdam in 1662.<sup>180</sup> Besides lawyers and scholars from the province of Holland, the authors include renowned jurists from Utrecht and Friesland, indicating that the issues addressed disconcerted many throughout the United Provinces.

The treason conviction by the Amsterdam judges was based on the position that a violation of the WIC monopoly as laid down in its Charter, constituted an act of treason against the Republic. The main point of contention in the published briefs concerns the following question: do the actions of Coymans constitute an act of treason, or can they only be punished as a breach of the Company charter? In other words, what is the constitutional position of the WIC? Is it a private enterprise carrying a number of public powers derived from its Charter, or is it a fully fledged agent of the state, acting as a substitute and representative of the sovereign States-General in its overseas territories? One of authors included in the pamphlet is Jacob de la Mine from Amsterdam (which is most likely a pseudonym referring to castle Elmina), who in the following passage touches upon the essence of this question:

'[...] [D]at aengesien de West-Indische Compagnie van dese Vereenighde Nederlanden, niet simpelijck is een Compagnie van verscheyde kooplieden ende Geinteresseerdens te samen, om tot profijt en voordeel van de selve in het particulier negotie te drijven; maer dat het selve is een Collegie by publike autoriteyt en speciale Octroy van de Hoog: Moog: Heeren Staten Generael

---

<sup>179</sup> Confessieboek 24-01-1662, SAA, SS 5061, inv. nr. 314, f. 79v; *Brieven, confessie; mitsgaders, advisen*, 8.

<sup>180</sup> *Brieven, confessie; mitsgaders, advisen van verscheyden rechtsgeleerden in de saeck van Isaac Coymans gegeven; als mede de sententie daer op gevolgt* (Rotterdam 1662).

deser vrye Vereenighde Nederlanden, tot den welstant van de selve Landen, ende uytbreydinge van de Limiten van het gebied ende gesach van den Staet opperecht ende gestabilieert: Soodanigh dat de selve Compagnie in de gewesten die in de Limiten van het voorsegde Octroy zijn begrepen, niet als perticuliere Negotianten leven ende ageren, maer aldaer representeren de Hoogheydt ende de Souverainiteyt van hare Hoog: Moog: de Heeren Staten Generael.<sup>181</sup>

De la Mine supports his statement by listing those provisions of the WIC Charter covering the relation between the States-General and the Company (discussed above in chapter II). Considering these articles he argues that the resulting conclusion must be that, although the granted powers might *prima facie* be exercised by a sovereign entity, in reality they flow from the authority of the state.<sup>182</sup>

Moreover, he argued that although it might be true that Coymans was not acting with the intention of damaging the interests of the United Provinces but only out of an aversion against the WIC, this does not change the fact that he advises Cramer to commit an act of war against the Dutch: incitement to overthrow the legitimate government of the Republic. Resulting in a state of war between the two parties. This is an act in violation of natural law. As Grotius explains in *De Iure Belli*, generally it is not permitted for private actors to wage war against the state, unless the state itself orders those actors to perform acts prohibited by natural law.<sup>183</sup> Accordingly, it does not matter that Joost Cramer is the subject of a friendly state, incapable of bringing offence to the Dutch, as Coymans claims in his letters, for if he acted on this advise he would become an enemy of the state. Nor does it matter that the crimes discussed by Coymans were not actually perpetrated, as the special character of *crimen laesae majestatis* stipulates that only conspiring to damage the state is sufficient.<sup>184</sup>

Jurists Gaspar Fagel, Martin van der Goes and Willem van Strijen agree with de la Mine and reaffirm his position on the relation between the States-General and the WIC.<sup>185</sup>

'[...] [G]heconsidereert de West-Indische Compagnie is een Collegie, daer inne de Hoog: Moog: Heeren Staeten Generael in de Limiten van des selfden Octroy, haer Souverainiteyt doen bestaen, ageren ende leven, ende dat sulcks 't geen tegens de voorsegde Limiten wert gecommitteert,

---

<sup>181</sup> Brieven, confessie; mitsgaders, advisen, 17.

<sup>182</sup> Brieven, confessie; mitsgaders, advisen, 18.

<sup>183</sup> Ibidem, 10-11; Hugo de Groot, *Het recht van oorlog en vrede. Prolegomena & Boek I*, vert. Jan Frans Lindeman (Brussels 1993) 180-182, 204-206.

<sup>184</sup> Brieven, confessie; mitsgaders, 24-27.

<sup>185</sup> Fagel was a lawyer from Utrecht and future pensionary of Haarlem. Van Strijen was a well known legal scholar whose opinions were published in the *Hollandsche en Utrechtse consultatiën*; van der Aa, *Biographisch woordenboek* VI, 16-17; Ibidem XVII, 1056.

effectivelijck werdt gecommiteert tegens de Hoogheydt en Souverainiteyt van de opgemelte Heeren Staeten-Generael.<sup>186</sup>

They refer to Coymans letter from 13 July 1660, in which Coymans assures Cramer that the Danes won't be able to get any compensation for injuries inflicted by the WIC, through judicial channels. Therefore he advises Cramer to seek revenge by using the troops under command of Jan Claessen. By encouraging Cramer to pit the Africans, formerly loyal to the WIC, against the Dutch, Coymans has committed unlawful acts against the state.<sup>187</sup>

The arguments raised by those who reject the claims of treason can be summarized by two main points. First, they consider the WIC to be a private society of merchants, not a public body of the state, notwithstanding the powers granted to it in the 1621 Charter. Second, the writing of letters by Coymans to Joost Cramer does not constitute a criminal act, it must be classified as correspondence with an ally of the Republic. Subjects of the States-General are allowed to maintain good relations with its foreign allies. Moreover, derived from this second argument, they find it indeed commendable that Coymans tried to warn a personal friend and ally of the state of the mischievous plans of the WIC to kill Cramer and attack Cabo Corso. These actions do not even constitute a violation of the Company monopoly, as there was no illegal trafficking of goods involved.<sup>188</sup> There is disagreement between these experts however, on the question of Company sovereignty over its overseas territories. Some reject all WIC claims of territorial jurisdiction.

Paulus Voet, a jurist from Utrecht and father of the renowned Johannes Voet argues, together with others, that the scope of *crimen laesae majestatis* cannot be extended to cover acts damaging WIC interests. The Company does not represent the state in the Netherlands, nor in Guinea. This opinion clearly finds its origin in a work published by Voet in 1661, *De Statutis eorumque concursu Liber Singularis*. The treatise is a clear expression of the absolute territorial sovereignty of the state in the area of private international law, a legal area that deals with conflict of different legal systems in the relations between private individuals. According to the theory of statutism, which originated in the northern Italian city states, laws enacted by equal sovereigns cannot create obligations within the territory of the other sovereign. Unless the sovereign, as an expression of comity, consents to the extraterritorial functioning of a foreign statute. These acts of comity between Italian city states, which all had their own legal codes, would facilitate the trade relations amongst each other. Not surprisingly, this theory appealed to Dutch jurists, as the Provinces of the United Netherlands also used separate legal codes and customs. There was no overarching law for the

---

<sup>186</sup> Brieven, confessie; mitsgaders, advisen, 28-29.

<sup>187</sup> Ibidem, 29-30.

<sup>188</sup> Ibidem, 43-44.

whole Republic, but the rise of the Dutch commercial empire necessitated the use of new legal theories.<sup>189</sup>

Voet states that the WIC was not in possession of Fort Nassau: the occupation of the fort by Company soldiers merely served to secure Dutch trade on the coast and it was only possible with consent from the territorial sovereign, the king of Sabou. Moreover, any concessions made by the king with regards to exercise of jurisdiction by the company were made to the WIC and not to the States-General.<sup>190</sup> According to Voet the Company did not have any territorial rights in West-Africa: '[...] overmits de voorschreven Compagnie het Fort Nassouw, niet als een Plaets tot desen Staet specterende, zijn besittende, maer alleen met Garnisoen beset hebben tot securiteyt van hare Negotie, bij toelatinge van de Koninck van Sabou.'<sup>191</sup>

Nevertheless, there *was* extraterritorial operation of Dutch law in the coastal outposts. Civil and criminal conflicts between subjects of the Company and Africans occurred from time to time and in these cases the question arose of what law would have to be applied. In general, Company officials served as mediators in these cases, trying to manage peaceful resolution of the disputes. As a last resort the WIC could serve as a judge in the case. This can be seen as an act of comity on the part of the African rulers in theory, but of course in practice there was no equality between two sovereign partners. The Dutch had continued the practice started by the Portuguese and acted as a suzerain with regard to the local rulers.<sup>192</sup>

A group of prominent lawyers from The Hague issued an opinion on the extent of the WIC's territorial jurisdiction. Among those signing the opinion were Willem van der Kerckhoven, Cornelis de Neyn and Hendrick Cloeck, who would later become judges at the Provincial Court of Holland.<sup>193</sup> Another signatory was Willem de Groot, Hugo's younger brother who had also gained some fame in the legal profession as a lawyer for the VOC and who had closely worked with him on his famous publications.<sup>194</sup> Not surprisingly he seems to endorse his brother's thoughts about the legal dimensions of the trading companies (as it is interpreted in the recent scholarship by Borschberg, van Ittersum and Wilson). Firstly, they argue, the Company is not an entity able to exercise territorial jurisdiction *within* the Republic and Isaac Coymans is not a subject of this entity pretending to be a state, against which treason can be committed. This would make it a state within a state: 'tanquam

---

<sup>189</sup> Johannes Phillipus Suijling, *De Statutentheorie in Nederland gedurende de XVIIe eeuw* (Utrecht 1893), 1-10, 44-46.

<sup>190</sup> Brieven, confessie; mitsgaders, advisen, 39-40.

<sup>191</sup> Ibidem, 40.

<sup>192</sup> Henk den Heijer, 'Met bewillinghe van de swarte partij. Nederlands recht op de Goudkust in de zeventiende eeuw', *Pro Memoria* 5 (2003) 350-363, 355-362.

<sup>193</sup> Repertorium van ambtsdragers en ambtenaren 1428-1861, <http://www.historici.nl/Onderzoek/Projecten/Repertorium/app/personen/5013>, consulted on: 08-08-2012.

<sup>194</sup> Van der Aa, *Biographisch woordenboek* VII, 466-468.

Imperium in Imperio, aut Majestas in Majestate [...]'], which is exactly the fear that would be expressed by Pieter de la Court a few years later in his *Aanwijzing der heilsame politike Gronden en Maximen*. However, it is subsequently emphasized that within the geographical limits specified in the Charter, the Company is sovereign over those settlements, forts and territories that it possesses. Therefore, treasonous activities perpetrated within these Limits against the WIC could constitute *crimen laesae majestatis*, provided that the perpetrator is in the service of said Company.<sup>195</sup> The conclusion that can be drawn from this reasoning is that the abovementioned authors considered the WIC to possess autonomous authority within their overseas outposts. The question of a finding of treason depended upon the matter of employment by the company, or residence within its territories. For Coymans, neither condition was fulfilled. In chapter XIII of *De iure praedae*, Grotius comments on the relationship between the States-General and the VOC:

'In the first place then, it is a generally accepted fact that the individuals who compose the East India Company are subject to the said States-General. For all persons within the territory in question have pledged allegiance by oath to that assembly, or else tacitly give adequate assurance, by making themselves part of the political community governed by the latter, of their intention to live in accordance with the customs of this community and to obey the magistrates recognized by it. Such an assurance (as we have pointed out in another passage) is no less binding than the spoken word.'<sup>196</sup>

Now, since *De Iure Praedae* was only rediscovered in 1864, these seventeenth century jurists cannot be expected to have had any knowledge of its contents. However, it is of course not unthinkable that the brothers de Groot discussed these matters with each other, exchanging views on the issue of the Companies' legal position. The opinion accords with Eric Wilson's interpretation of *De Iure Praedae* to the extent that the treatise upholds the distinction between private and public, but by attributing the Company with the necessary tools to protect its property overseas, it becomes a state-like entity. In other words, the Company is subordinate to the public authority of the States-General, yet in practice it becomes a 'Corporate Sovereign' as the States-General grants parts of its sovereign powers to the private body and vacates those areas itself.<sup>197</sup> This concept entails that as a matter of law, the state exercises control over the corporation. However: 'As of fact, private actors exercise decisive structural power over national politics and economics. The outcome is a radical iterability between public and private "sovereignty", both sectors perpetually interfering in the 'internal

---

<sup>195</sup> Brieven, confessie; mitsgaders, advisen, 35-37.

<sup>196</sup> Hugo Grotius, *Commentary on the Law of Prize and Booty*, ed. Martine Julia van Ittersum (Indianapolis 2006) 409.

<sup>197</sup> Wilson, *The VOC, Corporate Sovereignty and the Republican Sub-Text of De iure praedae*, 332-340.

operations' of the other.<sup>198</sup> A second point that stands out is the fact that Coymans was not in the service of the WIC anymore during his correspondence with Cramer. In other words, he was not a subject of the WIC. This affirms the early modern view on sovereignty, in which the element of territory was not as pivotal as today. The more essential concept was that of subjecthood because: 'subjects could be located anywhere, and the tie between sovereign and subject was defined as a legal relationship, legal authority was not bound territorially.'<sup>199</sup>

Law professor Johannes Christenius follows the line set out in the other opinions written in defense of Coymans. He adds the notion that the WIC has to be equated with any other citizen of the state. An offense against a subject of the state, does not automatically lead to an offense against the state itself:

'dat soo wanneer in een koninghrijck ofte Republijck eenige Stadt ofte onderhoorigh Lidt eenighsins gelaedeert wordt, terstont de hooghste Macht moste verstaen worden gelaedeert te zijn, het welcke de Rechten in geenderley manieren toelaten'<sup>200</sup>

Finally, based on the consultations with these jurists, Coymans' lawyer (sadly he remains anonymous) sets out to construe his argument. The implication of a finding of *crimen majestatis laesae* would be that the WIC possesses the highest authority, in other words, that it would be sovereign. This permits no equal or *parem Majestatem* to exist. Here we arrive again at the concern of a government within a government: 'En in yeders mont bestorven is, datter geen Staet in Staet, Regeeringe in Regeeringe kan bestaen.' He states it is evident, however, that the Company is subject to the authority of the High Government of the Land, as is any inhabitant of the Netherlands.<sup>201</sup>

Turning to Article 2 of the Charter, which as discussed above contains the powers of the WIC to conclude treaties, build fortresses and maintain an army, the author recognizes that these kind of powers presuppose sovereignty. Hugo Grotius and Gentili also suggested that these were 'kentycken van hoogheyt en souveraniteyt'. However, as these powers are concessions from the lawful sovereign, the States-General, they have to be considered to be exercised in the name of the sovereign, not in the name of the Company. The sovereign, to which all commanding officers of the Company have to swear an oath of loyalty, as decreed by Article 3 of the Charter. Even the matters of war and peace, laid down in Article 19, do not fall solely within the competence of the Company. Decisions that fall within this realm have to be put before the States-General for approval.<sup>202</sup>

---

<sup>198</sup> Ibidem, 222-223.

<sup>199</sup> Benton, *A Search for Sovereignty*, 287-288.

<sup>200</sup> Brieven, confessie; mitsgaders, advisen, 38-39.

<sup>201</sup> Ibidem, 46-47.

<sup>202</sup> Ibidem, 48-49.

In short, the WIC exercises a limited number of public powers and when it does so, these are exercised as an agent of the States-General. This competence does not create a sovereign entity within or parallel to the state. The WIC remains subordinate to the States-General, as is any individual subject of the state. So while both his lawyer and the proponents of Coymans' indictment for *crimen laesae majestatis* agree that the WIC is not in itself a sovereign body, but rather an agent of the state, they disagree on the implications of this legal classification.

Now the author turns to the question whether any crime was committed at all, in sending those letters to Guinea. As discussed above, the contents of the letters were aimed to warn Joost Cramer about an impending attack by the WIC on Cabo Corso. Can the supposedly secret schemes made by the Directors be considered state secrets? No, he argues, because often enough the WIC acts in opposition of the interests of the state, in casu by planning an attack on the subjects of a friendly kingdom. In his view, competitors of the Company cannot automatically be equated to enemies of the state. Moreover, Coymans does not incite Cramer to commit any illegal acts against the WIC. Surely, it is Grotius himself who states in his *De Iure Belli ac Pacis* that an unprovoked attack provides a just cause to strike back.<sup>203</sup>

Concluding his argument, Coymans' representative states that the mere fact that the consulted jurists are not in agreement on the matter at hand, creates a heavy duty for the prosecutor to prove the criminality of the acts committed. Coymans had no criminal intent in writing those letters to Cramer, a friend who he wanted to warn about the plans of the Directors to launch an illegal attack on the fort Cabo Cors. Even if the articles of the Charter have been broken (which, as he has argued is not the case), this would not constitute a criminal act, just a contravention of the founding document of a trading company.<sup>204</sup> As has been laid out at the beginning of this chapter, the pleading turned out to be in vain, as Coymans was convicted of treason on 25 January 1662.

Surprisingly, Gerard van Tets was released from custody by the court in January 1662. He had initially been arrested on similar grounds, namely trying to warn Jan Claessen that the Company had put a price on his head. Van Tets' confession revealed that Claessen had once saved his life and he felt that he was obligated to return the favour. He was let off with a mere warning. The decision goes against the view put forward in the consultations by van der Elst, Fagel and van Strijen, who were all of the opinion that van Tets deserved the same punishment as Coymans. From this selectivity we might deduce that the court was not necessarily trying to round up all the participants of the Danish African Company. Mostly it was looking to use Coymans as a scapegoat and to make an example of him to satisfy the WIC Directors.<sup>205</sup> This probably happened under influence of Nicolaas Pancras, who

---

<sup>203</sup> Ibidem, 55-61.

<sup>204</sup> Ibidem, 68-69.

<sup>205</sup> Justitieboeken 03-01-1662, SAA, SS 5061, inv. nr. 584, f. 49-50.



was *Schepen* in Amsterdam and an influential member of the city's ruling elite. He had been one of the original participants in the DAC together with Coymans and must have been trying to contain any further investigations in the matter out of self-interest.<sup>206</sup>

### *Treason charges*

In the consults, Isaac Coymans is alternately stated to be charged with the crime of *crimen laesae majestatis*, or *crimen perduellionis*. Both terms indicate a form of treason, yet *perduellio* denotes a narrower concept of treason than *crimen majestatis*. The latter was a concept that covered any 'act or plot the goal of which was to diminish the greatness or security of the sovereign power'.<sup>207</sup>

The decision to prosecute Coymans on the basis of these charges already demonstrates in a way the politicized nature of the trial. The crime of *crimen laesae majestatis* or treason has historically been used mainly to assert authority and jurisdiction. In his study on the law of treason in Late Medieval France, Cuttler states:

'The relationship of law and politics is evinced in one respect by the administration of justice: political authority derives from the maintenance of both public and private rights; and the exercise of jurisdiction is an exercise in power. In a society in which a single authority exists, the competence of a tribunal is a strictly legal matter; but in a society of conflicting authorities jurisdictional entitlement becomes more of a political issue than a legal one. [...]

Because of the vague nature of treason, the decision to prosecute a particular person at a particular time could be a political one. The prosecution itself, in which there could be a great deal of flexibility in matters of jurisdiction, procedure and punishment, could also be determined by political considerations.<sup>208</sup>

It is not hard to see how Cuttler's characterization of treason trials is applicable to the present case of Isaac Coymans and it leads us directly to the central issue in this case: Does a violation of the WIC Charter constitute *crimen laesae majestatis*, or is it merely a violation of the privileges of a private corporation? Although historically limited to crimes against the crown, the scope of treason was expanded to include crimes against the state itself.<sup>209</sup> By appealing to the supreme authority of the state, European monarchs or, in the case of the Republic, the States-General, tried to avoid inquiry into the exact legal relationship between the government and the colonial administrators, which

---

<sup>206</sup> De Roever, *Twee Concurrenten*, 208.

<sup>207</sup> Cuttler, S.H., *The Law of Treason and Treason Trials in Later Medieval France* (Bristol 1981) 6.

<sup>208</sup> *Ibidem*, 2-3.

<sup>209</sup> Benton, *A Search for Sovereignty*, 62-63.

mostly consisted of pragmatic ad hoc solutions.<sup>210</sup> Ironically, the Coymans trial proved to be a good platform to air these questions, evinced by the distribution of the pamphlet containing legal opinions on the case.

#### *Provincial Court of Holland, Zeeland and West Friesland*

The proceedings of the case do not only shed a light upon the relation between the WIC and the States-General. They were also the stage of a power struggle between the municipal courts, in this case the *Schepenen* Court of Amsterdam, and the Provincial Court of Holland, Zeeland and West Friesland. The municipal courts were continuously trying to expand their jurisdiction at the expense of the Provincial Court. The powerful cities of Holland possessed voting rights in the State assembly and enjoyed a high degree of autonomy.<sup>211</sup>

The notoriety of the Coymans trial led to an attempt by the Prosecutor General to appeal the case at the Provincial Court. Taking into account the relatively light punishment he was given, it is not surprising that the Provincial Court of Holland decided to intervene in the case, resulting in a correspondence between the counsellors of the Provincial Court and the *Schepenen* of Amsterdam. In this case, the involvement of judge Pancras with the Danish African Company, and the preference held by Amsterdam merchants to lift the monopoly for West Africa probably worked in the defendants favour. The Company Directors of the Chamber Amsterdam had been opponents of the monopoly of trade given to the West India Company on the coast of West-Africa by force of the Charter. They actually preferred to allow private trading in exchange for recognition fees but were unsuccessful in convincing the States-General of these convictions.<sup>212</sup> The procedural dispute that ensued between the Provincial Court and the Amsterdam court concerned the question whether appeal was possible in an extraordinary trial. The judges from Amsterdam won the argument by referring to a resolution from 1591, that prohibited such an action in extraordinary trials. However, as Kernkamp notes, the fear of preferential treatment was not ungrounded as Coymans would be released from his prison after sitting out a few years and he was finally set free in February 1667 by the States of Holland.<sup>213</sup>

The verdict also gave rise to reactions by disgruntled citizens agitating against the nepotism of the Amsterdam elite. A pamphlet titled *'t Samenspraek tusschen een Hollantsch en Brabantsch Koopman, ontrent de negotie van desen tijdt*, printed in 1662 in Dordrecht articulates these protests

---

<sup>210</sup> Ibidem, 42.

<sup>211</sup> G.W. Kernkamp ed., *De regeeringe van Amsterdam soo in 't civiel als crimineel en militaire (1653-1672) ontworpen door Hans Bontemantel I* (The Hague 1897) cxcix.

<sup>212</sup> Den Heijer, *De geoctrooieerde compagnie*, 150.

<sup>213</sup> Kernkamp, *De regeeringe van Amsterdam*, ccv-ccvi.

in a conversation between a Brabander and a Hollander. Complaining that Coymans had deserved a death sentence and that this case sets a wrong precedent, the Brabander states:

'Gracelick, in ons Lant worden Lant, Stadt, ofte verraders van Forten, soo indigne ge-estimeert, dat men die onweerdich ordeelt de straten te betreden, en worden op een horde naer de Galge gesleept [...]

Wat seght gy, dat is doch wat gracelick, onse gansche Brabant sal der over verwondert sijn, 't gelt, 't gelt kan machtich veel te wege brengen, dat d'eene aen de koorde kan knoopen, kan d'ander door gelt doen af-koopen, de kleyne Diefjens hanght men, de groote laet men loopen: doch echter sijn credit ende reputatie moeder nu gansch toe liggen, want wie eenen quaden naem heeft, is half gehangen. Een Schip op zant, seght men is een baken in Zee, dit exempel sal andere ten goede dienen, hy spiegelt hem sacht, die hem aen andere spiegelt.<sup>214</sup>

Concluding, the trial exposed a lot of dissension within the Republic: scholarly concerns about the legal dimension of the WIC were expressed. It also reveals that the outcome of these discussions were in reality very much dependent on the realities of power and balancing the commercial and governmental concerns. In her article *The Long Goodbye*, Martine van Ittersum notes that the view held by the High Court of Holland on matters of overseas expansion has not yet been thoroughly researched in Dutch historiography. Although in the Coymans case it concerns the Provincial Court, we can surmise that at least this court of appeal supports the view of the WIC as a direct agent of the States-General. Their concern with this case indicates the mistrust against the municipal court of Amsterdam, which they suspect of being prejudiced in a case concerning one of their own.<sup>215</sup>

In her account on the role of sovereignty in empire, Benton shortly sums up the consequences of jurisdictional politics within empires. Her analysis corresponds with the findings of the cases discussed in this thesis:

'Disputes invoking claims and accusations about loyalty, maladministration of justice, and the delegation or usurpation of legal authority in imperial settings can be read as discourses about sovereignty, but of course for imperial actors the stakes were also both higher and lower, because conflicts focused on particular interests and goals of discrete groups; higher because outcomes could

---

<sup>214</sup> *Pamphlet Knuttel* 8646, 't Samenspraeck tusschen een Hollantsch ende Brabantsch Koopman ontrent de Negotie van desen tijdt' (Dordrecht 1662) 4-5.

<sup>215</sup> Van Ittersum, *The long goodbye*, 401 note 64.

mean catastrophic loss - of life, patronage, property, commercial rights, and political influence - and irreparable damage to the viability of empire itself.<sup>216</sup>

It is not hard to recognize in these findings the tribulations of the merchant Isaac Coymans and of captain Croeger and his crew. The outcomes of the disputes under review mattered greatly for the involved parties (Coymans, Pancras, Croeger) and the interests they represented; at the same time, at a higher level, the different takes on the legal concepts of jurisdiction and sovereignty that came to be discussed in the course of these kinds of disputes were determinative for the shape of Dutch commercial empire.

---

<sup>216</sup> Benton, *A Search for Sovereignty*, 288-289.

## V Dispute with the Danish Crown

The disturbance in the usually friendly relations with Denmark and Sweden caused by the Coymans trial, touches upon an important observation: divergence between Company policy and state foreign policy is another issue where Company sovereignty is put to the test. Is the Republic responsible for any wrongful acts committed by the WIC against other states? And to what extent did the granted powers of the Dutch West India Company grow out of fear of foreign competitors? In order to maintain the competitive edge it was of paramount importance for the WIC to defend its trading monopoly. Moreover, one of the main reasons for the States-General to grant the monopoly in the first place was as a compensation for the Company's function as an instrument of war.

In February 1661, a Company ship had captured a galleon, equipped by the Danish African Company, named the *Postillon van Venetië*, around Castle Mina on the coast of Guinea. The ship was carrying a number of documents and letters, including the letters written by Isaac Coymans to Joost Cramer.<sup>217</sup> Yet the capture of the *Postillon* was only one of many injuries inflicted back and forth between the two parties. Another cause was, as mentioned in the previous chapter, the conflict that had started when Samuel Smidt had transferred some trading posts on the Gold Coast to the WIC, ordered by Caerloff.

### *International State Responsibility for acts committed by the West-India Company?*

The legal issue that arose from the conflict between the West-India Company and the Danish African Company concerns the question of international state responsibility: Was the Dutch Republic responsible for actions committed by the WIC against neutral power Denmark? Responsibility can only be established if the WIC is actually an organ of the state. Verzijl has concluded that responsibility can be attributed to a State 'for all acts committed by its officials or organs'.<sup>218</sup> Moreover, Lindley argues that: 'When a State has called such a body into being for express purposes, it should, it would seem, be prepared to accept international responsibility for the way in which those purposes are carried out, so long as the Corporation is working under its Charter.'<sup>219</sup> The dispute also serves as an example of the workings of early modern territorial claims and the importance of its foundations in law. As Benton and Straumann have shown, these claims do not revolve about an absolute show of title to territory. It is a question of relativity. Which European

---

<sup>217</sup> Verklaring Charisius 12-11-1661, NaA, SG, inv. nr. 4846.

<sup>218</sup> Roelofsen, Cornelis G., 'The Claim of some Citizens of Stettin against the Dutch Republic and its Adjudication (1609-17). State Responsibility in Early Modern Europe; *Apropos of De Iure Belli ac Pacis* II.17.20' in: Terry D. Gill and Wybo P. Heere, *Reflections on Principles and Practice of International Law. Essays in Honour of Leo J. Bouchez* (The Hague 2000) 175-189, aldaar: 177.

<sup>219</sup> M.F. Lindley, *The Acquisition and Government of Backward Territory in International Law. Being a treatise on the law and practice relating to colonial expansion* (London 1926) 91.

power has a stronger claim than the other in these inter-imperial disputes? Creatively using concepts drawn from Roman property law, scholars tried to come up with legitimizations of acquiring overseas territories.<sup>220</sup> In contemporary international law this relativity aspect is still relevant. In contrast to most domestic systems of law, where there are formal requirements to be met that would lead to an absolute title, international courts or arbitrators in boundary conflicts will assign territory to the state party that makes the best case.<sup>221</sup>

Both the representative of the Danish Crown and the WIC tried to convince the States-General of the harm done by the other party and the righteousness of their own positions. The battle was not only fought in The Hague however. The arguments raised by both sides were published in pamphlets and thus became part of a publicity war as well. The Dutch financiers behind the DAC cleverly succeeded in causing a diplomatic conflict by appealing to the Danish Crown. The stories of the men involved in the Danish Africa Company reveal the opportunities that overseas trade offered to those early modern Europeans with adventurous spirits. Men like Hendrick Caerloff easily switched allegiance if it served their individual purposes and interests. Legal concepts like sovereignty, subjecthood and the 'state' were not yet developed enough to directly deal with these entrepreneurs, who were either not at all concerned with the law, or were just adept at finding those legally grey areas to maneuver in.

On November 12, 1661 Petrus Charisius, representative of the Danish crown in The Hague, appeared before a meeting of the States-General after a visit to Copenhagen. He presented the claim of the Danish Crown, being that they demanded satisfaction for the harm done to Danish ships ordered by Director General on the Guinea coast, Director-General Jasper van Heussen. Moreover, in order to preserve the friendly relations between the Republic and Denmark, the States-General would have to impose sanctions on the Dutch West India Company.<sup>222</sup> These would include the restitution of a trading post taken by the WIC and guarantees that similar situations would be prevented in the future. The WIC Directors would have to make sure that the Danish ship *Frederick*, which was on its way to the African coast, would be allowed safe passage on arrival. Charisius warned the delegates of the harmful consequences that could follow "*per fas et nefas*" if the Directors of the WIC kept stalling and refusing to compensate for the damages incurred.<sup>223</sup> Rejecting jurisdiction of a Dutch court in resolving the conflict, the Danes considered themselves to be forced to resort to taking countermeasures: a Dutch ship named *Graeff Enno* which had entered Plymouth

---

<sup>220</sup> Benton and Straumann, *Acquiring Empire by Law*, 3-5.

<sup>221</sup> Shaw, *International Law*, 491.

<sup>222</sup> NaA, SG, inv. nr. 4846.

<sup>223</sup> *Ibidem*.

was arrested in 1661 by English authorities on the request of the Danish emissary in London.<sup>224</sup> In the mean time, after examination by a commission of the States-General, the WIC Directors of the Chamber of Amsterdam were ordered to start preparing a legal defence for the actions of Van Heussen in anticipation of a court case. Moreover, they had written a request, appealing to the English authorities to release the *Graeff Enno*. The request was granted, to no avail however, as the English took it as security for their own pending claims against the WIC.<sup>225</sup> This exemplifies how the European powers were involved in a continuous struggle over their positions on the Guinea coast. Joost Cramer had also proceeded to capture two Dutch vessels loaded with gold, slaves and ivory. These actions urged the States-General to condemn the Danish Company for violating the law of nations and for letting Dutch citizens (obviously referring to Coymans, Caerloff and their accomplices) circumvent the WIC Charter under the Danish flag.<sup>226</sup> Thereafter, in February 1663, king of Denmark sent a proposal to the States-General to attempt judicial settlement of the growing conflict between the WIC and Danish African Company on the Guinea coast. The proposal was aimed at establishing an ad hoc college, composed of independent judges, to arbitrate the case.<sup>227</sup> It appears that the States-General was not yet ready to accept such a proposal.

In June 1664, Michiel ten Hove, lawyer for the WIC, sent a memorial to the States-General reaffirming their rights to the territories in West Africa. Ten Hove enumerates the historical claims of the WIC on several forts and trading posts in the region. Subsequently he contests that the places and forts captured by Hendrick Caerloff belong to the Danish Crown, as his expedition was financed by Caerloff himself and thus became his personal property. By transferring Cabo Corso to the WIC in 1659, the WIC had become the rightful owner. A transfer that could not be prejudiced by a later contract between Caerloff and the Danish Company concerning the sale of the fort. Any claims made by the Danish Crown had to be addressed at Caerloff, he argued, there is no legal grounds for action against the WIC. Moreover, ten Hove states, Article 1 of the capitulation granted by the Danish Crown to Caerloff, declares that any property captured by Caerloff can be transferred to allies of the Crown unconditionally, in this case to the Republic.<sup>228</sup> As evidence of the prohibition to trade within each other's territories without permission of the other state, ten Hove cites centuries old state practice between the European powers, affirmed by many treaties concluded to that end between

---

<sup>224</sup> *Pamflet Knuttel* 8905A, 'Remonstrantie aen de Ho: Mo: Heeren de Staten-Generael der Vereenighde Nederlanden: overgegeven den Junij 1664 Bij de Heeren de Bewint-hebberen van de Geoctroyeerde West-Indische Compagnie der Vereenighde Nederlanden. Opende jegens Verscheyde Memorien van den Heer Resident *Charisius*, wegens de (gepretendeerde) Deense Africaensche Compagnie, aen haer Ho: Mo: overgegeven.' (Amsterdam 1664) 7-8.

<sup>225</sup> 26-01-1662, NaA, SG, inv. nr. 4846; De Roever, *Twee Concurrenten*, 220, n1.

<sup>226</sup> 21-03-1662, NaA, SG, inv. nr. 4846.

<sup>227</sup> Verzoek van de Deense koning om de Afrikaanse geschillen aan onafhankelijke arbiters voor te leggen 10-02-1663, NaA, SG, inv. nr. 4846.

<sup>228</sup> *Knuttel* 8905A, 11-15.

the respective states. The Portuguese, who held the disputed territories between 1482 and 1637 had always excluded participation by foreign merchants. Therefore, the Dutch, as legal successors to the Portuguese, are allowed to maintain the same policy.<sup>229</sup> After further elaborating on how Caerloff had set out to pit the Danes against the WIC, ten Hove claims that Charisius was actually acting in bad faith by submitting his memorial, because Caerloff had testified that he had told Charisius about his plans to swindle the WIC.<sup>230</sup>

Specifically concerning the confiscation of the *Postillon van Venetien*, the Danish representative had apparently accused the WIC of having acted as a judge in its own case, a critique that remind us of the issue central to the *Alckmaer* case, as seen in Chapter III. In reply, ten Hove states that the judicial officials in charge of the process had taken their oath of loyalty to the States-General, and cannot be supposed to have acted on behalf of the Company, even if they were in the service of the Company:

'Ende dewelcke haer Eedt ghedaen hebbende niet en moeten werden ghepresumeert, uyt insicht van de Compagnie een ander ongelijck gedaen te hebben, Min ofte meer als de Hoven van Justitie hier te Lande, de Collegien der Admiraliteyten ende andere die door de respectieve Overheden sijnde gestelt op aenklachte van de Fiscalen recht ende justitie administreeeren.'<sup>231</sup>

In a response to the *Remonstrantie* delivered by the WIC to the States-General in 1664, the directors of the Danish Africa Company decided to turn to their sovereign, King Frederick III of Denmark. Assuring that the arrest of the *Graeff Enno* in England was justified, they urged the Crown to set up an arbitral Commission made up of judges from both sides to bring an end to the ongoing conflict.<sup>232</sup>

The author of the Danish brief goes on to reject the two main arguments on which the WIC based its exclusive trading rights and jurisdiction over the territories on the Guinea coast. The WIC lawyers claim that: first, the Dutch have rightfully occupied those territories *jure belli*. In the war against the Spanish and Portuguese, Castle *Elmina* and other fortresses have been captured, thereby transferring their possession on the Dutch. Second, the WIC advocate argued that local rulers have concluded treaties with the WIC submitting themselves to Company jurisdiction, which had resulted

---

<sup>229</sup> Knuttel 8905A, 18-19.

<sup>230</sup> Ibidem, 26.

<sup>231</sup> Ibidem, 28.

<sup>232</sup> *Pamphlet Knuttel* 9005, 'Afgedrongen en Welgefondeerde Tegen-Bericht Der Conincklijcke Deensche Geoctroyeerde Affricaansche Guineesche, en in de Hooft verstinghe Gluckstadt opgerichte Compagnie. Gestelt tegens. Die van de Hollandtsche West-Indische Compagnie, voor weynich tyts, onder den titul van een *Remonstrantie*, in oopenbaaren Druck gespargeerde, gantsch onwaarachtige *Calumnien* en valschen *attentaten* gemanifesteert, aan alle Weerelt ten ton gestelt, en krachtig gerefuteert werden. Aan die tot Deenemarcken Norweegen, der Wenden en Gotten Conincklycke Mayesteyt, alderonderdanigst overgegeen.' (Gluckstadt 1665) 12-13.



in the right for the Dutch to exclude other Europeans from trading on the African coast.<sup>233</sup> Evidently this argument used by the WIC advocates, adopts Grotius' contract theory presented in *Mare Liberum*. Exclusion of other states from trading in certain areas (which would be a natural right for all) can be justified through the conclusion of contracts with local rulers. In this case, the contractual obligations of both parties (*pacta sunt servanda*) supersede the natural right to freedom of access and trade.<sup>234</sup> Concerning the first point it is stated that:

'In d'Remonstrantie poogt d'*Westind: Comp:* bykans booven haar kraght, immers tegens alle recht en reeden staande te houden, dat over alle d'Landen van *Guinea* aan haar, niet alleen *Jurisdictione*; maar oock d'*Jura Majestatis* syn competerende. Formerende daarop d'soete hoewel valsche conclusie, alle andere Natien sonder exepctie, van daar te excludeeren, en in *Utopiam* te relegeren.<sup>235</sup>

The WIC cannot claim to have sovereign power on the coast of Africa, so it cannot justify excluding other nations from trading there. Although the Danish lawyer does not refute the possibility to legally acquire possession under the laws of war, he claims that as the Portuguese, arriving in 1481, did not have full sovereignty but rather *imperium mixtum* over the coastal areas, the Dutch cannot in any way claim to have taken over full sovereignty: *quod nemo plus juris ab alio accipere possit, quam id habuit*. One cannot acquire a more extensive right from someone, than that which he possesses. Falling back on the original arrival of the Portuguese fleet, under command of *Diego Dezabuija*, the author states that the Portuguese had never claimed any superiority or jurisdiction over the inhabitants of the Guinea coast. Any Portuguese exclusion of other nations only reflected the *de facto* situation and was not based on any legal right.<sup>236</sup> The principle invoked here against Dutch claims is one that is still valid in current international law with regards to cession of territory between two states. It was affirmed in the *Island of Las Palmas* arbitration mentioned in the Introduction. The arbitrators held that Spain, in an 1898 treaty with the U.S. could not cede more rights to the other party than it possessed, so the U.S. were unable to claim to have acquired sovereignty over the island based on this agreement.<sup>237</sup>

On the second point, the author argues that the mere fact that the Dutch had to resort to the conclusion of treaties with the African kingdoms points to the fact that WIC presence on the coast was merely *tolerated*. He points out that there is an internal contradiction in the WIC's arguments because they first claim to have actual possession, and as a subsidiary argument state to have

---

<sup>233</sup> Ibidem, 27.

<sup>234</sup> Borschberg, *Hugo Grotius, the Portuguese and Free Trade in the East Indies*, 102-105.

<sup>235</sup> Knuttel 9005, 27.

<sup>236</sup> Knuttel 9005, 28-33.

<sup>237</sup> Shaw, *International Law*, 499.

concluded exclusionary contracts. Why would there be a need to make agreements with local rulers if the Company is in possession of these territories?

Moreover, the existence of commercial treaties with the Dutch would not preclude the African sovereigns to conclude treaties with other European powers. This Grotian theory is outright rejected by the DAC advocate:<sup>238</sup>

'En connen niet sowel d'opgerichte Contracten, als d'heele Fetusche Regeringe genoegsaam doen blycken, dat d'Coninck Heer en Meester in syn landt is?

En heeft niet de Coninck van *Acraa*, synde Souverain Regent, soo wel macht, met d'*Coninckl: Deensche*, als met d'*Westind: Comp:* te contraheeren, en in syn Coninckryck Privilegie en vryheydt te geven; gelyck met den Bergh *Congo* geschiet t 'syn, alreede verhaalt is?<sup>239</sup>

In colourful wording, the WIC is likened to the Lernaean Hydra, the mythical many-headed monster that grows a new head each time one is chopped off. Each argument that is contradicted, leads the WIC lawyers to come up with another one: referring to the aforementioned sale of forts and trading posts by Hendrick Caerloff to the WIC in 1659. The directors of the Danish African Company reject the truthfulness of this story, and point to a contract dated March 28, 1659 between Hendrick Caerloff and Danish Admiralty Councillor Paul Klingenberg transferring the forts at *Cabo Corso*, *Taccaran* and *Anamabo* and the lodge at *Orsu* to the Crown of Denmark.<sup>240</sup> Moreover, on 22 July 1660, Caerloff had apparently testified to the Dutch Ambassador to this end:

'Nu is sulcks, dat ick naar het inneemen, niet alleen alle vlyt hebbe aangewende, om deselve plaatsen, voor hoogst-gedachte Majesteyt te conserveren, toe dien eynde by de geallieerde, des nodigh synde, wel assistentie is versocht, maar noyt het minste deel, dieswegen gecontracteert; veel min getransporteert. [...] [G]een de minste intentie is geweest, door het inneemen der *Comp:* Volckeren, die plaatsen van syn Coninckl: *Mayest:* te ontvreemden, maar dat oock dieswegen geen transport, ofte eenige acte mede is gemaackt; invoegen uyt neffensgaande Notariale Attestatie, breeder blyckt.<sup>241</sup>

In their view the original Danish capitulation granted to Caerloff had merely stated that he was allowed to seek assistance from allied nations (i.e. the Republic) in case of an attack by England or Sweden. Thus the Dutch have a false understanding of the meaning of this capitulation.

---

<sup>238</sup> Knuttel 9005, 28-33.

<sup>239</sup> Knuttel, 9005, 35.

<sup>240</sup> Ole Justesen, *Danish Sources for the History of Ghana 1657-1754 I* (Copenhagen 2005) 5-8.

<sup>241</sup> Knuttel 9005, 39-40.

How does the dispute between the WIC and the DAC reflect on the relationship between the WIC and the States-General? The States-General and the Directors of the WIC had issued contradicting instructions to the Director-General concerning the treatment of the Danish traders on the Guinea coast. On the one hand, in a resolution dated 16 November 1661, the States-General had ordered Director-General Jasper van Heussen to maintain friendly relations with the allied Danish nation.<sup>242</sup> On the other hand, the Company Directors ordered him to try to interfere as much as possible in the Danish trading activities, assuring him that any responsibility for damages would eventually be carried by the Company.<sup>243</sup> The Company, concerned about its diminishing profits disregarded the interests of the state to maintain good relations with an ally. The DAC saw itself faced with the difficult situation that it would not be able to get a fair judgment in Dutch courts, while the States-General could (or would?) not force the WIC Directors to pay any damages:

'Naardemaal de *Deensche Compagnie* sigh noyt voor de Ho: Mo: Heeren Staaten Generaal, ofte voor de Ed: GrootMogende Heeren Staaten van Hollandt en West-Vrieslandt, in proces ingelaaten, haare vierschaar gekendt, veel min haar oordeel onderworpen heeft. De West-Indische Compagnie (dewijl sij van haar Overicheyt niet en is gedwongen satisfactie te doen) sigh bij deese rooverij seer wel bevindende; Slaet haare *Wolfs-claauwen* wijder op vrije Zee [...]'<sup>244</sup>

Eventually both parties would be forced to resolve their issues, pressured by the outbreak of the Second Anglo-Dutch War in 1665. The States-General and the King of Denmark were to conclude an agreement, mediated by the King of France. The outbreak of the war was itself partly the result of strife over the Coast of West-Africa, as the English Royal Africa Company was looking to end Dutch domination in the region and to oust them from their trading posts and forts.<sup>245</sup> So, the escalating series of events between the WIC and DAC finally led to the conclusion of a treaty, stipulating that arbitration was necessary between the two companies in order to settle claims of damages on both sides (although the Company Directors still tried to move the States-General to appoint Dutch arbitrators). On 11 February 1666 a treaty of alliance was signed between the States-General and the Danish Crown.<sup>246</sup> A separate agreement was concluded on the same day, concerning the conflict between the WIC and the Danish Africa Company. It called for the cessation of all hostilities between the two companies on the Guinea coast. The Danish Company would drop its claims on the outposts

---

<sup>242</sup> Extract Resolution States-General 16-11-1661, NaA, SG, inv. nr. 12564.58.

<sup>243</sup> Knuttel 9005, 74.

<sup>244</sup> Knuttel 9005, 71.

<sup>245</sup> Steven C.A. Pincus, 'Popery, Trade and Universal Monarchy: The Ideological Context of the Outbreak of the Second Anglo-Dutch War', *The English Historical Review* 107 (1992) 1-29, 9-11.

<sup>246</sup> Tractaat 11-02-1666, NaA, SG, inv. nr. 12572.46, Preamble.

of Cabo Corso, Tacquorari and Annemabo. Moreover, after the expiration of the Danish charter in 1679, the forts of Fredericksborg and Orsu would be ceded to the WIC. Lastly, it states that the Danish authorities must enact regulations in order to prevent any person residing on Dutch territory, like Isaac Coymans, participating in the Danish African Company. Otherwise their invested capital will be subject to confiscation. Article 6 of the agreement covers the past claims between the two companies and stipulates that they should be resolved through arbitration.<sup>247</sup> Clearly the Danish negotiators had to yield to the Dutch, faced with the war against England, precluding further judicial settlement of the conflict, except in the matter of the arrested ships.

In the arbitration agreement both parties agreed to submit a list of their charges against each other within two months after signing the document and to abide by the verdict that would follow. The execution of the verdict would require both the Danish Crown and the States-General to force the respective Companies to compensate for the damages incurred by the other party.<sup>248</sup> Both states in this case seem to be prepared to accept responsibility for the wrongful acts committed by 'their' trading companies, if found guilty that is. The WIC would then be seen as an agent of the state carrying public authority, the acts of which have to be equated with acts by the state itself. Even though the Company apparently went against the policy dictated by the States-General.

In this respect it differs from the individual privateer that was the subject of the case of the merchants of Stettin. A case that concerned a privateer named Dirck Dircksz. who had captured a vessel (the *Salvator*) in 1606, belonging to merchants from the town of Stettin in Pomerania. The captain had been granted a privateering commission by the States-General, however, apparently Dircksz. was not planning on returning to the Netherlands with his cargo, thereby disregarding the conditions of his commission. On behalf of the merchants, the Duke of Pomerania sent a letter to the States-General demanding compensation. After more correspondence and threats of reprisal by the Duke, the case ended up in a Dutch court in 1610. Advocate Fiscal Hendrik Storm of the Amsterdam Admiralty Court argues in this case that a state cannot be held responsible for the actions committed by subjects acting in a private capacity (because the commission had been violated).<sup>249</sup> With some caution, a parallel might be drawn with current developments in which non-state actors like multinationals increasingly take over activities formerly reserved for states, like the employment of private military companies. The Draft Articles on the Responsibility of States for Internationally Wrongful Acts, drafted by the International Law Commission state in article 5 that: 'The conduct of a person or entity which is not an organ of the State under article 4 but which is empowered by the law of that State to exercise elements of the governmental authority shall be considered an act of

---

<sup>247</sup> Vergelijkinge met Denemarcken over de Guineese differenten 11-02-1666, NaA, SG, inv. nr. 12572.41.

<sup>248</sup> Project van Abritrage, NaA, SG, inv. nr. 12564.58.

<sup>249</sup> Roelofsen, *The claim of some citizens of Stettin*, 176-179.

the State under international law, provided the person or entity is acting in that capacity in the particular instance.<sup>250</sup>

Of course it has to be noted that the agreement to subject the case to arbitration by the king of France was a decision of political expediency. In the face of a naval war with England, an alliance with Denmark was necessary to keep access to the Baltic Sea open. The arbitration was put into a separate annex to the 1666 Treaty of Alliance, to resolve the issues that had arisen over the African trade, yet it can be doubted that any solution involving judicial settlement would have followed in other circumstances. As Roelofsen states in his article about the Stettin case, accepting state responsibility by the States-General could set a dangerous precedent, especially in the case of the WIC, since the Company was actively involved in the business of privateering.<sup>251</sup> As laid out above there also exists a tension between the concerns of the States-General to maintain friendly relations with its Scandinavian allies and the commercial interests of the WIC and its efforts to exclude others from trading within the Limits of its Charter. Here we are again reminded of Spruyt's argument about the inefficiency of divided sovereignty in international relations. However, the constitutional arrangement of a state using a private entity to represent its overseas interests worked well for the seventeenth century Netherlands. With regards to the matter of state responsibility, the use of divisible sovereignty could provide what Adams calls 'interposed layers of plausible deniability'. The States-General could effectively deny to have any control over, or even knowledge of, what the WIC was doing in their dispute with the DAC. Except in this case, which for political reasons ended up in arbitral settlement between two states.<sup>252</sup>

---

<sup>250</sup> Articles on Responsibility of States for Internationally Wrongful Acts, ILC (2001); Shaw, *International Law*, 787.

<sup>251</sup> Roelofsen, *The claim of some citizens of Stettin*, 178.

<sup>252</sup> Adams, *The Familial State*, 54-55.

## Conclusion

Rather than trying to find out whether the WIC should be considered to be a sovereign entity under international law - a question that (for the VOC) has already been answered by Somers - the goal of this thesis was to look at the internal relationship between the state and the company. The main question raised in the Introduction read: to what extent was the WIC able to operate as a *de facto* state overseas?

Previous research on the nature of imperial sovereignty has shown that sovereignty in this period was a matter of delegation and divisibility. The WIC carried a bundle of rights that would today be part of the broader concept of territorial sovereignty. The matter of sovereignty and exercise of jurisdiction by the Dutch chartered companies is not a matter of anachronistically applying our current day conceptions of these legal principles to early modern reality. The dividing line between public and private was not easily discernible because the early modern state in Europe was not capable of performing all those functions that we would today described as the 'core functions' of the state. In the seventeenth century Netherlands, this led to the necessity of privatizing some of those functions. Moreover, the wealthy, decentralized Republic provided a good environment for commercial elites to obtain political clout, further entangling private and public interests.

The legal dimensions of the Dutch companies were discussed by two prominent Dutch scholars. Pieter de la Court is wary of the extensive powers granted to the VOC and WIC and warns against the dangers of a state operating within a state. Whereas Hugo Grotius, according to recent interpretations of his work, was very much trying to create a legal justification for Dutch overseas expansion using private corporations, favoring the idea of divisible sovereignty, freedom of navigation and trade, private warfare and the inviolability of international agreements.

Not surprisingly, the Dutch approach led to numerous legal disputes, of which I have discussed three in the current thesis. A number of conclusions can be drawn after the reading of these cases. The case of the seizure of the *Alckmaer* concerns the judicial jurisdiction of the WIC and reveals how the lack of a clear constitutional structure in the relation between the company and the state leads to conflict. By letting the company be judge in its own cause, commercial interests prevailed over fundamental principles of justice. Eventually the States-General decides to intervene, which is not so much a sign of governmental concern with justice; rather it meant that the owners of the ship were probably aligned with the right families back in the Republic.

The notorious treason trial of Isaac Coymans indirectly concerns the question of whether the WIC should be considered as a part of the state. As Coymans is convicted by the Amsterdam court, the judges evidently decide that it is, however, the politicized nature of the trial does not

suggest the decision was based on a purely legal motivation. The opinions contained in the discussed pamphlet give an insight in the various arguments that are employed and show that this question was an actual topic of concern. The contribution written by Willem de Groot and others, seem to echo the ideas of his brother Hugo as posited in (the still undiscovered) *De Iure Praedae* and *Mare Liberum*. One recurring fear voiced by some of the jurists discussed, is that of the company acting as a government within a government, the fear of *imperium in imperio*. Coymans' low sentencing can again be considered as an example of how these disputes are mostly decided by the dominant interests within the *regenten* class, in this case through interference of Pancras as member of a group of wealthy Amsterdam merchants.

The uncertainty about the WIC's legal position created conflict internally within the Republic, but also with other European states, even with allies. From the exchange of legal arguments presented in chapter V, it appears that both companies (the DAC and WIC) are acting as full subjects of international law, carrying rights and obligations (and being allowed to enforce those rights); capable of concluding treaties, possessing territories and exercising jurisdiction on their own accord. Only when the conflict is escalates, the companies turn to their sovereign overlords. However, when it comes to the issue of state responsibility for wrongful acts, the States-General is obviously trying to deny any liability. They hold off requests by the Danish crown to recompense the DAC for attacks by the WIC, until the outbreak of the war with England forces them to a settlement.

The WIC functioned as a kind of para-government for Atlantic affairs, whose interests were not always in line with those of the States-General. This constitutional arrangement functioned well for the most part when there was alignment between commercial and political interests. Stern and Wilson have used the term corporate sovereignty, to describe the de facto situation of respectively the English East India Company and the VOC acting as states in their overseas territories. As the public powers of the company were based on a charter granted by the state, the WIC cannot be equated with a sovereign nation-state as we know it today. However, considering the practice of the fragmented Dutch state and the theory of divisible sovereignty, I would argue that the concept of corporate sovereignty can also be applied to the WIC. In practice, the deliberately unclear constitutional structure provided a useful flexibility with regards to other European powers, but a lack of legal certainty for citizens trying to participate in overseas trade. For the more wealthy and fortunate citizens however, this uncertainty was compensated through the prevalent practices of patronage and clientelism. Moreover, this environment provided a wealth of opportunity for lawyers to try and substantiate claims of their clients and make the legal theory fit the complicated reality of the Atlantic trade.

## Literature and Sources

### Literature

- Van der Aa, A.J., *Biographisch Woordenboek* (Haarlem 1878).
- Adams, Julia, *The Familial State. Ruling Families and Merchant Capitalism in Early Modern Europe* (Ithaca 2005).
- Alexandrowicz, C.H., *An Introduction to the History of the Law of Nations in the East Indies. (16th, 17th and 18th Centuries)* (Oxford 1967).
- Benton, Lauren, *A Search for Sovereignty. Law and Geography in European Empires, 1400-1900* (New York 2010).
- Benton, Lauren and Benjamin Straumann, 'Acquiring Empire by Law: From Roman Doctrine to Early Modern European Practice', *Law and History Review* 28 (2010) 1-38.
- Benton, Lauren, 'Empires of Exception: History, Law and the Problem of Imperial Sovereignty', *Quaderni di Relazioni Internazionali* 6 (2007) 54-67.
- Besson, Samantha, 'Sovereignty', *Max Planck Encyclopedia of Public International Law*
- Blom, Hans W., 'Patriots, contracts and other patterns of trust in a polyarchic society: the Dutch 17th century' in: Robert von Friedeburg, '*Patria*' und '*Patrioten*' vor dem Patriotismus. *Pflichten, Rechte, Glauben und die Rekonfigurierung europäischer Gemeinwesen im 17. Jahrhundert* (Wiesbaden 2005) 193-213.
- Blom, Hans W., 'The Republican Mirror: The Dutch Idea of Europe' in: Anthony Pagden ed., *The Idea of Europe From Antiquity to the European Union* (Cambridge 2002) 91-115.
- Blusse, L. and Femme Gaastra eds., *Companies and Trade. Essays on Overseas Trading Companies during the Ancien Régime* (Leiden 1981).
- Blussé L., "'Ver sacrum' Hoe 't Verzuymd Brazil en 't Verwaerloosde Formosa verloren gingen' in: Maurits Ebben, Henk den Heijer en Joost Schokkenbroek eds., *Alles streken van het kompas. Maritieme geschiedenis in Nederland. Opstellen over maritieme geschiedenis in Nederland. Aangeboden aan Femme S. Gaastra bij zijn afscheid als hoogleraar zee geschiedenis aan de Universiteit Leiden* (Zutphen 2010) 147-173.
- Borschberg, Peter, *Hugo Grotius, the Portuguese and Free Trade in the East Indies* (Singapore 2011).
- Boxer, C.R., *The Dutch in Brazil 1624-1654* (Oxford 1957).
- Cuttler, S.H., *The Law of Treason and Treason Trials in Later Medieval France* (Bristol 1981).
- Drooglever, P.J., 'The Netherlands Colonial Empire: Historical Outline and Some Legal Aspects' in: H.F. van Panhuys e.a. eds., *International Law in the Netherlands I* (The Hague 1978) 103-166.
- Elias, Johan E., *De Vroedschap van Amsterdam 1578-1795* (Amsterdam 1963).



- Emmer, Piet, 'The West India Company, 1621-1791: Dutch or Atlantic?' in: L. Blussé and F. Gaastra eds., *Companies and Trade. Essays on Overseas Trading Companies during the Ancien Régime* (Leiden 1981), 71-95.
- Gelderen, Martin van, 'The state and its rivals in early-modern Europe' in: Quentin Skinner and Bo Stråth eds., *States & Citizens. History, Theory, Prospects* (Cambridge 2003), 79-96.
- Grotius, Hugo, *Commentary on the Law of Prize and Booty*, ed. Martine Julia van Ittersum (Indianapolis 2006).
- Groot, Hugo de, *Het recht van oorlog en vrede. Prolegomena & Boek I*, vert. Jan Frans Lindeman (Brussels 1993).
- Heijer, H. den, 'Een dienaar van vele heren. De Atlantische carrière van Hendrick Caerloff' in: J. Thomas Lindblad and Alicia Schrikker eds., *Het Verre Gezicht. Politieke en culturele relaties tussen Nederland en Azië, Afrika en Amerika. Opstellen aangeboden aan Prof. Dr. Leonard Blussé* (Franeker 2011) 162-180.
- Heijer, H. den, *De geschiedenis van de WIC* (Second edition; Zutphen 2002).
- Heijer, H. den, *De geöctrooieerde compagnie. De VOC en de WIC als voorlopers van de naamloze vennootschap* (Deventer 2005).
- Heijer, H. den, 'Met bewillinghe van de swarte partij. Nederlands recht op de Goudkust in de zeventiende eeuw', *Pro Memorie* 5 (2003) 350-363.
- Held, David and Anthony McGrew, 'The End of the Old Order? Globalization and the Prospects for World Order', *Review of International Studies* 24 (1998) 219-245.
- Ittersum, Martine Julia van, 'Preparing Mare Liberum for the Press: Hugo Grotius' Rewriting of Chapter 12 of *De iure praedae* in November-December 1608', in: Hans W. Blom ed., *Property, Piracy and Punishment. Hugo Grotius on War and Booty in De iure praedae - Concepts and Contexts* (Leiden 2009), 246-280.
- Ittersum, Martine Julia van, '*Mare Liberum* in the West Indies? Hugo Grotius and the Case of the *Swimming Lion*, a Dutch Pirate in the Caribbean at the Turn of the Seventeenth Century', *Itinerario* XXXI (2007) 59-94.
- Ittersum, Martine Julia van, '*Mare Liberum* Versus Propriety of the Seas? The Debate between Hugo Grotius (1583-1645) and William Welwood (1552-1624) and its Impact on Anglo-Scotto-Dutch Fishery Disputes in the Second Decade of the Seventeenth Century', *Edinburgh Law Review* 10 (2006) 239-276.
- Ittersum, Martine Julia van, *Profit and Principle. Hugo Grotius, Natural Rights Theories and the Rise of Dutch Powers in the East Indies 1595-1615* (Leiden 2006).
- Ittersum, Martine Julia van, 'The long goodbye: Hugo Grotius' justification of Dutch expansion overseas, 1615-1645', *History of European Ideas* 36 (2010) 386-411.
- Justesen, Ole, *Danish Sources for the History of Ghana 1657-1754 I* (Copenhagen 2005).

- Keene, Edward, *Beyond the Anarchical Society. Grotius, Colonialism and Order in World Politics* (Cambridge 2002).
- Kernkamp, G.W. ed., *De regeeringe van Amsterdam soo in 't civiel als crimineel en militaire (1653-1672) ontworpen door Hans Bontemantel I* (The Hague 1897).
- Klooster, Wim, *Illicit Riches: Dutch Trade in the Caribbean, 1648-1795* (Leiden 1998).
- Kunst, A.J.M., *Recht, Commercie en Kolonialisme in West-Indië. Vanaf de zestiende tot in de negentiende eeuw* (Zutphen 1981).
- Leue, H.J., 'Legal Expansion in the Age of the Companies: Aspects of the Administration of Justice in the English and Dutch Settlements of Maritime Asia, c. 1600-1750' in: W.J. Mommsen and J.A. de Moor, *European Expansion and Law. The Encounter of European and Indigenous Law in 19th- and 20th-Century Africa and Asia* (Oxford 1992) 129-158.
- Lindley, M.F., *The acquisition and government of backward territory in international law: being a treatise on the law and practice relating to colonial expansion* (London 1926).
- Novaky, György, *Handelskompanier och kompanihandel. Svenska Afrikakompaniet 1649-1663 En studie i feodal handel* (Uppsala 1990).
- Pagden, Anthony, 'Introduction' in: Anthony Pagden ed., *The Idea of Europe From Antiquity to the European Union* (Cambridge 2002) 1-32.
- Pearson, M.N., 'Merchants and States' in: James D. Tracy ed., *The Political Economy of Merchant Empires* (New York 1991) 41-116.
- Permanent Court of Arbitration, (United States v. USA) *Island of Palmas case*, Reports of International Arbitral Awards II, XX, (4 April 1928) 829-871.
- Pincus, Steven C.A., 'Popery, Trade and Universal Monarchy: The Ideological Context of the Outbreak of the Second Anglo-Dutch War', *The English Historical Review* 107 (1992) 1-29.
- Ratelband, K., *Vijf dagregisters van het kasteel São Jorge da Mina (Elmina) aan de Goudkust 1645-1647* (The Hague 1953).
- Rees, Otto van, *Aanwijzing der politike gronden en maximen van de republike van Holland en West-Vriesland = Verhandeling over de: Aanwijzing der politike gronden en maximen van de Republike van Holland en West-Vriesland, van Pieter de la Court* (Utrecht 1851).
- Roelofsen, Cornelis G., 'The Claim of some Citizens of Stettin against the Dutch Republic and its Adjudication (1609-17). State Responsibility in Early Modern Europe; *Apropos of De Iure Belli ac Pacis* II.17.20' in: Terry D. Gill and Wybo P. Heere, *Reflections on Principles and Practice of International Law. Essays in Honour of Leo J. Bouchez* (The Hague 2000) 175-189.
- Roever, N. de, 'Twee Concurrenten van de Eerste West-Indische Compagnie', *Oud Holland. Nieuwe bijdragen voor de geschiedenis der Nederlandsche kunst, letterkunde, nijverheid enz.* 7 (1889) 195-222.

- Schiltkamp, Jacob A., 'Legislation, Government, Jurisprudence, and Law in the Dutch West Indian Colonies: The Order of Government of 1629', *Pro Memoria* 5 (2003) 320-334.
- Shaw, Malcolm N., *International Law* (Sixth edition; Cambridge 2010).
- Somers, J.A., *De VOC als volkenrechtelijke actor* (Rotterdam 2001).
- Spruyt, Hendrik, *The Sovereign State and its Competitors: An Analysis of Systems Change* (Princeton 1994).
- Steensgaard, Niels, 'Companies as a specific institution' in: Blusse, L. and Femme Gaastra eds., *Companies and Trade. Essays on Overseas Trading Companies during the Ancien Régime* (Leiden 1981) 245-264.
- Stern, Philip J., *The Company-State. Corporate Sovereignty and the Early Modern Foundations of the British Empire in India* (New York 2011).
- Suijling, Johannes Philippus, *De statutentheorie in Nederland gedurende de XVIIe eeuw* (Utrecht 1893).
- Tak, J., *Geschiedenis van de Koloniale Wetgeving der Staten-Generaal van de Republiek der Vereenigde Nederlanden* (Leiden 1841).
- Tex, den Jan, *Oldenbarnevelt II* (Cambridge 1973).
- Thomson, Erik, 'The Dutch Miracle, Modified. Hugo Grotius' *Mare Liberum*, Commercial Governance and Imperial War in the Early-Seventeenth Century', *Grotiana* 30 (2009) 107-130.
- Tilly, Charles, *Coercion, Capital, and European States, AD 990-1992* (Revised paperback edition; Malden 1992).
- Tracy, James, 'Introduction' in: James D. Tracy ed., *The Political Economy of Merchant Empires. State Power and World Trade 1350-1750* (Cambridge 1991) 1-21.
- Tuck, Richard, *The Rights of War and Peace. Political Thought and the International Order From Grotius to Kant* (New York 1999).
- Vollenhoven, C. van, *Staatrecht overzee* (Leiden 1934).
- Wilson, Eric, *Savage Republic. De Indis of Hugo Grotius, Republicanism and Dutch Hegemony within the Early Modern World-System (C. 1600-1619)* (Leiden 2008).
- Wilson, Eric, 'The VOC, Corporate Sovereignty and the Republican Sub-Text of *De iure praedae*', *Grotiana* 26-28 (2005-2007) 310-340.

## Primary Sources Print

- Pieter de la Court, *Aanwijzing der heilsame politike Gronden en Maximen van de Republike van Holland en West-Vriesland* (Leiden 1669).

- *The argument of the lord chief justice of the Court of king's bench [George Jeffrey, baron Jeffreys] : concerning the great case of monopolies, between the East-India Company, plaintiff, and Thomas Sandys, defendant* (London 1689).

- *Groot plaacet-boeck, vervattende de placaten, ordonnantien ende edicten van de Staten Generael der Vereenighde Nederlanden, ende van de Staten van Hollandt en West-Vrieslandt, mitsgaders vande Staten van Zeelandt II* (The Hague 1664)

- *Brieven, confessie; mitsgaders, advisen van verscheyden rechtsgeleerden in de saeck van Isaac Coymans gegeven; als mede de sententie daer op gevolgt* (Rotterdam 1662).

- *Consultatien, advysen en advertisementen, / gegeven ende geschreven by verscheyden treffelijcke rechts-geleerden in Hollandt V* (Rotterdam 1664)

### Pamphlet collection Knuttel (Koninklijke Bibliotheek Den Haag)

- *Pamphlet Knuttel 5114, 'Remonstrantie ende Consideratien aengaende De Vereeninghe vande Oost ende West-Indische Compagnien'* (The Hague 1644).

- *Pamphlet Knuttel 5119, 't Schaede die Den Staet der Vereenichde Nederlanden en d'Inghesetenen van dien, is aenstaende, by de versuymenisse van d'Oost en West-Indische Negotie onder een Octroy en Societeyt te begrijpen.'* (The Hague 1644).

- *Pamphlet Knuttel 8646, 't Samenspraeck tusschen een Hollantsch ende Brabantsch Koopman ontrent de Negotie va desen tijdt'* (Dordrecht 1662).

- *Pamflet Knuttel 8905A, 'Remonstrantie aen de Ho: Mo: Heeren de Staten-Generael der Vereenighde Nederlanden: overgegeven den Junij 1664 Bij de Heeren de Bewint-hebberen van de Geoctroyeerde West-Indische Compagnie der Vereenighde Nederlanden. Opende jegens Verscheyde Memorien van den Heer Resident Charisius, wegens de (gepretendeerde) Deensche Africaensche Compagnie, aen haer Ho: Mo: overgegeven.'* (Amsterdam 1664).

- *Pamphlet Knuttel 9005, 'Afgedrongen en Welgefondeerde Tegen-Bericht Der Conincklijcke Deensche Geoctroyeerde Affricaansche Guineesche, en in de Hooft verstinghe Gluckstadt opgerichte Compagnie. Gestelt tegens. Die van de Hollandtsche West-Indische Compagnie, voor weynich tyts, onder den titul van een Remonstrantie, in oopenbaaren Druck gespargeerde, gantsch onwaarachtige Calumnien en valschen attentaten gemanifesteert, aan alle Weerelt ten ton gestelt, en krachtig gerefuteert werden. Aan die tot Deenemarcken Norweegen, der Wenden en Gotten Conincklycke Mayesteyt, alderonderdanigst overgegeen.'* (Gluckstadt 1665).

## Archival sources

### *Nationaal Archief Den Haag*

#### *Archive Staten-Generaal 1.01.02:*

- 12564.18, 'Stukken betreffende de bemoeiingen van de Staten-Generaal met het proces tussen de eigenaars en reders van het schip 'Alkmaar', schipper Cornelis Pietersz. Croeger, in 1638 door de Politieke Raad in Brazilië geconfisceerd, ter eenre, en de W.I.C., ter andere zijde.' (1641-1646).
- 12564.58, 'Stukken betreffende de bemoeiingen van de Staten-Generaal met de beslechting van de geschillen tussen de W.I.C. en de Deense Afrikaanse Compagnie.' (1665-1666).
- 12572.46, 'Akte van traktaat te 's-Gravenhage gesloten tussen de koning van Denemarken en de Staten-Generaal. Kopieën van kopieën.' (11 februari 1666).
- 12572.41, 'Stukken betreffende de bemoeiingen van de Staten-Generaal met de geschillen tussen de W.I.C. en de Deense Afrikaanse Compagnie over de kust van Guinea.' (1662-1665).
- 4846, 'Resoluties betreffende de West-Indische Compagnie.' (3 januari 1652 - 29 december 1663).

#### *Archive Oude West-Indische Compagnie 1.05.01.01:*

- 53, 'Overgekomen brieven en papieren uit Brazilië, Kamer Zeeland.' (1638).

### *Kaartcollectie Buitenland Leupe*

- 619.38, 'Johannes Vingboons, 'Cart van Cabo Corso gelegen aende Gout Cust in Guinea Kaart in vogelvlucht van Cabo Corso/Cape Coast tot Mouree/Mouri, Ghana.' (1665).  
(illustratie voorblad)

### *Stadsarchief Amsterdam*

#### *Archive Schout en Schepenen 5061:*

- 2, 'Missivenboeken van de Hoofdofficier (Aan diverse personen en collegien).' (29 november 1658 - 20 juli 1662).
- 314, 'Confessieboeken (Verhoren der preventieven).' (4 augustus 1661 - 16 januari 1663).
- 584, 'Justitieboeken (Bevat korte inhoud van het vonnis).' (9 maart 1661 - 8 maart 1664).

