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SHIPPING, COMMERCE AND THE RISK OF JURISDICTION

THE SCHELDT TRADE (SIXTEENTH CENTURY)

This article investigates the rules of jurisdiction that were applied in the case of damages in maritime transport. The focus is on traffic in one of the main riverine estuaries of the Low Countries, over the rivers Honte and Scheldt. In the course of the fifteenth century the governments of the county of Flanders and the duchy of Brabant had come to embrace a more exclusive notion of jurisdiction on rivers, which comprised the idea of precise demarcations. In practice, however, this new approach did not bring about more clarity. Uncertainty as to which forum would hear disputes on riverine shipping accidents marked a risk of trade. Among merchants and shipmasters, choice of jurisdiction was common, which happened after mishaps and was not arranged for contractually. The mentioned uncertainty was addressed with rules of thumb, which steered towards the courts of some locations instead of others. They took the port of destination as criterion, in combination with the residence of the merchant-owners of cargo on board of the ship.

Keywords: Riverine jurisdiction, General average, Transport, Risk management, Dispute resolution, Customary law.

Introduction

The topic of managing jurisdictional issues, and the «localization» of disputes, as part of mercantile strategies, requires more attention. The compound nature, even uncertainty of jurisdiction in the later Middle Ages and early modern period begs the question how merchants, venturing in international business, dealt with it. For the fifteenth to seventeenth centuries, some authors stress the advantages of shopping

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between official courts and of their jurisdictional differences[1]. However, an instrumental use of forums requires clarity and certainty as to the demarcations of their competences. In practice, this exactness often did not exist[2]. Many jurisdictions were vague, or layered, and it was therefore often impossible to predict beforehand which court would hear a case. Courts could also defy state-imposed adjudicative jurisdictional rules and seize lawsuits that were not theirs[3]. Moreover, in international commerce merchants and stakeholders with different nationalities, at different locations, were involved. Rules of private international law, which determined which court was competent in complex transnational situations, were only slowly developing and far from uniformly interpreted[4].

The notion of jurisdiction is difficult to define. For the sixteenth century one needs to distinguish between state-coordinated jurisdiction (henceforth also official jurisdiction), doctrinal jurisdiction and parties' choice jurisdiction. For the later Middle Ages and early modern period, legal historians have analyzed the developments of the legal-doctrinal concept of jurisdiction in detail[5]. But this is only one part of the story. Jurisdictional pluralism followed from incomplete or incoherent state-coordinated jurisdiction. Legislative projects aimed at imposing hierarchies of courts, which were cemented together with procedural remedies such as appeal and revision, but they could not eradicate existing landscapes completely; as a result, they were often – even implicitly – confirming overlaps. State formation processes purported to bring control over courts, but this control was never absolute. As a result of all this, in the period of the 1500s, official jurisdiction in practice was fluid and contingent[6].

Therefore, jurisdiction was considered a risk, for which appropriate strategies had to be developed. Jurisdiction of choice was an adequate response, also because rules of thumb emerged for deciding which jurisdiction could be addressed. Some of these rules were concerned with a choice of forum in contracts. Yet, most of them referred to the localization of disputes after they had arisen.

The focus of this article is on the sixteenth-century (Southern) Low Countries, in particular the Scheldt trade. The emphasis is on marine insurance and General Average (Gross Average), because of their transnational characteristics. Marine insurance shifted the risks of maritime trade to underwriters, whereas in General Average there was a pooling of risk between the shipmaster and the merchants, owners of the cargo on board of a ship[7]. In contrast to General Average, marine insurance was contractual and could – theoretically – be involved with a choice of forum in the insurance policy. For General Average the question

of jurisdiction always arose ex post, after a mishap that caused damages. Freightage contracts did not usually contain clauses of jurisdiction. Moreover, the localization of disputes regarding General Average was generally more difficult than when a contract of marine insurance had been signed. But even in the latter case, because of the many international aspects of insurances, place stood often central in the disputes.

In a first paragraph, the jurisdictions over the Scheldt trade in the sixteenth century are detailed. It will be argued that official jurisdictional rules were fundamentally layered, because of changing paradigms over time, which increased the need for jurisdictional choices. A second part discusses the differences in substantive rules across jurisdictions. The third paragraph analyzes the problem of localization in average and marine insurance disputes. A fourth part goes into the rules of thumb and informal jurisdiction that arose in mercantile practice and which were closely related to risk management.

1. *Jurisdiction(s) and the Scheldt trade*

Trade over the river Scheldt ran through several jurisdictions. In the sixteenth century, ships coming from the Baltic Sea, Portugal, Spain, England and Scotland navigated through the Honte, which was the Western branch of the river (hence also the Westerscheldt), below Walcheren. They passed Sluis and Bruges (in the county of Flanders) on their right hand side, and Vlissingen and Middelburg (in the county of Zeeland) on their left, on their way to Antwerp, which was in the duchy of Brabant. After Vlissingen, they could venture up north, to the Easterscheldt. If continuing along the Honte, after Hontemuiden[8] ships could sail north as well, directly to Bergen op Zoom[9]. Once Hontemuiden was left behind, the Honte became the Scheldt. The Scheldt after Antwerp was used for traffic to Ghent, where the Lys could be followed in the direction of Courtrai, and for voyages to the heartland of the duchy of Brabant. Some fifteen kilometers south of Antwerp, the mouth of the Rupel was opposite Rupelmonde; this river led to the Dyle, which went to Mechelen and Louvain, to the river Zenne, which was connected with Brussels, and to the river Nete, which flowed to Lier[10].

The estuary of the Scheldt, in both its eastern and western parts, was in constant evolution, which added to the difficulties surrounding jurisdiction over the river. Until the later fourteenth century, the Honte was virtually never used by merchant ships, because of the shallow passages and low tides. But when afterwards the river became broader, the

Honte became preferred over the regular entrance to the Easterscheldt, which was above Walcheren[11].

Jurisdictions over the inland river and over the estuary of the Honte were not very different. It was typical for the Scheldt and Honte that the territorial scope of jurisdictions was broad. Passage money was imposed for the use of large stretches of the river, and these were typically collected by inspection ships[12]. In the area of the river between the mouth of the Rupel and Hontemuiden, both the county of Flanders and the duchy of Brabant levied fees, which in the sixteenth century often had the form of fixed amounts per unit of a certain type of merchandise. These fees could be tolls (*teloneum*) or *conductus*, «conduct money». Originally the latter was not a tax (*teloneum*) but a compensation for lordly protection. However, in the 1500s, the distinction between tolls and conduct was minimal[13].

The Brabantine duke imposed *conductus* on the Honte, in both directions, between Bordebure, which was at the entrance of the Rupel river, and Vosvliethille, at the border with the Easterscheldt, on the route to Bergen op Zoom[14]. The count of Flanders had *conductus* for passages, in both directions, in the zone of the Scheldt between Saeftinge and Hulsterhaven (near Hulst)[15]. However, in spite of some geographical demarcation the overlap of rights was extensive. In the area between the Rupel and Antwerp, the *conductus* of the Brabantine duke came on top of the jurisdiction that was related to the conduct money of Rupelmonde, which pertained to the Flemish count. In Rupelmonde since 1271 conduct money was paid for any ship coming from Saeftinge that went further upstream, or which ventured towards the river Rupel, and for ships that left the Rupel and went either to Ghent or to Antwerp. Exemptions were given to Antwerpeners and to citizens of cities in Brabant and of Mechelen. These exemptions only applied for «own good», that is merchandise that was produced locally or for which the city of the shipmaster had staple rights[16].

The Rupelmonde conduct was collected by the bailiff of Rupelmonde. His jurisdiction came to include the part of the river Scheldt between Hulst and Eyckervliet (at the mouth of the Rupel), which nowadays encompasses some 45 kilometers of the river. The extension of the jurisdiction of the bailiff of Rupelmonde was part of a strategy of state formation. Starting from the thirteenth century, the count of Flanders had sought to impose his exclusive authority over the Honte river, which marked the border of his county with the principalities of Brabant and Zeeland.

The gradual broadening of the competences of the Rupelmonde bailiff were closely mimicking comital concerns and projects. Rights of

powerful local lords on the river were curtailed. One example thereof concerned the lord of Beveren. In the twelfth century Beveren had rights in the Antwerp fish market, and it seems that all fish caught in the Scheldt within its jurisdiction, roughly between Saeftinge and Rupelmonde (also including the villages of Doel and Kallo), belonged to the lord of Beveren[17]. There are indications that initially the lord of Beveren occasionally claimed jurisdiction over crimes committed on the river, even outside the mentioned areas and far away from Beveren. Also, he seized goods that were carried by ships over the Scheldt[18]. All this was reduced in favor of the sole jurisdiction of the comital bailiff of Rupelmonde. The bailiff at first merely had had jurisdiction over the village of Rupelmonde and appending territories, but as his power and authority grew, he started boasting jurisdiction over «the lord's river» (*des heeren stroom*)[19].

The authority of the Flemish count, by way of his agent, the bailiff of Rupelmonde, came to be regarded as so strong that it was held that the Scheldt was a «comital» river between Eyckervliet and Hontemuiden[20]. Even though this was an exaggeration (as the mentioned examples of *conductus* by the duke of Brabant show), such phrases came to depict a newly emerging interpretation of state-centered jurisdiction over rivers. At first, tolls and *conductus* had been levied in reference to shipping routes, and the zonal understanding of sovereign rights on rivers had been minimal. The main purpose of the mentioned tolls and conduct money had been to exert control over river traffic. This explains for why the count of Flanders and the duke of Brabant could raise taxes in the same areas of the river Scheldt. In the same vein, in the fourteenth century, all this related to a continuation of a medieval idea of «fuzzy borders». Rivers between principalities were not divided between those polities, but rather considered as unsplit «border zones», not pertaining to one or the other[21].

However, starting from the 1400s, a territorial understanding of riverine jurisdiction became more dominant. Rivers were divided into square areas, which were subject to rights of sovereign jurisdiction. These zones were considered as continuations of the adjacent land. As a result, rivers that were borders between territories had to be split up by a demarcation line that was situated in their middle. Each lord then had authority over the part of the river up to the middle of the river[22]. This new approach was largely due to the slowly spreading influence of legal scholarly writings. Doctrinal jurisdiction had coupled rights over rivers to sovereignty, thus triggering a linear conception of rivers that functioned as borders[23]. In an imperial law of 1158 (*Constitutio de Regalibus*, issued at the Diet of Roncaglia) the authority over navigable

rivers had been labelled «*de regibus*». This meant that abstract jurisdictional rights over rivers were vested in the lord of the land, even if they ran through private territories[24]. Legal scholars of the later Middle Ages further underpinned the mentioned rule, which was used as an argument in support of the comital authorities.

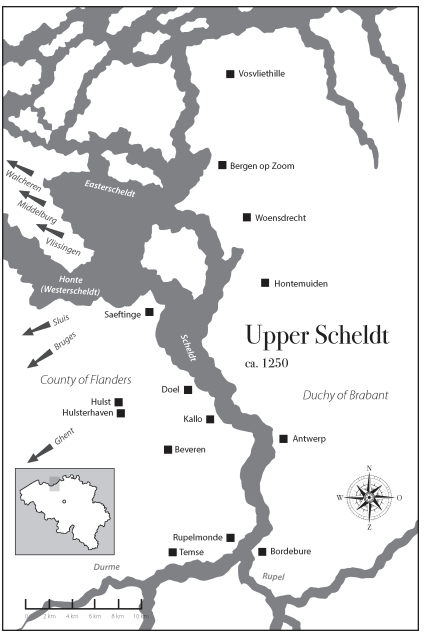

Fig. 1.

In 1467-69 and 1496-1504 important trials on the status of the Honte were waged before the ducal Council, later the Great Council of Mechelen, which was the supreme court of the Low Countries[25]. In these lawsuits, the parties involved, *i.e.* the counties of Holland and Zeeland and the duchy of Brabant, expressed jurisdiction in terms of territory and demarcations. It is remarkable that in their pleadings they overlooked the earlier nuances regarding the differences between toll and *conductus*, and their connection to navigation routes. Older mentions of tolls and conduct money were taken for signs of jurisdiction in the new sense[26]. Of course, as a result thereof, each of the three polities could make use of documents supporting their claim – from the new viewpoint – which made it impossible to resolve the issue.

The mentioned broadening of jurisdiction on behalf of the bailiff of Rupelmonde did not entirely end the jurisdiction of local governments.

The City of Antwerp claimed rights over the part of the Scheldt that bordered its territory (the so-called Franc or Freedom of Antwerp). This area stretched from Steenborgerweert north of the city, still far away from the inlet of the Honte that went to Bergen op Zoom, to the Kiel area south of the city, which in 1540 had been incorporated into the city's Franc[27]. The city's jurisdiction over the Scheldt, *ratione materiae*, entailed criminal jurisdiction, for crimes committed on board of ships. But the city could equally act on delegation of the Brabantine duke. At the wharfs of the city, for example, the ducal tolls, among them the important *Riddertol* (bastardized from the Dutch term for rudder-toll (*roedertol*)) was collected. Moreover, the Antwerp City Council issued rules regarding the docking, loading and unloading of ships, which were implemented by its wharf master (*caeymeester*)[28]. Also, the city had jurisdiction over the fairs of Antwerp, which meant that all disputes relating thereto could be brought in the City Court[29]. The city in that regard, at the same time, acted as executor of the ducal *saufconduite* that was granted to merchants flocking to the city during the time of the fairs. In close relation to its jurisdiction over the fairs, the Antwerp City Court heard lawsuits on mercantile contracts that were brought against citizens, residents and temporary visitors. As a result thereof, starting from the 1530s, cases of marine insurance and General Average were submitted to the Antwerp City Court[30].

Further upstream, the village councils of Hemiksem, Schelle and Niel could hear cases related to trade and fishing on the river Scheldt. Along the river Rupel, the aldermanic courts of Willebroek, Rumst, and further down along the Dyle, Mechelen could adjudicate in disputes that referred to shipping and trade as well. In this regard, one should take into account that some cities and villages had toll-rights of their own[31]. Mechelen, in addition, boasted staple rights in fish, salt and oats[32]. In reference to their staple rights, cities could have jurisdiction over maritime affairs that had connections to locations far beyond their territories. But, also, several cities issued regulations for their shipmasters that contained rules on behavior in other cities, for example at the Antwerp fairs. In 1495 the Mechelen city administrators passed regulation for its shipping guild, stating that shipmasters from Mechelen had to accept cargo in Antwerp without waiting at the city's wharfs for more than one day. They had to sail back even if they had not managed to fully load their ships, this in order to maintain free competition within the guild[33]. Since Antwerp was a common destination during the time of the city's fairs, this jurisdiction was hardly considered extra-territorial. Moreover, this example is a late example of the idea that jurisdiction had earlier been linked to shipping routes[34].

Besides the local courts, there were also *nationes* of foreign merchants that could intervene in cases relating to insurances and General Average, which was when only members of the *natio* were involved. In 1568, for example, there was a conflict between members of the Castilian *natio* of Bruges and the Portuguese *natio* at Antwerp over who had the authority to do the dispatching of average damages. The Portuguese claimed that they had the right to settle the damage report for any Portuguese ship, for ships with a majority of Portuguese cargo, or when the charterers (*cargadores*) were Portuguese. The dispute was centered around the question whether this Portuguese privilege also applied in case the charterers of Portuguese merchandise in a shared Portuguese-Castilian ship were Spanish[35]. However, here and also in a similar case of 1579, the Antwerp judges stuck to the principle that the nationality of the shipmaster determined the jurisdiction of the *natio* over average adjustments[36]. The example of the Castilian *natio* shows that the influence of Bruges in Antwerp was still very important. Castilian merchants in Antwerp officially resided under the *natio* which had its seat in Bruges; the same was true for the Hanseatic merchants until 1553, since only in that year the Bruges *Kontor* was transferred to Antwerp[37].

This picture of layered jurisdictions was complicated further by appellate jurisdictions. In 1473 the Parliament of Mechelen, later the Great Council, was installed. This court could hear cases in first instance if they were brought by merchants or were concerned with maritime traffic[38]. Also, since the later 1460s, a princely appellate court had been installed in the duchy of Brabant. Verdicts of the Antwerp City Court could thereafter be challenged there, even though in practice the Council of Brabant heard few mercantile cases[39]. The same was true for the Great Council, which in mercantile affairs mostly dealt with disputes between cities and other polities, and seldom with cases of insurance or General Average of individual merchants[40].

With trade being more and more concentrated on Antwerp, in the course of the sixteenth century the Court of this city became a natural hub for dispute resolution, also with regard to General Average and marine insurance. However, this did not mean that this jurisdiction was considered as self-evident. It is far from certain that all disputes on insurances signed at Antwerp were solved there; and probably neither were all Antwerp court cases on marine insurance involved with insurance policies that had been made in the city[41]. Also, the mentioned fragmented territorial jurisdictions, of villages along the Scheldt and dependent rivers, remained relevant because they could be used for attestations of accidents and damages. All the above, then, made that

rules of thumb were developed to tackle choice of jurisdiction, which – as well – were necessary because of differences in the law that was applied across jurisdictions.

2. *Convergence and divergence in average and marine insurance (15th-16th centuries)*

The identification or choice of a competent forum to hear cases of marine insurance and General Average was important, also because of differences in the substantive law that was applied. Admittedly, for the fifteenth and the first half of the sixteenth century the principles relating to maritime accidents in the county of Flanders and the Duchy of Brabant were comparable. Even though there are not a lot of sources, it seems that similar average adjustment principles prevailed in the Scheldt estuary, within cities such as Bruges and Antwerp; these cities seem to have applied for a large part the same general norms. These included that any damage that had occurred during a voyage and which had been inflicted in order to prevent further harm to the ship and cargo, had to be compensated by the merchants owning the cargo in the ship and the ship-owner. If damages were not attributable to a rescue effort to the advantage of the ship, then they were particular average; in that case the damage «lay where it fell», it was then borne by the one suffering the damage[42]. In matters of marine insurance, the rules were that any damage was insurable if caused by the «fortune of the sea», but it seems that insurance was easily extended to river transport as well[43]. Insurance covered General Average damages, but also other events, such as seizure and privateering. Up until 1530, marine insurance was nearly exclusively used in Bruges. Afterwards, the practice of insuring ships became popular at the Antwerp Bourse.

However, even though the principles were shared across the Low Countries, there were unsolved issues, and divergence existed as to concrete outcomes. Detailed forms of marine insurance contracts were not known in Bruges and before approximately 1570 were not in use in Antwerp either, even though they had been known elsewhere since the 1510s[44]. The written contracts that have been preserved as notarial deeds could be in different languages (French, Low or High German, Spanish). Contracts were not identical, even when the contents were sometimes comparable. In the preserved notarial deeds, some similarities in provisions can be found, for example with regard to the risks (the definition of risks was general, of the seas and men)[45] or the route (all policies contained a «liberty clause», which allowed to touch all

ports of choice during the voyage)[46]. These lines corresponded to a set of policy clauses, which were commonly chosen. However, the use of a roughly typical policy was not imposed or deemed obligatory within the merchant community. As a result, sixteenth-century insurance contracts could be divergent in terms and conditions. Some insurance contracts, for example, insured against misconduct and damages caused by the captain and his crew (*i.e.* barratry), whereas others did not mention this as a peril[47]. In some insurance policies, the value that was insured was defined as limited, but percentages differed (90 or 50%)[48]. At least some of these differences might reflect variable views of groups or *nationes* of merchants as to lawful and compulsory insurance terms[49]. Only after 1571 printed forms of insurance contracts became common, which brought about more consistency in insurance terms[50].

In General Average, convergence was also general, but not in the concrete solutions. For example, rules of calculation differed. At first, in Antwerp «goods and ship» contributed to General Average, but the contribution of the ship was typically calculated on the freightage, not the value of the ship[51]. In the early seventeenth century, at Antwerp the choice between the value of the ship or the freightage as basis was given to the merchants, which was in contrast to the rule of the *Rôles d'Oléron*, which had given this right of choice to the shipmaster, the latter being or representing the shipowner[52]. In fifteenth-century Bruges, the latter rule applied as well[53].

Also, questions of insurance coverage were solved differently across jurisdictions. For example, in 1459, in a dispute brought before the aldermanic court of Bruges the question was whether damages to a ship that occurred directly after the loading of the ship at La Rochelle, but before the ship had fully embarked on the journey to Flanders, could be considered as insurable. The ship, the hull of which was insured, had been loaded in the La Rochelle port, at least partially. Thereupon, a storm broke out and wrecked the ship. The insurer argued that the insurance was for the journey, and that the journey had not yet begun. The owner of the ship by contrast stated that the sail of the ship had been raised and that the ship had moved out of the port when it was struck by the storm. Later it appeared that the ship had indeed sailed, but according to the insurers only in order to avoid the storm and seek shelter, not to start the voyage to Flanders[54]. The text of the source points towards the judges' doubts during the first hearing of the case. They gathered in full council and demanded further evidence. During the second session, which was when it became clear that the ship had indeed put up a sail and had moved with cargo on board before the damages occurred, they decided that the insurers had to pay compen-

sation[55]. The Bruges interpretation seems to have been that once the ship was on the verge of leaving after being loaded, even before actually setting sail on the insured trip, it was insured. In the seventeenth and eighteenth centuries, there remained divergence on this issue. In Antwerp, at least since the 1570s the rule was that the marine insurance started when the insured cargo was loaded from the docks onto smaller vessels, before the actual loading of the ship from these boats, and thus before departure[56]; in eighteenth-century English insurance centers it was a rule that insurance started when the ship was fully loaded and in motion[57].

3. *Place-ness in General Average and marine insurance*

In the 1500s, both General Average and marine insurance disputes referred to circumstances that were seldom concerned with just one location. This not only resulted from the organizational features of commerce and its connections between distant places. It also followed from changes in maritime practice. In the sixteenth century, as the abovementioned discussion between the Castilians and Portuguese already shows, it had often become difficult to categorize ships in terms of nationality. The reason was a growing separation between ship ownership, chartering and shipping services, and the fact that merchants of different origins and in different places could be involved in the same maritime expedition. In the fourteenth century, it was quite normal that the shipmaster of a Dutch ship was also the shipowner and that he acted as commission agent for merchants sending cargo with him. By contrast, in the sixteenth century, since larger ships were being deployed in trade, Dutch ships were often co-owned by several investors and the shipmaster was their deputy and salaried agent. Moreover, because ships had become more voluminous, not only merchandise of shipowners was loaded, but also cargo of others[58].

In Antwerp in the 1530s and 1540s underwriters started insuring cross-risks: voyages could be insured that did not touch the place of insurance[59]. In shipping practice, the distance between shipowners and supervisors over expeditions was growing. In the later 1500s, at Antwerp it had become normal for merchants to charter entire ships that were not theirs[60]. Moreover, due to the growing popularity of commission agency, the shipmaster often stood in contact with agents chartering the merchandise of others[61]. And the nationality of ships itself was brokered; ships could change of names in attempts to bypass rules of international trade[62].

For General Average these developments were important, since many of the rules surrounding the arrangement had been based on the older situation. For example, according to the rules applied in the later Middle Ages the shipmaster contributed to General Average compensations with either the freightage or the value of the ship[63]. The latter was rather outdated in a context in which the shipmaster was not the owner of the ship, which is maybe one reason for why at Antwerp the ship's value was not taken as basis for contributions. Moreover, in the tradition of the *Rôles d'Oléron* the shipmaster had large autonomy in his decision to jettison (that is, throw cargo overboard in order to lighten a grounded ship)[64], but in the new circumstances this autonomy was less appropriate. Another example of old rules that were less compatible for new situations related to ship co-ownership. In the coastal cities of the counties of Holland and Zeeland, ships became owned by several co-owners; the «parts» of these ships could be sold[65]. The owners of these shares were invited to pay for costs of an expedition with the ship, by way of investment; after the ship's return they received their portion of the profits, or had to pay up for losses or damages[66]. The mentioned co-owners were required to pay for General Average even if they had small stakes in the ship. When the vessel was leased out, their contribution was equally compulsory when damages had been inflicted on the hull or equipment of the ship.

An explicit choice of forum by contract in marine insurance was not common. Typically, a contract mentioned the place where it was signed. It also regularly contained references to the applicable law[67]. However, provisions on which court had to be chosen for disputes were not usual. Legislation did not impose a specific court either. As a result, in marine insurance voluntary assumption of jurisdiction was normal. It presupposed a deliberate choice of jurisdiction after a dispute emerged, when more than one court could be chosen. Because of the mentioned transnational characteristics in maritime trade and insurance practice, several courts could be selected. However, in order to increase predictability, rules of thumb emerged. These rules were usages, known and applied by merchants and shipmasters, that offered guidance, even though they were not mandatory in themselves. They stood apart from the rules which scholars of Roman law crafted, that were embraced in state formation processes and which would become the basis of modern private international law.

One informal practice related to the evidence of mishaps, and the use of news. In the 1500s, reports of damages and notifications of circumstances of damage-inflicting events and accidents were formal. Formalities mattered for reasons of evidence[68]. According to the 1563

princely ordinance on maritime matters, the insured had to bring proper notice to the insurers of (news on) loss or of circumstances that could result in losses. In Antwerp, in the sixteenth century, this was usually done by a notary, who was assisted by two witnesses. The notification, if it was concerned with actual loss or shipwreck, had to be accompanied with proof. The mentioned 1563 law stated that this proof was either a «*deuchdelijcke certificatie*», that is, a sound or valid certificate, or a testimony[69]. The 1608 Antwerp law compilation imposed that witnesses were adequate: they had to be impartial and had to have sufficient information. Witness accounts were considered valid if they were made by persons who had witnessed the events or had been near the place where the mishap had happened[70].

In practice it seems that the latter rules were not applied as strictly as they were mentioned in the legal texts. Many witness statements referred to hearsay and «reliable» news, not to the presence at or witnessing of events. For ships that disappeared, this was of course often the only evidence that one could produce[71]. In 1535 a notarial witness testimony of two Spanish merchants was drafted by the Antwerp notary Willem Streyt; they stated that a ship had perished, with all its cargo, in Spain, «as the rumor went»[72]. Generally, news was more referred to than eyewitness statements[73]. In fact, this was due to the concentration of rumors and news of events at the Antwerp Exchange[74], and also, practical concerns. It was time-consuming and costly to seek witnesses in distant locations.

Slowly, at Antwerp news began to trickle into the legal arena and was even commodified. Many Antwerp marine insurance policies of the 1530s included a clause stating the underwriters' requirement to pay when no news of a vessel had been heard for a year[75]. This reversed the burden of proof; the insured was no longer held to prove the ship's disappearance. In 1544, in a lawsuit before the Antwerp City Court, this rule was referred to as a «usage and custom of the [Antwerp] Bourse», which demonstrates that the rule had come to apply even if not referred to in the insurance contract[76]. Moreover, belated insurance was lawful, if the insured could not have known about the mishap that was covered by the insurance contract. A *consilium* of the Leuven law professor Elbrecht De Leeuw (Leoninus), most probably dating of 1540, mentioned the rule that an insurance agreement remained valid when it appeared later that damage to the insured object had occurred before the contract had been signed, but only if the news on the damages could not have reached Antwerp before the signing of the contract. Leoninus described the rule on the validity of insurance of unknowingly damaged objects as a local *consuetudo* of the city of Antwerp, and as known among mer-

chants and seamen there[77]. The rule was mentioned in lawsuits before the Antwerp City Court, in 1543, 1547 and 1548, as well[78]. In a further step, insuring for cargo that had already suffered mishaps when the contract was signed was transformed into a risk, for which the premium was adjusted. Insurances were made «on good and bad tidings». An informal calculation of one hour per mile of distance (later two hours per three miles) from Antwerp applied, and the mentioned clause of «good and bad tidings» allowed the insured to bring evidence of good faith even if the miles-rule showed him guilty. In practice, an oath sufficed, which brought the burden of proof mainly upon the insurers[79].

By the end of the sixteenth century, mercantile practices had found ways around the problems that came with risk management in maritime trade. The references to news, and the concentration of information at certain places, in particular at the Antwerp Bourse, were convenient and cost-efficient. However, this approach was only a partial solution. In case of conflict, the mentioned diverse aspects of locality still invited for choices to be made.

4. *Rules of thumb and the localization of disputes*

The absence of clear jurisdictional rules with regard to the river Scheldt created the need for merchants and shipmasters to address this problem. In fact, the grey legal situations presented a risk for trade.

In practice, when a damage-causing incident happened at sea or on a river, the port of direction was usually the one where the accident was declared. This was often the case also when there were few other connections to that port. For example, in 1560 there was a loss of 100 bales of pastel dye in a storm before the coast of France, on a trip from Bordeaux to Antwerp. The declaration of the events and the report of the damages, to be paid in General Average, were made before the Antwerp aldermen, even though of the three merchants involved in the expedition only one was from Antwerp[80].

The port of arrival was regularly considered more important than the forum connected to the ownership of the ship or the nationality of the shipmaster. This was clearly the case in Antwerp after approximately 1530, when larger vessels from Zeeland and Holland started to appear in the city's port[81]. However, ships owned exclusively by Antwerpeners were typically brought under the Antwerp jurisdiction irrespective of the voyage or the location of the incident. In 1563, for example, the vessel *El Venator*, loaded and probably owned by three Antwerp merchants, was robbed by an English shipmaster on its way

from Santa Cruz to Tazacorte (La Palma). The stolen goods belonged to the mentioned Antwerp merchants, who therefore most naturally brought the case before the Antwerp aldermen[82]. It seems that if the majority of the cargo was for Antwerpeners, the jurisdiction of Antwerp was at stake as well, possibly at the demand of the local merchants having incurred damages. In 1566 a ship that had departed in Antwerp and which carried French salt made several stops, picking up fine textiles and English cloth, possibly in a Holland port, before sailing to Danzig. It then ended up before the west coast of Sweden where it was wrecked. The shipmaster was probably not from Antwerp, but it seems that the merchandise was for the most part pertaining to Antwerp merchants. Hence the Antwerp aldermen drew up a declaration attesting to the damages[83].

A similar approach, of preference for the port of arrival or the port of residence of the owners, concerned the foreign merchants *nationes*. Early in 1535, the abovementioned Antwerp notary Willem Streyt drew up a General Average dispatching report for the Portuguese ship *Santa Maria de Consolaçion,* which was owned by Portuguese residing in Antwerp. The ship had suffered damages before the coast of Dunkirk (the cable and anchor were cut)[84]. This case shows that the criterion of nationality was focused on residence rather than geographic origins.

Similar informal criteria applied in the river trade. The same preference for the forum of arrival, in combination with ownership, applied with regard to riverine voyages. In 1595, the salt weighers of Mechelen, for example, certified the harm to a cargo of salt that had been brought to Mechelen in a ship owned by a shipmaster from Goes (Zeeland). They had learned from the shipmaster that his helper had left the ship at night, when it was docked in another port before heading to Mechelen, and that therefore water had been able to enter the ship, causing the mentioned damage[85].

Rules of thumb such as the ones listed were practical, also because it was often impossible to determine the exact jurisdiction of a forum, according to official rules. On a February night in 1602 Peter De Ruysscher, a shipmaster from Antwerp, travelled with his ship on the river Scheldt. He brought cargo from Ghent and was heading towards Mechelen. From there he would sail further to Antwerp. When he nearly reached the mouth of the river Rupel he suddenly sailed over and wrecked a ship of the Antwerp shipmaster Joos Natael, with at least three other men on board. Following the events, claims of compensation were brought to Peter. It seems that the affair was settled fairly quickly. De Ruysscher paid for the damages. Most probably the full extent of the harm was compensated, and it is likely that

Peter (at least partially) acknowledged his liability[86]. The applicable 1563 princely statute on maritime affairs distinguished between accidents without fault, for which the damages and interests were split between the harm-bringer and the victim, and culpable or intentional collisions, for which the offender had to pay the full damages and interests[87]. It seems that it had been agreed that the latter rules were applicable.

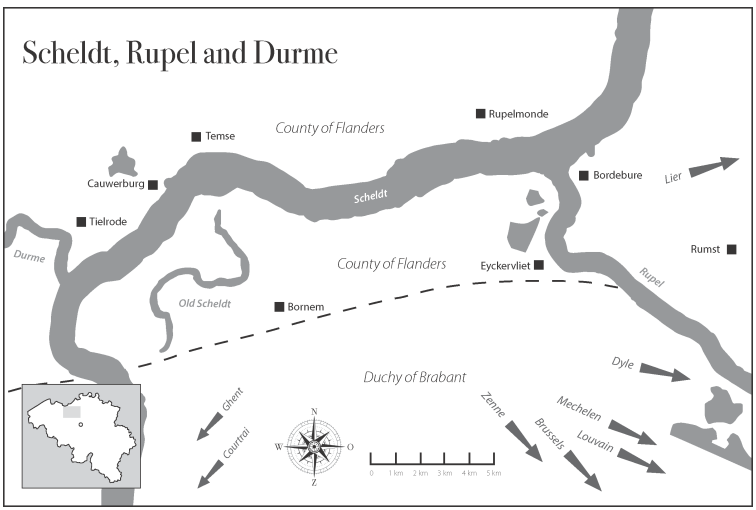

Fig. 2.

However, after the settlement a dispute arose with the merchant-owners of the cargo in Peter's ship. The merchandise on board of the ship had been destined for three merchants of Mechelen. Possibly some of the cargo had gone missing or was lost in the accident. Or, they were confronted with a claim of the shipmaster, stating that what had happened could be categorized as General Average, which then for example included a part of the damages to the ship. In response, the merchant-owners started looking for witnesses of the incident. They specifically wanted to know whether De Ruysscher had called out to Natael before the collision and whether the accident could have been avoided. One can surmise that Peter had changed his mind and had stated that the accident had been partially – or for the largest part – Natael's fault. This is evident from the fact that the witnesses were invited to declare whether Natael was deaf and whether he had the necessary ability to steer a ship. These allegations most probably came from Peter. Those present on Natael's ship were interviewed first. They were

two shippers of Mechelen, and one shipmaster from Antwerp. All three denied hearing a shout and they confirmed that Natael was perfectly capable of steering his ship. The witness declarations were made before a notary of Mechelen, in the city's port[88].

For this case, one can presume that it was mainly the nationality of the merchant-owners that mattered most, and not the one of the shipmaster. The fact that Mechelen shippers were asked to provide information on a captain of Antwerp was not uncommon, because traffic between both cities was very busy. And it is clear that in these circumstances the informal rule, of choice of the location of residence of the owners and the port of destination, mattered. Determining the exact territorial jurisdiction for this case would have been near impossible. The accident happened on the border between Brabant and Flanders, between two Antwerp shipmasters. The fact that the damaged cargo was destined for Mechelen, and maybe also that two witnesses to the incident were from Mechelen, seems to have determined the choice for a Mechelen notary.

Conclusion

The management of risk on behalf of merchants and sailors resulted in rules of thumb that were used for determining the locality to which a dispute could be linked. There seems to have been a preference for the port of destination, in combination with the forum of the residence of the merchant-owners. This preference related both to dispute resolution and the notification of mishaps. For certificates attesting to the circumstances of damages witnesses had to be sought, but at Antwerp reliable news was more and more considered as sufficient. These informal rules were communal to both maritime and river trade. One reason for this development of informal rules, linked to party autonomy, was the layering of paradigms in jurisdiction. Official rules of jurisdiction had embraced a new, more zonal perspective on rivers. The new ideas of sovereignty come on top of an older approach that had been connected more to shipping routes. As a result thereof, courts were exclusively competent for certain stretches of the river Scheldt, but not for others. However, the mentioned rules of thumb largely continued an older preference for the destination as criterion of jurisdiction. As a result of all this, the narrative of deliberate and rational forum shopping, which is sometimes used as argument with regard to the history of sixteenth-century trade, is difficult to uphold. An instrumental use of jurisdictions seems not to have been based on the strategic exploitation

of differences in applicable rules, but was instead streamlined, through the use of informal rules.

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Notes

1 See for example, O. GELDERBLOM, *Cities of Commerce. The Institutional Foundations of International Trade in the Low Countries, 1250-1650*, Princeton 2013.

2 Also, the substantive law applied by courts could be unclear, which renders the theory of rational forum shopping even more problematic.

3 An example is the strife between French civil and commercial courts over mercantile cases. See FL. GARNIER, *Histoires du droit commercial*, Paris 2020, pp. 240-2.

4 N. HATZIMIHAIL, *Preclassical Conflict of Laws*, Cambridge 2021, p. 528.

5 See for example G. ROSSI, *Deconstructing Iurisdictio: The Adventures of a Legal Category in the Hands of the Humanist Jurists*, in P. DU PLESSIS, J. CAIRNS (eds), *Reassessing Legal Humanism and its Claims. Petere Fontes?*, Edinburgh 2015, pp. 59-87; J. VALLEJO, *Power Hierarchies in Medieval Juridical Thought. An Essay in Reinterpretation*, in «Ius commune», 19 (1992), pp. 1-29.

6 On legal pluralism as jurisdictional pluralism that was continuously restructured through claims and disputes, in reference to spaces, see L. BENTON, R.J. ROSS, *Empires and Legal Pluralism. Jurisdiction, Sovereignty, and Political Imagination in the Early Modern World*, in EID. (eds), *Legal Pluralism and Empires, 1500-1850*, New York 2013, pp. 1-20.

7 On the differences between marine insurance and General Average, see M. FUSARO, *Sharing Risks, On Averages and Why They Matter*, in EAD., A. ADDOBBATI, L. PICCINNO (eds), *General Average and Risk Management in Medieval and Early Modern Maritime Business*, London 2023, pp. 3-31.

8 The exact location of this place is uncertain. It was probably somewhere around the present-day Land of Saeftinge, which is a nature preserve.

9 Since the early fifteenth century this passage was silted up and in the sixteenth century two routes existed, one along the older Scheldt, which was narrow, and one along the so-called *Geul* or *Creekrak*. See A.W. VLAM, *Bijdragen tot de geschiedenis van de Schelde*, in «Archief. Mededelingen van het Zeeuws Genootschap der Wetenschappen», 1944-45, pp. 32-50, pp. 32-7.

10 On the gateway function of the Scheldt estuary, and its connections to a wide *Hinterland*, see A. NEELE, L. SICKING, *The Scheldt Estuary as a Gateway System 1300-1600*, in W. BLOCKMANS, M. KROM, J. WUBS-MROZEWICZ (eds), *Routledge Handbook of Maritime Networks, 1300-1600*, Abingdon 2017, pp. 366-82.

11 For a profound analysis, see B. AUGUSTYN, *Zeespiegelrijzing, transgressiefasen en stormvloeden in maritiem Vlaanderen tot het einde van de XVIde eeuw. Een landschappelijke, ecologische en klimatologische studie in historisch perspectief*, Brussels 1992, vol. 1, pp. 191-7.

12 E. KLOMPMAKER, *De Scheldekaart van Rupelmonde tot aan het Zwin…*, master thesis Ghent University, Ghent 2013, pp. 110-1.

13 Already at the end of the thirteenth century, the *conductus* of Rupelmonde was transformed into a tax-like contribution. As a result, payments were not merely for ships, but were differentiated according to the type of cargo. On this development see J.-P. PEETERS, *De oudste bekende gedetailleerde rekening van de grafelijke tol van Rupelmonde (24 juni 1385-31 januari*

1386), in «Bulletin de la Commission royale d'Histoire», 160 (1994), pp. 259-312, pp. 260-1. The 1271 tariff list has been published in L.A. WARNKOENIG, *Histoire de la Flandre et de ses institutions civiles et politiques jusqu'à l'année 1305*, vol. 2, Brussels 1836, pp. 460-92.

14 G. ASAERT, *De Antwerpse scheepvaart in de XVde eeuw (1394-1480)*, Brussels 1973, p. 116; E.M. MEIJERS, *Des graven stroom*, in «Mededelingen der Koninklijke Akademie van Wetenschappen, Afdeling Letterkunde», n.s., 3/4 (1940), pp. 103-205, p. 114.

15 AUGUSTYN, *Zeespiegelrijzing* cit., vol. 1, p. 202.

16 J.-P. PEETERS, *De grafelijke tol van Rupelmonde vanuit het standpunt der stad Mechelen tijdens de late middeleeuwen*, in «Bulletin du cercle archéologique, littéraire et artistique de Malines», 104 (2001), pp. 13-34, p. 14.

17 F.H. MERTENS, K.L. TORFS, *Geschiedenis van Antwerpen*, vol. 1, Antwerp 1845, pp. 266-7.

18 FL. PRIMS, *De rechten van Vlaanderen en van Brabant op de Antwerpsche Schelde*, in «Verslagen en Mededelingen van de Koninklijke Vlaamse Academie voor Taal- en Letterkunde», (1931), pp. 889-964, pp. 896-97, here p. 906.

19 H. NOWÉ, *Les baillis comtaux de Flandre: des origins à la fin du XIV^e siècle*, Brussels 1929, pp. 344-5.

20 MEIJERS, *Des graven stroom* cit., p. 119. See in this regard also the fact that the expression «lord's stream» was equally used for the sea before the county of Flanders. See MEIJERS, *Des graven stroom* cit., p. 106; L. SICKING, J. DE KLERK, *The Law of Wreck in Flanders, Holland and Zeeland in the Late Middle Ages*, in *Communities, Environment, and Regulation in the Premodern World. Essays in Honour of Peter Hoppenbrouwers*, Turnhout 2022, pp. 201-31, p. 209.

21 L. GENICOT, *Ligne et zone: la frontière des principautés médiévales*, in «Bulletins de l'Académie royale de Belgique», 56 (1970), pp. 29-42. With regard to rivers, see M. SUTTOR, *Le rôle d'un fleuve comme limite ou frontière au Moyen Âge. La Meuse, de Sedan à Maastricht*, in «Le Moyen Âge», 96 (2010), pp. 335-66. See also D. FEDELE, *The Medieval Foundations of International Law. Baldus de Ubaldis (1327-1400), Doctrine and Practice of the Ius Gentium*, Leiden 2021, pp. 230-9.

22 An early example is MEIJERS, *Des graven stroom* cit., pp. 163-9 (20 March 1370 ns).

23 This strengthened an earlier understanding of *divortium aquarium*, a separation in the middle of river-borders, which was at first considered as indicative and not as absolute. See, besides Fedele (see footnote 22), P. MARCHETTI, *Spazio politico e confini nella scienza giuridica del tardo medieoevo*, in «Reti Medievali», 7/1 (2006), pp. 1-15.

24 The rule is found in chapter 55 of the *Libri Feudorum*. On the history of this chapter, see: P.W. FINSTERWALDER, *Die Gesetze des Reichstags von Roncalia von 11 November 1158*, in «Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Germanistische Abteilung», 51 (1931), pp. 1-69.

25 S.T. BINDOFF, *The Scheldt Question to 1839*, London 1945; J. DENUCÉ, *De loop van de Schelde van de zee tot Rupelmonde in de XVde eeuw*, Antwerp 1933; MEIJERS, *Des graven stroom* cit., pp. 122 and 125-6; A. WIJFFELS, *Flanders and the Scheldt Question. A Mirror of the Law of International Relations and its Actors*, in «Sartoniana», 15 (2002), pp. 213-80.

26 WIJFFELS, *The Scheldt Question* cit., pp. 228-30.

27 The map of the Franc of Antwerp was printed and joined to the 1582 edition of the Antwerp urban law. For a detailed discussion, see F. DE NAVE, *De vrijheid van Antwerpen (vanaf de middeleeuwen tot de tijd van Rubens)*, in L. VOET *et al.* (eds), *De stad Antwerpen van de Romeinse tijd tot de 17de eeuw. Topografische studie rond het plan van Virgilius Bononiensis 1565*, Brussels 1978, pp. 59-93.

28 J. DENUCÉ, *De Admiraliteit van de Schelde te Antwerpen*, in «Antwerpsch Archievenblad», 2nd series, (1932), pp. 289-313, 308-11 (municipal ordinance of 10 Nov. 1522).

29 Antwerp, Felixarchief (City Archives) (hereafter ACA), *Privilegiekamer*, 79, fol. 311r (1488).

30 Between 1544 and 1560 22 lawsuits on General Average and marine insurance were waged before the Antwerp City Court. Of those 22 court cases, five were concerned exclusively with General Average, and nine only with marine insurance. In eight lawsuits both marine insurance and General Average were concerned. See ACA, *Vierschaar*, 1235, fol. 26v-7r; 1237, fol. 23v-4v (31 Oct. 1542), fol. 50v-1r (22 Nov. 1542); 1238, fol. 62r (17 Sept. 1543); 1239, fol. 15r-v (22 March 1544 ns); 1241, fol. 4r (1 March 1548 ns), fol. 48v-9v (7 May 1547), fol. 103v-4r (17 July 1547), fol. 283r-v (8 March 1548 ns); 1242, fol. 50v-2r (10 April 1548 ns), fol. 111v (14 July 1548), fol. 127r (18 Aug. 1548), fol. 225r-6r (28 Nov. 1558), fol. 270v (12 Jan. 1559 ns); 1243, fol. 309r-10r (20 May 1553); 1244, fol. 25v (17 Oct. 1555), fol. 60v-1r (24 Oct. 1555), fol. 63r-v (24 Dec. 1555), fol. 64r-6v (Oct. 1555), fol. 104r (7 March 1555), fol. 126v-9v (3 March 1555), fol. 152v-3r (27 April 1556).

31 For example, in Rumst a ducal toll was collected. See P.-J. VAN DOREN, *Inventaire des archives de la ville de Malines*, vol. 3, Mechelen 1865, pp. 23-4 (31 Aug. 1412).

32 M. DE LAET, *Mechelen versus Antwerpen-De strijd om het bezit en het behoud van de stapels voor vis, zout en haver (1233-1467)*, in «Bulletin du Cercle archéologique, littéraire et artistique de Malines», 90 (1986), pp. 57-89.

33 J. SCHOEFFER, *Historische aanteekeningen rakende de kerken, de kloosters, de ambachten en andere stichten de Stad Mechelen*, Mechelen 1877-1880, vol. 2, pp. 193-4 (art. 1, ordinance of 7 Dec. 1495).

34 It was not uncommon that urban shipping guilds exerted authority in other cities. See for example, for similar regulations in Amsterdam, N.W. POSTHUMUS, *De Oosterse handel te Amsterdam. Het oudst bewaarde koopmansboek van een Amsterdamse vennootschap betreffende de handel op de Oostzee, 1485-1490*, Leiden 1953, pp. 144-5.

35 ACA, *Privilegiekamer*, 640, fol. 148v-149v. (12 Jan. 1568 ns).

36 G. DREIJER, *The Power and Pains of Polysemy: Maritime Trade, Averages, and Institutional Development in the Low Countries (15th-16th Centuries)*, Leiden 2023, p. 187.

37 K. FRIEDLAND, *Die 'Verlegung' des bru ggischen Kontors nach Antwerpen*, in «Hansische Geschichtsblätter», 81 (1963), pp. 1-19. Only in 1561 did the prince accept this transfer.

38 C.H. VAN RHEE, *Litigation and Legislation. Civil procedure at first instance in the Great Council for the Netherlands in Malines (1522-1559)*, Brussels 1997, pp. 35-41.

39 J. PUTTEVILS, *Merchants and Trading in the Sixteenth Century: The Golden Age of Antwerp*, London 2015, pp. 145-6.

40 DREIJER, *The Power and Pains* cit., pp. 62 and 159-60.

41 There is no direct evidence – to my knowledge – of lawsuits waged on Antwerp policies outside Antwerp, but the references to the customs of Lombard Street in Antwerp-signed insurance contracts until the 1550s (C. WYFFELS, *Een Antwerpse zeeverzekeringspolis uit het jaar 1557*, in «Bulletin de la Commission royale d'Histoire», 113 (1948), pp. 95-103, 8 Febr. 1557) and to the rules of Antwerp in London-made contracts (H.L.V. DE GROOTE, *De zeeassurantie te Antwerpen en te Brugge in de zestiende eeuw*, Antwerp 1975, pp. 126-7 (English contracts of 1547, 1548, 1553, 1555 and 1566); G. ROSSI, *Insurance in Elisabethan England: The London Code*, Cambridge 2016, p. 749 (English contract of 1576, referring to both the usages of Lombard Street and Antwerp) may point in the direction of Antwerp contracts that were read by London judges. For the lawsuits brought in the Antwerp City Court, it cannot be excluded that some cases referred to contracts signed outside Antwerp, even though this was probably exceptional.

42 On the earliest rules of General Average in the Low Countries, see my analysis in D. DE RUYSSCHER, *Maxims and Cases: Maritime Law and the Blending of Merchant and Legal Culture in the Low Countries (16th-17th Centuries)*, in «Zeitschrift der Savigny-Stiftung (Germanistische Abteilung)», 138/1 (2021), pp. 260-75, at pp. 262-4.

43 For a glimpse of marine insurance as being applied in sixteenth-century Mechelen, see J. BRIELS, *De emigratie uit Mechelen naar de Noordelijke Nederlanden omstreeks 1572-1630*, in «Bulletin du cercle archéologique, littéraire et artistique de Malines», 89 (1985), p. 67. In princely legislation, riverine transport insurance was distinguished from marine insurance starting in 1571. See J.P. VAN NIEKERK, *The Development of the Principles of Insurance Law in the Netherlands from 1500 to 1800*, Kenwyn 1998, vol. 1, pp. 420-1. Before that time, the difference, in particular with regard to the Honte and Scheldt, seems not to have been important. Journeys were insured from port to port, irrespective of where the port was situated.

44 In Burgos, in 1514 a policy form was imposed, and in Florence, a standard policy applied since 1523. See VAN NIEKERK, *The Development* cit., vol. 1, p. 486.

45 DE GROOTE, *De zeeassurantie* cit., pp. 100, 107-8.

46 Ivi, p. 106.

47 Ivi, pp. 107-8.

48 Ivi, p. 120.

49 See on barratry, and differences of opinion among merchants of different regions relating thereto, ROSSI, *Insurance in Elisabethan England* cit., pp. 173-6.

50 However, even after the use of standard forms handwritten clauses were often added. See D. DE RUYSSCHER, *Normative Hybridity in Antwerp Marine Insurance (c. 1650-c. 1700)*, in S. DONLAN, D. HEIRBAUT (eds), *The Law's Many Bodies, Studies in legal hybridity and jurisdictional complexity c1600-1900*, Berlin 2015, pp. 145-68, pp. 154-5

51 ACA, Notaries, 3131, fol. 305v (28 June 1535); 3133, fol. 9r (1535).

52 G. DREIJER, *Compulsory Contributions and Castilian Normative Practice in the Southern Low Countries (Sixteenth Century)*, in *General Average and Risk Management* cit., p. 205; J.-M. PARDESSUS, *Collection de lois maritimes antérieures aux XVIII^e siècle*, vol. 1, Paris 1828, 328-9 (*Rôles d'Oléron*, art. 8).

53 The *Vonnissen van Damme* did not digress from the *Rôles* at this point. See PARDESSUS, *Collection* cit., vol. 1, pp. 375-6.

54 L. GILLIODTS-VAN SEVEREN (dir.), *Cartulaire de l'ancienne estaple de Bruges: recueil de documents concernant le commerce intérieur et maritime, les relations internationales et l'histoire économique de cette ville*, vol. 2, Bruges 1904, pp. 74-5 (no 993, 24 Jan. 1458) and pp. 86-7 (no 1010, 1 Febr. 1459).

55 Ivi, vol. 2, pp. 86-87.

56 G. DE LONGÉ (dir.), *Coutumes du pays et duché de Brabant. Quartier d'Anvers. Coutumes de la ville d'Anvers*, vol. 4, Brussels 1874, pp. 264-6 (art. 156). See for these rules VAN NIEKERK, *The Development* cit., vol. 2, 814-8. The 1563 princely law on maritime issues had stipulated that marine insurance started when the cargo was delivered in the harbor of departure, but this was changed in the 1571 law.

57 R. MERKIN, *Marine Insurance: A Legal History*, Oxford 2021, p. 427.

58 J.C. RIEMERSMA, *Trading and Shipping Associations in Sixteenth-Century Holland*, in «Tijdschrift voor Geschiedenis», 65 (1952), pp. 330-8, p. 332.

59 D. DE RUYSSCHER, *Antwerp 1490-1590: Insurance and Speculation*, in A.B. LEONARD (ed.), *Marine Insurance: Origins and Institutions, 1300-1850*, London 2015, pp. 78-105, p. 84.

60 W. BRULEZ, *De firma Della Faille en de internationale handel van Vlaamse firma's in de 16de eeuw*, Brussels 1959, pp. 526-7.

61 These could be charterers who on agency sought ships for transport, or agents acting on commission for one party of merchandise. For an example of a charterer, see M.A. DROST (dir.), *Documents pour server à l'histoire du commerce des Pays-Bas avec la France jusqu'à 1585*, vol. 1, The Hague 1984, pp. 31-9 (nos 45-52, notarial deeds of 1537, with Jacques Denaigres of La Rochelle acting as chartering agent for merchants of Rouen).

62 When in August 1585 Antwerp became reintegrated in the Spanish Southern Netherlands, Maarten della Faille made sure that trade from Venice to Holland was done in name of a German agent; the name of the ship was changed and documents were ordered to evidence its renaming in Emden, which was no part of the Low Countries. See BRULEZ, *De firma Della Faille* cit., pp. 169-70.

63 E. FRANKOT, *'Of Laws of Ships and Shipmen': Medieval Maritime Law and its Practice in Urban Northern Europe*, Edinburgh 2012, pp. 38-46.

64 PARDESSUS, *Collection* cit., vol. 1, pp. 328-9 (art. 8).

65 RIEMERSMA, *Trading and Shipping Associations* cit.

66 H.E. VAN GELDER, *Zestiende-eeuwsche vrachtvaartbescheiden*, in «Economisch-Historisch Jaarboek», 3 (1917), pp. 124-290.

67 On choice-of-law clauses, see DE GROOTE, *De zeeassurantie* cit., pp. 126-9; J.P. VAN NIEKERK, *The law and customs of marine insurance in Antwerp and London at the end of the sixteenth century: preliminary thought on the background to and some of the sources for a comparative investigation*, in «Fundamina: A Journal of Legal History», 17 (2011), pp. 144-63 and footnote 42.

68 FUSARO, *Sharing risks* cit., p. 23.

69 *Ordonnance* 1563, ch. 7, art. 18. See an edited version of the 1563 *ordonnance* J.-M. PARDESSUS, *Collection de lois maritimes antérieures au XVIII^e siècle*, vol. 4, Paris 1837, pp. 64-102 (this article is at pp. 100-1).

70 *Coutumes du pays et duché de Brabant. Quartier d'Anvers. Coutumes de la ville d'Anvers*, vol. 4, Brussels, 1874, G. DE LONGÉ (dir.) (hereafter *Antwerp municipal law 1608*), p. 312 (book 4, ch. 11, art. 270).

71 The rules of the 1608 Antwerp compilation, which required several statements, made at the place of departure, discharge and domicile of the shipmaster, seems not to have been followed in practice; it did not reflect earlier usages either. See *Antwerp municipal law 1608*, p. 312 (book 4, ch. 11, art. 272-3).

72 J. STRIEDER, *Aus Antwerpener Notariatsarchiven. Quellen zur deutschen Wirtschaftsgeschichte des 16. Jahrhunderts*, Stuttgart 1930, p. 22 (no 658, 2 Jan. 1535).

73 In only one case brought before the Antwerp City Court, the underwriters argued that the certificate of the mishap was too vague. It referred to the burial of one of the crew members but did not go into the circumstances of his death. See ACA, *Vierschaar*, 1243, fol. 309r-310r (20 May 1553).

74 On the use of price lists at the Antwerp Bourse, starting from the 1530s, see *Antwerp Commercial and Financial Newspapers*, in J.J. MCCUSKER, C. GRAVESTEIJN (eds), *The Beginnings of Commercial and Financial Journalism. The Commodity Price Currents, Exchange Rate Currents, and Money Currents of Early Modern Europe*, Amsterdam 1991, pp. 85-110.

75 DE GROOTE, *De zeeassurantie* cit., pp. 112-3.

76 ACA, *Vierschaar*, 1239, fol. 117v, fol. 138v.

77 Elbrecht DE LEEUW (LEONINUS), *Centuria consiliorum*, Arnhem 1645, pp. 250-1 (cons. 22, nos 5-6). See also A. WIJFFELS, *Business Relations Between Merchants in Sixteenth-Century Belgian Practice-Orientated Civil Law Literature*, in V. PIERGIOVANNI (ed.), *From lex mercatoria to commercial law*, Berlin 2004, pp. 256-9.

78 ACA, *Vierschaar*, 1238, fol. 62r (17 Sept. 1543); 1241, fol. 48v (7 May 1547), and 1242, fol. 50v-2r (10 April 1548 ns).

79 *Antwerp municipal law 1608*, 204-8 (book 4, ch. 11, art. 13–22); van Niekerk, *The Development* cit., vol. 2, pp. 867-8.

80 ACA, *Schepenregisters*, 279, fol. 317v (1560).

81 For example, ACA, *Vierschaar*, 1241, foL. 103v-104r (17 July 1547); De Groote, *De zeeassurantie* cit., pp. 100-1.

82 G. ASAERT, *Onder de vlag met de hand. Antwerpens scheepvaart van de zestiende eeuw*, Antwerp, s.n., vol. 2, p. 84.

83 ACA, *Certificaties*, 26, fol. 520v (1566).

84 ACA, Notaries, 3132, fol. 8v-9v. See also: De Groote, *De zeeassurantie* cit., p. 144.

85 City Archives of Mechelen (hereafter CAM), Notaries, 1593, 17 June 1595.

86 CAM, Notaries, 886, fol. 111r (21 April 1603).

87 1563 *Ordonnance* cit., title 5, art. 1. See also PARDESSUS, *Collection* cit., vol. 4, p. 85.

88 CAM, Notaries, 886, fol. 16r (21 Jan. 1603) and fol. 111r (21 April 1603).