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Introduction: maritime conflict management, diplomacy and international law, 1100–1800

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Maritime conflict management is the regulation of conflict in relation to the sea. It comprises conflict enforcement, conflict resolution and conflict avoidance. How did victims of maritime conflicts claim and obtain damages or demand compensation or reparation? The articles in this issue aim to shed light on this question from two distinct yet related perspectives: that of the aggressor and the victim, on the one hand, and that of the political entities to which they belonged, on the other. The articles, covering seven centuries, reveal connections and entanglements between private parties and public authorities, demonstrating the importance of both for the development of maritime conflict management. Taken together these contributions provide evidence for the gradual development of maritime conflict management, diplomacy and norms for international law.

Keywords: maritime conflict management; diplomacy; international law; conflict resolution; treaty making; neutrality; prize law; merchants; political entities

I. Opening remarks

Maritime enterprises, such as shipping, trade and fishing, were significant facets of medieval and early-modern societies.[1] The consequences of these activities,

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[1]This issue is the result of a workshop that took place in the Scheepvaartmuseum in Amsterdam on 1 April 2016 which has been made possible thanks to the support of the Law Faculty of Vrije Universiteit (VU) Amsterdam, and the Aemilius Papinianus Foundation. Further research for this issue has been possible thanks to the project 'Maritime Conflict Management in Atlantic Europe,' funded by NWO and the Prix Descartes-Huygens 2016 of the Comité des Sciences of the Institut de France. I thank Ian Peter Grohse and Shavana Musa for proofreading the English of the articles.

particularly for coastal societies, compelled public authorities, including cities, rulers and states, to extend their power extra-territorially, that is to say beyond their coastal frontiers. The invariably transnational character of these pursuits, as well as the conflicts they engendered, positions them as particularly compelling cases for the study of diplomatic and international legal history. Such perspectives may enable us to diverge from more conventional methods that view maritime enterprises within the purvey of socioeconomic and military histories.[2] This issue will focus on maritime conflict management, that is the regulation of conflict in relation to the sea. Maritime conflict management comprises conflict enforcement (naval warfare, privateering, piracy and blockades), conflict resolution (formal judicial and administrative procedures as well as informal or private means) and conflict avoidance (negotiations).[3]

Our focus on conflict management may shed new light on the interrelations between identity, economic development and the rudiments of war, conflict and peace.[4] At the same time, this perspective may further the contextualisation and innovation of diplomatic history[5] and the history of international law.[6] The recent

[2]There are exceptions in maritime history writing, which take a more integrated approach to mankind's relations with the sea. See, for example, L Paine, *The Sea and Civilization: A Maritime History of the World* (Atlantic Books, 2014).

[3]Louis Sicking, 'Maritime Conflict Management in Atlantic Europe, 1200–1600'. For a short project description, see www.universiteitleiden.nl/en/research/research-projects/humanities/maritime-conflict-management-in-atlantic-europe (accessed 5 October 2016).

[4]Conflict resolution has developed its own historiography. See, for example, T Kuehn, 'Conflict Resolution and Legal Systems' in C Lansing and ED English (eds), *A Companion to the Medieval World* (Wiley-Blackwell, 2009) 335; A Cordes and AM Auer (eds), *Mit Freundschaft oder mit Recht? Inner- und außergerichtliche Alternativen zur kontroversen Streitentscheidung im 15.-19. Jahrhundert* (Böhlau Verlag 2015); examples of case studies: Ph Höhn, 'Kaufmannische Konfliktaustragung im Hanseraum (ca. 1350–1450)' in O Auge (ed), *Hansegeschichte als Regionalgeschichte. Beiträge einer internationalen und interdisiplinären Winterschule in Greifswald vom 20. Bis 24 Februar 2012* (Peter Lang, 2014) 317–32; AA Wijffels, 'International Trade Disputes and ius commune: Legal Arguments on the "Gdańsk Issue" During the Hanseatic Embassy to London in 1553' in A Cordes and S Dauchy (eds), *Eine Grenze in Bewegung: Öffentliche und private Justiz im Handels- und Seerecht. Une frontière mouvante: Justice privée et justice publique en matières commerciales et maritimes* (Oldenbourg Verlag 2012) 65.

[5]On the new approaches of the so-called new diplomatic history: J Watkins, 'Toward a New Diplomatic History of Medieval and Early Modern Europe' (2008) 38(1) *Journal of Medieval and Early Modern Studies* 15; J Black, *A History of Diplomacy* (Reaktion Books, 2010) 7–58; M Ebben and L Sicking, 'Nieuwe diplomatieke geschiedenis van de premoderne tijd. Een inleiding' (2014) 127(4) *Tijdschrift voor geschiedenis* 541; TA Sowerby, 'Early Modern Diplomatic History' (2016) 14(9) *History Compass* 441.

[6]The history of international law has taken advantage of the 'historical turn' in international law. See, for example, M Koskenniemi, 'Why History of International Law Today?' (2004) 4 *Rechtsgeschichte: Zeitschrift des Max-Planck-Instituts für Europäische Rechtsgeschichte* 61; GR Bandeira Galindo, 'Martti Koskenniemi and the Historiographical Turn in International Law' (2005) 16(3) *European Journal of International Law* 539; M Craven, 'Introduction: International Law and its Histories' in M Craven, M Fitzmaurice and M Vogiatzi (eds), *Time, History and International Law* (Brill, 2007) 23; R Lesaffer, 'International Law

historiographies of these fields contain several parallels which may be synthesised within a spatially and chronologically broadened perspective on both disciplines.[7] In terms of space, the focus, which had long been Eurocentric, has now been stretched beyond Europe and its former colonies.[8] The chronological scope has also been distended.[9] Influenced by the cultural turn in history and, more recently, perspectives from global history, studies in diplomacy and international law have undergone profound changes over the last three decades.[10] These have resulted in a number of innovations in the historiography of diplomacy, some of which have also found resonance in the historiography of international law. Given the limited space available, it is only possible to mention a few of the most important advances. First, diplomatic history is no longer restricted to relations between sovereigns and states.[11] Non-state actors such as cities, city leagues and religious orders are also taken into account.[12] Among other things, this has initiated a shift away from the *haute politique* and inspired greater focus on the advantages of the so-called 'bottom-up diplomacy', in which non-state actors and interest groups play an active role.[13] Historians of international law have also shifted their focus, placing greater emphasis on non-state actors as subjects of international law.[14] Second, teleological approaches that view medieval and early modern diplomacy, or premodern diplomacy in general, as a preface to the birth of modern diplomatic machinery have steadily declined in relevance.[15] Interest in

and its History: The Story of an Unrequited Love' in M Craven, M Fitzmaurice and M Vogiatzi (eds), *Time, History and International Law* 27.

[7]Black (n 5) 12–13, 17–18; Lesaffer (n 6) 36–41. See for example S Neff, *Justice among Nations* (Harvard University Press, 2014).

[8]See for example L Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400–1900* (Cambridge University Press, 2002); L Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900* (Cambridge University Press, 2010); L Benton and R Ross (eds), *Legal Pluralism and Empires, 1500–1850* (New York University Press, 2013); M Kempe, *Fluch der Weltmeere. Piraterie, Völkerrecht und internationale Beziehungen, 1500–1900* (Campus Verlag, 2010).

[9]See, for instance, the articles of A Altman, 'Tracing the Earliest Recorded Concepts of International Law' [parts 1–4] (2004) 6; (2005) 7; (2008) 10; (2009) 11 *Journal of the History of International Law* (1) 153; (2) 115; (3) 1; (4) 125, 333.

[10]See e.g. Ch Jönsson and M Hall, *Essence of Diplomacy* (MacMillan, 2005); B Fassbender and A Peters, 'Introduction: Towards a Global History of International Law' in B Fassbender and A Peters (eds), *The Oxford Handbook of the History of International Law* (Oxford University Press, 2012) 1.

[11]Ebben and Sicking (n 5) 541; Sowerby (n 5) 441.

[12]For example A Gallo, 'Le développement d'un réseau diplomatique par le conseil de ville de Sisteron au XIVe siècle' *Les relations diplomatiques au moyen Âge. Formes et enjeux* (Publication de la Sorbonne, 2011) 219–26; K Toomaspoeg, 'Les ordres religieux militaires et la diplomatie. Formes et enjeux' *Les relations diplomatiques* 227–38.

[13]For example R Morieux, 'Diplomacy from Below and Belonging: Fishermen and Cross-Channel Relations in the Eighteenth Century' (2009) 202 *Past and Present* 83.

[14]Fassbender and Peters (n 10) 9.

[15]Black (n 5) 8–9; Ebben and Sicking (n 5) 542.

the history of international law, much of which is traditionally shaped by current circumstances and agendas, is undergoing a similar transformation.[16] Premodern diplomacy and international law are now addressed as subjects in their own right, to be studied within their own chronological contexts and with their own characteristic dynamics. Third, emphasis has shifted from the goals and results of diplomatic activity to the processes and cultural dimensions of diplomatic intercourse.[17] Although not entirely corresponding, the traditional focus on legal doctrine is now counterbalanced by rising interest in international legal practice,[18] a shift that the present issue also aims to advance. Finally, scholarship on diplomatic history has witnessed a growing interest in cross-cultural and non-European diplomacy.[19] The same is true for the history of international law.[20] Two contributions in this issue take this cross-cultural approach.[21]

Maritime conflict management, particularly as manifested in the law of maritime warfare, gave rise to mechanisms that were later applied in other arenas of international law and diplomacy.[22] What significance did maritime conflict management have in shaping the standards of international law in medieval and early-modern Europe? How did diplomacy figure into the processes of maritime conflict management? The articles in this thematic issue aim to shed light on these questions from two distinct yet related perspectives: that of the aggressor and the victim on the one hand, and that of the political entities to which they belonged on the other. How did victims of maritime conflicts claim and obtain damages or demand compensation or reparation? To what extent could they rely on their own polities or the polities of their aggressors? What sort of efforts did public

[16]Lesaffer (n 6) 34; Craven (n 6) 9–10, 15–16.
[17]Ebben and Sicking (n 5) 547; Sowerby (n 5) 441. See e.g. L Bély, *L'art de la paix en Europe. Naissance de la diplomatie moderne XVIe-XVIIIe siècle* (Presses universitaires de France, 2007) and his *Espions et ambassadeurs au temps de Louis XIV* (Fayard, 1990).
[18]Lesaffer (n 6) 32–34. For example J Hilaire, 'La résolution des conflits en matière de commerce à travers les archives du Parlement de Paris au XIIIe siècle' in Cordes and Dauchy (n 4) 1.
[19]Sowerby (n 5) 446; Black (n 5) 42. See e.g. N Jaspert, 'Interreligiöse Diplomatie im Mittelmeerraum – Die Krone Aragón und die islamische Welt im 13. und 14. Jahrhundert' in C Zey (ed), *Aus der Frühzeit europäischer Diplomatie. Zum geistlichen und weltlichen Gesandtschaftswesen vom 12. bis zum 15. Jahrhundert* (Chronos, 2008) 151; N Jaspert and S Kolditz, 'Christlich-Muslimische Aussenbeziehungen im Mittelmeerraum. Zur räumlichen und religiösen Dimension mittelalterlicher Diplomatie' (2014) 41(1) *Zeitschrift für historische Forschung* 1; N Drocourt (ed), *La figure de l'ambassadeur entre mondes éloignés. Ambassadeurs, envoyés officiels et représentations diplomatiques entre Orient islamique, Occident latin et Orient chrétien (XIe-XVIe siècle)* (Presses universitaires de Rennes, 2015).
[20]Fassbender and Peters (n 10) 4–5.
[21]See Daphne Penna's and Víctor Olcina Pita's respective articles (this issue).
[22]CG Roelofsen, 'Studies in the History of International Law: Practice and Doctrine in Particular with Regard to the Law of Naval Warfare in the Low Countries from circa 1450 until the Early Seventeenth Century' (PhD thesis, Utrecht University 1991) viii, 177.

authorities make to protect their subjects or citizens beyond the boundaries of their jurisdiction? How prepared were they to provide opportunities for redress to foreign victims of maritime violence that were committed by their own subjects and citizens? How did different political authorities and polities negotiate disputes of maritime diplomacy which transcended jurisdictional boundaries, particularly those involving reprisals and piracy, and what strategies, arrangements and agreements did they employ in attempting to achieve resolution of those conflicts? As is demonstrated in several of the contributions to this issue, the boundaries between private and public international law were fluid. The articles unveil connections and entanglements between private parties and public authorities, demonstrating the importance of both for the development of maritime conflict management. As a result, this issue aims to offer new insights and enrich our understanding of the role of maritime conflict management and legal practice within the wider context of maritime diplomacy and the development of international law.[23] The contributions may be divided in three loosely defined sections: the first includes two examinations of the central Middle Ages, both of which take rulers as points of departure. The second comprises articles that focus on merchants and encompass both the late-medieval and early-modern periods. The contributions in the last section examine interrelations between prize law and diplomacy in the seventeenth and/or eighteenth centuries. Thus, contributions are arranged in loose chronological order. Each addresses one or more of the aforementioned questions from a particular (inter-)regional perspective. The broad chronological scope of our collection, which covers nearly seven centuries, beginning around 1100, enables scrutiny of maritime conflict management across the *longue durée*, one that may offer greater perspective on the traditional academic contrasts between medieval and early-modern eras.

II. The ruler's perspective

The first two contributions examine, respectively, affairs within the northern seas in the wake of the Viking Age and the eastern Mediterranean in the late-twelfth century. These works emphasise the importance of treaty-making between Norwegian and Scottish monarchs in Northern Europe and the potential for reprisal under the initiative of the Byzantine empire in the Mediterranean.

Ian Peter Grohse demonstrates how Norwegian and Scottish kings defined a mainland–maritime border in 1098 and redefined the spatial dimensions of their lordship with the Treaty of Perth in 1266. He investigates the entanglement of jurisdiction and conflict management in maritime environments by scrutinising Norwegian–Scottish diplomacy from the late-eleventh until the fourteenth century. The treaties, especially the Treaty of Perth, included procedures for dealing with conflicts. Grohse's contribution further illustrates how kings

[23]See also L Sicking, *De piraat en de admiraal* (Brill, 2014).

intervened in the resolution of three different conflicts between their subjects in or around the Orkney archipelago in the first century after the 1266 accord. In doing so, he emphasises the monarchs' adherence to the Treaty's terms as a means of addressing conflicts between subjects in their respective coastal and seafaring communities.

Daphne Penna presents a case study on the role of the Byzantine emperor in the resolution of a maritime conflict between Byzantines and Genoese at the end of the twelfth century. While the emperor first put pressure on the city of Genoa to solve the question, he then took measures against the Genoese merchant community in Constantinople in order to secure damage redress on behalf of the Byzantine victims whose vessel and cargo had been captured by Genoese pirates. This example of applied collective liability resembles the practice of reprisal, which, the author argues, may have been introduced by the emperor through adoption of existing European merchant practices.

The contrast between what was one of the great civilisations of world history, including its cosmopolitan capital, on the one hand, and the harsh northern world of Scandinavia, on the other, could hardly have been sharper within the confines of medieval Europe, although both spheres were in contact with one another.[24] Nevertheless, both the Byzantine emperor and the kings of the North actively strove toward defending the rights of their subjects at or beyond the borders of their territories. The example of the former prompts us to question the general idea that 'imperial attitudes to trade prevented the development of more flexible economic institutions and failed to respond to initiatives developed by Italian and Muslim merchants'.[25] The Treaty of Perth may reflect a major shift in northern diplomacy which 'encouraged greater cooperation between kings and their officials in matters of conflict management'. By demanding participation on the part of both crowns in ensuring regional order, the treaty also defined 'procedures for dealing with inter-jurisdictional crime and jettison' which had become more in demand with the growth of trade since the twelfth century.

III. The merchant's perspective

Pre-modern merchants who ventured beyond the safe confines of their hometowns and territories were confronted with the dangers of a legally-fragmented European landscape. Compelled to trade beyond the bounds of jurisdiction to which they belonged, merchants found themselves at odds with dissimilar, and, at times, incongruent contracting rules in different localities. Yet, they had a range of 'institutional arrangements' at their disposal, which they employed to mitigate or circumvent the problems of legal fragmentation. Examining conflict management from the merchant's perspective, Victor Olcina Pita sheds light on how these

[24]J Herrin, *Byzantium: The Surprising Life of a Medieval Empire* (Penguin Books, 2008) 245–46.
[25]Herrin (n 24) 159.

travellers fashioned protective mechanisms in fifteenth-century Valencia. Merchants could first rely on 'private order solutions' in which networks of kinsmen and friends were willing to act as business agents and impose social sanctions or threats in order to enforce discipline. They could also create guilds whose leaders were charged with adjudicating commercial conflicts between individual members. Another option was to rely upon 'community responsibility systems' within which all constituents could be held liable for the default of a fellow member. Finally, they could appeal to sets of standard contracting rules with which merchant groups were bound to comply, for instance the so-called *lex mercatoria* or merchant law. It has recently been argued that such 'institutional arrangements' could not have functioned without the recourse of law and thus presupposed the intervention of public authorities. Merchants whose ships or goods were seized to compensate damages done by others, for instance, turned to their local or central authorities or courts for redress. Urban authorities, who enjoyed legal autonomy and invested in the prosperity of their towns, are said to have been particularly flexible in adapting local customs and court proceedings to suit the needs of merchants. Among the contributions to this section, Sabine Go's examination of early-modern Amsterdam supports this idea.

Oscar Gelderblom, whose argument has been followed here, emphasises the central role of urban governments in supporting international traders in overcoming the challenges of enterprise in a legally fragmented pre-modern world. He is, however, critical of Douglas North's theory on the ability of the state, acting as legislator and independent third-party enforcer, to facilitate contracts between foreign merchants. Gelderblom challenges the supposed importance of rulers and states in this capacity by pointing to the relatively delayed erection of central courts, which appeared well after many large trading networks had already come into existence. With their educational training in Roman law, the professional lawyers serving on these new central courts supposedly lacked knowledge or understanding of mercantile practice. Merchants rarely made use of these central courts and their influence on commercial dealings remained quite limited.[26] Whereas the medieval papers in this section emphasise the public embeddedness of the aforementioned institutional arrangements, they also underline the crucial function of rulers and their councils in mitigating or overcoming the challenges of legal fragmentation that confront long-distance merchants. We should, in turn, stress the importance of diplomacy in this capacity. The articles of Grohse and Penna offer further evidence for the significant role of rulers in managing maritime conflicts in the Middle Ages.

[26]Based on O Gelderblom, *Cities of Commerce: The Institutional Foundations of International Trade in the Low Countries, 1250–1650* (Princeton University Press, 2013) 102–104, 126–33. Compare DC North, *Institutions, Institutional Change and Economic Performance* (Cambridge University Press, 1990) 34–35, 120–21, 128–29.

Jurriaan Wink and Louis Sicking contribute to the historiography on reprisal by examining its practice in the context of Anglo-Dutch commercial relations in the fourteenth and early fifteenth centuries. After considering how merchants and skippers suffering losses sought redress for damages incurred while trading and shipping from or with Holland and Zeeland, their study focuses on one particular case in which a merchant from Beverley, John Wagen, sought redress for damages supposedly suffered from a citizen from Leiden and another from Delft. The case shows how both the king of England and the count of Holland-Zeeland were drawn into the affair, as well as how they operated and why it took so long – almost 20 years – to finally reach a resolution. In the end, both princes accounted for the wider interests of their respective countries and citizens involved in Anglo-Dutch trade.

The mechanisms of maritime conflict resolution relating to victims and perpetrators of the so-called Cuatro Villas in northern Castile – San Vicente de la Barquera, Santander, Laredo and Castro Urdiales – are the subject of Javier Añíbarro Rodríguez' contribution. Scrutinising five cases, Añibarro positions each conflict within its respective geographic and social context. The merchants and skippers in focus were involved in maritime conflicts in England, Ireland or the Low Countries, while an additional Venetian merchant sought redress in Castile. Although it proved difficult for victims to obtain justice in the land of the perpetrators, wealth and influence could assist the victim in drawing the support of institutions in the foreign land. While local courts seem to have ruled in favour of their own subjects in most cases, and thus prioritised the interest of community members over those of foreign merchants and wider interests of 'transnational' stability, both the English and Castilian crowns were willing to support foreign victims who had suffered damage by their respective subjects. This supports recent research on the early fourteenth century, which shows for both Castile and England that, if not for the intervention of higher authorities, local administrators rarely took responsibility for the piratical actions of their seafaring citizens.[27] In accordance with the legal doctrine of the period and the practice of reprisal in the fourteenth-century Anglo-Dutch context, both crowns were equally restrained in delivering letters of reprisal.

Much like Penna's article, Víctor Olcina Pita's contribution addresses maritime conflict management in a cross-cultural context. Considering how traders from Valencia and Mallorca tried to enforce contracts and dealt with conflicts in Muslim-ruled Granada and North Africa, Olcina enters the fast growing field of inquiry into cross-cultural trade.[28] The author demonstrates how merchants

[27]TK Heebøll-Holm, *Ports, Pirates and Maritime War: Piracy in the English Channel and the Atlantic, c 1280–c 1330* (Brill, 2013) 209–12, 224–26.

[28]Inaugurated by P Curtin, *Cross-Cultural Trade in World History* (Cambridge University Press, 1984); F Trivellato, 'The Historical and Comparative Study of Cross-Cultural Trade' in F Trivellato, L Halevi and C Antunes (eds), *Religion and Trade: Cross-Cultural*

employed different methods to both enforce their contracts with Granadian and North African business partners and placate conflicts. The merchants exhibited remarkable pragmatism in adapting to the particular institution they expected would best serve their interests, be it the Valencian town administration or one of its consulates, either in Catalonia or overseas, or the local Muslim administration, including the local Muslim courts. Rather than unlimited 'forum shopping', the choice for either Christian or Muslim courts may have been determined by the location in which sentence could best be executed or where the gravity of activities of the solution seeking merchant was situated. Valencian merchants thus exploited the cross-cultural environment within which they operated, traversing boundaries of religion and cultural identity.[29] This contribution encourages further inquiry into cross-cultural trade in and around the medieval Mediterranean, as well as the institutions which supported this trade, such as diplomacy, treaty-making and other conflict resolution strategies. Particularly compelling is the chance to highlight changes and continuities between the strategies employed in this period and those relied upon in the early modern age.[30]

Sabine Go explains how the city government of Amsterdam installed a specialised institution to adjudicate marine insurance conflicts in 1598. Regulations concerning the working of this Chamber of Insurance and Average were drawn partially from ordinances of the central government that had already been promulgated before the Dutch Revolt. The instalment of a separate body to deal with marine insurance conflicts, however, was a novelty, and was a response to requests from the business community, on the one hand, and to relieve the city's bench of aldermen of an increasing number of insurance cases, on the other. The Chamber further reduced uncertainties to the benefit of the litigating parties by explaining how they interpreted the clauses of the ordinance at the foundation of their work, how calculations were made and how they reached verdicts. This transparency and accountability greatly contributed to the enforcement of contracts and facilitated transactions, the author argues. Both the city and the Chamber were willing to adapt to the changing demands of the business community, which supports the view of marine conflict management as a bottom-up development.

Exchanges in World History, 1000–1900 (Oxford University Press, 2014) 2, offers a useful overview of its historiography.

[29]On the entanglement of diplomacy and commerce across the Mediterranean see e.g. G Jehel, *L'Italie et le Maghreb au Moyen Age. Conflits et échanges du VIIe au XVe siècle* (Presses universitaires de France, 2001); B Doumerc, *Venise et l'émirat hafside de Tunis, 1231–1535* (L'Harmattan, 1999); M Ouerfelli, 'Personnel diplomatique et modalités des négociations entre la commune de Pise et les États du Maghreb (1133–1397)' in *Les relations diplomatiques* (n 12) 128–32.

[30]See for instance M van Gelder and T Krstić, 'Introduction: Cross-Confessional Diplomacy and Diplomatic Intermediaries in the Early Modern Mediterranean' (2015) 19 *Journal of Early Modern History* 93.

All the articles indicate that the rulers, local authorities (seventeenth-century Amsterdam) or a combination of local and central 'institutional arrangements' (fifteenth-century Valencia) were integral to maritime conflict management.

IV. Prize law, diplomacy and neutrality

The office of admiral and the Admiralty are medieval institutions. The office of 'admiral', originally a provisional fleet commander of a particular expedition, later denoted a permanent official responsible for naval administration, including jurisdiction over maritime cases. Prize cases were principal among these cases. In Northwestern Europe, both the admiral and the Admiralty developed into permanent institutions in France, England and Flanders in the fourteenth and fifteenth centuries.[31] Enjoying a right to garnish a percentage – often 10% – of a prize's value, admirals took a personal interest in the adjudication of prizes and the declaration of booty as a 'good prize', thus increasing the likelihood of abuse. The possibility of appeal served to mitigate conflicts of interest.[32] Prize law, its execution and the diplomatic context within which the latter took place in the early modern era are at the centre of the last three contributions in this issue.[33]

The practices of Admiralties, which addressed cases brought between parties from different countries, are essential for understanding the development of international law. Despite their national or regional jurisdictions, Admiralties shaped the rules that governed behaviour and practices of states and relations between them. Shavana Musa examines the role of these courts as 'platforms' upon which certain groups victimised during maritime conflict could seek compensation. She focuses on the implementation of prize law, that being the set of rules that determined which of the prizes – typically property in the form of ships and their cargoes – seized in the course of war were appraised as good prize and which were not. Musa sheds light upon the practical application of prize law in several cases derived from three Anglo-Dutch Wars of the seventeenth century. Each of these conflicts amplified the number of cases brought by victims of war before the English Court of Admiralty. The cases in focus demonstrate that

[31]É Barré, 'Notes sur l'amirauté de France en Normandie au Moyen Âge' (2014) 19 *Revue d'histoire maritime* 21; NAM Rodger, *The Admiralty* (Terence Dalton Limited, 1979) 3–4; L Sicking, *Neptune and the Netherlands: State, Economy and War at Sea* (Brill, 2004) 19–31.

[32]M Tranchant and S Hamel, 'Le déploiement de l'amirauté de France à La Rochelle à la fin du Moyen Âge (2014) 19(2) *Revue d'histoire maritime* 40, 45–46; J Paviot, *La politique navale des ducs de Bourgogne, 1384–1482* (Presses universitaires de Lille, 1995) 30. For the early modern period JHW Verzijl, WP Heere and JPS Offerhaus, *International Law in Historical Perspective* Part IX-C The Law of Maritime Prize (Brill, 1992) 108, 617, 663–64.

[33]See e.g. AA Wijffels, 'The Anglo–Spanish Peace Treaty of 1604: A Rehearsel for Belgian Diplomats?' in R Lesaffer (ed), *The Twelve Years Truce (1609), Peace, Truce, War and Law in the Low Countries at the Turn of the 17th Century* (Brill, 2014) 69.

neutrality as an institution was respected. Although neutral ships carrying enemy cargo were not legally subject to reparations according to the English Admiralty, many such ships were in fact restored and their owners compensated in order to foster amicable relations between friendly states. Diplomacy thus moulded 'who the "victim" should actually be'.

The diplomatic context is even more important in the next contribution on the history of prize law, particularly with regard to the assessment of foreign prizes. Hielke van Nieuwenhuize's inquiry concerns governments' methods for scrutinising prizes captured by their subjects or, more accurately, privateers who transported prizes into foreign harbours. From another perspective, his study considers the governments' treatment of prizes that were brought to their harbours by privateers of a foreign power. The complexity of these situations increased as naval warfare continued to rely heavily on private military ventures and as governments, especially those that would not muster a large number of home-grown privateers like Portugal and Sweden, readily recruited foreign privateers from distant jurisdictions. Such complexities are manifest in one case in focus, wherein the Admiralty of Amsterdam confiscated Norwegian merchant ships that had been captured by a Swedish squadron consisting of Dutch vessels equipped by Louis de Geer, a Dutch entrepreneur, during the so-called Torstensson War between Sweden and Denmark-Norway (1643–45). Beyond stressing entanglements, the case allows for study of Dutch policy on the assessment of these foreign prizes, which in this particular case posed a threat to Dutch neutrality in the Dano-Swedish war.

Van Nieuwenhuize argues that Dutch political and economic interests in the Baltic dictated the States-General's strategies in this case far more than the arguments of litigants, including those relating to international law that were brought forth by the Swedish resident in the Dutch Republic. Although the latter's proposal to work on the Swedish government's behalf in negotiating possible law suits concerning Swedish prizes in the Netherlands was turned down by the Dutch, his appeal served as a harbinger of things to come. In the late-seventeenth century, consuls came to influence the assessment of foreign prizes, even if the control of these consuls left much to be desired in the early stages.

In the final contribution to this issue, Thierry Allain contextualises the seizure of a Dutch merchant vessel by a British war ship in the Mediterranean in 1745. The incident occurred during the War of the Austrian Succession, a conflict which saw France pitted against Britain. The case shows the different Dutch, British and French political and economic interests at stake within what was a highly complex international situation in which the transport of enemy goods by neutral parties was a central bone of contention. Although the Anglo-Dutch marine treaty of 1674, which recognised the principle of 'free ship, free goods', retained validity, the Admiralty at Port-Mahon on the British-controlled island of Menorca had declared the Dutch vessel to be a good prize. The judgment was made not only on the basis that the ship transported French commodities, but also on the grounds that her Dutch captain and the accompanying freighters had been accused of fraud.

Allain reveals that while the Dutch Republic adhered to the treaty of 1674, both Britain and France regarded older treaties such as this to be outdated due, amongst other reasons, to the Republic's inability to enforce respect for their stipulations. While the French consul claimed to be shocked by the British violation of the treaties in the case of the Dutch vessel, he was no doubt conscious of French interest in a neutral maritime power that could carry French maritime trade in time of war. The French were certainly not advocates of 'neutralité absolue'. Their naval ordinance of 1681, which imposed the principle of 'hostile infection', meant that all prizes containing any enemy goods would be justified or deemed 'good prize'.[34] France nevertheless moved towards the principle of 'free ship, free goods', as was stipulated in a treaty concluded with the Dutch in 1739. However, when Dutch ships transported English troops in 1745, the French annulled concessions made previously to the Dutch. Both British and French attitudes towards Dutch neutral shipping were apparently dictated by concerns as to whether or how it might undermine their respective war efforts. The case thus confirms that the potential of force was a necessary prerequisite for the enforcement of international law.

All three articles in this last section emphasise the flexible interpretation or 'moulding' of 'victims' and 'neutrality' in individual prize cases depending on the various political and economic interests of the countries at stake. In this respect, they offer evidence of continuity between the fifteenth and sixteenth centuries, when prize law served not only as a means of damage redress to victims of war, mostly neutrals, following the conclusion of a truce or peace between belligerents, but also as a means of normalising diplomatic and commercial relations.[35] Prize law and diplomatic relations thus mutually influenced one other.

V. Closing remarks

The articles span seven centuries of maritime conflict management, primarily within the confines of Europe. Throughout the period in focus, public authorities actively intervened in conflicts that arose in the course of business dealings or other forms of interaction between maritime traders and skippers. While these parties could not rely on the unfailing support of their rulers, the fact that the latter often concluded treaties aimed, at least in part, at promoting the formers' interests bears witness to their normative pretentions of providing security. As the articles in this issue demonstrate, diplomatic contacts which enabled rulers to negotiate, prepare and interpret treaties went beyond regulating the negotiating rulers' relations with one another; rather, they aimed to stabilise commercial relations between private individuals,

[34]E Schnakenbourg, *Entre la guerre et la paix. Neutralité et relations internationales, XVIIe-XVIIIe siècles* (Presses universitaires de Rennes, 2013) 99–101.
[35]Roelofsen (n 22); Sicking, *Neptune* (n 31) 447–52, 480.

associations of merchants and companies.[36] Viewed in concert, these contributions provide evidence for the gradual development of maritime conflict management, diplomacy and norms for international law.

This is not to imply that these changes could not unfold more rapidly at some points than at others. Changes occurred in different times and places in ways that did not necessarily follow an obvious pattern. Treaty-making, for instance, was often the ad hoc result of immediate challenges and the intermittent success of those affected in including their concerns in the agendas of legislators. The effective application of stipulations in international treaties was often dependent on a variety of circumstances, including the legislators and their officers' means of control, their willingness to effectively control, and the possibilities for those who were controlled to circumvent these means of control.

When reading the following articles the unevenness of the surviving sources on which they are based should also be taken into account, as most of the surviving archives pertaining to medieval and early modern Europe are rooted in public authorities and institutions, whether at the central, regional or local levels. The emphasis might as a consequence be easily directed to the role of public authorities in maritime conflict management which could result in overrating its importance. One should be aware that merchants could resolve conflicts via private order solutions without turning to a public authority, and thus without necessarily leaving traces in the surviving archives.[37]

Regardless of whether they were the perpetrators or victims of maritime conflict, or whether conflicts were rooted in competition from counterparts or incurred in the course of war, merchants and skippers enjoyed a growing arsenal of possibilities with which to defend themselves and seek redress for damages. Contributions to this issue address a number of these possibilities. Although the rise of prize law reduced the long-term relevance of reprisal as the ultimate means of damage redress, it should be noted that various methods for managing and resolving conflicts between seafaring individuals continued to exist in parallel to one another throughout the period in focus, even if they changed in expression over time. This can be witnessed when, in connection with the peace of Aachen/Aix-la-Chapelle of 1748, an ad hoc committee was installed by France, Great Britain and the Dutch Republic to decide the mutual restitution or indemnity of prizes taken.[38] Such ad hoc committees were already in place nearly five centuries

[36]See, for example, JA Solórzano, B Arízaga Bolumburu and L Sicking (eds), *Diplomacia y comercio en la Europa atlántica medieval* (Instituto de Estudios Riojanos, 2015).

[37]Compare A Cordes, 'Litigating Abroad: Merchant's Expectations Regarding Procedure before Foreign Courts According To the Hanseatic Privileges (12th–16th c)' (2013) Working Paper 4, 15 http://publikationen.ub.uni-frankfurt.de/opus4/solrsearch/index/search/searchtype/series/id/16190/start/0/rows/10/author_facetfq/Albrecht+Cordes (accessed 15 October 2016).

[38]R Morieux, *Une mer pour deux royaumes. La Manche, frontière franco-anglaise (XVIIe-XVIIIe siècles)* (Presses universitaires de Rennes, 2008) 160.

earlier, such as those engineered through the initiatives of Castilian and English monarchs in 1293 and 1311.[39] The foundation of Admiralty courts and their increasing importance in the application of prize law apparently did not exclude the 'return' of more traditional means of maritime conflict resolution. This example serves as a warning to those who might seek a linear evolution between the cases studied in this issue. Instead, we must appreciate that developments within the fluid traditions of maritime conflict management came in waves, ebbing and flowing, often in unpredictable sequence, throughout the pre-modern era.

Disclosure statement

No potential conflict of interest was reported by the author.

[39]M Bochaca, 'La diplomatie du roi d'Angleterre au secours des intérêts commerciaux bayonnais: la gestions des relations avec les Castillans et les Portugais à la fin du XIIIe siècle' in Solórzano, Arízaga and Sicking (n 36) 33–45. Heebøll-Holm (n 27) 209–12.