Identity, conflict and commercial law:

Legal strategies of Castilian merchants in the Low Countries (fifteenth-sixteenth centuries)

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

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Introduction

The arrival of foreign merchants significantly altered the political and legal landscape of the fifteenth- and sixteenth-century Low Countries. The presence of Italian and Iberian merchants in the city of Bruges required the incorporation of foreigners into a (largely) custom-based existing legal system. Bruges facilitated the establishment of foreign merchant communities in Bruges and other cities in the Low Countries, whereas before foreign merchants often travelled from fair to fair. These organisational vehicles, often headed by elected consuls, were called nationes (singular natio). In historical literature, these foreign merchant guilds have been presented both as efficient solutions to long-distance trading and as rent-seeking obstacles to an open-access market. Their supposed efficiency in providing contract enforcement has been praised in particular because they were able to deal with conflict internally. This essay, however, intends to show that foreign merchants in the Low Countries developed a wide number of strategies to deal with conflict, which were by no means limited to the internal consular court or the municipal court. Forum shopping, jurisdictional complexity and legal pluralism were all present during the fifteenth and sixteenth centuries, which makes the study of mercantile conflict complex and exciting at the same time. While foreign merchants strongly defended their privileges, various actors in the fifteenth- and sixteenth-century Low Countries simultaneously produced new mercantile norms resulting from a combination of commercial litigation, lobbying, and negotiations. This paper investigates the consequences of the arrival of foreign merchants – specifically, Castilian merchants – on the social and legal structure of (commercial) conflict and contract enforcement, and how this subsequently influenced the development of commercial and maritime law during the fifteenth and sixteenth centuries in the Low Countries. By connecting the literature on the effects of foreign merchant guilds and the legal strategies of foreign merchants, this paper also aims to reconcile economic-historical and legal-historical approaches towards foreign merchant guilds and the development of commercial law.

It is, of course, well known that Iberian and Italian merchants made a lasting impact in the development of commerce and maritime trade in the Low Countries between the fourteenth and

1 The author wants to thank Maria Fusaro, Lewis Wade and the participants in the ‘Citizenship, Identity and Commercial Law’ workshop in Brussels (November 2019) for valuable feedback on an earlier draft of this essay. Financial support for this essay has been granted by the European Research Council under Grant Agreement 724544 (AveTransRisk).


5 Ogilvie, Institutions and European trade, 250-314.
eighteenth centuries. Besides their commercial importance, they also brought marine insurance, banking and various organisational innovations, such as the *commenda*, to the Low Countries.\(^6\) Their impact on the development of the modes of (legal and extra-legal) conflict resolution developed has not been systematically researched, however. This essay focuses specifically on Spanish (that is, Castilian) merchants, who kept their *natio* in Bruges until 1705, long after most other foreign merchant communities had moved to Antwerp. A large Spanish (both Castilian and non-Castilian) colony was also present in Antwerp during its ‘Golden Age’ in the sixteenth century.\(^7\) Even if much is already known about the legal, social and economic status of Castilian merchants in the Low Countries, their legal strategies have not yet been researched.\(^8\) Given that Castilian merchants integrated relatively well into the sixteenth-century Low Countries, their case can also teach us something about the relationship between their self-identification, legal status and choice of legal strategies. Because of the wealth of archival material and the longevity of their presence in the Low Countries, the Castilians serve as an excellent case for foreigners’ different judicial options and the ways in which modes of conflict were regulated. Moreover, their experience can tell us how Bruges and Antwerp tailored their economic and social policies to accommodate foreign merchants, and how legal developments were intertwined within this process.\(^9\)

Sources are plentiful for the Castilian case for both the fifteenth and sixteenth centuries. Since sources for the five hundred years are quite rare, this gives historians an interesting perspective for studying fifteenth-century conflict. In his monumental source editions, Louis Gilliodts-Van Severen included many examples of commercial and maritime conflict, as well as a wealth of information on the legal status of Castilian merchants.\(^10\) This paper focuses on merchants from Castile, the core area in the Iberian Peninsula, although comparisons and examples from Biscay, Catalan and Aragonese merchants will be made where appropriate. All these merchants had their own *natio* based on their region of origin, but only the archives of the Castilian *natio* have survived.

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\(^7\) Jan-Albert Goris, *Étude sur les colonies marchandes méridionales (Portugais, Espagnols, Italiens) à Anvers de 1488 à 1567* (Louvain: Librairie Universitaire, 1925), 57-66.


\(^9\) This is a popular topic in the literature. See: Gelderblom, *Cities of commerce: the institutional foundations of international trade in the Low Countries, 1250-1650* (Princeton: Princeton University Press, 2013), especially 102-140.

Additional sources, such as notarial records, cases from the consular court and litigation in the various courts in the Low Countries shed additional light on the legal strategies of the Castilian merchants. The second section of the paper provides an approach to conflict resolution and management based on the recent literature. The third section gives an overview of the development of the Castilian consular jurisdiction between the fourteenth and sixteenth. The fourth section delves into the various legal sources at our disposal and studies the legal strategies of the Castilian merchants at various jurisdictional levels. The fifth section compares the findings to the strategies to handle conflicts of other foreign merchants’ communities. Section six concludes.

Legal strategies and conflict management

Mercantile conflict resolution has recently re-emerged as a key area of interest amongst legal, social and economic historians. Justyna Wubs-Mrowezicz has argued for the broadening of the concept of conflict resolution to conflict management because merchants opted for a variety of legal and extra-legal options to deal with conflict, sometimes prolonging conflict rather than necessarily solving those conflicts. Louis Sicking has pointed to the important role of diplomacy on various levels in maritime conflict. Albrecht Cordes and Philip Höhn have, moreover, written a sharp article summarising the extra-legal and legal options that merchants had at their disposal in the late medieval period. According to Cordes and Höhn, the capacity for merchants to deal with conflict was aided by the absence of a clear legal order and divergent socio-political frameworks in both time and space. Legal pluralism should thus be considered an asset rather than an obstacle for trade. This challenges the idea that merchants exclusively relied on quick and efficient solutions, such as arbitration. Arbitration was used primarily within small and close-knit communities such as nationes, but was markedly less efficient when dealing with conflict with other ‘foreign’ merchants. Cordes and Höhn have also pointed to other important principles of conflict management: the ‘sociability’ of commercial conflict, which meant that merchants were often more interested in resolving disputes amicably than speedily; the defence of privileges as the key to studying (medieval) legal history; the willingness of merchants to go to central courts and explore various legal options, often because of commercial links to a ruler; the lack of enforcement measures and the (sometimes intentional) lingering of conflicts; and the need to embed the study of conflict into a broader social-anthropological framework.

13 Sicking, ‘Introduction’.
15 Ibidem, 513.
18 Ibid., 514-521.
For the fifteenth and sixteenth centuries, most of the extant sources in the Low Countries are of an ‘institutional’ nature and as such provide excellent material for legal-historical research. However, they can be employed for multiple goals. Legal historians often approach law as a formal process, an ‘internal process’ whereby laws develop relatively autonomously. For the study of conflict, however, ‘internal’ legal history has the major problem that it focuses mainly on the outcome rather than on the process, which is generally more interesting for historians and shows them more about the social, economic and political background of the conflicts. Moreover, focusing on the formal outcome often obscures the murky reality of enforcement during the fifteenth and sixteenth centuries. To study the complex reality of late-medieval conflict and jurisdictional complexity, a more social-historical approach to conflict may be helpful, inspired by the sociological and historical work of Georg Simmel. Simmel argued that all relations in society are characterised by conflict based on (socio-economic) inequality, an important inspiration for the newly found interest in conflict management in recent historiography. This approach also helps us to understand the social dimensions of conflict (e.g. status, identity, citizenship and so on), especially in the case of foreign merchant communities. Recent conceptualisations by legal historians about jurisdictional complexity and legal and normative pluralism may also help us to better understand this complex process. This follows the now widespread acknowledgement that legal pluralism, and a complex hierarchy of laws, were a fact of life in the Middle Ages and, for the greater part, during the early modern period.

The Castilian community in the Low Countries

In the Low Countries, Bruges was one of the first cities to give privileges to foreign merchant communities. Foreign merchant communities, such as the Hanseatic merchants and the various groups of merchants from the Italian and Iberian Peninsulas were among the earliest groups to receive privileges. Not only Bruges was willing to provide merchants with privileges. Foreign merchants often sought confirmation at the level of the Count of Flanders or, after 1480, from the Burgundian rulers of the Low Countries. These privileges often included autonomy in judicial matters, such as jurisdiction over civil matters in internal disputes. Foreign merchants were, however, not citizens of the city of Bruges (neither de facto nor de jure). Members of the natio could

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20 Georg Simmel, Soziologie: Untersuchungen über die Formen der Vergesellschaftung (Berlin: Dunckler und Humblot, 1908), 186-255.
nevertheless claim legal protection from both the Bruges aldermen and the Flemish Counts and were often privileged litigants at various courts in the Low Countries. Within the natio, the consuls were tasked with fostering a social bond between the members, even if the willingness of merchants to be members of nationes is sometimes debated.25

The first record of privileges for Castilian merchants in Bruges dates from 1343. Both Bruges, as a member of the so-called Drie Leden (Three Members), a collective of Bruges, Ghent, and Ypres, and the Count of Flanders granted these privileges. These privileges mainly concerned protection against arbitrary imprisonment for Castilian merchants.26 Further privileges, from 1348, 1421 and 1428 both confirmed and expanded on the previous ones. The 1348 privileges, for example, expanded the legal protection for Spanish merchants, stipulating that individual Castilian merchants could not face reprisal for the debts of other Castilian merchants, and gave them the so-called staple rights (the right to pay taxes, duties, and tolls in one place only).27 Already in 1389, Aragonese merchants also received their own privileges to trade to and from the Low Countries.28 These included a reciprocal clause that Flemish merchants would have the same rights in Aragon. In 1447, merchants from Biscay negotiated their own privileges.29 Despite protests from the Castilians, further developments meant that from 1494 onwards, ‘Spanish’ merchants were divided into three nationes: the Spanish (i.e. Castilian), Biscayer and Catalan-Aragonese.30 In 1500, the Andalusian natio received privileges in Antwerp, before moving to Middelburg (Zeeland) in 1505.31 The Navarrese natio also received privileges in 1530.32 These privileges strongly differed from each other; the Castilian natio, self-styled as primus inter pares, received the most extensive ones, including a wide jurisdiction in civil matters, with the Bruges municipal court only nominally involved with the decisions made in the consular court.33 Both the Castilian and Biscayer merchants had the privilege to levy the droit d’avarie, a compulsory contribution on the imports and exports of their members.34

Many nationes moved from Bruges to Antwerp between 1484 and 1488, after the Habsburg sovereign Maximilian of Austria ordered them to do so at the start of the Flemish Revolt in 1482. Although some nationes briefly returned to Bruges around 1490 after the Revolt ended, most of them moved to Antwerp permanently during the first half of the sixteenth century. These events were the final acts in a gradual shift in commercial gravitas from Bruges to Antwerp.35 The Genoese, for example, transferred their Consulate in 1509, followed by the Portuguese in 1511.36 Because

25 Ogilvie, Institutions and European trade, 94-159.
26 Gilliodts-Van Severen, Espagne, 8-12.
27 Ibid., 13.
28 Ibid., 19-21.
29 Ibid., 31.
34 Gilliodts-Van Severen, Espagne, 594-596.
36 Goris, Étude, 48-51 and 75-78.
many Spanish merchants resided in Antwerp for business purposes (e.g. acting as insurers), a significant part of the Castilian community in the Low Countries also pushed for moving the natio to Antwerp. Both Bruges and the Habsburg central government, however, saw the role of Castilian and Biscayer merchants in the wool trade as vital to the Low Countries and forced them to stay in Bruges. The Castilian natio remained there until 1705, even if the Castilian merchants in Antwerp desperately tried to form a Consulate of their own in Antwerp around 1550. The Catalan-Aragonese natio decided to remain in Antwerp after the Flemish Revolt.

In both cities, Castilian and other Iberian merchants fulfilled a pivotal role in commercial life. The importance of their wool trade was especially pronounced. The literature on the Castilian community in Bruges has provided evidence of the relatively high extent to which Spanish merchants married Flemish women, whereby some even bought or received poorterschap (citizenship) in either Bruges or Antwerp. Around 25% of the Castilian merchants became either a citizen or an ingezetene (inhabitant) of either Bruges or Antwerp during the sixteenth century. Genoese merchants also became citizens in Bruges to a relatively high extent during the fifteenth century. Andrew Brown has also pointed, however, to the limited participation of Castilian merchants in local social life or in administrative roles after acquiring citizenship. Most of the Castilian merchants in Antwerp moreover mostly stuck to their compatriots for trade, insurance, and loans, as notarial records show. Rules set by the Consulate even stated that Castilian merchants were still under the control of that Consulate, even if they married a local woman. In many respects, Castilian merchants were not particularly different from other foreign merchant communities. They did, however, distinguish themselves in two important ways: first, by their willingness to use the local courts at their disposal (municipal, regional, central); and second, by their far-reaching influence in matters of commercial and maritime law, which they attained through a combination of litigation on their privileges, through lobbying and through publishing collections of customs on insurance law. As a result, Castilian merchants were able to obtain favourable terms for their trade and influence commercial law, using a wide variety of extra-legal and legal strategies. As Cordes and Höhn have noted, the defence of their negotiated privileges is the key to understanding

37 Ibid., 57-66.
38 Ibid.
39 Maréchal, ‘La colonie espagnole’, 7-11. They were less well integrated into society than the Castilians. See: Pablo D. Bielsa, ‘El Consulado Catalán de Brujas (1330-1488)’, in Aragón en la Edad Media, XIV-XV. Homenaje a la profesora Carmen Orcástequi ed. Carmen Orcástequi Gros (Zaragoza: Universidad de Zaragoza, 1999), 387-388.
44 For the notaries, see: Fagel, De Hispano-Vlaamse werel, 71-72; Municipal archives of Antwerp (hereafter BE-SAA), Notariaat Streyt, inv. N#1232 and N#1233; Notariaat ‘s-Hertogen, inv. N#2070-N#2078; Rijksarchief Antwerpen (hereafter BE-RAA), inv. R02, Notariaat De Platea, I, fol. 63r-64r. See also for the Castilian insurer Juan Henriquez: Casado Alonso, ‘Juan Henriquez, un corredor de seguros de Amberes a mediados del Siglo XVI’, in Palabras de archivo: homenaje a Milagros Moratinos Palomero ed. Juan C. Pérez Manrique (Burgos: Ayuntamiento de Burgos, 2018), 49-68.
45 Ogilvie, Institutions and European trade, 12.
the legal strategies of many foreign merchants.\textsuperscript{46} This insight is also key to understanding the legal activity of the Castilian merchants in the Low Countries.

**Intra-Castilian conflicts**

The analysis of strategies to deal with conflict concern multiple aspects and should also take into account alternative options, such as violence. It appears that Castilian merchants had several options at their disposal, for example violence, arbitration, negotiations, lobbying and litigation. Moreover, sovereigns or other high-ranked officials could also intervene in disputes, for example engaging in diplomacy in certain cases.\textsuperscript{47} Sources have survived for most of these options. Even if a merchant decided to litigate, there was still a wide variety of options to choose from, because the jurisdictional setting in the Low Countries was complex.\textsuperscript{48} A Castilian merchant could bring their cases before their consular court, but they also had the right to go before the municipal courts of either Bruges or Antwerp, depending on where they were based. Moreover, foreign merchants were privileged litigants at the Council of Flanders, Council of Brabant and the Great Council of Mechlin, the provincial and central superior courts, which granted them the right to initiate first instance cases there.\textsuperscript{49} Since Castilian merchants were formally under control of the Consulate (Consulado) of their home city, which supervised their respective nationes, it may have been possible to litigate cases back in Seville or Burgos, where these organisations were based.\textsuperscript{50} This option for legal pluralism seems, however, not to have been used.

For disputes between Castilian merchants, most were solved by litigation before the consular court or by arbitration. In Bruges, around 75\% of intra-Spanish cases were arbitrated at the end of the fifteenth century.\textsuperscript{51} In principle, the consuls heard all first instance cases between Castilian merchants. Since the community of Castilian merchants in Bruges was small (between 40 and 60 at most at any given time)\textsuperscript{52} this was not necessarily a very formal affair. One could probably best describe these disputes as a halfway house between arbitration and a formal court case, whereby the elected consuls would act as the arbitrators or judges. Most of these cases concerned commercial law.\textsuperscript{53} There were however also formal limitations to the competence of the consular court. Its first instance competence, for example, was limited to cases between Castilian merchants, although foreign merchants could also voluntarily subject themselves to the authority of the court. This happened twice during the 1540s with Portuguese merchants, who claimed a right to be heard under the Ius Gentium (Law of Nations).\textsuperscript{54} The consular court was also subjected to the formal control of the Bruges municipal court, which meant that appeals had to be made there, but this

\textsuperscript{46} Cordes and Höhn, ‘Extra-legal and legal conflict management’, 514-515.

\textsuperscript{47} Sicking, ‘Introduction’.


\textsuperscript{49} Remco C.H. Van Rhee, Litigation and legislation: civil procedure at first instance in the Great Council for the Netherlands in Malines (1522-1559) (Brussels: Algemeen Rijksarchief en Rijksarchief in de Provincieën, 1997), 41.

\textsuperscript{50} De ryuyscher, Gedisciplineerde vrijheid, 36.

\textsuperscript{51} Ogilvie, Institutions and European trade, 298.

\textsuperscript{52} Fagel, De Hispano-Vlaamse wereld, 15.

\textsuperscript{53} Stadsarchief Brugge (hereafter BE-SAB), Spaanse Natie, inv. 304, Libro de pleytos ordinaarios (1546-1561).

\textsuperscript{54} ibid, fol. 11r-v and 46v. This was not uncommon, because Flemish merchants also appeared before the Portuguese consular court. See: Miranda, ‘Commerce, conflits et justice: les marchands portugais en Flandre à la fin du Moyen Âge’ (2010), 117 Annales de Bretagne et des Pays de l’Ouest 1, there 8-9.
seems to have been just a theoretical possibility. In Bruges, Castilian merchants were often appointed as arbiters in commercial disputes, because Bruges aldermen lacked the expertise to deal with disputes of commercial or maritime law. Portuguese and Hanseatic merchants were also regularly appointed as arbiters. Although the Bruges municipal court was formally in control, Castilian and other foreign merchants were permitted to find acceptable solutions on commercial law. The situation in Antwerp was slightly different: the municipal court heard cases of commercial law and had ultimate authority. The city did organise the system of the so-called enquête par turbe, whereby a panel of merchants was summoned to decide of what a mercantile ‘custom’ consisted. This also provided Castilian merchants an opportunity to influence the development of Antwerp municipal law, for example on insurance.

Of course, Castilian merchants could voluntarily appoint arbiters to judge their disputes, which was already a preferred mode of conflict resolution in Bruges. In Antwerp, where they lacked the formal backing of a Consulate, this became the default mode of conflict resolution for conflicts between Castilian merchants. They often appointed a notary from a small group of trusted and specialised notaries. In the notarial archives in Antwerp, one can find freight contracts, testaments, and decisions made by notaries employed by Castilian merchants to solve disputes, for example on insurance. In the absence of the Consulate, Castilian merchants thus opted for a private-order solution to judge intra-Castilian disputes. Besides notaries, trustworthy compatriots could also act as arbiters. In Bruges, the specialised notary Paredes was also regularly employed by the Castilian merchants to adjudicate internal disputes. Of course, there was still the opportunity to bring the case to the municipal court, but it seems that many Spanish merchants did not want to breach the trust between the close-knit community of their closest trading partners and merchants. Castilian merchants in Antwerp thus appointed trusted men to protect the reputation of Castilian merchants to outsiders.

This solution did however not always work, especially after Antwerp started clawing back the consular jurisdictions from the nationes around 1570. For example, two Castilian merchants, Alonso and Juan De Palma, filed a request in January 1568 with the Antwerp aldermen to appoint an official of the city to aid the notary Jan de Berlaymont to adjust a General Average (GA) claim resulting from damages on a joint Castilian-Portuguese venture from São Tomé to Antwerp. Initially, the Antwerp aldermen granted this request, so that the adjustment could be sent to Spain, noting that De Berlaymont indeed had a good reputation in the city as a capable notary, and appointed the secretary Hendrik de Moy to aid him. The Portuguese consuls in Antwerp protested against this decision, arguing that jurisdiction on this matter was part of the privileges of the

55 See for an example: Gilliodts-Van Severen, Espagne, 34.
56 This was for example the case in a 1487 dispute between the Castilian natio and a Catalan merchant. See: Gilliodts-Van Severen, Espagne, 137-139. See also below, section IV.2.1. See for other cases where arbiters were appointed: Ibidem, 73-75 and 95-97.
58 Fagel, De Hispano-Vlaamse wereld, 72-73 & 100-107.
59 See for example: BE-SAA, Notariaat Streyt, inv. N#1232, fols. 56r-57v, 57v-58r, 70r, 71r-72v; N#1233, fol. 165r-166r.
60 Goris, Étude, 66-67.
61 His records are studied in: Philips jr., ‘Local integration and long-distance ties’, 33-49.
Portuguese *natio* in the city. Since the Castilian *natio* in Bruges also possessed a similar privilege, the Portuguese secretary of the *natio*, Jehan Fernandes, argued that the Castilian merchants who filed the request should have known this. The Antwerp Magistrate then decided that the Portuguese consuls would indeed have the right to draw up the average adjustment based on this privilege. Even though the Castilian merchants had tried to appoint their own notary to draw up the GA calculus and to legitimise this by seeking the blessing of the municipal court, this shrewd political move failed because the Portuguese *natio* was able to persuade the aldermen to uphold its privileges.

**Litigation against other (foreign) merchants**

Conflicts with other (foreign) merchants often fell into two categories: to claim back a debt or to defend privileges. Even if a case was brought by an individual merchant, Castilian consuls supported their members with money and legal support. Castilian merchants in Bruges even filed regular cases against other Iberian merchants on various commercial matters. One case from 1455, for example, concerned a Venetian ship that had both Genoese and Castilian goods on board and was on its way to Bruges. 64 Catalan privateers took it on the grounds that the ship carried Genoese goods and Catalonia and Genoa were then at war. The Castilian merchant, in this case, argued that the Catalans in Bruges would have to reimburse him for his loss, but the municipal court did not allow this on the grounds that he could have known that Genoese goods were on the ship, which meant that this was a lawful Prize for the Catalans. 65 Although the court declined to rule for the Castilian merchant, it did promise to send a letter to the Catalan-Aragonese King, John II, to inquire about the whereabouts of the Castilian goods and the decision made by the Prize Court in Barcelona. 66 Another 1487 case saw a Catalan merchant summoned before the Bruges municipal court for not paying a *droit d’avarie* contribution to the protection costs of a ship. 67 The Castilian *natio* argued that only the Castilian *natio* had the right to levy the contribution on merchants from the Iberian Peninsula. A jury of Hanseatic, Portuguese and local merchants, however, decided that the Catalan merchant did not have to pay the contribution. There existed animosity especially between the Castilians and the Catalans in Bruges, even after the 1469 personal union between the Crowns. 68 Similar cases abound in the archives, both against individual Iberian merchants and cases jointly filed by the Castilians and the Biscayens. 69

The defence of the privilege of the *droit d’avarie* (the compulsory contribution levied by the *natio*) can be observed in a major case that was litigated before various courts in the Low Countries between 1511 and 1542. The Castilian *natio* was often at odds with the Genoese *natio* about this contribution, which was partly used to pay for the ships’ protection costs. This Great Council case of 1515 already had a precedent in a 1472 case litigated before the Bruges municipal court. 60 In this 1472 case the Castilian shipmaster Michel de Sancle, with the support of the Castilian consuls, brought a claim against the Genoese consuls in Bruges. De Sancle wanted Genoese merchants to pay their contribution for transporting Genoese goods on his ship. In counter to this, the Genoese argued that they were only allowed to pay the contribution concluded under the rules of their privileges granted by the Genoese Senato (their so-called Statute), which stipulated that this

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67 Ibid., 137-139.
68 Other examples of Catalan-Castilian conflict in Bruges can be found in: Ibid., 54-56 and 65-66.
69 See for example: Ibid., 79-80, 111, 122-124, 197-198.
70 As described in: Ibid., 111.
contribution could only be paid to Genoese shipmasters.\textsuperscript{71} The Castilian consuls however argued that the payment of maritime averages functioned as a sort of warranty, so that the Genoese merchants could not simply run off when the goods were delivered. The municipal court decided in favour of De Sancle, meaning the Genoese merchants had to pay the master before De Sancle sailed off to the Iberian Peninsula. Since enforcement remained relatively easy because the two nationes were still based in Bruges, this case did not lead to any further litigation. This was again the case in 1482, when a Genoese merchant was forced to pay the droit d’avarie.\textsuperscript{72}

In 1511 and 1515, the Castilian consuls decided to support the Biscayer consuls to pursue a similar case and even enlisted Castilian merchants in Antwerp to start litigation against three Genoese merchants and one Florentine merchant, all based in Antwerp.\textsuperscript{73} After having opened cases both in Bruges and Antwerp in 1511, the Castilian and Biscayer nationes also filed a first instance case at the Great Council of Mechlin in 1515, when jurisdictional issues prevented them from getting a favourable result: the Biscayers had won the case before the municipal court of Bruges but lost in Antwerp. This meant that they had no way to enforce the judgements from Flanders. Even if the case concerned a small sum (it, again, concerned a contribution to mutual protection costs by three Genoese and one Florentine merchant(s)), the case would linger on from 1511 to 1549 moving between various courts. Eventually, the Castilian and Biscay nationes could proclaim victory, even if it took over thirty-five years to get a favourable judgement and, more importantly, a judicial order to proceed with its enforcement.\textsuperscript{74}

In 1515 the Genoese presented exactly the same arguments as in 1472, pointing to their Statute that only permitted them to pay for maritime averages when Genoese ships were used.\textsuperscript{75} This time, enforcement had become a major problem, which obliged the Great Council to make multiple judgements to enforce its initial judgement. This was partly because the Secret Council, formally the highest judicial authority in the Low Countries, agreed to hear a petition by the Genoese natio about this case.\textsuperscript{76} The Biscayers protested this petition to no avail, since the Secret Council decided that the Great Council had to explain its judgement, implying that its judgement was incorrect. This gave the Genoese another option to file a case. In the end, the Biscay and Castilian merchants could proclaim formal victory, even if enforcement was still an issue up to 1549 when the archives go silent. The move to Antwerp severely complicated things, which necessitated both the Biscayer and Genoese merchants to creatively find new avenues for litigation at the various courts in

\textsuperscript{71} Ibid. The Genoese Statute were essentially the privileges and corresponding instructions from the Genoese Senato. See for an explanation by the Genoese themselves: Ibid., 233-234. See also: Documenti riguardanti le relazione di Genova col Brabante, La Fiandra e la Borgogna: raccolti ed ordinati eds. Cornelio Desimoni & Luigi T. Belgrano (Genoa: Istituto Sordo-Muti, 1871), 455-457.

\textsuperscript{72} Gilliodts-Van Severen, Espagne, 122-124.

\textsuperscript{73} See Algemeen Rijksarchief Brussel (hereafter BE-ARB), Grote Raad der Nederlanden te Mechelen. Processen in eerste aanleg, inv. T 138, nrs. 294 and 3519; Registers, inv. T 107, nrs. 815.12 (fol. 70-88), 815.13 (fol. 90-106), 818.28 (pp. 283-309) 818.35 (pp. 391-405), 823.68 (pp. 547-560), 824.83 (pp. 749-755), 826.68 (pp. 567-574). It should be noted that some of the cases, until 1515, contain folio and the post-1515 cases contain pages in the archival pieces. The first instance cases that are studied below are unfoliated and only contain dates and are as such referred to.

\textsuperscript{74} The case, including the long aftermath, is also briefly described in: Wijffels, ‘Justitia in commerciis: public governance and commercial litigation before the Great Council of Mechlin in the late fifteenth and early sixteenth century’, in Understanding the sources of early modern and modern commercial law: courts, statutes, contracts, and legal scholarship eds. Pihlajamäki, Cordes, Serge Dauchy and De ruysscher (Leiden and Boston: Brill, 2018), 32-54, there 48-49.

\textsuperscript{75} Desimoni & Belgrano, Documenti, 469-470; Gilliodts-Van Severen, Espagne, 230-240, especially 233-234.

\textsuperscript{76} See: BE-ARB, Registers, nrs. 823.68 (pp. 547-560), 824.83 (pp. 749-755), 826.68 (pp. 567-574). The complex jurisdictional situation between the Secret Council and the Great Council is described in: De Schepper, ‘De Grote Raad van Mechelen’.
the Low Countries. The Genoese merchants were especially creative in finding new ways to delay the execution of the judgement, even filing an appeal to the Admiralty Court.\textsuperscript{77} Political support played a key role during this case. While Iberian merchants were supported by their Habsburg sovereign and therefore trusted the Low Countries court system, the Genoese tried to solve the case via delays and negotiations until the early 1530s. The 1529 Peace of Cambrai however restored peace between Genoa and the Habsburg Empire, shifting the political situation of the Genoese in the Low Countries as well. This may explain their lengthy appeals in the 1530s and 1540s.

The secret ingredient: lobbying

Even if most Castilian merchants were not citizens, they displayed a remarkable ability to influence legislation in the sixteenth-century Low Countries. Two examples stand out: the 1551 Ordonnance and the 1569 Hordenanzas. Following from the 1550 Ordonnance on the same topic, the 1551 Ordonnance was issued by Charles V to address the challenges of navigating to the Iberian Peninsula. This navigation was threatened by Scottish and French pirates, especially in the Channel.\textsuperscript{78} The 1550 Ordonnance was concerned with the equipment and protection of ships, and laid down rules for sailing between the Low Countries and the Iberian Peninsula, for example obligatory artillery and other protective measures.\textsuperscript{79} In doing this, the central government hoped to discourage the use of insurance and bottomry, two tools the government viewed as detrimental to risk management.\textsuperscript{80} The 1550 Ordonnance was only aimed at small ships sailing westwards, which meant that the Spanish and Portuguese merchants were exempted from the new rules because they already used larger and better-protected ships.\textsuperscript{81} Since the Ordonnance did not immediately reach its intended effect, Charles V promulgated a second Ordonnance in 1551 with additional rules, which this time also applied to Iberian merchants, and included regulations on private maritime law as well. In the archives of the Brussels Admiralty and the Antwerp municipal archives, drafts of the 1551 Ordonnance survive with Spanish and Portuguese merchants’ comments.\textsuperscript{82} The draft Ordonnance was also sent out to other maritime interest groups, including Dutch skippers, Antwerp skippers, Antwerp merchants and Bruges merchants.\textsuperscript{83}

The 1551 Ordonnance subjected all westward seafaring (i.e. to the Iberian Peninsula) to the same regime, with rules set by the central government. This included obligatory convoys and artillery.\textsuperscript{84} Since the central government did not contribute to these extra protection costs, these proposals would lead to an enormous rise in transaction costs for merchants, which most groups vehemently opposed and protested. Moreover, the 1551 Ordonnance strongly limited the use of

\textsuperscript{77} BE-ARB, Processen, nr. 294 (12/12/1533).
\textsuperscript{78} Sicking, Neptune and the Netherlands, 243-245.
\textsuperscript{80} Sicking, Neptune and the Netherlands, 247-253.
\textsuperscript{82} BE-ARB, Admiraliteitsarchief, inv. T 094, nrs. 106-107; also BE-SAA, Privilegiekamer, Verzameling ‘Raecckende den Handel’, nr. PK 1021.
\textsuperscript{84} Santa M. Coronas González, ‘Carlos V, asegurador: una propuesta original de los comerciales de Amberes (1551)’, in Centralismo y autonomismo en los Siglos XVI-XVII. Homenaje al Professore Jesús Lalinde Aladia eds. Aquilino Iglesia Ferreirós and Sixto Sánchez-Lauro (Barcelona: Universidad de Barcelona, 1989), 121-130.
insurance, as shall be discussed later, which hit Castilian merchants extraordinarily hard given their widespread use of the technique. Following an additional proposal to tax merchants to pay for the obligatory protection measures, Castilian merchants immediately entered into negotiations over the tax with Cornelis de Schepper, the main civil servant in charge of maritime affairs in the Low Countries. The Castilian merchants agreed to a 2% tax in 1552, down from the 3% originally proposed. They also negotiated a contribution by the central government to pay for part of the protection costs. In their written feedback, both Castilian and Portuguese merchants also made the case that standard tools of risk management, such as insurance and General Average (GA), could suffice to counter the risks of pirates, provided that the natio covered additional protection measures. In the end, the 1551 Ordonnance included a clause that allowed for GA to be declared when sailors were wounded or had died after fighting a pirate attack. The Castilians argued that a precedent existed in Roman law that allowed for GA after a pirate attack, namely when a ransom payment was made to pirates to save the venture. Subsequently, the 1563 Ordonnance issued by Philip II also included this clause. By creating an ad-hoc coalition with the Portuguese natio, Castilian merchants had been able to negotiate the contents of the Ordonnance to significant effect. Since the Castilian consul had jurisdictional control in the consular court over GA proceedings, this also benefited the natio.

Another example of successful lobbying concerned the publication of the so-called Hordenanzas of 1569 by the Castilian natio in Bruges. The Hordenanzas concerned insurance and was published at a delicate time. Since 1558, when the Piedmontese merchant Giovanni Batista Ferrufini proposed to create a central insurance brokers’ office, lengthy negotiations between stakeholders in the insurance business in the Low Countries had been going on to create workable legal norms. Castilian merchants, the principal insurers in Antwerp, of course also participated in these negotiations, which mainly took place between various merchant communities, the city of Antwerp and the central government under Philip II. The latter’s representative in the Low Countries, the Duke of Alva, was so frustrated with the lack of progress that he promulgated the 1569 Ordonnance prohibiting all insurances. As opposed to the 1550 and 1551 Ordonnances, when Charles V had obtained a more or less favourable result through negotiations, Alva and Philip II shut down negotiations when no compromise could be reached. Merchants revolted against this decision with the support of the city of Antwerp, and the central government was soon forced to back down, publishing two more Ordonnances in 1570 and 1571 on insurance which, with the input of merchants, stipulated basic rules and standard policy for cargo and hull insurance. This was partly

85 Ordonnance 1551, Article 18. The Ordonnance can be found in: Jean-Marie Pardessus (ed.), Collection de lois, maritimes antérieures au XVIIIe siècle (Vol. 4) (Paris: Imprimerie Royale, 1828), 44-63.
86 Sicking, Neptune and the Netherlands, 250-252.
87 Ibidem, 257-258.
88 BE-ARB, Admiraliteitsarchief, nr. 107, sine folio (1549).
89 1551 Ordonnance, Art. 28: “Item, oft iemand in eeneigen ghevechte teghen wyanden ofte zeerovers ghequetst, verwynckt, oft ghedoot worde, so sal t’interest ende schade van den ghequetsten ofte verminckten, ende voorts de volle huere, voorderingehe en de begravinge van den dooden betaelt worden als groote averye van den schepe ende goeden, tot defensie van den welcken tongheval toeghecomen ware, alles ten zegene van goeden mannen hen des verstaeende, die genomen ende daer toe versocht sullen worden ter plaetsen daer tschip eerst onder onse juridictie aencommen sal”.
90 D. 14.2.2.3 stated this.
91 See for the documents regarding this proposal: Pieter Génard, Jean-Baptiste Ferrufini et les assurances maritimes à Anvers au XVIIe siècle (Antwerp: Imprimerie Veuve de Bakker, 1882).
based on the standard policies promulgated in the Hordenanzas, along with the Florentine insurance policies of the time. In 1571, Philip II even formally enshrined the Hordenanzas into royal legislation, a remarkable about-face compared to only two years earlier.94

The Castilian merchants claimed that the Hordenanzas were based on the ‘customs of the Antwerp stock exchange and those of London’.95 Guido Rossi and other scholars have strongly questioned this claim, partly because many of the clauses were taken from the insurance Ordonnances promulgated in Burgos in 1538 and in Seville in 1556.96 Moreover, the Hordenanzas were mainly used to regulate insurance policies for the route between Burgos and Bruges, where the Castilian natio was established. Indeed, most of the rules contained in the Hordenanzas were specifically targeted at the wool trade between the Iberian Peninsula and the Low Countries, including separate chapters for how to deal with damaged wool. Even if the Hordenanzas did not contain the customs of the Antwerp stock exchange, the influence of the work was still significant. In the 1608 Compilatae of Antwerp, a major collection of customary municipal law compiled between 1592 and 1608, almost 25% of the clauses on maritime law were directly taken from the Hordenanzas, at least according to the writers of the Costuymen themselves.97 Although there was some contemporary criticism on the Costuymen of 1608 for not adequately reflecting the customs of Antwerp, it is clear that the jurists drawing up the Compilatae drew extensively from the Hordenanzas. This should also be considered a form of lobbying, especially since Castilian merchants were the principal players in the sixteenth-century Antwerp insurance business. Castilian insurers profited from the incorporation of “their” rules into the corpus dealing with commercial and maritime law in the Low Countries (e.g. in royal legislation and Antwerp municipal law).

Legal strategies of other foreign merchant communities
How did other nations manage conflict in the fifteenth- and sixteenth-century Low Countries? The Portuguese natio copied the strategies of the Castilian natio in many ways, with a strong focus on keeping conflicts within the natio and aggressive litigation when its privileges were under threat.98 After the Portuguese natio moved to Antwerp in 1511, it tried to keep control over all Portuguese merchants in the Low Countries. In 1512, it filed an appeal at the Great Council against Loupes de Calvos, the sole Portuguese merchant still residing in Bruges. De Calvos had refused to pay his membership fee of the natio, arguing that he did not have to pay for costs such as building a chapel in Antwerp when he did not live nor work in the city. He referred to the various Burgundian privileges, which provided Portuguese merchants with privileges in the “Land of Flanders”.99 Since the natio had left its formal seat in Bruges, De Calvos argued that he was the rightful heir to these privileges in Flanders. The Great Council concurred with this opinion and denied the Portuguese consuls the right to extract the membership fee from De Calvos. As Rudy van Answaarden has

95 The text is printed in: Charles Verlinden, Código de seguros marítimos según la costumbre de Amberes: promulgado por le Consulado Español de Brujas en 1569 (Buenos Aires: Facultad de Filosofía y Letras, 1947).
shown, the Portuguese *natio* regularly filed cases at the Great Council to further their cause. But using similar litigation strategies was not the only way in which the Portuguese merchants mimicked the Castilians. Portuguese consuls also provided feedback on the 1551 *Ordonnance*, arguing for similar changes to the Castilian merchants and negotiating together. The strategies of the Castilian and Portuguese merchants thus were relatively similar. One difference was, of course, the move of the Portuguese *natio* to Antwerp in the early sixteenth century. In 1582, Antwerp confirmed the Portuguese consular jurisdiction, while simultaneously limiting the jurisdictions of most other *nationes*, showing the influence of the Portuguese in Antwerp. The frequent diplomatic efforts of the Portuguese Crown also appear to have furthered the Portuguese cause in the Low Countries.

The Genoese are another interesting case. The Genoese were already of major importance in fifteenth-century Bruges, supplanting Venetian dominance there alongside the Florentines. In Bruges, the Genoese were active litigants, for example in insurance and debt cases. In Antwerp, their position was rather different. Similar to the Castilians, Genoese merchants integrated to a relatively high extent into Antwerp society. This was a development that accelerated after 1529 when Genoa and Charles V made peace at Cambrai, which enabled the Genoese merchants to become major creditors of the Habsburg rulers. Yet competition with Southern German merchant houses like the Fuggers meant that Genoese (and Florentine) merchants never monopolised banking in sixteenth-century Antwerp. By the nature of their privileges and political position, with strong control from the Genoese *Senato*, the *natio* in Antwerp used different legal strategies than they were used to in Bruges. The privileges from the Genoese City Council limited the power of the consuls (especially compared to the Iberian case) and the *natio* did not receive a civil jurisdiction until 1564. This meant the Genoese were largely dependent on negotiations with the Habsburg Crown for protection, seeking to keep disputes within the *natio* and largely avoiding litigation in Antwerp (in marked contrast to their more powerful position in Bruges). Yet the consuls were able to use creative means to deflect claims involving their members. In the Great Council case, the

101 BE-SAA, nr. PK 1021, *sine folio* (23/02/1551).
104 Stabel, ‘Italian merchants and the fairs in the Low Countries (12th-16th centuries)’, in *La pratica dello scambio: Sistemi di fiere, Mercanti e città in Europa (1400-1700)* ed. Paolo Lanaro (Venice: Marsilio, 2003), 131-159, there 156-158.
110 Ibid.
Genoese forum shopped their way throughout various courts in the Low Countries, including the Admiralty and the Secret Council, creating new avenues for concurrent litigation.112

Finally, a quick look at the Hanseatic merchants. They have traditionally been presented as ‘backward’ in their use of business techniques, even if this view has been challenged recently.113 Some have pointed to the complex nature of Hanseatic diplomacy, both within and outside the Hanseatic Diet.114 Indeed, diplomacy and blockades were a preferred strategy for the Hanseatic merchant community to defend their privileges, although their effect diminished when their importance in the wool trade declined.115 The various Kontore (offices) were in charge of disciplining merchants if they did not stick to the rules, even if the aldermen did not have a full-fledged jurisdictional competence like other nationes.116 The Kontore aldermen could, nonetheless, pass informal sentences. Their legal strategies remained similar throughout the centuries, namely collective sanctioning, arbitration and a reluctance to use local courts.117 Important cases were often litigated in Hamburg or Lübeck, rather than in the Low Countries. The growing professionalisation of the courts in the Low Countries did not change their legal strategies, in contrast to the Southern European nationes which adapted successfully and turned it into their advantage.

Conclusion

Castilian merchants used a wide variety of strategies to manage conflicts. Even if the Castilian consuls were indeed protective of their privileges, they almost always adopted pragmatic and opportunistic approaches in order to manage conflicts. They aimed to keep conflicts within their own community as much as possible. In Antwerp, Castilian merchants also relied on trusted compatriots for conflict resolution and management. However, when their privileges were threatened, or a member of the Castilian group was summoned to court, the consuls in Bruges threw their full weight behind the merchant in question, using forum shopping as a tool to obtain a favourable outcome. Merchants also appear to have developed a ‘legal literacy’, which gave them the tools to present different arguments at different courts, depending on the circumstances.118 Exploiting their political links to the sovereign of the Low Countries, Castilian merchants were able to use their extensive privileges to obtain favourable results at court, despite their limited participation in local social and political life. Furthermore, Iberian merchants were, more than other foreign merchant communities, willing to engage in political and legal debate in the Low Countries. Castilian merchants were successful in their lobbying efforts, as shown by the 1551 Ordonnance and the 1569 Hordenanzas. In short, they made the best of both worlds. Even if they were often not citizens in the Low Countries, they actively participated in the political debate over commercial law, lobbied municipal and central governments, while keeping their own traditional identity largely intact. This suggests that the nationes were not necessarily ‘efficient’ in dealing with conflict; rather, merchants themselves leveraged all the legal strategies at their disposal in order to bring about the favourable

112 E.g. BE-ARB, Processen in eerste aanleg, nr. 294 (02/12/1541 and 28/03/1545).
117 Ewert and Selzer, Institutions of Hanseatic trade, 29-57.
resolution of their disputes. Their strategies stemmed mostly from their social, political and economic status as foreigners.