



Political agendas and the contestable legality of privateering: the case of the Dutch-Portuguese War (1657–1662)

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The relationship between seventeenth-century European states and international privateering was complex. For the state that issued commissions to privateers in the form of ‘letters of marque’ there were a number of obvious advantages. No financial or material investments were required and the state received a set percentage of all revenues. Privateering caused direct damage to an enemy’s economy and, through loss of customs revenues, to its military potential. The losses inflicted affected the morale of the opponent’s population, which increased public pressure on its rulers and politicians to withdraw from a conflict. This was particularly the case in England and the Dutch Republic, where the large maritime sector used representative institutions to make their complaints heard. Furthermore, privateering involved peripheral regions more directly in the

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national war effort and provided work and income to areas affected by the negative effects of the war.¹ Finally, privateering provided a shared interest in the outcome of maritime warfare to people from very different social, economic and political backgrounds. This is illustrated by the fact that courtiers, politicians and government officials as well as entrepreneurs invested in private men of war.²

There were, however, also distinct disadvantages. Privatized warfare led to situations of relative lawlessness. Privatized warfare was officially regulated and entrepreneurs had to pay bail to guarantee their crew's good conduct. Yet, in reality, state control was often weak or completely absent and physical abuse, theft and corruption remained unpunished. This, and the fact that privateering meant a practical infringement on the state's monopoly of military violence, undermined its political and moral authority, at least in the perception of the victims and that of state-builders. Furthermore, there could be competition between navy boards and entrepreneurs for skilled manpower. Usually, navies could not compete with the wages paid by privateers and the lure of prize money. Governments solved this problem by putting a temporary embargo on privateering and maritime commerce until the fleet was sufficiently manned. Privateers were not happy with this measure because it provided their potential prey with time to seek shelter.³ Thus, the decision whether or not to issue letters of marque meant that conflicting interests had to be carefully assessed.

Still greater complications arose from the fact that privateering was frequently not a bilateral phenomenon. Enemy traders often sought to hide their cargoes beneath a neutral flag. This resulted in the capture of neutral vessels, which in turn led to complicated disputes before prize courts.⁴ Furthermore, as is discussed in this article, it was sometimes tempting for one of the warring parties, or both, to give out letters of marque to subjects of a formally neutral state. This third state was subsequently drawn into the conflict, if not *de jure* then, at least, *de facto*, or, as this article will demonstrate, deliberately allowed itself to become a stakeholder. The victimized party usually challenged the legality of this practice, often labelling it as a breach of neutrality or an act of piracy. Thus, the decision whether or not to encourage or allow privateering needed to be based not only on its potential effect on state interest or on the course of a bilateral

conflict, but also on its possible effects on the international political system. By presenting a remarkable case study concerning international privateering during the Dutch-Portuguese War of 1657–1662, this article aims to shed light on the highly complex interaction between states' conflicting interests, international power politics and the contestable legality of privateering. It will argue that regimes sometimes chose to exploit the absence of international consensus regarding the legality of privateering⁵ in order to pursue specific political aims. It should also be noted that no attempt will be made to discuss the organizational or operational dimensions of Dutch and Portuguese privateering, nor to assess the results or impact.

The Dutch-Portuguese War

The roots of the Dutch-Portuguese conflict can be traced back to the late sixteenth century when growing numbers of Dutch merchants began to develop an interest in the highly lucrative African, Asian and Latin American trades. The Portuguese were determined to keep potential rivals out of their colonial empire, using violence and intimidation to this end.⁶ Portugal was tied to Spain in a dynastic union, created in 1580 when the heirless King Henry was succeeded by Philip II of Spain, whose mother Isabella had been a Portuguese princess.⁷ The northern provinces of the Low Countries, known collectively as the Republic of the Seven United Netherlands, had been fighting a war of independence since approximately 1565 against the same Philip II, their Habsburg overlord, from whom they had declared their independence in 1581.⁸ Because of the union of the Iberian crowns, Portuguese colonial violence and their struggle against Spain, the Dutch felt entitled to attack Portugal's overseas possessions. The Roman Catholic faith of the Portuguese people and the Vatican's involvement in the realisation of the 1494 Treaty of Tordesillas, in which the Iberian neighbours had divided the world outside Europe between them, served as additional grounds for this aggression.⁹

From its founding in 1602 onwards, the Dutch East India Company, known by its initials VOC, systematically targeted Portuguese vessels, forts and trading posts. The VOC had been established by the States General,

the governmental body in The Hague in which all seven Dutch provinces were represented. The reason why the States General took this step was to end the fierce rivalry that existed between various smaller Dutch companies, further extending the Republic's colonial presence, maximise profits, and harm Spanish and Portuguese strategic interests. The VOC was granted delegated state powers and an official monopoly on all trade and shipping east of the Cape of Good Hope.¹⁰ During the next four decades, its much more coherent and efficient management, its higher profit margins, its superior military capacity and the strategic vision of its governors, enabled the VOC to drive the Portuguese almost completely out of the Indonesian archipelago and capture many of their other Asian trading posts.¹¹

Portugal's African and Latin American empire remained intact until the end of the so-called Twelve Years' Truce between Spain and the Dutch Republic in 1621. There had been some Dutch attempts to take over Portuguese trading posts on the African coast, but these had been largely unsuccessful. The Republic's Atlantic trade had not been organized in a chartered company because there had been no need to. Certain interest groups had opposed this monopoly and it would have conflicted with the armistice. But when the truce's expiration date approached, the States General decided to establish a West India Company (WIC) that would be able to inflict significant damage on the enemy's colonial interests.



In September 1628, a WIC-fleet commanded by Admiral Piet Hein managed to capture a Spanish treasure fleet worth an estimated 14 million guilders off the Cuban coast. Source: The Netherlands Institute of Military History.



In April 1625, a Spanish-Portuguese fleet commanded by Admiral Fadrique Álvarez de Toledo recaptured the city of Salvador de Bahia. Painting by Juan Bautista Mayo. Source: Wikipedia.

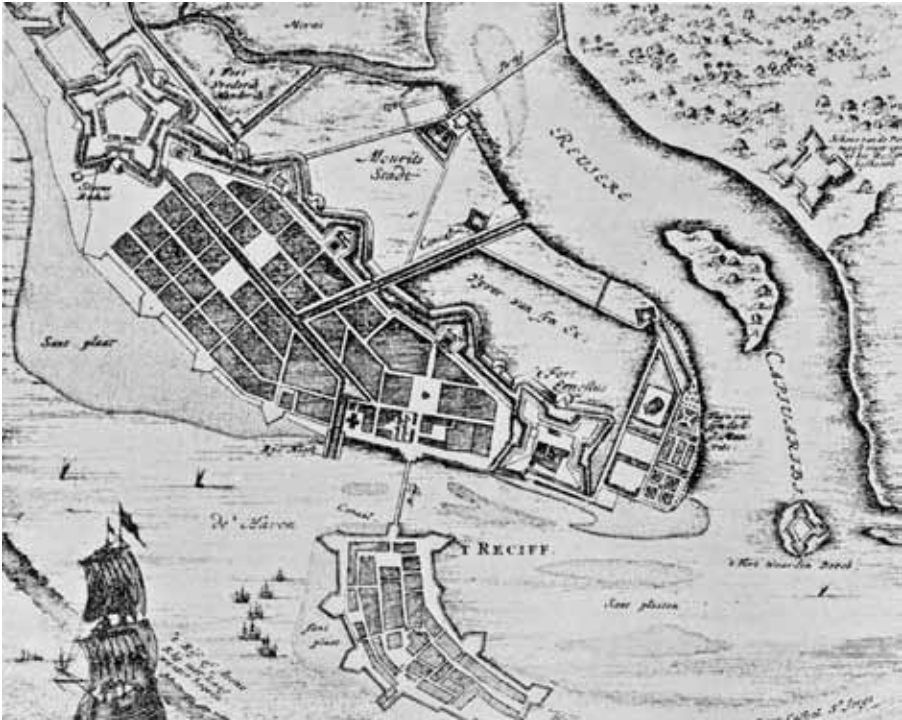
The new company was granted a monopoly that included the African trade south of the Tropic of Cancer, the Americas and the islands in the Atlantic. It was clear from the start, however, that privateering and conquest were also prominent goals.¹²

Three years after its founding, the company launched a major offensive that resulted in the capture of Salvador de Bahia, one of the key centres in the highly lucrative Brazilian sugar production. Dutch occupation did not last long, however, and the city was retaken after only eleven months. Continuing its campaign against the Spanish and Portuguese, the WIC intercepted dozens of trading vessels in 1626 and 1627. The following year,

a WIC-fleet under the command of Admiral Piet Hein succeeded in taking a large part of the annual *Flota de Indias*, the famous Spanish treasure fleet off the Cuban coast. Two years later, its revenue, an estimated 14 million guilders, was used to launch yet another major attack on Portuguese Brazil, this time against the region of Pernambuco. The Dutch took its capital city Recife and spent the next years consolidating their grip over the sugar-producing hinterland. Slave labour was required to operate the plantations and sugar mills and so, in 1637, the Portuguese-held slave station at Elmina in present-day Ghana was captured. During the next five years the WIC completed its conquest of Portugal's remaining possessions on Africa's Atlantic coast. The last slave station to fall in 1642 was Axim, also in present-day Ghana.¹³

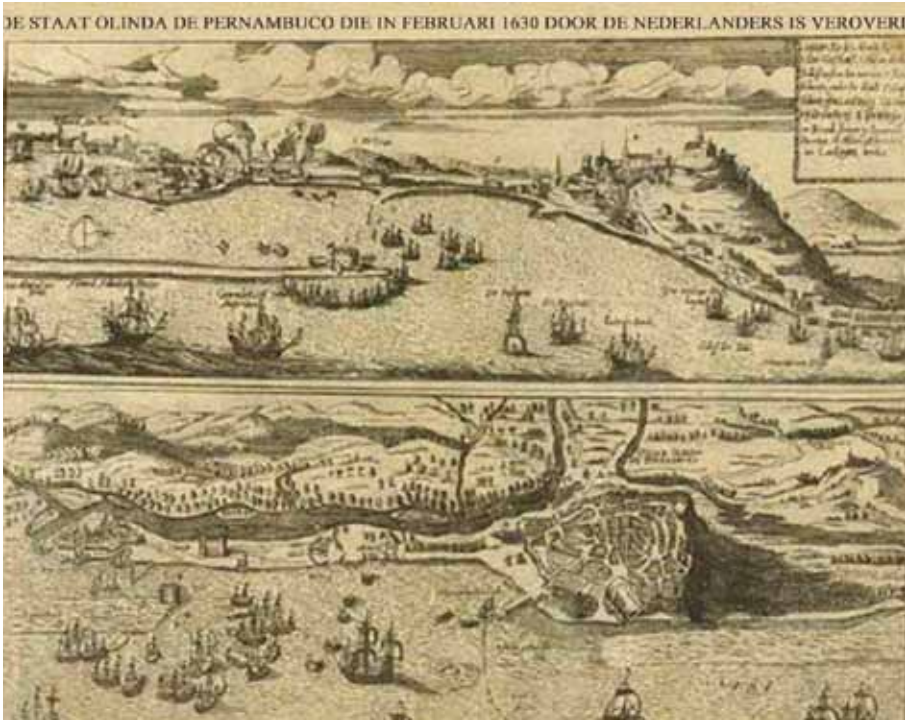
Two years earlier, in December 1640, the Portuguese nobility and bourgeoisie instigated a revolt against the House of Habsburg. Independence was declared and John, 8th Duke of Braganza, was crowned King John IV. The Republic and Portugal now shared Spain as a common enemy, while the formal motivation for Dutch colonial aggression had ceased to exist. Portugal, its military and political position still precarious, was anxious to gain support against Spain and international recognition of its new independence. Lacking the military power to reconquer its colonies, Lisbon sent an embassy to The Hague to negotiate a truce and request their return. In this way the colonial dispute was formally frozen and left to be decided at some moment in the future, either at the negotiating table or on the battlefield. Both states could now concentrate on their conflict with Spain and establish mutually beneficial trading connections. Despite opposition from the VOC and the WIC, a ten-year truce was signed in June 1641.¹⁴

Already in 1641, the Portuguese began to make plans to recapture Brazil as it had become clear that future diplomatic negotiations would not bear fruit and because the WIC was much weaker than the VOC in Asia. In 1644, John IV ordered that a revolt be instigated among the Portuguese inhabitants of the Dutch-held Brazilian territories. The rebellion broke out the following year.¹⁵ As the Portuguese government had already anticipated, the overstretched WIC lacked the military capacity to bring an end to the rebellion. The Dutch company gained the support of certain indige-



Dutch map of the city of Recife. Source: The Netherlands Institute of Military History.

nous tribes and on some occasions resorted to extreme violence. However, being less accustomed to ruthless jungle warfare than the Portuguese and their indigenous allies, and without sufficient reinforcements from Europe, it suffered defeat in most encounters and gradually lost the war. The fact that the Dutch Republic became involved in a crippling sea war against England in 1652 proved decisive. With the Dutch navy unable to send reinforcements, the WIC finally lost control over Recife two years later. The Dutch presence in Brazil thus came to an end.¹⁶ The company and its investors, furious about what they hypocritically perceived to be a breach of the 1641 truce, pressed the States General to force Portugal to return Brazil.¹⁷ In October 1657, after three years of fruitless negotiations about restitution or compensation, the States General finally decided to declare war.¹⁸



Dutch etching of Olinda, the capital city of Pernambuco. Source: Wikipedia.

Privateering as an implicit threat and a tool of leverage

The following month, a Dutch squadron that had been sent to blockade the Tagus Estuary intercepted fourteen homebound sugar vessels in a gunboat-diplomacy-like attempt to bring Lisbon to heel. In the following years, Dutch men of war continued to patrol Iberian waters, disrupting Portuguese trade and fishing as much as possible.¹⁹ Meanwhile, the VOC continued its ferocious campaign against Portugal's Asian empire. The company's aim was to complete the conquest of Ceylon and India's Coromandel and Malabar Coasts.²⁰ There was very little Portugal could do to stop Dutch squadrons from disrupting its maritime trade or to prevent the systematic destruction of its Asian empire. Still involved in a life-or-death struggle with Spain, Portugal lacked the naval capacity to confront

Dutch military power either in home waters or in Asia.²¹ Instead, Lisbon resorted to a two-pronged strategy, which comprised seeking political and diplomatic support from France, and particularly from England, on the one hand, and privateering on the other.²²

The Republic may not have been vulnerable from a naval point of view, at least not against Portugal, but its huge maritime economy certainly was, something Lisbon was well aware of. Privateering, after all, had been a crucial aspect of Spain's maritime

strategy during the Dutch Revolt. The capture of thousands of vessels by privateers from Spanish-held Flanders had inflicted immense damage on the Republic's overseas trade and fishing industry. Also, this strategy had forced the United Provinces to devote a significant part of their resources to convoys and naval blockades.²³ As Portugal had no significant privateering community of its own, Lisbon gave out letters of marque to English and French entrepreneurs.²⁴

Privateers from Brittany, Normandy, Southern and Eastern England and the Channel Islands eagerly accepted these commissions, which provided an attractive opportunity to pounce upon a numerous as well as lucrative



In 1657, Admiral Jacob van Wassenaer Obdam was instructed to blockade the Tagus Estuary. Source: The Netherlands Institute of Military History.

prey.²⁵ After Cromwell's 'New Model Army', together with French troops, conquered Dunkirk in June 1658, a significant part of the privateering potential of the 'Algiers of the North', as the city has been called²⁶, was also mobilized against Dutch shipping.²⁷

The French government chose to ignore the legally contestable fact that its subjects were being employed in a foreign state's campaign against a country France was officially at peace with. This policy may have been motivated by anger about the Dutch-Spanish peace treaty of 1648. France and the United Provinces had long been allies against Spain, but the States General had chosen to desert the alliance while France remained at war. Probably more important, however, was the fact that neutral Dutch vessels were currently being used to supply the Spanish with whatever they required, including arms and ammunition produced in the United Provinces.²⁸

England was deliberately showing the United Provinces its teeth. Lord Protector Oliver Cromwell, England's head of state between December 1653 and September 1658, could have simply forbidden English subjects to accept Portuguese commissions, but instead he chose to create a juridical, political and even quasi-military dispute with the Dutch. There were several reasons for this aggressive line of policy. The first was the bitter economic rivalry that existed between England and the United Provinces. Merchants and companies from both countries competed for every major trade both in and outside Europe, while the large Dutch herring fleet operated in what the English perceived as their own territorial waters. The Dutch textile industry made large profits by processing and re-exporting English raw wool, despite English attempts to protect its own textile trade by forbidding this.²⁹

The First Anglo-Dutch War had only ended three years earlier, in 1654, with an English victory. The main provisions of the peace treaty included formal recognition of the Act of Navigation. This forbade imports of foreign goods in Dutch ships and was the cornerstone of English mercantile legislation, the flag salute due to English men of war, and a secret promise made by the States of the province of Holland to exclude Prince William III of Orange from all political and military functions, thus gratifying republican sentiments in both countries.³⁰ Despite, or perhaps because of,

its relative mildness, it resolved none of the economic issues and Anglo-Dutch economic rivalry, therefore, remained as sharp as it had been just prior to the war.

A second reason was that Dutch naval power was rapidly recovering from the damage it had sustained during the war and was now being employed not only against Portugal, but also to interfere in the Baltic, where Swedish expansionism threatened to harm the Republic's economic and maritime interests.³¹ Permitting privateers to use Portuguese letters of marque was an obvious assertion of England's traditional claim of maritime sovereignty and a clear warning to the Dutch not to become overconfident about their regained naval strength. Thirdly, England had for some years, been pulling Portugal into its own political sphere of interest, mainly to ensure that Lisbon would not again side with the Royalists, as it had done between 1649 and 1650. Cromwell supported Portugal in its struggle against Spain, the state he perceived to be the champion of international Catholicism and with ambitions to establish a universal monarchy. In 1655, England had launched an attack against Spain's colonial empire in the West Indies.³² Dutch merchants benefitted from this conflict not only by selling weapons and ammunition to the Spanish, but by moving into trades previously dominated by English merchants, as well.³³ Furthermore, entrepreneurs from Zeeland, a province with a strong privateering culture³⁴, ignored prohibitions issued by the States General against accepting Spanish commissions and were operating against English shipping.³⁵ From this perspective, England was only returning the favour. Despite the Protectorate's shortage of money, the motives for this were predominantly political, reflecting Cromwell's relative indifference to economic arguments.

In January 1658, as English privateers began bringing in Dutch vessels, George Downing, Cromwell's Resident to the Dutch Republic, arrived in The Hague. Downing was instructed to help reach a peaceful settlement in the Baltic and offer his mediation in the Dutch-Portuguese conflict. There were several reasons for this. Firstly, Cromwell understood that the ports of his ally provided a valuable base from which English naval power could operate into the Mediterranean and harass Spanish shipping. The annual *Flota de Indias* was particularly vulnerable during its crossing of the Atlantic. Secondly, the VOC had resumed its offensive in Asia. Surely it was

only a matter of time before the Dutch company would conquer Portugal's remaining possessions? The VOC would grow stronger still, leaving the English East India Company only the crumbs. Furthermore, the Portuguese, desperate to cling to their colonial assets, would be prepared to offer the Dutch very favourable trading privileges, equal to those English negotiators had managed to obtain in their own treaty negotiations four years earlier. Thus, Downing was to mediate between the belligerents in order to assert England's political influence over Portugal and guard its own economic interests against Dutch expansion.³⁶ Cromwell's strategy was that of stick and carrot: Downing would display England's constructive diplomatic benevolence, while at the same time the privateering campaign contained an inherent military threat against the Dutch Republic.

The expropriation of Portugal's privateering campaign by proxy

French and English privateering had a serious impact on the United Provinces. Investors lost money as ships and goods were confiscated and sailors temporarily lost their freedom. The States of Holland and the States General were petitioned by furious applicants who demanded that forceful measures be taken against the privateers or that restitution or compensation be obtained via diplomatic channels.³⁷

The impact, however, was not severe enough to outweigh the obvious advantages the Portuguese war brought to other Dutch interests. The VOC was systematically breaking down the remainder of Portugal's Asian empire, completing the conquest of Ceylon in 1658, followed the next year by the capture of Negapatnam on the Coromandel Coast.³⁸ At the same time, privateers from Zeeland under the flag of the WIC were bringing in richly laden Portuguese merchantmen.³⁹ This is not to suggest that Dutch foreign policy was the rational and coherent product of a cold and rational calculation. On the contrary, the decentralized structure of the Republic's governmental system tended to encourage political power games between the provinces of Zeeland and Holland, and also within the latter province, about the continuation of the war.⁴⁰ Some provinces, particularly

Zeeland, refused to settle for anything less than the return of Brazil, whereas Holland's regents were inclined to accept heavy cash compensation and trading privileges. Dutch foreign policy was thus characterized by ambivalence.⁴¹

This put Portugal's ambassador, Dom Fernando Telles de Faro, who had arrived in The Hague in July 1658, in a difficult position. Portugal needed to end the Dutch war in order to concentrate on its struggle with Spain, while simultaneously retaining some of its Asian possessions.⁴² Returning Brazil to the United Provinces was absolutely out of the question, because the Portuguese state would not be able to sustain itself without the colonial revenue. De Faro could therefore offer the States General only a huge financial compensation and generous trading privileges. His position was further complicated by his instruction to cooperate closely with Downing, as England's political support was indispensable to Portugal. Downing, the future godfather of English mercantilism, pressured De Faro not to yield to the trading privileges the Dutch demanded.⁴³ As De Faro had little else to offer than the promise of future payment, the destruction of Portugal's empire continued, and so did English and French privateering.⁴⁴

Two major changes in European politics, namely Charles II's Restoration in May 1660 and Louis XIV's assumption of personal rule upon Cardinal Mazarin's death in March 1661, thwarted Portugal's privateering strategy and, paradoxically, even reversed its impact. Aiming to conclude a defensive treaty with the United Provinces, the Sun King quickly brought an end to anti-Dutch privateering from French ports.⁴⁵ Charles II, who had received some assistance from Madrid during his exile on the Continent, immediately ended the crippling and highly unpopular war against Spain. Hoping to obtain cheap loans from the Dutch, he also agreed to enter negotiations with the States General about a defensive alliance.

However, Anglo-Dutch relations soon deteriorated again because English mercantile interest groups demanded new protectionist policies and a tougher attitude towards perceived Dutch maliciousness.⁴⁶ Charles, looking to strengthen his domestic power base and pondering the state of his finances, decided to swim with the mercantilist, anti-Dutch tide. He permitted Parliament to pass a renewed and strengthened Act of Navigation⁴⁷ and also allowed English privateers to continue harassing Dutch maritime

trade. Complaints from the Dutch embassy were first met with feigned ignorance, then with half-hearted promises that English privateering would be ended, followed by the pseudo-legal claim that these practises were in no way a violation of international legal custom and, finally, with the cynical remark that they would only be stopped when the Dutch would yield on specific points.⁴⁸ The Portuguese privateering campaign by proxy thus became a tool of English foreign policy.

Still at war with Spain, and involved in complicated negotiations with the United Provinces, Lisbon aimed to strengthen its ties with England by means of a marriage between Charles II and Catherine of Braganza, sister to King Afonso VI.⁴⁹ Downing, who had sided with the restored monarchy in May 1660 and had received a knighthood in reward, was now serving as the king's representative to the United Provinces. He used Lisbon's hopes of an English alliance to exercise influence over its new ambassador in The Hague, Dom Henrique de Sousa de Tavares, Count de Miranda, to accept English mediation in the ongoing peace talks. The Dutch too, had to endure Downing's mediation because refusal would be detrimental to their relations with England. In reality, Downing's 'mediation' amounted to little less than outright sabotage of the peace negotiations. While worried about Dutch progress in Asia, Charles and his ministers believed a Dutch-Portuguese peace agreement would endanger the wedding negotiations. Downing kept De Miranda under constant supervision to ensure that he and Johan de Witt, the *de facto* political leader of the Dutch Republic, could hardly ever negotiate in private. Also, Downing strove to exploit the disunity among the Dutch provinces and resorted to delaying tactics. The English ambassador suffered a major defeat, however, when De Witt outmanoeuvred him in August 1661 by presenting De Miranda with a deadline to sign the peace treaty. The Portuguese ambassador would be expelled if he failed to sign the agreement within ten days. Relieved by De Witt's trick, De Miranda signed.⁵⁰ The Dutch formally recognised Portugal's sovereignty over Brazil in exchange for trading privileges and four million *cruzeros*, to be paid over a period of sixteen years. However, from Downing's perspective the game was not yet completely lost as the agreement had still to be ratified, and Zeeland and Gelderland continued to oppose the peace.⁵¹

The ratification process proved no less difficult than the actual conclusion of the treaty. Lisbon dared do nothing that could put the wedding negotiations at risk, while the Dutch would settle for nothing less than what had been agreed to in the treaty. Whitehall disagreed about the trading privileges, but simultaneously feared that resumed hostilities would allow the VOC to complete its sequestration of Portugal's Asian empire.⁵² This would be detrimental to English colonial interests, as Bombay was part of Catherine's dowry. The dreaded prospect of Dutch hegemony in Asia proved only too realistic, as the VOC indeed benefitted from the diplomatic stalemate to concentrate its military might on India's Malabar Coast.⁵³ Meanwhile, Anglo-Dutch relations had deteriorated to the point where Charles blatantly refused to end English and Dunkirk privateering. In February 1662, De Miranda, understanding that the continuation of English privatized warfare with Portuguese letters of marque was only harming Lisbon's interests as it obstructed the ratification and would inevitably lead to the further destruction of the Asian empire, publicly declared all commissions void. Also, he requested Lord Rutherford, the governor of Dunkirk, to put a stop to local privateering. His plea was conveniently ignored.⁵⁴ The Portuguese privateering campaign by proxy had thus been expropriated by Portugal's only ally, who abused it to settle some scores with and exert political pressure on the Dutch Republic, while completely ignoring Portugal's strategic interests.

The affair finally came to an end in September 1662 when the United Provinces and England concluded their long negotiations for a friendship treaty. This agreement did not conceal the deterioration of mutual relations over the past two years nor would it prevent the outbreak of war two-and-half years later, but at least it meant a temporary *détente*.⁵⁵ It was no longer in England's interest to obstruct the Dutch-Portuguese peace because the royal marriage had been validated according to the Protestant rite in May 1662 and further delay would only benefit the VOC. The States General finally ratified it in November 1662, and the signed documents were exchanged the following month.⁵⁶

Conclusions

Lacking the brute naval power needed to confront the fleet of the United Provinces in open battle or to prevent the systematic destruction of its Asian empire, Portugal opted to mobilize the privateering capacity of England and France against the Dutch maritime economy. France allowed this practise to continue until Louis XIV finally decided that a pro-Dutch policy would be more beneficial to his agenda. Cromwell cared little about the financial gains made from English privateering with Portuguese commissions, or about the employment it created, but considered it a useful tool to check the recent Dutch naval resurrection and enhance Portugal's dependence upon England. The Lord Protector's aims were obviously geo-strategic in nature. Charles II's foreign policy vacillated between two options, but eventually, swimming with the predominant mercantilist tide, he employed Portugal's privateering by proxy to put pressure on the United Provinces. He was prepared to overlook the fact that this policy was detrimental to the interests of his ally and new brother-in-law.

Portugal's privateering campaign created a political dilemma within the Dutch Republic. The damage was felt most in Holland, but VOC shareholders from this same province profited from the war and so did Zeeland's privateering community. The decentralized structure of the Republic's governmental bodies made it difficult to formulate a unanimously agreed policy on the Portuguese-Brazilian issue. Obviously, this ambivalence complicated diplomatic negotiations. The fact that Zeeland continued to oppose a peace agreement after Holland's opposition had been won over was symptomatic of the continuous and ultimately insoluble tug-of-war between the political centre and the periphery in the Dutch Republic. The same went for privateering at large – while Holland was often careful when it came to issuing letters of marque, Zeeland was usually willing to do so.⁵⁷ In their decision-making with regard to privateering, early-modern European states usually assessed the various interests at stake before deciding whether or not to issue letters of marque. However, the international context in which privateering campaigns were launched sometimes proved more volatile than those in charge had anticipated, as was aptly demonstrated when the Portuguese campaign back-fired. The

dynamics of seventeenth-century international politics contributed significantly to the uncontrollable nature of privateering, and the juridical and political dilemmas attached to privateering at least partly originated from this. Conversely, and more obviously perhaps, private warfare contributed to the changeable character of international power politics, as was demonstrated by Charles II's manipulative policy to mobilize 'Portuguese' privateers against the United Provinces, while simultaneously negotiating a friendship treaty with the States General. Finally, Charles's attitude clearly shows how regimes could opt to exploit and thus strengthen the contestability of the legality of privateering in order to pursue specific political or strategic agendas.

Sammanfattning

Genom att presentera en fallstudie om internationell kaperiverksamhet under holländsk-portugisiska kriget 1657–1662, syftar denna artikel till att belysa samspelet mellan staternas motstridiga intressen, den internationell politiken och den omtvistade legaliteten rörande kaperi. I artikeln hävdas att regimer ibland valde att utnyttja frånvaron av internationell konsensus beträffande lagligheten av kaperi för politiska syften. Eftersom Portugal saknade den kraft som behövdes för att möta den nederländska flottan i strid eller att förhindra förstörelsen av det egna asiatiska imperiet, försökte landet nyttja engelska och franska kapare gentemot holländarna.

Frankrike tillät denna verksamhet tills Ludvig XIV insåg att en pro-nederländsk politik var mer fördelaktigt. Cromwell, å sin sida, såg kaperi som ett användbart verktyg för att kontrollera den holländska flottans nyligen ökade inflytande. Karl II:s utrikespolitik vacklade mellan två inriktningar, men han nyttjade till slut, genom ombud, Portugals kaperiverksamhet för att sätta press på Republiken Förenade Nederländerna.

Efter att holländarna och portugiserna nått ett fredsavtal, fortsatte Karl att mobilisera "portugisiska" kapare mot Republiken, samtidigt som han förhandlade fram ett vänskapsfördrag med Generalstaterna, Nederländernas lagstiftande församling. Detta tillvägagångssätt visar tydligt hur regimer kan utnyttja, och därmed stärka, lagligheten av kaperi för att tjäna vissa politiska eller strategiska målsättningar.

Notes

¹ An earlier version of this article was given as a paper at the *Conference on persistent piracy. Historical perspectives on maritime violence and state formation*, held at the Utrikespolitiska Institutet in Stockholm, 3–5 May 2012. David Davies, Roger Downing, Simon Groenveld and Andrew Little were kind enough to help me with their comments and advice. Any shortcomings are of course entirely my own.

Patrick Villiers, *Les corsairs du littoral. Dunkerque, Calais, Boulogne, de Philippe II à Louis XIV (1568–1713)* (Villeneuve d'Ascq 2000), pp. 14–18; Ivo van Loo, 'Kaa-pvaart, handel en staatsbelang. Het gebruik van kaa-pvaart als maritiem machtsmiddel en vorm van ondernemerschap tijdens de Nederlandse Opstand, 1568–1648', in Clé Lesger and Leo Noordegraaf (eds.), *Ondernemers en bestuurders. Economie en politiek in de Noordelijke Nederlanden in de late middeleeuwen en vroegmoderne tijd* (Amsterdam 1999), pp. 349–368; Louis Sicking, 'State and non-state violence at sea: privateering in the Habsburg Netherlands', in David Starkey and Morten Hahn-Pedersen (eds.), *Bridging troubled waters. Conflict and co-operation in the North Sea region since 1550* (Esbjerg 2005), pp. 31–43; Adri van Vliet, 'Privateering as an instrument of economic and naval warfare in Flanders, Zeeland and Holland, 1568–1697', in David Starkey and Morten Hahn-Pedersen (eds.), *Bridging troubled waters. Conflict and co-operation in the North Sea region since 1550* (Esbjerg 2005), pp. 45–57; Bryan Mabee, 'Pirates, privateers and the political economy of private violence', in: *Global Change, Peace and Security* 21 (2009), pp. 139–152; Michael Braddick, *State formation in early modern England, 1550–1700* (Cambridge 2000), pp. 205–208; Steve Murdoch, *The terror of the seas? Scottish maritime warfare, 1513–1713* (Leiden 2010), p. 326; Roberto Barazzutti, 'Pour une histoire économique et sociale de la course zéelandaise et de son impact sur l'économie locale de 1672 au début de la décennie 1720', in *La Revue d'Histoire Maritime*, forthcoming.

² David Davies, *Pepys's navy. Ships, men & warfare 1649–1689* (Barnsley 2008), pp. 119–120.

³ Marjolein 't Hart, 'Kaa-pvaart en staatsmacht. Dilemma's van de geprivati-seerde oorlogsvoering op zee', in: *De Zeventiende Eeuw* 13 (1997), pp. 424–437; Johan van Niekerk, *The developments of the principles of insurance law in The Netherlands from 1500 to 1800* (2 vols) (Johannesburg 1998), I, pp. 395–402; Janice Thompson, *Merce-naries, pirates & sovereigns. State-building and extra-territorial violence in early modern Europe* (Princeton 1994), pp. 22–25 and 69–76.

⁴ See, for example Steve Murdoch, Andrew Little and Angelo Forte, 'Scottish privateering, Swedish neutrality and prize law in the Third Anglo-Dutch War, 1672–1674', *Forum Navale*, No. 59 (2003), pp. 37–65.

⁵ See on the lack of international consensus regarding maritime legalities and the treatment of piracy: Lauren Benton, 'Towards a new legal history of piracy: maritime legalities and the myth of universal jurisdiction', *International Journal of Maritime History*, 23 (2011), pp. 225–240.

⁶ George Winius, 'Luso-Nederlandse rivaliteit in Azië', in Gerrit Knaap and Ger Teitler (eds.), *De Verenigde Oost-Indische Compagnie tussen oorlog en diplomatie* (Leiden 2002), pp. 108–111; Jur van Goor, *De Nederlandse koloniën. Geschiedenis van de Nederlandse expansie 1600–1975* (Bilthoven 1994), p. 21.

⁷ Charles Boxer, *The Portuguese seaborne empire 1415–1825* (London 1969), p. 107.

⁸ See on this subject: Simon Groenveld a.o., *De Tachtigjarige Oorlog. De Opstand in de Nederlanden (ca. 1560–1650)* (Zutphen 2008).

⁹ Boxer, *The Portuguese seaborne empire*, pp. 106–109.

¹⁰ Victor Enthoven, 'Van steunpilaar tot blok aan het been. De Verenigde Oost-Indische Compagnie en de Unie', in Gerrit Knaap and Ger Teitler (eds.), *De Verenigde Oost-Indische Compagnie tussen oorlog en diplomatie* (Leiden 2002), pp. 35–58.

¹¹ Winius, 'Luso-Nederlandse rivaliteit in Azië', pp. 105–130; Boxer, *The Portuguese seaborne empire*, pp. 109–119.

¹² There has been debate among two Dutch historians about the true purposes of the WIC. See: W.J. van Hoboken, 'De West-Indische Compagnie en de Vrede van Munster', in *Tijdschrift voor Geschiedenis* 70 (1957), pp. 359–368; and J.G. van Dillen, 'De West-Indische Compagnie, het calvinisme en de politiek', *Tijdschrift voor Geschiedenis* 74 (1961), pp. 145–171; W.J. van Hoboken, 'Een wederwoord inzake de Westindische Compagnie', *Tijdschrift voor Geschiedenis* 75 (1962), pp. 49–53; J.G. van Dillen, 'Naschrift bij voorgaand artikel', *Tijdschrift voor Geschiedenis* 75 (1962), pp. 53–56. For more recent interpretations, see: Van Goor, *De Nederlandse koloniën*, pp. 37–40 and 59–66; Henk den Heijer, *De geschiedenis van de WIC* (Zutphen 1994), pp. 30–31

¹³ Van Goor, *De Nederlandse koloniën*, pp. 61–62; Christopher Ebert, *Between empires: Brazilian sugar in the early Atlantic economy 1550–1630* (Leiden 2008), p. 60 and 154; Johannes Postma, *The Dutch in the Atlantic slave trade 1600–1815* (Cambridge 1990), pp. 17–19; Boxer, *The Portuguese seaborne empire*, 109–113.

¹⁴ Evaldo Cabral de Mello, *De Braziliaanse affaire. Portugal, de Republiek der Verenigde Nederlanden, 1641–1669* (Zutphen 2005), pp. 22–26.

¹⁵ Cabral de Mello, *De Braziliaanse affaire*, pp. 26–35 and 45–46.

¹⁶ Boxer, *The Portuguese seaborne empire*, pp. 109–122.

¹⁷ The WIC-lobby had been pressing the States General to provide naval assistance. See, for example: *Remonstrantie, Van de hooft-participanten, ende geintresseerde vande West-Indische Compagnie, aen alle regenten des Vaderlandts: versoeckende een spoedighe effectieve assistentie, tot meynentue van de selfde, teghen alle de ghene diese soecken te dissolveren en te ruyneren* (1649).

¹⁸ Cabral de Mello, *De Braziliaanse affaire*, pp. 117–137; Boxer, *The Portuguese seaborne empire*, pp. 112–120.

¹⁹ Ronald Prud'homme van Reine, *Rechterhand van Nederland. Biografie van Michiel Adriaenszoon de Ruyter* (Amsterdam/Antwerp 1996), pp. 101–102; Jaap Bruijn, *The Dutch navy of the seventeenth and eighteenth centuries* (updated edition, St. John's, Newfoundland, 2011), pp. 72–73.

²⁰ Hugo s'Jacob, 'Rijcklof Volckertsz van Goens, 1619–1682. Kind van de Compagnie, diplomaat en krijgsman' in Gerrit Knaap and Ger Teitler (eds.), *De Verenigde Oost-Indische Compagnie tussen oorlog en diplomatie* (Leiden 2002), pp. 131–149.

²¹ Boxer, *The Portuguese seaborne empire*, pp. 119–120.

²² Gijs Rommelse, 'Ondertusschen continueeren de caepers in hare roverijen. De Republiek, Duinkerken en de dynaniek van de internationale kaapvaart, 1658–1662' in Pieter Wagenaar and Maurits Ebben (eds.), *De cirkel doorbroken. Met nieuwe ideeën terug naar de bronnen. Opstellen over de Republiek* (Leiden 2006), pp. 150–151; J.A.K. Haas, 'Demasqué van een ambassadeur. De Haagse ambassade van Dom Fernando Telles de Faro, 1658–1659', in *Bijdragen en Mededelingen betreffende de Geschiedenis der Nederlanden* 99 (1984), p. 378.

²³ Roland Baetens, 'The organization and effect of Flemish privateering in the seventeenth-century', *Acta Historiae Neerlandicae* IX (1976), pp. 48–75; Adri van Vliet, 'The influence of Dunkirk privateering on the North Sea (herring)fishery during the years 1580–1650', in Juliette Roding and Lex Heerma van Vos (eds.), *The North Sea and culture in early modern history (1550–1800)* (Hilversum 1996), pp. 150–165; Robert Stradling, *The Armada of Flanders. Spanish maritime policy and European war, 1568–1668* (Cambridge 1992).

²⁴ Cabral de Mello, *De Braziliaanse affaire*, pp. 156–157.

²⁵ England had a long privateering tradition. Moreover, its geographic location was ideal to operate against Dutch shipping, as had been demonstrated during the English Civil Wars, when many Dutch vessels had been captured by both Royalists and Parlia-

mentarians, and during the First Anglo-Dutch War from 1652 to 1654, when English privateers had seized anywhere between 1 250 and 1 500 prizes. See: Simon Groenveld, *Verlopend getij. De Nederlandse Republiek en de Engelse burgeroorlog 1640–1646* (Dieren 1984); idem, 'The English Civil Wars as a cause of the First Anglo-Dutch War, 1640–1652', *English Historical Review* 30 (1987), pp. 541–566; Ralph Davis, *The rise of the English shipping industry in the seventeenth and eighteenth centuries* (London 1972), p. 51.

²⁶ Peter H. Wilson, *The Thirty Years War. Europe's tragedy* (London 2009), p. 367; Robert Stradling, 'The Spanish Dunkirkers, 1621–1648. A record of plunder and destruction', *Tijdschrift voor Geschiedenis* 93 (1980), p. 542.

²⁷ Downing to Thurloe, The Hague, 19–7–1658, in Thomas Birch (ed.), *Thurloe State Papers*, VII, 1658–1660 (London 1742), pp. 251–253. Following the capture of Dunkirk in 1658 some twenty privateers moved to Ostend. See on this: Reinoud Magosse, *Al die willen te kap'ren varen: de Oostende kaapvaart tijdens de Spaanse Successieoorlog (1702–1713)* (Ostend 1999), p. 35.

²⁸ Francesco Giavarina to the Doge and Senate of Venice 4–8–1656, in A.B. Hinds (ed.), *Calendar of State Papers, Venetian Series XXX*, 1655–1656, pp. 247–249; Cabral de Mello, *De Braziliaanse affaire*, p. 134.

²⁹ Jonathan Israel, 'England's mercantilist response to Dutch world trade primacy, 1647–1674', in Simon Groenveld and Michael Wintle (eds.), *State and government: government and the economy in Britain and the Netherlands since the Middle Ages* (Zutphen 1992), pp. 50–61.

³⁰ James Jones, *The Anglo-Dutch wars of the seventeenth century* (New York 1996), pp. 136–144.

³¹ Bruijn, *The Dutch navy of the seventeenth and eighteenth centuries*, pp. 64–72; Prud'homme van Reine, *Rechterhand van Nederland*, pp. 105–114.

³² Bernard Capp, *Cromwell's navy. The fleet and the English Revolution 1648–1660* (Oxford 1989), 87–88; Richard Stradling, *Europe and the decline of Spain. A study of the Spanish system, 1580–1720* (London 1981), pp. 124–139.

³³ 'The war between the two countries is a goldmine to them [the Dutch], since at present they monopolise all that trade, bringing to England all the fruits etc. from Spain, which cannot come in English ships.' Francesco Giavarina to the Doge and Senate of Venice, 13 December 1658, in *Calendar of State Papers, Venetian Series XXXI*, 1657–1659, pp. 269–271. See also: E. Malcolm Hause, *Puritan mercantilism. English foreign*

policy during the Protectorate of Richard Cromwell (Moscow, Idaho, 1977), p. 3; Stradling, *Europe and the decline of Spain*, pp. 159–168.

³⁴ Ivo van Loo, 'For freedom and fortune. The rise of Dutch privateering during the First half of the Dutch Revolt, 1568–1609', in Marco van der Hoeven (ed.), *Exercise of arms. Warfare in the Netherlands, 1568–1648* (Leiden 1997), pp. 173–195; Franz Binder, 'Die Zeeländische Kaperfahrt, 1654–1662', in *Mededelingen van het Koninklijk Zeeuwsch Genootschap der Wetenschappen* (Middelburg 1976), pp. 44–69; Johan Francke, *Utiliteyt voor de gemeene saake. De Zeeuwse commissievaart en haar achterban tijdens de Negenjarige Oorlog, 1688–1697* (Middelburg 2001).

³⁵ Sir George Downing to John Thurloe October 1658, in Birch (ed.), *Thurloe State Papers*, VII, 1658–1660 (London 1742), p. 431; Giavarina to the Doge and Senate of Venice, 9 March 1657, in Hinds (ed.), *Calendar of State Papers, Venetian Series XXXI*, 1657–1659 (London 1931), pp. 3–26; Henry Coventry to Edward Hyde 28 December 1658, in F.J. Routledge (ed.), *Calendar of Clarendon State Papers*, IV (Oxford 1932), p. 125; Charles Longford to the Admiralty Commissioners 25 April 1659, in M.A. Everett Green (ed.), *Calendar of State Papers Domestic, Interregnum Series XII*, 1658–1659 (London 1885), pp. 333–334; The Netherlands National Archives [NNA], States General, Resolution of the States General, 7 December 1661. See also: Capp, *Cromwell's navy*, pp. 91 and 101–104; Malcolm Hause, *Puritan mercantilism*, pp. 9–19.

³⁶ Roger Downing and Gijs Rommelse, *A fearful gentleman. Sir George Downing in The Hague 1658–1672* (Hilversum 2011), p. 55.

³⁷ NNA, States General, Secrete Kas Frankrijk, Boreel to Louis XIV, 6–1–1660; Secrete Kas Engeland, Nieupoort to the States General, 13–2–1660, 20–2–1660, 19–3–1660 and 30–4–1660; Secret Resolutions of the States General, 18–6–1659; British National Archives [BNA], State Papers 84/163 f. 1a, Willem Nieupoort to the Council of State, 1660; M.A.E. Green (ed.) *Council of State Papers, Domestic Series*, Interregnum 1659–1660 (London 1886), 352, Council of state to the Commissioners of the Customs, 19–2–1660.

³⁸ s' Jacob, 'Rijklof Volckertsz van Goens', pp. 141–145; Winius, 'Luso-Nederlandse rivaliteit in Azië', pp. 126–128; Boxer, *The Portuguese seaborne empire*, pp. 110–111.

³⁹ Jonathan Israel, *The Dutch Republic. Its rise, greatness and fall, 1477–1806* (Oxford 1995), pp. 738 and 757–758.

⁴⁰ This was not the first time Holland and Zeeland collided over the WIC-interests in Brazil. See for example: *Brasyls schuyt-praetjen, ghehouden tusschen een officier, een*

domine, en een coopman, noopende den state van Brasyl: mede hoe de officieren en soldaten tegenwoordich aldaer ghetracteert werden, en hoe men placht te leven ten tyde van doen de Portogysen noch onder het onverdraeghlijck iock der Hollanders saten (1649); *De Zeeuw-sche verre-kyker* (Flushing 1649).

⁴¹ Cabral de Mello, *De Braziliaanse affaire*, pp. 139–141 and 157; Downing and Rommelse, *A fearful gentleman*, p. 56.

⁴² Haas, 'Demasqué van een ambassadeur', p. 379.

⁴³ Cf. Haas, 'Demasqué van een ambassadeur', pp. 382–383.

⁴⁴ Haas, 'Demasqué van een ambassadeur', explains that Telles de Farro deliberately botched his mission because of his secret loyalty to Philip IV of Spain. Telles de Farro subsequently betrayed Portugal in 1659 and fled to Spain.

⁴⁵ NNA, States General, Resolutions of the States General, 14–1–1661; Lias Frankrijk, Dutch embassy to the States General 8–4–1661 and 5–1–1662; Lias Engeland, Dutch embassy to the States General, 5–8–1661

⁴⁶ Jones, *Anglo-Dutch wars*, pp. 88–92 and 145–155.

⁴⁷ L.A. Harper, *The English navigation laws* (New York 1939), pp. 87–88 and 281.

⁴⁸ NNA, States General, Secrete Kas Engeland, Dutch embassy to the States General 14–3–1662, 9–6–1662; Resolutions of the States General, 27–3–1662, 4–5–1662, 15–6–1662 and 6–7–1662; Lias Engeland, Downing to the States General 12–4–1662, Dutch embassy to the States General 2–12–1661, 28–4–1662, 5–5–1662 and 30–6–1662; BNA, State Papers 84/165 f280, De Miranda to Rutherford 23–5–1662; British Library, Everton MSS 2538 f59–60, Downing to Nicholas 5–5–1662, f63–64, Downing to Nicholas 28–7–1662; Additional MSS 22919 f219, William Coventry to Downing 23–6–1662.

⁴⁹ Boxer, *The Portuguese seaborne empire*, pp. 113–114; Cabral de Mello, *De Braziliaanse affaire*, pp. 161–163.

⁵⁰ Cf. Cabral de Mello, *De Braziliaanse affaire*, p. 165.

⁵¹ Cabral de Mello, *De Braziliaanse affaire*, pp. 157–159; Downing and Rommelse, *A fearful gentleman*, pp. 57–58.

⁵² *Ibid.*, p. 59.

⁵³ Van Goor, *De Nederlandse koloniën*, p. 59; Boxer, *The Portuguese seaborne empire*, p. 109.

⁵⁴ NNA, States General 3268, Resolutions of the States General, 14 June 1662; States General 12589.118, Secrete Kas Engeland, Dutch ambassadors to Charles II, 31 May 1662; Edward Nicholas to the Dutch ambassadors, 28 June 1662; States General 5904

II Lias Engeland, Declaration of Lord Rutherford 26 May 1662; Dutch ambassadors to the States General 18 July 1662; BNA, State Papers 84/165 f. 281, Lord Rutherford to the States General 1 June 1662.

⁵⁵ Nicholaas Japikse, *De verwickelingen tusschen de Republiek en Engeland van 1660–1665* (Leiden 1900).

⁵⁶ Cabral de Mello, *De Braziliaanse affaire*, pp. 167–168.

⁵⁷ Karel Davids and Marjolein 't Hart, 'The navy and the rise of the state. The case of the Netherlands, c. 1570–1810', <home.medewerker.uva.nl/...thart/.../DavidstHartVols3.doc>, accessed 13 April 2012, 25–28; Rommelse, 'Ondertusschen continueeren de caepers in hare roverijen', p. 154.