“Arrestez et pillez contre toute sorte de droit”: Commercial Treaties, Neutrality and the Aftershocks of the Spanish Succession

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“Arretez et pillez contre toute sorte de droit!”:
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Frederik Dhondt

Introduction

The Peace Treaties of Utrecht (11 April 1713), Rastatt (6 March 1714) and Baden (7 September 1714) were a milestone of European diplomatic history. Continent-wide conflagrations were absent until the war of the Polish (1733-1735) or the Austrian Succession (1740-1748). “Utrecht” ended a century of conflict in Europe, from the Thirty Years’ War to the War of the Spanish Succession. The partition of the composite Spanish monarchy between Habsburg and Bourbon was the core of the agreement. Yet, inevitably, economic and trade issues followed as a corollary. The 1713 territorial balance of power in Europe was even conditioned on a commercial balance of trade on a global scale. Afterwards, trade issues occupied a secondary place in the diplomatic management of the system. Incidents between British and French subjects overseas were not allowed to escalate into a rupture of political relations and were generally settled on the diplomatic level. Peace negotiations amending the treaties of Utrecht had priority over commercial quarrels.

1 Marginal note, AN, Marine, B1, f. 299v.
2 Postdoctoral researcher of the Research Foundation Flanders (FWO) and lecturer at the Free University of Brussels (VUB). My thanks to Dirk Heirbaut, Dave De ruyscher, Jelten Baguet and the attendees of the St Andrews conference “Balance of Power, Balance of Trade” on 21-22 January 2015 for their remarks and suggestions on an earlier version of this paper.
4 John L. Sutton, The King's Honor and the King’s Cardinal: the War of the Polish Succession (Lexington: Kentucky UP, 1980); Pierre Massuet, Histoire de la guerre présente contenant tout ce qui s’est passé de plus important en Italie, sur le Rhin, en Pologne, & dans la plupart des Cours de l’Europe (Amsterdam: François l’Honoré, 1735).
5 Reed Browning, The War of the Austrian Succession (New York: St Martin's Griffin, 1995).
8 E.g. Josiah Child, Discourse of Trade, Wherein is Recommended Several weighty Points relating to Companies of Merchants, the Act of Navigation, Naturalization of Strangers, and our Woollen Manufactures, the Ballance of Trade And the Nature of Plantations, and their Consequences, in Relation to the Kingdom, are Seriously Discussed (London: Sowle, 1718).
9 E.g. Chammorel, London, 28 June 1717, on harsh treatment suffered by French merchants in the Mediterranean at the hands of Vice-Admiral Cornwall, complaints of the French fishing population of Boulogne and St Valéry sur Somme. AN, Marine, B1, 32, f. 447r-v. Or, during the War of the Quadruple Alliance, fought jointly by France and Britain against Spain, Admiral Byng’s search of a French vessel destined for Alexandria, described as “the harshest and most unjust search operation ever” (de la Leurie, Naples, 13 December 1718).
Two other seizures, of the vessels of the French captains Roux and Audibert, described as “tyrannical”, were
Nevertheless, on the ground, commercial treaties were honoured more in the breach than in the observance. Moreover, the actual impact of military operations on trade should be nuanced, in view of the numerous mutual accusations of continuous trade during conflicts. In spite of numerous factual aggressions, the continuity of trade was the rule. Wartime disturbances were exceptions, to be restrictively interpreted. Confiscations of private property were regularly framed as violations of the “law of nations”. Conversely, even between allies, trade remained a zero-sum game of fierce competition. Partners in a common political undertaking were perceived as trustful as outside neutrals or enemies, “exploiting every occasion to thwart and ruin commerce and navigation”. These general aggressive dynamics should not reverse the intellectual order of priorities. Diplomats put balance of power first, individual merchants’ complaints on violations of the regulation of trade only came in second place. Actions by the navy or consuls could only be undone by “rigorous orders” from London or Paris, and they were subject to diplomatic negotiations, rather than to “respect for treaties and conventions”.

The aim of the present contribution is to show how geopolitical Grand Strategy had its repercussions on trade policy and on the legal language used to frame it, and, conversely, how a discourse of interdependence and free trade was so present that all parties used it indiscriminately. Commercial treaties as an instrument of regulation should not be separated from the geopolitical structure that underpins their normative environment. The case of Franco-British intervention at

justified by the admiral by reference to an order of the Regent to seize all French ships transporting goods for Spain (de la Laurie, Naples, 20 December 1718, AN, Marine, B1, 40, f. 21v). In the same vein: de Camp (The Hague), 29 December 1718, ibid., f. 30v: French complaints on Dutch depredations should be temporarily shelved, since treating them would hamper Franco-British tentatives to lure the Republic into the Quadruple Alliance.

10 E.g. Chammorel’s report, 28 June 1717 on negotiations with James Craggs, Secretary of State for the Southern Department, o.c., f. 447v: “the crisis where negotiations on Italy are in at present will further prolong the resolutions we had hoped for since a long time”. Similar complaints on the breach of the dispositions in the Franco-English trade Convention of Utrecht (11 April 1713, CUD [Corps Universel Diplomatique du Droit des Gens] VIII/1, nr. CLII, artt. XVIII-XX): “although the English had insisted the most on phrasing the treaty in these terms, forcing us [France] to derogate to all our established ordinances” (Memorandum of the Council of Commerce, 31 January 1719, AN, Marine, B1, 40, f. 35r).

11 E.g. de Camp (The Hague), 29 December 1718, o.c., f. 30r: Dutch corsairs seize French vessels, “worth more than two millions [livres tournois]” after the Treaty of Utrecht; “formally contravening” the trade convention between France and the Dutch Republic. See art. VII, Treaty between Louis XIV and the Estates-General, Utrecht, 11 April 1713, CUD VIII/1, nr. CLVII, 378.

12 Complaint by the Aldermen and Deputies for Commerce of Marseille, 3 and 8 November 1719: “the English actually have an overt trade in all ports of Spain (...) they bring in all kinds of manufactured goods and food. Since the declaration of War [v] His Majesty’s subjects have been forbidden access to these advantage (...) their vessels pillaged and searched almost daily, and stopped by those belonging to the English nation without reverence or consideration for the French pavillon” AN, Marine, B1, 36, f. 342r-v.

13 Memorandum by Clairembault (consul in Livorno) to the Regent, 20 January 1719, AN, Marine, B1, f. 46v. Excessive searches and seizures by France’s British ally on French vessels or on those of French trading partners, which “interrupts Commerce and Navigation.”

14 E.g. Portier (Tenerife), 13 May 1719, AN, Marine, B1, f. 156v (on the conservatory seizure of tobacco stocks belonging to French nationals).

15 E.g. consul Clairembault complaining on British stubborness in releasing goods unduefully seizes on French vessels. Not as much the factual harm to the owners, as the damage to the reputation of the French nation as intermediaries for maritime transport was at stake. If British vessels were implicitly rendered safer, profiting from the British military fleet’s dominance, France had few commercial advantages to gain from a war in the Mediterranean (Clairembault (Livorno), 12 May 1719, AN, Marine, B1, 40, f. 137v-138r).

16 Clairembault (Livorno), 19 May 1719, AN, Marine, B1, 40, f. 135v.

17 Clairembault (Livorno), 16 June 1719, AN, Marine, B1, 40, f. 152v.
Emperor Charles VI’s side, during the War of the Quadruple Alliance (1718-1720)\textsuperscript{18} shows the operation of commercial arguments in wartime.

1. Intricate conflicts

“The harbours of the Kingdom of Naples daily see Frenchmen in Spanish service (…) of all kinds (…) out of greed, deserters (…) or on their way back to the kingdom after the declaration of war.”

De la Leurie (Naples), 26 September 1719\textsuperscript{19}

The Spanish invasion of Sardinia (22 August 1717) and Sicily (1 July 1718) was a frontal attack on the peace settlement of the Utrecht treaties. The Kingdom of Sardinia had been ceded by Spain to Emperor Charles VI. Sicily was detained by Duke Victor Amadeus II of Savoy\textsuperscript{20}. Philip V claimed that the ongoing negotiations between Turin and Vienna to hand over Sicily to the Emperor were a violation of the reversion right, which he retained at the occasion of the Spanish-Savoyard peace treaty\textsuperscript{21}. In case the house of Savoy would leave Sicily, the island had to revert back to the crown of Spain. Yet, none of this had been agreed or executed when Spanish troops landed on the isle, poorly defended by Savoy\textsuperscript{22}. Philip merely acted out of conservatory motives, since the reversion right on Sardinia was worth less than that on Sicily\textsuperscript{23}. Factually, the island of Sardinia’s military importance as a hub for future invasion of Naples and Tuscany counted more\textsuperscript{24}.

While Charles VI had a Turkish war at hands on the Balkans, he had to appeal for help. France and Britain were disposed to offer this. However, they were not prepared to inflict a sanction on Spain. As the British Fleet under admiral Byng destroyed its Spanish counterpart at the Battle of Cape Passaro (11 August 1718), it was clear that Philip V would not take the upper hand in the war. France and Britain negotiated criteria for a peace settlement with Charles VI. The exchange of Sicily and Sardinia would be effectuated. Yet, Spain would obtain the succession of Philip V’s son don Carlos\textsuperscript{25} in the Duchies of Parma and Piacenza and the Grand Duchy of Tuscany\textsuperscript{26}. Consequently, with the

\textsuperscript{19} AN, Marine, B1, 40, f. 231r.
\textsuperscript{21} Considérations sur la guerre d’Italie (s.l.: s.n., [1718]), Treaty of Peace between Philip V and Victor Amadeus of Savoy, Utrecht, 13 August 1713, CUD VII/1, nr. XCLVI, 403, art. VI.
\textsuperscript{22} Christopher Storrs, War, diplomacy and the rise of Savoy, 1690-1720 (Cambridge: CUP, 1999), 72.
\textsuperscript{23} Mercure historique et politique, Contenant l'état présent de l'Europe, ce qui se passe dans toutes les Cours, l'Intérêt des Princes, leurs Brigues, & généralement tout ce qu'il y a de curieux pour le Mois de Janvier 1719 (La Haye: Les Frères Van Dole, 1719), 86. Other motives, such as the arrest of Molinez in the Duchy of Milan, were ill-constructed. In the latter case, the Emperor, as Duke of Milan, had respected ecclesiastical privilegium fori (Considérations sur la guerre d’Italie, 24). Imperial assistance to the Catalan or Mallorcan rebellions were still reproaches dating from the closing years of the Spanish Succession (ibid., 29).
\textsuperscript{24} abbé de Vayrac, Etat présent de l’Espagne, où l’on voit une géographie historique du Pays, (Amsterdam: Steenhouwer & Uytwerp, 1719), III, 326.
\textsuperscript{25} The future Charles VII of Naples and Charles III of Spain. Giuseppe Caridi, Carlo III. Un grande re riformatore a Napoli e in Spagna (Roma: Salerno, 2014).
Duke of Savoy moving to Sardinia, the Italian balance would not be endangered\(^{27}\). Spain had astutely invoked Italian frustration and Imperial encroachments on princely liberties\(^{28}\).

From the moment Cardinal Alberoni (1664-1752)\(^{29}\) was dismissed as Prime Minister (5 December 1719), France and Britain had all interest to restore good relations, if only in view of the restoration of trade\(^{30}\). The Parmezan Prime Minister in Madrid was a merely handy scapegoat for the Palais Royal and Hampton Court. Dynastic and domestic reasons could explain this. Philip V, grandson of Louis XIV, was a Bourbon\(^{31}\). Philip of Orléans, who acted as Regent during Louis XV’s minority\(^{32}\), could not afford to alienate the traditionalist fractions at court in Paris and had to face region unrest in Brittany\(^{33}\). Moreover, French armateurs\(^{34}\), captains\(^{35}\), sailors and soldiers were enlisting for Philip V\(^{36}\) or carried his troops across the Mediterranean\(^{37}\). When famine struck Mallorca, French merchants eagerly provided the island with the necessary grains\(^{38}\). The Regent, after issuing a first recalling Ordinance\(^{39}\), had all interest in granting amnesty to deviant subjects\(^{40}\). Finally, the Emperor could not be allowed to become too powerful. The deal struck during the War of the Spanish Succession aimed at an equitable repartition of territories in Europe between the two main competing


\(^{28}\) *Considérations sur la guerre d’Italie*, 7.11.55.


\(^{33}\) E.g. mobilising the British fleet to patrol off Brittany: Stair to Craggs, Paris, 31 May 1719, NA, SP, 78, 164, f. 86r. Pierre de La Condamine, *Pontcallec: une étrange conspiration au cœur de la Bretagne* ([Mayenne]: Y. Floc’h, 1988).

\(^{34}\) E.g. Circular by the Regent to enjoin French privateers under Spanish pavilion to cease their “intolerable” activities, or accept the consequences of a treatment as “deserters”: AN, B1, Marine, 40, ff. 45v-46r.

\(^{35}\) Barber (Cadiz), 9 September 1719, AN, Marine, B1, 40, f. 229r.

\(^{36}\) E.g. report of 5 December 1717, Barcelona in AN, Marine, B1, 32, f. 5v. French captains from Toulon participated in the expedition on Sardinia under Spanish pavilion, and hoisted the French flag again afterwards. E.g. report by de Varennes (Alicante) on French sailors serving on a Spanish man of war, captured by the British fleet in a fight off the Spanish coast (AN, Marine B1, 40, f. 35v).

\(^{37}\) Aubert (Genoa), 3 January 1719: English complaints on Spanish troops transported aboard two French vessels. AN, Marine, B1, 40, f.20v.

\(^{38}\) Nieulon fils (Mallorca), 17 August 1719, AN, Marine, B1, f. 214r.

\(^{39}\) Ordinance of Louis XV enjoining his subjects in Spain to come back to France immediately after publication, yet granting a delay of six months to all French merchants presently in Spain to stay there for six more months, in order to withdraw, sell or transport their goods and properties, Paris, 10 January 1719; Ordinance of Louis XV permitting Spanish subjects to stay in France for six months, in order to sell or transport their belongings, Paris, 10 January 1719; Ordinance of Louis XV permitting his subjects to go and collect their properties and goods in Spain, to bring them back in the Kingdom within six months from 10 January, Paris, 6 March 1719.

\(^{40}\) Chavigny (Genoa), 4 October 1719, AN, Marine, B1, 40, f. 289r. See Draft ordinance to facilitate the return of Frenchmen in the Kingdom, of any profession, after leaving for Italy or other states, AN, Marine, B1, 40, f. 227r-229r.
During the military operations, trade in the Mediterranean was not a point of minor interest.
Firstly, although Italy had been an object of external powers’ political appetite and was “covered with foreign troops”\(^\text{44}\), this did not imply the peninsula had fallen into economic oblivion. As Pietro Tosini’s 1718 pamphlet –defending Italy’s essence against ungrateful neighbouring peoples- put it, “Barbarous Nations haven’t been humanized but through the Italian trade”, spreading “arts, sciences and the most considerable advantages” over Europe\(^\text{45}\). Secondly, both the bilateral Franco-Spanish and Anglo-Spanish flows were considerable\(^\text{46}\). Outside of Spain itself, the de iure suspension of commercial relations was often accompanied by confiscations throughout the Spanish commercial empire\(^\text{47}\).

2. Philip V, or the commercial politics of “divide et impera”

As the military operations unfolded from the Summer of 1718 to the Winter of 1719-1720, their outcome was predictable but far from certain. The main protagonists, James Viscount Stanhope\(^\text{48}\) and Guillaume Dubois\(^\text{49}\), were constantly caught between the hope of success and the fear of failure,


\(^{42}\) Considérations sur la guerre d’Italie, 18.

\(^{43}\) Treaty of Alliance between Charles VI, Louis XV and George I, London, 2 August 1718, CUD VIII/1, nr. CCII, 531. France, Britain and the Emperor were the only contracting parties. Savoy adhered in November 1718, but the fourth place was destined for the Dutch.

\(^{44}\) Pietro Tosini, La liberté de l'Italie Démontrée à ses Princes et à ses Peuples. Traduite de l'italien (Amsterdam: Steenhouwer & Uytwerf, 1718), 3.

\(^{45}\) Ibid., 9: “Les Nations Barbares n’ont été humanisées que par le Commerce des Italiens, & ne se sont enrichis que des biens dont ils ont été prodigués envers elles.”

\(^{46}\) Considérations sur la guerre d’Italie, 42. Not to mention direct debts payable in France, e.g. “Cardinal Alberoni declared only recently to the Duke of Saint Aignan that the King of Spain would pay no debt whatsoever as long as he would be at war” (Catalan, French informant in Madrid to the Marine Council, 6 December 1717, AN, Marine, B1, 32, f. 1r. See e.g. complaints on the violation of French privileges (quartering in soldiers, De Moy, Barcelona), ibid., f. 3r. Ralph Davis, “English Foreign Trade 1700-1774”, Economic History Review XV (1962): 287-288, 293, 301-303. J.O. Maclellan, Trade and Peace with Old Spain, 1667-1750 (Cambridge: CUP, 1940); François Crouzet (“La rivalité commerciale franco-anglaise dans l’empire espagnol, 1713-1789”, Histoire, Économie et Société XXXI (2012): 19-29) estimates French exports to Spain at 19,3 million livres tournois for the years 1716-1720. British export would have been around 10,3 million.

\(^{47}\) E.g. report from Cadiz, 30 Oct 1717: Diego Navarro, intendant for tobacco, seizes for 200 000 piastres belonging to the French “nation”, damages even more important since “this judge has neither credit nor money”. (AN, Marine, B1, 32, f. 7r).


\(^{49}\) Alexandre Dupilet, Le cardinal Dubois le génie politique de la Régence (Paris: Tallandier, 2015); Émile Bourgeois, La diplomatie secrète au XVIIIe siècle, ses débuts. I. Le secret du Régent et la politique de l'abbé Dubois (triple et quadruple alliance) (1716-1718) (Paris: Colin, 1909); Id., La Diplomatie secrète au XVIIIe siècle, ses débuts. III. Le secret de Dubois, cardinal et premier ministre (Paris: A. Colin, 1910) ; Guy
implying both men’s domestic political position. They built their careers on gradually discarding opposing fractions. As military operations always were unsure, their letters incorporated all possible alternatives and reveal the structure of international crises. Spain tried to play both mediators against another. Inter alia by applying different measures to similar situations. The Spanish ambassador in London, Monteleón,50 intimidated the directors of the South Sea Company51. British subjects had to fear confiscations52, and hid their assets in houses “of the Flemish or French houses”53. French merchants had obtained a decree from Philip V dated 9 November 1718, whereby their effects were safeguarded from confiscation54 and their vessels made immune from search55. This corresponded to a genuine fear in France for the economic consequences of a rupture with Spain56. Yet, this fear was common to both belligerents. Philip V desired to let trade continue57. If only for the necessary imports of goods not produced in his realms58, such as textiles59. Yet, this offered a supplementary possibility to contrast Spanish complaisance and generosity towards French merchants with the dominant and aggressive British stance. Consequently, Philip would reinforce the Spanish party in the realm and put pressure on the Regent to withdraw from the coalition.

52 E.g. immediate seizure of all British goods on the Canaries, instigating fear to the inhabitants, “whose only richess consists in their wines, the majority of them destined for the British market” (Portier (Tenerife), 24 February 1719, AN, Marine, B1, 40, f. 112r).
53 AN, Marine, B1, 32, f. 449r.
54 AN, Marine, B1, 40, f. 2r (Brigodet de Varennes, Alicante, 28 November 1718).
55 AN, Marine, B1, 40, f. 47v. (de l’Epinard, Messina, 17 December 1718). The case of Messina is particular. Spanish troops landed on the isle of Sicily on 1 July 1718, but Imperial troops under Mercy d’Argenteau (1666-1734) reconquered almost the whole Kingdom in October 1719. Already in January 1719, de l’Epinard reported that commander Spinola had supplies for barely any longer than a month. Yet, in the meanwhile, French merchants provided clothing and tents, imported from Nîmes and Anduze to the army of Jean-François de la Bette Marquis de Lede (1666-1725) (de l’Epinard, Messina, 13 March 1719, ibid., f. 103r). These transactions had been concluded before January 1719 and the French declaration of war to Spain. They could thus be carried out. Moreover, the Regent considered Sicily as a possession of the Emperor, even before the treaty on exchange with Sardinia had been signed, on the basis of Savoy’s accession to the Quadruple Alliance, whose art VI. foresaw in the Spanish renunciation on the reversal right of Spain. Measures to similar situations. The Spanish ambassador in London, Monteleón50, intimidated the directors of the South Sea Company51. British subjects had to fear confiscations52, and hid their assets in houses “of the Flemish or French houses”53. French merchants had obtained a decree from Philip V dated 9 November 1718, whereby their effects were safeguarded from confiscation54 and their vessels made immune from search55. This corresponded to a genuine fear in France for the economic consequences of a rupture with Spain56. Yet, this fear was common to both belligerents. Philip V desired to let trade continue57. If only for the necessary imports of goods not produced in his realms58, such as textiles59. Yet, this offered a supplementary possibility to contrast Spanish complaisance and generosity towards French merchants with the dominant and aggressive British stance. Consequently, Philip would reinforce the Spanish party in the realm and put pressure on the Regent to withdraw from the coalition.

56 “The French had for 20 million livres tournois in Spain. If they were to be confiscated, this would inflict a terrible blow on the Regent, who needed time to withdraw them” (Stair to James Stanhope, Paris, Paris, 5 October 1718, NA, SP, 78, 162, f. 207r.).
57 Royal Decree by Philip V, Madrid, 10 February 1719, quoted in the report of Nieulon fils (Mallorca), 18 February 1719, AN, Marine, B1, 40, f. 84v. e.g. French vessels regularly arriving in Mallorca with grains, whereas military operations on Spanish soils had already set in by January 1719 (Nieulon fils (Mallorca), 9 July 1719, AN, Marine, B1, 40, f. 199r).
58 de Vayrac, Etat présent de l'Espagne, III, 317. Tentatives to set up manufactures with labourers from Holland or France illustrate a desire by Alberoni and the Duke of Ripperda. See as well Davis, “English Foreign Trade 1700-1774”, 295.
59 Aubert (Genoa), 16 May 1719, AN, Marine, B1, 40, f. 136v, on a Neapolitan corsair stopping a French merchant vessel sailing from Saint-Tropez to Barcelona carrying 1300 Spanish uniforms. The French consul hoped these goods could be qualified as ordinary trade stock, since they had been exempted in the Franco-British Treaty of Commerce concluded at Utrecht (art. XII, CUD VIII/1, 348).
Spanish promises were nevertheless seen as unreliable, as news reached Paris that stocks were seized by Spanish authorities or mandatory sold off to them at a lower price\(^{60}\). The Council of Marine asked French consuls in Spain to incite their merchants to evacuate and repair to France as soon as possible\(^{61}\). As the war effort strained Spanish resources, higher taxation\(^{62}\) or confiscations of French vessels became inevitable\(^{63}\). As Berwick’s army invaded Guipuzcoa and Galicia, French merchants who brought their belongings in safety were blamed by the Spanish governor for insulting the trustworthiness of Philip V’s decree protecting them\(^{64}\). In the Mediterranean, admiral Byng’s fleet regularly harassed French commercial vessels bound for Sicily or Sardinia, declaring all of them suspect\(^{65}\).

3. Privateering between outsourced public authority and individual greed

“Armators of France’s allies treat the King’s subjects as enemies and entirely ruin their commerce and navigation in the Mediterranean”

De la Chausse (Rome), 14 November 1719\(^{66}\)

Privateering can be seen as an aspect of the states’ external military power, or at least the power to harm enemy trade. Military vessels could of course conduct search operations, either as part of the fleet patrolling the Mediterranean\(^{67}\), or from bases as Port Mahon or Gibraltar, obtained by Britain during the War of the Spanish Succession\(^{68}\). Yet, outside their perimeter of action, privateers could constitute an effective alternative. Private individuals exercise public authority, incited by potential private profits in name of a public cause\(^{69}\). The rules governing their conduct pertain to public law, and not to private law\(^{70}\). This happened irrespective of their nationality. Catalans, subjects of the King of Spain, could harass French vessels in the free port of Livorno\(^{71}\), acting as privateers from Naples in the name of Emperor Charles VI, who had his court in Barcelona during the War of the Spanish Succession\(^{72}\)! The Neapolitan authorities delivered commissions to anybody, without even asking for a proper warrant. Penniless Catalans and Mallorcan refugees eagerly enlisted, hoping to re-establish themselves in life by terrorising the Mediterranean\(^{73}\).

\(^{60}\) Portier (Tenerife), 24 February 1719, o.c., f. 112r.

\(^{61}\) E.g. Domas (Cartagena), 17 April 1719, AN, Marine, B1, 40, f. 139r.

\(^{62}\) Du Pin (Alicante), AN, marine, B1, 40, f. 130v.

\(^{63}\) Barber (Cadiz), 21 March 1719, AN, Marine, B1, 40, f. 126v.

\(^{64}\) Barber (Cadiz), 19 May 1719, AN, Marine, B1, 40, f. 148r.

\(^{65}\) Clairembault (Livorno), 16 June 1719, o.c., f. 151v.; De la Leurie (Naples), 15 May 1719, AN, Marine, B1, 40, f. 140v. Another example in his letter dated 23 May 1719 (\textit{ibid.}, f. 141r): a French vessel left Palermo after a commercial mission. It drifted off in a storm near Milazzo and had to look for Spanish help. Yet, “German” (Austrian) forces intercepted it off the coast of Naples, jailing the crew. Vice-Roy Daun promised to release them, but judicial proceedings in Naples dragged on an on.

\(^{66}\) AN, Marine, B1, f. 296r.

\(^{67}\) E.g. French accusations against admiral Byng “by the profit he reaps off vexations” (Clairembault (Livorno), 20 January 1719, o.c.

\(^{68}\) Complaints by de Moy (Barcelona), 4 February 1719, AN, Marine, B1, 40, f. 49v.


\(^{72}\) Clairembault (Livorno), 2 June 1719, AN, Marine, B1, 40, f. 143r.

\(^{73}\) De la Leurie (Naples), 23 June 1719, AN, Marine, B1, 40, f. 161v-162r.
Courts and tribunals could exercise control the legality of seizures brought in national ports. Neutral vessels were far from immune from searches. “Free ship, free good” could only be a prudent wish, trade politics in terms of the customs established by reciprocity seemed an impossibility between strong and weaker parties. Conventional or doctrinal definitions of contraband were precarious. Even carriages of grains, sugar or French cheese were stopped! Shouldn’t privateers stop only “enemies, and not friends”? If principles or past agreements were to have any value, they needed to be reaffirmed time and time again. The law of nations in general was insufficient to provide individuals with efficient legal protection.

In practice, belligerents looked for enemy goods on any ship. “Contrary to all treaties […] the “slightest indication of any merchandise’s pertaining to a subject of the King of Spain” was enough to trigger greedy British soldiers or privateers to proceed to search and confiscation, thus scaring off merchants from the Languedoc or Provence. In Livorno, the British consul was withholding French assets, “violating the treaties of Utrecht and the most exact justice”. If we apply Kaiser and Calafat’s terminology, the “instrumental use of violence” by British representatives was seen by French consuls on the ground as “an essential element of empire-building”. British subjects sailed under Spanish commissions, depredating on French trade. Blanco Spanish passports were auctioned at the London Stock Exchange, gladly distributed by Philip V. Yet, the British fleet at times correctly applied the law of nations. Although the Regent did not want to endanger his

74 AN, Marine, B1, 36, f. 132r.
75 E.g. de Rochefort (Stockholm), 13 January 1719, AN, Marine, B1, 40, f. 41r: the Charles XII of Sweden urges his nations’ privateers to respect the rights of neutrals and limit their actions to the country’s enemies.
77 De la Leurie (Naples), 20 December 1718, AN, Marine, B1, f. 22r. The French Consul’s remarks that “commerce not having been interrupted, the French could load and navigate for any destination without being arrested […] If there had to come about a rupture [between England and France], there were Treaties and Laws to be followed, ordering French vessels to be released” illustrate the lack of legal conceptual views in practical commercial disputes.
78 Clairembault (Livorno), 26 May 1719, AN, Marine, B1, 40, f. 139v.; de la Leurie (Naples), 7 October 1719, Ibid., f. 259r.
79 Bynkershoek, Quaestionum iuris publici, 111.
80 Portier (Tenerife), 24 February 1719, o.c., f. 112v.: “If we don’t oppose this kind of acts, the [French] nation will be exposed daily to new snubs, and eventually to the loss of her privileges.”
82 AN, Marine, B1, 40, f. 1r. Report by Partyet (Cadiz) on Spanish practices of indiscriminate searching English and other nations’ vessels for English goods. Clairembault (Livorno, 20 January 1719) accused the English consul in Livorno of blackmail. He would have demanded a fixed fee of 2% on French assets in exchange of a certificate of property, immunising against searches conducted by admiral Byng. In a similar case, whereby two French vessels were accordingly unjustly retained by admiral Byng, the English consul demanded a 5% fee, “vexation inouïe” (Clairembault (Livorno), 7 April 1719, Ibid., f. 113v).
83 De Moy (Barcelona), 4 February 1719, o.c., f. 49v.
84 Clairembault (Livorno), 15 March 1719, AN, Marine, B1, f. 95v.
85 Kaiser and Calafat, “Violence, Protection and Commerce. Corsairing and Ars Piratica in the Early Modern Mediterranean”, 73. See as well Anderson and Gifford, ”Privatcercing and the Private Production of Naval Power”.
86 Chammorel (London), 12 November 1719, AN, Marine, B1, f. 271v.; Barber (Cadiz), 2 September 1719, Ibid., f. 263v.
87 De la Leurie (Naples), 4 April 1719, AN, Marine, B1, f. 118r. The French vessel Nostre Dame left Palermo for Barcelona carrying correspondence (among which a letter to Philip V), but was caught in bad weather and had to divert to Cape Passaro, where the British man of war The Grafton intercepted her. The crew
diplomatic relationship with Britain, he issued a protectionist Ordinance on 10 July 1719, enjoining his subjects only to charge goods on vessels under the French pavilion, and to return home\textsuperscript{88}.

4. Neapolitan and British disorders

“How much are we hurt by those petty corsairs under Imperial pavilion”
Regent to Dubois, 7 August 1719\textsuperscript{89}

The French National Archives contain numerous complaints of private merchants on depredations in the Mediterranean. If Italian privateering had posed a threat, Spanish privateers did not pose the greatest problem. The Kingdom of Naples did. The latter was controlled by the Emperor since his troops had chased those of Philip V in 1707. Wirich Philipp Count of Daun (1669-1741) acted as its governor. The Kingdom did not pass to Spanish hands before 1733-1734\textsuperscript{90}. Privateering activities could of course be explained by the ongoing Habsburg-Turkish war, which lasted until the peace of Passarowitz (21 July 1718\textsuperscript{91}). To the extent French vessels were transporting Turks or goods for the Ottoman trade, Charles VI’s corsairs could intercept part of the Ottoman army’s logistical support\textsuperscript{92}.

However, in many cases the Neapolitan privateers acted outside any legal framework, often to “pillage and the most valuable goods” from passing vessels\textsuperscript{93}, or, to unjustly retain the Sultan’s subjects after peace had been concluded, “against any law of nations”\textsuperscript{94}. As the Emperor was able to withdraw his troops from the Balkans and face the Spaniards in Sicily, Daun ordered for the


\textsuperscript{88} Ordinance by Louis XV, executing those of 7 January 1689 & 5 April 1713, forbidding all subjects resident in the Levant, Barbary and the Ports of Italy, to charge goods on alien vessels, not under French pavilion, Paris, 10 July 1719.

\textsuperscript{89} AN, Marine, B1, 40, f. 192v.


\textsuperscript{91} Peace Treaty between Charles VI, Sultan Ahmet and the Republic of Venice, Passarowitz, 21 July 1718, CUD VIII/1, nr. CXIX, 520.

\textsuperscript{92} Report by Clairembault from Livorno, 17 June 1717, AN, Marine, B1, 32, f. 503r-v. In the specific case of the armator Moret, who had been abducted by the Neapolitan corsair Palombo, the French resident in Livorno complained that the latter had searched the vessel and confiscated part of the carriage “without the least pretext”. Palombo conducted the vessel to Civitavecchia in the Papal States, but neither the Pope (embroided with Spain) nor his officers showed impartiality, according to the French resident. See also AN, Marine, B1, 40, f. 16v (de la Leurie, Naples, 13 December 1718): French merchant Magnan sailing from Calabria to Naples on behalf of Genoese clients, caught by a Neapolitan armator who argued his carriage was to be declared “de bonne prise” on the basis of Spanish carriage bills for an earlier voyage to Tenerife. Idem, report by Nieuton (Malloca), 17 December 1718, on the Tartanne, vessel owned by the French armator Martinenq, seized by a Neapolitan corsair and released again, save for part of its carriage supposedly destined for Spain as contraband. The goods were subsequently sold off… to British tradesmen, in violation of the Quadruple Alliance between the Emperor, France and Spain (AN, Marine, B1, 40, f. 36r).

\textsuperscript{93} De la Leurie (Naples), 14 March 1719, AN, Marine, B1, 40, f. 110r.

\textsuperscript{94} Ibid. The Regent insisted that « no trial whatsoever » should take place and called for the immediate release.
confiscation of any vessel capable of transporting troops, including those armed by subjects of allied powers, such as France95. France and Austria agreed on mutual regulations concerning seizures, rendering the latter merely conservatory in case of doubt96. Neapolitan seizures were transferred to Jean Baptiste du Bourg (1690-1728), the French resident in Vienna, who presented them to the Imperial Court97. Unfortunately, the Emperor referred all cases to the Spanish Council, stuffed with his personal creatures98, nostalgic of Charles of Habsburg’s reign in Spain:

The Neapolitans are gens ramassez, who can’t be withheld by any rule of law, yet protected by these people, who will never let them give back what they have taken99.

At the apex of British depredations, admiral Byng’s practices were seen as extra incitement for the disorderly behaviour of Neapolitan corsairs100! It is illustrative that corsairs from Naples seized a Spanish ship carrying diplomatic correspondence from Venice and handed it over to the British fleet off the coast of Sicily, in order to get their share of the sale101. Whoever came across their path was a possible target. The protection of the corsair Palombo was more effective than the Neapolitan or Imperial court’s desire of justice. French consuls repeatedly insist on the Neapolitan magistrates taking a personal interest in every privateering commission they delivered102. One of the detainees died “a death of misery”. Palombo’s protectors, as de la Leurie insinuated, had received their share of his bounty103. Outside these intricate networks of Neapolitan corruption104, Imperial envoys tried to bring their unruly subjects to reason, e.g. enjoining them to appear before local judges in Genoa105 or offering compensation for harm inflicted by Italian privateers106.

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95 De la Leurie (Naples), 14 February 1719, AN, Marine, B1, 40, f. 79r.
96 Coutlet (Genoa), 28 March 1719. AN, Marine, B1, 40, f. 99r. A French vessel containing 600 barrils of powder was captured by a Neapolitan corsair off Corsica. Its formal destination was Malta. The case was ultimately solved by the Emperor envoy Maricon in Genoa. He decided to agree in principle to release the French vessel. Yet, while the ammunition and the letters of carriage were verified in Genoa, the French captain had to sail to Naples in order to transport troops for Daun (Coutlet (Genoa), 10 April 1719, AN, Marine, B1, 40, f. 113v.
97 Du Bourg (Vienna), 25 April 1719, AN, Marine, B1, 40, f. 102r.
98 Virginia León Sanz, Carlos VI. El Emperador que no pudo ser Rey de España (Madrid: Aguilar, 2003).
99 Du Bourg, 25 April 1719, o.c., f. 102v.
100 Aubert (Genoa), 27 June 1719, AN, Marine, B1, 40, f. 188v: „the Neapolitans, following the example of the English, use any possible act of power to interrupt French trade and navigation“.
101 de l’Epinard (Messina), 3 March 1719, AN, Marine, B1, 40, f. 110v. The Spanish captain was jailed by the British, accusing him of negligence. He should have thrown the diplomatic papers overboard.
102 “les corsaires sont protegez par des ministres qui sont mesme interessez sous main dans les armemens, de sorts qu’il est impossible d’avoir aucune raison de leurs Brigandages” (de la Leurie (Naples), 13 June 1719, o.c., f. 162r).
103 De la Leurie (Naples), 28 March 1719, AN, Marine, B1, 40, f. 114v.
104 Which did not imply that all French cases were lost, e.g. Arnauld, who obtained restitution of his vessel, as well as compensation for the harm inflicted by a Neapolitan corsair. Sentence of the Royal Chamber of Naples, reported by de la Leurie, 5 August 1719, AN, Marine, B1, 40, f. 207v-208r. The presence of corruption in political affairs was not exceptional in the early modern period, where private and public interest were often insufficiently distinguished, see Aaron Graham, Corruption, Party, and Government in Britain, 1702-1713 (Oxford: OUP, 2015); Peter R. Campbell, Power and politics in Old Regime France, 1720-1743 (London: Routledge, 1996); eds. Niels Grüné and Simona Slanička, Korruption. Historische Annäherungen an eine Grundfigur politischer Kommunikation (Göttingen: Vandenhoeck & Ruprecht, 2010). Yet, practices in Naples seemed to have come across as particularly striking.
105 Aubert (Genoa), 27 June 1719, o.c., f. 156v.
106 Aubert (Genoa), 13 June 1719, AN, Marine, B1, f. 147v.
In the Spanish case, the use of private agents to protect the colonies is a well-known topic for economic and political historians. Lacking the top-down military means to exclude foreigner merchants, private help could fill the gaps. Irrespective of their nationality: even British subjects have been reported to have served as privateers for Philip V, depredating on their own nationals’ trade. Meanwhile, building up a stronger centralised system of government, embracing mercantilism and protectionist policies would allow the Spanish crown to better exploit its commercial assets. During an armed conflict, the ranks of Spanish privateers could be reinforced by private persons, subjects of the Kings of France or Britain, or of the Emperor.

These search operations were evidently hotly disputed, as with those of the English concerning Spanish contraband on French vessels in the War of the Quadruple Alliance. Even though the Anglo-French Treaty on Trade and Commerce concluded in Utrecht (but never ratified) contained an article limiting mutual search operations to strict contraband, the British fleet did not respect this when patrolling the Mediterranean. The British consul in Livorno even declared the Treaty of Commerce “ridiculous.” No “free ships, free goods”-principle was applicable to French vessels. Even carriages of salted meat “goods declared free under the Treaty of Utrecht,” destined for Malta were stopped and seized, under the suspicion of being destined for Spanish-occupied Sicily. In the specific case, the English captain and consul in Livorno blackmailed the French owner, asking 200 pistoles to release the vessel. The crew was molested, kicked and beaten up with lashes and swords.

Some practical influence on local case law could be useful, as stated by the Council of Commerce in the case of Naples:

no expenditure is more useful for the navigation of His Majesty’s subjects than the annual gratification of 150 piastres paid to the judge competent for seizures of the French nation, who always ranks among the most prominent ministers of the Country [Naples] (…) with the necessary credit and authority to protect and give justice to the French and maintain them in their privileges.

108 E.g. French vessel seized off the coast of Malaga, 14 March 1719 (report by Fleury de Vareilles, AN, Marine, B1, 40, f. 92v).
109 Report by le Bailly Lorenz (Florence), 3 March 1719, AN, Marine, B1, 40, f. 83r.
110 de Vayrac, État présent de l'Espagne, t. III, 312-318.
111 E.g. the case of Le Brun, armator from Toulon, who took a French Pink out of the port of Livorno (Clairembault (Livorno), 31 March 1719, AN, Marine, B1, 40, f. 104r). Le Brun was broke and had only himself to hold accountable for his crimes (Clairembault, 12 May 1719, o.c., f. 137r). Yet, he managed to escape with “une femme de mauvaise vie” (Clairembault, 9 June 1719, o.c., f. 149v).
112 Memorandum of the Council of Commerce, 31 January 1719, o.c.:
114 Treaty of Navigation and Commerce between Louis XIV and Queen Anne, Utrecht, 11 April 1713, CUD VIII/1, nr. CLII, Art. XIX.
115 Clairembault (Livorno), 16 June 1719, AN, Marine, B1, 40, f. 154r.
116 Clairembault (Livorno), 16 June 1719, AN, Marine, B1, 40, f. 135r.: “even if this would have been the case, trade in it would have been allowed under the Treaty of Utrecht, proscribing stopping vessels with no contraband aboard.”
117 AN, Marine, B1, 40, f. 39r.
5. The draft treaty\textsuperscript{120}

In May 1719, the Council of Marine drafted a convention aimed at the Republics of Genoa and Venice\textsuperscript{121} and the Grand Duchy of Tuscany. The inspiration came from an earlier proposal directed at the neutral Dutch Republic, drafted in November 1718, three months after the battle of Cape Passaro\textsuperscript{122}. Materially, the clauses pertained to domestic law. The treaty proposal amounted to imposed legislation by France on the Italians neutrals, “small states\textsuperscript{123}” in the game of Great Powers after Utrecht, but of prime importance to safeguard Mediterranean trade. Its first article established free entrance for any vessel, either warships or merchants, including those belonging to privateers, armed for war with commissions of their sovereign. Yet, the second article imposed an interdiction of arming vessels for war. Contraveners had to be stopped, their ships confiscated. Article three orders all seizures by privateers to leave the port within twenty-four hours and forbids their sale. A longer stay entailed the loss of the ship in questions, the release of its crew, and the impossibility for the privateer to enforce any further claim. This operation was similar to what had been agreed before, during the War of the Spanish Succession, with the King of Denmark (who was neutral at the start of the war)\textsuperscript{124}. The twenty-four hour rule can be traced back to Colbert’s Marine Ordinance of 1681, forbidding privateers to stay longer in French ports, save when the seizure concerned an enemy ship\textsuperscript{125}.

The problems encountered by French merchants were characterised as the exercise of “criminal activities and piracy” by “private persons, subject either to the allied Powers or the King of Spain”, in order to enrich themselves\textsuperscript{126} in an unjust way, “with greedy intentions”, without “the permission to privateer on the basis of legitimate commissions issued by their sovereigns” (art. V.). Captains entering the ports of Genoa, Venice or the Grand Duchy of Tuscany would have had to submit themselves to compulsory verification by the local magistrates, as well as the consuls of the “respective powers having an interest in the case”. In view of the incessant trouble described above, the text aims as well at the privateers as at the distribution of power between local jurisdictions and consular privileges.

These entities were equipped with their own jurisdictions, able to exercise judicial control over seizures\textsuperscript{127}. Their neutrality implied equal treatment for all belligerents. Yet, this was hard to sustain in

\textsuperscript{120} Convention project between Britain, France, Austria, the Grand Duchy of Tuscany and the Republics of Venice and Genoa, to maintain neutrality in the ports of their dominance and to avoid piracy, Paris, s.d., NA, SP, 78, 164, ff. 82r-84v. Williams, Stanhope. A Study in Eighteenth-Century War and Diplomacy, 329-330.
\textsuperscript{121} Eric Schnakenbourg, Entre la guerre et la paix : neutralité et relations internationales, XVII-XVIII siècles (Rennes: PUR, 2013), 23.
\textsuperscript{122} Stair to Craggs, Paris, 8 November 1718, NA, SP, 78, 162, f. 293v. Frederik Dhondt, Balance of Power and Norm Hierarchy. Franco-British Diplomacy after the Peace of Utrecht (Leiden: Brill, 2015), 164.
\textsuperscript{124} Schnakenbourg, Entre la guerre et la paix : neutralité et relations internationales, XVII-XVIII siècles, 71. Art. 3, Treaty of Alliance between Denmark, Britain and the States-General, Odense, 20 January 1701, CUD VIII/1, nr. I, 1. French diplomats tried to have the presence of French privateers accepted for Denmark and Norway. Frederick IV of Denmark allowed the sale of captures in his ports from 1711 on, in return for a reciprocal permission for Danish subjects in Britain, the Republic and France.
\textsuperscript{125} Ibid., See Ordonnance de la Marine du mois d’Aoust 1681. Commentée & Conférée sur les anciennes Ordonnances, le Droit Romain, & les nouveaux Règlements (Paris : Osmont), 1714, 336.
\textsuperscript{126} Kaiser and Calafat, “Violence, Protection and Commerce. Corsairing and Ars Piratica in the Early Modern Mediterranean”, 72: “the objective for corsairs was primarily the rich cargo of merchant ships and captives, not warfare against other corsairs or armed naval forces”.
\textsuperscript{127} E.g. Request of 18 December 1718 by captain Gerfroid, merchant from St Tropez, to obtain the effective restitution of his effects seized by Venetian privateers in 1717. AN, Marine, B1, 36, f. 17r;
view of the imbalance of power between the coalition and the King of Spain. Reports by French consuls on the peninsula alerted the Regent of the necessity to impose clearer rules. Even if this meant intrusion into domestic legislation. French consuls had jurisdiction over their own nationals, a privilege jealously guarded. Outside this perimeter, they could only observe what happened in proceedings before the domestic judges competent for seizures by Italian privateers. Attempts to reserve jurisdiction over cases involving seized French vessels were unsuccessful. Moreover, Italian judges tended to cling to the neutral status of their port. This implied they would refuse to arrest French, English or Imperial subjects participating in privateering for the King of Spain. Consequently, treacherous or deserting subjects found a genuine free harbour to sell of the benefits of their mischiefs. Commerce with the enemy could thus continue under Spanish pavilion. Spanish privateering vessels could in fact have been armed in Marseille, raised the Spanish pavilion on the high seas, staffed with French sailors, seized an English vessel and safely sailed to Genoa, where their prize could be sold off with the help of French auctioneers. Or, on the other side, the Italian entities could insist on enforcing their neutral status, threatening to visit and search all foreign vessels.

A final clause of the draft treaty laid down sanctions in case a privateer turned out to act on a false commission, under double commission (granted by two sovereigns) or without authorisation. Vessel and merchandise were to be confiscated to the benefit of the neutral state, which would punish

Memorandum by Aubert, consul in Genoa (3 January 1719), on consular jurisdiction. AN, Marine, B1, 40, ff. 21r-26v: Genoese Maritime magistrates impeded on French consular jurisdiction (governed by Colbert’s 1681 ordinance) as far as vessels or individuals from the French Nation were concerned. Consular decisions were only enforceable after passing a Genoese notary declared them conformable to the laws and statutes of the Genoese Republic. Yet, Aubert complained of excessive encroachments by the local judges, who treated cases from the material level on. Another example is the decision of the Venetian Senate to systematically visit any foreign vessel, contrary to established Imperial and French privileges. Of course, Charles VI’s, Louis XV’s and George I’s consuls objected (Le Blond (Venice), 5 August 1719, AN, Marine, B1, 40, f. 191r-v). Venice had to grant an exception to the Emperor, confirming his subjects’ privileges, and let French and British vessels come and go without visit (Le Blond (Venice), 12 August 1719, AN, Marine, B1, 40, f. 200v-201r).

E.g. de Silva (Livorno), 30 December 1718, AN, Marine, B1, f. 21r. The Spanish consul had bought a vessel and raised the royal pavilion, loaded ammunition onto it and sent it to the army in Sicily. As a reaction, the French consul Clairembault ordered French ships lying in the harbour to disembark after protestation of the Imperial consul.

E.g. Ordinance of the Regent forbidding the Sossins merchant family to execute a local judicial decision obtained from municipal judges in Livorno against Chavignon, another French merchant from Marseille (AN, Marine, B1, 40, f. 62v. Disputes between French merchants, or any disputes whereby a French merchant acts as the defendant or debtor in a trial, were of the exclusive competence of the French consul. Even several years of residence abroad could not change this. Appeals could only be treated before the (French) sovereign court of parliament closest to the foreign port, in casu that of the Provence (ibid., f. 64r). “On the basis of the law of nations, His Majesty has never conceived of nor tolerated the situation whereby disputes between his subjects would be dependent on other judges than those who give justice in his name, and under his authority”.

E.g. answer by the Regent to consul Aubert in Genoa, 31 January 1719, AN, Marine, B1, 40, f. 46r. Contrary to the advice of the British representative in Genoa, Aubert was not encouraged to seize vessels armed in France and confiscated by Italian privateers.

E.g. de la Leurie (Naples), 14 August 1719, AN, Marine, B1, 40, ff. 208r-209v.

Report by Aubert to the French Regent, AN, Marine, B1, 40, f. 46r.

E.g. Saint-Frémond (Venice), 20 May 1719 (AN, Marine, B1, 40, f. 135v-136r) : a Spanish vessel sent from Sicily to the Spanish envoy in Venice was on the brink of returning, when the French consul ordered its conscripted seizure before a local court. The carriage would serve as an “hypotheque” for the outstanding debts of its armator. With all material destined for Sicily locked inside the ship, the Spanish would never receive it.

Report by D’Auvergne (Genoa), 14 March 1719, AN, Marine, B1, 40, f. 91v. Report by the widow David (Genoa), 4 March 1719, ibid., f. 92r.

E.g. Report by St Frémond (Venice), 1 April 1719, AN, Marine, B1, 40, f. 109v. Combined Austrian, English and French pressure made this however very unlikely.

“no legal warfare, but disguised crime” Bynkershock, Quaestionum iuris publici libri duo, 107.
captain, officers and equipment as “forbans” and “gens courans les mers sans aveu”\(^\text{137}\). The regulations did not come into force. Charles VI refused to participate\(^\text{138}\). As explained above, corsairs from Naples were among the most irritating threats to French commerce. If even a pillar of the alliance did not participate, it was useless to impose the articles on Italian neutrals.

**Epilogue: the ultimate recourse to natural law**

As French and British merchants alike\(^\text{139}\) voiced their anger at the depredations they had to suffer, the fundamental nature of free navigation between nations was the cornerstone of their argument. Falling back on the general law of nations as a vector of complaints was not unique. During the conflict, France and Britain were frustrated with Dutch aloofness from the struggle for the common good of Europe. Hispano-Dutch trade could continue unhampered during the conflict, whereas France and Britain would lose part of their market. Conformably to a more general Dutch line of behaviour, the States-General preferred to be medius in bello, or non hostes\(^\text{140}\). Gaining from trade, rather than ruinously spending on defence, as had been the case in the War of the Spanish Succession\(^\text{141}\). This temporary commercial advantage removed the Dutch from the centre of European negotiations. Moreover, the freedom of commerce claimed by the Dutch in the War of the Quadruple Alliance contrasted with their own attitude three years later. In 1722, Emperor Charles VI granted an official patent to the Imperial East Indies Company in Ostend. Britain and the Dutch Republic clamped down on their commercial competitor. The formal legitimacy for the Company’s elimination was the violation of the Treaty of Munster, at the occasion of which Philip IV of Spain had denied access to the Indies to his “Castillan” subjects.

The treaty’s validity was linked to inherent limitations on the principle of free navigation on the high seas, as it had been expounded by Hugo Grotius’s *Mare Liberum*\(^\text{142}\). The latter point of view is well known. Most of the literature retains the Dutch thesis, supported by influential names as Jean Barbeyrac, professor public law in Groningen. Unfortunately, various pamphlets written against this commercial brutality have fallen into oblivion\(^\text{143}\). Yet, one of these writings, attributed to Imperial historiographer Jean Du Mont de Carels-Kroon\(^\text{144}\), who drafted the commercial treaty allowing the

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\(^{138}\) Maricon to Courtes (Genoa), 11 July 1719, AN, Marine, B1, 40, f. 161r.

\(^{139}\) Chammorel (London), 28 September 1719, AN, Marine, B1, 40, f. 237v; Id., 30 November 1719, AN, Marine, B1, 40, f. 300r.


\(^{143}\) Michel Huisman, *La Belgique commerciale sous l'empereur Charles VI : la Compagnie d'Ostende: étude historique de politique commerciale et coloniale* (Bruxelles: Lamertin, 1902).

Ostend Company to trade directly in Spain, fundamentally undermined the Dutch point of view. What if the new King of Spain, Philip V, opened his dominions to Charles VI’s subjects? Wouldn’t this new treaty lift the limitation installed in 1648 by his predecessor Philip IV? Just as in the case of Mediterranean trade, geopolitical logic settled the affair. However, the flexibility of the universal discourse on free trade as a state of nature between sovereigns could not be eradicated. The Dutch Republic shifted from a militant position in the early 17th century, against the Hispano-Portuguese division of the world in two hemispheres at the Treaty of Tordesillas, or against the British opinion of *Mare Clausum*, propagated by John Selden, to one of repression and consolidation of its own position. If she abandoned this point of view in order to eliminate a competitor, the validity of Grotius’s initial affirmation remained. The Dutch scholar referred to the freedom to trade and navigate, as found in Justinian’s *Digest*. In view of the lack of ratification of the Franco-British trade treaty, this would remain the bedrock of merchant’s legal defence, at any time when their vessels had been “arrested against the law of nations and contrary to the treaties concluded between France and England.”


148 Clairembault (Livorno), 2 June 1719, AN, Marine, B1, 40, f. 143v.