



TranState Working Papers

INTERNATIONAL SEABORNE
PIRACY AND THE STATE:
LESSONS TO BE LEARNED
FROM HISTORY?

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No. 172

Universität Bremen • University of Bremen
Jacobs Universität Bremen • Jacobs University Bremen
Universität Oldenburg • University of Oldenburg

Staatlichkeit im Wandel • Transformations of the State
Sonderforschungsbereich 597 • Collaborative Research Center 597

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Sfb597 „Staatlichkeit im Wandel“ – „Transformations of the State“

Bremen, 2013

[ISSN 1861-1176]

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(TranState Working Papers, 172)

Bremen: Sfb 597 „Staatlichkeit im Wandel“, 2013

ISSN 1861-1176

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Diese Arbeit ist im Sonderforschungsbereich 597 „Staatlichkeit im Wandel“, Bremen, entstanden und wurde auf dessen Veranlassung unter Verwendung der ihm von der Deutschen Forschungsgemeinschaft zur Verfügung gestellten Mittel veröffentlicht.

Deutsche
Forschungsgemeinschaft

DFG

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ABSTRACT

Since 1994 worldwide maritime piracy has witnessed an explosion. While data collection has improved, the incidence of piracy has undoubtedly risen as well, particularly in areas of the world marked by 'failed' or 'weak' states' (Somalia, Papua New Guinea, Sierra Leone), though some areas (South-East Asia) have experienced piracy as a perennial hazard. It is not clear whether modern nation states are sufficiently equipped to deal with such a problem, and it is from within international bodies that we might best expect the lead to be taken against the current piracy epidemic (NATO/UN/EU). However, while the EuNavfor Atalanta taskforce can already boast of some early successes, there are also substantial legal hurdles to be overcome in resurrecting piracy laws unused in 400 years, as some test cases like that of MS Taipan, which got underway in the Hamburg Amtsgericht in October 2010, demonstrate. As a historian, one should ask how the problem of seaborne piracy was addressed and suppressed by European powers in the past, for example in the period 1480-1725 in which I am specifically interested. Means of enforcing stricter penalties, increasing naval patrols of sea lanes, and shifting official attitudes regarding the threat posed by piracy to the well-being of nation states, are all lessons policy-makers today would do well to take heed of. Not all attempts at resolving piracy were successful, and in what follows three different case studies shall be presented: the piratic attacks by the so-called 'Victualian Brothers' against the Wendish cities of the Hanseatic League over the last fifteen years of the fourteenth century, a relatively small-scale challenge which had a wider international backdrop, but which was successfully extirpated; then, the case of Portugal in the sixteenth century, where piracy threatened simultaneously on too many fronts, and was not successfully swept aside; and the case of Britain in the eighteenth, where piracy again presented itself as a global problem, but efforts to counter it were more far-ranging, handled by a specially commissioned sub-state agency, sanctioned with new purposeful legislation, and where the fight was met with greater success.

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International Seaborne Piracy and the State: Lessons to be learned from History?

INTRODUCTION

Worldwide maritime piracy was defined by the UN convention on the law of the sea in 1982 as ‘any criminal acts of violence, detention, rape or depredation committed by a private party onboard one ship against another ship on the high seas’.¹ Recent criminal law would seem if anything to be more demanding in its application of this term: last year, Attorney Neil MacBride for the US federal courts in the eastern district of Virginia explained that ‘piracy involves armed hijacking on the high seas with a very real threat of death to those taken hostage’, although the MS Nicholas and Ashland trials in 2010 saw 30-year sentences handed down even though neither vessel was actually boarded, shots simply were fired and some material damage inflicted.² At any rate, since 1994 piracy has witnessed an explosion globally, according to the International Maritime Organization database. More than four hundred separate attacks on cargo ships have been registered in the 2000s.³ While data collection has certainly improved with, for example, the establishment of the Piracy Reporting Centre (PRO) in Kuala Lumpur, Malaysia, in 1992, the incidence of piracy as a worldwide phenomenon has undoubtedly risen as well, particularly in areas of the world such as Somalia, marked by the collapse of the Socialist dictatorship of Siad Barre in 1991. While ‘failed states’ such as Somalia have seen the proliferation of piracy, ‘weak states’ like Papua New Guinea and Sierra Leone have also seen a rapid rise in piracy. Some areas, such as South-East Asia have perennially attracted piracy from earliest times, which specialists have ascribed to the fragmented geography and plethora of riverine estuaries and offshore islands.⁴

With the high profile seizure of the Ukrainian cargo vessel *MV Faina* in August 2008, which contained as many as 33 armed tanks destined for covert Kenyan military activities in southern Sudan, maritime piracy has hit the world headlines, with national governments discussing amongst themselves how best to protect important international

¹ www.un.org/depts/05/convention_agreements/convention_overview_convention.htm.

² Reported in BBC News on 3 October 2011.

³ V. Kotlyar, ‘Piracy in the 21st century’, in *International Affairs: A Russian Journal of World Politics, Diplomacy and International Relations*, 2009, vol. 55, issue 3, 59-67.

⁴ See, for example, the relevant clauses in the *Maritime Law of Malacca*, written between 1488-1511 (*Undang-undang Laut; dan Undang-undang laut*, ed. Hasan Ahmad, Kuala Lumpur: Yayasan Karyawan, 2003), or ethnographies of ‘piratic’ peoples like the Maghs, in Amiran Gonen ed., *The Encyclopedia of Peoples of the World*, New York: Henry Holt, 1993.

shipping lanes such as those that pass the Horn of Africa. The stakes are high indeed: of all world merchandise trade, the World Trade Organization (WTO) has estimated that 75% of it travels by sea as a proportion of value. In terms of weight, the figure is more like 90%.

Organisations within the United States were perhaps first to respond. The US coast-guard has been instrumental in the past few years in establishing instruments such as Maritime Domain Awareness (MDA), a surveillance program of seaborne activities and intelligence gathering. The data collected from different sources is to be ‘fused’ here into a common format. Another US initiative is the so-called ‘Global Maritime Partnership’ elucidated at the 17th International Seapower Symposium in Rhode Island in 2005, a call for other national merchant navies and shipping companies to work together to promote global maritime security via information-sharing. The US is also responsible for the dispatch of the USS Dwight Eisenhower task force to the troubled region.

Initially, it was not clear whether nation states are today sufficiently equipped to deal with such problems, and it is from within international bodies that we might best expect the lead to be taken against the current piracy epidemic. International organizations such as NATO announced their intention to intervene, sending off a Standing Naval Maritime Group 2 under Durand de la Penne, and setting up a logistical command centre for anti-piracy operations in Northwood, Middlesex, while Russia has called upon the UN to broker a solution. In fact, the UN Security Council has already approved the armed intervention against pirates. Another international actor has been the EU, which on 2 October 2008 agreed to establish an anti-piracy security operation off Somalia, operational from November 2008, called Operation Atalanta EUNavfor. Task forces were created within this operation, for example, to protect vessels of the World Food Programme (WFP) and vessels of the African Union Mission in Somalia (AMISOM), as well as protecting vulnerable vessels in the Gulf of Aden and Indian Ocean, and monitoring fishing activities. The most recent missions have, following EU authorization, switched gear so as to destroy pirate bases on land.⁵

The Atalanta search force has already been praised with success in that while the overall number of piratic attacks has escalated, a smaller proportion of those attacks has been successful.⁶ Other voices remind us that the current crop of pirates are working alone, and not in cahoots with other rogue governments, or western renegades, and that it is a localized problem (they do not descend on vulnerable ports in the West as was the

⁵ Reported in BBC News 15 May, 2012.

⁶ See the relevant statistics at <http://eunavfor.eu/key-facts-and-figures/> (URL accessed 24 January 2013)

case throughout the early modern age).⁷ But it is too early to consider this a problem resolved.

THE DEVELOPING SEARCH FOR LEGAL TOOLS TO PROSECUTE PIRATES IN INTERNATIONAL LAW: THE CASE OF MS TAIPAN.

‘Hostis humani generis’, an enemy to mankind, is the historical legal categorization of this crime, one which have seen pirates subject to universal condemnation, a bit like perpetrators of genocide. But time and again, it has proved difficult to try pirates for their transgressions of human morality if only because privateers did much the same albeit with the sanction of the ruling authorities. Thus, it has proved easier to bring pirates to trial for their failure to comply with the formalities of licensing. That the resurgence of piracy in the 1990s took British criminal codes by surprise is an understatement; piracy remained a capital offence until 1998, when it was finally taken off under Section 3 of the Crime and Disorder Act. The same is true in other European countries, as the details of the *MS Taipan* case illustrate.

At the beginning of April 2010, five hundred nautical miles off the coast of Somalia, a gang of Somalians attacked the container ship ‘Taipan’. On Easter Monday the crew – which had barricaded itself inside the ship at arms length from their attackers - was liberated after four hours of captivity by a Dutch marine commando unit, and the attackers seized. Fortunately, there were no fatalities, nor injuries sustained.

The Hamburg District Court (*Amtsgericht*) immediately issued an instruction to imprison (*Haftbefehle*) the Somalians guilty of piracy. The men were consequently flown under arrest back to Europe. In mid-August, the law courts in Amsterdam decided to hand the men over to the Hamburger Staatsanwaltschaft despite the arguments of the defence that the trial should be held against the Somalians in the Netherlands. The defence argued against sending the men to Germany on the basis that the ship was sailing under the flag of the Bahamas or Liberia rather than the German. In her concluding statements, Judge Hans Davids said that the German justice system had demonstrated its responsibility and competence (*Zuständigkeit*) for the case, and that the accused could be guaranteed a fair trial in German courts.

In Hamburg, the ten men’s trial got under way in October 2010. The decision was made to try them under German penal codes rather than maritime law, and in public despite a plea made by the Defence to exclude media attention. Presiding Judge Bernd Steinmetz explained his decision in terms of the lively ongoing public discussion surrounding ‘national and international piracy’. According to the Staatsanwaltschaft ‘satis-

⁷ Adrian Tinniswood, *Corsairs, Conquests, and Captivity in the Seventeenth-Century Mediterranean*, Riverhead Books, 2010.

factory evidence' (*ausreichend Beweismittel*) was shipped home including five machine-guns of the type Kalashnikow AK47, two rocket launchers, large quantities of ammunition and two middlemen (*Enterleitern*). Twenty-two witnesses (*Zeugen*) were persuaded to come forward and testify by the Staatsanwaltschaft. The charge was initially 'versuchter erpresserischer Menschenraub und Angriff auf den Seeverkehr', for which their punishment was to reach a ceiling of 15 years. But in the ensuing discussions over the length of the applicable *Haftbefehle*, the Staatsanwaltschaft charge has changed somewhat so as to contest early release of the prisoners. It speaks now of 'versuchten gemeinschaftlichen Mordes'.

Other negotiations include the fate of one of the accused, who is only a child of thirteen years of age and has not arrived at the age of criminal responsibility, i.e. is not yet *strafmündig*. He is to appear instead before the Jugendhofrichter, where he made no statement. The age of the other defendants also has to be established by the court. In America, the defendant Abduwali Abdukhadir Muse raised similar problems. While his defence lawyers insist he was born only in November 1993, prosecutors say he is over 18.⁸

In terms of wider context, the press has been quick to proclaim that this is the 'first pirate trial in Hamburg for 400 years', while others like to go back further still, citing Klaus Störtebeker, the leader and the best known representative of a companionship of privateers known as the Vitalian Brothers (*Vitalienbrüder*), and who operated between 1360-1400. In England, pirate trials have been much more recent, and in certain parts of the world like southern China and Indonesia are ongoing. But the strongest parallels are to similar piracy trials going on in the US, where sentences have already been handed down. These concern the pirate attacks on the MS Nicholas and MS Ashland, two separate incidents that were tried in Norfolk Virginia in November 2010.⁹ The Somali pirates were encouraged to enter a guilty plea to the crime of 'attacking to plunder a vessel and engaging in an act of violence against people on a vessel'. The sentence was harsh: the pirates had to agree to a thirty year prison sentence. In the case of the attack on the yacht *Quest*, where four American sailors were killed, the Somalis sentenced were handed down life sentences, with a possible death penalty.¹⁰

Some voices, like that of Annette Weber (NDR Fernsehen), proclaim that the MS Taipan show-trial (which is complex and still – in August 2011 – ongoing) will have no effects upon the situation back in Somalia, and is thus of limited effectiveness, but there

⁸ As reported in the BBC News, 3 October 2011.

⁹ As reported by the Neptune Maritime Security Bulletin online, now subsumed into the ICC Commercial Crime Services site: <http://www.icc-ccs.org/piracy-reporting-centre/piracynewsfigures>.

¹⁰ 'Somali Pirate Leader Gets Life in Prison for Yacht Hijacking', 4 October 2011, *Fox News*.

is a general feeling that the responsible bodies need to toughen up and take sides. Already in 2011 a South Korean court has demanded the death penalty for a Somali pirate convicted of attempted murder of a South Korean captain on a hijacked ship, while on 22 August two Somali pirates were sentenced to life in a US court. The US Congress has since set the penalty for piracy as a mandatory life sentence.

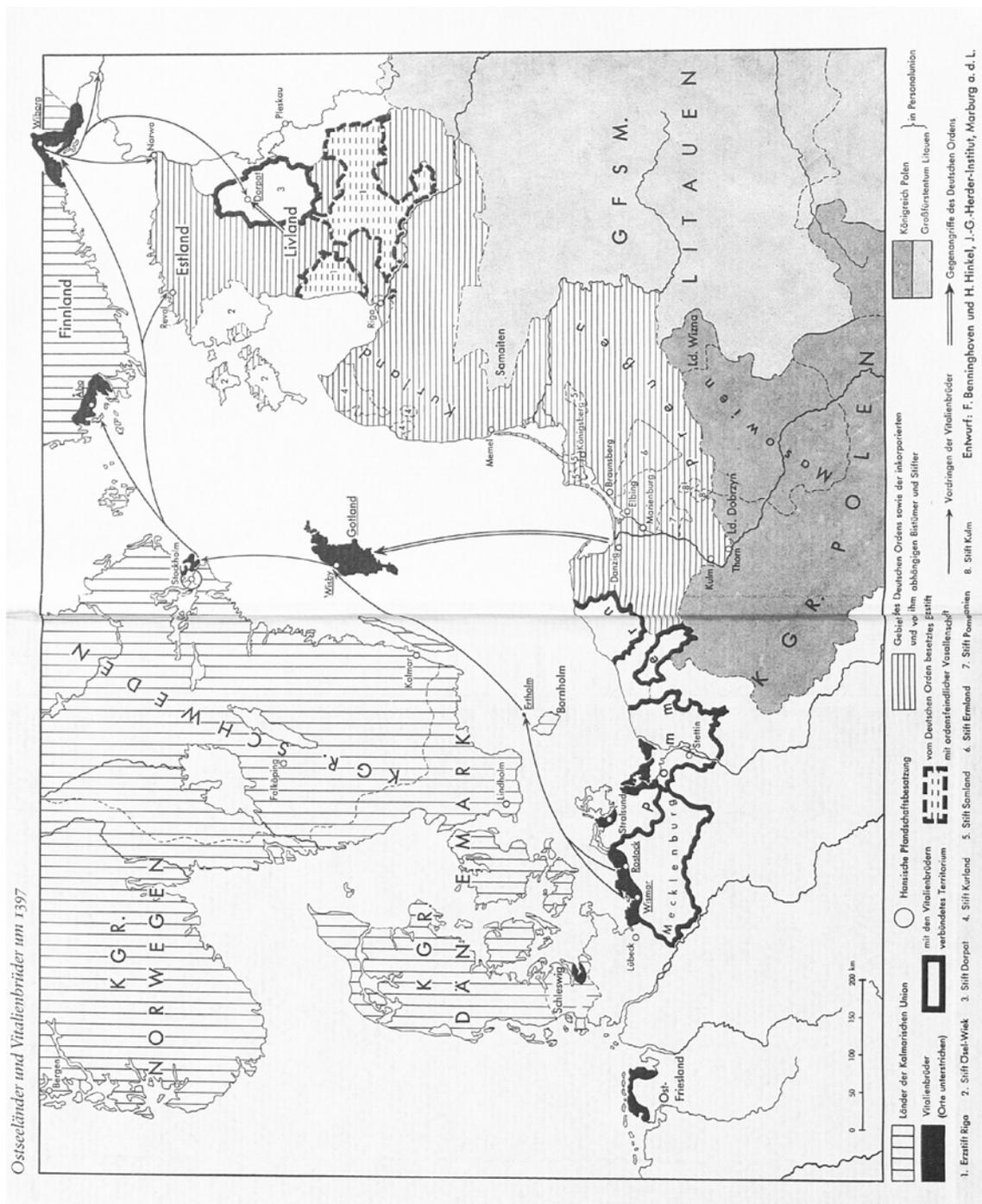
Other voices, including that of the German political scientist Mathias Weber, have called for an international court to be established, which is currently being considered by the UN.¹¹ The problem is that the costs of collecting evidence and holding the trials is too expensive, a deterrent to the running of the legal process. In Europe, the problem of establishing an international tribunal is compounded by the inevitable asylum pleas of Somali suspects. The problems, then, are chiefly political rather than legal: piracy is not on a par with crimes of genocide, or war crimes. Roger Middleton, a consultant for the Africa Program at Chatham House, thinks the problem is a more generalized one in which the rest of the world must also bear some responsibility: to stop illegal fishing and the dumping of toxic waste on the Somali coast creating a climate in which local people take to piracy. Simon Reeve's recent BBC series on the Indian Ocean also plies this line: that the fight against piracy begins on land, rather than at sea.¹²

A STUDY IN THE LEGAL AND POLITICAL PROCESS OF THE SUPPRESSION OF SEABORNE PIRACY BY EUROPEAN POWERS, 1680-1725.

Piracy was an endemic phenomenon in early modern Europe, when international legal disputes raged as to whether property rights extended to the sea or whether the sea belonged to nobody as a *res nullius*. But beyond the specific legal arguments put forward by jurists like Hugo Grotius and Seraphim de Freitas, one can observe historically that when state authorities turned their back on maritime affairs (as was the case with the Ming dynasty in China), or when those state authorities were involved in protracted civil war (as was the case during the *sengokku-jidai*, the warring century in Japan prior to the Tokugawa), seaborne piracy invariably flourished. In Europe, state authorities actively connived at piracy, viewing it as an extension of military action against their enemies. For example, in the war-torn years prior to the Peace of Westphalia in 1648, European nation states actively promoted piracy by issuing privateers with 'letters of mark' authorizing them to destroy enemy shipping and keep the loot for their troubles. The Dutch Seventy Years War against their Spanish overlords was largely conducted in

¹¹ Reported by *Deutsche Welle*, 26 August 2011.

¹² BBC Two, *Indian Ocean* with Simon Reeve, 'Kenya and the Horn of Africa', broadcast on 13 May 2012.



this way, bringing a fleet of national defence (the 'sea-beggars') into existence in this way.¹³

The point of departure of this paper will be a set of historical reflections as to how the problem of seaborne piracy was addressed and suppressed by European powers in the period 1680-1725. Means of enforcing stricter penalties, increasing naval patrols of

¹³ Virginia West Lansford, *Piracy in the Golden Age Netherlands*, 2005.

sea lanes and shifting official attitudes regarding the threat posed are all lessons policy-makers today would do well to take heed of. Not all attempts at resolving piracy were successful historically, and in what follows three different case studies shall be presented: the piratic attacks by the so-called ‘Victualian Brothers’ against the Wendish cities of the Hanseatic League over the last fifteen years of the fourteenth century, a relatively small-scale challenge which had a wider international backdrop, but which was successfully extirpated; then, the case of Portugal in the sixteenth century, where piracy threatened simultaneously on too many fronts, and was not successfully swept aside; and the case of Britain in the eighteenth, where piracy again presented itself as a global problem, but efforts to counter it were more far-ranging, handled by a specially commissioned sub-state agency, sanctioned with new purposeful legislation, and where the fight was met with greater success.

THE VITALIAN BROTHERS

The history of the Vitalian Brothers (*Vitalienbrüder/Viktualienbrüder*) is that of a mixed bag of adventurers operating on both sides of the Danish Øresund or Sound and plundering the regular dispatch of shipping of the Hanseatic League, especially the so-called *Englandfahrer* bound for London.¹⁴ The story is one that has unfairly brought certain characters to the forefront of history, namely the pirates Klaus Störtebeker and Godeke Michels, and their chief antagonist Simon von Utrecht, in the service of the Hanse. Operas and novels have been dedicated to these men, and public memorial statues erected on, for example, the Kersten-Miles-Brücke in Hamburg at the end of the nineteenth century. It is a history full of myths but also a history that still resonates in northern Germany today, for the Simon von Utrecht statue was decapitated and defaced during the night of the 5 June, 1985 and defiant graffiti along the lines of ‘Pirates still live!’ spray-painted across the memorial. Even more recently, with the coming of the MS Taipan trial to the Amtsgericht in Hamburg, newspapers like the *Hamburger Handelsblatt* were quick to proclaim the ‘first pirate trial in Germany since that of Klaus Störtebeker’.

Generalising historians like Susan Rose are quick to suggest that piracy was ‘seemingly endemic in the Baltic’, whether conducted by individuals or operating to some commercial or political agenda; another of her summary impressions is that ‘piracy was so prevalent in the area that all vessels were prepared to defend themselves but (...) there are few if any accounts of more large-scale engagements’.¹⁵ While her first statement is

¹⁴ See the English complaints (*Klageakte*) of 1405; Friedrich Schulz’s account of English-Hanse relations in this exact period is very different, *Die Hanse und England*, Berlin 1911 repr. Aalen: Scientia Verlag, 1978, pp. 59-66.

¹⁵ Susan Rose, *Medieval Naval Warfare, 1000-1500*, Routledge, 2002, p.19, p.72. For the first assertion, see also A. d’Haenens, *Europe of the North Sea and the Baltic. The World of the Hanse*, Antwerp: Fonds Mercator, 1984.

clearly exaggerated, indeed Bruce Gelsinger's entry on the Hanseatic League in the *Dictionary of the Middle Ages* indeed fails to even mention piracy as a historical problem for the League, the second of Rose's statements is true only if one compares the number of ships utilised in the Sibetsburg expedition of 1435 with the naval battle at Sluys in 1340, when the English mustered an impressive fleet of 160 ships.¹⁶ Sluys, however, was not the product of a systematic and repeated two-year engagement, as was the case with the Hanseatic Sibetsburg expedition, which also sought to engage a number of local powers in the eradication of the problem. Other aspects of the naval conflict that Rose uses to substantiate her argument, for example, that there was little if any structural difference between ships engaged primarily in warlike activities and those engaged in trade, are more pertinent and worth drawing attention to. While recent German literature is better informed, such as the book by Mathias Puhle, the purpose of his research is rather to seek to engage directly with the myth, and its distortions; Puhle fails to set the *Vitalienbrüder* against the wider international backdrop of the times.¹⁷ My purpose is of course rather to engage with the kind of piracy practised here, and how it was combated by authorities like the Hanseatic League.

The problem of piracy arose with the power vacuum created with King Waldemar Atterdag's death on 24 October 1375, which provoked the Counts of Mecklenburg to group bands of pirates together under their leadership and wage war against the Danes, in Puhle's opinion 'out of thirst for power and expansion'. In all reality, the Mecklenburgers were redressing an imbalance of power in the region after Waldemar had seized Visby.¹⁸ The flourishing of piracy in the power vacuums between rival states was a common background to major conflicts of the time like the Hundred Years War primarily between England and France.¹⁹ This put the Hanseatic cities of Rostock and Wismar in a very difficult position, as they needed to show some solidarity with the neighbouring Herzogshaus, but also had to follow Hanseatic policy, namely ordering all members of the Hanse to close their ports to close their harbours to pirates. In general, the League considered Mecklenburg far more dangerous than the Danes, although it had only recently been at war with Waldemar, partly because Mecklenburg's feelings, which also

¹⁶ Kelly DeVries, 'God, Leadership, Flemings and Archery: Contemporary Perceptions of Victory and Defeat at the Battle of Sluys', *American Neptune*, no. 55, 1995, pp. 1-28.

¹⁷ Mathias Puhle, *Die Vitalienbrüder : Klaus Störtebeker und die Seeräuber der Hansezeit*, Frankfurt am Main: Campus Verlag, 1992; see, for example, C.J. Ford, 'Piracy or Policy: the Crisis in the Channel, 1400-1403', *Transactions of the Royal Historical Society*, Fifth Series, vol. 29 (1979), pp. 63-78.

¹⁸ Philippe Dollinger (trans.), *The German Hanse*, Basingstoke: MacMillan, 1964, pp. 78-72.

¹⁹ Raphaela Averkorn, 'The Sea as European diplomatic, political and economical battlefield in the times of the Hundred Years War', in Luc François & Kathy Isaacs eds., *The Sea in European History*, Pisa 2001, pp. 191-217.

targeted anger at the Hanse for supporting Waldemar's daughter Margaret as Regent in the Danish succession, were shared by Stockholm, and because Mecklenburg based its ships in Rostock and Wismar. These two port cities eventually complied with the Hanseatic stipulation following the death of Count Heinrich III von Mecklenburg (died 1383), but only after they had supported the Mecklenburg pirates 'more or less openly'.²⁰

The same pirates now switched to Danish ports, where they found support under the new Queen Regent Margaret. She wanted to see Hanseatic privileges in Scandinavia curtailed, and some sort of freedom on behalf of the four Sund castles (Schloss Kronborg, also the Scanian fortress of Hålsingborg) from Hanseatic claims to *Pfandbesitz*. Hanseatic control of these four fortresses for fifteen years had been one of the clauses determined by the Peace of Stralsund in 1370. Margarete's support for the pirate communities proved short-lived however, as she realised that collaboration with the Hanse at its apogee was a more pragmatic strategy, which stood a greater chance of her winning control over the destinies of the *Sundschlösser*.

In this period, the Hanse often sought instead to scapegoat other powers for this efflorescence of piracy rather than take any direct action itself. The Diet of 1386 presented King Richard II of England with a list of 22 separate incidents, of which six involved piracy, three robbery of goods after shipwreck and two other robberies on land, for which in sum compensation was demanded; a total of around £2,136 sterling.²¹ This led to understandably strained relations, not least Susan Rose argues because many were rather cases of commercial negligence or embezzlement rather than outright piracy. The theft of a Prussian cargo wrecked off Romney in 1386 by the local villagers was illegal perhaps, but not piracy. More clearly a matter of condoned violence against a rival happened off Brittany in 1378 when men from 'English warships' boarded a ship from Danzig, killed the captain and cut off his fingers to steal his rings before throwing him into the sea.²² Another extremely contentious issue was the demand for an enquiry into the alleged murder of the entire crew of a Danzig ship at Boston in 1384, to which no price could be set since the ship itself had been recovered. As it was Danzigers who seemed repeatedly to be at the end of English depredations, it is of no surprise that on 18th July 1385 a diet of the Prussian towns ordered the arrest of English goods in Danzig and Elbing and banned all trade with England. An embassy was dispatched to de-

²⁰ Mathias Puhle, *Die Vitalienbrüder: Klaus Störtebeker und die Seeräuber der Hansezeit*, Frankfurt am Main: Campus Verlag, 1992, 21.

²¹ *Die Recesse und Andere Akten der Hansetage*, Series I (iii), nos. 142-3, 192, ed. K. Koppmann (Leipzig, 1870-97).

²² Dollinger, 289-90 (from the Hanserezesse).

mand compensation for another notorious incident, the Zwin robbery of six Prussian ships earlier in 1385, and all losses over the previous ten years, but the embassy came to nothing.²³

To this background of ‘low level maritime war’ between England and Prussia, the freely acting pirates we have been concentrating on were now chased out of the Baltic Sea after the Hanse encharged one of its constituent cities, Stralsund, and specifically the Bürgermeister, Wulf Wulflam, with the task of ‘pacifying the Baltic’ (*Befriedung der Ostsee*) in March 1385. He was provided with ‘one great ship, as well as several *Schniggen* and *Schuten* and a hundred, well-armed soldiers’. This instruction is widely considered successful, although many thought he did not do a very thorough job, and that the problem of piracy in the Baltic was resolved rather through a lack of concrete support for their activities and continuance.²⁴

The pirates subsequently moved their operations away from the Baltic into the North Sea and again sought refuge and employment, this time under the East Frisian chieftains (*Häuptlinge*) like Edo Wiemkens at his later destroyed stronghold at the Sibetsburg. In all likelihood, these chieftains could supplement their primarily agricultural incomes by depredations on the flow of international seaborne trade westwards, taking advantage of the tense and fractious relations between the Hanse and the English, as we have seen, and with the Flemish, on whom the Wendish towns had proclaimed an embargo in 1388, but which was repealed in 1392. The English government actually issued letters of credence to John Huntingdon and John de Wesenham as ambassadors to the Wendish towns. The chief purpose of this mission was to complain about the attacks of the Mecklenburg pirates, or *Vitalienbrüder*. Whilst the Diet was extremely tardy in its deliberations, it finally wrote to Richard II stating that the Hanse had no control over the *Vitalienbrüder*, who were anyway doing more harm to Hanse merchants than to the English. It requested, therefore, that the king should prevent his subjects from attacking Hanse ships in retaliation for damage done by the *Vitalienbrüder*. But the letter went no way to forming some sort of international alliance against the pirates: it passed on to the matter of Hanseatic privileges in England, demanding their full implementation, threatening an increase of taxation on English merchants and a ban on the import of English cloth. While cities like Dortmund, protective of its own trade in England, had written to Lübeck in 1395 recommending the payment of compensation to the English,

²³ *Die Recesse und Andere Akten der Hansetage*, I (ii), no. 309; (iii), no. 204. For English complaints, see T.H. Lloyd, *England and the German Hanse, 1157-1611. A Study of their trade and commercial diplomacy*, Cambridge University Press 1991, 62-3.

²⁴ Puhle, 27.

it appears that the general consensus in the League was that England had anyway made good for their losses to pirates from attacks on other Hanse ships.²⁵

Figure 1: Reconstruction of the Sibetsburg, torn down on the instructions of the Hanseatic cities in 1433. From a brass plaque placed with other information on a mound in Wilhelmshaven (December 2011).



Matters developed until they came to a head with another Hanseatic punitive fleet sent out early in 1400 to put an end to the ‘scandalous deeds’ (*Schandtaten*) which rendered navigation and trade further west so hazardous. These fleets were specifically composed of ‘Friedeschiffen’ or ‘peace ships’, which were, however, cogships (*Koggen*), fully kitted out for war. The maritime skirmishes, however, tended to be inconclusive as no long-term peace treaties were signed, and the pirates were dispersed rather than conquered, escaping to Holland and Norway where they regrouped and quickly returned to East Frisia, just as the Hanseatic fleet was returning to its home port. Victualling was limited, and other time constraints did not allow the Hanseatic fleet on such occasions to pursue their prey further out into the North Sea. The convening of annual *Hansetage* meant that up-to-date reports needed to be presented on these occasions, and hence swiftly prepared; it was altogether more sensible to follow the naval campaign up with letters to rulers like Margaret of Norway to persuade her to fight against the Victualian

²⁵ *Die Recesse und Andere Akten der Hansetage*, nos. 189, 235. HR, I (iv) nos. 255, 2604 and Lloyd, *England and the German Hanse*, 71-2.

Brothers who had arrived on her shores. There was also the matter of cost: the expedition of 1400 had cost the Hanse 9350 Lübeck marks.

The 1400 campaign had dispersed the Victualian brothers some of whom, as we have seen, went to Norway, but others went to Holland, where they sought refuge under Duke Albrecht. He allowed them to reside in Staveren and prejudice his enemies, but the agreement specified that they should not become unemployed and thus burdensome on the host and indeed a possible threat to him. Albrecht's letter of 15 August 1400 specifies 114 Victualian Brothers, including Störtebeker. It is worth making an effort to understand the context here. Holland had enjoyed a recent economic boom, and was now competing seriously with Lübeck and Hamburg. Holland had sealed a new trading agreement with the Prussian Hanse towns, which largely bypassed the influence of the Wendish Quarter (Hamburg and Lübeck) on their trade and traffic. On 18 October 1400, Hamburg felt compelled to send a sharp letter to the Prussian Hanse towns informing them of Dutch seizures of both Hamburg ships and goods and thus warning them to stop.²⁶

Another group went to work for the counts of Oldenburg.²⁷ In any case, the story now becomes a little more unclear, and the entries in the *Hamburger Kammerechnungen* are very short and inconclusive. There is confusion as to the dates of the next determining encounter. The *Kammerechnungen* entry for 1401 stipulate the preceding year (*anno preterito*), which would be 1400, as the date for the offensive (*ad Reysam*) undertaken by the Lord Hermann Langhen and Nicholas Schoken upon the island of Heligoland.

The *Lübecker Rufus-Chronik* relates how 40 sea robbers were killed by Hamburg's fleet of outgoing *Englandfahrer* in Heligoland, and how 70 more were captured. They were brought to Hamburg and executed as a clear deterrent, much as the gibbeted bodies of pirates hung at Wapping were to do more than three hundred years later: 'ihre Köpfe setzen sie auf eine Weise an der Elbe als Zeichen dafür, daß sie auf dem Meer geraubt hatten'.²⁸ The *Hamburgische Chronik* of 1457 states how 'Anno 1402 ward Wichman unde Stortebeker afgehouden altohant na Feliciani'; they were kept then until the next year before receiving their sentence. Störtebeker's ship, a 'mittleren Holk' was brought back and sold in Hamburg for 16 pounds, principally the mast and some other wooden components, while the city *Kammerechnungen* enter the costs of the pirates'

²⁶ Puhle, 129. The Wendish Quarter was unable in the long run to prevent overtures from the Baltic towns to Dutch and English merchants; Eric of Pomerania actively invited foreign merchants to his realms to provide some commercial competition.

²⁷ Josef Wanke, *Die Vitalienbrüder in Oldenburg, 1395-1433*, Diss. Uni. Greifswald, 1910.

²⁸ *Chroniken der deutschen Städte*, Lübeck, Bd. 28, 1902, p. 25.

punishment: ‘1 Pfund Knokere ad faciendum foveam pro Vitaliensibus decollatis. 12 Pfund bedello ad decollandum 30 Vitaliensis’, in other words one pound to dig the common grave, eight shillings per individual decapitated.²⁹ A further entry ‘32 sol. pro querela Vitaliensium’ relates to, Puhle argues, the cost of torture in order to acquire information thereby.³⁰ The overall cost of the expedition amounted to 57 Pfund.

Figure 2: Wood block engraving of fight at sea with Störtebeker, 1401.



We must presume that the action against the Victualian Brothers took place in the brief window before Duke Albrecht wrote another letter (*Kaperbrief*), this time dated 11 November 1400, in which he committed to engage around 150 further Victualian Brothers from the Counts of Oldenburg. We are obliged to see the motivation for this as replacing his naval force which had been wiped out at Heligoland a short time previously. Presumably, they had been sent to Heligoland as a strategic move in the Dutch count's ongoing war against Hamburg; a corollary reason would suggest that the island was in close ties with several East Frisian chieftains, and would thus provide haven and possible supplies for the pirate fleet should such be needed.

In the meantime, Godeke Michels had in all probability sat the winter out in Norway. The *Rufus* Chronicle continues the story:

²⁹ 1873, Bd. 1, p. 490.

³⁰ Puhle, 137.

Nicht lange danach [the overcoming of Störtebeker] trafen dieselben Englanfahrer auf einen Haufen der Seeräuber und schlugen sich mit ihnen. Gott gab seinen segnen der guten Helden gegen diese, so daß sie viele töteten und 80 von ihnen mit sich nach Hamburg führten; da wurden sie enthauptet und neben ihre Kumpane auf die Wiese gesetzt. Die Hauptleute hießen Michels und Wigbold, ein Meister der sieben Kueste.

Tratziger's *Chronica der Stadt Hamburg* written in 1560, tells the same story, albeit preferring a date of 1402:

Die Hamburger griffen die Seeräuber an, und erschlugen 40 von ihnen, etwa 70 wurden gefangen und gen Hamburg geführt, wo die geköpft wurden und bekamen, was sie verdienten (..) Nicht lang danach in demselben Jahr fingen die Hamburger noch 80 Vitalienbrüder mit ihren Hauptleuten Godeken Michael und Wigbolder, welcher war ein promovierter Magister in den freien Künsten. Sie wahren alle gen Hamburg geführt, da selbst enthauptet und ihre Häupter auf das Brok zu den anderen gesetzt.

The story was, however, in all truth, a little more complex. In 1401, Godeke Michels reappeared in East Friesland. On 24 March 1401, the Hanseatic cities gathered in Lübeck and addressed a common plea to their colleagues (*Bundesgenossen*) from Prussia to help fit out a ship with 50 armed men to patrol the Baltic, the Wendish cities emphasising that they themselves wanted to undertake such a venture ('wollten dasselbe tun') on the basis that Godeke Michels was almost certainly at sea and that he would sail for the Øresund.³¹ The Hamburg Kammereirechnungen indeed testify to the fact that 230 pounds and 14 shillings were levied for the raising of an expedition to be led by Herr Nicolaus Schoke and Hinrik Jenevelt (sic).³²

The course of the expedition we learn from subsequent letters, particularly to the city of Kampen, explaining what had happened.³³ It refers to the overcoming of Michels' cog (*Kogge*) by the three ships leading the expedition. These 'ships of the Englandfahrer' in the words of the Rufus Chronicle were, as we learn from the specifications of the Hamburger Kammereirechnungen, under the leadership of Simon von Utrecht, Hermann Nyenkerken and Werner von Uelzen. On Michels's flagship, the expedition leaders found Lubbert Overdik, whose own boat *Die Jade* had been overrun by Michels' crew, and which then fled upriver with the perpetrators. Overdik's cargo, which was beer, was jettisoned in order to make the ship travel more easily, but was nevertheless captured and brought back to Hamburg. The letter concentrates on the division of the captured booty: one-third going to those who had financed the

³¹ Hanserecesse, I 5, nr. 8, pp 6ff.

³² Hamburger Kammereirechnungen, 1873, Bd. 2, p. 2.

³³ Hanserecesse, I 5, nr. 5, nr. 54, p. 32.

expedition, one-third going to those who had carried out the expedition, and one-third going as compensation to the captain Lubbert and the merchant whose goods were stored on *Die Jade*. The letter written to Kampen asked that the parties to be compensated, who obviously came from the city, should formally agree to this procedure and withdraw a complaint (*Mahnung*) that been voiced at the way the Hamburg authorities were proceeding.

From the accounts of this expedition, and its winnings, the Hamburg *Kammereirechnungen* again have a say:

Die Rathmannen Nikolaus Schoke und Hinrich Jenevelt erhalten 1401 230 Pf. 145 für ihre Fahrt gegen die Vitalienbrüder in die Weser; 1402 empfängt Simon von Utrecht für seine Arbeit und vernichtetes Schiffsgeräth, als Gödeke Michels und die Andern gefangen wurden, 48 Pf., für Anker, Lanzen und Zimmermannslohn 6 Pf 4 S., für seine Arbeit und für Beschädigung seines Schiffes auf der Fahrt ggen die Vitalienbrüder 13 Pf. 12 S; ferner erhalten Hermann Nyenkerken für seine Arbeit und vernichtetes Schiffsgeräth des Schiffes Bunte Kuh 32 Pf. und Werner von Uelzen 24 Pf., als man Gödeke Michels und seine Gesellen gefangen nahm.

From the above, we can appreciate what a financial outlay the Hamburger Rat was obliged to make to combat piracy, and which was only partially covered from the subsequent sale of confiscated cargos and ships. It is clear from the *Kammereirechnungen* that the Hanse did not possess its own permanent standing fleet ready to combat piracy or go to war, as was the case with contemporary monarchies such as that in England. Nor did it possess its own Arsenal, like that operating in Venice from 1206. What is striking are the claims from third parties to the events, who sought either to defend their citizens' commercial involvement, or demand some compensation for their assistance. Thus the city of Leiden here protested that their citizen Gerrit de Bruyn owned a part of the beer on Godeke Michel's boat, which was later sold by the Hamburg authorities.³⁴ Meanwhile, the city of Hoorn claimed its shipwrights had transformed some municipally owned cogships into warships, and had chased Godeke Michels at sea, preventing him moving on upstream until the Hanse's vessels had caught up with him. They wanted one-third of the winnings from subsequent sales of the ships, and the goods they were carrying.³⁵

The Hamburgers retorted that according to the eyewitness accounts of the expedition commanders, there were forty men from Enkhuizen who helped rather than anyone from Hoorn. One of them, Gerrit Jakobsson claimed he had overcome Godeke Michels on the *Jade* as well as having personally provisioned ten Hamburg seamen on board, but

³⁴ Hanserecesse I 5, nr. 52, p. 31.

³⁵ Hanserecesse nr. 46, p. 30 ff.

these claims were contradicted directly by Nikolaus Schoke, the principal commander (*Oberfehlshaber*) of the German fleet. A few years later Gerrit Jakobsson received 54 Marks from the Hamburg Rat.³⁶

Historiographical attention wanes at this point, as the historic perpetrators of the piracy which had come about in the wake of the Danish-Mecklenburg conflict were forced to face their sentence, although acts of piracy continued to flare up. Scholars like Rose prefer to see this as a state of ongoing ‘low level maritime war’ between the Hanseatic League and the county of Holland and England – ‘warfare’ erupting over questions of access to markets and reciprocity in the payment of customs dues and other privileges for merchants, but divorced from considerations of territorial aggrandizement or rivalry between monarchs.³⁷ In 1405, around 300 *Vitalienbrüder* gathered in Emden and its surroundings, where they robbed at sea. In 1408, five Hanse ships lost their cargo in this way. The situation in Oldenburg and Holland continued to provide the *Vitalienbrüder* with a means of living. On the Baltic, too, there were sporadic losses, although these were not *Vitalienbrüder* and had nothing to do with the Danish-Mecklenburg conflict.

The situation came to a head with another great *Strafexpedition* on the part of the Hamburgers aimed this time at the entities on land who harboured them in Sibetsburg and in Emden. In the former a grandson, Sibert Lubbenson of the notorious Edo Wiemkens, continued to host pirate communities in much the same way his grandfather had done. On 6 June 1433 Hamburg wrote to Göttingen that its help was needed in destroying the Sibetsburg in revenge for fourteen days of plunder its merchants had suffered. A memorandum produced at one of the Hanserecessen confirmed that neighbouring cities should pull together to assist in the dispersal (*Zerstreuung*) of the pirates. The Hanse as a whole agreed to pay the costs (*Kost und Zehrung*) that this implied.³⁸ Göttingen and the other Hanse cities, however, failed to commit, so that Hamburg alone had again to single-handedly lead the offensive, aided by Lübeck and Bremen. Simon von Utrecht was again appointed to lead the twenty-one ship expedition. Emden fell to the party quickly, but Sibetsburg resisted more strongly, until mid-September. The Hamburg forces (*Besatzung*) stayed on in Emden to ensure the situation did not revert to its previous state; in 1435 the Sibetsburg was torn down in perpetuity. For Josef Wanke, author of a detailed study of the *Vitalienbrüder* in Oldenburg, this was the concluding chapter in a long story:

³⁶ Hanserecesse 48-51, p. 31.

³⁷ Rose, *Medieval Naval Warfare*, 93.

³⁸ Ostfriesisches Urkundenbuch, Bd I, nr. 414, p. 31 ff.

*Es waren die letzten Vitalienbrüder, die wir in den Oldenburgischen Gebiete antreffen. In der Graftschaft Oldenburg sind sie nach 1419 kaum noch gewesen. Ihr Name verschwand allmählich aus der Geschichte.*³⁹

In Chapter 7 of his book, Mathias Puhle conducts some interesting research into the social origin of the pirates and the nature of their ‘Bruderschaft’, which found an echo in the many guild forms of the period. Like Arne Bialuschewski for the Golden Age of Piracy, Puhle sees the *Vitalienbrüder* as an urban proletariat, whose prospects were often worse than for day labourers in the countryside. He sees them as playing a role in the burst of civic conflict taking place in the 13th and especially the 14th centuries.

This makes the *Vitalienbrüder* a very different prospect from the kind of English privateers like Robert Wenynghon and the Earl of Warwick picking on Hanseatic shipping in the middle years of the fifteenth century. The former was a respectable man of substance, a former mayor of the Channel town of Dartmouth, who put together a fleet in the spring of 1449 for the purposes, as British historiography would have it, of ‘the kind of sea-keeping patrol much desired by all English seafarers’, to the backdrop of an ever more anarchic situation in the Channel.⁴⁰ What needs to be reconciled is the rhetoric we can find in his lengthy report, in which he stated his terms that foreign shipping acknowledge English claims to sovereignty of the seas in the Channel by ‘striking’ i.e. lowering their colours, and the results, the capture of two ships from Brest in Brittany, and the entire annual Hanseatic fleet sailing for the Bay of Bourgneuf, in his own estimation ‘a fleet of a hundred great ships’, encountered in the waters between Guernsey and Portland.⁴¹

There were considerable political issues behind Wenynghon’s action, not least the wranglings over Hanseatic privileges in London which were seen as increasingly unfair, in that the rate of duty they paid on the export of woollen cloth was lower than that paid even by local (denizen) merchants, their exemption on the poundage (as from 1437), and lack of reciprocity in granting privileges to English merchants in Hanseatic ports.⁴² It is unclear why the fleet surrendered so tamely: the League had insisted from 1447 that all Hanseatic merchant ships be armed specifically so as to ward off pirates; perhaps the

³⁹ Josef Wanke, *Die Vitalienbrüder in Oldenburg, 1395-1433*, 97.

⁴⁰ Rose, *Medieval Naval Warfare*, 94-5.

⁴¹ His report takes the form of a letter of 25 May 1449 from himself to Thomas Daniel in the Paston Collection. It is printed in J.B. Hattendorf, R.J.B. Knight, A.H.W. Pearsall, N.A.M. Rodger and G. Till eds., *British Naval Documents, 1204-1960*, London: Scholar Press for the Navy Records Society, vol. 20, pp. 30-1.

⁴² See S. Jenks, *England, die Hanse und Preussen: Handel und Diplomatie, 1377-1471*, Cologne/Vienna: Bohlau Verlag, 1992; J.D. Fudge, *Cargoes, Embargoes and Emissaries: The Commercial and Political Interaction of England and the German Hanse*, Toronto & London: U. Toronto Press, 1995, esp. 7-15.

Hanseatics (mistakenly) hoped to seek swift redress in the English Admiralty courts. In any case, it is hard to follow Rose in casting the story in virtuous light; contemporaries strongly suspected that most of the proceeds of this attack found their way into the pockets of some royal councillors.⁴³ Wenynghon, who had already been pardoned for piracy and murder in 1445-6 was, however, once again pardoned, and served again as Mayor of Dartmouth in 1456-7.⁴⁴

The Hanse was not able to emerge from this setback very easily, and as stated, suffered pretty much a repeat ten years later in 1458, when another ‘keeper of the sea’ Richard Neville, Earl of Warwick, took as many as 17 ships on the old excuse of the returning salt fleet’s refusal to strike in the name of the King of England.⁴⁵ As the Hansards were not enemies, a commission of enquiry followed, and Warwick was called to Westminster, but a brawl ensued in which Warwick almost lost his life and escaped back to Calais unrebuked and unpunished.⁴⁶ This story reveals King Henry VI’s failure to keep the sea, but also challenges staged against a Hanseatic entity in overstretch, and with a rather weak, dispersed, federal chain of command. The Hanse was clearly neglecting to invest new military technology such as cannonry on its vessels, the deployment of which was starting to be seen (for example, the ‘guns’ in Wenynghon’s account), although the Hanse was soon to engage freebooters like the notorious Danzigers Paul Beneke and Martin Bardewik, operating out of Bruges, in developing its own *Kaperkrieg*.⁴⁷ These were, as in the offensives led by Simon of Utrecht, essentially merchant ships manned by extra levies of soldiers. The refitting of a vessel for military service primarily attempted to create additional space for soldiers and their weapons, and accommodate whatever rudimentary cannon was available. Because they had to be re-

⁴³ See T.H. Lloyd, *England and the German Hanse*, p.181.

⁴⁴ J. Wedgewood ed., *History of Parliament I*, Biographies of the Members of the House of Commons 1439-1509, 934; CPR 1446-52, London 1936, p. 570; for his own report, see ‘Robert Wenynghon to Thomas Daniel, 25 May 1449’, in *The Paston Letters*, ed. J. Gairdner, Edinburgh, 1910, vol. I, pp. 84-6.

⁴⁵ Colin F. Richmond, ‘The Earl of Warwick’s domination of the Channel and the Naval Dimension to the Wars of the Roses, 1456-1460’, *Southern History*, vol. 20/21 (1998/9), p. 7; T.H. Lloyd, *England and the German Hanse*, 195; J. Gardiner ed., ‘A Short English Chronicle’, *Three Fifteenth Century Chronicles*, Camden Society 1880, p.71. For the 1447 injunction, see E. Daenell, ‘The Policy of the German Hanseatic League respecting the Mercantile Marine’, *American Historical Review*, XV (1909-10), 48-53.

⁴⁶ *Calendar of Patent Rolls, 1452-1461*, p. 443.

⁴⁷ The classic account of the development of maritime cannonry by Carlo Cipolla still holds, ‘Guns and Sails’, in *European Culture and Overseas Expansion*, Harmondsworth: Pelican Books, 1970, pp. 29-109.

victualled frequently and were in constant need of repair, they remained at sea only for short periods, usually not exceeding two or three weeks.⁴⁸

In conclusion, the problem of piracy posed to the Hanseatic League, particularly the Wendish section of the League, was a relatively circumscribed one, although at moments in its historical development it risked more widespread conflagration, particularly with the political backing of regional powers. Diplomatic initiatives, and group pressure, saw that this only seldom became the case. Well orchestrated *Strafexpeditionen* of limited scale saw to it that pirates were not only put to flight, as happened with the initial encounter off Heligoland in 1400, but vigorously chased up, arrested, brought back to Hamburg and sentenced to death on the Grasbrook. Military deployments occupied towns that had provided refuge to the pirate communities. Dark clouds were, however, already appearing on the horizon as a result of the international situation and the increasing militarization and free-for-all on important shipping routes like the English Channel. These were challenges it was not clear the Hanse could successfully surmount, particularly given the newly fledged confidence of rising nation-states such as England and Holland, but these challenges were not strictly piratical. It was the challenge of privateers acting nominally in rulers' interests, but practically speaking seizing and impounding whatever came their way in order to make up their scant official revenues in terms of poundage and tonnage dues from local ports.

THE FAILURE TO ADDRESS PIRACY BY EARLY MODERN HEGEMONS LIKE THE PORTUGUESE

Alongside shipwreck, piracy presented itself as the other singular menace to Portuguese shipping in its golden age (roughly 1450-1550). Piracy afflicted the Portuguese in different arenas at different times: off the western coast of India⁴⁹; in the *Ilhas Adjacentes* (particularly the Azores)⁵⁰; on the important trading run up to Antwerp; and off the western coast of Africa.⁵¹ Mirroring the vein in historical thinking that insists the Portu-

⁴⁸ P. Simson, *Geschichte der Stadt Danzig bis 1626*, Danzig, 1913-24, vol. I, p. 288; O. Lienau, 'Danziger Schifffahrt und Schiffbau in der zweiten Hälfte des 15. Jahrhunderts', *Zeitschrift des Westpreussischen Geschichtvereins*, LXX (1930), 74.

⁴⁹ Michael N. Pearson, 'Corruption and Corsairs in Sixteenth-Century Western India. A Functional Analysis', in *Coastal Western India: Studies from the Portuguese Records*. New Delhi : Concept, 1981.

⁵⁰ Eduardo C.N. PEREIRA, *Piratas e corsários nas Ilhas Adjacentes*, 3 ed., Funchal (1965).

⁵¹ I do not know any comprehensive work on this area, but examples of West African piracy can be found in Duarte Pacheco Pereira, *Esmerlado de situ orbis*, livro II, cap. 3; Eustache de la Fosse, 'Voyage à la côte occidentale d'Afrique', in *Revue Historique*, 1897, p. 197 ; and in the Machim legend, first set down by Valentim Fernandes da Morávia, a German printer living in Lisbon in the early sixteenth century, see António Baião (ed), *O Manu-*

guese empire was little more than an ensemble of heterogenous spaces with no unity of structure, we can similarly perceive that strategies to confront piracy in these different areas differed greatly.

(1) Off West Africa, where the malefactors were a range of nationalities, chiefly Spaniards, typically sailing out of Seville, piracy was in part legitimated by the political struggle that had blown up between Spain and Portugal for the Castilian throne between 1475-1480. Indeed, the Spanish Crown issued grants to merchantmen of Palos to trade at Mina de Ouro and harvest the *quinto* in the name of those monarchs, while the rich fisheries around the Rio de Ouro were regularly invaded by Canary islanders and black slaves were taken from the Gulf of Guinea.⁵²

The Treaty of Alcáçovas, signed on 24 September 1479, and a second one at Toledo in 1480 obliged the Castilians to renounce their maritime activities in the Gulf of Guinea and recognize the Portuguese monopoly to navigation and commerce across seas it had only painstakingly conquered during the sixty years of the *plano das Indias*. This, however, proved difficult to enforce given the area's physical proximity to the Spanish Canaries and the islands' need to keep itself stocked and supplied, although we have record that Queen Isabella wrote to her *asistente* in Seville in November 1480 to expel English merchants who had arrived in Seville looking to employ Andalusian pilots and seamen.⁵³ Nor were Spaniards prepared to accept the precepts behind these interdictions, and so this rivalry continued to flare until the discovery of the New World in 1492 provided Spain with a new arena.

The problem was also a more general one for the Portuguese. Countless ships from Flanders, France, Castile and England subsequently appeared in the waters off the western coast of Africa, as an extension to Fernand Braudel's famous thesis as to 'the Mediterranean's invasion by northern shipping', which he situates around 1550, but which could in reality be brought forward in time.⁵⁴ While the Portuguese sunk enemy ships

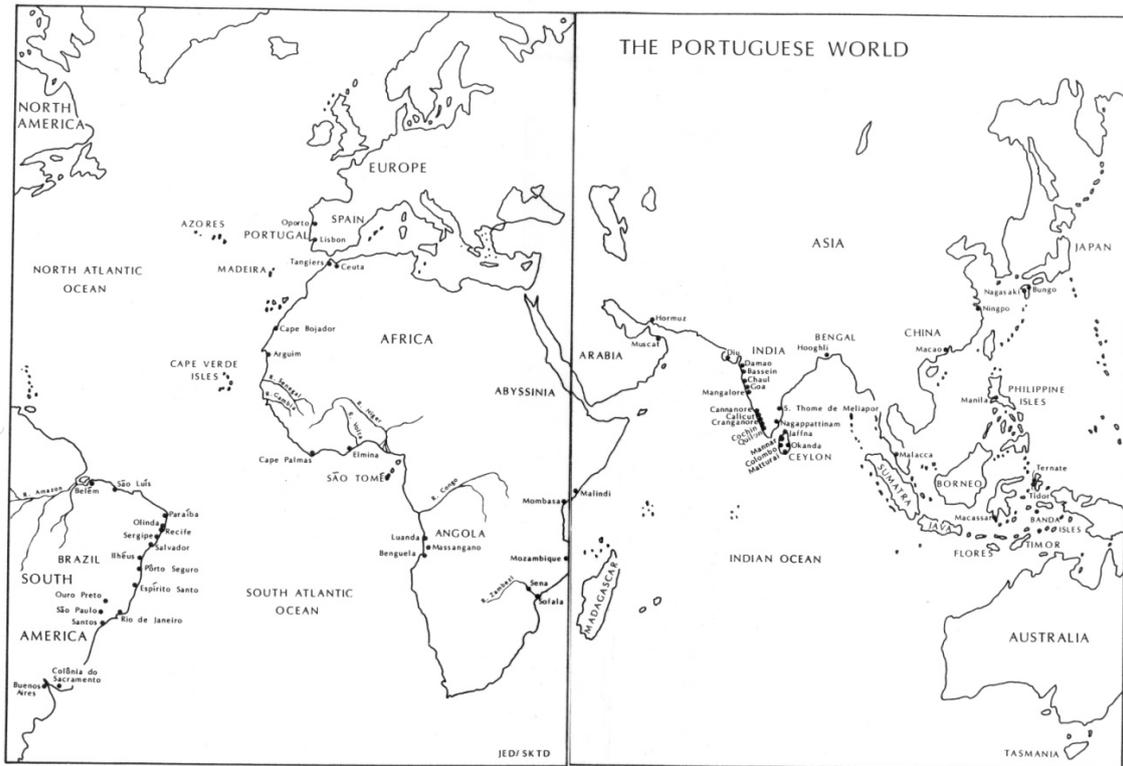
scrito 'Valentim Fernandes' (ca. 1505-10), (Lisbon, 1940). A parallel, but seemingly independent record of the story appeared in a tract written by António Galvão, *Descobrimentos antigos e modernos*, (Lisbon, 1563), trans. Richard Hakluyt as *Discoveries of the World* (London, 1601).

⁵² Jaime Cortesão, *Los Portugueses*, pp. 538-540; V.M. Godinho, 'As incidências da pirataria no sistema português do século XVI', in *Mito, Mercadoria, Utopia e Prática de Navegar: séculos XIII-XVIII*, Difel 1990, pp. 460-461; cf. José Sánchez Herrero, 'Corsarios e Piratas entre los comerciantes Gaditanos durante la segunda mitad del siglo XV', in *Studia*, 1989, 47, pp. 61-79.

⁵³ Peter Russell, 'Castilian Documentary Sources for the History of the Portuguese expansion in Guinea in the last years of the reign of D. Afonso V', in *Portugal, Spain and the African Atlantic*, Aldershot: Variorum, 1995.

⁵⁴ For examples, see *Anais de D. João III*, Suplemento (t. II, p. 262) – 'Relatório do vedor da Fazenda, 1542', Jean Denucé, *L'Afrique au XVIe siècle et le commerce anversois*, Antwerp: De Sikkel, 1937.

Figure 3: Map of the Early Modern Portuguese Overseas World.



and either imprisoned or massacred the crews of numerous such voyages, as instructed per a notorious decree of John II from 1480, the profits were such that the return of one trespassing vessel could cover the losses of repeated failures, and so the flow of foreign opportunists grew rather than declined. Portuguese patrols were never adequate to cover the entire length of coastline: the Portuguese were forced to concentrate their attentions on Mina, and its gold, and S. Thomé and its sugar. In this way, the rest of the Gulf of Guinea ‘passed entirely into the background’ and the monopoly rights became theory, but in practice something of a dead letter.⁵⁵ Portuguese rights, which were enshrined in prohibitions for Englishmen to trade via such deeds as the 1503 Charter of the Merchant Adventurers, were anyway contested by Englishmen who argued that they ‘had a right to trade to unsettled regions’; Frobisher had written a report where it was stated that there were no Portuguese forts between Cape Verde and Benin. On another occasion, they claimed access on the basis of tradition: that they were used to trade ‘without hindrance to Asia and Africa, as well as Europe’.⁵⁶

⁵⁵ J. Bouchaud, ‘Les Portugais dans la Baie de Biafra au XVI^e siècle’, *Africa: Journal of the International African Institute*, vol. XVI, October 1946, no. 4.

⁵⁶ Shillington and Chapman, *The Commercial Relations of England and Portugal*, Ayer Publishing repr., 1970, 136-138.

Are we moving away from piracy here to mere contraband? In part, although the voyages of John Hawkins and Winters plundered Portuguese merchant vessels en route, causing widespread indignation.⁵⁷

(2) In western India, we need to understand that piracy was often a desperate last resort on the part of respectable merchants from cities like Cochin whose livelihoods were jeopardized by Portuguese transgressions even of the unfair commercial rules that they themselves had established, like the forced purchase of *cartazes* or trading permits.⁵⁸ In this instance, the merchant in question proceeded to the hostile city of Calicut and became an inveterate enemy of the Portuguese. Others called by the Portuguese *coissarios* were rather guerilla auxiliaries of the Zamorins of Calicut who supplied protection for the merchants' trade ships, though polities like the Mughals, when antagonized by the Portuguese seizure of vessels like the *Rahimi* in October 1613, instituted rather prohibitions on entry into their ports.⁵⁹ At times of war it would be true to say that anyone trading in pepper was considered by the Portuguese a 'pirata', though we have here an example of patent misuse of the term.⁶⁰

The Portuguese responded in a number of ways. In the later sixteenth century, all Portuguese ships and native ships trading within their system sailed in convoys protected by warships (*cafilas*). Palm tree plantations growing in enemy areas were also cut down, so as to limit the amount of building materials at their enemy's disposal, and took years to regrow. A third strategy consisted in changing the type of vessels they used, the heavy slow-moving boats of the early sixteenth century, which were easy prey to smaller pirate craft, being steadily replaced by lighter vessels known as *sanguiceis*.

But invariably the Portuguese resorted to violence, and would even disdain taking prisoners when they captured a Malibari vessel, hanging their prisoners from the yard-arm before sailing into port 'in order to terrorise the enemy and delight the city'.⁶¹

⁵⁷ Eliz. Foreign State P. Calend., 16 August 1559, no. 1203.

⁵⁸ J. de Barros, *Da Ásia*, 4, viii, 12.

⁵⁹ See, for example, Elison B. Findly, 'The Capture of Maryam-uz-Zamani's Ship: Mughal Women and European Traders', *Journal of the American Oriental Society*, 108 (2), 227-238.

⁶⁰ Lakshmi Subramanian, 'Of Pirates and Potentates. Aspects of Maritime Jurisdiction in Portuguese India and the Construction of Piracy', *Indo-Portuguese Encounters: Journeys In Science, Technology And Culture* (9th International Indo-Portuguese History Seminar), ed. Lotika Vadarajan, 2 vols., 1998.

⁶¹ Diogo do Couto, *Vida de D. Paulo de Lima Pereira*, pp. 76-77; *Documentação Ultramarina Portuguesa*, (Lisbon, 1960-67), vol. I, 422.

Figure 4: Janjira sea fort off the western coast of India.



Note: Photo courtesy of K.N. Chaudhuri.

Unrestrained violence, with unsure grounds for its application in the first place, here only provoked violent response. Consequently, Portuguese India was a dangerous place, which led to the decline of many western Indian ports and may have undermined the development of the Indian manufacturing system.⁶² But it had serious implications for Portugal herself. One Jesuit said that as a result of the Malabaris, the voyage from Goa to Cochin was more dangerous than that to Portugal.⁶³ Another Jesuit, who observed in 1575 how the Malabaris had become ‘absolute rulers of all the seas of India’ was not far wrong when he attributed that to ‘our [sic] sins and carelessness’, although he did not expand on his painful elegy.⁶⁴ Piracy along the western seaboard of India was not eliminated and continued to plague later generations of European colonialists, as the history of Kanhoji Angre (or Angria) in the 1690s shows only too well, who came to control ports from Kolaba south to Gherieh, that is, the coastal area between Bombay and Goa.

An island fortress, in the possession of the Sidis, an African clan literally being pushed into the sea by relentless Maratha pressure. They had recently lost much of their shipping to Kahoji Angria, and civil war had erupted amongst them. There was no central leadership in the clan, not much discipline, but the blind instinct for survival remained via depredations on the unprotected Gujurati merchant. The English in Bombay,

⁶² Radhakamal Mukerjee, *The Economic History of India, 1600-1800* (Allahabad: Kitab Mahal, 1967), 134-135.

⁶³ *Documenta Indica*, ed. J. Wicki, VIII, Rome (1948-), pp. 120-21.

⁶⁴ *Documenta Indica*, vol. X, 3.

however, stood in alliance with them, subsidizing them, primarily to stave off the ill consequences of the Marathas possessing themselves of the whole sea coast. Sir Robert Cown, Governor of Bombay (1729-34), nevertheless feared that 'they are such poor politicians and worse soldiers that I am afraid with all the assistance we can give them, they will scarce be able to maintain themselves' [Ashin Das Gupta, *Indian Merchants and the Decline of Surat, c.1700-1750*, Wiesbaden : Steiner, 1979 260-1]

(3) Let us now turn to another arena in the Portuguese world in which piracy came to the fore: the English Channel and shipping run up to Bruges and, later, Antwerp. Some historians see piracy as a perpetual historical feature of navigation through the politically charged waters of, say, the English Channel, but rather than the product of dynastic war, or as a response to indiscriminate violence, we are moving along clearer lines when we interpret this as the covetousness (*sequiosas cobiças*) on the part of countries' 'still at an inferior level of commercial and maritime development'.⁶⁵

While we know of losses of Portuguese shipping in the Channel from 1509,⁶⁶ in a little known report written at the end of the 1540s, which coincides more or less precisely with the period of the Portuguese Crown retraction, an anonymous merchant candidly expresses his protest that the hazards of trade with Antwerp had mounted steadily over the preceding ten years to the point of commercial impracticability:

From around 1538-40, the merchant is noticeably exposed to pillage as the prey of almost all nations of the world; from 1540 to 1544 at the hands of the French, then between 1544-46 by the English, then from 1547 to 1548 by the Scottish and now, over the last year, starting up again with this French war of relief. It's a marvel that the sea-borne traffic hasn't been entirely ruined.⁶⁷

For a number of maritime insurers of Antwerp, there were fears indeed of ruin. In a letter of April 1546, the English ambassador to the Low Countries, Vaughan, reported a series of petitions by fifty or so insurers to the City Magistrates and even the Privy Council, in which it was stated that they had lost 35.000 Flemish crowns between February and mid-April of that year, mostly on ships coming up from Italy and Iberia. Dealers lay in wait at English ports to buy up the plunder as it was brought in, making

⁶⁵ F. Cantineau, 'Origines des relations commerciales entre la Flandre et le Portugal', *Boletim da Sociedade de Geographia de Lisboa*, series XVIII, Lisbon (1900), no. 1, 24 ff; GODINHO, 'As incidências da pirataria', p. 459.

⁶⁶ Carta do feitor em Flandres ao rei, Antuérpia, 13 August 1509 (Braamcamp, *Feitoria*, doc. no. 21).

⁶⁷ 'Signamment depuis l'an 1538 et 1540, le marchand est exposé au pillage, ayant esté la proye de quasy toutes les nations du monde, comme en l'an 1540 jusques en l'an 1544 des Franchois, depuis de l'an 1544 jusques 1546 des Englois, depuis l'an 1547 et 1548 des Escossoys, et maintenant pour le dernier an commencement de cette guerre de rechief des Francois. Il est à s'émerveiller que le trafic par mer ne fut pas entièrement ruiné'. Archives communales d'Anvers, Dossier Marine, Equipement de navires, no. 5011.

any thoughts of recovery of property impossible.⁶⁸ In 1547, the Regent of the Low Countries, Mary of Hungary, convened her deputies in an emergency session to discuss the problem and responded by restricting the release of port exit licences. In 1551, Antwerp merchants delivered a petition to the Habsburg government claiming that pirates, principally Scots, had taken ships and goods worth an estimated 1.699.000 Holland pounds over the previous eight to ten years.⁶⁹

Sectors of international commerce that managed to weather this particular storm and the acute war years of 1551-53 that followed, seem to have arrived subsequently at a period of relative prosperity, though the war with France rumbled on until 1559 and the peace of Cateau-Cambrésis. Vincenzo Collodi of Lucca, based at Antwerp, could hope for the best in his capacity as insurer as early as April 1550 - 'now that peace reigns between the French and English', he wrote, '[one] should be able to sail normally' (*hora che seguita la pace tra francesi e inglesi. . [e si] doverà ragionevolmente navigare*).⁷⁰ The period between 1553-1565 has even been described as the apogee of alum exports to northern markets, the dangers of sea travel rearing their head only subsequently, between 1566-1602, with the Dutch Revolt and the fierce waterborne depredations of the Seabeggars (*watergeuzen*). Antwerp customs records confirm that overall trade, measured as goods exported from Antwerp, rose steadily between 1543-44 and at the time of the treasurer Grammaye's report ten years later.⁷¹

The first half of the sixteenth century had nonetheless been horrible to the Portuguese. King João III instructed his envoy to tell the ambassador at the French court, Ataíde, that between 1500 and 1531 'more than 300 ships of mine [but more probably 'mine' as in 'my subjects'] have been taken (*aos meus tem tomados passante de tresentos navios*).⁷² In a letter written three years later to the same ambassador, Dom João III expressed a figure as high as 350 Portuguese ships that he claimed had either been

⁶⁸ Brewer & Gairdner, *Letters and Papers, Foreign and Domestic, of the reign of Henry VIII*, vol. XXI, pt. I, nos. 578, 615.

⁶⁹ J.D. Tracy, *Holland under Habsburg rule*, Berkeley: University of California Press (1990), 93.

⁷⁰ Renzo Sabbatini, 'Cercar esca'. *Mercanti lucchesi ad Anversa nel Cinquecento* (1985), citing the Archivio di Stato in Lucca, AG 127, n. 34.

⁷¹ Jean Delumeau, *L'alun de Rome XVe-XIXe siècle*, Paris (1962), 217. Confirm the validity of the Antwerp customs statement taken from Essen, *Contribution à l'Histoire du Port d'Anvers et du Commerce d'Exportation des Pays-Bas vers l'Espagne et le Portugal à l'époque de Charles Quint (1553-4)*, (1921), 30. Gerard Grammaye's *Memoriebook* (1580-82) was published by Jean Denucé in 1928.

⁷² published in Fernando Palha, *A carta de marca de João Ango, exposição summaria dos factos extrahida de documentos originaes e inéditos*, Lisbon (1882), doc. I and as Letter #6, *Letters of John III, King of Portugal, 1521-7*, Camb. Mass. (1931).

seized or plundered, including six or seven of his own fleet. Losses were estimated at one million cruzados.⁷³ Godinho, in an independent reassessment of subsequent available statistics on the issue, concludes that all in all a little more than 450 ships were lost by the Portuguese in the first half of the sixteenth century. The rate of incidence that he presents, moreover, (see Graph 11) concurs with the anonymous merchant's report with which we began this chapter, in that the years 1541-49 see a substantial rise in the amount of shipping lost, with the highest losses experienced immediately thereafter, between 1550-1551.⁷⁴ What this amounts to, in Godinho's estimation, is the loss of as much as half the Portuguese national marine - 'a terrible blow' (*terrível golpe*) indeed, if these statistics are to be believed.⁷⁵

I would contend that deprivations represent a major issue in Portuguese maritime policy of the golden age. However, while for some historians they are satisfactory enough an explanation for the revocation of the Crown *feitor* from Antwerp (the royal order (*carta régia*) of 15 February, 1549), they cannot in themselves account for the collapse of crown trading in Antwerp at a structural level.⁷⁶ For this we need to issues like the anachronism of the idea of crown controlled *feitoria*, or staple, and internal operational problems.⁷⁷ Moreover, while the problem of piracy could be outflanked, as

⁷³ Frei Luís de Sousa, *Anais de D. João III: suplemento*, ed. R. Lapa, t. II, 237. The letter prompted the despatch of Rui Fernandes de Almada to the French court on January 1 1534 to communicate the gravity of the situation. We should not, perhaps, take the Portuguese Crown's estimates too seriously: it needed the French ambassador, Jean Nicot, to point out in 1560 that a register should be kept of Portuguese victims of French deprivations including the full names of captain and crew as well as quantity, nature of merchandise and destination. Edmund Falgairolle, *Jean Nicot* (1897), xxxv. In any case, the French King assessed the losses at 400.000 cruzados rather than the one million claimed by João, C.C. I, m. 43, doc. 25.

⁷⁴ See the report attached to Sousa's chronicle and entitled 'Relação de naus que se perderam no caminho da Índia' [An account of ships lost on the route to India], computed for the period running up until 1551 and which include the 'naus que se perderam indo pera Frandes com carga de especiaria' (ships lost on the Flanders run with cargos of spice).

⁷⁵ V.M. Godinho, 'As incidências da pirateria no sistema português', ch. 3 of *Mito e Mercadoria, Utopia e Prática de Navegar - séculos XIII-XVIII*, Lisboa (1990). Ana Maria Pereira Ferreira, who consacrated her PhD thesis to the problem of piracy as the principal determinant in political relations between France and Portugal in the first half of the sixteenth century, however, dismisses Godinho's work as 'um panorama longínquo da realidade. . baseado apenas em fontes publicadas', *Problemas Marítimos entre Portugal e a França na primeira metade do século XVI*, dissertação de doutoramento em História ap. a Fac. de Ciências Sociais e Humanas da Universidade Nova de Lisboa (1991), nota #1, 7.

⁷⁶ c.f. J.A. Goris, *Études sur les colonies marchandes méridionales à Anvers, 1458-1567*, (1925), 236.

⁷⁷ See S. Halikowski Smith, *Portugal and the European Spice Trade, 1480-1580*, Ph.D. thesis defended at the Eu-

was the case in 1568 when the Spanish silver fleets switched from using the Biscayan *zabras* on the run between Loredó to Antwerp to Mediterranean redistributive networks, from Barcelona to Genova and thence overland routes running north, the Portuguese do not appear to have taken recourse to this.⁷⁸

Nevertheless, it remains to be asked why the Portuguese Crown did not respond to piracy on the Antwerp run more concertedly. Godinho has described the Portuguese response to Breton privateering in the mid-fifteenth century on the sea-routes north to Flanders as ‘effective reprisals, reinforcing lively negotiations with the Duke of Brittany’ (*represálias eficazes, reforçando enérgicas negociações junto do duque de Bretanha*). Portuguese armadas were sent out expressly to chase up outlaws like the Biscayan Joham de Laranda in 1488.⁷⁹ As the sixteenth century wore on, and in line with her European competitors, Portugal moved from ‘effective reprisals’ to instituting a convoy system on her European trading routes. A more proactive policy was restricted to the biannual patrols sent out as part of the *capitanias da mar* from 1516 to Brazil, but as an analogy to a system already operating in the Indian Ocean. These *capitanias* were a jurisdictional grant of ports along the Brazilian coastline assigned by King Manuel and his Conselho between 1516-30 and on at least four known occasions. Between 1516-1519, for example, a *capitania da mar* was granted to Cristovão Jacques. The *capitães*’s task was to lead small Portuguese armed squadrons up and down the Brazilian littoral, especially around the Rio do Prata.⁸⁰ The system was extended to patrols along the Malagueta coast as far as Mina.

Meanwhile, an escort system was set in place, charged with protecting Indiamen during the first stage of their outward voyage up until the Azores, as well as home-bound fleets from the Indies, which were then similarly escorted from the Azores. This system was up and running from the time of Lopo Soares’ return from the East in 1519. The ground rules were set out in the ‘Regimento para as naus da Índia nos Açores’ promulgated in 1520, and entrusted to the bureau of the *Provedor das Armadas da Índia, Brasil e Guiné*, whose seat was established in Angra do Heroísmo, and whose first nomination was Pero Anes do Canto.⁸¹

ropean University Institute, Fiesole, 2001, §11.3, §11.4.

⁷⁸ Fernand Braudel, *La Méditerranée...*, Paris (1949), 376-381.

⁷⁹ Braamcamp Freire, ‘Expedições e armadas de 1488’, doc. no. 2, as cited by Godinho, *Mito e Mercadoria, Utopia e Prática de Navegar - séculos XIII-XVIII* (1990), 462.

⁸⁰ Carlos Mattoso Filipe, ‘Primeiro Contacto com Terras Brasileiras’ in *Portugal no Mundo*, ed. Luís de Albuquerque, vol. 3, O Descobrimento da Rota do Cabo e as suas Consequências. O Descobrimento do Brasil e suas Consequências, Lisboa, Alfa, 1989, p. 202.

⁸¹ Artur Teodoro de Matos, ‘A Provedoria das Armadas da Ilha Terceira e a Carreira da Índia no século XVI’, in

Anes do Canto's responsibilities were set out as the superintendence of all the defence, supply and support of state voyages calling into port (*escala*) or passing by (*passagem*) the Azores. He was also to direct the *armada das ilhas* to convoy from Flores to Lisbon all the fleets sailing from Brazil, India and Mina. Between 1536-56, historians have noted at least twelve such armadas.⁸² Afterwards, the state embarked upon a policy of offering safe anchorage via the building of necessary fortifications. Evaluations of these provisions are mixed. Alberto Vieira, on the one hand, insists that the scheme was so successful that Spaniards at times solicited the support of the Azorean authorities.⁸³ Longer-term reorganization of the fleets for the Americas in terms of those bound for Nueva España and Terra Fierme saw to it that Terceira forged a role for herself as 'universal escala do mar do poente' in the famous words of Gaspar Frutuoso's sixth book of his *Saudades da Terra*.⁸⁴ On the other, official documents of shipowners' and merchants' complaints regarding the depredations of French corsairs between 1521-37 only highlight the continued risks of trade with the Azores.⁸⁵ During the Anglo-Spanish War of 1585-1604, joint operations of Elizabethan crown ships and privateers captured or lost as a result of English attacks seven Portuguese Indiamen.⁸⁶ As a reaction, there is no doubt that Portuguese Indiamen stopped calling at the Azores⁸⁷ by the end of the 16th Century and at Saint Helena after 1602 due to fear of privateering attacks. As no alternatives to these two ports of call were adopted, the so-called *viagens de rota batida* (that

Luís de Albuquerque, Inácio Guerreiro (eds.), *II Seminário Internacional de História Indo-Portuguesa*, Lisbon: Instituto de Investigação Científica Tropical – Centro de Estudos de História e Cartografia Antiga, 1985, pp. 63-72; idem, 'A Armada das Ilhas e a Armada da Costa no século XVI (novos elementos para o seu estudo)', Lisbon: offprint from Academia de Marinha, 1990.

⁸² Vieira, Alberto, 'A fortuna das Afortunadas', in *Oceanos*, 2001, No.46, pp. 56-80.

⁸³ He is referring to 'Instrução dada a Juan Tello de Guzman, capitão general da armada que foi aos Açores buscar o ouro e a prata que lá se encontravam e acompanhar, desde aquelas ilhas até Sanlúcar de Barrameda, as naus espanholas regressadas da América' (dated 30 April, 1554), Arquivo General das Índias, Seville, *Patronato*, 258.

⁸⁴ Frutuoso, Gaspar. *Saudades da Terra*, Livro 6, Cap. II.

⁸⁵ Ana Maria Pereira Ferreira, 'O Corso Frances e o Comercio Açoriano na Primeira Metade do século XVI (1521-37)', in *Boletim do Instituto Histórico da Ilha Terceira* (1987) 45(1): 263-284.

⁸⁶ Paulo Guinote, Eduardo Frutuoso, António Lopes, *Naufrágios e outras perdas da «Carreira da Índia». Séculos XVI e XVII*, Lisbon: Grupo de Trabalho do Ministério da Educação para as Comemorações dos Descobrimentos Portugueses, 1998, pp. 223-231.

⁸⁷ Rui Godinho, *A Carreira da Índia – aspectos e problemas da torna-viagem (1550-1649)* (unpublished MA thesis), Lisbon, 2000.p. 301.

is, voyages made without calling at any harbour) on the homeward voyage were instituted.⁸⁸

But although ships were usually safe in Portuguese metropolitan waters, they remained painfully exposed on the trip up to Antwerp. Convoys of Portuguese ships, when recorded, either formed around the state fleets on their sporadic visits to Antwerp or else on an *ad hoc* basis. Antwerp's New Christian spice contractors arranged south-bound fleets to travel together to Lisbon and Andalusia; it was most probably one of these fleets of mixed Spanish and Portuguese amounting to 50 sail that arrived by return in Antwerp in 1525.⁸⁹

Portugal's competitors, it needs be pointed out, saw far more readily to the protection of their domestic merchant navies. The Venetian galleys always went heavily armed and with a requisite number of bowmen aboard, while the Genoese insisted that merchandise of any value be transported on board the armed galleys of the Commune. The Dutch authorities initially commissioned accompanying warships paid for by special levies (*omslagen*), but commuted this to stringent regulations demanding that west-bound merchantmen carry double the usual armament or else sail in convoys of at least forty ships.

At any rate, the Portuguese Crown took few active measures to confront the lawlessness on the high seas, preferring to seek alternative commercial outlets on the Mediterranean, as we have speculated with the presence of a Portuguese feitor in Marseille in 1524, or else operate through a series of ineffectual diplomatic missions and the repeated tendering of naive requests through diplomatic channels, which were only rebuffed insolently by a French monarchy openly encouraging 'reprisals' via free distribution of the ignominious letters of mark (*cartas de marca*).⁹⁰ An enquiry undertaken by the Portuguese city of Guimarães on behalf of its shipping interests in 1532 concluded tearfully

⁸⁸ Ibidem, pp. 367-373.

⁸⁹ G. Bertrijn, *Chronijck der Stadt Antwerpen toegeschraeven aan den Notaris Geeraard Bertijn*, published by G. van Havre, Antwerp (1879).

⁹⁰ see, for example, François I's famous *carta de marca* issued to Jean Ango authorising him to take what he liked from Portuguese *fazendas*, A.N.T.T., Gaveta III, m. I, no. 19 and m. II, no. 7; François's letter of 27 July, 1530, to the governors of Provence and other royal provinces instructing them not to impede Jean Ango from seizing goods from the Portuguese in compensation for Portuguese deprivations valued at 250.000 ducats as cited in Barata, *Rui Fernandes de Almada*. (1971); also Frei Luís de Sousa, *Anais de D. João III*, ed. M. Rodrigues Lapa, Lisbon (1938), II, 237, and Fernando Palha, *A carta de marca de João Ango, exposição summária dos factos extrahida de documentos originaes e inéditos*, Lisboa (1882). For a treatment of the issue in secondary literature, see Charles de la RONCIÈRE, *Histoire de la marine française*, 5 vols., Paris (1909), especially v. III, chapter entitled 'Ango et la liberté des mers'.

that in France justice was not served.⁹¹ International treaties such as the Treaty de Crépy of 1544, by which the French agreed not to interfere with the Portuguese and Spanish New Worlds, as the Fointainebleau agreement of June 1531, by which both sides committed themselves to the abolition of all issued *cartas de marca* and the immediate cession of reprisals, were nonchalantly reneged upon from the French side. Generous Portuguese disbursements in gold bullion to the political protagonists (an indemnity of 60.000 francs to Ango and 10.000 cruzados to Admiral Chabot, on top of loans to the King and annual pensions to Counsellor Montmorency and Chancellor Du Prat), which were intended to pay for the compromise, as was the case with the much more expensive Treaty of Saragossa, ultimately led nowhere. The hopes reawakened with the establishment of a judicial body to broker a resolution, the Tribunal de Presas, composed of *deputados* of both countries, and which first met in Bayonne on 22 March, 1535, were dashed by French foot-dragging and accusatory polemic in which Portugal was castigated for its purported hostility to the Valois cause in the House's struggle against the Habsburgs.⁹² In 1558, the Venetian ambassador Capello declared that the King of France laughed openly at the protests of his Portuguese brother-in-law.

Thus, in effect a hopeless foreign policy of sustaining benevolent neutrality to all sides backfired; rather than laud Portuguese neutrality as 'a tour de force of cleverness' (*uma obra-prima de habilidade*), neutrality had none of the political pay-offs it might do in a more gentlemanly scheme of international relations. Rather, it made Portugal become open prey to not just French, but also English privateers working in the Channel, who responded to the ambiguous international situation and Elizabeth I's annoyance with the Portuguese for not conceding an inch on the principle of *mare clausum* with respect to non-European waters.⁹³ This, which started out as a mere point of irritation, turned into a forthright demand on the occasion of any request on the part of the Ambassador of Portugal that his King reciprocally 'vouchsafe to admit in his next navigation to Callicut some English men of the Kings appointment to adventure therewith for the provision of the realme for spice'.⁹⁴ Unsatisfied, the English Crown, like the French, turned to issuing letters of mark, such as we find issued to a certain Mr. Winters, and

⁹¹ *Livro dos roubos que os franceses e vassallos del Rey de França fezeram aos moradores desta vila de Guimarães e seu termo* (1532), ed. Alfredo Pimenta, Guimarães, 1940.

⁹² see, for example, A.N.T.T., Corp. Cron., pte. III, maço 13, doc. 12 and *ibid.*, pt. I, m. 61, 56. In 1537, Charles V pressed the King of Portugal to forbid French vessels from entering the ports.

⁹³ P. S. Martínez, *História Diplomática de Portugal*, (1986), 104, taking his cue from Santarém, *Quadro elementar das relações políticas e diplomáticas de Portugal com as diversas potencias do mundo desde o princípio da Monarchia portugueza até aos nossos dias*, III, pp. LXIV-LXV.

⁹⁴ British Library, Cotton, Nero, B I, doc. 74 ('out of the Counsell table booke'), Slyford, 14 October, 1541.

even went so far as to sign a treaty of war with the French Crown and which specifically targeted 'the ships of Portugal bearing spices and other goods via the said Strait and Low Countries and lands of the Emperor' (*les navires de Portugal chargées d'epicerie et autres marchandises par led. Destroit et basses régions et país de l'Empereur*).⁹⁵

Ultimately, the Portuguese were forced to toughen up and take sides. Naval forces for the protection of metropolitan Portugal were increased substantially; twenty armed *latinos* of 25 to 30 tons, grouped in six flotillas each with its own port of supply, were made available and four galleons were instructed to patrol the Atlantic coastline, while one *navio grosso* and three caravels were to keep watch over the Algarve. The traditional Portuguese neutrality was compromised by an agreement made with the Emperor to coordinate actions against the French. Provisions directed at 'all the ports and Portuguese points of anchorage' (*todos os portos e ancoradouros portugueses*) decreed that no boat or caravel could sail 'for the North or West' (*para a Poente*) without a royal license. This echoed imperial policy which from the early 1540s required that even the Portuguese Crown factor in Antwerp obtain a licence from the Regent in order to export.⁹⁶ But these measures, for what they were worth, were made too late in the day to have any influence on the fate of the Antwerp *feitoria*, which as we have seen, was closed in 1549: they were announced only at the beginning of 1552.⁹⁷

We have looked at the threat posed by maritime piracy to Portuguese trading circuits in the late fifteenth and sixteenth centuries. To be understood in context, however, piracy ought to be set against the dangers of shipwreck that accompanied forwarding commercial shipments by sea from Portugal. For although the trading opportunities at Antwerp as trumpeted by Lodovico Guicciardini and many others are well known, navigating the rough and exposed waters of the Atlantic was of a different technical order to the relative security of criss-crossing an inland sea (*cabotagem*) like the Mediterranean-

⁹⁵ British Library, Cottoniana, codice Nero, B. I. 'Reasons for a Portugall to move the trade into England', January 29, 1569, point #15, fol. 147v; see Ana Maria Pereira Ferreira, *Problemas Marítimos entre Portugal e a França na primeira metade do século XVI*, from Bibliothèque Nationale de Paris, Nouv. Acq., no. 9388, fl. 46-49 v.

⁹⁶ documents in *A.H.P.*, t. II (1904), pp. 243 ff and Pedro de Azevedo, *Defesa da navegação de portugal contra os franceses*, t. VI (1908), p. 161 ff. and particularly 164-65. For imperial licenses from Antwerp, see R. Haepke, *Niederländische Akten und Urkunden zur Geschichte der Hanse und zur Deutschen Seegeschichte*, Munich (1913), 372. The contractors, equally, needed permission in the form of a *sauf-conduit*, *sauvegarde et seurté* from the Emperor and the Chancellery of the Brabant Court in order to import into Antwerp, GORIS, *Étude sur les colonies méridionales...*, 202.

⁹⁷ Godinho, 'As Incidências da Pirateria no Sistema Português do Século XVI', in *Mito, Mercadoria, Utopia e Prática de Navegar*, (1990), 473.

an.⁹⁸ Shipwreck on the shipping route up to Antwerp took a steady toll on Portuguese shipping, as vividly described from personal experience by Matteo da Bergamo, or in the letters sent out by the Portuguese King seeking restitution of goods recovered in such incidents.⁹⁹ The precise losses are conveniently summed up in a report attached to Sousa's chronicle and entitled 'Relação de naus que se perderam no caminho da India' [An account of ships lost on the route to India], computed for the period running up until 1551 and which include the 'naus que se perderam indo pera Frandes com carga de especiaria' (ships lost on the Flanders run with cargos of spice). The final count is five ships and 300.000 cruzados loss on the *trato de Europa*, out of a total estimated loss of 31 ships and 3.352.150 cruzados.¹⁰⁰

Table 1: Losses of the King's spice ships due to shipwrecks, 1521-51.

	Number of ships lost	Total value of cargo lost	Average cargo per ship
Cape route. Outbound.	13	552.150	50.000
Cape route. Inbound.	10	2.450.000	250.000
India-Hormuz	3	50.000	16.666
Lisbon-Antwerp	5	300.000	60.000
TOTAL LOSSES	31	3.352.150	

As much as a sixth of the Crown fleet running the spice trade and lost to the rocks fell victim on the redistributive leg between Lisbon and Antwerp; ignored by the genre of literature that emerged as 'A História Tragica Maritima', which was devoted to heroic tragedies at sea and sought exotic settings for its tales, the Antwerp leg was in proportion to the fleets' overall mileage as perilous an undertaking as a journey to the coast of Malabar.¹⁰¹

BRITAIN STARTS TO MOVE AGAINST PIRACY

In attempting to explain why European states (primarily Britain and France) moved on to take legal measures against sea-borne piracy at the end of the seventeenth and during the eighteenth centuries, I would like to approach the problem from three perspectives:

⁹⁸ Lodovico Guicciardini, *Descrittione di tutti i Paesi Bassi*, Antwerp, 1567.

⁹⁹ see Prospero Peragallo, 'Viaggio di Matteo da Bergamo in India sulla flotta di Vasco da Gama, 1502-3', in *Bollettino della Società geografica italiana*, XXXIV (1902); for an example of the second type of literature, see 'Carta do Rei D. João III ao Cardinal Wolsey', dated Coimbra, September 10, 1527, B.L. Cotton, Nero, B. I, fol. 64.

¹⁰⁰ taken from Frei Luís de Sousa, *Anais de D. João III*, ed. M. Rodrigues Lapa, Lisbon (1938), II, 237 & 243; suplemento, t. II, pp. 291-2.

¹⁰¹ Giulia Lanciani, *Tempeste e Naufragi sulla via delle Indie*, Roma: Bulzoni (1991).

(1) Challenging the universalistic model for the development of commercial law

Greater efforts need to be made to factor in the international political situation into an understanding of state attitudes to piracy. Thus, rather than a deterministic and universal model for the development of commercial law, we need to see the fight against piracy as a particular episode in the emergence of the *pax Britannica*.¹⁰² While the *pax Britannica* was only really an achievement of the nineteenth century, Paul Kennedy notes how ‘the governments of the 1650s were the first in English history to have a world strategy’.¹⁰³ Such a global strategy was needed to conceive of confronting piracy as a global problem.

During the sixteenth century, England had been encouraging piracy as a means to usurp Spanish claims to overseas possessions (for example the Drake voyages against Panama), or in waging war against their arch-enemy the French.¹⁰⁴ Piracy was presented as patriotism, or even as part of a Protestant crusade, especially when it took place in the Caribbean or South Atlantic.¹⁰⁵ It consequently flourished in Elizabethan England: Studland Bay in Dorset was the site between 1581-83 where at least 40 stolen vessels were unloaded and stripped. By the mid-eighteenth century, however, Britain had become ‘the largest free-trade area in the world’.¹⁰⁶ She had become a land-owning power in North America and the Caribbean, producing exportable material wealth that constituted prospective booty to pirates operating there. Piracy was now a problem to England itself. We can perhaps detect an intervening period of ‘Jacobean pacificism’ when piracy was no longer the glamorous occupation it had once been, and where instructions to wreak havoc on erstwhile hostile powers like Spain were now substituted by instructions to apprehend pirates ‘having no sufficient Commission’ from the times of James’ predecessor.¹⁰⁷

¹⁰² For such a deterministic reading, see Johannes Flume & Jan Thiessen, *Entwicklungsgeschichte des Handelsrechts: Synoptische Darstellung, bestehend aus ADHGB, HGB 1897, heutigem deutschen Handelsrecht und österreichischem Unternehmensgesetzbuch*, de Gruyter (Rechtswissenschaften): 2010; Douglass North, *The rise of the western world: a new economic history*, Cambridge : Cambridge University Pr., 1973.

¹⁰³ *God’s Englishman*, 166-68; Hill, *The Century of Revolution*, 1961, 156-60.

¹⁰⁴ 23 privateers were issued with letters of marque in June 1558 to take their own rewards at the expense of the French.

¹⁰⁵ David Loades, ‘From the King’s ships to the Royal Navy, 1500-1642’ in Hill & Ranft, *The Oxford illustrated history of the Royal Navy*, Oxford U.P., 1995, 42.

¹⁰⁶ K. Berrill, ‘International Trade and the rate of economic growth’, *Economic History Review*, 2nd series, XII, 1960, 358.

¹⁰⁷ Claire Jowitt, ‘Piracy and Politics in Heywood and Rowley’s *Fortune by Land and Sea*’, *Renaissance Studies*,

The shift from one prevailing logic to another was not, however, black-and-white. Britain remained a major privateering power throughout the eighteenth century.¹⁰⁸ But of all European powers, Britain had the highest proportion of gross national product and employment linked to foreign trade. A failure to defend it would have catastrophic fiscal consequences, with incalculable results for naval expenditure. As one pamphlet entitled ‘News from the sea: OR, the Takeing of the Cruel Pirate’ explained in 1674: ‘Amongst all the rapacious violencies practiced by wicked Men, there is scarce any more destructive to Society and Commerce then that of Piracy, or Robbers of the Sea, whence in all Ages they have been esteemed, *Humani Generus hostes*, Publique Enemies to Mankind whom every one was obliged to oppose and destroy, as we do Common vermine that Infest and trouble us.’¹⁰⁹ And at the trial (b. 1696) of Avery’s crew for their piratic acts committed against the *Ganj-i-Sawai*, the Judge Advocate of the Admiralty, Dr. Thomas Newton, reminded the jury of the consequences of allowing the acquittal of the defendants: ‘the destruction of those innocent Englishmen’ engaged in trading, as well as ‘the total loss of the Indian trade, and thereby the impoverishment of this kingdom’.¹¹⁰

We have plenty of historical evidence to show how pirates were quite ready to turn against their own co-nationals when the occasion presented itself. Piracy was not in other words the extension of war unofficially against England’s enemies, even though Spaniards figured amongst common targets in the sixteenth century, and Mughal and Muslim pilgrim vessels in the Red Sea figured in the later seventeenth century as a popular target for British pirates as is well known from the adventures of Captain Kidd and Henry Every.¹¹¹

(2) It would be convenient to argue that the suppression of maritime piracy was an achievement of the rising power of the European state. In this context, it is interesting to note how the home government in London moved more quickly and determinedly against Caribbean piracy than local populations did in the Caribbean basin, who connived with the pirates’ activities, supplying them with services and selling them stolen

June 2002, vol. 16, issue 2, 217-19.

¹⁰⁸ See Meyer, ‘English privateering in the War of the Spanish Succession’, *Mariner’s Mirror*, 69, (1983); R.P. Crowhurst, ‘British naval responses to privateering, 1793-1815’, paper given at Huddersfield conference and considered forthcoming.

¹⁰⁹ ‘News from the sea: OR, the Takeing of the Cruel Pirate’, 1674.

¹¹⁰ William Cobbett ed., *A Complete Collection of State Trials and Proceedings for High Treason and Other Crimes and Misdemeanors from the Earliest Period to the Year 1783*, 1816, pp. 451-484.

¹¹¹ Robert Ritchie, *Captain Kidd and the War against the Pirates*, Cambridge: Harvard U.P., 1986; Douglas Burgess Jr., ‘Piracy in the Public Sphere. The Henry Every Trials and the Battle for meaning in 17th century Print Culture’, *Journal of British Studies*, October 2009, vol. 48, issue 4, 887-913.

merchandise. In this second line of research, I would like to conduct a study of a sub-state institution like the Royal Navy, to determine to what extent its own interests diverged or indeed converged with those of the state.

There is considerable controversy as to the role of the British Admiralty. On the one hand, historians have seen it as something of a feckless, reactionary institution that was slow to grasp pressing realities. As recently as the Nine Years War (1689-97), the Admiralty had shied away from coming to the help of the East India Company in bringing pirates to heel, arguing it did not have enough ships to assist the Company. The Admiralty had sought to defend itself from the charge that it had obstructed the fight against pirates, by claiming that it was not possible to commission privateers to fight pirates.¹¹² At the same time, common law gradually stripped from admiralty law its authority over non-tidal waters and maritime disputes arising on land.¹¹³ On the other hand, British historians applaud the arrival of a permanent bureaucracy at the Admiralty under commissioners during the twenty years following the Nine Years War. A permanent location was fixed, the Secretary became a permanent position, and its records ceased to be regarded as personal belongings of its chief or secretary. The French navy is seen by these historians as hampered for lack of its own admiralty.

The major breakthroughs, however, were not slow in coming. As Paul Kennedy explains, the really great changes in the Royal Navy were in its functions, and composition. From being an assembly of vessels provided for by the monarch and certain nobles and merchants, it became a national force, paid for by regular votes of Parliament; from being an occasional and motley body, it became a standing and homogenous fleet; from being almost without administrative and logistical support whatsoever, it developed a structure of dockyards, provisioning, accounting, recruitment and training; and from being a force directed by gentlemen amateurs, whose understanding of sea power was limited and whose private interests often conflicted with those of the state, it fell under the control of professional seamen, guided by its 'Fighting Instructions and Articles of War', directly responsible to the government as an instrument of national policy.¹¹⁴ Sociologists like Norbert Elias have studied the social tensions at work in the Navy between the lowly 'tarpaulins' equipped with the skills needed for handling the maritime environment and the mindset of the still feudal military classes interested and trained rather for fighting, arguing that the openness of the conflict enabled social mobility and improvement.¹¹⁵

¹¹² Hargrave, 1777, 342.

¹¹³ M.J. Pritchard and D.E.C. Yale, *Hale and Fleetwood on Admiralty Jurisdiction* (London: Selden Society, 1993).

¹¹⁴ Paul Kennedy, *The Rise and Fall of British Naval Mastery*, Allen Hall, 1976.

¹¹⁵ Norbert Elias, *The Genesis of the Naval Profession*, University College Dublin Press, 2007.

Table 2: Ships and tonnages, 1680-1815

Year	Numbers			Displacement tons (000s)	
	Line of Battle	Cruisers	British	French	Dutch
1680	95	20	129	132	64
1690	83	26	124	141	68
1695	112	46	172	208	106
1700	127	49	196	195	113
1710	123	57	201	171	119
1715	119	63	201	108	98
1720	102	53	174	48	22
1730	105	49	189	73	73
1740	101	58	195	91	91
1745	104	98	231	98	55
1750	115	108	276	115	41
1755	117	108	277	162	113
1760	135	172	375	156	137
1765	139	136	377	175	124
1770	126	112	350	219	165
1775	117	115	337	199	198
1780	117	187	372	271	196
1785	137	181	447	268	211
1790	145	180	459	314	242
1800	127	264	546	204	127
1805	135		569	182	139
1810	152	3906	7256	194	100
1815	126		616	228	60

Note: These are official navy lists, and refer to the mobilizable force. British ships of the line of battle did not increase much; cruiser class advances were more substantial. The table shows that their numbers tripled over the period 1710-1760 and rose almost seven times by 1810.

How did these changes come about? Samuel Pepys put it down to dynastic good fortune: ‘If it had not pleased God to give us a King and Duke that understood the Sea, this nation had ‘ere been quite beaten out of it’.¹¹⁶ But it was more than just this, the whole country came round in 1690, after the debacle off Beachy Head, to the wholesale support of the Navy in the face of what looked like a country open to invasion. A new dockyard in Plymouth was envisaged and a special fund voted for the building of 27 men-of-war. Bishop Burnet described the mood in the Parliament that autumn: ‘they (MPs) dare not go back into their country if they do not give Money liberally. We seem not to be the same people we were a year ago’. Massive growth resulted from this

¹¹⁶ Daniel A. Baugh, ‘The 18th century Navy as a National institution’, p. 120 (in *Oxford Illustrated History of Royal Navy*).

change of outlook; by 1713, 48.000 seamen were registered in the Royal Navy. We can also appreciate this growth in the rise of British shipping and tonnage when compared with other European rivals.¹¹⁷

The Navy, meanwhile, was also empowered to hold trials for cases of suspected piracy, which was legalised by the statute of 1700, entitled an ‘Act for the More Effectual Suppression of Piracy’, and this concretized the navy’s role as state substitute. Attempts to shift prosecution of pirates to colonial forums were also negated by this piece of legislation, which created instead a special procedure for staffing a seven-person court in any location. Thus, while some scholars have argued recently for the development ‘ocean regionalism’ with regards to the treatment of piracy, this remains very much the view from abroad.¹¹⁸ Metropolitan statutes were not, in their wording, articulated in terms of a variable geometry applying certain criteria to different regions of the world. The importance of this piece of legislation reverberated in later legal texts, such as the *Articles of War* of 1749, which reminded ‘captains, commanders or other officers of any of His Majesty’s Ships or Vessels of War’ that receiving any ‘goods or merchandizes whatsoever, in order to trade or merchandize with pirates’ was an offence worthy of court martial.¹¹⁹

The Navy pushed hard against piracy, actively pursuing pirates on international waters. Rewards were used to get bystanders to turn pirates in to the authorities, perhaps the most famous of all being the combined bounty of £1,000 offered for Henry Avery’s capture by the Privy Council and the East India Company, leading to the first worldwide manhunt in recorded history.¹²⁰ There was initially a softer line of official pardons to pirates, particularly in the years 1717 and 1718. But generally speaking, the highest punishments were applied and especially the death penalty, to those guilty of piracy; one historian has recently estimated that between 400-500 pirates were hung between 1716-1726.¹²¹ Execution Dock in the Wapping area became the notorious spot at which

¹¹⁷ We must discard the old histories that consider the Royal Navy in decline over the period 1700-40. This view was based on figures pertaining to ships in the line of battle. Also, if we take a comparative European view, it was the French Navy that really fell into decline. The really remarkable thing, Baugh argues, is that the British did not reduce her fleet in light of the decay of the French Navy.

¹¹⁸ Lauren Benton, ‘Legal spaces of empire: piracy and the origins of ocean regionalism’, *Comparative Studies in Society and History*, 47: 4, 700-24.

¹¹⁹ This statute (?) is repr. as Appendix I in Markus Eder, *Crime and Punishment*, 158-173.

¹²⁰ Douglas R. Burgess. *The Pirates' Pact: The Secret Alliances Between History's Most Notorious Buccaneers and Colonial America*. New York, NY: McGraw-Hill (2009), p. 144.

¹²¹ Markus Rediker, *Between the Devil and the Deep Blue Sea. Merchant Seamen, Pirates and the Anglo-American Maritime World, 1700-1750*, CUP, 1987, 283.

pirates, smugglers and mutineers that had been sentenced to death by Admiralty courts were hung, and several gibbeted as a means to deter other possible offenders. In court, many of the pirates' traditional lines of defence were cracked down upon. Many pirates had exploited flawed commissions, or changed their names. Others presented 'piracy' as the upshot of an attempt to put down querulous crews. But Marcus Rediker has shown how the hard line pursued by the prosecuting authorities on the high seas and in colonial courts only provoked pirates, particularly in the period between 1722-26 to 'give up on legitimacy' and become more desperate. Although some pirates, like Thomas Anstis, are known to have actively awaited a specific pardon from King George II, after he had issued a general pardon in 1718, it is generally held that since the graces specified that only certain crimes committed at certain times and in specific regions would be forgiven, many pirates saw enormous latitude for official trickery and refused to surrender.¹²² Other historians have suggested pirates were reluctant to go back to the unemployment and hardship they had experienced in early life.

The numbers tell their own story, however. Contemporary estimates of the pirate population during the period under consideration placed the number between one to two thousand at any one time. But from records that describe the activities of pirate ships and from records or projections of crew sizes, it appears that between 1800-2400 Anglo-American pirates prowled the seas between 1716-18, 1500-2000 between 1719-22, and 1000 to 1500 declining to fewer than 2000 between 1723-26.

It remains to be established how many of these capital punishments were actually directly prompted by the Royal Navy, and not some other agency, for example, colonial governors. It was the Governor of Virginia, Alexander Spotswood, for example, who arranged for a party of soldiers and sailors to find and capture 'Blackbeard' (our archetypal pirate of the era, whose real name was Edward Teach), which they did on 22 November 1718, although it was Lieutenant Maynard of the Royal Navy who located the pirates anchored on the inner side of Ocracoke Island, in the evening of 21 November.¹²³ James Jones argues that the Navy was not a decisive instrument of power until the period 1757-63, even though the swift and successful British naval mobilizations in 1726-31 and again in 1734-5 made Jacobite proposals for invasions of Britain appear ridiculous.¹²⁴

¹²² For Anstis, see M. Rediker, *Villains of All Nations*, 155; for refusals, see C. Pennett, *Bandits at Sea. A Pirates' Reader*, New York University Press, 2000, 154.

¹²³ Konstam, Angus (2007), *Blackbeard: America's Most Notorious Pirate*, John Wiley & Sons; Colin Woodward, *The Republic of Pirates*, Harcourt Press 2007, 289.

¹²⁴ James Jones, 'Limitations of British sea power in the French wars, 1689-1715', in Jeremy Black and Philip Woodfine, *The British Navy and the Uses of Naval Power in the Eighteenth Century*, Leicester University Press

Regardless of the state-building process, Kris Lane has suggested that the Navy's primary self-interest was fear of losing its own employees (merchant seamen) to piracy. Many prominent pirates like the Welshman Bartholomew Roberts were, for example, ex-Royal Navy men.¹²⁵ Lane goes on to show that the size of the Royal Navy was inversely proportional to the pirate congregation.¹²⁶ We can see the progress of the offensive against piracy, consequently, in the number of men serving the navy, which increased from 6298 in 1725 to 16872 in 1726, and then to 20697 in 1727.¹²⁷

As much as pirates were actively hunted down, others were enticed into the Royal Navy through an assortment of incentives. Convicted criminals, even pirates like Henric Muller and Samuel Dring in 1760, were offered the chance to enter either the army or the navy in exchange for a royal pardon.¹²⁸ Others who were indicted, but not yet sentenced, were also given the opportunity to enter the armed services in lieu of trial.¹²⁹ This was particularly true at times of war. Admittedly, such a policy created a backlash particularly amongst that most reactionary of naval institutions, the Admiralty. In a memorandum of 1771, for example, the Lords of the Admiralty expressed their wish that 'no more convicts (...) be ordered on board HM's ships, As such persons may not only bring distempers and immoralities among their companies, but may discourage men of irreproachable character from entering into HM's service, seeing that they are ranked with common malefactors'.¹³⁰

But at no time did the Navy improve its wages. These were notoriously low and provoked high rates of desertion, particularly during wartime, a problem compounded by seamen always standing last in the queue of creditors. In 1686, the naval wage for an able seaman stood at 24 shillings (£1.20) per lunar month, and remained unchanged for more than a century until a petition of 1797 resulted in mutiny and an immediate 23% pay increase. Ministers and parliaments instituted measures in 1728 and again in 1758 for the navy to pay wages more regularly, but nothing was done to raise wages despite the glowing rhetoric in the public domain regarding sailors as the true saviours of the nation. Yet – to compare – at the height of the Seven Years War, wages in merchant

(1988), 33 ff.

¹²⁵ Sue Hamilton, *Bartholomew Roberts, ABDO and Daughters*, 2007, 4.

¹²⁶ Kris Lane, *Pillaging the Empire. Piracy in the Americas, 1500-1750*, London, 1998.

¹²⁷ These are probably Marcus Rediker's figures. Cf. E. Monkkonen, *The Colonies and early Republic*, Meckler 1991, 602, who argues that an average of around 130000 merchant men were employed by the Royal Navy in any given year between 1716-26.

¹²⁸ Markus Eder, *Crime and Punishment in the Royal Navy, 1755-63*, 38.

¹²⁹ *Gaoler Journal of Northumberland for the year 1759*, National Archives, formerly PRO E 382.

¹³⁰ Quoted by Radzinowicz, *A History of English Criminal Law*, vol. I 25.

ships reached £3 or more. To be more precise, the average pay in the port of London was £1 10 shillings per month on the eve of war in 1793; it leapt immediately to £3 15 shillings upon the outbreak of hostilities, and stood at over £5 in 1804. There was always the lure of prize money to motivate Navy crews. Non-rated seamen and mariners stood to divide $\frac{1}{4}$ of the condemned value, while the captain took another $\frac{1}{4}$. But for crews of large ships, the prospects of such remained slim. It remained more than anything else an enticement trick to maintain the appeal of service in the frigates and sloops.

We might also observe that the navy's campaign against piracy was a short, rapid and localised one: the campaign was already winding down by 1725, and seems to have largely ignored freebooting going on in the South Seas (the voyages of William Dampier, for example). Much of the disciplinary legislation, such as the *Articles of War* passed as a statute by Parliament in 1749, and which considered serious infractions and their punishment in court-martial trials, were subsequent to the great offensive against piracy early in the century.¹³¹ Scholars like Janice Thompson prefer to situate 'the more definitive reordering in global efforts to control mercenaries, pirates and other non-state violent actors to the 'long nineteenth century'.'¹³²

Nevertheless, as a rhetorical front, the British Navy tried to spread its message amongst other European nations as their national navies came together after the Treaty of Utrecht (March / April 1713). It reminded them that the law made clear that pirates were a 'common enemy', which every nation that could defend itself had a duty to fight. It will be interesting to study contemporary French reactions to this propaganda.¹³³ In some places, the Royal Navy went so far as instituting localised 'regime change'. Caribbean neighbours like the rogue governor Adolf Esmit of Danish St. Thomas in the Virgin islands, who was himself a former pirate, was, for example, ousted in October 1684.¹³⁴

¹³¹ For a discussion, see Greg Denning, *Mr. Bligh's Bad Language: Passion, Power and Theatre on the Bounty*, Cambridge: 1992, 147-50.

¹³² J. Thompson, *Mercenaries, Pirates and Sovereigns: State Building and Extraterritorial Violence in Early Modern Europe*, Princeton U.P.: 1994.

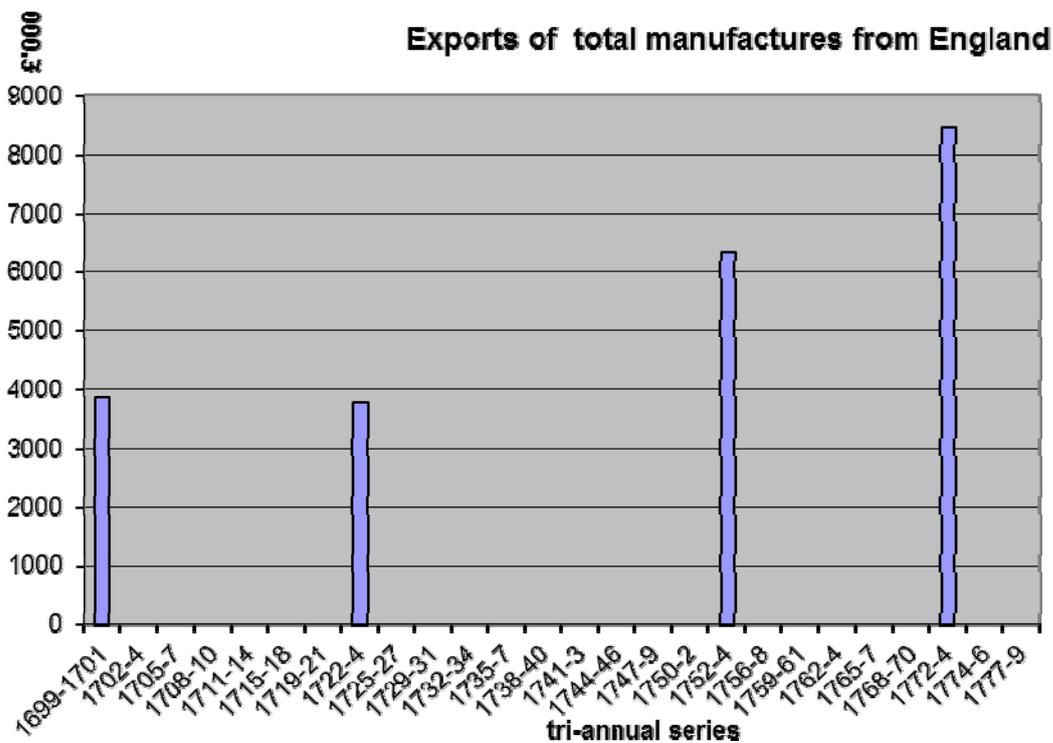
¹³³ Schaeper disappointingly concentrates on the trading tariffs controversy, but covers two French 'spies' sent to London to cover parliamentary discussion and newspaper coverage of the debate, 'French and English trade after the Treaty of Utrecht: the missions of Anisson and Fénelon', in *British Journal for 18th Century Studies*, 9, 1986, pp. 1-18.

¹³⁴ Waldemar Westergaard, *The Danish West Indies under Company Rule (1671 - 1754)* (MacMillan, New York, 1917).

(2) What kind of national economic backdrop?

A third front I would like to open in blazing new trails across the topic focuses on rejigging old interpretations that the first half of the eighteenth century – especially the decades 1720-40 - was a period of economic stagnation. This idea has been discarded, especially in the sense that the importance of foreign trade seems to have been greater than is suggested by official statistics.¹³⁵ The fight against piracy was spearheaded during a period of long, sustained national economic growth, hence to the background of a rise in national income and the increase in the mercantile marine, so that the logic and necessity of the fight against piracy becomes clearer, as do the resources at the British government’s disposal.¹³⁶

Figure 5: Exports of total manufactures from England



Source: Walter Minchinton, *The growth of English overseas trade in the seventeenth and eighteenth centuries*, London: Methuen, 1969, 108.

However, while piracy was effectively targeted by the state, other maritime problems like armed bands of smugglers were allowed to mushroom, reaching a peak in the 1730s

¹³⁵ A.H. John, ‘Aspects of English Economic Growth in the first half of the Eighteenth Century’, reprod. in Minchinton, *The growth of English overseas trade in the seventeenth and eighteenth centuries*, London: Methuen, 1969, 183; K. Berrill, ‘International trade and the rate of economic growth’, *Economic History Review*, 2nd series, vol. XII, 1960, p.358.

¹³⁶ Richard Middleton, *Naval administration in the age of Pitt and Anson, 1755-63*.

and 1740s with the Hawkhurst gang.¹³⁷ The situation in George II's reign (1727-60) has been described as one of a 'systematic and permanent traffic in contraband, sympathized with by the bulk of the population of the maritime counties'.¹³⁸ The East India Company was naturally the most vociferous voice to complain about smuggling, particularly given the indebtedness facing the company, and was correspondingly far less of a political problem to Pitt the Younger's advisers, but smuggling was also much easier to resolve from Westminster than piracy; the removal of duties via the Commutation Act of 1784 from 119% to 12.5% largely did away with the need for smuggling, although as a practice it continued through to the nineteenth century.

CONCLUSIONS

For any discussion of the state's provision of legal certainty to commerce, questions revolving around the suppression of piracy must necessarily come to the fore. Recent work on piracy has tended to concentrate on motivational issues and the culture of pirate communities, whether they were anarchies or authoritarian regimes.¹³⁹

In this (book) paper, I have adopted a historical, empirical approach that focuses on the agency of sub-state groups, especially the British Royal Navy, in the war against Caribbean piracy between 1680-1725, with an eye to nuancing arguments previously centred on the extension of state power. The Navy operated according to its own, independent institutional logic, although many of the platforms it used ran in parallel to other state ones. The court-martial system, for example, ran alongside the continued application of civil law courts. I would also like to reiterate here that the suppression of piracy is a historical contingency, and not in any ways an irrevocable process, as the recent upsurge in kidnappings and maritime piracy off Somalia and in the southern Philippines demonstrate.

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¹³⁸ W.A. Cole, 'Trends in Eighteenth-century Smuggling', in W.E. Minchinton, *The Growth of English Overseas Trade in the 17th and 18th centuries*, Methuen: 1969, 141; H. Atton & H.H. Holland, *The King's Customs*, London (1908), vol. I, 134.

¹³⁹ See, for example, David Cordingly, *Under the Black Flag: The Romance and the reality of Life Among the Pirates*, New York: Random House, 1995.

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