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International Trade Disputes and *ius commune*: Legal Arguments on the ‘Gdańsk Issue’ during the Hanseatic Embassy to London in 1553

When individual international trade conflicts reflect wider commercial competition and rivalry, political trade and economic interests are usually at stake. Local or territorial authorities will be under pressure to defend the interests of their own merchant community, while bearing in mind their general economic and trade policies, and their own political position on the international scene. Individual conflicts may be settled through judicial decisions, arbitration, or a negotiated compromise, but such a settlement, forced or voluntary, does not put an end to the underlying structural conflict of interests. The control of such an international conflict of interests is fundamentally a matter of diplomacy and in these economic international relations, the ‘balance of power’ may prove decisive. However, Western international relations have also a long tradition of endeavouring to justify in legal terms the positions of the various actors involved in such economic and trade conflicts, and sometimes also the (often, temporary) settlements they reach. For the later centuries of the Middle Ages and the Early-Modern Times, this may at first come as a surprise to the contemporary lawyer or diplomat, as, arguably, neither the *ius commune* nor the *iura propria* had developed any consistent body of rules which would now qualify as a branch of international commercial or economic law. Yet, the need to frame trade disputes in legal categories and principles was obviously felt, and the legal profession met this demand in various ways. The present paper aims to illustrate the point by focusing on a very specific example, a short episode in the long-standing conflict between the German Hanse and the English merchant community during the 1550s¹.

¹ Abbreviations: BL for British Library (London); APG for Archiwum Państwowe w Gdańsku. For research in the Gdańsk records, I relied on various calendars and inventories, including: *Czesław Biernat*, Staatsarchiv Danzig. Wegweiser durch die Bestände bis zum Jahr 1945 [Aus dem Polnischen übersetzt von Stephan Niedermeier] (Schriften des Bundesinstituts für ostdeutsche Kultur und Geschichte 16, München 2000); *Lennart Bes, Edda Frankot, Hanno Brand* (eds.), Baltic Connections. Archival Guide to the Maritime Relations of the Countries around the Baltic Sea (including the Netherlands) 1450–1800, 3 vols. (The Northern World 36, 1–3, Leiden, Boston 2007), in particular t. 3, 1629–1755. *Gerhard Wilhelm Kernkamp*, Baltische archivalia. Onderzoek naar archivalia, belangrijk voor de geschiedenis

The Context: English Diplomacy *v.* the Growing Rivalry between English and Hanse Merchants²

During the 1550s, the rivalry between German Hanse merchants and English Merchant Adventures fuelled recurrent disputes which jeopardised the already weakened position of the former in London. The crisis of those years was but an episode of a long-term shift in the balance of power in English foreign trade. The main Hanse franchises in England had been acquired during the organisation's heydays between the late-twelfth and the mid-fourteenth century. By the sixteenth century, the Hanse was but a pale reflection of that powerful past, and what remained of its position was being increasingly challenged in England, and particularly in London, by the native merchant community. The Merchant Adventurers had reached a level of development, expertise and self-consciousness regarding their leverage in the English polity which made it unlikely that they would any longer suffer the advantages of the Hansards in their own marketplace. The English political system, albeit still unstable, was already veering towards an early-modern concept of national economic interests which was bound to favour its own merchants against foreign competitors. Indeed, by the end of the sixteenth century, the Hanse, or what was left of it, had practically lost its ancient foothold in England.

The disputes of the 1550s turned around a series of English grievances. These included local issues regarding the organisation, membership and operation of the Steelyard (as the Hanse's London base was known³), the access of Hansards to the

van Nederland, in Stockholm, Kopenhagen en de Duitsche Oostzeesteden (Rijks Geschiedkundige Publicatiën, Kleine Serie 4, 's-Gravenhage, Martinus Nijhoff 1909) 255, mentions one of the opinions by Mudaeus and Leoninus in the Gdańsk archives. Most of the works mentioned by *Roman Czaja*, *Neuere Hanseforschung in Polen (1970–1998)*, in: *Hansische Geschichtsblätter* 117 (1999) 131–149, were not accessible to me. The present contribution reflects mainly the state of my research in 2008–2009. Since then, I have been able to pursue my research on Anglo-Hanseatic relations thanks to a Mercator guest professorship at the University of Frankfurt am Main in 2010–2011, and more recently, in association with Prof. Dr. A. Cordes, in the context of the LOEWE project “Gerichtliche und außergerichtliche Konfliktlösung” (Goethe-Universität, Frankfurt a. M., and the Max Planck Institute for European Legal History). In the course of further research in Hanseatic and English archives, I have come across more relevant documents than those mentioned here; a special mention should be made of BL Add. Ms. 48010, which appears to contain substantially the same documents (including the legal consultations discussed hereafter) as Lansdowne 170.

² For the long-term context of the relations between England and the German Hanse, cf. *Terence Henry Lloyd*, *England and the German Hanse 1157–1611. A Study of their trade and commercial diplomacy* (Cambridge 1991), with many references to English records and manuscript source-material. The first part of this paper relies mostly on Lloyd's work.

³ *Werner Kurzinna*, *Der Name Stalhof*, in: *Hansische Geschichtsblätter* 18 (1912) 429–461; *Martin Weinbaum*, *Stalhof und Deutsche Gildhalle zu London*, in: *Hansische Geschichtsblätter* 33 (1928 [1929]) 45–65; *Philip Norman*, *Notes on the Later History of the Steelyard in London*, in: *Archaeologia or Miscellaneous Tracts Relating to Antiquity* 61 (1909) 389–426;

English (and especially the London) marketplaces, the franchises enjoyed by Hanse merchants in exporting and importing goods from and into England. In a wider context of international trade, the English complained about malpractices by Hansards abroad affecting the trade in English goods, the competition by Hanse merchants taking advantage of their franchises in England on the key trade-market of the Low Countries, particularly in Antwerp, and the difficulties they encountered in accessing the markets in the Hanseatic towns on the Baltic sea and their hinterlands, because the promises of giving them in those parts the same trade advantages as those enjoyed by the Hansards in England had constantly failed to be honoured.

The Hanse merchants in London were continuously being forced to adopt a defensive strategy as their franchises and privileges were challenged, characteristically holding on to concessions which had been granted to them at a time when they were in a position of force which they could not expect to revive ever again. Due to the shifting political situation in England at the time, they enjoyed a few temporary reprieves, but the overall tendency showed that the days of the old franchises were numbered. Several grievances exposed by the English Merchants led the Privy Council on 24 February 1552 to suspend the franchises, a decision which was countered, later that year, by a resolution of a Hanse diet to boycott the purchase of English cloth and the export of Hanseatic goods to England; but because of conflicting interests among Hanse towns, the boycott, which ended in 1555, may not have been altogether effective. The English government had also invited the Hanse in 1552 to send an embassy to renegotiate the position of the Hansards in England. The embassy eventually reached London in the summer of 1553, shortly after the accession of Queen Mary⁴. The decision of 1552 was reversed and the old charters were confirmed by the Queen, though several controversial issues – such as those already mentioned – remained unsettled⁵. While these issues were being discussed, the English government imposed export restrictions regarding English cloth, including a temporary ban on all cloth exports to the Low Countries. Soon, the English merchants were bringing to their evidence government's attention that Hanse merchants were nevertheless selling English cloth in Brabant and other parts of the Netherlands. In 1555, fresh complaints from the English merchants against Hanse practices, particularly in the Low Countries, were meant to show that those practices undermined their trade position and their staple⁶. The

Derek Keene, New Discoveries at the Hanseatic Steelyard in London, in: *Hansische Geschichtsblätter* 107 (1989) 15–25.

⁴ Cf. the “recesses” (here in the sense of: delegates’ reports) at APG mentioned *infra*. From these reports, it appears that some of the Hanse delegates, while staying in London, were invited to attend the coronation. The following year, during the wedding celebrations of Mary and Philip, the Steelyard contributed to the festivities by erecting a triumphal arch in Gracechurch Street: *Anna Whitelock*, *Mary Tudor. England's First Queen* (London etc. 2010) 241.

⁵ Cf. *infra*, as regards the reservation clauses inserted in the confirmation of the privileges.

⁶ BL Lansdowne 170, fol. 151^v–152^r (witnesses’ statements recorded on 31st January 1555 (a.s.?) at Bergen-op-Zoom (Brabant) establishing that several German Hanse merchants had

Privy Council imposed new temporary measures on 19th March 1555⁷, including stricter controls and quotas on imports from non-Hanseatic territories and exports of unfinished cloth; for a period of one year, all export of cloth by Hanse merchants to the Low Countries was banned. The London merchants put further pressure on the Hanse merchants by refusing them access to their main marketplace, Blackwell Hall, by seizing goods which had allegedly been negotiated there notwithstanding their prohibition, and by imposing the control of a 'packing' officer and the levying of duties by that officer. A diet convened at Lübeck in 1555 decided on a restricted boycott and on sending a small-scale delegation to London. During its stay in England, from December 1555 until April 1556, the delegation obtained from the Privy Council somewhat less stringent trade quotas, but the ban on exports to the Netherlands was upheld. Other meetings showed how the rift between the London and the Hanse merchants had become insuperable. The Privy Council ordered that some of the measures imposed on the Hansards by the Londoners⁸ be temporarily relaxed or suspended, but any final settlement regarding the position of the Hanse and its trade from and to England had, once again, to be negotiated, this time by a full embassy of the Hanse. During the following months, further pressure was put on the Hanse merchants by stopping all cloth exports from England by foreigners for periods of time. The decision to allow the transit of English cloth through the Low Countries may have been too much of an inducement to temptation, and indeed, a few months later the government tried to impose a 20,000 £ bond on the Hanse merchants, which the representatives of the Steelyard said they could not honour.

The Hanse embassy which was sent to London in May 1557 did not meet the expectations of the English government. The Hanse had only dispatched two expert delegates, whose credentials were only addressed to the King. Moreover, English government officials conveyed in the strongest terms the outrage caused in England by Gdańsk's refusal to allow a shipping of corn to England⁹. The protests were taken up and amplified by the London merchant community. Meetings took place in a context of mistrust and animosity. At one stage, the Steelyard's old charters were sent to the Low Countries for safekeeping. The embassy failed to obtain confirmation of the franchises¹⁰, as the Queen let it know that her country's interests dictated restrictions on the Hanse's franchises. Once again, the English government proposed that a new embassy should be sent by the Hanse towns to renegotiate their merchants' status. When such an embassy was sent the

been selling English cloth in the Low Countries – especially in Antwerp – between 1553 and 1555).

⁷ BL Lansdowne 170, fol. 155^r–156^v (and an order of 23rd December 1556, fol. 156^v–157^r).

⁸ Cf. the Hanse complaints (1556) listed in BL Lansdowne 170, fol. 152^v–153^r, and the reply by the Londoners, fol. 153^v–154^r.

⁹ BL Lansdowne 170, fol. 158^{rv} (a letter from the Gdańsk council to the London council, 24th April 1557).

¹⁰ BL Lansdowne 170, fol. 159^r–161^r (a petition from the Hanse towns, insisting on the binding force of the privileges they enjoyed and providing a summary of the main privileges which were affected by the Privy Council's decisions).

following year, it was mostly engaged in negotiating the release of Hanse ships which had been arrested by the English who feared that they might be used by the enemy in what appeared to be a pending war against France and Denmark. Hanse efforts to boycott English trade were largely frustrated by internal dissension. In 1558, Queen Elizabeth's accession to the throne was seen as an opportunity to obtain a new confirmation of the old franchises and privileges¹¹, but the new monarch made it clear that these would have to be restricted and suggested, following the same line as her predecessors, that an embassy be sent for dealing with the contentious issues. At the same time, the English government was exploring the diplomatic possibilities of putting pressure on the position of the Hanse in the Duchy of Holstein, but it also had to consider the threat of a French intervention in Scotland, and therefore the need to maintain the lines of communications and supply with Germany. Yet another Hanse embassy in 1560 was faced with hard bargaining from the Privy Council, and the pressure exerted on the government by the English merchants. The Council submitted a draft treaty which included the standard clause that the franchises were to be maintained as before, but the earlier demands of the Hanseatic merchants, faced with the challenges which that general but vague clause had failed to avert in the recent past, to have the franchises they claimed specified in some detail were on the whole ignored, but for their right of packaging, about which the London authorities had effectively harassed them by repeatedly imposing the interference of their own official. Otherwise, the draft treaty stated that the same duty rates as denizens would be paid by Hansards on the export of cloth to their own towns and on imports from Hanseatic goods. For trade between England and non-Hanseatic towns, the rates of duties applicable to non-privileged aliens would be imposed, although a rebate was granted. No cloth could be exported, directly or indirectly, to the Netherlands. Finally, the English draft once again subordinated these provisions to the condition of reciprocity. A counter-proposal by the Hanseatic embassy was dismissed. The draft was discussed among the Hanse towns, but on 15th May 1561, the English were informed that the treaty had not been ratified. Trade was nevertheless maintained, seemingly according to the terms of the draft treaty. During the early 1560s, a ban on English cloth imports to the Netherlands by the government in Brussels was instrumental in the creation of an English staple at Emden, which proved yet another battleground between the Merchants Adventurers and the Hanse merchants based in London¹².

¹¹ *Henryk Zins*, *England and the Baltic in the Elizabethan Era* [trans. H.C. Stevens] (Manchester 1972); *George Daniel Ramsay*, *The City of London in International Politics at the Accession of Elizabeth Tudor* (Manchester 1975).

¹² As the following pages focus on the negotiations during the years immediately preceding the Elizabethan reign, this brief outline does not pursue the story up to the 1603–1604 negotiations, for which one may refer to the study by *Richard Grassby*, *Die letzten Verhandlungen zwischen England und der Hanse 1603–1604*, in: *Hansische Geschichtsblätter* 76 (1958) 73–120, although the London file referred to hereafter may well have been put together at the time of those negotiations at the beginning of James I's reign.

The 1553 London Recess and the ‘Gdańsk Issue’

For the years of the reign of Queen Mary (including the years shared with King Philip), a file of transcripts of various documents, probably collected by a civil lawyer in England during the later years of Elizabeth’s reign or perhaps during the early-Stuart years, now in the British Library¹³, illustrates some of the controversies between the London merchants and the Steelyard. The file includes various official documents, copies of treaties, Privy Council orders, petitions, witnesses’ statements [...] but also documents drafted by (civil) lawyers expressing the legal arguments¹⁴. Two consultations (containing mostly redundant arguments) in favour, according to the caption in the file, of the Hanseatic merchants, in fact specifically in support of the city of Gdańsk, are attributed to the Louvain law professor Gabriel Mudaus (and co-authored or co-subscribed by his younger colleague Elbertus Leoninus)¹⁵. Two other lengthy consultations in favour of the London merchants, possibly written in or around 1557, are attributed to a civil law doctor identified as Nicholas ab Emeri(c)¹⁶, and, also in the same file, a polemical argument vehemently attacking the Hansards’ claims in London mentions as its author Walter Haddon, an advocate of Doctors’ Commons¹⁷. In addition¹⁸,

¹³ BL Lansdowne 170, fol. 151^r–268^v (for the latter, according to the new numbering of fols.).

¹⁴ BL Lansdowne 170, the general handwritten index of the whole volume (of which the file on the English-Hanseatic dispute covers only a small part); the index may have been written by Julius Caesar (1558–1636), and the volume appears to be part of the vast collection of the “Caesar Papers”; cf. *Alain Wijffels*, Caesar (formerly Adelmare), Sir Julius (bap. 1558, d. 1636), in: *Oxford Dictionary of National Biography*, t. 9 (Oxford 2004) 436–438; *Lamar M. Hill*, Bench and Bureaucracy. The Public Career of Sir Julius Caesar, 1580–1606 (Cambridge 1988).

¹⁵ BL Lansdowne 170, fol. 184^r–188^v (“Consilium sive sensura doctoris Gabrielis Lovaniensis in gratiam Hanzianorum et Gedanensium compositum”); fol. 188^v–193^v (“Aliud consilium eiusdem doctoris Gabrielis in gratiam Hanzianorum et Gedanensium”). These are transcripts. Mudaus is only identified through his first name [and affiliation to (the university of) Louvain]; in the BL file, Leoninus is not mentioned. Two other copies, with some variations, are kept at APG 300, 28/90, fol. 95^r–116^v, and 300, 28/130, fol. 9^r–32^r. References in the present paper are to the BL copy; an edition of the consultations based on the three manuscripts is forthcoming.

¹⁶ BL Lansdowne 170, fol. 164^v–170^r (“Refutatio mercatorum et universitatis Londoniensis contra supplicationem Hanze, autore Nicholao ab Emeric, legum doctore”) and fol. 247^r–268^v (“Consilium doctoris Nicholai ab Emeri in gratiam mercatorum Anglorum contra Hanzianos”), transcripts in the same hand as the *consilia* by Mudaus in the same file.

¹⁷ BL Lansdowne 170, fol. 161^v–164^r (“Defensio mercatorum Anglie et universitatis Londinensis contra scriptum [...] exhibitum a legatis civitatum societatis Hanse, autore Waltero Haddon, legum doctore”, again a transcript by the same hand as the opinions of Mudaus and Emeric). Walter Haddon, LLD (Cantab., 1549), was admitted at Doctors’ Commons on 5 May 1555, cf. *George Drewry Squibb*, Doctors’ Commons, A History of the College of Advocates and Doctors of Law (Oxford 1977) 152.

¹⁸ None of the consultations is dated. Mudaus’ consultations are probably related to the 1553 embassy (*infra*). Emeric’s, and possibly also Haddon’s, consultations may tentatively be associated to the 1557 embassy, but the research for this paper has not yielded any decisive

the file also contains an extensive summary of distinct principles arranged schematically and revolving around the notions of “privilege”, “customary law” etc. – all obviously to be used in support of the English merchants or against their Hanseatic counterparts. The Hanseatic Archives in Gdańsk provide further information on the issue, mainly from the Hanseatic (and, specifically, Gdańsk) perspective. For the 1553 Hanseatic embassy in London, in particular, reports written by members of the Hanseatic delegation give an almost day-by-day account of the embassy’s work. The Gdańsk records also contain two more copies of the consultation by Mudaeus and Leoninus, and, beyond the negotiations of the 1550s, copies of various previous acts, including treaties, which were at the time continuously referred to.

These legal documents, in particular the consultations (which follow in general the pattern of *consilia* in use at the time) were probably submitted by both sides in order to buttress their claims and defence during the arguments presented to the Privy Council or (as in 1553) to a restricted committee of Royal Commissioners (who may have given both sides an opportunity to present their case – though not necessarily in the course of quasi-adversarial proceedings), or perhaps even to strengthen their petitions to the sovereign. These consultations show how the conflicts of commercial interests were restated as legal issues and how – in the absence of any developed economic or international commercial law, whether statutory or doctrinal – the respective positions were legitimised in legal terms. As these consultations involved to a substantial degree issues of international trade and were drafted by civil lawyers, it was not English common law but the European academic law tradition (i.e. Roman-Canon law or *ius commune*) which provided the conventional authorities, legal concepts and patterns of reasoning for working out the legal arguments¹⁹. The 1553 Hanse delegation, in particular, included several university-educated lawyers²⁰. Their scholarly input in the diplomatic proceedings and negotiations appears to have been already at the time somewhat ambiguous. On the one hand, their professional legal contribution seems to

arguments for the date (see also *infra*, regarding the protests against Gdańsk’s boycott of corn exports to England).

¹⁹ Undated is the short and unfortunately incomplete document presented here in the Appendix, which, in the conventional style of civil law arguments and on the strength of civil and canon law authorities, purports to prove that in this dispute, the English King (the expression “rex Angliae” does not necessarily imply that the text predates the reign of Queen Mary) would have to submit to the civil law. See also *infra*, note 72.

²⁰ APG 300, 28/20, fol. 1r, mentions as delegates (“oratores et commissarios”) appointed at Lubeck in May 1553: “Hermannum Falconem consulem, Hermannum Crusarium utriusque juris doctores, Gotschalkum de Wickedem, senatorem, Lubecenses, dominum Hermannum Sudermannum, consulem, Henricum Sudermannum eius filium, J.V. doctorem, Constantinum a Liskirchen, senatorem, Colonienses, dominum Joannem Rollwagen, J.V. doctorem, syndicum, et Rithmarum Kenckel, senatorem, Bremenses, dominum Albertum Hackeman, consulem, Joannem Strubegium, J.V. doctorem, Gerardum Niebuer, senatorem, Hamburgenses, dominum Joannem a Weiden, auratae militiae equitem, capitaneum Preuschmarcensem, haeredem in Neuburg et proconsulem, et Georgium Klefeldt, J.V. doctorem, syndicum ac senatorem, Gedanenses”.

have been acknowledged as both conventional in such discussions and necessary for formulating exactly the arguments and their outcome. On the other hand, at a more explicit and more crude political level, it appears that the negotiators preferred sometimes to argue their case according to different lines and standards: during the 1553 negotiations, the English Lord Treasurer challenged the Hanse delegates precisely because of their 'scholastic' arguments', which he declared unhelpful for solving the dispute – a stand which, of course, may have been more strategic than anything else²¹.

Before the 1553 Hanseatic embassy reached England, some of the delegates spent several weeks in the Low Countries, mainly in Antwerp and some time in Bruges²². Their prolonged stay in the Netherlands was probably not only inspired by their concern to see for themselves how business, in particular Hanse business, was developing in what had become a major commercial hub between southern and northern Europe, but also by the need to assess with their local representatives there the features of the trade with England, as exports of various types of cloth from England to the Netherlands were the cause of some of the strongest recriminations against the Hansards from the English merchant community, and a trade through which the English authorities were best placed, and most likely, to exert pressure on Hanse merchants. While in Brabant, some of the delegates met with Madaeus in Louvain²³. The death of Edward VI and the accession of Mary

²¹ APG 300, 28/20, fol. 49^r (20th September, 1553): in his address to the delegates, the Lord Treasurer told them that the Council was busy preparing the coronation of the new Queen; he had nevertheless read their written submissions, and criticised their 'scholastic' approach: "Legimus scriptum vestrum, in quo nobiscum velut in schola agitis proferentes plurima scholastica argumenta [49^v] quibus non difficile est respondere, eaque confutare, si tempus nobis liceret inaniter transigere. Caeterum quia cupimus vobiscum ex aequo et bono tractare, quo ritius res suum sortiatur exitum. Quare omissa omni disputatione rem ipsam aggrediemus". The Treasurer's remark may be alluding to the well-known principle, often quoted by civil lawyers in commercial cases, according to which relations between merchants should not be governed by the standards of the "apices iuris", but rather according to equity. In his response, the delegate Dr. Crusius defended the line of argument followed in the Hanse's submissions: "Quandoquidem de verbis disceptatio orta fuisset, igitur necessario scholasticam disceptationem adhibendam fuisse. A grammaticis enim peti solere verborum expositionem neque haec eo consilio a nobis adducta, quum si ipsi ignorarent, sed ut planum faceremus quomodo a nobis verba privilegii intelligentur" (*ibidem*). This brief exchange would prove typical of the 'setting' of the negotiations: the Hansards were trying to have their old privileges upheld, which required to some extent more 'formalistic' arguments, whereas the English government was poised to adjust them to the new circumstances, taking into account that English trade and policies were now less dependent on the Hanse than at the time when those privileges had been originally granted.

²² Most of the delegates were apparently in Antwerp by the end of June, 1553; the confirmation of Edward VI's death (6th July) and rumours about the manoeuvres around his succession had reached the delegates by 12th July. They crossed the Channel towards the end of August and travelled straight to London (APG 300, 28/20).

²³ APG 300, 28/21^a, fol. 10^v (12th July 1553): the three delegates who went to consult with Madaeus in Louvain were Dr. Crusierius, Dr. Suderman and the *syndicus* of Gdańsk, *viz.* Dr. Clefeld (cf. his memorandum, discussed *infra*, which bears many resemblances with Mu-

were both the source of a complication and an opportunity for the Hanseatic delegation: a complication, because their credentials were addressed to the now defunct king; at the same time, they perceived the succession as an opportunity, because of the common practice of asking (and, usually as a matter of course) obtaining the confirmation of their privileges from a new ruler. An added complication, however, was that, partly under pressure of the London merchant community, the English government wished to restrict the Hanseatic privileges. Some of the London merchants' grievances provided them with an excuse, as they could refer to the alleged improper use of the privileges by the German merchants, and therefore justify their unwillingness to confirm the privileges as they were being misapplied by the Hansards. As the delegates were only empowered to seek the reinstatement, they could argue that they were not authorised to accept a partial or adjusted version of the privileges. Faced with that dilemma, it was perhaps a foregone conclusion that the reinstatement would be qualified or at least granted for a time only, pending new negotiations aiming at curbing the scope of the privileges. Meanwhile, intimidation and harassment of the German merchants of the Steelyard by London traders and officials maintained the pressure on the negotiations.

Once in London, the Hanse delegates had to negotiate at different political levels. They seem to have avoided any direct discussions with their real rivals, the London merchants, who lobbied hard in Court and with the Privy Councillors. Their official reception by the Queen was a more formal affair, but the exchange was still important because it was the monarch who appeared to decide on the general thrust of English policy towards the Hansards – bearing in mind that, although she had to retain the support of her own merchant community, English interests in European policies dictated that good relations be maintained with the German merchants and with the Emperor. As the delegates' access to the Court was limited, their own indirect lobbying depended much, or so they hoped, on the support of their cause through the Duchess of Cleves²⁴. Most of the delegates' negotiations took place with a small group of councillors acting as commissioners²⁵.

During the negotiations, the English Commissioners, prompted by a memorandum presented by the London merchants, raised the 'Gdańsk issue', i.e. complaints that the English did not enjoy full rights to trade with any other party at

daeus' opinions). Also in APG 300, 28/18 ("Recessus legationis Hanseaticae in Angliam per Doctorem Clefeldum conscriptus Anno 1553"), fol. 12^r.

²⁴ APG 300, 28/21^a, fol. 21^v (and *passim* later on); the Queen had also received recommendations in favour of the Hanse from the Emperor, the King of Poland and the Duke of Cleves, "ea tamen cum moderatione, ut quod aequum et bonum esset [...] concederetur [*to the Hanse*]" (fol. 62^v).

²⁵ Within the Hanse delegation, there was some internal discussion regarding the weight and presence of the lawyers in the small group of delegates who were to attend the meetings with the English delegates; the decision seems to have been that the group would consist of J. von Werden (representing the King of Poland, but also in the name of Gdańsk), G. von Wickeden, H. Sudermann and J. Strubius (APG 300, 28/21^a, fol. 62^{rv}: "Erant plerique in ea opinione ut plures ex Doctoribus adsciscerentur adhuc, sed prius conclusum mansit ratum").

Gdańsk or in Prussia. It was an old grievance²⁶ and the Hanseatic delegates may well have anticipated that it would once again be held against them. Whether during their stay in Brabant or afterwards, it was certainly an issue on which they consulted Mudaeus. Mudaeus's consultations appear to have been primarily written on behalf of Gdańsk. The central issue dealt with at length in both consultations is the status of English merchants trading in Prussia²⁷. More specifically, the issue at stake is that of the English merchants' claim to trade in the town and region not only with Gdańsk burghers, but also with non-burghers. That issue should no doubt be understood against the backdrop of the English demand of reciprocity in the position granted to their merchants in Hanse towns and their long-standing desire to trade with the hinterlands of the Baltic towns, such as Livonia. The English merchants complained that, whereas they had acquired reciprocal treatment in most Hanse towns, in Prussia they were still subject to restrictions, one of the recurrent grievances addressed to the Hanseatic merchants in London and to Hanseatic embassies.

The bulk of Mudaeus's arguments focused on a restrictive interpretation of the very broad wording in the treaties of 1409–1410 and of 1474²⁸, which seemed, as the consultant acknowledged, to recognise the English merchants' rights to deal and trade with whomever they wanted to in Prussia and Gdańsk, whether burghers or not²⁹. The 1474 Treaty of Utrecht, for example, stated (translated from the Latin original³⁰):

²⁶ An English merchant community appears to have been present at Gdańsk since the late-fourteenth century, and by the early fifteenth century, English merchants were complaining about the trade restrictions imposed on them in Prussia: *Stuart Jenks*, Die Ordnung für die englische Handelskolonie in Danzig (23. Mai 1405), in: *Danzig in acht Jahrhunderten. Beiträge zur Geschichte eines hansischen und preußischen Mittelpunktes*, ed. by *Bernhart Jähnig, Peter Letkemann* (Münster 1985) 105–120, 114–116.

²⁷ In the BL copy of the consultation, the text omits almost consistently the full name of the country, using only the initial "P." (exceptionally, whether or not inadvertently, a full reference appears to "Polonia"), and particularly in Gdańsk (continuously referred to in the consultations as "G."). The Gdańsk copies mention the place-names in full.

²⁸ And, in the second opinion, also on the 1436 treaty: BL Lansdowne 170, fol. 191^r. Cf. on these treaties (and the Treaty of Utrecht): *Terence Henry Lloyd*, A Reconsideration of two Anglo-Hanseatic Treaties of the Fifteenth Century, in: *English Historical Review* 102 (1987) 916–933.

²⁹ For the political and economic background of the fifteenth-century treaties, see also *Moisei Mikhaïl Postan*, The Economic and Political Relations of England and the Hanse from 1400 to 1475, in: *Eileen Power, Moisei Mikhaïl Postan*, Studies in English Trade in the Fifteenth Century (London 1933) 91–153 and 373–380, highly critical of the English government's policies, the weakness of which may explain that the Hanse still had the opportunity at the time to buttress its legal position in England. The standard reference is now: *Stuart Jenks*, England, die Hanse und Preussen, Handel und Diplomatie 1377–1474, 3 vols. (Cologne, Vienna 1992), reviewed by *Terence Henry Lloyd* in: *English Historical Review* 108 (1993) 675–677. For the late-fifteenth and early-sixteenth developments, see *John D. Fudge*, Cargoes, Embargoes, and Emissaries. The Commercial and Political Interaction of England and the German Hanse 1450–1510 (Toronto, Buffalo, London 1995), critically reviewed by *Jenks* in *Hansische Geschichtsblätter* 117 (1999) 151–160. Only after writing this article was I able to read: *Nils Jörn*, "With money and blood". Der Londoner Stalhof im Spannungsfeld

“All and every merchant and other subjects and lieges of the Lord King of England for the time being, whatever their status may be, will and can, how much and how often they wish and want, enter safely and securely the territory of Prussia and other places of the Hanse, stay and reside there, leave the country and return, buy and sell with whichever persons in such manner and entirely free, such as they have been able and wont, ever before the present time, to buy and to sell, to enter and leave the country, after paying the customs and duties on their goods as it is due and customary”³¹.

In that article, the passage “cum quibuscumque personis” (“with whichever persons”, or “with any persons whatsoever”) would not appear at first sight to exclude any categories, or to restrict the English merchants’ right to deal with non-burghers. Yet, both consultations by Mudaeus tend to prove that, these general words notwithstanding, such a restriction nonetheless applied at Gdańsk, and that in that city, English merchants were denied the right to trade with non-burghers. As already mentioned, both consultations tend to be repetitive; however, a possible differentiation between the two might be that the first is more concerned with a restrictive construction of the authorities, so as to exclude any trade with non-burgers, whereas the second consultation perhaps lays a greater emphasis on the validity of any Gdańsk statute or custom prohibiting aliens from trading with non-burghers. In both cases, Mudaeus uses the array of conventional interpretative rules borrowed from grammatical and syntactical exegesis³², logical arguments, and a hint of the prevailing doctrine of legal authorities³³, all in order to establish that general phrases in a treaty do not implicitly have the effect of departing from a special customary or statutory rule to the contrary, but should be understood to imply that such a rule remains in force. Mudaeus also applies a well-known contextual argument, pointing out that the section quoted above intended foremost, at that place of the treaty, to guarantee the security of the English

der englisch-hansischen Beziehungen im 15. und 16. Jahrhundert (Cologne 2000), see esp. for the 1550s 238–250. For a well-documented perspective on the Stalhof in the 16th century from the perspective of art history: *Katrin Petter-Wahnschaffe*, *Hans Holbein und der Stalhof in London* (Berlin, Munich 2010).

³⁰ For a Dutch translation, cf. APG 300, 28/169 (“1474 Tractait van Utrecht tusschen den heren Koning van Engeland ende den steden van der Hansse in duytsch”, including a numbering of the sections or articles in the margin); for a Latin version: APG 300, 28/141, fol. 114r–125v.

³¹ See the full text of the treaty in: *Hanserecesse von 1431–1476* (bearbeitet von *Goswin Frhr. von der Ropp*), in: *Hanserecesse, Zweite Abtheilung* [hrsg. vom Verein für Hansische Geschichte], *Siebenter (Schluss-)Band* (Leipzig 1892) No. 142, the passage quoted at 342–343 (“[...] quod omnes et singuli mercatores et alii subditi et ligei domini regis Anglie pro tempore existentes, cujuscumque status fuerint, poterunt et possunt tociens quociens eis libuerit et placuerit salvo et secure terram Prucie et alia loca hanze intrare, ibidem morari et conversare, exire et redire, emere et vendere cum quibuscumque personis ita et in eo modo ac adeo libere sicut unquam ante hec tempora emere et vendere, intrare et exire potuerunt et consueverunt, solutis custumis et deveriis de mercandis suis debitis et consuetis”).

³² BL Lansdowne 170, fol. 186v.

³³ BL Lansdowne 170, fol. 187rv.

Merchants, but was not primarily concerned with the persons they could deal with. When, in a different passage, a reference is made to the “*mos mercatorius*”, he argues that the phrase refers to local practices³⁴. Local law, especially when it has been implemented by a long-standing practice, is not deemed to have been put aside by a general provision to the contrary, unless the general provision expressly states that the local law will no longer prevail³⁵. Although most of these arguments are drawn from conventional sources and *topoi* reflecting general principles, it should be noted that throughout his consultations, Mudaeus reminds his reader that the argument applies in particular to the specific, and somewhat exceptional, situation in Gdańsk – an emphasis which suggests that the consultation had been commissioned by that city. That impression is further strengthened by the inclusion of several references to the prevailing practice at Gdańsk, as, for example, when it is alleged that the restrictions at Gdańsk also applied to Prussian and Hanse merchants with regard to trade with non-burghers³⁶. Another line of conventional arguments in the same sense considers that at various times, English merchants had accepted the Gdańsk restrictions, and that therefore any clause in a treaty reinstating the parties in their former rights would not include any right to deal with non-burghers; moreover, if such right had ever been exercised, it had been lost through a long contrary practice³⁷. Only at the very end of the second consultation does Mudaeus address more briefly two other issues, less exclusively related to the specific position of Gdańsk³⁸: first, he states that there is no doubt that the Hanse should be regarded as a corporation (an issue which had been contested by the English merchants in the early 1550s)³⁹; and secondly, Mudaeus rejects the contention that a corporation might lose its privileges because some of its members have been infringing upon them; if, in particular, the privileges have been obtained in consideration of advantages, that cannot be a pretext for repealing a privilege unilaterally. A corporation, it is said, is not deemed to commit an offence, unless the offensive act has been duly and formally decided by the corporation’s council⁴⁰.

³⁴ BL Lansdowne 170, fol. 190^r.

³⁵ BL Lansdowne 170, fol. 191^v.

³⁶ BL Lansdowne 170, fol. 191^r.

³⁷ BL Lansdowne 170, fol. 192^v.

³⁸ See (e.g.) BL Lansdowne 170, fol. 192^r *infra*.

³⁹ BL Lansdowne 170, fol. 193^r. The question, which cities were to be considered members of the Hanse was raised by the royal councillors during the 1553 negotiations. Again, this was not a novel issue. For example, during the crisis of 1468 and the following years, the Hanse had already submitted to the English King a legal memorandum stating the corporate (but confederate) nature of the Hanse, and of the association’s membership, *F. R. Salter*, *The Hanse, Cologne, and the Crisis of 1468*, in: *The Economic History Review* 3 (1930) 93–101, 96–98. The legal character of the Hanse has of course also been a source of debate in historiography: *Albrecht Cordes*, *Die Rechtsnatur der Hanse. Politische, juristische und historische Diskurse*, in: *Hansische Geschichtsblätter* 119 (2001) 49–62.

⁴⁰ BL Lansdowne 170, fol. 193^{rv}.

One should assume that the merchants of the Steelyard and the Hanse delegates who came to London in the course of the successive embassies during the 1550s also submitted formal legal arguments, whether or not in the form of consultations, on the other, more substantial issues which threatened the position of the Hanse in England. Not only do Mudaeus's two consultations appear to be almost entirely one-sided in considering almost exclusively a single issue only of interest to the city of Gdańsk, but when one considers the broader controversies opposing the London merchants and the Hanseatic interests in England, it becomes clear that the whole legal argumentation in favour of Gdańsk was a two-edged sword, which could easily be turned against the Hansards in London and their own franchises. In other words, the consultations submitted on behalf of Gdańsk tended to undermine the very efforts of the Hanse to save whatever they could of their franchises in England.

The reports by Hanseatic delegates show that during the 1553 embassy in London, the Gdańsk issue was explicitly raised during the discussions with the Royal Commissioners. It seems that a memorandum submitted by the London merchants to the government stating their grievances⁴¹ was instrumental in bringing the issue to the forefront of the diplomatic discussions, forcing the Hansards onto the defensive. It may be difficult to assess to what extent the Commissioners wanted to insist on this particular controversy, or whether they saw in this grievance not only an opportunity to demonstrate their willingness to defend the City's interests, but primarily perhaps some leverage in their efforts to counter the embassy's demands to restore without any changes the old privileges⁴². After a meeting with the Royal Commissioners during which commercial controversies with both Cologne and Gdańsk had been referred to, the 'debriefing' session among the Hanseatic delegates resulted in entrusting to the representatives of those towns the drafting of arguments to counter the London grievances. For Gdańsk, Dr. Clefeld ("syndicus Gedanensis"⁴³) wrote an extensive defence, partly based

⁴¹ APG 300, 28/21a, fol. 56^v–58^r: during the meeting of 16 September 1553, the Earl of Arundel mentioned a memorandum submitted (that very day) by the Londoners; the Hanse diplomats replied that they were to deal with the Queen, not the Londoners, but that they would nonetheless take notice of any writings from the latter, if the Commissioners would wish them to do so.

⁴² The grievances of the English merchants regarding the restrictions on their trade in Gdańsk and Prussia were nevertheless explicitly referred to in the reservation clauses added to the confirmation of the Hanse's privileges (cf. *infra*).

⁴³ The name is also spelt "Klefeld[t]" in the Gdańsk sources, e.g. the report's version in APG 300, 28/20 ("Recessus civitatum Ansa Teutonicae Londini habitus anno 1553"), fol. 1: "per Doctorem Georgium Klefeldum", quoted hereafter. Also: APG 300, 28/16, fol. 121–136. Clefeld was, with Henricus Suderman (Cologne) and Gerhardius Niebur (Hamburg), one of the three delegates who stayed in London after most of the others had left by the end of October, 1553, in order to ensure that the reinstatement of the privileges would be implemented and the business of the Steelyard could be carried on (APG 300, 28/16, fol. 201). In APG 300, 28/18, fol. 2, he is styled "Klefeldt utriusque iuris doctorem syndicum <ac senato-rem> Gedanensem" (see also *supra*, APG 300, 28/20, fol. 1ar).

on technical legal arguments and authorities, which was later included (possibly as a literal transcript) in the delegates' reports⁴⁴.

Clefeld's argument follows the same lines as Mudaeus's opinion – though it is not possible to determine to what extent the latter relied on the documents (including legal arguments) submitted to him by the Gdańsk lawyers and diplomats, or whether the former was inspired by the discussions of the delegates with the Louvain professors a few months earlier, and possibly by their written opinion commissioned at the time or sent forward at a later stage⁴⁵. Clefeld's approach is primarily a rejoinder of the London arguments. The fundamental references for the dispute are the earlier treaties and agreements between the Hanse and England (Clefeld refers explicitly to those of 1491⁴⁶, 1499⁴⁷, 1520–21, while the English arguments, in his view, turn to a large extent around the construction of the Treaty of Utrecht). Thus, most of Clefeld's rejoinder consists in rebutting the English interpretation of the terms of the Utrecht Treaty⁴⁸. The alternative interpretation offered by Clefeld is, not surprisingly, mostly based on conventional civil law rules of construction. Thus, the general phrasing of the Treaty's concession to the English to trade "cum quibuscunque personis" needs to be construed, according to the Treaty's own words which form the context of the passage in question, without prejudice to the pre-existing usages and practices, which restricted their trade to dealings with the Gdańsk residents: a conventional interpre-

⁴⁴ APG 300, 28/21a, fol. 69^v–79^r (ending, in that version, with the words: "Hactenus de causa Gedanensi", with the addition: "Nihil deest", which may perhaps refer to the transcript). The memorandum has not been included in all the (Gdańsk) versions of the "recessus", for example, it does not seem to appear in APG 300, 28/17, which does, however, include the grievances of the London merchants (fol. 131 et seq.). On these grievances, see also APG 300, 28/117 (shelf-list: "Anglicana 1535–1579"), with, fol. 112^r–118^r; possibly a draft version of Clefeld's memorandum.

⁴⁵ Some references in both Clefeld's defence and in Mudaeus's opinion are the same. Common references to conventional authorities of the corpus iuris civilis may not be all that surprising, but more striking is the reference to Nicolaus Everardus' *Loci legales*, which, however, had by 1553 already been reprinted in several European countries (*Otto Vervaaert*, *Studies over Nicolaas Everaerts [1462–1532] en zijn Topica* [Arnhem 1994] 254–259), including the at the time recently enlarged edition of Louvain 1552, which Clefeld or other delegates could have acquired while staying in the Low Countries in the early summer of 1553.

⁴⁶ On the privileges granted by English Kings before 1491 and on the meeting of 1491: APG 300, 28/175; 300, 28/176; 300, 28/178 ("Tractatus ambasciatorum Angliae et civitatum Hansae teutonicae Antwerpiae initus Anno Domini millesimo quadringentesimo nonagesimo primo in Maio, cum inidem avisatis, appunctuatis et conventis insertis exemplis mandatorum procuratorum utrinque legatorum missorum"); 300, 28/180 ("Lubecensis recessus Antwerpiae conscriptus Anno super 1491 Hantwerpie cum oratoribus Regis Angliae 1491"); 300, 28/181 ("Recessus per Secretarium Gedanensem Antwerpiae conscriptus"); 300, 28/182; 300, 28/183 (Henry VII, 1491); 300, 28/184.

⁴⁷ On the 1499 meeting and outcome: APG 300, 28/151a; 300, 28/179 ("Querele negotiatorum de Ansa alemanica Londonie residente in dieta Antwerpiae celebrata anno 91, presente et iterate in dieta anno 99 Bruggis tenta"); 300, 28/189; 300, 28/190; 300, 28/191.

⁴⁸ Even today, the Hanseatic records in APG on the Utrecht Treaty are comparatively well documented: see (e.g.) 300, 28/168 (in Dutch); 300, 28/170 (in German).

tatory argument of the “*consuetudo optima semper interpret*”⁴⁹. That usage had been applicable for so long, that even if the English could claim that they had once traded with others in Gdańsk or the town’s region, ‘prescription’ had now strengthened and confirmed the prohibition imposed upon them⁵⁰. The prohibition was not specifically discriminating against the English, for it also applied to merchants from other Hanseatic towns, and even to citizens of other Prussian towns⁵¹. Clefeld also considered the argument concerning the purpose of the Treaty’s terms: he rejected the idea that the passage the English were relying on had been an innovation at the time, in the sense of a concession beyond the rights they had enjoyed before. Otherwise, the English might object, if the passage had merely been stating the rights they had enjoyed earlier on, the clause would not fulfil any purpose and would have been redundant. Clefeld’s answers that the passage was merely confirming those rights which the English had enjoyed before the war, and which simply had reinstated those rights, which had lapsed during the warfare⁵². A similar set of arguments is also produced in order to prove that any general obligation or concession is to be understood to have been made without affecting specific local customs⁵³.

Nor did the status of the Hansards in London imply a reciprocal treatment in Prussia. In developing this line of argument, Clefeld refers extensively to the fifteenth- and early-sixteenth century treaties. The 1410 Treaty between the English King and the master of the Teutonic Order may have seemed to open up the “Prussian territories” to the English merchants, but it had not, according to the Gdańsk *syndicus*, included Gdańsk. In any case, its application had been rejected by the latter and the clause the English would have had to rely upon had deliberately been omitted in the Treaty of Utrecht, which implied that the latter could not be construed by referring to the 1410 Treaty⁵⁴. The rejection had been explicitly confirmed by Gdańsk to the city council of Lubeck, the “supreme head” of the Hanse⁵⁵. Similar objections had been expressed when fresh agreements had been made at Antwerp in 1491, at Bruges in 1499 and in 1520–21⁵⁶. Clefeld ended

⁴⁹ APG 300, 28/21a, fol. 71^v–72^r, referring to D. 50.17.34, D. 32.1.73, Jason Maynus ad C. 6.20.17, and Nicolaus Everardus, *Loci*, *Locus a consuetudo seu usitato*; fol. 74^r, also to Zasius, *Intellectus singulares*.

⁵⁰ *Ibidem*. This argument, too, is buttressed by legal authorities: the Gloss and commentaries on D. 8.2.11 and C. 3.34.1. See also APG 300, 28/21a, fol. 76^{rv}.

⁵¹ APG 300, 28/21a, fol. 74^r, referring to the *Memorabilia* and records of the city.

⁵² APG 300, 28/21a, fol. 72^v–73^r, referring to X. 2.30.4, X. 5.33.29, D. 24.1.36.1.

⁵³ APG 300, 28/21a, fol. 75^r, referring to C. 3.28.35, again to D. 50.17.34 and D. 32.1.73, and to canonistic commentaries on Sextus 1.2.1.

⁵⁴ APG 300, 28/21a, fol. 76^{rv}, referring also to Consilium 63 by Franciscus Curtius Jr., and, as regards the failure of the English to have successfully included a specific and explicit derogation in their favour in the Utrecht Treaty, to D. 18.1.21. As Mudaeus, Clefeld also uses the reference “more mercatorio” in order to establish that a specific derogation had been included in the treaty (fol. 76^v).

⁵⁵ APG 300, 28/21a, fol. 77^v.

⁵⁶ APG 300, 28/21a, fol. 78^{rv}.

his defence in a typical legal style, claiming that if the English wished to press their case and claims, the burden of proof fell upon them⁵⁷.

These arguments were not only conventional, but they had for many years already been used to counter the same English grievances. Thus, during the negotiations in Bruges in 1521 (where Thomas More played a prominent role in the English delegation), the English had protested against several restrictive trade practices in Hanseatic harbours⁵⁸, and in particular against the prohibition of free trade in Gdańsk and Riga⁵⁹.

The end result of the 1553 negotiations appears to have been, as the Hansards had hoped, the reinstatement of their privileges, but the lobbying by the City merchants and the weakened position of the Hanse is reflected in the reservation clause in the reinstatement order: the Hanse was reinstated in their privileges, following the conventional expression used in such treaties, as they had existed and been enjoyed by the beneficiaries before Edward VI's decree – a formula which conveniently left all parties to understand the restored practice to their own advantage⁶⁰ –, “salvis tamen Maiestati Reginali eiusque successoribus iuribus suis, quae ex legibus et statutis huius regni competunt contra eos, quos privilegiis antedictis abuti contingerit: ita tamen quod propterea innocentes per viam suspensionis, arrestationis, aut quovis alio modo ab fruitione, ac usu eorundem privilegiorum ac libertatum non impediuntur. Salvis etiam libertatibus, privilegiis, et liberis consuetudinibus mercatoribus Anglis in civitatibus Hansae, et praesertim in terris Prussiae competentibus”⁶¹. The last passage of the second reservation clause

⁵⁷ APG 300, 28/21a, fol. 79r, referring to D. 22.3.5, D. 22.5.1 and X. 3.19.6.

⁵⁸ APG 300, 28/1 (“Tractatus et Recessus inter Oratores Anzae, et Regem Angliae, Brugis habitus, Anno Domini 1521”), fol. 37: “Praeterea in Gedano et aliis plerisque civitatibus Ansaе nautae omnes sunt prohibiti et iureiurando aducti, ne quid bonorum aut mercium alicuius Angli evehant in Angliam”, and several other complaints).

⁵⁹ APG 300, 28/1, fol. 38–39 (coercive measures against English merchants at Gdańsk), 99, 105 (the English relied on the phrase “quibuscumque”).

⁶⁰ The author of the report in APG 300, 28/20, ends the report with a somewhat self-congratulatory observation asserting that the essential aim of the embassy, the restoration of the old privileges, has been obtained. Obviously a man with legal mind, he even compares the reinstatement as a form of *postliminium* for the Hanse merchants (fol. 147r).

⁶¹ Dated London, 24th October 1553, in APG 300, 28/141, fol. 23^{rv}. Compare with the slightly different version in APG 300, 28/20, fol. 91r, which at the end mentions explicitly: “[...] et praesertim in civitate Dantisca <marginal note “g”: terris Prussiae> competentibus”; a note has been added to the text: “Notandum. Cum hic inter caetera petatum esset per supradictos deputatos nomine oratorum Gedanensium, ut loco illorum verborum, ‘in civitate Dantisca’, ponerentur haec, ‘in terris Prussiae’, attento, quod ea ubique sic in privilegiis ac tractatibus haberentur. Responsum fuit a Domino Petro, secretario regio: Et haec illa verba ponenda esse. Nam non esse vanas querelas subditorum huius regni, qui a sex annis se novis et incon-suetis vectigalibus et impositionibus oneratos, ac cum antea duobus diebus qualibet hebdomada liberum mercatum exercere possent, nunc uno tantum die admitterentur, conquerantur. Responderunt nostri: Si quid insolitum Anglis in ea civitate esset impositum, id scripto comprehensum, Gedanensibus eos communicare posse, qui haud dubie curaturi essent, ut tollerentur gravamina. Quod ad liberum mercatum attineret, iam antea non semel dictum fuisse, eam civitatem singulari praerogativa gaudere, neque unquam confoederatas civitates, aut vici-

emphasises that the ‘Gdańsk issue’ was taken seriously by the English government, but that, for the time being, the respective claims were left unresolved in order to preserve, in spite of diverging interpretations, the Hanse privileges which were necessary for the continuation of their operations in and from London.

The Legal Case for the London Merchants (1557)⁶²

Walter Haddon’s ‘defence’ of the London merchants was a direct rejoinder rebutting the arguments that a Hanse embassy had previously addressed to the King (possibly in May 1557) and in which they had asked that their ancient privileges, which, they insisted, were binding because of their compensatory nature, should be confirmed. Haddon briefly rejected every single argument in fairly violent terms, his main thesis consisting in denying that there was any evidence of the alleged privileges⁶³, or, in any case, that they were still valid, repeatedly referring to the many ‘abuses’ committed by the Hansards. The argument concluded with a call to declare any alleged privileges abolished, and a wish which hardly reflected much goodwill in the Anglo-Hanseatic commercial relations: “and that any memory of your corporation may be obliterated through perpetual oblivion”⁶⁴.

Nicholas Emeric’s legal opinions are more elaborate and technical, but substantially they assert the same idea and condemn the Hanse merchants in more formal, but not less harsh, terms. He, too, claims that the privileges are not as the Hanseatic ambassadors claimed, and that at any rate, any privileges which might have been granted to them had been lost. In some ways, the opinion – which was possibly written some four years after the 1553 embassy, in a different context – offers a mirror image of Mudaeus’s arguments, for he insists that any privileges granted to the Hanse would not have affected the rights of London merchants by implication. What stands out in Emeric’s opinion, apart from the many civil law authorities, are his arguments based on policy considerations – not as such, however,

nas eidem subiectas Principi ad liberum mercatum admissas fuisse. Ad quae dominus Petrus secretarius: Si ergo illa civitas peculiari praerogativa frui velit prae caeteris, quae tamen nostros ad liberum mercatum admittunt, non est aequum, ut ipsa pari conditione cum caeteris censeatur. Poterimusque illi aliquid oneris imponere, a quo aliae sint exemptae. Neque enim qui paria non praestant, paribus debent gaudere privilegiis” (fol. 91^v–92^r).

⁶² The date of 1557 for the opinions discussed hereafter is, as already stated, hypothetical.

⁶³ The transcript in BL Lansdowne 170 contains no technical references to formal authorities, but to the English institutional context (e.g. the authority of Parliament) and Haddon relies implicitly on general principles, e.g. when he refutes the Hanse claims that their privileges were binding, fol. 162^r (“Contra contractum quo partim iure partim consensu nos teneri dicitis, duplex nobis datur defensio. Nunquam enim illam privilegiorum et libertatum conditionem admissimus quam vos assumitis, itaque perpetua fuit in ea re discrepatio de qua nunquam convenit et quomodo continuum hic consensum nostrum urgetis, cum ipsi paulo post interpretationem vocabulo dissentionem nostram plane confiteamini”).

⁶⁴ BL Lansdowne 170, fol. 164^r: “[...] et ut omnis memoria vestrae societatis oblivione perpetua deleatur”.

an unusual feature in sixteenth-century legal arguments in practice⁶⁵. Thus, among the arguments he develops to demonstrate that the Hanse had lost any privileges they may have enjoyed at some time, he stresses that the rationale behind any such privileges had been their usefulness for the realm: such concessions, he quoted, were made “in consideration [...] for the weall publique that may ensew to the Kinge and his [...] land”⁶⁶. When the cost of such privileges to the Realm was no longer balanced by the benefits they brought to the country, they were to be abolished “ipso iure” or could be simply repealed. The argument does not seem to anticipate directly the idea behind the “*rebus sic stantibus*” principle, but appears to work out the more traditional principles based on the *causa* of a legal arrangement⁶⁷. Thus, he also notes that the concessions – through privileges or agreed in treaties – had been made *inter alia* in order to secure reciprocal rights or the reinstatement of old rights in Prussia and other Hanseatic places, but since that condition had never been implemented, the ‘cause’ of the concessions had not materialised and the concessions could be rescinded. Emeric also considered that any agreements on which the position of the Hansards in England rested had been made “*per viam recessus*”, a legal figure which resulted, in his view, in a not absolutely binding pact, for it left the door open to a unilateral withdrawal, particularly when the other party (as in the case of the refusal to implement the terms and conditions with regard to the position of the English in Prussia) had not kept his part of the bargain. In this context, too, the policy considerations reappear, for the King, it is said, is never supposed to have acted in prejudice of his own subjects⁶⁸. That in turn, leads to a necessary construction of any concession in such a way that a concession should not be interpreted to the detriment of the subjects – a principle applicable in this case, as the alleged concessions caused a prejudice to the English merchants. The King was all the more entitled to repeal past privileges, since it was his prerogative to judge whether the interests of the realm of his subjects were at stake: “*Omnium autem que in aliquo regno aguntur vel fiant, rex ipse iudex est, et arbiter utpote qui exemplo pontificis, atque imperatoris, omnes iudicat ac a nemine in suo regno iudicatur*”⁶⁹ [...] “*cum reges ipsi eorum iudicia proinde atque pontifices atque imperatores a nemine iudicantur nisi a Deo*”⁷⁰ – principles based on old and traditional authorities, but which in this context make it clear that a burgeoning concept of *raison d'état* was beginning to overrule the medieval legal status of privileges. The incidents involving Hanse towns refusing

⁶⁵ Alain Wijffels, Argumentationsmuster in belgisch-niederländischen Konsiliensammlungen des 16. Jahrhunderts. ‘Policy considerations’ in der *ius commune*-tradition, in: Juristische Argumentation – Argumente der Juristen, ed. by Albrecht Cordes (Köln, Weimar, Wien 2006) 55–73.

⁶⁶ BL Lansdowne 170, fol. 166r.

⁶⁷ “*Adeo ut causa horum privilegiorum inversa seu extincta, iusta vel ex ipsis litteris dederit causam ea revocandi [...] expressa ea causa ac sub spe ut Anglis restituerentur sua privilegia in terris Prussiae ac aliis locis Hanze [...]*” (BL Lansdowne 170, fol. 166r).

⁶⁸ BL Lansdowne 170, fol. 167r.

⁶⁹ BL Lansdowne 170, fol. 168v.

⁷⁰ BL Lansdowne 170, fol. 169v.

to ship corn to England in spite of a famine is taken up at this point, again to establish circumstances highly detrimental to English interests and to justify the loss of their privileges in England⁷¹.

Conclusion

This brief summary of how an ongoing commercial conflict was framed in legal terms in the context of diplomatic wrangling at a political level shows that by the mid-sixteenth century, the traditional legal methods and authorities inherited from late-medieval academic legal learning could still provide the principles and lines of reasoning for dealing with economic issues which neither the civil law nor the particular laws, not even statutory law, had ever systematically addressed. That continuity is however no more than an historical *trompe l'oeil*, for the political balance of power which had prevailed at the time the Italian method had developed its public law, mainly within the Italian peninsula, no longer prevailed in sixteenth-century Western Europe. As Emeric's consultations clearly demonstrate, what had been a largely theoretical foundation of political sovereignty was now being asserted as an effective power, which meant that the balance between particular interests, often still enshrined in century-old privileges, and the state's interest expressed by the early-modern sovereign, had definitively shifted in favour of the latter. The Anglo-Hanseatic relations of the late-Tudor period thus show that English commercial interests in the hands of a sufficient and efficient native merchant community would inevitably be preferred to any dependency to foreign commercial organisations and interests. At the same time, England's position on the international scene during the 1550s and the following years was not sufficiently strong yet to warrant the full elimination of the Hanse's advantages in England, as in periods of crisis, their trade could still prove necessary to support England's trade, but also the country's military and political needs. In that light, it is understandable that without conceding the specific liberties and franchises which the Hanse claimed they had legitimately acquired in the past, the government was reluctant to deny them all advantages or the possibility of renegotiating the terms of their status. There was no point in adopting the radical anti-Hanseatic stance of the London merchants who were bent on eliminating any franchise the Hansards enjoyed and which they viewed as a source of competition and potential damage to their own trade activities, as long as the English merchants could not provide all the services which, at one time or another, the government could still expect from the Hanseatic merchants. The 1553 negotiations clearly show that the issue of renewing the privileges was largely determined by former treaties. Thus, the issue was not merely a matter of unilateral concessions by the King and to some extent beyond his discretionary power. Moreover, the construction of both

⁷¹ BL Lansdowne 170, fol. 169v.

privileges and treaties implied inevitably the use of interpretative techniques borrowed from the *ius commune* tradition. As the brief fragment published hereafter in the Appendix makes clear, the use of *ius commune* rules (combining both Roman and canon law authorities and principles) was nevertheless legitimised, through *ius commune* authorities, by referring to principles of *ius gentium* and natural law⁷². Characteristically, fundamental principles of due process as a form of natural justice are adduced in order to establish that the King cannot act as a judge on such an issue in which he has a direct interest, but that that issue needs to be settled “ex iure communi praescripto”. The flexibility of that legal framework made it possible, as both parties acknowledged, to take into account policy considerations and the respective interests at stake. Legal arguments in this context did not serve as grounds for settling finally any particular litigation, but served to legitimise new policies. The scholastic medieval learned law tradition offered apparently endless possibilities for buttressing either side’s contentions. However, as this case-study illustrates, when the legal arguments did not address actual policy concerns and considerations, traditional arguments supporting traditional interests, whatever their venerable past, were no match against principles adjusted to the new power relations within the early-modern political system.

Appendix

Gdańsk APG 300,28/117, f. 40^{rv} (*incomplete*).

[40^r] *An Rex Angliae oborta controversia inter civitates Anzae de privilegiis, ex iure scripto agere nobiscum teneatur.*

Et apparet quod non, quia cum ex pontificii tum civilis iuris interpretum sententia manifeste constat, regem Angliae esse in regno suo monarcham et reputare imperatorem maiestatem, adeo ut non magis ab illius sententia quam ipsius caesaris liceat provocare, neque etiam Romano imperio, quemadmodum caeteri reges qui superiorem non agnoscunt, subiicitur, ut est in l. unica ff. de off. praef. praeto. [D.1.11.1] et Bald. in ca. Cum venissent, extra De eo qui mittit. in poss. ca. rei ser. [Baldus ad X. 2.15.3⁷³], Mattheus De Afflictis post alias feudistas omnes in titulo De pace iurament. firmando [Matthaeus de Afflictis, ad L.F. 2.53⁷⁴], Felinus

⁷² The document (which is incomplete) is not dated. One may speculate whether the argument was in any way intended as a refutation of the argument put forward by Thomas More at the Bruges conference of 1520, who denied on that occasion that civil or canon law could be applied to matters concerning King Henry VIII’s subjects, as that would be contrary to his status as a sovereign (see *Lloyd*, England and the German Hanse, o.c., p. 255).

⁷³ *Baldus [de Ubaldis]*, Ad tres priores libros Decretalium commentaria collectione vetustissimorum exemplarium nunc recens summo labore suae integritati restituta et ab innumeris mendis vindicata; quibus accesserunt Francisci a Parona et Petri Crassi adnotamenta (reprint of the Lyon 1585 edition: Aalen 1970) fol. 171^{vb}–172^{va}, at No. 2, fol. 171^{vb}, specifically on the position of the King of England.

⁷⁴ *Matthaeus de Afflictis* Super III. Feud. lib. Commentaria (Francofurti [Apud Andreae Wecheli heredes, Claudium Marnium, et Io. Aubrium] 1598) 625–668 (without page numbering 636–648), esp. 629, No. 1, on the King of England and other sovereigns.

quoque in ca. Cum non liceat, extra De praescrip. [Felinus Sandeus ad X. 2.26.12⁷⁵], Bald. in prohemio ffortum, col. 4 [Baldus ad D., proh.⁷⁶].

Deinde liquet reges Angliae ideo etiam <ad> leges imperatorias non adstringi, cum ipsi nullo unquam tempore imperii iugum sustinuerint, sed pro suo arbitratu legibus novisque constitutionibus aeditis, quibus semper paruerunt, regnum libere administrarunt. Ac cum imperatoribus non refragantibus hoc fecerint praescriptione se tueri poterunt, cum quod imperatores tollerando approbasse videantur, tum quod traditum sit multorum auctoritate, potentissimos principes imperii iura ac ne imperatorem agnoscunt superiorem, posse praescribere, de his vid. Felinus in d. ca. Cum non liceat, col. 10, extra De praescriptio. [Felinus Sandeus ad X. 2.26.12⁷⁷].

Huc accedit quod iure traditum est, principem superiorem non recognoscentem, in temporalibus, in sua propria causa iudicem esse posse, ut est in l. Proxime, ff. De his qui in test. dele [D. 28.4.3] et l. Et hoc Tiberius, ff. De heredib. instituen [D. 28.5.42]. Clarus textus in ca. Nunc autem 21 dist. [Decretum Gratiani, *Prima Pars*, D. 21, c. 7], Innocentius in ca. Cum venissem, De probatio. [X. 2.19⁷⁸], Bart. in l. 1a, C. Ne quis in sua causa [Bartolus ad C. 3.5.1⁷⁹].

Item perperendum nunc temporis Angliae reges ne pontificis quidem auctoritatem agnoscere, profitentes enim se supremum in temporalibus dominum et in terra ecclesiae Anglicanae caput.

[40^v] His non obstantibus constat, reges Angliae non solum sibi ius dicere in lite cum civitatibus Ansaie non posse, sed etiam ad iuris caesarii auctoritatem decisionemque adstringi, adeo ut vel ex iuris communis praescripto, vel extra regni sui limites neutri parti suspectos iudices, procedere posse patiantur.

Primum, quia controversia de amissis privilegiis propter praetensum abusum concernit ipsum Regem ac regionum vectigalium customarumque augmentationem ac diminutionem, et sic lucrum proprium. Repugnat autem legibus naturae ut quis sibi ipsi adversetur, aut permissa facultate contra propriam utilitatem aliquid statuatur. [*in the margin*: Cicero inquit, Nemo est qui sui periculi⁸⁰]. Item Ea quae nocitura prospicimus aversamur, commoda vero ac utilia omnes amplectimur.

Secundo. Domini imperatores Valen[s], Gratianus et Val[entinianus] sanciverunt, Ne quis in sua causa iudicet aut sibi ipsi ius dicat, affirmantes in re propria alicui licentiam tribuere sententiae ferendae esse admodum iniquum [C. 3.5.1]. Et refert Nicolaus papa in ca. fin. [3].5 (quoniam Iustinianus statuerit propter suspicionem ex hac vel simili causa proclamantem quemlibet iudicem tanquam suspectum posse recusari [C. 3.1.16] naturale esse suspectorum iudicum insidias declinare [Decretum Gratiani, *Secunda Pars*, C. 3, Qu. 5, c. 15, § 4].

Tertio indubitati iuris est et naturalis ratio convincit ea quae substantiam iudicii concernunt, reges Angliae non magis posse negligere, quam quae communi gentium iure non solum, sed

⁷⁵ *Felinus Sandeus Ferrariensis*, In Decretalium libros V Pars Tertia (Venetiis [Apud haeredes Melchioris Sessae] 1570), col. 239–249, esp. col. 244, on the sovereignty of the King of England (hereinafter: *Sandeus*, In Decretalium libros).

⁷⁶ *Baldus Ubaldus*, In primam Digesti Veteris partem Commentarius (Venetiis 1599, reprint Goldbach 2004), fol. 2^{va}, No. 17 et seqq.

⁷⁷ *Sandeus*, In Decretalium libros (n. 74) Pars Tertia (Venetiis [Apud haeredes Melchioris Sessae] 1570), col. 239–249, esp. col. 246–247.

⁷⁸ *Innocentius IV*, the passage of the commentary was not identified.

⁷⁹ *Bartolus de Saxoferrato*, Super prima Codicis (Venetiis [per Baptistam de Tortis] 1526, reprint Rome 1996), fol. 111^{ra}.

⁸⁰ *Marcus Tullius Cicero*, Oratio pro rege Deiotaro, II.

etiam divino constituta ab omnibus hominibus inviolabiliter custodiuntur, passim autem, etiam in ipso Angliae regno observatur, ne quis simul sit iudex et actor. Iudicia enim tres personas requirunt, Iudicem, Actorem et Reum, ca. forus, De verbo. sign. [X. 5.40.10] [*added in the margin: <ac quod de auferendis non servandis pactis contenditur>*].

Sequitur igitur ut reges Angliae in tali causa iurisdictionem omnem a se abdicerent, cum quod iudicium non solum nullum foret, sed et contra ius gentium et propriam regni Anglici ob-servantiam. Haec probantur per Felinum in ca. Cum venissent, nu. 5, multis argumentis, extra [cf. Felinus Sandeus ad X. 2.1.12⁸¹] [*end of fol. 40v, the rest of the text missing*].

During a subsequent visit to the Danzig Archives, I found in a different file a sheet containing the text which follows immediately the previous page and which is transcribed hereafter. The document, however, is still not complete with that addition; the same file appears to contain more papers related to the same argument, perhaps drafts.

Gdańsk APG 300,128/130, fol. 571^{rv}

[571^r] extra De iudiciis ubi affirmat quod propter assignatas causas ne summus quidem Pontifex aut Imperator in sua causa possint esse iudices. Quarto si Rex propter pretensos abusus et offensiones ex falsis narrationibus mercatorum Lundinensium acerbius aliquid contra civitates Anzie statuit non magis equum erit ut ipse partes iudicis gerat quam si propter offensam inimicus factus de eadem offensa velit cognoscere, quod cum nulla ratione patitur [b] Eo quod non solum verisimile non est exacerbatum regem liberas defensiones que iuris naturae sunt, non admissurum sed quod ipsae civitates in conspectu regis, et maxime intra ipsius imperii limites, ubi omnia ex regio nutu peraguntur, non audebunt citra formidinem libere defensionem innocentiae suae proponere. Ergo etiam hoc inconvenienti perpenso, non ipsi reges idem debent permittere ut litis decisio a sua vel suorum sententia dependeat [C].

Non obstat quod supra dictum est principes superiorem non recognoscentes in sua causa iudices esse [*crossed out: non*] posse, nam hoc non aliter verum esse, et ratio et inveterata consuetudo, omniumque iuris interpretum constans autoritas dictat, quam ubi princeps talis contra subditum suum procedit. Secus vero ubi illi cum non subdito controversia incidit, si-quidem cum <ad> illos se regis iurisdicatio extendere non possit, nulla ratio illi contra tales sententiae licentiam tribuere potest, idque propterea quod huiusmodi iudicium deficiente potestate exequendi contra non subditum oporteret esse frustratorium.

Ideoque olim felicitis recordationis Richardus Angliae Rex iudicium Innocentii tertii per ferre non fuit dedignatus, cum illi ratione Pictaviensis ducatus cum rege Franciae controversia esset

marginal notes fol. 571^r:

b argumento L. lex Cornelia ff. de iniuriis [...] [D. 47.10.5] & L. si pariter ff. de liberali causa [D. 40.12.9], L. apertissimi ff. de iudiciis [D. 3.1.16].

C per huius confirmationem faciunt que post Innocen.⁸² no. Felinus in ca. cum venissent De iudi. nu. 483, per ca. accusatores [cf. Decretum Gratiani C.3 q.5 c. 2] & ca. quod suspecti 3 q. 5

⁸¹ Cf. Sandeus, In Decretalium libros (n. 74) Pars Secunda (Venetiis [Apud haeredes Melchioris Sessae] 1569), col. 86–90, esp. No. 5, col. 88.

⁸² Innocentius, Apparatus toto orbe celebrandus, super V. libris Decretalium et super Decretalibus per eum editis [...] (Lugduni, apud Hugonem à Porta, M.D.XLVIII), ad X. 5.40.23, fol. 215ra–va.

⁸³ Felinus Sandeus, Commentariorum [...] ad V. libros Decretalium [...] Pars Secunda (Lugduni MDLXXXVII) ad X. 2.1.12, No. 4, fol. 19rab, referring i.a. to “Innoc. in capit. ex parte. de verb. signifi.”.

[Decretum Gratiani C.3. q.5 c. 15] ubi offensus repellitur ab accusando, multo ergo fortius a iudicando. Et dicit tex. in d. ca. quod suspecti [Decretum Gratiani C.3. q.5 c. 15] iudicis recusationem ex predictis causis esse iuris naturae.

D Ut est tex. in ca. Novit ille extra De iudiciis [X. 2.1.13] ut Panor. post alios notat nu. 16⁸⁴ [*crossed out*: Et dicit Bart. Sozy. in cons. 27 vol. 3 nu. 5 – *see main text on the following page*].

[571^v] Et dicit Barthol. Socynus quod quando princeps contra naturaliter non subditum procedit cum hoc casu plenitudine potestatis suae uti non possit, ideo eius assertioni non stari, eo quod princeps suae preeminentiae plenaeque potestatis privilegio contra eum in quem plenam potestatem non habet, exercere non potest, allegat Franciscum Aret. [C], ubi inquit quod assertioni iudicis non statum in his in quibus non habet plenam potestatem utputa super dispositis a iure gentium vel divino, Hostiensis quoque [D] quem sequitur Felinus [E] affirmat illud quod dicitur principem superiorem non recognoscentem in causa propria iudicem esse posse, non habere locum contra non subditos.

Nec obstat quod Reges Angliae legibus Romanis aut pontificiis constitutionis non adstringantur, quod et de imperatoribus quorum autoritate omnes Romanas leges constat esse fultitas, tradit[ur ?], etsi enim divi Theodos[i]us et Valentinus <imperatores> constitutionem reliquerunt [F] qua sese eximerunt, tamen palam notum est [*crossed out*: etiam p...] hoc non nisi per modum autoritatis ac superioritatis verum esse ut scilicet autoritati im- [*crossed out*: perabat] peratorum reges Angliae non subiiciantur. Nam quoad constitutiones ex nature et gentium iure profluxerunt, omnes totius orbis principes iis obligantur. Ex quo sequitur reges Angliae si non ob id, quod illorum potestas a divorum imperatorum autoritate dependet, saltem igitur communibus ex nature et gentium legibus deprompt[is...?] obligari, exempli passim occurrunt tam ex Grecis quam Latinis historiis.

Philippus Macedonum Rex in controversiis quas sepe cum Athenien. habuit, non a suo tantum iudicio sententiam voluit pendere, sed eam [*end of page*] [...]

marginal notes fol. 571v:

B [Barthol. Socynus] In Cons. 27 vol. 3, nu. 5⁸⁵.

C [Franciscum Aret.] In ca. Cum nobis, De testib.⁸⁶.

⁸⁴ Nicolai Tudeschii Catinensis Siculi, Abbatis Panormitani, Commentaria Primae Partis in Secundum Librum Decretalium, Tomus Tertius (Venetiis, Apud Iuntas, MDLXXXVII, reprint Frankfurt am Main 2005), ad X. 2.1.13, Nos. 15–16, fol. 45^{rb}.

⁸⁵ Bartholomaeus Socinus, Tertia Pars Consiliorum (Lugduni [Petrus Fradin] 1551), Cons. 27, fol. 29^v–31^{rb}, inc. 'In praesenti consultatione substantialiter loquendo', No. 5, fol. 30rab.

⁸⁶ Franciscus de Accoltis de Aretio, Lectura [...] super libro secundo decretalium [...] (Bononie, expensis Antonii de Cistis de Bononia. Et egregii viri Henrici de Colonia, 20 Dec. 1481), ad X. 2.20.28, esp. 2nd col. ("In glo. posita in verbo nec unius [...] [...] dixit Hosti. et est communis opinio quod creditur assertioni summi pontificis ut probatur in tex. nostro. infi. et aliis iuribus allegatis per eum, vide hic per moder., hoc autem dictum admittit do. Abb. modern. in his in quibus proprie papa habet supplere variam potestatem ut in spiritualibus et in beneficiis, ubi autem ageretur de iure naturali vel gentium seu de iure divino, tunc videtur secundum eum quod non stetur assertioni solius pontificis"), and 3rd col. ("Unde non potest restringi iste tex. ad spiritualia ut dicit do. Ab. Et quod illa conclusio sit vera videtur esse casus in c. ad audientiam infra de prescript. quem tex. ibi ponderat do. Ab. ad hoc ubi patet quod ex assertionem pontificis probatur obligatio census debiti contra laicum, quinyimo secundum intellectum probat tex. etiam quod sit probatio etiam contra laicum non subiectum ecclesie, et hoc tenet ibi do. Ab., sed reputatur dictum novum. Sed hoc ultimum non placet mihi, quia per hoc quod creditur assertioni summi pontificis est privilegium superve potestatem quo privilegio non potest uti princeps contra non subditos, ut est casus in clemen. pastoralis, ver.

D [Hostiensis] in d. ca. Novit ille⁸⁷.

E [Felinus] d. ca. Cum venissent nu. 5 in prima limitatione⁸⁸.

F in L. Digna vox C. de legibus et consti. [C.1.14.4].

opposite "si non ob id, [...]": pro huius loci ampliacione vid. hic Corrasium lib. Miscell. 22 ca. ult.⁸⁹.

Kurzfassung

Wenn individuelle Konflikte im internationalen Handel einen weitreichenderen kaufmännischen Wettbewerb und Konkurrenzkampf widerspiegeln, stehen in der Regel der politische Handel und ökonomische Interessen auf dem Spiel. Lokale oder territoriale Autoritäten werden unter den Druck geraten, die Interessen ihrer eigenen Handelsgemeinschaft zu verteidigen, unter gleichzeitiger Berücksichtigung ihrer allgemeinen Wirtschafts- und Handelspolitik sowie ihrer eigenen politischen Position auf der internationalen Bühne. Individuelle Konflikte mögen beigelegt werden durch gerichtliche Entscheidungen, einen Schiedsspruch oder durch einen ausgehandelten Kompromiss, doch solch eine Beilegung, erzwungen oder freiwillig, beendet nicht den zugrundeliegenden strukturellen Interessenkonflikt. Die Beherrschung eines solchen internationalen Interessenkonflikts ist im Wesentlichen eine diplomatische Angelegenheit, und in diesen internationalen Wirtschaftsbeziehungen könnte sich das ‚Gleichgewicht der Kräfte‘ als entscheidend herausstellen. Indes haben die westlichen internationalen Beziehungen ebenso eine lange Tradition der Bemühung um eine Rechtfertigung der Positionen der verschiedenen Akteure, die in solche Wirtschafts- und Handelskonflikte involviert sind, und manchmal auch derer (meist zeitweiligen) Beilegungen in rechtlichen Termini.

Die Gesandtschaft der deutschen Hanse nach London im Jahr 1553 ist eine gut belegte Veranschaulichung dieser Strategie: Bei dieser Gelegenheit versuchten die Hansestädte, die wesentlichen Vorteile zu verteidigen, die sie in früheren Jahrhunderten durch Privilegien und ihren Status in London erlangt hatten, gegen die zunehmende Selbstbehauptung der englischen (und insbesondere der Londoner) Kaufleute, die, angetrieben durch ihre anwachsende Machtstellung, danach strebten, die Hansische Konkurrenz auf ihrem eigenen Grund einzudämmen oder sogar zu unterbinden. Die Politik der englischen Regierung bestand darin, einen

ceterum, de re iudicata. Unde dicere quod speciale sit in papa ut dicit ibi dominus Abbas non videtur habere rationem").

⁸⁷ *Henricus de Segusio Cardinalis Hostiensis* [...], In Primum Decretalium librum Commentaria [...] (Venetiis, apud Iuntas, MDLXXXI) (repr. Torino 1965) ad X. 2.1.13, fol. 5^{ra}–7^{ra}, esp. No. 13, fol. 6^{ab}.

⁸⁸ *Sandeus*, Commentariorum [...] ad V. libros Decretalium [...] Pars Secunda (n. 82), ad X. 2.1.12, No. 5, fol. 19^{rb}.

⁸⁹ *Joannes Corasius*, Miscellaneorum iuris civilis Libri Septem (Coloniae Agrippinae, Apud Viduam Ioannis Gymnici, sub Monocerote, Anno M.D.XCVIII), Lib. VI, c. 25, 456–459.

Mittelweg zu finden, der gewährleisten würde, dass sie sich weiterhin auf die Unterstützung ihrer eigenen Handelsgemeinschaft verlassen könnte, während die guten Beziehungen zu dem wichtigen Netzwerk Hansischer Städte und ihrer unerreichten maritimen Infrastruktur aufrecht erhalten würden, auf die sich die englischen Autoritäten nachwievor verlassen mussten angesichts der Schwäche der englischen Handelsmarine. Während der Verhandlungen erwies sich die Frage einer nicht-benachteiligenden Ordnung der englischen Kaufleute in Gdańsk als eines der Haupthindernisse. Auf beiden Seiten beriefen sich die Parteien auf das Herkommen des gelehrten *ius commune*, um ihre jeweiligen Argumente und Positionen zu stützen.

Résumé

Lorsque des litiges impliquant des entreprises ou des négociants particuliers se situent dans le cadre général d'une rivalité et d'une concurrence commerciales, l'enjeu est le plus souvent un conflit d'intérêts politiques et économiques entre des acteurs majeurs de la scène internationale. Les autorités locales ou régionales seront amenées à défendre les intérêts de leur propre communauté de marchands, tout en tenant compte des exigences de leur politique économique et commerciale et de leur position sur les marchés internationaux. Les litiges entre particuliers peuvent être résolus par une procédure judiciaire, un arbitrage, ou un compromis négocié, mais une telle résolution du conflit, imposée ou volontaire, ne met pas un terme au conflit d'intérêts sous-jacent. Pour maîtriser un tel conflit d'intérêts dans les rapports internationaux, les acteurs doivent avoir recours à la voie diplomatique et l'équilibre des forces en présence est souvent déterminant. En Occident, les relations économiques internationales ont une longue tradition consistant à justifier en termes de droit les positions respectives des différents acteurs impliqués dans ce type de conflits d'intérêts, et parfois aussi les solutions (souvent provisoires) qui sont élaborées. L'ambassade de la Hanse allemande à Londres en 1553 en est une illustration relativement bien documentée. À cette occasion, les villes hanséatiques s'efforcèrent de sauvegarder l'essentiel de leurs anciens statuts et privilèges à Londres, face à la montée en puissance des marchands anglais qui entendaient couper court à la concurrence hanséatique en Angleterre. Le gouvernement anglais devait chercher une solution médiane qui lui permettait de ne pas s'aliéner le soutien de sa propre communauté marchande, tout en s'assurant de maintenir l'appui des réseaux hanséatiques, dont l'infrastructure permettait encore, à cette époque, de suppléer aux faiblesses des capacités marchandes anglaises. Dans ce contexte, l'obtention d'un régime non-discriminatoire en faveur des marchands anglais à Danzig (Gdańsk) était l'une des questions les plus controversées au cours des négociations. De part et d'autre, les parties firent appel à des arguments et consultations juridiques ancrées dans la tradition savante du *ius commune* pour étayer leurs positions.