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Allying with Unbelievers: Hugo Grotius's Letters to East-Indian Rulers

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Abstract

The article examines a series of letters written by Hugo Grotius to East-Indian rulers on behalf of the Dutch East India Company (VOC). Drafts of these letters have been preserved at the Dutch National Archives. In his letters, Grotius developed several new ideas about alliances with non-Christians, which would later be included in his writings on natural law and the law of nations. He addressed the non-Christian rulers of the East Indies as sovereigns. He argued that the Dutch had a right to protect their non-Christian allies, even against other Christians, such as the Spaniards and Portuguese. Crucially, Grotius developed a justification for the VOC's monopoly on the spice trade, which he defended as a just compensation for the expenses it had incurred in 'liberating' its East-Indian allies from Iberian 'tyranny'. He thereby provided a legal framework for the VOC's 'informal empire' in the East Indies.

Keywords

Grotius – natural law – VOC – East Indies – alliances with non-Christians – monopoly contracts

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1 Introduction

Hugo Grotius is generally regarded as a trailblazer of modern international law. However, there is a growing awareness among historians that he was also one of the early architects of Dutch imperial rule in the East Indies.¹ Between 1604 and 1615, Grotius worked as a legal advisor and political lobbyist for the Dutch East India Company (VOC). In this capacity, he helped to lay the legal foundations for the VOC's web of alliances with native rulers in the East Indies.² What is little known is that Grotius personally drafted a series of letters to East-Indian rulers on behalf of the VOC's board of directors, the Lords XVII. The purpose of these letters was to reaffirm existing partnerships, such as trade agreements and military alliances, between these rulers and the VOC. The original drafts of Grotius's letters have been preserved at the Dutch National Archives in the Hague.³ Although some of these letters have been published, they have not been systematically described or studied.⁴ My aim in this article is therefore to describe and analyze Grotius's letters and to examine how they relate to his ideas on natural law and the law of nations. More specifically, I intend to show how Grotius developed a theory on treaties and alliances with non-Christians,

1 See, in particular, Borschberg, Peter. 'Hugo Grotius and the East Indies', in *The Cambridge Companion to Hugo Grotius*, eds. Randall Lesaffer and Janne Nijman (Cambridge: Cambridge University Press, 2021), 65–90; Borschberg, Peter. *Hugo Grotius, the Portuguese and Free Trade in the East Indies* (Singapore: NUS Press, 2011); Ittersum, Martine van. 'The Long Goodbye: Hugo Grotius' Justification of Dutch Expansion Overseas'. *History of European Ideas* 36(4) (2010), 386–411; Ittersum, Martine van. *Profit and Principle: Hugo Grotius, Natural Rights Theories and the Rise of Dutch Power in the East Indies (1595–1615)* (Leiden: Brill, 2006); Keene, Edward. *Beyond the Anarchical Society: Grotius, Colonialism and Order in World Politics* (Cambridge: Cambridge University Press, 2002); Wilson, Eric. *Savage Republic: De Indis of Hugo Grotius, Republicanism and Dutch Hegemony within the Early-Modern World System (c. 1600–1619)* (Leiden: Brill, 2008); Tuck, Richard. *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant* (Oxford: Oxford University Press, 2009), 78–108; Nellen, Henk. 'Hugo Grotius over kaapvaart en commerciële expansie'. *Leidschrift* 26 (2011), 59–73; Van Gelderen, Martin van. 'The Challenge of Colonialism: Grotius and Vitoria on Natural Law and International Relations'. *Grotiana* 14(1) (1993), 3–37.

2 Borschberg, *Hugo Grotius* 2011 (n. 1), 168.

3 Dutch National Archives, Collectie Hugo de Groot, supplement 1, access 1.10.35.02, inv. 40, fol. 344–345, 359–362, 364–366, 424–425, 430v.

4 An English translation of Grotius's letter to the king of Tidore has been published in Grotius, Hugo. *Commentary on the Law of Prize and Booty (De iure praedae commentarius)*, ed. Martine van Ittersum (Indianapolis: Liberty Fund, 2006), 553–555 (app. 9). Borschberg has published transcriptions and English translations of the letters to the kings of Siam and Johor: Borschberg, Peter. 'Cornelis Matelief, Hugo Grotius, and the King of Siam (1605–1616): Agency, Initiative and Diplomacy'. *Modern Asian Studies* 54(1) (2020), 122–156, 153–156, app. 2 and 3 (transcriptions) and 139–140 (translations).

which served to support the VOC's commercial and military policies in the East Indies.

In his letters, Grotius presented the East-Indian rulers as sovereigns, addressing them, for instance, as 'king of Ternate', 'emperor of Borneo', or 'mighty lords of Banda'.⁵ He emphasized that these rulers had voluntarily entered into alliances with the Dutch, which were aimed against their 'common enemy', the Spaniards and Portuguese, who sought to 'unlawfully prevent free trade throughout the world' (fol. 344r). As Grotius explained in his letters, the Dutch alliances with East-Indian rulers entailed rights and obligations for both parties: while the Dutch promised their allies military protection, the East-Indian rulers granted the VOC an exclusive right to buy certain spices. Although Grotius presented the East-Indian rulers as independent sovereigns, the reality was of course different: they were often forced into obedience by their Dutch trading partners. This was particularly true of the Banda islands, where the presence of Dutch warships left local rulers little other choice than to accept the VOC's terms, including its monopoly on the spice trade.⁶ However, in Grotius's view, the Dutch had come to 'liberate the princes and nations of the East Indies from the tyranny' of the Spaniards and Portuguese – a formulation he repeated in several letters (fol. 344r, 359r, 361r and 365r). He used this argument to justify the VOC's monopoly on the spice trade: as the Dutch had 'liberated' their East-Indian allies from Iberian 'oppression', they had to be preferred in trade over other nations (fol. 344r–345v, 359v, 362v, 366r). Grotius thus defended what would later be called 'informal empire', that is, a trading empire based on treaties and alliances through which the Dutch acquired economic control while recognizing the (nominal) sovereignty of native rulers.⁷

In the present article, I will focus on analyzing the main arguments in Grotius's letters to East-Indian rulers. I will compare these arguments with those presented in his early treatises *De societate publica cum infidelibus* [On Public Partnership with Unbelievers] and *De iure praedae* [On the Law

5 Draft letters to the king of Ternate, the emperor of Borneo and the lords of Banda. Dutch National Archives, Collectie Hugo de Groot, supplement 1, access 1.10.35.02, inv. 40, fol. 361, 359 and 430. References to the letters will henceforth be provided in the main text with folio numbers.

6 Ittersum, Martine van. 'Debating Natural Law in the Banda Islands: A Case Study in Anglo-Dutch Imperial Competition in the East Indies, 1609–1621'. *History of European Ideas* 42(4) (2016), 459–501.

7 Fitzmaurice, Andrew. *Sovereignty, Property and Empire, 1500–2000* (Cambridge: Cambridge University Press, 2014), 99; Boisen, Camilla. 'Grotius and Empire'. *Grotiana* 36 (2015), 28–39, 33.

of Booty], which were written in the same period.⁸ In these writings, Grotius argued that it was generally permissible for Christians to enter into alliances with non-Christians. Within European legal and political discourse, there had been a strong tradition of resistance against the idea that such ‘impious alliances’ could be legitimate. The Spanish scholastics were the first to recognize the importance of alliances with non-Christians for building European empires overseas.⁹ However, they also warned against the scandal of allying with non-Christian rulers against other Christians. Grotius overcame these anxieties by developing a new justification for alliances with non-Christians based on natural law.¹⁰ As he explained in *De societate publica cum infidelibus*, the right to enter into ‘alliances with unbelievers’ followed from the natural law of non-offensiveness, which applied irrespective of religion. Christians were thus permitted to enter into alliances with non-Christians, even if they were aimed against other Christians. Grotius’s theory was important for providing a legal justification for the VOC’s network of treaties and alliances with non-Christian rulers in the East Indies, which were directed against the Spaniards and Portuguese.

All in all, I have identified eight letters to East-Indian rulers that were drafted by Grotius himself as well as two copies of letters with marginal notes in his hand.¹¹ In this article, I will focus on Grotius’s letters to rulers in the Moluccas,

8 Grotius, *De iure praedae* 2006 (n. 4) and Grotius, Hugo. *De societate publica cum infidelibus*, Leiden University Library, MS. Cod. BPL 922, fol. 314r–318v. Grotius finished the manuscript of *De iure praedae* in November 1606, although he continued to revise it in the following years. The manuscript of *De societate publica cum infidelibus* is undated. Borschberg has identified it as an early work of Grotius, which was probably written in the first decade of the seventeenth century, in the context of *De iure praedae*. Borschberg, Peter. ‘De societate publica cum infidelibus: Ein Frühwerk von Hugo Grotius’. *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Romanistische Abteilung* 115 (1998), 355–393, 356 and 385, and Ittersum, Martine van. ‘Dating the Manuscript of *De iure praedae* (1604–1608): What Watermarks, Foliation, and Quire Divisions Can Tell Us about Hugo Grotius’ Development as a Natural Rights and Natural Law Theorist’. *History of European Ideas* 35 (2009), 125–193.

9 Tuck, Richard. ‘Alliances with Infidels in the European Imperial Expansion’, in *Empire and Modern Political Thought*, ed. Sankar Muthu (Cambridge: Cambridge University Press, 2012), 61–83, 67.

10 Ibid., 76.

11 Collectie Hugo de Groot, supplement I, access 1.10.35.02, inv. 40, fol. 344–345 (draft letter to the king of Ternate), 359–360 (draft letter to the lords of Banda, with an instruction in Grotius’s hand to send the same letter to the queen of Patani and the king of Bantam), 361–362 (copy of the letter to the king of Ternate, with marginal notes in Grotius’s hand), 364 (draft letter to the lords of Ambon), 364v (draft letter to the king of Siam), 365–366 (copy of the letter to the king of Tidore, with marginal notes in Grotius’s hand), 424 (draft letter to the king of Johor), 424–425 (draft letter to the emperor of Malabar), 430 (draft

such as the sultans of Ternate and Tidore, and the orang kayas of Ambon and the Banda islands. I will not discuss his letters to the 'king of Siam' and the 'emperor of Borneo'. In a recent article, Peter Borschberg already provided an excellent analysis of Grotius's letter to the 'king of Siam', showing how Grotius and the VOC directors regarded Siam as a springboard for gaining access to the trade with China as well as a potential ally in the war against the Portuguese.¹² Grotius's letter to the 'emperor of Borneo' has received less attention in the literature; it was meant to thank the sultan of Borneo (present-day Brunei) on behalf of the VOC directors for releasing eight Dutch prisoners and to reaffirm their friendship.¹³ Although both letters are important for understanding how Grotius contributed to the VOC's policy of alliance-making, I will focus on his letters to rulers in the Moluccas, in which he provided a justification for the VOC's monopoly on the spice trade. By comparing the arguments in his letters with those presented in his early treatises, I examine how he developed a theory about 'public partnerships with unbelievers', which served to support the VOC's evolving policy of treaty- and alliance-making. First, I will examine the purpose of Grotius's letters by relating them to the historical context. Then,

letter to the emperor of Borneo), and 430v (draft letter to the king of Tidore). Smelt also mentions a letter to the 'king of Siau' in her inventory of Grotius's VOC papers, but she refers to fol. 364v, which contains the letter to the 'king of Siam'. She may have misread 'Siam' (or in Grotius's spelling: 'Sian') as 'Siau'. Smelt, Wilhelmina E. 'Beschrijving eener verzameling papieren, afkomstig van Hugo de Groot', in *Inventarissen van Rijks- en andere archieven* (The Hague: Algemeene Landsdrukkerij, 1928), 73–105, 84.

- 12 As Borschberg explains, the idea of using Siam as a springboard for the China trade had originally been suggested by the Siamese themselves. After years of war with neighboring Burma, they were keen on expanding their foreign trade by allying with the Dutch, thus curbing the influence of the Burmese and the Portuguese. In the summer of 1604, Admiral Wybrand van Warwijck was approached by an envoy of the Siamese king, who suggested that the Dutch could gain access to the Chinese trade by joining a Siamese tributary mission to the Ming Court. Excited by the prospect, Van Warwijck sent a letter to the king of Siam and dispatched a small Dutch delegation led by Cornelis Speck to the Siamese court. However, due to the death of king Naresuan in 1605, the mission did not take place. In his letter to king Naresuan's successor, Grotius suggested that the VOC was to blame for letting the opportunity pass. He begged the king to offer another opportunity for the sake of their friendship. He also noted that another Dutch fleet would soon leave for the East Indies to attack their mutual enemies, the Portuguese. Borschberg, 'Cornelis Matelief, Hugo Grotius, and the King of Siam' 2020 (n. 4), 122–156 (at 139–141); Borschberg, 'Hugo Grotius and the East Indies' 2021 (n. 1), 72.
- 13 The prisoners were members of the crew of Jacob van Heemskerck. They were delivered to Van Warwijck at Patani, just after his meeting with the envoy of the king of Siam. The Sultan declared that they had been imprisoned against his will, and he invited the Dutch to trade in Borneo. Tiele, Pieter A. 'De Europeërs in de Maleischen archipel. Zesde gedeelte, 1598–1605'. *Bijdragen tot de taal-, land- en volkenkunde* 30(1) (1882), 141–242, 221.

I will analyze the arguments he used to justify the VOC's monopoly on the spice trade. Finally, I will compare these arguments with those presented in his theoretical writings, to show how they informed his ideas about natural law and the law of nations.

2 Why Did Grotius Write the Letters?

Grotius's letters to East-Indian rulers were written on behalf of the governing board of the VOC, the Lords XVII. The aim of these letters was to reaffirm existing partnerships, military alliances and commercial treaties, between the VOC and the East-Indian rulers. In its founding charter of 1602, the VOC had been granted the exclusive right to trade in Asia, east of Cape Good Hope. Under Art. 35 of the charter, it had obtained the authority to enter into 'contracts and alliances' with foreign 'princes and potentates' on behalf of the States General and 'High Authorities' of the Dutch Republic.¹⁴ In the first years of its existence, the VOC had entered into a series of alliances with rulers in Asia and the East-Indian archipelago, such as the Samorin of Malabar, the sultans of Johor, Ternate and Tidore, and the orang kayas of Ambon and the Banda Islands.¹⁵ In a legal sense, the VOC acted as a mandatory or plenipotentiary of the United Provinces, that is, not in its own name, but in the name and under the responsibility of the States General and High Authorities.¹⁶ However, in practice, local VOC officials determined the terms of these alliances, acting on the basis of general instructions from the Lords XVII. Although the charter referred to (private) 'contracts' and (public) 'alliances', these were not clearly distinguished

14 Charter of the VOC, in *Groot Placaet-Boeck vervattende de placaten, ordonnantien en edicten van de doorluchtige, Hoogh Moghende Heeren Staten-Generael der Vereenighde Nederlanden*, ed. Cornelis Cau (The Hague: Van Wouw, 1658), 536. The States General were primarily responsible for foreign policy, while the States of the provinces (e.g., the States of Holland) were the highest authority regarding domestic policy. The Stadholder, Prince Maurice, was the supreme military commander. By the time Grotius wrote his letters to East-Indian rulers, the sovereignty of the Dutch Republic was not yet formally recognized by other nations (it would not be formally recognized until the Peace of Westphalia of 1648), although states such as England and France recognized its de facto independence. By addressing the East-Indian rulers as sovereigns, Grotius implied that the Dutch Republic was a sovereign nation that could enter into treaties and alliances with other nations.

15 Stapel, Frederik W. 'Corpus diplomaticum Neerlandico-Indicum: Verzameling van politieke contracten en verdere verdragen door de Nederlanders in het Oosten gesloten, van privilegebrieven aan hen verleend, etc.'. *Bijdragen tot de taal-, land- en volkenkunde van Nederlands Indië* 57 (1907), 29–541, XIII–XX, 30–48.

16 Somers, Jan A. *De VOC als volkenrechtelijke actor (The Dutch East India Company as an Actor in International Law)* (Gouda: Quint, 2001), 67–68.

in practice, and most alliances had both a commercial and a public character, for instance, offering military protection to East-Indian allies in exchange for trading privileges for the VOC.

In his letters, Grotius characterizes the VOC's alliances with East-Indian rulers as 'contracts of alliance [*contracten van verbondt*]' or 'communities of arms [*gemeenschappen van wapenen*]' (fol. 345, 359v, 361v, 366 and 424). He sometimes refers to specific contracts, such as the 'contract of alliance' concluded in 1604 between Admiral Steven van der Hagen and the Samorin of Malabar (fol. 424v), and the 'contract' concluded in 1605 between Vice-Admiral Cornelis Sebastiaens and the Sultan of Tidore (fol. 430v). Van der Hagen had received specific instructions from the VOC directors to enter into alliances with rulers in India and the East Indies.¹⁷ On 11 November 1604, he had concluded a 'contract' with the Samorin of Calicut, described as the 'mighty emperor and Samorin of Malabar', on behalf of the States General and Prince Maurice. The contract was characterized as a 'perpetual and unbreakable alliance [*eeuwige ende onverbreeckelijcke alliantie*] to destroy the Portuguese and their allies, and to expel them from all the lands of his majesty and from the Indies as a whole'.¹⁸ The Dutch promised to send ships and people at the earliest possible occasion, including merchants who would take residence at Calicut. They also obtained the right to build a fortress, which would remain under Dutch authority. It was expressly stipulated that the contracting parties would not enter into a separate peace agreement with the Portuguese without first consulting each other. Finally, no one was allowed to sail along the coast of Malabar without a passport issued by the Samorin, and ships that were caught without a passport were declared a 'just prize'.¹⁹

In his letter to the Samorin, Grotius mentions the 'contract of alliance' concluded with Van der Hagen, which he characterizes as a contract to 'destroy the Portuguese, our common enemies, at the earliest possible occasion' (fol. 424v). Grotius apologizes for the fact that no Dutch ships have arrived in Calicut

17 Jonge, Jan K. J. de *De opkomst van het Nederlandsch gezag in Oost-Indië (1595–1610)*, vol. 3 (The Hague: Martinus Nijhoff, 1865), 29.

18 Stapel, 'Corpus diplomaticum' 1907 (n. 15), XIII, 30.

19 Ibid., XIII, 31. The VOC would later introduce a similar 'passport' to enforce its monopoly on the spice trade on the Banda islands. For instance, in 1616, Admiral Jan Dirkszoon Lam concluded a peace treaty with the Bandanese, allowing VOC personnel to search any Bandanese vessel, and to confiscate it, if it lacked a proper passport. The Bandanese were instructed to refuse anchorage to ships of other 'European and black nations [*zwarte natien*]', with the exception of junks from Java which were allowed to anchor in sight of the towns of Lontor and Selamon on Great Banda, provided that they first obtained passports from the Dutch, *ibid.*, LI, 123; Ittersum, 'Debating Natural Law in the Banda Islands' 2016 (n. 6), 470 and 478.

since the contract has been concluded. He explains that two Dutch fleets have departed from Holland, but failed to reach the coast of Malabar due to adverse winds. In a note, he refers to the fleets of Cornelis Matelief de Jonge and Paulus van Caerden, which had sailed in May 1605 and May 1606 respectively. The aim of Grotius's letter is to convince the Samorin that the Dutch remain committed to honor their alliance: he announces that another 'very excellent fleet' will be sent in the coming year. In the meantime, Grotius points out, a considerable Dutch fleet of 24 'very good warships' has blocked the ports of Spain and Portugal, thereby preventing the enemy from sailing to Malabar. As Grotius explains, these ships are now ready to be sent to the East Indies as well. On behalf of the VOC directors, he requests the Samorin to make preparations for the war against the Portuguese and, if possible, to enter into military alliances with other Asian 'princes' (fol. 424v). Interestingly, in a second version of the letter, Grotius expresses his fear that Van Caerden's fleet may not have reached the Malabar coast. He now mentions that this fleet has departed 'last May [*maio voorleden*]' (fol. 425). This allows us to date the letter in 1606 and, more particularly, between the departure of Van Caerden's fleet in May 1606 and the end of that year.²⁰

In his letter to the king of Tidore, Grotius refers to the contract concluded with Cornelis Sebastiaens in May 1605, in which the king had granted the Dutch permission to rebuild the fortress at Tidore and promised not to admit other nations to the trade in his realm (fol. 430v). Van der Hagen's Vice-Admiral Sebastiaens had conquered the Portuguese fortress at Tidore with support of Ternate.²¹ The Sultan of Ternate was the most powerful ruler in the Moluccas; his authority extended to the large island of Gilolo (Halmaheira), Ambon and the Banda islands, eastern Celebes (Sulawesi) and western New Guinea. Traditionally, a strong rivalry existed between the Sultans of Ternate and Tidore, who both attempted to control the lucrative spice trade. The Moluccas were the only area where cloves were produced, while nutmeg and mace grew only on the Banda islands. In the course of the sixteenth century, the Spaniards and Portuguese had arrived in the Moluccas and started to buy up cloves for the European market. They had built fortresses at Ternate and Tidore to enforce their monopoly against local traders and European competitors. However, in 1575, the Sultan of Ternate had driven out the Portuguese and become independent of the Iberian powers.²² When the Dutch arrived in the

20 See also Smelt, 'Beschrijving eener verzameling papieren' 1928 (n. 11), 85 (at fol. 424v–425).

21 De Jonge, *Opkomst* 1865 (n. 17), 36–37.

22 Mostert, Tristan. 'The Scramble for the Spices: Makassar's Role in European and Asian Competition in the Eastern Archipelago up to 1616', in *The Dutch and English East India*

Moluccas in the early seventeenth century, the Sultan of Ternate invited them to buy cloves, while the Sultan of Tidore continued to support the Spaniards and Portuguese. In May 1605, Sebastiaens conquered the Portuguese fortress at Tidore with the assistance of Ternate. However, the Dutch victory would not last. In March 1606, a Spanish fleet under the command of Pedro de Acuña reconquered the fortress. The Spaniards also attacked Ternate and managed to seize the old Portuguese fortress on the south coast. The Sultan of Ternate, Saïd Barkat was arrested and deported to Manila.²³

Apparently, at the time of writing, Grotius did not know that the fortresses of Tidore and Ternate were in Spanish hands and that the Sultan had been arrested. The same reference to the Dutch 'taking of the fortress of Tidore' can be found in the letter to the king of Ternate. In this letter, Grotius explains that the Dutch conquest of the fortress has much contributed to the 'security of your Majesty and his subjects' (fol. 361r). The same phrase appears in his draft letter to the king of Tidore, but now the word 'security' is crossed out and replaced with 'liberation [*verlossinghe*]' (fol. 365r). The fact that Grotius did not know that the fortresses of Tidore and Ternate were in Spanish hands gives us a rough indication as to when these letters were written. As Smelt explains, news of the Dutch conquest of the fortress of Tidore had arrived in Holland in 1606. The Spanish reconquest of the fortress was known in Holland in 1607. This means that Grotius's letters to the kings of Tidore and Ternate were probably written in 1606.²⁴ In his letters, Grotius admonishes the two kings to solve their disputes and to prevent their 'private quarrels from endangering the public liberty' (fol. 344v and 365r). They are invited to enter into a perpetual alliance with each other, which will be guaranteed by the Dutch. In addition, they are requested to honor their agreements with the VOC, and to refrain from delivering their spices to other nations (fol. 344v and 365v). Honoring the VOC's monopoly on the spice trade is necessary to finance the war against Spain and Portugal and to protect their liberty. As Grotius puts it, 'a lasting friendship and military alliance deserves more favor than [the quest for] immediate profit' (fol. 366r).

In January 1605, Van der Hagen was approached by an embassy from Ambon with the request to provide military assistance against the Portuguese.²⁵ Five years before, Van der Hagen had founded a Dutch fortress on Ambon, the fortress 'Van Verre'. In the meantime, it had been deserted by the Dutch and

Companies: Diplomacy, Trade and Violence in Early Modern Asia, eds. Adam Clulow and Tristan Mostert (Amsterdam: Amsterdam University Press, 2018), 25–54, 31–32.

23 Ibid., 38–39; De Jonge, *Opkomst* 1865 (n. 17), 52–53.

24 Smelt, 'Beschrijving eener verzameling papieren' 1928 (n. 11), 81–82 (at fol. 344–345, 361–362 and 365–366) and 85 (at fol. 430v).

25 De Jonge, *Opkomst* 1865 (n. 17), 35.

occupied by the Portuguese. On 21 February 1605, Van der Hagen's fleet arrived before the coast of Ambon. Two days later, the Portuguese surrendered the fortress without a fight.²⁶ Van der Hagen seized the occasion to renew the alliance with the rulers of the northern part of Ambon, the 'captain' of Hitu and orang kayas.²⁷ Recognizing that they had been 'liberated' by the Dutch, these rulers swore an oath of allegiance to the Dutch States General and Prince Maurice, as well as to the Governor of Ambon.²⁸ They promised to assist the Dutch against all enemies. In addition, they granted the VOC an exclusive right to buy all the cloves harvested on the island. Both parties promised to tolerate each other's religion: no one was to disturb or molest the other because of their faith.²⁹ Dutch soldiers who ran away had to be returned to the fortress, and likewise, Ambonese who fled to the fortress had to be delivered to their rulers. The Governor was required to punish Dutch soldiers who attacked the local population or disturbed the peace in other ways. Finally, disagreements among the Ambonese should not prevent them from assisting the Dutch.³⁰ The contract was based on the fiction that the 'lords of Ambon' had acted as independent rulers and voluntarily granted these rights to the Dutch – in particular, the right of preemption, i.e., the right to buy present and future harvests of cloves at a fixed price – in exchange for their 'liberation' from the Portuguese. A separate contract was concluded with another local ruler, the 'king' of Oma, who had actively supported the Portuguese. He was forced to give up his sovereign rights and to swear an oath of fealty as 'vassal' of the States General and Prince Maurice, recognizing them as 'sovereign lords of the foresaid islands in the archipelago of Ambon'.³¹

26 Ibid., 35–36.

27 The captain of Hitu and the orang kayas (literally: 'rich' or 'powerful men') were aristocrats who had acquired their wealth from trade and who recognized the Sultan of Ternate as their overlord. They governed Hitu and some of its surrounding towns on the northern part of Ambon.

28 Stapel, 'Corpus diplomaticum' 1907 (n. 15), XIV, 31.

29 The provision that both parties would not interfere with each other's religious beliefs can be found in many VOC treaties (see, for instance, *ibid.*, XVII, 37; XXVII, 60; XXVIII, 64; XXXIV, 77; XXXIX, 93; XLV, 108–109). From the perspective of the East-Indian allies, the promise of the Dutch that they would not interfere with their religion made them appear a more favorable partner than the Portuguese. Weststeijn, Arthur. 'Love is Not Enough: Treaties in Seventeenth-Century Dutch Colonial Expansion', in *Empire by Treaty: Negotiating European Expansion, 1600–1900*, ed. Saliha Belmessous (Oxford: Oxford University Press, 2014), 19–44, 33.

30 The contract specifically referred to the Olisiva and Olilima, parties that had traditionally divided Ambon and the Banda islands. Stapel, 'Corpus diplomaticum' 1907 (n. 15), XIV, 33.

31 *Ibid.*, xv, 34. In a third contract, the Portuguese merchants and soldiers who had surrendered to the Dutch were forced to swear an oath of allegiance to the States General and Prince Maurice, *ibid.*, xvi, 35–36.

In his draft letter to the 'might lords' of Ambon,³² Grotius refers to these events, recalling the 'inhumane cruelty [*onmenschelycke wreedtheyt*]' committed by the Portuguese which, in his view, 'surpasses all examples' (fol. 364r). Echoing a phrase from his letters to the Sultans of Tidore and Ternate, Grotius points out that the Dutch 'conquest of the fortress at your island, which had been violently occupied by the Portuguese, is judged by your Lords themselves to be your only liberation [*verlossinghe*]' (fol. 364r). In his letter, Grotius presents the Dutch conquest of the fortress as a humanitarian intervention: it was necessary to end the 'inhumane cruelty' of the Portuguese and to 'liberate' the Ambonese from 'tyranny'. Grotius does not describe the contract between Van der Hagen and the lords of Ambon in detail. He does not mention the obligation of the Ambonese to assist the Dutch and to deliver all their cloves exclusively to the VOC. Instead, he apologizes for any inconveniences which the Dutch may have caused 'due to their lack of experience' (fol. 364r). He emphasizes how difficult it is for the authorities back in Holland to impose a 'good order' on their subjects overseas. If the lords of Ambon or their subjects have reason to complain about ill behavior of the Dutch, reparations will be made. It is unclear what deeds of the Dutch had prompted Grotius to apologize and offer reparations. A similar passage is lacking in the other letters to East-Indian rulers. The letter to the lords of Ambon is clearly a draft: throughout the text, phrases are left unfinished and cross-references are inserted to the letters to the king of Johor and the lords of Banda, suggesting that these letters were written simultaneously (fol. 364r).³³

When Van der Hagen was still at Ambon he received news that several Dutch merchants had been killed on the island of Banda Neira: as the story went, two of them had converted to Islam. They had been killed by their colleagues, who regarded their conversion as an act of desertion. In response, the Bandenese had taken revenge on the remaining Dutch merchants, who were murdered in the house of an Islamic priest.³⁴ On 1 April 1605, Van der Hagen left Ambon and sailed to the Banda islands. When he arrived at Banda Neira, he entered into negotiations with the orang kayas, and on 13 July, they concluded a contract. Both parties promised not to interfere with each other's religion: religion should not become a 'source of enmity'.³⁵ Moreover, the Bandanese vowed to protect the Dutch merchants as they would protect 'their own women and

32 Meant are the rulers of the northern part of Ambon, the captain of Hitu and four orang kayas, with whom Van der Hagen had concluded a contract in February 1605.

33 See also Borschberg, 'Hugo Grotius and the East Indies' 2021 (n. 1), 72.

34 Chijs, Jacobus A. van der *De vestiging van het Nederlandsche gezag over de Banda-eilanden (1599-1621)* (The Hague: Martinus Nijhoff, 1886), 20-28.

35 Stapel, 'Corpus diplomaticum' 1907 (n. 15), XVII, 37.

children'.³⁶ In return, the Dutch promised to defend the Bandanese against external enemies (a reference to the Spaniards and Portuguese), and to remain neutral in conflicts among the Bandanese themselves. It was expressly forbidden to convert Dutch merchants or soldiers to Islam and runaways had to be returned. The core of the contract was a provision granting the Dutch the exclusive right to buy all the nutmeg and mace produced on the Banda islands at an agreed price. In return, they were to provide victuals, trading goods, silver and gold, and the Bandanese were allowed to continue their trade with other nations in products which the Dutch could not provide.³⁷ The contract was signed by the orang kayas of Banda Neira and other islands, with the exception of Labetaka and Lontor. This would later become a source of contention, as the orang kayas of Lontor, claiming that they were not bound by the contract, continued to deliver their spices to other nations than the Dutch.³⁸

In his letter to the 'mighty lords' of Banda, Grotius emphasizes that the Portuguese are the common enemy of the Bandanese and the Dutch. Grotius does not mention the contract concluded between Van der Hagen and the orang kayas of Banda Neira. However, he does provide a justification for its main provision: the VOC's exclusive right to buy all nutmeg and mace produced on the Banda islands is presented as a fair compensation for the war waged on behalf of its allies against the Portuguese. As Grotius explains, daily reports are received that neighbors of the Dutch are seeking to trade with the Bandanese without being willing or able to protect them against the Portuguese (fol. 359v). The reference is to English interlopers, who had arrived in the Moluccas in previous years, offering higher prices for their spices than the VOC. Ill will had existed between the VOC and the English East India Company (EIC) as early as 1605.³⁹ In that year, Henry Middleton had obtained cloves from the Portuguese commander of Tidore in exchange for guns and ammunition. This had much irritated VOC officials, who were supporting the Sultan of Ternate in his efforts to drive out the Portuguese.⁴⁰ As Grotius explains in his letter to the lords of Banda, allowing other nations than the Dutch to trade in the Moluccas would cause significant harm to the VOC, which had incurred 'great expenses' in fighting the war against the Spaniards and Portuguese on behalf of its East-Indian allies (fol. 359v). If competition with other nations forced the VOC to pay higher prices for their spices, it would no longer be able to finance the war, which would enable the enemy to permanently settle in the

36 Ibid., xvii, 37.

37 Ibid., xvii, 38.

38 Chijs, *Vestiging* 1886 (n. 34), 28; Ittersum, 'Debating Natural Law in the Banda Islands' 2016 (n. 6), 459–501.

39 Ittersum, *Profit and Principle* 2006 (n. 1), 371.

40 Ibid., 371–372 and 403.

East Indies. Grotius therefore urges the East-Indian rulers to 'prefer the United Company in trade above all others' (fol. 359v). They are reminded of the 'good promises [*goed toeseegghinge*]' they have made. Preferring the VOC in trade is not merely an expression of friendship, but a legal obligation.

In October 1605, Van der Hagen departed with two ships on his journey back to Holland. On Mauritius, he met with his successor, Admiral Cornelis Matelief de Jonge,⁴¹ who had left Holland with a large fleet in May of that year.⁴² Their conversations led Matelief to decide to set course to Malacca to provide military assistance to an old ally of the Dutch, the Sultan of Johor.⁴³ Van der Hagen mistakenly believed that the Portuguese had laid siege to Johor. In May 1606, Matelief concluded a new contract with the 'serene and mighty king of Johor' on behalf of the States General. In it, he promised to assist the king in 'taking and conquering the city of Malacca from the Portuguese, their mutual enemies'.⁴⁴ The contract was primarily meant to divide the spoils in the event that Malacca would be conquered.⁴⁵ The Dutch were to receive control of the walled city as compensation for their support, and the king of Johor was to govern the surrounding lands and receive some pieces of artillery from the Portuguese fortress. In addition, 'vassals' of the Dutch would obtain the right to deliver their goods in Malacca without being subject to taxation, while

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- 41 Matelief de Jonge was one of the early architects of the VOC's empire in the East Indies. Between 1605 and 1608, he had served as Admiral of the VOC's second fleet. Upon his return in the Dutch Republic, he became a personal acquaintance of Grotius. As Borschberg has showed, from 1609 through 1610, Grotius acted as an intermediary between Matelief and Johan van Oldenbarnevelt, the Advocate of Holland. He provided Grotius with information on political, economic and strategic issues in the East Indies (for instance, Grotius gained access to his then unpublished travelogue). Matelief proposed several important reforms of the VOC's operations in Asia. These included the proposal to found a so-called rendez vous, or permanent base, at Jacatra, to make one person responsible for the VOC's operations in Asia (later the Governor General), and to establish a monopoly on cloves, nutmeg and mace (while simultaneously flooding the European market with pepper to drive out the VOC's competitors). As Borschberg explains, Matelief's reform plans helped shape Grotius's own understanding of East-Indian affairs. In particular, Grotius seems to have shared Matelief's vision of a Dutch trading empire based on a web of exclusive delivery contracts backed by promises of protection. Borschberg, 'Hugo Grotius and the East Indies' 2021 (n. 1), 73–75.
- 42 Akveld, Leo. *Machtstrijd om Malakka: De Reis van VOC-admiraal Cornelis Cornelisz. Matelief naar Oost-Azië, 1605–1608* (Zutphen: Walburg Pers, 2013), 68–69; and Borschberg, Peter. *Journal, Memorials and Letters of Admiral Cornelis Matelieff de Jonge* (Singapore: NUS Press, 2015).
- 43 Akveld, *Machtstrijd om Malakka* 2013 (n. 42), 27–28.
- 44 Stapel, 'Corpus diplomaticum' 1907 (n. 15), XVIII, 42. Cf. De Jonge, *Opkomst* 1865 (n. 17), 48–49.
- 45 Borschberg, Peter. 'The Johor-VOC Alliance and the Twelve Years' Truce: Factionalism, Intrigue and International Diplomacy, 1606–1613'. *ILJ Working Papers* 8 (2009), 1–64, 17.

other 'European nations' would be prohibited from trading in Malacca without permission of the Dutch Governor. Other agreements were made, including a mutual promise to support each other in the war against the Spaniards and Portuguese, and to defend each other in the event of an attack by other nations.⁴⁶ In May 1606, a combined fleet of Dutch and Johorite ships under the command of Matelief laid siege to Malacca, blocking its harbor. However, in August, a large Portuguese armada from Goa arrived to liberate the city, and Matelief was forced to give up the siege and retreat to Johor river.⁴⁷

Grotius's letter to the 'serenest king of Johor' is the shortest of his letters to East-Indian rulers. However, it is important for dating these letters. Grotius begins by expressing his hope (on behalf of the VOC directors) that 'when this letter will be delivered to your majesty that the same can serve to congratulate your majesty with the conquest of the city of Malacca, which we have ordered our Admiral to undertake, and of which we are now expecting to receive the tidings of a good outcome' (fol. 424r). It is likely that Grotius had heard about Matelief's intention to lay siege to Malacca from Van der Hagen himself, either directly or through the VOC directors. Van der Hagen had arrived in Holland on 22 July 1606, which implies that Grotius must have written his letter after that date. Apparently, at the time of writing, Grotius did not yet know that the siege of Malacca had failed; this news reached Holland in 1607. Grotius's letter to the king of Johor is written on the reverse side of his letter to the Samorin of Malabar, which supports Smelt's assumption that these letters were written around the same time.⁴⁸ Grotius's other letters to East-Indian rulers also contain cross-references to his letter to the king of Johor: for instance, his letter to the lords of Ambon twice includes the words 'as in Johor [*ut in Johor*]' (fol. 364r). Interestingly, in his correspondence with the VOC directors, Van Caerden mentions that he has received Grotius's letter to the lords of Ambon, which was sent to him aboard the ship *Gouda*.⁴⁹ This ship had departed from Holland on 13 December 1606.⁵⁰ Hence, if we follow Smelt's assumption that Grotius's letters were written in the same period, this implies that they were probably

46 Stapel, 'Corpus diplomaticum' 1907 (n. 15), XVIII, 43.

47 Akveld, *Machtstrijd om Malakka* 2013 (n. 42), 32 and 34; De Jonge, *Opkomst* 1865 (n. 17), 48–49.

48 Smelt, 'Beschrijving eener verzameling papieren' 1928 (n. 11), 82 (at fol. 364) and 84 (at fol. 424). See also Borschberg, 'Hugo Grotius and the East Indies' 2021 (n. 1), 72.

49 Letter of Paulus van Caerden to the Lords XVII, 8 May 1608, in Booy, Alfred de. *De derde reis van de V.O.C. naar Oost-Indië onder het beleid van admiraal Paulus van Caerden uitgezeild in 1606*, vol. 2 (Leiden: Martinus Nijhoff, 1968), 155; Ittersum, *Profit and Principle* 2006 (n. 1), 270–271, n. 81.

50 Booy, *Derde reis* 1968, vol. 1 (n. 49), 12.

written between 22 July 1606 (the return of Van der Hagen in Holland) and 13 December 1606 (the departure of the ship Gouda).

This dating of Grotius's letters allows us to relate them to the political context and better understand why they were written. In the Summer of 1606, the position of the Dutch Republic was threatened by a combination of developments. Two years before, England had concluded a peace treaty with Spain, and the EIC had sent several ships to the East Indies to buy spices.⁵¹ In the meantime, the main ally of the Dutch, France, was preparing to establish its own East India Company, for which it had requested Dutch assistance.⁵² Moreover, the Spanish commander Spinola was making preparations for a new military offensive against the Republic. In this context, the VOC was faced with multiple challenges: first of all, it had received instructions from the States General to attack Spanish and Portuguese positions in Asia, in order to reduce the enemy's income and means for fighting the war in Europe. The aim of the States General was to force the Spaniards to enter into peace negotiations, in which the sovereignty of the Dutch Republic would be recognized without the requirement to give up the East-Indian trade.⁵³ Secondly, the VOC was facing increasing competition in the East Indies from neutral parties and allies such as the English and the French. In particular, it had to prevent that the EIC profited from the peace with Spain by participating in the spice trade in the Moluccas and offering higher prices for spices than the VOC. To achieve these aims, it was necessary for the VOC to reaffirm existing contracts and alliances with East-Indian rulers. It was essential that these rulers supported the war against the Spaniards and Portuguese and excluded other nations from the spice trade. War and trade went hand in hand. If the war against the Portuguese and Spaniards proved successful, it would increase the prestige of the Dutch, both in Europe and among the Asian rulers. Moreover, the conquest

51 In the spring of 1604, Middleton had sailed with four ships to the East Indies. A year later, in March 1605, he reached the Moluccas, where he succeeded in buying cloves from the Portuguese commander at Tidore. He also requested permission to establish a permanent English factory at Ternate. However, his request was denied by the sultan, who let him know that he had already promised to deliver all his spices to the Dutch. At the Anglo-Dutch colonial conference of 1613, Grotius emphasized that it had been the sultan, not the Dutch, who had forced Middleton to leave Ternate. Ittersum, *Profit and Principle* 2006 (n. 1), 400–412.

52 Henry IV regarded the founding of a French East India Company as his pet project. However, the king's requests for Dutch assistance were politely denied by the States General, which had no desire to contribute to the creation of a potentially dangerous competitor for the VOC. In the end, the plans for establishing a French East India Company never materialized, *ibid.*, 151–166.

53 Booy, *Derde reis* 1968, vol. 1 (n. 49), 12.

of fortresses would allow the VOC to effectively enforce its monopoly on the spice trade, both against its enemies and allies.

Against this background, Grotius's letters were primarily meant to convince the East-Indian rulers that the Dutch were faithful allies, who remained fully committed to honor their agreement by sending ships, merchants and trading goods, and by protecting their allies from the Spaniards and Portuguese. They were also intended to remind these rulers of their contractual obligations, in particular, the obligation not to trade with other nations than the Dutch. Crucially, in his letters, Grotius provided a legal justification for the VOC's monopoly on the spice trade: the East-Indian rulers were to prefer the Dutch in trade over other nations, because they protected them from Iberian 'tyranny'. He repeatedly claimed that the Dutch had united their regional trading companies into a general company, not only to more effectively protect their own rights, but also to 'liberate the princes and nations of the East Indies from the tyranny [*om de princen ende natien van oostindien te bevryden van de tyrannye*] which these same enemies have committed for many years in these quarters according to their nature and custom' (fol. 344, 359, 361, 365). Grotius's humanitarian argument – that the Dutch had 'liberated' their allies from the 'inhumane cruelty' of the Spaniards and Portuguese – served to justify the exclusion of other nations from the spice trade. The East-Indian rulers were thus warned not to trade with other nations such the English, as it would jeopardize the war fought on their behalf. Of course, the English could offer higher prices for their spices, as they did not share in the expenses of the war, but ultimately trading with them would play into the hands of the enemy, as it would make it impossible for the Dutch to finance the war against the Iberian enemy. Hence, the aim of Grotius's letters was to convince the East-Indian rulers that the Dutch remained committed to protect their allies, provided that they, in return, refrained from trading with other nations than the Dutch.

3 Sovereignty or Subjection?

In his letters, Grotius addressed the East-Indian rulers as sovereigns.⁵⁴ Judging by his mode of address, he compared them to European rulers: for instance, the Sultans of Johor, Ternate, Tidore and Bantam were addressed as 'serenest king [*doorluchtichste(n) Coning(h)*]' (fol. 344, 360, 361 and 365), the Sultan of Borneo and the Samorin of Malabar were addressed as 'most powerful emperor [*grootmachtighen keyser*]' (fol. 424 and 430), and the orang kayas of Ambon

54 Borschberg, *Hugo Grotius* 2011 (n. 1), 10, 123 and 161.

and Banda as 'mighty lords [*mog(h)ende heeren*]' (fol. 359 and 364).⁵⁵ However, Grotius was well-aware of the variety of legal standings embedded in existing treaties, and he did not regard *every* East-Indian ruler as a sovereign. For instance, his letter to the 'lords of Ambon' was specifically addressed to rulers of the northern part of the island, not to the king of Oma, who had been forced to give up his sovereign rights and become a vassal of the Dutch.⁵⁶ Grotius's letters were thus addressed to those East-Indian rulers, who, on the basis of existing treaties, could be regarded as sovereigns. Grotius's mode of address implied that, as sovereigns, these rulers enjoyed supreme authority over their lands, vassals and subjects. However, as Borschberg explains, Grotius's conception of sovereignty was in fact alien to the East-Indian context, where political authority tended to be divided.⁵⁷ For instance, by addressing the Sultan of Johor as 'serenest king' (fol. 424), Grotius suggested that all sovereign power was vested in this monarch, while in reality, power at the Johor court was divided between four royal brothers and several high functionaries.⁵⁸ The VOC's policies of treaty- and alliance-making thus interfered with the balance of power at East-Indian courts and contributed to deepening existing divisions within the ruling elite.⁵⁹ For instance, at the Johor court, it was Raja Bongsu, the younger brother of Sultan Ala'udin Ri'ayat Shah III, who entered into alliances with the Dutch in 1602 and 1606, at the expense of his rivals at court, Raja Siak and Raja Laut, who preferred an alliance with the Portuguese.⁶⁰

Grotius was probably aware that his mode of address did not always correspond neatly with political realities at East-Indian courts: for instance, in his letter to the Sultan of Ternate, he referred to 'serenest kings [*doorluchtichsten coningen*]' in the plural, adding an alternative formulation in the margins: 'mighty lords [*moghende heeren*]' (fol. 344). Faced with the complex power relations at Ternate, he apparently hesitated between adopting a monarchical or oligarchical mode of address. However, in a second version of the letter, the Sultan of Ternate was addressed as 'serenest king' in the singular (fol. 361). As Grotius realized, it was in the VOC's interest to attribute sovereign power to a single ruler, who could enter into alliances on behalf of his subjects, rather than having to conclude multiple alliances with different rulers. The 'king' of Ternate, Sultan Haydan, presented himself as the overlord of the Moluccas,

55 Grotius also refers to the ruler of Siam as 'serenest king' (fol. 364v) and to the Sultane of Patani as 'queen [*coninghinne*]' (fol. 360).

56 Stapel, 'Corpus diplomaticum 1907' (n. 15), xv, 33–34.

57 Borschberg, *Hugo Grotius* 2011 (n. 1), 159.

58 *Ibid.*, 161.

59 *Ibid.*, 159.

60 Borschberg, 'The Johor-VOC Alliance' 2009 (n. 45), 14.

which were ruled by his ‘vassals’. The alliance with the Sultan of Ternate thus allowed the VOC to extend its influence over the Moluccan Spice Islands by conducting ‘diplomacy by proxy’.⁶¹ As the Sultan was nominally the head of state of a great many of the islands in the Moluccas, including Ambon and the Banda islands, the VOC could use his authority to strengthen its grip on these regions. By addressing the Sultan of Ternate as a ‘king’, Grotius implicitly accepted his claim to be the highest authority in the Moluccas. However, to ensure that the rulers of Ambon and the Banda islands supported the alliance, Grotius sent them separate letters, addressing them as ‘mighty lords’ and ‘your highnesses [*uwe doorluchtigheden*]’ (fol. 359 and 364). Although he did not mention the alliance with the king of Ternate, he implied that as vassals of the king, the lords of Ambon and Banda were bound by the promises he had made.

Grotius believed that to contain the political and economic influence of the Spaniards and Portuguese in the East Indies, it was necessary to recognize the East-Indian rulers as sovereigns, who had voluntarily entered into the alliances with the VOC. Unlike the Portuguese and Spaniards, who based their claims to power in Asia on spurious titles of discovery and occupation, the Dutch sought to expand their power by creating a web of alliances with local rulers, thus establishing a system of exclusive trade and mutual assistance.⁶² These alliances were based on the assumption that the non-Christian rulers of the East Indies were independent sovereigns, whose rights had to be protected against encroachments by the Spaniards and Portuguese. When Grotius wrote his letters, the Dutch were not yet claiming territorial authority in the East Indies. They did not have the military capacity to force the East-Indian rulers into submission, while fighting a war against the Spaniards and Portuguese. Moreover, the VOC was a commercial company, and its investors were primarily interested in trade, not in governing local populations. Instead of claiming territorial authority, the VOC therefore sought to expand its empire by emphasizing that its East-Indian allies were independent rulers, who had voluntarily granted it trading privileges. This allowed Grotius to depict the Spaniards and Portuguese as oppressors and tyrants, who had falsely denied the sovereign rights of the ‘princes and nations of the East Indies’, and the Dutch as liberators and defenders of native rights. As he reminded the East-Indian rulers, their alliances with the VOC served not only to defend their natural right to trade, but also the sovereign rights of East-Indian ‘princes and nations’ to govern their own polities without being subjected to Iberian ‘oppression’.

61 Mostert, ‘The Scramble for the Spices’ 2018 (n. 22), 49.

62 Borschberg, *Hugo Grotius* 2011 (n. 1), 50.

In his letters, Grotius repeatedly emphasized the good faith of the Dutch as opposed to the perfidy of the Spaniards and Portuguese.⁶³ The capture of the 'castles' (fortresses) of Tidore (fol. 344, 361, 365) and Ambon (fol. 359, 364) was evoked as proof of the 'determination' and 'boldness' with which the Dutch were seeking to drive out the Iberian enemy. In his letter to the lords of Banda, Grotius even maintained that the Dutch were fighting a 'war for the liberation of your lords as well as the other surrounding nations' (fol. 360r). By contrast, the Portuguese and Spaniards were depicted as perfidious enemies, who were constantly seeking to play off the East-Indian rulers against each other: as Grotius reminded the East-Indian rulers, it was 'well-known to your majest[ies] that the Spaniards and Portuguese have always strengthened themselves through divisions and conflicts between the princes of the East Indies and that division is also commonly the cause of defeat, whereas victories should be expected from unity' (fol. 344v, 361v, 365v). Grotius mentioned the conflict between the kings of Ternate and Tidore as an example: it had only played into the hands of the Spaniards and Portuguese, while harming the interests of the Dutch and their allies. This allowed Grotius to present the Dutch as being committed to uniting the princes and nations of the East Indies into a single front against the common enemy. Grotius maintained that the Dutch could not tolerate that local feuds divided the East-Indian rulers and jeopardized the 'general liberty'. The kings of Ternate and Tidore were therefore urged to settle their disputes and to enter into a 'perpetual alliance' with each other, for which the VOC offered its assistance (fol. 344v, 362 and 365v).

We do not know how the East-Indian rulers responded to Grotius's understanding of their alliance with the VOC. Interestingly, the copy of a letter of the Sultan of Ternate to king James of England has been preserved among Grotius's VOC papers.⁶⁴ In this letter, the Sultan explains that he cannot allow the English to trade in the Moluccas, as he has already promised to trade exclusively with the Dutch in exchange for their assistance against the Portuguese: 'I have given my word and promise to them [the Dutch, MdW] that all nutmeg as well as all other merchandise traded in my land will not be sold to anyone

63 In his early treatise *De fide et perfidia* (ca. 1602), Grotius had compared the good faith of the Dutch with the *fides* of the Romans, and the perfidy of the Spaniards with the *perfidia* of the Carthaginians. Fikentscher, Wolfgang. *De fide et perfidia: Der Treuegedanke in den 'Staatsparallelen' des Hugo Grotius aus heutiger Sicht* (Munich: Verlag der Bayerischen Akademie der Wissenschaften, 1979), 90–145.

64 Copy of a letter of the king of Ternate, Sultan Haydan, to the king of England, 18 July 1605, Dutch National Archives, Collectie Hugo de Groot, supplement 1, access 1.10.35.02, inv. 40, fol. 302–303.

or to any nation other than [the Dutch]. Moreover, I have promised them that no other nation of those lands will be allowed or admitted to commerce or trade in the Moluccas or in any other places in my kingdom, and I have written accordingly to the excellent prince Maurice to send me aid and assistance against my enemy the Portuguese, whom I have driven out of my Moluccas and destroyed by the grace of God with the aid [and] power of the Dutch. I am therefore bound by my given word and promise under oath not to allow any other nation in my land than the Dutch as compensation and recognition for having liberated and saved me from my enemies [*yn recompense ende erken-tenys datse my gelost ende vrygemaect hebben van mynne vianden*]’ (fol. 302–303). The Sultan’s letter suggests that he agreed with Grotius’s understanding of their alliance: praising the Dutch as ‘liberators of [his] kingdom’, he considers himself bound by his promise to grant them a monopoly on the spice trade as compensation and recognition for the war they have waged on his behalf. Of course, we do not know if Sultan Haydan really regarded the Dutch as liberators. The presence of Dutch warships may have left him no other option than to accept the VOC’s terms. Moreover, his letter was probably dictated by a VOC official: as Middleton noted, it was delivered with ‘little state, and a merchant’s seal upon it.’⁶⁵

Grotius’s understanding of the Dutch alliances with East-Indian rulers also led to some controversy among VOC officials. Not everyone agreed with Grotius that the East-Indian rulers were to be addressed as independent sovereigns. In a letter to the VOC directors, Admiral Van Caerden explained that he had decided not to deliver Grotius’s letter to the lords of Ambon, because it addressed them as a ‘free people’, who ‘merely stand in an alliance and friendship with us.’⁶⁶ After discussing the contents of Grotius’s letter with the broad council, Van Caerden concluded that it sent the wrong message to the Ambonese by suggesting that they were equal partners of the Dutch, rather than their ‘subjects and vassals’. Van Caerden also complained that the letter had been written on behalf of the States General, while the Ambonese did ‘not have the conception of such a government, because they use only the name of his Excellence [Prince Maurice, MdW] with the title King of Holland, as they are not used to give powerful lords other titles.’⁶⁷ Rather than concerning themselves with the subtleties of republican government, Van Caerden advised

65 Corney, Bolton. *Voyage of Sir Henry Middleton to Bantam and the Maluco Islands* (London: Hakluyt Society, 1855), 70; Ittersum, *Profit and Principle* 2006 (n. 1), 404.

66 Letter of Paulus van Caerden to the Lords XVII, 8 May 1608, in Booy, *Derde reis* 1968, vol. 2 (n. 49), 156. See also Ittersum, *Profit and Principle* 2006 (n. 1), 270–271, n. 81.

67 Booy, *Derde reis* 1968, vol. 2 (n. 49), 156.

the VOC directors 'that any letters of their excellences, which will henceforth be sent here, be written on behalf of a lord to a vassal, because, if these people are not addressed as our subjects, they will immediately raise their horns and fail to respect our nation'.⁶⁸ As Van Caerden warned the VOC directors, the Ambonese had to be 'kept in submission and obedience', otherwise they would not cooperate at all. Grotius's choice to address the 'mighty lords of Ambon' as independent rulers thus sealed the fate of his letter, which was not delivered to its addressees at all.⁶⁹

4 Public Partnerships with Unbelievers

Grotius's activities as a legal advisor and political lobbyist of the VOC have left their mark on his writings on natural law and the law of nations. In these writings, he developed a theory about 'alliances with infidels', which served to support the VOC's policy of treaty- and alliance-making in the East Indies. The question whether Christian rulers were allowed to enter into alliances with non-Christians had been the subject of intense debate in the Middle Ages and Early Modernity.⁷⁰ Medieval jurists had argued that Christians were allowed to request the aid of non-Christians, but only for defensive purposes or if an 'urgent necessity' required it.⁷¹ The sixteenth-century Spanish scholastics were less reluctant to accept alliances with non-Christians, as they recognized their importance for building European empires overseas. However, they also warned against the scandal of Christians allying with infidels against other Christians.⁷² As Richard Tuck has pointed out, Grotius was the first to

68 Ibid., 156.

69 Van Ittersum points out that, although he 'totally disapproved' of the contents of Grotius's letter, Van Caerden did not claim Dutch sovereignty over the entire region. For instance, he carefully distinguished between the inhabitants of the Ley-Timor Peninsula, whom he regarded as subjects of Prince Maurice, and the villagers of Luhu and Kambelu on the island of Ceram, whom he viewed as subjects of the king of Ternate. Ittersum, *Profit and Principle* 2006 (n. 1), 271, n. 81.

70 For an overview of these debates see: Tuck, 'Alliances with Infidels' 2012 (n. 9), 61–83; Condorelli, Orazio. 'Grotius's Doctrine of Alliances with Infidels and the Idea of *Respublica Christiana*'. *Grotiana* 41 (2020), 13–39.

71 Ponte, Oldradus de. 'Consilium 71', in *Jews and Saracens in the Consilia of Oldradus de Ponte*, ed. Norman Zacour (Toronto: Pontifical Institute of Medieval Studies, 1990), 78–79 (Latin text) and 44–46 (English translation), and Andreae, Johannes. *Additio to Durandi Speculum iuris*, vol. 2 (Frankfurt am Main: Wechel, 1592), 472 (*De iudaeis et sarracenis*).

72 See, for instance, Molina, Luis de. *De iustitia et iure*, vol. 1 (Antwerp: Apud Ioannem Keerberghem, 1615), 188, disp. 112. Tuck, 'Alliances with Infidels' 2012 (n. 9), 67.

eliminate completely the existing Christian anxieties about alliances with non-Christians.⁷³ This change of perspective was prompted by the VOC's practice of allying with non-Christian rulers against the Spaniards and Portuguese. In Grotius's view, the VOC's alliances were entirely legitimate, as they served to protect the natural rights of the Dutch and their East-Indian trading partners. However, as Orazio Condorelli has recently argued, the extent to which Grotius remained indebted to the older tradition of jurists who had warned against such 'impious alliances' should not be underestimated.⁷⁴ Although Grotius believed that alliances with non-Christians were in principle permitted under natural law, he also emphasized that Christians had a moral and legal obligation to defend Christianity.

Grotius developed his ideas on 'alliances with infidels' in a short treatise, entitled *De societate publica cum infidelibus* ('On Public Partnerships with Unbelievers'). This unpublished treatise, of which an autograph has been preserved at the Leiden University Library,⁷⁵ was first described by Borschberg in the late 1990s.⁷⁶ The manuscript is undated, but it contains the same watermarks as Grotius's letters to East-Indian rulers.⁷⁷ In *De societate*, Grotius argued that the right to enter into alliances with non-Christians derived from the natural law of non-offensiveness: under natural law, all men had a duty to refrain from harming others without cause. Referring to Thomas Aquinas, Grotius

73 Tuck, 'Alliances with Infidels' 2012 (n. 9), 76.

74 Condorelli 'Grotius's Doctrine of Alliances with Infidels' 2020 (n. 70), 13–39.

75 Leiden University Library, Ms. Cod. BPL 922. I am grateful to Henk Nellen for helping me to prepare a transcription of Grotius's manuscript. References to the manuscript will be given in the main text with folio numbers. The analysis presented here is largely based on Borschberg, 'De societate' 1998 (n. 8) and Wilde, Marc de. 'Hugo Grotius's *De societate publica cum infidelibus*: Justifying Overseas Expansionism or Religious Toleration.' *Tijdschrift voor Rechtsgeschiedenis* 88 (3–4) (2020), 422–439.

76 Borschberg, 'De societate' 1998 (n. 8), 355–393.

77 Grotius's draft letter to the king of Ternate (fol. 345) and *De societate* (fol. 316 (2)) both contain the watermark of a diamond shape cluster of eleven rows with a horn shaped stem. The paper containing this watermark was produced by the paper mills of Troyes in France. Comparable grape watermarks have been found on documents from the period 1600–1650 in the Zeeland Archives. A precise date for the grape watermark on the paper used by Grotius cannot be determined. However, as it was relatively inexpensive paper (used for drafts and reading notes), it is unlikely that Grotius kept a supply of it for a long time. Hence, the fact that the same grape watermark can be found on *De societate* and his draft letter to the king of Ternate is an indication that these texts were probably written in the same period. I thank Martine van Ittersum for identifying the grape watermark on *De societate* and for sharing her views on how it can be used to date Grotius's manuscripts. See Ittersum, 'Dating the Manuscript of *De iure praedae*' 2006 (n. 8), 143; Laurentius, Theo and Frans Laurentius. *Watermarks 1600–1650 Found in the Zeeland Archives* ('t Goy-Houten: Hes and De Graaf Publishers, 2007), 34–36 and 238–242 (numbers 553–574).

explained that 'errors of faith' did not cancel the fellowship of men that existed by nature (fol. 314r).⁷⁸ Therefore, the duty not to harm others applied irrespective of religion. As Grotius argued, the natural law of non-offensiveness was confirmed by the Gospel and the divine commandment to brotherly love.⁷⁹ It was therefore permissible for 'private as well as public persons' to enter into alliances with non-Christians with the aim not to harm each other (fol. 314v). Grotius distinguished between various types of alliances: private and public (*privata – publica*), equal and unequal (*equalis – inequalis*), superior and inferior (*superior – inferior*). According to Grotius, even military alliances (*societates bellicae*) with non-Christians were allowed. Such alliances could have a defensive or an offensive character: the first type, which Grotius called *επιμαχιαι*, derived from the natural right to self-preservation, the second, the so-called *συμμαχιαι*, from the right to punish violations of natural law, whether they affected one-self or others (fol. 317r).⁸⁰

As Grotius explained, if Christians entered into a military alliance with non-Christians, a justified ground for war was required. He gave the example of the protection of unbelievers from oppression: 'In a just war, however, the unbelievers are rightly protected by the faithful, even if those who oppress the unbelievers want to be considered as faithful [*etiamsi ii qui infideles opprimunt fideles haberi velint*]. Indeed, this work is not only permitted, but it is also most praiseworthy, and because of the circumstances often necessary' (fol. 317v). In this context, Grotius referred to the Spanish jurist Francisco de Vitoria, who had identified the protection of non-Christian allies as a *justa causa belli*.⁸¹ Vitoria had given the example of a Christian ruler (the king of Spain), who had provided military assistance to a non-Christian ally (the Tlaxcaltecs) against a non-Christian enemy (the Mexicans).⁸² Vitoria had also recognized the 'protection of the innocent from tyranny' as a justified ground for war: thus, the king of Spain had the right to declare war on 'infidel' rulers in the Americas to protect their subjects from inhumane practices such as cannibalism and human sacrifice.⁸³ Referring to these passages in Vitoria, Grotius concluded that Christians could wage a just war to protect their non-Christian allies from

78 Aquinas, Thomas. *Summa theologiae* (London: Blackfriars, 1977), 2a 2ae, Q. 10, art. 10.

79 Grotius quotes the Sermon of the Mount to demonstrate that all human beings, including those of other creeds, should be treated as children of God (fol. 315v).

80 Borschberg, 'De societate' 1998 (n. 8), 370.

81 Grotius refers to Vitoria's *De Indis*, 3.5.15 and 3.7.17 (fol. 316v (2)). The page numbers (368 and 370) correspond with those of the 1557 edition of Vitoria's *Relectiones theologicae XII* published in Lyon. Cf. Borschberg, 'De societate' 1998 (n. 8), 379–380.

82 Vitoria, *De Indis*, 3.7.17.

83 *Ibid.*, 3.5.15.

tyranny and oppression. However, he went one step further than the Spanish jurist by arguing that non-Christians could even be protected against those who regarded themselves as Christians. Had Vitoria considered the protection of the 'Indians' as a possible justification of the war *against non-Christian rulers*, Grotius recognized it as a justified ground for the war that was waged by Christians (e.g., the Dutch) on behalf of their non-Christian allies (e.g., the East-Indian rulers) *against other Christians* (e.g., the Spaniards and Portuguese).

However, for Grotius, the right to enter into alliances with non-Christian rulers was not without limitations. Christians had an obligation to refrain from anything that might harm the Christian religion: therefore, alliances with non-Christians were *not* permitted if they undermined the authority of God or the unity of the Christian church. For this reason, Grotius was more critical of alliances with heretics and apostates than with 'infidels' such as Jews and Muslims (fol. 315r). While alliances with the former risked undermining the unity of the church, this did not apply to the latter, who had never belonged to the church. Christians were thus allowed to enter into alliances with non-Christians, while alliances with heretics and apostates had to be avoided. However, alliances with non-Christians were not always allowed either: as Grotius explained, it was not permissible for Christians to *voluntarily* subject themselves to the authority of a non-Christian ruler, unless this ruler allowed his Christian subjects to freely exercise their religion.⁸⁴ Thus, for Grotius, the protection of Christianity remained an overriding concern: the advantage of the true religion prevailed over profane interests. It would be wrong, however, to conclude that the possibility of entering into alliances with non-Christians was thereby reduced to a 'mere theoretical hypothesis'.⁸⁵ Instead, Grotius

84 Grotius accepted *involuntary* submission, for instance, if an urgent necessity or a divine commandment forced Christians to submit to the authority of a non-Christian ruler, who did not tolerate the Christian faith (fol. 317v.).

85 Condorelli, 'Grotius' Doctrine of Alliances with Infidels' 2020 (n. 70), 29. Condorelli attaches a lot of importance to a passage in *De iure belli ac pacis*, where Grotius calls upon 'all Christians' to enter into a 'confederation against the enemies of Christianity' (2.15.12). As Condorelli explains, the 'enemies of Christianity' to whom Grotius referred were the Turks, who at the time posed a real military threat to Christian Europe. Condorelli's interpretation is supported by passages in *De veritate*, where Grotius presented Islam as a religion 'spread by weapons', while characterizing Christianity as a religion spread by word and 'spirit'. However, unlike the Turks, the non-Christian nations in the East Indies did not pose a military threat to Christian Europe, and therefore, it is unlikely that Grotius's call on Christians to 'confederate against the enemies of Christianity' was meant as a critique of Dutch practices of allying with non-Christian in the East Indies, *ibid.*, 30–36 and Grotius, Hugo. *De veritate religionis Christianae* (Leiden: Ex Officina Joannis Maire, 1640), 103 and 324.

believed that providing assistance to non-Christian allies and protecting the innocent from oppression contributed to the propagation of the Christian faith. As Grotius suggested, non-Christians would be more inclined to accept a faith that protected them than one that denied that any form of agreement could ever exist between the believers and the unbelievers.⁸⁶

As Borschberg and van Ittersum have pointed out, Grotius probably wrote *De societate* to support his arguments in *De iure praedae* regarding the VOC's policy of alliance-making in the East Indies.⁸⁷ Grotius had been commissioned by the Amsterdam chamber of the VOC to write this treatise to provide a legal justification for the seizure of the Santa Catarina by Jacob van Heemskerck in 1603. He had argued that the seizure of the Santa Catarina was justified, because the Portuguese had violated the Dutch rights of free navigation and trade. Even a private trading company like the VOC could wage a just war to protect these rights if a judicial recourse was lacking (which, in Grotius's opinion, was the case in the East Indies).⁸⁸ However, as Grotius maintained, the Dutch war against the Portuguese served not only to protect their own rights, but also to protect the rights of their non-Christian allies. Grotius mentioned one ally in particular: the king of Johor. He explained that in 1602, Van Heemskerck had entered into an alliance with the king of Johor by which the Dutch were granted trading privileges in exchange for protecting the king and his people. When the Portuguese had heard about the alliance, they had sent warships to Johor to block the approach of the Dutch and harass the local population with slaughter and pillage. Thereupon, the king of Johor had requested Van Heemskerck to provide military support.⁸⁹ After the Dutch had chased away the Portuguese, new agreements between the Dutch and the king of Johor were made, which, according to Grotius, demonstrated 'how holy and how pleasing, in the eyes of our Heavenly Father, is the defence of those who have been unjustly oppressed'.⁹⁰

For Grotius, the alliance with the king of Johor served as an important argument for justifying the seizure of the Santa Catarina as a 'just prize' in a 'public war'. He explained that the kingdom of Johor had 'long been considered a sovereign principality, so that its ruler clearly possessed the authority necessary

86 See, for instance, Grotius, *De iure praedae* 2006 (n. 4), 435: 'Let them [the Indians, MdW] marvel at the faith which forbids that even infidels should be neglected. In achieving these ends, we shall be preparing men for God.'

87 Borschberg, 'De societate' 1998 (n. 8), 356 and 385 and Ittersum, *Profit and Principle* 2006 (n. 1), 49–50.

88 Grotius, *De iure praedae* 2006 (n. 4), 142 and 364.

89 *Ibid.*, 297.

90 *Ibid.*, 297–298.

to conduct a public war'.⁹¹ In Grotius's view, it was evident that the king of Johor had a justified ground for the war against the Portuguese. The Portuguese had attacked his kingdom on no other pretext than that he had offered hospitality to the Dutch and allowed them to trade in his kingdom. As allies of the king, the Dutch had a duty to provide military assistance when requested to do so. As Grotius explained, it did not matter that the king of Johor was not a Christian ruler, because the obligations of humane conduct were not dispelled on grounds of religion. Hence, the Dutch could defend their non-Christian ally even against other Christians, such as the Portuguese. As Grotius argued, 'not only is it universally admitted that the protection of unbelievers from injury (even injury by Christians) is never unjust, but it is furthermore maintained, by authorities who have examined this particular point, that alliances and treaties with unbelievers may in many cases be justly contracted for the purpose of defending one's own rights, too'.⁹² Grotius concluded that the Dutch alliances with non-Christian rulers in the East Indies had a dual purpose: they not only served to protect non-Christians from oppression, but also to defend the rights of the Dutch themselves, and, more specifically, their rights to free navigation and trade. According to Grotius, the alliances with East-Indian rulers were therefore justified, even if they were aimed against other Christians, such as the Spaniards and Portuguese.

In *De iure belli ac pacis* ('On the Law of War and Peace', 1625), Grotius returned to his theory that 'treaties with those who are strangers to the true religion (*qui a vera religione alieni sunt*) are permissible by the law of nature'.⁹³ As Grotius explained, the right to enter into treaties was 'so common to all men that it [did] not admit of a distinction arising from religion'.⁹⁴ However, he conceded that there was disagreement among jurists and theologians as to whether alliances with infidels were permitted under *Christian* law.⁹⁵ Addressing this question, Grotius inserted a lengthy and learned exegesis of Scripture. Discussing the examples of the alliances between Jacob and Laban, and between David and Solomon and Hiram, he concluded that it was permissible under Mosaic law to enter into alliances with unbelievers with the aim not to harm each other, such

91 Ibid., 432.

92 Ibid., 434; Borschberg, 'De societate' 1998 (n. 8), 390.

93 Grotius, Hugo. *De iure belli ac pacis libri tres* (Washington, D.C.: Carnegie Institution, 1913), 2.15.8.

94 Ibid., 2.15.8.

95 In this context, Grotius referred to the opinions of Oldradus, *Consilia*, 71; Decianus, *Consilia*, 3.20 and, without specification, Antoninus, Cajetanus, Toletus, Molina, Valdesius and Malderus. For a specification of these sources, see Condorelli, 'Grotius's Doctrine of Alliances with Infidels' 2020 (n. 70), 23, n. 28–32.

as commercial treaties and military alliances.⁹⁶ Moreover, he observed that the law of the Gospel had not altered Mosaic law in this respect, while extending even greater favor to alliances by which non-Christians 'receive[d] help in a just cause'.⁹⁷ However, Grotius cautioned against alliances that risked undermining the Christian faith. In particular, too great an intimacy with non-Christians had to be avoided, as it could cause the weak to doubt about the true religion.⁹⁸ Moreover, the believers were warned not to enter into alliances that greatly increased the strength of non-Christian rulers; such alliances were not permissible except in direst need.⁹⁹ The Dutch alliances with East-Indian rulers seemed to be entirely legitimate from this perspective. Rather than undermining the Christian faith, Grotius believed they contributed to its propagation, as the example of Dutch fidelity would induce the 'Indians' to *voluntarily* convert to Christianity.¹⁰⁰

It should be recalled that by the time Grotius wrote *De iure belli ac pacis*, the Dutch had already begun to annex territories and plant colonists, for instance, on Ambon and the Banda islands. According to some authors, this explains why he argued that 'foreigners' had a right to take possession of uncultivated lands, provided that they submitted themselves to the authority of local rulers.¹⁰¹ However, the lands the Dutch claimed in the East Indies were not uncultivated, nor did they submit themselves to the authority of local rulers.¹⁰² Instead, as the examples of Ambon and the Banda islands show, they claimed these lands

96 Grotius, *De iure belli ac pacis* 1913 (n. 93), 2.15.9.

97 Ibid., 2.15.10. In this context, Grotius referred to Vitoria, *De Indis*, 3.15 and 17, Francisco Arias, *De bello*, 192, Cajetanus, gloss to Aquinas, *Summa theologiae* 2 2ae, q. 40, art. 1; Molina, 2.112 and the Bible (Matt. 5: 45).

98 Grotius implicitly referred to the opinion of Aquinas, who had argued that the *communio* with infidels was prohibited if it risked inducing Christians to apostasy. Aquinas, *Summa theologiae*, 2 2ae, q. 10 art. 9; Condorelli, 'Grotius's Doctrine of Alliances with Infidels' 2020 (n. 70), 22.

99 Grotius, *De iure belli ac pacis* 1913 (n. 93), 2.15.11.

100 Grotius firmly rejected the *forced* conversion of the 'Indians'. Instead, he believed that the Indians should be induced to *voluntarily* convert to Christianity. On Grotius's views on forced and voluntary conversion of non-Christians, see Wilde, Marc de. 'Offering Hospitality to Strangers: Hugo Grotius's Draft Regulations for the Jews'. *Tijdschrift voor Rechtsgeschiedenis* 85 (3–4) (2017), 391–433 (at 417–420).

101 Tuck, *Rights of War and Peace* 2009 (n. 1), 105–106. Cf. Grotius, *De iure belli ac pacis* 1913 (n. 93), 2.2.17.

102 For instance, according to the VOC's treaties, Dutch merchants and soldiers did not fall under the jurisdiction of East-Indian rulers. Instead, if they had violated the rights of the native population, the treaties stipulated that they were to be handed over to the Dutch governor for trial and punishment. See, for instance, the treaty between Van der Hagen and the Bandanese of 13 July 1605, in Stapel, 'Corpus diplomaticum' 1907 (n. 15), XVII, 38.

by right of military conquest.¹⁰³ Moreover, unlike VOC officials such as Van Caerden, Grotius continued to emphasize the independence of East-Indian rulers, although he must have known that violence and intimidation were used to enforce the VOC's monopoly on the spice trade.¹⁰⁴ For this reason, Andrew Fitzmaurice concludes that Grotius should not be regarded as an apologist of 'empire' in terms of the land-based empires that were being established at the time he wrote *De iure belli ac pacis*. Instead, he defended what would later be called 'informal empire', that is, commercial or trading empires based on treaties through which European nations acquired legal and economic control while recognizing the (nominal) sovereignty of native rulers.¹⁰⁵ Building on these distinctions, Inge Van Hulle has shown how Grotius developed a theory of 'unequal treaties', which provided him with an opportunity to defend the Dutch methods of 'informal empire' in the East Indies.¹⁰⁶ As Van Hulle explains, Grotius never questioned the validity of unequal treaties. Instead, his arguments centered on the question whether or not states that were party to such treaties lost their sovereignty.¹⁰⁷

Grotius presented his theory on 'unequal treaties' in the second book of *De iure belli ac pacis*, in a section preceding the one on treaties with 'those who are strangers to the true religion'.¹⁰⁸ He explained that unequal treaties were concluded between a weaker party and a superior party, who promised aid, but did not require it.¹⁰⁹ According to Grotius, such unequal treaties did not necessarily impair the sovereignty of the weaker party. Unequal treaties without impairment of sovereignty could contain temporary or permanent burdens,

103 Stapel, 'Corpus diplomaticum' (n. 15), xxvi (Ambon), 58 and xxx, 67–68 (Banda); Ittersum, 'Debating Natural Law in the Banda Islands' 2016 (n. 6), 466.

104 As Henk Nellen has pointed out, Grotius's VOC papers contain several documents indicating that the VOC used violence to enforce its monopoly on the spice islands. One of these was the *Short Remonstrance* (1612) of Jacques L'Hermite, governor of Bantam, in which the military conquest of the Spice Islands, the transmigration and even extermination of native populations, and the colonization by Dutch plantation owners were advocated. Nellen concludes that by defending the VOC's monopoly contracts, Grotius 'stood at the cradle of the Dutch colonial system', although he justified these contracts by emphasizing that the 'Indian' rulers were independent sovereigns. Nellen, 'Hugo Grotius over kaapvaart en commerciële expansie' 2011 (n. 1), 69–70 and Nellen, Henk. *Geen vrede-stichter is zonder tegensprekers: Hugo de Groot: Geleerde, staatsman, verguisd verzoener* (Amsterdam: Athenaeum, Polak & Van Gennep, 2021), 62.

105 Fitzmaurice, *Sovereignty, Property and Empire* 2014 (n. 7), 99.

106 Hulle, Inge Van. 'Grotius, Informal Empire and the Conclusion of Unequal Treaties'. *Grotiana* 37 (2016), 43–60 (at 52).

107 *Ibid.*, 49–50.

108 Grotius, *De iure belli ac pacis* 1913 (n. 93), 2.15.7

109 *Ibid.*, 2.15.7.1

such as the provision that the weaker party should recognize as its friends or enemies those whom the superior party desired.¹¹⁰ Elsewhere in *De iure belli ac pacis*, Grotius explained that 'unequal alliances' were based on clauses in treaties that contained 'rights of protection, defence and patronage'.¹¹¹ He emphasized that the weaker state, which came under the protection of the superior one, did not thereby lose its independence.¹¹² However, he also observed that 'in the majority of cases he who has the position of vantage in a treaty, if he is greatly superior in respect to power, gradually usurps the sovereignty properly so called'.¹¹³ In those cases, non-resistance on the part of the weaker party resulted in a right of ruling on the part of the superior party, or 'at least a division of sovereignty'.¹¹⁴ According to Grotius, this was especially liable to happen if unequal alliances were 'perpetual' and if they contained the 'right to introduce garrisons into towns'.¹¹⁵ As Van Hulle explains, many of the VOC's alliances in the East-Indies fulfilled these conditions: they were 'perpetual alliances' by which the Dutch obtained the right to build fortresses and place permanent garrisons on native lands.¹¹⁶ For instance, the treaty concluded between Matelief and the Sultan of Ternate in 1607 forced the Ternatans to recognize the Dutch States General as their 'protector' (*beschermheer*), while the VOC obtained the right to station garrisons, the upkeep of which was to be paid for by the Ternatans themselves.¹¹⁷

However, Van Hulle does not discuss what Grotius considered to be the main provision of the VOC's treaties: its monopoly on the spice trade. It was precisely this monopoly which had enabled the VOC to establish its 'informal empire' in the East Indies. At the end of his chapter on treaties, Grotius thus returned to the question he had already addressed in his letters to East-Indian rulers: 'I recall that the question has been raised whether it is permissible for a people to make an agreement with another people to sell to it alone products of a certain kind, which do not grow elsewhere'.¹¹⁸ According to Grotius, a monopoly on such products did not violate the law of nature, provided that the 'people

110 Ibid., 2.15.7.3.

111 Ibid., 1.3.21.1.

112 Ibid., 1.3.21.3: 'Just as private patronage in the case of individuals does not take away individual liberty, so patronage in the case of a state does not take away independence; and independence without sovereignty is inconceivable.'

113 Ibid., 1.3.21.10.

114 Ibid., 1.3.21.11. On divisible sovereignty in Grotius: Keene, *Beyond the Anarchical Society* 2002 (n. 1), 49.

115 Grotius, *De iure belli ac pacis* 1913 (n. 93), 1.3.21.10.

116 Van Hulle, 'Grotius, Informal Empire' 2016 (n. 106), 52.

117 Ibid., 52; Stapel, 'Corpus diplomaticum' 1907 (n. 15), XXII, 51–52.

118 Grotius, *De iure belli ac pacis* 1913 (n. 93), 2.2.24.

which buys is prepared to sell to others at a fair price. It makes no difference to other nations, from whom they buy what satisfies the demands of nature'.¹¹⁹ As Grotius explained, a monopoly was especially justified 'if the people which has obtained the concession has taken the other under its protection and on that account is incurring expense'.¹²⁰ In his letters to East-Indian rulers, this had of course been Grotius's main argument for justifying the VOC's monopoly on the spice trade: the East-Indian rulers had an obligation to deliver all their spices exclusively to the Dutch to compensate them for the expenses they had incurred for their protection. In this context, the sovereignty of East-Indian rulers served as an additional argument for the VOC's monopoly. As the Dutch had 'liberated' their allies from Iberian 'tyranny' (i.e., a denial of their sovereignty), it was not unjust that they were preferred in trade over other nations, provided that they were willing to sell those products to others (e.g., the English) at a fair price.¹²¹ By justifying the VOC's monopoly on the spice trade as an integral part of its unequal treaties of protection, Grotius thus provided the legal framework for the VOC's 'informal empire' in the East Indies.

5 Conclusion

In this article, I have analyzed a set of letters written by Grotius on behalf of the VOC directors to East-Indian rulers. The aim of these letters was to reaffirm existing alliances between these rulers and the VOC. As we have seen, the letters were probably written in the Autumn or Winter of 1606, when the VOC was facing multiple challenges: on the one hand, it was fighting a war against the Spaniards and Portuguese over the control of the spice trade, and, on the other, it was facing increasing competition from neutral parties and allies such as the English and the French. Against this background, Grotius's task was to ensure that the East-Indian rulers supported the Dutch war against the Spaniards and Portuguese and excluded other nations from the spice trade. Although Grotius sometimes referred to specific 'contracts' in his letters, he did not discuss these

119 Ibid., 2.2.24.

120 Ibid., 2.2.24; Ittersum, 'The Long Goodbye' 2010 (n. 1), 393.

121 As van Ittersum points out, Grotius had made the same argument at the Anglo-Dutch colonial conferences of 1613 and 1615, where he explained that the VOC had never refused to sell spices 'to the English here at a just and reasonable price'. Letter of the Dutch delegation to the English ambassador Caron of 6 May 1615, draft written in Grotius's hand (fol. 241–244), in Clark, George N. and Eysinga, Willem J. M. van. 'The Colonial Conferences between England and the Netherlands in 1613 and 1615'. *Bibliotheca Visseriana* 15(33) (1940), 232 (app. 91); Ittersum, 'The Long Goodbye' 2010 (n. 1), 393.

contracts in detail. Instead, his aim was to provide a legal justification for their main provision, which granted the VOC the exclusive right to buy certain spices at a fixed price. As Grotius explained, the East-Indian rulers were to prefer the Dutch in trade over other nations, because they had 'liberated' them from Iberian 'tyranny'. The VOC's monopoly on the spice trade was a just compensation for the 'great expenses' it had incurred in fighting a war on behalf of its allies. Grotius also reminded the East-Indian rulers of the 'good promises' they had made. Honoring the VOC's monopoly on the spice trade was not merely an expression of friendship, but a legal obligation.

In his letters, Grotius addressed the East-Indian rulers as sovereigns, who had remained independent in spite of the VOC's unequal treaties. Grotius was well-aware of the variety of legal standings embedded in existing treaties, and therefore, he did not regard *every* East-Indian ruler as a sovereign. Instead, his letters were specifically addressed to rulers who, on the basis of existing agreements, could be regarded as sovereigns. As Grotius realized, it was in the VOC's interest to recognize these rulers as independent sovereigns, who had voluntarily entered into alliances with the Dutch. By emphasizing their independence, he could present the Spaniards and Portuguese as tyrants and oppressors, and the Dutch as liberators and defenders of native rights. Most importantly, for Grotius, the notion that the East-Indian rulers were sovereigns served as a convenient fiction for justifying the exclusion of other nations from the spice trade. Had the Dutch claimed sovereignty in the East Indies, they would have been required to grant trading privileges to the English for the sake of their countries' longstanding friendship. Hence, for Grotius and the VOC directors, it was more convenient to maintain the fiction that the East-Indian rulers were independent sovereigns, who had compensated the VOC for their protection by ceding it an exclusive right on the spice trade with their realms.¹²² However, not all VOC officials agreed with Grotius's characterization of the East-Indian rulers as sovereigns. Van Caerden even refused to deliver Grotius's letter to the lords of Ambon, because it addressed them as a 'free people'. Instead, he advised the VOC-directors to address them as 'vassals and subjects' of Prince Maurice, the 'king of Holland'. Otherwise, Van Caerden feared, they would fail to respect the Dutch and refuse to cooperate.

Grotius's justification of the VOC's alliances with East-Indian rulers have left their traces in his writings on natural law and the law of nations. In his early treatises *De societate publica cum infidelibus* and *De iure praedae*, Grotius argued that it was permissible for Christians to enter into alliances with non-Christians, provided that they did not harm the Christian religion. These alliances were

¹²² Ittersum, *Profit and Principle* 2006 (n. 1), 386.

justified by the natural law of non-offensiveness and the Christian commandment of brotherly love. Even alliances for purposes of war were permitted, although a justified ground for war was required. Referring to Vitoria, Grotius recognized the protection of the innocent as a *justa causa belli*. He argued that a just war could be waged to protect non-Christians from oppression, even if those who oppressed them were Christians. In *De iure belli ac pacis*, Grotius returned to his theory that alliances with non-Christians were justified, especially if they ‘receive[d] help in a just cause’. He also suggested that *unequal* treaties and alliances were lawful if they served to protect non-Christians from oppression. In this context, Grotius defended the VOC’s monopoly on the spice trade as an integral part of its unequal treaties of protection. As Grotius explained, the VOC’s monopoly on the spice trade did not violate the law of nature, provided that it was willing to sell its spices to others at a ‘fair price’. There was an additional justification for such monopoly agreements if the superior party had ‘taken the other under its protection and on that account was incurring expense.’¹²³ As Grotius implied, the VOC’s monopoly on the spice trade was entirely legitimate in view of the expenses it had made to protect its East-Indian allies from oppression. Thus, Grotius’s theory on ‘alliances with infidels’ and monopoly agreements, which he had first developed in his letters to East-Indian rulers and later incorporated in *De iure belli ac pacis*, contributed to justifying the VOC’s informal empire in the East Indies.

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¹²³ Grotius, *De iure belli ac pacis* 1913 (n. 93), 2.2.24.

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