Introduction

In 1686, the Amsterdam Directorate of Levant Trade and Navigation in the Mediterranean (*Directie Levantse Handel en Navigatie in de Middellandse Zee*) drafted a proposal with which they hoped to settle all matters related to the jurisdiction of and the litigation done by the Dutch ambassador and consuls in the Levant.¹ It contained seven articles, the last one specifying that

in order to prevent the inhabitants of this state [the United Provinces] in the Levant from annoying each other with lengthy trials, damaging trade and draining all its lifeblood, it is necessary that the States General order the resident [ambassador] and consuls in the Levant, together with their assessors [merchants acting as co-judges], to offer a prompt expedition of justice to the inhabitants of this state who air a dispute before them and to sentence in a short and tactful manner.²

The Directorate of Levant Trade was a board of merchants active in Levantine trade. It was established in 1625 as an institution supervising Dutch trade in the Levant.³ It provided advice to the political organs in the Dutch Republic

- 1 In the early modern period, references to the Levant include the whole non-European eastern Mediterranean, including for instance Anatolia and its coast, contrary to today's interpretation of the term, which is limited to the lands along the coast between the Sinai desert and southeastern Anatolia.
- 2 Klaas Heeringa and J.G. Nanninga, *Bronnen tot de geschiedenis van den Levantschen handel (1590–1826)* (The Hague, 1917), 2: pp. 251–252, 'Ontwerp-reglement van justitie in de Levante', Amsterdam, 17/01/1686, on p. 252, 'en opdat de ingesetene van deesen staat in de Levante niet met langhdurige processen malkanderen en mogen vexeeeren tot schaade van de negotie, en daartoe alle aderen mochte werden afgesneden, sal mede gansch dienstich sijn, dat H.H.M. den gemelte resident en consuls in de Levante serieuslijcken gelieven te gelasten, ten eyde deselve met haar assessoren, den ingesetenen van deesen staat voor haar eenige saake ventileerende, prompte expeditie van justitie komen te geven, mitsgaders cort en onvertooge recht te doen etc'. The work of Heeringa and Nanninga is an extensive publication of primary sources in Dutch archives related to the Dutch Levant trade. Its first two volumes were edited by Klaas Heeringa and published in 1910 and 1917. The other two were edited by J.G. Nanninga and were published in 1952, 1964 and 1966 (the last volume, like the second, appeared in two parts). The complete work can be consulted online at <http://resources.huygens.knaw.nl/retroboeken/levantschehandel/#page=0&accessor=toc&view=homePane>.
- 3 'The Low Countries' is used to refer to both the Spanish/Austrian Netherlands and the Dutch Republic; Dutch refers to the Dutch Republic, or the United Provinces, while Holland only refers to the particular Dutch province of that name. In her work, Maartje van Gelder used 'Netherlandish' to indicate merchants coming from the Low Countries. I have chosen not to adopt that useful designation as the Dutch community of Izmir did not include merchants

and maintained contact with Dutch diplomatic representatives in the eastern Mediterranean.

Most of the Levant was controlled by the Ottomans, and by the time the proposal was drafted, the Dutch had maintained a diplomatic relationship with the Sublime Porte for almost seventy-five years in support of various Dutch trading communities active in several Levantine *échelles*, where they were active as commission traders, handling the merchandise of and for colleagues in the Dutch Republic as well as the Spanish Netherlands. Goods were bought and sold through Ottoman middlemen in Greece, Aleppo, Istanbul, Ankara and, most importantly, Izmir.⁴ The Dutch, like other European trading communities, were guests, staying at the discretion of the Ottoman hosts, and their presence was regulated through an expanding set of privileges given by the Ottoman sultan that were known as the capitulations, or *ahdnames*.⁵ These allowed for Europeans to stay indefinitely in Ottoman territory and provided them with several fiscal and commercial privileges, such as tax exemptions and lower custom tariffs. One of the main privileges that was granted to the Europeans was their right to legal autonomy. The capitulations stipulated that the various trading communities fell under the jurisdiction of consuls, vice-consuls or ambassadors, who also had the right to adjudicate disputes within their communities. This meant that Europeans could use their own 'national' laws, statutes and procedures in intra-community litigation, with the consul (or ambassador) acting as judge.

The Sublime Porte giving permission to trading communities to settle disputes amongst their members autonomously matched the European medieval custom of legal autonomy given to foreign trading communities headed by a consul. While the privilege of autonomy was thus not an exotic one for Europeans, it did not mean that the legal context within which European consuls in the Ottoman Empire needed to operate was always unambiguous and clearly delineated. Early modern European states did not have one codified

from the Austrian Netherlands. Maartje van Gelder, *Trading places: The Netherlandish merchants in early modern Venice* (Leiden and Boston, 2009).

- 4 This book has opted to refer to Ottoman cities under their current Turkish names. Early modern Smyrna is thus referred to as Izmir, Constantinople as Istanbul and so on. In quotes, the place name is kept the way it was written down, including its spelling.
- 5 The term 'capitulation', or *capitula* in Latin, was used for the 1304 treaty between Genoa and Byzantium and also designates late-medieval treaties concluded between Christian and Muslim states in the Mediterranean. Viorel Panaite, 'The legal and political status of Wallachia and Moldavia in relation to the Ottoman Empire', in *The European tributary states of the Ottoman Empire in the sixteenth and seventeenth centuries*, eds. Gábor Kármán and Lovro Kunčević (Leiden and Boston, 2013), p. 37.

body of national law.⁶ Legal pluralism and a variety of local jurisdictions were commonplace. Thus, it was not so easy to transplant 'national' law onto the 'national' trading communities operating abroad.⁷ An additional complication was the nature of disputes that were solved by consular litigation. European presence in the Ottoman Empire was a consequence of trade, and by far, most of the European individuals living in an Ottoman city were traders, and when they took each other to court, it was usually to settle a commercial dispute. There are two reasons why it was not so easy to use state law to settle such disputes.

The first one is that the legal autonomy granted by the Ottomans applied to intracommunity resolutions, and commercial relationships, almost without exception, extended beyond the community, which made legal autonomy insufficient and necessitated additional agreements between different actors, Ottoman as well as European, on jurisdiction. The second one is that there was no readily available corpus of written 'national' law that was developed enough to be used in all matters of commercial litigation, particularly when considering the increasingly international context of early modern trade.

Historians have pointed to the existence of an informal body of rules used by traders from different backgrounds to settle their disputes, the so-called 'law merchant', a concept that offers a solution for both problems mentioned above. The concept, which originated in the Middle Ages and was considered universal, or at least highly cosmopolitan, is still the subject of academic debate. While some scholars consider the law merchant one of the medieval institutions that helped revive and expand Europe's trade with the world, others have argued that the law merchant is an artificial concept introduced

6 While there were certainly European states with a strong degree of centralisation, such as France, others, such as the Dutch Republic, were fundamentally different. In general, the use of the term 'nation-state' for the period under study is complicated and does not do justice to the sophisticated political fragmentation and local autonomies that existed within the borders of many European states. For an analysis of the process of state formation in Europe, see Thomas Ertman, *Birth of the leviathan. Building states and regimes in medieval and early modern Europe* (Cambridge, 1997).

7 A national trading community abroad is more regularly referred to as a trading nation, both in contemporary and modern literature. It should not be equated with a nation-state – as the Dutch case makes abundantly clear. I will use both trading community and trading nation throughout the book. For an extensive study of the interaction of European trading nations with the institutions of a host society through a diplomatic and legal prism, see Roberto Zaugg, *Stranieri di antico regime. Mercanti, giudici e consoli nella Napoli del Settecento* (Roma, 2011).

by historians attempting to find the historical roots of early attempts at globalisation.⁸

This book argues that, while the law merchant did not exist in the way its advocates suggested, the international merchant community was nonetheless able to rely on a large and heterogeneous web of rules, customs and uses that merchants themselves labelled the 'merchants' style' (*koopmansstijl* is the term used in most Dutch sources).⁹ Furthermore, analysis of several commercial disputes adjudicated by the Dutch consul in Izmir shows that the merchants' style was used in litigation as the central criterion on which the court based its legal verdicts. Legal procedure and the court's *modus operandi* were fully accommodating towards this merchants' style and the variety of merchants' customs, something that equally applied to various courts in different areas of the world – without there being an actual codified system of international law in existence.

The central thesis of this book is that the use of the merchants' style in courts adjudicating commercial disputes in an international context should be considered the legal equivalent of the commercial customs that underpinned early modern intercultural and international trade. It expressed what was

8 For criticism, see Emily Kadens, 'The myth of the customary law merchant', *Texas law review*, 90 (2012): pp. 1153–1206; and 'The medieval law merchant: The tyranny of a construct', *Journal of legal analysis*, 7:2 (2015): pp. 251–289; Stephen Sachs, 'From St. Ives to cyberspace: The modern distortion of the medieval "law merchant"', *American University international law review*, 21:5 (2006): pp. 685–812; Emily Kadens, 'Order within law, variety within custom: The character of the medieval merchant law', *Chicago journal of international law*, 5:1 (2004): pp. 39–65; and Albrecht Cordes, 'The search for a medieval *lex mercatoria*', *Oxford University comparative law forum* 5 (2003), consulted online at <http://ouclf.iuscomp.org/the-search-for-a-medieval-lex-mercatoria/>. For early defenders, see William Mitchell, *An essay on the early history of the law merchant* (Cambridge, 1904); and Levin Goldschmidt, *Handbuch des Handelsrechts* (Erlangen, 1868). Goldschmidt (1839–1897) was a professor in commercial law at Berlin University who studied with Max Weber. For an excellent recent analysis, see Dave De ruysscher, 'La *lex mercatoria* contextualisée: Tracer son parcours intellectuel', *Revue historique du droit français et étranger*, 90:4 (2012): pp. 501–504; see also J.H. Baker, 'The law merchant and the common law before 1700', *The Cambridge law journal*, 38:2 (1979): pp. 295–322; and for the argument on the revival of European trade, see Paul R. Milgrom, Douglass C. North, and Barry R. Weingast, 'The role of institutions in the revival of trade: The law merchant, private judges, and the champagne fairs', *Economics & politics*, 2:1 (1990): pp. 1–23. Historians have also considered the existence of a similar *lex maritima* for maritime law. For a discussion on this, see Dave De ruysscher 'Maxims, principles and legal change: Maritime law in merchant and legal culture (Low Countries, 16th century)', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*, 138 (2021): pp. 260–275.

9 On the idea of a pluralism of custom, see Kadens, 'Order within law'.

considered reasonable and equitable *in law* as the legal consequence of what was considered reasonable and fair behaviour *in trade*.

A great deal of historiography on early modern intercultural trade has been motivated by an attempt to explain how such trade was possible in the absence of formal international institutions that could successfully sanction fraudulent behaviour. The absence of a legal framework able to adjudicate international mercantile disputes and the reluctance of traders to go to court are often considered givens in discourse on the development of commercial networks based on trust. Scholars such as Francesca Trivellato, Sebouh Aslanian, Gunnar Dahl, Xabier Lamikiz and others have all analysed such networks in the early modern period, demonstrating the efforts undertaken by the international merchant community to reduce risk and enhance trust. These efforts include the careful construction of long-lasting business correspondences, peer judgment through reputation and creditworthiness and the consideration of mutual interest.¹⁰

In recent years, a number of studies have begun to consider the importance of litigation as a way to solve commercial disputes. Scholars have asserted that litigation was not as uncommon or eschewed as hitherto has been thought, particularly after a boom that began in the late sixteenth century: 'almost every man – and more women than expected – went to law in England before the eighteenth century. Civil litigation was a common, almost universal experience in some areas, and many people appeared as prosecutors of suits as well as defendants, at least above the level of the desperately poor'.¹¹ This observation was not only true for England and it also applied to commercial disputes. Even though friendly settlement was often attempted as a first step, merchants frequently did take each other to court. Not only do archives contain a substantial amount of commercial litigation, merchants regularly, and without much questioning, acted on each other's behalf in court, carrying power of attorney

10 See for instance Sebouh Aslanian, *From the Indian Ocean to the Mediterranean: The global trade networks of Armenian merchants from New Julfa* (Berkeley and New York, 2011); Tijl Vanneste, *Global trade and commercial networks: Eighteenth-century diamond merchants* (London, 2011); Xabier Lamikiz, *Trade and trust in the eighteenth-century Atlantic world: Spanish merchants and their overseas networks* (Woodbridge, 2010); Francesca Trivellato, *The familiarity of strangers: The Sephardic diaspora, Livorno, and cross-cultural trade in the early modern period* (New Haven and London, 2009); and Gunnar Dahl, *Trade, trust and networks: Commercial culture in late medieval Italy* (Lund, 1998).

11 David Lemmings, *Law and government in England during the long eighteenth century. From consent to command* (Basingstoke and New York, 2011), p. 56.

for an overseas merchant who could be more of a stranger than the party they were facing in court.¹²

A growing number of studies have started to look at court cases between traders, providing a much-needed addition to the literature on the behaviour of merchants during the early modern period. These studies, however, often focus on a particular spatial context, such as early modern France, and thus do not fully address the possibility of litigation in an international and intercultural context.¹³ More recently, a collection of essays on consuls operating in the Mediterranean between the seventeenth and twentieth centuries has addressed forms of litigation adjudicated by consuls in the contexts of major port cities like Livorno, Tunis, Barcelona, Cadiz and Sicily.¹⁴

While a 'merchant culture' is often recognised in these studies on commercial litigation, for instance in the excellent monograph on the Parisian merchant court by Amalia Kessler, its analysis is not fully reconciled with existing discourse on trade networks. The law merchant, the reliance on trust-generating mechanisms by the merchant community and litigation before a particular court have often been researched separately from each other in historiography. This book is meant as an attempt to cross the methodological and conceptual bridge that still exists between the law merchant, trust-generating mechanisms on which international trade was founded and commercial litigation by analysing trials between litigants of different backgrounds that were adjudicated at the Dutch consular court of Izmir during the second half of the eighteenth century. The central argument is that in places with a strong intercultural commercial presence, the customs of merchants involved in international trade, combined with political agreements and several bodies of 'national' and local law, were used to resolve legal disputes that arose as a consequence of international trade. The ability to resolve such disputes relied on

12 For powers of attorney as a form of support for international trade in a Mediterranean context, see Maria Fusaro, *Political economies of empire in the early modern Mediterranean: The decline of Venice and the rise of England, 1450–1700* (Cambridge, 2015), pp. 202–203, 234–235, and 254–255. For a short history on the context of Roman law, see Reinhard Zimmermann, *The law of obligations: Roman foundations of the civilian tradition* (Oxford, 1990), pp. 53–54.

13 See for instance Julie Hardwick, *Family business: Litigation and the political economies of daily life in early modern France* (Oxford, 2009); and Amalia D. Kessler, *A revolution in commerce: The Parisian merchant court and the rise of commercial society in eighteenth-century France* (New Haven, 2007); both focusing on France.

14 See the essays in *De l'utilité commerciale des consuls. L'institution consulaire et les marchands dans le monde méditerranéen (XVIIe-Xxe siècle)*, eds. Arnaud Bartolomei, Guillaume Calafat, Mathieu Grenet, and Jörg Ulbert (Rome and Madrid, 2017). The work is available through open access at <http://books.openedition.org/efr/3253>.

some sort of consensus amongst traders on what constituted the merchants' style and on an agreement between consular judges on the principles determining competence and jurisdiction.

Any attempt (this book included) to reconcile these three aspects of the regulation of intercultural trade in the early modern period encounters three important obstacles. First, the scholarly debate on the law merchant has obscured the role governments played in creating a legal environment in which litigation based on the customs and usages of merchants was possible, an omission further enlarged by the realisation that early modern European states harboured a hodgepodge of local laws, regulations and statutes inherited from the Middle Ages. This has rendered research more complicated, not least in areas that had a high degree of local legal autonomy and a large number of inhabitants participating in early modern international trade, such as the United Provinces. Concepts such as the law merchant and the merchants' style can only be applied if they were embedded within more formal systems of national or local law. In other words, merchants agreed upon the use of the merchants' style, but states still had to allow for its application in courts – analysis of the legal framework created to support the consular court of Izmir shows that states indeed did allow for this application. It is thus important to consider the development of state law in Europe to discover the exact place of the merchants' style and adjudication based on its use in the legal framework, but without making the mistake of considering the merchants' style as informal and subordinate to more formal systems of state and local law.

A second obstacle has to do with the legal fragmentation that was common in early modern Europe. It makes it hard to establish which jurisdiction applied in a particular commercial dispute, especially in an international context. In the United Provinces, traders could resort to urban institutions such as aldermen courts, and from the mid-seventeenth century onwards, they could also seek recourse at specialised courts, such as the maritime courts that were established in Amsterdam, Rotterdam and Zeeland. Additionally, merchants could bring cases before provincial and state courts, such as the States General, High Council (*Hoge Raad*) or Court of Holland (*Hof van Holland*).¹⁵

15 For an overview of courts in the Dutch Republic, see Oscar Gelderblom, *Cities of commerce. The institutional foundations of international trade in the Low Countries, 1250–1650* (Princeton and Oxford, 2013). The States General was also the representative governmental body of the United Provinces – each of the seven provincial states had representatives in it that dealt with matters of national interest, such as defence, military matters and foreign policy. Jan de Vries and Ad van der Woude, *Nederland: De eerste ronde van moderne economische groei* (Amsterdam, 1995), p. 125.

Additionally, Dutch merchants abroad could seek recourse to their consular representatives, if they had any. This fragmentation, combined with the growing international nature of trade, complicated adjudication, as it created a need to understand the sometimes complex agreements between different political entities on jurisdiction as well as a need to assert to what extent merchants had knowledge of different jurisdictions and the ways to access them.

A third obstacle is practical, as legal archives can be difficult to navigate. Even if a researcher knows which court to look at to find commercial litigation, archival records may be lost or destroyed. Most documents of the maritime courts in Rotterdam and Amsterdam, for instance, have not been preserved. When legal archives do exist, they are often hard to navigate. Often, for instance in the archives of the *Hof van Holland*, case documents have been preserved as series of the same types of documents and not as full cases in their entirety. This makes it hard to reconstruct the paper trail of a particular dispute, especially as a number of legal archives have not been properly inventoried. The possibility of appealing a sentence at a higher court further complicates the reconstruction of a full case.

When trial documents are found, it is a time-consuming affair to analyse even a relatively small case, as a minor dispute could produce a mass of documents, interrogations, memoirs, extracts of business books and accounts that can go on for dozens of pages in (frequently) hard-to-read handwriting in three or four different languages. Historians can get lost following this paper trail, which often includes sophisticated financial transactions, with payments in currencies that no longer exist and to which it might be complicated to attribute a modern value. And even if the logic of the case, and the string of events leading up to it, can be discerned, there will almost always be documents lost that could serve to contextualise it. If power of attorney was given to someone, we hardly know why it was given to that person. If an appeal was made, it is hard to find. If judges convened to discuss an outcome of a trial, they rarely left any documents related to it behind, and although proceedings at the Dutch consular court were based on written statements, and not on physical appearance in court and oral interrogations, the verbal aspect of the legal interaction between traders who lived near one another has mostly disappeared, references to it in written documents being the exception.

The Dutch consular court of Izmir was chosen for several reasons. Izmir was an important intercultural locale and a hub for international trade that involved Dutch traders, Englishmen, Frenchmen, 'Italians', 'Greeks', Armenians, Jews and Muslim Ottomans amongst others, rendering their constant interaction a suitable laboratory to test hypotheses on the use of litigation and the

law in international commerce.¹⁶ The functioning of European-Ottoman trade relied on those customary arrangements that were characteristic of intercultural international trade in the early modern period, but it was also subject to a legal context that was necessary in order to arrange the physical settlement of non-Ottoman subjects in Ottoman territories. This legal context consisted of privileges granted through capitulations as well as additional stipulations laid out through *fermans*, which were what decrees issued by the sultan were called. Although separate capitulations were concluded between the Ottoman Empire and the different European states present in the Ottoman Empire for centuries, the principle introduced in 1740 – that privileges granted to one European power became immediately active for the other powers as well – meant that there was a legal context that applied to all European nations, who further concluded a number of arrangements to regulate relationships between one another. The combination of legal arrangements between Europeans and Ottomans, but also between Europeans and Europeans, makes the Levantine context particularly interesting in the second half of the eighteenth century.

Contrary to French and English Levant trade, Dutch Levant trade was relatively open to foreigners, which led to the high participation of non-Muslim Ottoman traders, and subsequently to a higher amount of intercultural legal disputes.¹⁷ The Dutch, like other European nations, took foreigners under their protection, and during the eighteenth century, the Dutch consul in Izmir extended diplomatic protection to traders from the Holy Roman Empire, Tuscany, Sweden, Denmark, Russia and Poland. Amongst his legal subjects, the Dutch consul also counted several non-Muslim Ottomans who had purchased protection. This added to the diversity of the litigants that entered litigation at the Dutch consular court.

Finally, there is a practical advantage to looking at the Dutch mercantile community of Izmir. Litigation that fell under Dutch jurisdiction was adjudicated by the Dutch consul, and the legal archives of the Dutch consular court

16 'Greeks' and 'Italians' are placed between quotation marks here because at the time there were no clear Greek or Italian nation-states with Greek or Italian subjects. Both terms, however, do carry important meaning related to ethnicity, language and religion and will be used throughout the book without quotation marks. For the Greeks, see Victor Roudometof, 'From Rum millet to Greek nation: Enlightenment, secularization and national identity in Ottoman Balkan society', *Journal of modern Greek studies*, 16:1 (1998): pp. 11–48.

17 Ismail Hakki Kadı, *Ottoman and Dutch merchants in the eighteenth century. Competition and cooperation in Ankara, Izmir, and Amsterdam* (Leiden and Boston, 2012). For an overview of Dutch Levant trade prior to the eighteenth century, see Mehmet Bulut, *Ottoman-Dutch economic relations in the early modern period 1571–1699* (Hilversum, 2001).

in Izmir have been well preserved in the National Archives in The Hague. They consist of about 200 cases, which generally were kept in their entirety.¹⁸ These archives provide excellent primary source material on which to build a historical analysis. Next to the richness of these archives, a great deal of diplomatic correspondence between consuls and ambassadors in the Levant and political institutions in the United Provinces has also been preserved and made accessible in a publication edited by Klaas Heeringa and J.G. Nanninga between 1910 and 1966. This work is now available online and is equipped with a search engine, which provides an invaluable addition to the primary sources of the consular court.¹⁹ In addition, historians have already done crucial work studying the Dutch presence in the Ottoman Empire. Alexander de Groot is a pioneer when it comes to work on the Dutch capitulations and the history of Ottoman-Dutch relationships.²⁰ Ismail Hakki Kadı has written an important work on Ottoman and Dutch traders in the eighteenth century, while Maurits van den Boogert has analysed the legal framework surrounding the Dutch presence in the eighteenth century in detail.²¹ Without the existence of this body of work, it would have been impossible to manage the current study.

Something needs to be said about the time period. The consular archives only contain cases from the second half of the eighteenth century and a few from the early nineteenth century. Nothing has been preserved about litigation in earlier periods. The legal and commercial framework that was developed around the Dutch presence in the Levant and the Ottoman Empire, however, was created in the seventeenth century. This means that the theoretical part of this book focusses on seventeenth-century developments, while the cases studies that are examined in the more empirical section of the book all date from the eighteenth century. However, this time differential is not problematic for two reasons. First, the framework that was developed in the seventeenth century was still fully applicable in the eighteenth. Second, when analysing the position of commercial custom in the realm of law, it makes sense to look at it a substantial amount of time after the theoretical framework was

18 B.J. Slot, *Inventaris van het archief van het Nederlandse Consulaat te Smyrna, (1611) 1685–1811 (1837)* (The Hague, 1988), pp. 37–55, N^os 235–259 and N^os 316–462. They do not, however, include appeals very often.

19 See footnote 2 on page 1 for the full reference.

20 Alexander H. de Groot, *The Ottoman Empire and the Dutch Republic. A history of the earliest diplomatic relations 1610–1630*, revised ed. (Leiden, 2012). See the bibliography for more references to de Groot's work.

21 Hakki Kadı, *Ottoman and Dutch merchants*; and Maurits van den Boogert, *The capitulations and the Ottoman legal system. Qadis, consuls and beratlis in the 18th century* (Leiden and Boston, 2005).

created – because it meant the legal framework surrounding consular litigation had fully matured in practice.

This book is divided into five chapters. The first chapter discusses the development of Dutch Levant trade and the establishment of the Dutch merchant community in Izmir from the late sixteenth to the eighteenth century. Dutch trade with the Levant was mostly commission trade, based on the import of raw materials used in the textile industry at home and the export of colonial merchandise, arms and finished textiles such as sheets and linen produced in Dutch cities. This traded expanded significantly in the early seventeenth century, leading to the establishment of the first Dutch Ottoman consulate in Aleppo in present-day Syria. By the middle of the seventeenth century, Izmir had become the main trading centre for Europeans, including the Dutch, and the development of the Dutch consulate there was plagued by periodic quarrels about competence, taxes and fraud between consuls and merchants, a phase that came to an end with the arrival of the first scion of the de Hochepped family, who would provide consuls in Izmir for the whole eighteenth century. The first chapter also discusses the institutional development of the consulate in Izmir by researching the legal framework produced in the United Provinces that aimed to settle disputes between the traders and consuls there. It ends with a brief description of the Dutch trading community of Izmir.

The second chapter is concerned with the development of the adjudicating authority of the Dutch consulate in Izmir. The laws establishing this authority all came about during the seventeenth century and can be said to have originated with the first Dutch capitulations given in 1612 by Sultan Ahmed I, which included the clause on legal autonomy. Additional laws on consular litigation were issued by the States General, the Dutch governing body concerned with international affairs, following the establishment of the first consulate in Aleppo in 1612. There were no formal arrangements that settled the specific argumentation European courts in the Ottoman Empire should follow to reach a verdict, except for the procedural aspect. This was codified in the seventeenth century in a number of ordinances specifically issued to assure the good functioning of Dutch consular courts in the Levant and can be labelled as the ‘formal’ aspect of litigation.²² These ordinances defined the rules of

22 Cornelis Cau, *Groot placet-boeck vervattende de placaten, ordonnantien ende edicten vande doorluchtige, hoogh mog: heeren Staten Generael der Vereenighde Nederlanden ende vande ed: groot mog: heeren Staten van Hollandt ende West-Vrieslandt mitsgaders vande ed: mog: heeren Staten van Zeelandt waer by noch ghevoeght wijn eenige placaten vande voorgaende graven ende princen der selver landen, voor soo veel de selve als noch in gebruyck zijn* (The Hague, 1664), 2: pp. 1335–1338, ‘Acte, voor den consul van Aleppo, noopende

admission of written evidence, the options available for appeal and the system of written replies and counter-replies that traders submitted in court through the chancellor, who was responsible for communicating demands made by the judges, such as requests for information, and who also informed the parties of new developments and the final verdict. These regulations came from Roman law and in general can be identified with 'summary procedure'. Both concepts will be discussed in relation to the development of commercial litigation in the Dutch context.²³

Procedure, next to jurisdiction, was considered important, but regulations on both issues did not necessarily deal extensively with content or argumentation. Surely summary procedure was based on the use of equity and natural law, but in theory, this could be made concrete in a number of ways. I will argue that for commercial courts, in practice, this resulted in a reliance on the principles of the merchants' style. It was crucial that the actions of a litigant were held up against the manner in which merchants were accustomed to doing business, which was based on shared usages and the reciprocal protection of mutual interests. The failure to adhere to the very important principle of reciprocity was at the basis of a great deal of commercial litigation. A trader's behaviour was judged through reputation and creditworthiness, instruments that served to establish trust within a wider international merchant community.²⁴ When litigating, a merchant not only put his financial balance on the

de judicature, &c.', 17/02/1616. Heeringa and Nanninga, *Bronnen tot de geschiedenis*, 2: pp. 156–158, 'Resolutie der Staten-Generaal tot nederlegging der geschillen in Izmir', 24/07/1658.

23 There is an extensive bibliography on the development of summary procedure, see the references in Maria Fusaro, 'Politics of justice/politics of trade: Foreign merchants and the administration of justice from the records of Venice's *Giudici del Forestier*', *Mélanges de l'École française de Rome – Italie et Méditerranée modernes et contemporaines*, 126:1 (2014), consulted online at <https://journals.openedition.org/mefrim/1665>.

24 On this connection, see Craig Muldrew, *The economy of obligation: The culture of credit and social relations in early modern England* (Basingstoke, 1998); and Natasha Glaisyer, *The culture of commerce in England, 1660–1720* (London, 2006); see also Francesca Trivellato, 'Credito e cittadinanza nella repubblica dei mercanti visti attraverso la diaspora sefardita nell'Europa moderna', *Mélanges de l'École française de Rome: Moyen Âge*, 125:2 (2013), consulted online at <https://journals.openedition.org/mefrim/1447>. On reputation, see also Luuc Kooijmans, 'Risk and reputation: On the mentality of merchants in the early modern period', in *Entrepreneurs and entrepreneurship in early modern times: Merchants and industrialists within the orbit of the Dutch staple market*, eds. Clé Lesger and Leo Noordegraaf (The Hague, 1995), pp. 25–34; and Nuala Zahedieh, 'Credit, risk, and reputation in the late seventeenth-century colonial trade', in *Merchant organization and maritime trade in the north Atlantic, 1660–1815*, ed. O.U. Janzen (St John's, 1998), pp. 53–74.

line, and thus his creditworthiness, but also his reputation, which could suffer severe damage depending on the outcome of a trial.

These first two chapters are heavily focussed on seventeenth-century developments in commerce and the legislative framework. As such, they analyse the development of the context within which consular litigation became institutionalised. The remaining three chapters will look into specific case studies to analyse to what extent the merchants' style was used in the cases adjudicated by the Dutch consul in Izmir during the second half of the eighteenth century. Chapter three deals with the least complicated form of commercial litigation, that between Dutch merchants alone. While intra-Dutch litigation did not occur very often, in the instances where Dutch traders took each other to court, we can see a discourse that is heavily influenced by notions of commercial friendship and reciprocal interest. These were crucial characteristics of the merchants' style, and when traders felt that their peers violated what was common amongst traders, their argumentation in the documents they sent to court could be quite explicit and emotional.

Traders did not fundamentally change their discourse in disputes involving peers that belonged to other communities. Occasionally, a merchant tried to obtain an advantage by pointing to differences between Europeans and Ottomans, but as a rule, merchants circumscribed their legal argumentation within the discourse on what was customary amongst them. Even the consuls, who looked out for the best interests of their subjects as well as the state they represented, refused to let any argument based on nationality weigh heavily in a decision regarding a commercial dispute. Chapter four will analyse how Europeans developed informal agreements to settle jurisdictional problems. Most importantly, European consuls agreed to use the Roman legal principle of *forum rei*, which stipulated that in a dispute the competent court was the one under whose jurisdiction the defendant stood. The principle was codified by the Ottomans in the capitulations granted to the French in 1740.²⁵ This had been the dominant principle to determine the competent court in cases involving traders of different jurisdictions since medieval times, and it was part of a more general effort to protect merchants – the use of summary procedure being another.²⁶ Intra-European litigation could be complicated by the presence of European *protégés*. These were European traders established in the Ottoman Empire whose nations did not have a proper consular or ambassadorial apparatus. The extension of protection over such merchants was used

25 Van den Boogert, *The capitulations*, pp. 35–36.

26 Fusaro, 'Politics of justice/politics of trade'.

by European nations to extend their influence, and at certain times, France, England and the United Provinces all had merchants operating under their flag and protection. In the period under study, the Dutch extended protection over Genoese, Tuscan and Habsburg merchants, and several of them can be found amongst the litigants that appeared before the Dutch consul. A special position was taken by the consular adjudication in maritime disputes. Maritime laws in Europe had developed early and were the result of various regional influences. Litigants were often subject to insecure jurisdiction due to the fact that many disputes occurred on moving vessels.

The fifth and last chapter deals with disputes that involved Ottoman subjects. In theory, these had to be judged by an Ottoman court.²⁷ There was one important exception to this rule. Non-Muslim Ottoman subjects who had purchased protection from a European state were, for legal purposes, considered subjects of that state and could thus appear as defendants before a European court under the *forum rei* principle. They could still opt to bring their case before an Ottoman court, but this was not obligatory. An Ottoman under Dutch protection in Izmir, for instance, could choose to sue a Dutch trader at the Dutch consular court, and if he was sued by a European trader, he was allowed to stand trial at the Dutch consular court as well. The jurisdictional issues related to the practice of protection might lead to confusion, and it certainly led to protests by Europeans who felt certain Ottomans were getting the best of two worlds. The controversy surrounding this practice was further fuelled by the adherence to commercial custom, as it was considered a violation of the merchants' style to foster individual gain over the interests of others. Modern scholars have debated the possibility of traders seeking recourse to different legal systems through the concept of 'forum shopping', which could be considered an analytical instrument for looking at the legal behaviour of traders rather than an actual practice.²⁸

A last remark should be made in connection to the selection of cases. With over 220 different files kept in the archives of the Dutch consulate, selection

27 Van den Boogert, *The capitulations*, pp. 42–52. Europeans were also allowed to seek justice before an Ottoman court if they wanted.

28 For a debate on this, see 'Forum shopping reconsidered', *Harvard law review*, 103:7 (1990): 1677–1696; and Markus Petsche, 'What's wrong with forum shopping? An attempt to identify and assess the real issues of a controversial practice', *The international lawyer*, 45:4 (2011): pp. 1005–1028. For the Ottoman context, see also Paolo Sartori and Ido Shahar, 'Legal pluralism in Muslim-majority colonies: Mapping the terrain', *Journal of the economic and social history of the Orient*, 55 (2012): pp. 637–663; and Cihan Artunç, 'The price of legal institutions: The *beratlı* merchants in the eighteenth-century Ottoman Empire', *Journal of economic history*, 75:3 (2015): pp. 720–748.

was necessary. An attempt has been made to find a representative sample, particularly with regards to the legal identity of the litigants – Dutch, Dutch *protégés*, Europeans and Ottomans. Several names will return in different trials, as plaintiff, defendant, expert or as holding power of attorney for someone else. These names, such as Dirk Knipping, Pieter Ouckama, Manolaki di Panaiotis and Isaac Beaune, return not only because of the selection that was made. The cohesion between cases also shows that there was a high degree of interconnectedness. This has to do with the small size of the Dutch community as well as the nature of Dutch Levant trade, which was commission trade. It meant that often, when something went wrong, Dutch traders in Izmir were held accountable by their principals elsewhere, which made them defendants at the consular court. The same applied to the Ottoman *protégés*, who increasingly became commissioners for principals in the United Provinces in their own regard.

Eighteenth-century spelling was not consistent. I have opted to preserve the original spelling of the titles of the documents. A few documents did not have titles, in which case I gave them a descriptive title in English. The sources I used from Heeringa and Nanninga's work were given an English translation within Heeringa and Nanninga's description, except when they provided an original title, in which case I used that.

This study is part of a large and international project on intercultural trade, commercial litigation and legal pluralism between the fifteenth and nineteenth centuries in the Mediterranean basin.²⁹ The project's main aim is to look at commercial litigation to better understand the development of intercultural trade in a world characterised by legal pluralism: 'these issues will be investigated through the comparative analysis of commercial litigation and conciliation concerning trade in Mediterranean port cities, with a focus on disputes involving litigants who were not subjects of the local authorities, or whose legal status was linked to their religious identity. Encounters between Muslim, Jewish, Armenian, Protestant merchants and sailors with different legal customs and judicial practices appear as the social sites of legal and cultural creativity'.³⁰ This monograph fully inscribes itself in that mission statement. It means that part of its aim is to look at the Mediterranean basin as a space of legal and commercial innovation in a context that was not simply set by Europeans, and as such, it questions the classic assumption that the growing adaptation of legal institutions to foster international trade was a European

29 Funded by the ERC and headed by Wolfgang Kaiser. More details can be found at <https://configmed.hypotheses.org/>.

30 As stated at <https://configmed.hypotheses.org/a-propos-2>.

phenomenon that allowed (western) European societies to distinguish themselves from other places that were not able to incorporate similar changes. I am fully aware that I am doing this by focusing on European interaction within an Ottoman context and on the basis of European sources. I do think, however, that the agency of non-European actors, such as the Ottoman government and Ottoman traders, still takes a prominent place in the historical analysis undertaken in this work and that this analysis is valid for an environment in which Europeans played an important part alongside others.

FIGURE 1 Relief of a *Stretsvarer* or *Straatvaarder* (a ship active in Mediterranean navigation) on the facade of a building (Oude Doelenkade 21, Hoorn, Netherlands)

PHOTO BY GOUWENAAR