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Medieval Maritime Law from Oléron to Wisby: Jurisdictions in the Law of the Sea

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ABSTRACT

This chapter explores the history of medieval maritime law and its practice in Northern Europe. It argues that, contrary to the historiography, a common supra-territorial law of the sea did not exist in the Middle Ages in this region. Instead, Northern Europe was split up into several local, regional and national jurisdictions, each of which used varying laws. The chapter starts with an overview of written maritime laws from the *Rôles d'Oléron* to the Wisby Sea Law. Subsequently, the availability of these laws in five Northern European towns (Lübeck, Reval, Danzig, Kampen and Aberdeen) is examined, as well as their actual use in the town courts. In the final section, the administration of maritime justice is tackled. In this section, it is put forward that a common medieval law of the sea was an impossibility due to the absence of a supra-territorial jurisdiction which could implement such a law.

In medieval Europe, trade was the main activity besides warfare and diplomacy which involved regular contacts between persons from different territories. Long-distance trade, which in Northern Europe was first and foremost conducted overseas, was by its very nature supra-territorial trade. It brought merchants, skippers and their crews from across the North and Baltic seas into contact and ensured that Western Europe was supplied with much-needed grain and other bulk products, in exchange for cloth, salt and wine.

In order to secure smooth relations between all involved in this trade as regards any problems occurring during sea voyages, maritime laws were formulated¹. Regulating shipping between different territories, these maritime laws were intrinsically supra-territorial. Or were they? Regulations regarding maritime law were recorded in compilations like the *Rôles d'Oléron* [Rolls of Oléron] and the so-called Wisby Sea Law, which in the past have been ascribed a wide-spread validity². The existence of various town laws including maritime regulations suggests, however, that the law of the sea was not shared between territories at all, but was divided across many small jurisdictions.

The conception of this section of the book that there existed different types of jurisdictions for various users, including a jurisdiction for maritime traders, therefore appears

to be inaccurate from the outset, at least with regard to the law of the sea. However, the fact remains that merchants and skippers involved in overseas trade did have special needs which were shared by all, for example with regard to gaining justice abroad. So how were these needs met? This chapter will try to prove that while a common supra-territorial law did not exist in Northern Europe³, the special needs of maritime traders were cared for nonetheless. First of all, the spread of the written laws from Oléron to Wisby will be examined, giving an overview of the laws that came into existence between 1200 and 1500. Secondly, the availability of these laws at the Northern European town courts will be established, followed by an analysis of the use of the written laws at these courts. Finally, the administration of maritime justice will be looked at in order to establish which jurisdictions were competent in maritime matters, how merchants and skippers decided which court to go to, and why a common supra-territorial law did not come into existence⁴.

A HISTORY FROM OLÉRON TO WISBY

The oldest maritime regulations appeared in writing in Scandinavia in the late twelfth century. These laws reflected the organisation of Scandinavian shipping, which was generally conducted in joint ventures of the skipper (who owned at least part of the ship) and the owners of the cargo on a particular vessel. All members of this venture had the same rights and duties aboard the ship, which included the actual sailing of the vessel. The skipper functioned as a *primus inter pares* and decisions were made by mutual agreement⁵.

In the 13th century, the organisation of shipping changed when, due to a rising demand for goods which in its turn was caused by a growing population in the north of Europe, vessels were built to carry more cargo. This increase in carrying capacity of deep-sea vessels resulted in a separation of interests between the shipowners and the owners of the cargo. Merchants could now afford to buy off their duties aboard the ship and started to focus solely on trade. A specialised crew developed who, in general, received wages⁶. The owners of the ship stayed ashore and were represented on board by the skipper, who at the same time became more independent from the merchants with regard to taking decisions⁷. Although a further rise in the size of vessels at the turn of the fifteenth century brought about new developments in shipboard organisation, these did not constitute such a significant break. The clear division between shipowners, skipper, freighters and crew which was a result of the thirteenth-century developments, on the other hand, has continued until today. It is at the start of these developments, therefore, that I would like to begin this history of Northern European maritime law.

Northwestern Europe

The separation between skipper and merchants is reflected in the written laws of two different regions of thirteenth-century Northern Europe: the west coast of France spreading northward and the towns of Northern Germany. The most famous medieval

sea laws are probably the *Rôles d'Oléron* (or *Jugemens de la mer* [Judgments of the Sea]), which are named after a small island off the coast of the medieval duchy of Aquitaine⁸. They were drawn up in French in or shortly before 1286 and contain regulations for the wine trade from Brittany and Normandy to England, Scotland and Flanders. The two oldest extant manuscripts containing the *Rôles*, both from the early 14th century, are of English origin⁹. A mention of the laws in a report written in the 12th year of Edward III's reign (1329) confirms that the laws were in use in England in the first half of the 14th century¹⁰. In France, the *Rôles d'Oléron* had been adopted as the official sea law by 1364¹¹.

Copies of the *Rôles d'Oléron* spread throughout Western Europe in the 14th century. There are two translations: one into Flemish/Dutch and the other into Scots. The first is known as the *Vonnesse van Damme* [Judgments of Damme (Damme being Bruges' port)] and dates from the late 13th or early 14th century¹². The oldest extant copy of the Scottish translation is entitled *Of lawis of scyppis* [Of laws of ships] and dates from the second half of the 14th century. The translation itself may be slightly older, from the second or third quarter of the 14th century¹³.

A new written sea law appeared in the Netherlands around the mid-fourteenth century: the *Ordinancie* [Ordinance]¹⁴, containing regulations concerning shipping from the Zuiderzee to the rest of Europe. This compilation of laws was generally copied together with the Dutch translation of the *Rôles d'Oléron*, and it has been argued that the *Ordinancie* was written to complement these laws¹⁵. However, two extant Dutch manuscripts from the early 15th century contain solely the *Ordinancie*¹⁶, and two of its articles were copied verbatim from the *Rôles*, which would have been pointless if the *Ordinancie* was to complement these laws. No medieval translations were made of the *Ordinancie*, but known copies exist from Flanders, the Netherlands, Northern Germany, Denmark and Eastern Prussia. In general, the compilation of *Vonnesse van Damme* and *Ordinancie* was referred to simply as *Waterrecht* [water law]. In the later 15th century, some articles from Lübeck law were added to the text in two stages, resulting in the compilation which came to be known as the Gotland or Wisby Sea Law. Before discussing this law, we will first consider parallel developments in the Northern German towns.

Northern Europe

In Lübeck and Hamburg, maritime regulations appeared in the town laws¹⁷ from the early thirteenth century. The oldest of these laws were written in Latin, but vernacular versions appeared in the 1260s and 70s. The first Lübeck town law, the oldest extant copy of which is from around 1227, contains only two articles with regard to the law of the sea. By the late thirteenth century this number had grown to eleven. In 1299 a separate maritime law was compiled by town chancellor Albrecht von Bardewik. This law was partly based on the Hamburg Ship Law and consists of 42 articles. In the first half of the 14th century, an ordinance regulating the rights and duties of the crew was issued: the *Ordnung für Schiffer und Schiffsleute* [Ordinance for skippers and seamen].

In Hamburg, the town law was reformed by notary Jordan von Boizenburg in 1270. This law survives only in later copies from Stade (1279) and Riga (1294/7). The Riga version includes a section on sea law *Van Schiprechte* [Of shipping laws], a section which is also included in a later edition from Hamburg (1301/6). The original edition by Von Boizenburg may not have included this section, since it is missing from the Stade manuscript and since a separate sea law is referred to in a letter from Hamburg to Lübeck from 1259¹⁸. The introductory words of the section on maritime law from the 1301/6 manuscript confirm a separate promulgation of the shipping law: “The common council and the burghers of the town of Hamburg have ordained and published this shipping law”¹⁹.

The town of Riga between 1294 and 1297 copied the complete Hamburg town law, but the town council only used it to revise its own Riga Town Law. This town law not only contained Hamburg and older Riga laws, but also Lübeck law. The section on sea law was subsequently supplemented with five articles during the 14th and 15th century. A town law which developed completely separately from the other laws discussed so far was that of Kampen, one of the main medieval Dutch trading towns situated on the Zuiderzee coast. In two compilations from the late 14th and early 15th centuries (*Dat Boeck van Rechte* [The book of law] and *Dat Gulden Boeck* [The golden book]), a few regulations can be found which are unique in Northern European maritime law. Due to the fact that both the Kampen Town Law and the *Ordinancie* regulated shipping on the Zuiderzee, some regulations in these two compilations are similar in subject matter.

15th-century developments

In the 15th century few new maritime laws were developed, but some initial attempts were made at compiling laws to create texts that were perhaps more widely useable. Compilations of the *Vonnesse van Damme* and the *Ordinancie* had appeared from the late 14th century. In three Danish manuscripts from the middle of the 15th century, two articles were added at the end. The first is from the Lübeck Town Law, whereas the second was taken from the *Ordnung für Schiffer und Schiffsleute*. In another Danish manuscript from the second half of the 15th century, fourteen more articles of Lübeck origin were added at the beginning of the compilation: six from the *Ordnung*, seven from the Lübeck Town Law and one from an unknown source. This manuscript was probably used for the first printed edition of the compilation by Godfried von Gemen (Copenhagen 1505). In the colophon he wrote: “Here ends the Gotlandic water law which the common merchant and skippers have statuted and made at Wisby, so that all men may conform to this”²⁰. This name of Gotlandic or Wisby *water recht* has been the cause of much confusion since and still clings to the compilation²¹. It is certain, however, that none of the laws were statuted at Wisby, but that it consists wholly of laws originating elsewhere. The most likely explanation for Von Gemen’s title is that the manuscript on which he based his edition was kept on Gotland, just as the original charter of the *Rôles d’Oléron* was preserved on Oléron. Subsequent editions of the Gotland/Wisby Sea Law appeared in Amsterdam in 1532 and, in a slightly extended

version, in Lübeck in 1537, Danzig 1538, Copenhagen 1545, Stockholm 1549, Amsterdam 1551, and so forth²².

Another compilation of laws can be found in the revised Hamburg Town Law of 1497. Dr. Hermann Langenbeke, burgomaster of Hamburg, revised the shipping laws of 1301/6 using regulations from the *Vonnesse van Damme*, the *Ordinancie* and the Roman *Lex Rhodia de jactu* [Rhodian law of jettison]. The result was a systematised, modernised sea law, the constituent parts of which were no longer immediately recognizable²³. As opposed to the Gotland Sea law, which consisted of laws from the 13th and 14th centuries, this Ship Law was reasonably up-to-date with 15th-century developments.

Other laws which were up-to-date with developments in the 15th century were the statutes issued by the Hanseatic League. From the late 14th century, the Hanse regularly tried to regulate trade and shipping in its region of influence. As time progressed, ever more regulations were issued, but they were never systematically organised during the Middle Ages, nor were they comprehensive. Statutes concerning maritime matters are found scattered across the *Hanserecesse* (minutes of the Hanseatic meetings) of 1378, 1380, 1412, 1417, 1418, 1434, 1435, 1441, 1447 and 1470²⁴. Some of the regulations were issued on a regular basis and all the statutes issued in the previous years to a total of 25 articles are included in the 1447 minutes. However, only a few of these were repeated in 1470. In 1482 a separate *Schifferordnung* [Skippers' ordinance] appeared, regulating the relations between skipper and crew²⁵.

Customary sea laws versus urban regulations

The written maritime laws of Northern Europe can be divided into two groups: the customary sea laws²⁶ and the maritime regulations in the town laws. The *Rôles d'Oléron* and the *Ordinancie* can be considered part of the first group, whereas the sections in the Lübeck, Hamburg, Riga and Kampen town laws belong to the second. The Gotland Sea Law, although containing Lübeck law, can also be grouped under the customary sea laws.

The differences between the two groups are twofold. First of all, their territorial jurisdiction varied. The maritime regulations in the town laws were restricted to the skippers, shipowners, crew members and merchants of a single town. All citizens of this town were bound to these laws by an oath which they took annually²⁷. The customary sea laws on the other hand had come into being as customs or rules of conduct agreed upon between different groups involved in sea shipping. They were meant to be valid in a large area, but in themselves lacked an authority to administer justice based on them: they could only become valid when a group of people accepted them as the law, as happened in Bruges and in some towns in the Netherlands, or when they were enforced by a (royal) authority, as was the case in France and England, and probably Scotland. In those towns where copies of the customary sea laws were available besides maritime regulations in a town law, as was for example the case in Kampen, the customary sea

laws were presumably only used as an auxiliary law in cases in which the town law was incomprehensive²⁸.

Secondly, there was a difference in substantive law. The customary sea laws were private law restricted to the problems that arose during the journey and to those involved in sea trade, whereas urban maritime regulations also contained public law relating to the harbour and the law of wreck. The fines that needed to be paid for a breach of these urban regulations were (at least partly) paid to the town, whereas according to the customary sea laws the litigating person was to be compensated.

In the three centuries covered by this overview, many sea laws came into existence in Northern Europe. Developments occurred simultaneously in Northwestern and in Northern Europe, resulting in customary sea laws and maritime regulations in the town laws existing side by side throughout the period. The 15th century saw the first efforts to compile laws that would create texts that were more widely useable. The spread of the *Waterrecht*, a compilation of the customary sea laws and some maritime regulations from Lübeck, was too limited in the Middle Ages for the law to be called common. The revised Hamburg Ship Law, on the other hand, only came into existence in 1497 and remained restricted to the town of Hamburg. Finally, the Hanseatic laws enacted from the late 14th century were meant to be adopted by all the Hanseatic towns, but there were many towns in Northern Europe that did not belong to the Hanse, nor did all Hanseatic towns accept the statutes at all times. During the Middle Ages, therefore, none of the written sea laws which were compiled and developed in Northern Europe, became available throughout the area. It would thus be inaccurate to speak of a common supra-territorial written sea law for this period. A closer look at the availability of the written laws at the Northern European town courts will give a more detailed impression of the spread of the various compilations, before we continue with an analysis of the actual use of the lawbooks in these courts. Only then will we be able to determine whether this lack of communality in written law was also to be found in legal practice.

THE AVAILABILITY OF THE WRITTEN LAWS AT THE NORTHERN EUROPEAN TOWN COURTS

For my study of the practice of maritime law at the Northern European town courts, I examined court practice in five Northern European towns: Lübeck, Reval (Tallinn), Danzig (Gdańsk), Kampen and Aberdeen²⁹. It appears that different collections of written sea laws were used for the administration of maritime law in each of these courts.

Lübeck

In Lübeck, copies of the Lübeck laws (town law, sea law and the *Ordnung*) were obviously available, as were the minutes of the Hanseatic meetings, which were generally led by Lübeck³⁰. As regards other sea laws, no manuscripts from before 1500 survive. There are two manuscripts of the Gotland Sea Law dating to the 1530s, which are prob-

ably copies of the 1532 Amsterdam edition. The first printed Lübeck edition appeared at around the same time (1537), but included a few more articles. This suggests that another copy of the Sea Law was available in Lübeck, but there is no evidence that this manuscript can be dated to before 1500.

Reval

Reval had been granted Lübeck law in the 13th century and owned manuscript copies of the town law from this period. There are no indications, however, that any copies of the Lübeck Sea Law or *Ordnung für Schiffer und Schiffsleute* were available to the Reval court. As in Lübeck, no medieval copies of any other sea laws survive, nor do any from the 16th century. The only maritime regulations that seem to have been available besides those in the Lübeck Town Law were the *Hanserecesse*. Reval was a loyal member of the Hanse and was present at most of the meetings where the statutes regarding maritime matters were drawn up. The 1482 *Schifferordnung* has survived as a separate manuscript.

Danzig

Compared to Lübeck and Reval, Danzig had a large collection of sea law compilations at its disposal. This collection was also from a much later period: whereas most of Lübeck's and Reval's manuscripts were from the 13th century, Danzig owned copies of sea laws which were created in the 15th century. The exceptions are the Hanseatic statutes, which were equally available to all three towns. Before the 15th century, Danzig was subject to Kulm Town Law, the town law by which most Prussian towns under Teutonic Order rule were governed³¹. Kulm was an inland town and none of its town laws therefore contained any maritime regulations, which would have been inconvenient for a town like Danzig which thrived on sea trade. This, then, must have been one of the motivations behind the acquisition of a large collection of sea laws in the 15th century. Another major reason was the appointment of Danzig as Prussia's (and later Poland's) central maritime court in the late 14th or early 15th century.

Danzig's collection of maritime regulations is now contained in two manuscripts which include mainly material from the 15th century, but which were compiled (bound together) in the 16th. The first contains judgments from the Danzig court from the period 1425-36, an incomplete copy of these judgments from the 16th century, a text of the *Vonnesse van Damme* and the *Ordinancie (Waterrecht)* from around 1407 and a copy of the 1482 *Schifferordnung*. The second also contains a copy of the *Waterrecht*, dating to around 1429, and a copy of the Gotland Sea Law which is most likely from the first half of the 16th century. Based on a letter from Danzig to Wisby, in which the former requests a copy of the sea law available in the latter, it is likely that another copy of the *Waterrecht* made its way to Danzig in or shortly after 1447, but this has not survived. By the early 16th century, Danzig thus had a large collection of manuscripts which could be used for the administration of maritime justice. It consisted of at least three *Water-*

recht copies, which were supplemented by a printed copy in 1538, as well as Hanseatic statutes, a few local by-laws and the judgments from the Danzig court.

Kampen

In Kampen, two collections of town laws from the late 14th and the early 15th century have survived: *Dat Boeck van Rechte* and *Dat Gulden Boeck* respectively. These manuscripts were probably predated by another collection of by-laws. Both the extant manuscripts include maritime regulations; in fact, *Dat Gulden Boeck* includes a total of 42 articles. In the third quarter of the 15th century, Kampen also acquired a copy of the *Waterrecht*. Judging by a comment in this manuscript referring to *Dat Gulden Boeck*, both laws were used simultaneously for the administration of maritime justice. Being a Hanseatic town³², Kampen also possessed some copies of the *Hanserecesse*. It was not present at all the meetings at which the statutes were decided upon and about half of the relevant *Hanserecesse* are currently available. Among these is the 1447 *Hanserecess*, which included the largest amount of maritime regulations.

Aberdeen

No manuscripts including maritime law have survived from Aberdeen. However, several manuscripts including the Scottish translation of the *Rôles d'Oléron* have survived from elsewhere in Scotland, usually in collections of the main Scottish laws, such as the *Regiam Majestatem* and the Laws of the Four Burghs (*Leges Quatuor Burgorum*). We can therefore assume that the *Rôles d'Oléron* were part of the central body of medieval Scottish law. The relatively unified character of Scottish burghal law moreover suggests that those laws available in manuscript form in one burgh were known elsewhere too, either in writing or orally. Nine manuscripts including the translation of the *Rôles d'Oléron* are known to have survived, the oldest being from the second half of the 14th century, five from the 15th and three from the 16th century. Some of these actually include two varying copies of the translation. Apart from the translation of the *Rôles*, I have come across no other copies of Northern European sea laws in Scotland. The *Ordinancie* does not seem to have been available in manuscript form in the Middle Ages. From some 16th- and 17th-century writers, it can be gathered, however, that the Gotland Sea Law was known at this later time³³. A few regulations regarding trade and shipping can be found in the Acts of Parliament of Scotland.

THE USE OF THE WRITTEN LAWS IN COURT

The presence of each of the named written laws at the different Northern European courts did not necessarily entail that the books were used by these courts when administering justice. Indirect evidence regarding the use of the written laws in court can be gathered by comparing the regulations in the law books with the judgments passed by the town court. Here, I will analyse only the direct evidence by looking at references in

the sources to maritime laws in general and to specific law books in particular, in order to determine which laws were used in practice and whether any communality existed between the towns.

Lübeck

In the judgments of the Lübeck town court regarding shipwreck, jettison and ship collision³⁴, there is only one explicit reference to Lübeck law. The town council, in general, declared its verdicts *vor recht*, which can be understood to mean that they established what was lawful in a particular case without referring to any written laws³⁵. In a lawsuit from 1461 between a merchant and a skipper, the former wished the council to pass judgment according to Lübeck law³⁶.

Specific laws were referred to more frequently in appeal cases³⁷. For example, in a case from 1471, dealing with the payment of freightage after shipwreck, the Reval council had decided in favour of the shipowners, in accordance with the rule laid down in the *Hanserecess* of 1447³⁸. The merchants then appealed to the court in Lübeck, which confirmed the judgment “na unseme lubeschen rechte” [according to our Lübeck law]. In a case from 1486 in which “lubeschen rechte” was referred to, Hanseatic law was used too, although this is not mentioned specifically³⁹. In other cases, Lübeck law is just referred to without any written law actually being applied.

The Lübeck court thus named Lübeck law in cases of appeal from other towns, but in cases arising within Lübeck itself, the court did not explicitly refer to a specific law. The fact that judgments were passed according to Lübeck law was probably thought too obvious to need recording. When it was used, the term “Lübeck law” did not necessarily indicate those laws that were recorded in the Lübeck Town and Sea Laws. Some of the cases were actually decided according to Hanseatic statutes. This indicates that the statutes were incorporated into the town law⁴⁰. Apart from the use of these statutes, the sources provide no direct evidence as to which (written) laws were used.

Reval

In the judgments passed by the Reval council, there is, in general, no mention of a specific law that was used. Sentences were delivered, for example, “vor recht gewyst und affgesproken” [passed and approved as law] after due consideration and consultation⁴¹. We can assume that the Lübeck Town Law, either in written or unwritten form, was used when applicable, unless otherwise stated. As mentioned above, Reval applied the Hanseatic statutes from 1447 in a case from 1471. Lübeck law was mentioned regularly by Lübeck’s town council in reply to appeals from Reval.

When none of the written laws could be applied, the judgments passed by the Reval council were still considered to be Lübeck law. This is confirmed by the fact that parties regularly requested this law to be applied, for example in the 1486 appeal case mentioned earlier and in some letters sent to the Reval court about particular cases⁴². The

formula “ik hope to gade unnd to lubeschen rechte” [I hope by God and Lübeck law], which was used in Lübeck as well, can be found in statements from Reval burghers. This indicates that it was clear to the burghers of this town that they were ruled according to Lübeck law, centuries after this law had been presented to them.

Danzig

Between 1425 and 1436 the Danzig court recorded fifteen of its judgments. In some, the actual legal case in which the judgment had been passed was described, but in only two cases are the names of the parties given. In others, a normative rule was written without reference to a specific case. At the start of the sixth judgment, for example, it is stated that the council had enacted the following as regards jettisoned goods⁴³. Some of these judgments were therefore probably laid down for hypothetical cases (*Weistümer*) and were not based on actual lawsuits. Such judgments and those passed in actual cases were equal from a legal point of view and both could be used as precedents; it was irrelevant whether an issue was decided in a concrete case or in a hypothetical one⁴⁴.

The judgments give a few clues concerning the use of the written sea laws in the Danzig court. The judgments themselves were recorded for use in future cases, but they were sometimes based on other written laws. This becomes clear when considering the eleventh judgment from 1432⁴⁵. This dealt with a conflict between two skippers, caused when some of the crew hired by the first transferred to the second. As it happened, the first had changed the destination of his vessel from Prussia to Flanders. The skippers brought the case before the Danzig court to be judged according to “waterrechte”. Because the council had not handled or heard such a case before, it decided to write to the Common Merchant in Bruges seeking clarification from the council in Damme concerning the law in such a case⁴⁶. “Den genen de mit dem rechte umme gaen” [they who handle the law] in Damme deliberated about the matter for a long time but then concluded unanimously that the first skipper could not lay claim to damages from the other according to the *waterrecht*. The Danzig council then passed the same judgment, since both skippers had requested a judgment according to this law.

Although the word *waterrecht* is used four times in this text, the judgment was not actually based on a written law, because none existed for this matter, but on a verdict from the court of Damme. The reason for appealing to this court must have been that the law used in Danzig was considered to be from Damme. The *Vonnesse van Damme* are of course only a translation of the *Rôles d’Oléron*, but Damme was apparently seen as the source of this law by some and considered an authority even in the 15th century. The Damme council, moreover, answered the request and deemed itself competent. This case also confirmed that Danzig used the *Vonnesse* in its court in the 1430s.

The *waterrecht* is mentioned in two more of the judgments. In one of them, a judgment is passed “vor eyn water recht” [as *waterrecht*], just as verdicts were passed *vor recht* in Reval and Lübeck, declaring what is lawful in a particular case. Again the word did not refer to any specific written laws.

It is in this general sense that the word *waterrecht* was used in Danzig's correspondence about legal cases as well: verdicts were either passed according to the *waterrecht* or requests were made for this law to be applied. There is only one reference to the the *waterrecht* in a long letter from 1433 which seems to indicate a written law.⁴⁷ In this case a skipper applied to the court for payment of full freightage because some merchants wished to unload their goods from his ship. Subsequently, a regulation from the judgments is quoted, not verbatim but in a rephrased shape⁴⁸. The skipper was apparently aware of the (written) law, but another law was ultimately applied by the court⁴⁹.

Just as in Lübeck and Reval, the only written laws that were explicitly referred to in Danzig were the Hanseatic statutes. For example, in a letter of 1491 to Kolberg, Stettin, Greifswald and Stralsund (all Hanseatic towns themselves), Danzig reminded them of the "gemeynen hanse stede besluth unnde recessen" [the decisions and *recesse* of the common Hanseatic towns] regarding the trading with "zeedriftich" goods [literally goods floating on the sea] which had been sold and bought in these towns⁵⁰. This had been prohibited regularly by the Hanse, for example in the 1447 Hanseatic statutes. On the other hand, Danzig ignored the Hanse's repeated prohibition against building ships for the Dutch market and also traded with the English and the Dutch in contravention of Hanseatic statutes⁵¹.

Based on this, it must be concluded that the Danzig court applied some of its written laws. The *Vonnesse van Damme* and the court's own judgments were consulted at least in the 1430s. The judgments were also known by some skippers. The term *waterrecht* was used regularly in verdicts and correspondence, but must be understood in a general sense: it referred to the broader sphere of maritime law and only rarely to any specific written laws. The Hanseatic statutes were referred to specifically, and were used and adhered to in as far as it suited Danzig.

Kampen

That the sea laws in Kampen were supplemented and changed throughout the fourteenth and 15th century makes it likely that the town council utilised its laws in court. Explicit evidence of the use of the written laws is, however, very scanty: there are no specific references to *Dat Boeck van Rechte*, *Dat Gulden Boeck*, or the copy of the *Waterrecht*. In fact, there is only one case in which the law is referred to at all.

Around 1489, a testimony by two men was recorded regarding a discussion aboard their ship. It concerned "wat dat recht were van der bedevart" [what the law was regarding pilgrimage]. A man had been drawn by lot to go on a pilgrimage to Santiago de Compostela because the ship had been "in great distress". The question was raised as to what the law provided for in such instances. Some of the medieval sea laws regulated this situation, in which a pilgrimage would be pledged to God in order to gain his mercy and save the ship from wrecking. The costs of this pilgrimage and an offering would be divided among the parties aboard the ship in the same manner as the contribution for jettison. In this case, two men replied that three pounds *groten* and one noble were due

to be paid to the pilgrim. This does not correspond entirely to the rule laid down in *Dat Boeck van Rechte* (art. 3) and *Dat Gulden Boeck* (art. 7), in which three English pounds and three English shillings were stipulated, but this variation may just be due to the fact that the rule was written over a century earlier. The skipper subsequently replied that he wanted to abide by the law of the land where they would run aground⁵². No further mention is made where the ship eventually landed, but that the testimony was made in Kampen indicates that the vessel returned home. More importantly, two men aboard the ship knew the rules in detail. This shows that the law (although not in its written form) was used and thought important. It also shows that the law was known among some men aboard the ship aside from the skipper. There is, however, no direct evidence of the use of the written laws in the sources.

Aberdeen

The Council, Bailie and Guild Court Registers form a very rich source for Aberdeen legal practice. Although the *Lawis of schippis* are referred to in none of the cases recorded in these registers, there is mention of *leges aquarum* in one instance and of *watter law* in another. The first term is used in an entry from the bailie court of 5 November 1454 about a matter regarding freightage. The Aberdeen assize decided that the merchants should pay half freightage for an unspecified journey which had apparently not been completed. The verdict was given with the reservation that if the skipper returned within forty days with a letter from the burgh of Edinburgh *ubi leges aquarum habentur*, stating that the merchants would have to pay full freight, then the latter would have to settle the whole amount⁵³.

The assize that had been chosen to judge this case was thus apparently not sure whether its verdict was correct according to the *leges aquarum* in which the council at Edinburgh was deemed more knowledgeable. Because the word *habentur* can be translated in different ways, it is impossible to make out whether Edinburgh actually ‘had’ water laws in written form, whether its council only ‘knew’ the laws and was known for its wisdom in such matters, or whether Edinburgh was seen as a higher court that ‘kept’ the laws. It is certain, however, that the assize did not use a written law in this case and did not consider itself wholly competent in maritime cases.

In a case from 1490, also heard before a bailie court, the subject was the payment of freightage. In a dispute between some merchants and the owners of a hulk, the assize judged that the merchants should receive their goods, but should give a surety to the owners “for as much freight as the owners may obtain of them by the water law in Veere or Arnemuiden”⁵⁴. The entry does not specify who the parties were or what voyage the hulk had undertaken, and why, therefore, the case was partly referred to those Netherlandish towns. Again, at least, the assize seems to have had no knowledge of the exact content of the *watter law* (which may be the *Vonnesse van Damme* or possible other customs valid in Veere or Arnemuiden), since it does not give an estimate of the amount that would need to be paid and the guarantee that needed to be given.

That the Scottish burghs would sometimes correspond with each other concerning the *Leges Quatuor Burgorum* confirms that a certain amount of uniformity existed in the legal practice of the Scottish burghs, and that the councils of the large towns themselves sought to establish this unity. In the late 1460s, for example, Aberdeen received letters from Perth, Edinburgh and Dundee about an inheritance case in which the latter two burghs quoted a chapter from the *Leges* which dealt with these cases⁵⁵. This and other examples show that the burghs had copies of the burgh laws⁵⁶.

In most cases, however, sentences were “concluded and delivered”, “ordained and delivered”, “ordained and given”, “determined and concluded” or “found and delivered” by the different assizes and courts. The only written laws that thus seem to have been available were the *Leges Quatuor Burgorum* and presumably copies of the Acts of Parliament. Judgments in cases that were not provided for in these laws were concluded, ordained, determined or ‘found’ by the juries in the different burgh courts without using any written laws.

There are not many direct references to written laws in the sources from the five researched towns. The only laws that are specifically named are the Hanseatic statutes in documents from Lübeck, Reval and Danzig. The terms Lübeck law and *waterrecht* are used in several sources, but these seem to have been utilised in a general sense and not to refer to a particular written law. In Danzig, one decision seems to have been in exact accordance with a written judgment. There is also some indirect evidence that the *Vonnesse van Damme* were adhered to in this town. In Kampen, the law was referred to once, but in this case the amount of money mentioned was different from that in the written law. The sources from Aberdeen rather indicate that no written sea law was present in this town.

None of the written laws was used by all five towns at any one time in the later Middle Ages. Indeed, the lawbooks were used in the courts only on a very irregular basis. Judgments would more often be assessments or conclusions of what was lawful in a particular case. Further research comparing the judgments of the courts with the contents of the law has confirmed that the written laws were in general only used when recent law compilations were available⁵⁷. Comparisons have also shown that even the decisions made in legal practice in cases of shipwreck, jettison and ship collision varied between the courts⁵⁸. Communalism therefore neither existed in the written laws nor in legal practice. The question that now remains is: why did international laws and an international legal practice not come into existence? The answer lies in the administration of maritime justice.

THE ADMINISTRATION OF MARITIME JUSTICE

Who administered justice?

The administration of maritime justice in general was conducted on two levels: on the ship itself and at the town courts. Very little is known about the practice of administering justice on ships due to a lack of sources. In the Lübeck Town Law the possibility

of bringing a complaint before the skipper and others on board the ship is mentioned, but none of the other laws refer to the jurisdiction of the skipper⁵⁹. In the Lübeck law it is laid down that, when the skipper passes a judgment according to maritime law, the case is settled and cannot be taken to another court⁶⁰. Although the article does not specify which cases could be taken before this ship's court, the skipper's jurisdiction must have been restricted to those cases in which he himself was not involved. Most of these cases would have concerned discipline aboard the ship, but perhaps disputes between skippers and merchants were also sometimes dealt with by skippers from other vessels.

The problem is that for the 13th and 14th centuries the written laws are the only sources for studying maritime law, so there is no knowing how justice was actually administered in this period. The fact that various written laws appeared at this time, with differing contents, suggests that separate jurisdictions existed within Northern Europe. For the 15th century there are sources based on legal practice, but these originate solely from the town courts. From these we know that maritime matters were at least occasionally dealt with by these courts. At a time when administrative writing became ever more widespread, we can also assume that more and more parties would choose to bring their matters before a court where the decisions would be registered in memorandum books or other town registers, instead of before an oral ship's court.

The administration of maritime justice in the towns of Northern Europe was generally undertaken by the council. Although other civil cases were also dealt with by lesser town courts, such as the *Niedergericht* [lower court] in Lübeck, maritime matters were reviewed exclusively by the council in most Northern European towns. This indicates that these cases were considered of sufficient importance to be handled by the full body of councillors and that the rich merchants and shipowners who resided in the council liked to keep the administration of such matters, in which they themselves were often involved, in their own hands⁶¹.

In Lübeck, the council also functioned as a court of appeal (*Oberhof*) for cases from other towns with Lübeck law, such as Reval. In towns with Magdeburg/Kulm law, the *Schöffengericht* [aldermen's court] was generally the highest court. In Danzig, however, the council had been granted this honour when it was appointed as the central maritime court for Prussia. In Kampen, maritime cases were judged by the council or by the aldermen and council, whereas in Scotland the bailie court was in charge of these, although some cases are known to have been handled by the guild court or by admiral deputies in an admiralty court. The decisions in the bailie court in maritime cases were generally made by assizes of worthy men, consisting of merchants and skippers and an occasional helmsman.

A choice of courts

In general it was the skippers and merchants themselves, therefore, who passed decisions in maritime matters at the town courts. But how did the parties involved in a

case decide which court was to pass judgment between them? One would expect that choosing a court to review a case, when skippers, merchants, shipowners and crew were from various towns or even territories, would have caused regular problems and may have instigated ideas for a supra-territorial court or common maritime laws. The fact is, however, that there is little evidence of such irregularities. Neither did a supra-territorial court or, as we have seen, a common written law or legal practice come into existence in Northern Europe.

In cases involving parties from different towns, there seem to have been few conflicts in deciding to which town court to go. A good example is the case in which a ship caught fire near the Norwegian coast on its way back from Bergen to Kampen, and in which a Staveren skipper and Lübeck merchants were involved⁶². In this case from 1484, the Staveren skipper appeared before the Lübeck court to demand payment of freightage from the Lübeck merchants for transporting goods from Kampen to Bergen and back. When a ship captained by an Amsterdam skipper and transporting cargo from three Kampen merchants wrecked near Danzig in around the same period, the matter was brought before the Danzig court⁶³. Based on such cases, therefore, matters seem to have been brought either before the home court of one of the parties involved, or to the port nearest the accident.

In those cases in which a conflict does become apparent, this conflict concerns the question of which law should be applied, rather than which court to go to. Three examples of such problems can be found in the sources. The first is documented in a letter from Alt-Stettin to Riga of 21 August 1425⁶⁴. A skipper from Alt-Stettin, Merten Jawerk, had loaded goods in Flanders which were to be brought to a burgomaster and some burghers in Riga. Unfortunately, the ship was wrecked near Gotland. Some of the goods were salvaged and apparently brought to Riga by alternative transport. The town council in Wisby decided, in accordance with the Wisby Town Law, that the merchants had to pay half the freightage for the lost goods and full freightage for the goods that were salvaged. Jawerk subsequently went to Riga to demand his freightage from the merchants, but these wished to be subjected to Riga law instead of Wisby law. When we consider both laws, it is easy to understand why the merchants would rather have been judged according to Riga law, because this law only required the merchants to pay freightage for the salvaged goods and not for those that were lost at sea. Since the town of Alt-Stettin wrote the extant letter to the town of Riga on behalf of the skipper, the latter did apparently not receive the desired freightage from the Riga merchants immediately. Whether he did so after the letter is not documented.

Another case in which there was a conflict over the question of which law had to be applied in a particular matter is from Danzig. In 1435, the *Großkomtur* [commander] of the Teutonic Order in Danzig referred a case to the town council because one of the two parties involved requested the *waterrecht* to be used (whereas the other wanted to be judged according to Kulm law), a law which the Grand Master of the Teutonic Order and his commander did not know well enough. They therefore appealed to the Danzig council to decide which of the two laws should apply in this case. They would

then have to refer it to the relevant court⁶⁵. It is remarkable that the court had a choice between sea law and Kulm law in this case, since the latter does not in its written form contain any maritime regulations. Again, there is no information about the outcome of this case, nor is there about the exact circumstances relating to this matter.

A third example concerns the seizure of goods, related to a journey at sea. This case was dealt with by the Lübeck court after an appeal from Stralsund. Both parties wished to be judged according to different laws: the plaintiff preferred *waterrrecht*, whereas the defendant thought Lübeck law should be applied. The Lübeck court decided that because the seizure had taken place within Stralsund (a town using Lübeck law), it should be handled “myt lubeschem rechte”⁶⁶. From these examples, it thus appears that the only discussion that did at times take place between the parties in legal matters concerned the question of which law should be applied (confirming that several laws were in use simultaneously) rather than which court was competent. Why, then, did a common supra-territorial law, or at least common regulations, not come into existence?

The impossibility of a supra-territorial medieval sea law

For a law to function there needs to be either an authority which can implement such a law from above or a community of people who swear an oath to abide by that law. Neither of these existed on a supra-territorial level in medieval Northern Europe. The Hanseatic League comes closest to the definition of a supra-territorial organisation that could formulate a common law, but it always remained a loose federation of autonomous towns and towns which were subject to different lords, and had no power to implement such a law. Every statute that was decided upon had to be confirmed by the council of each individual town in order to become valid. Comparing the laws of important Hanseatic towns such as Lübeck, Hamburg, Danzig and Riga, it becomes clear that especially these larger towns attached great value to having their own laws. No efforts to devise a general Hanseatic law were therefore made until the late 16th century, when the League had already lost most of its power to the thriving national states of the Baltic region.

Even if it would have been possible for the Hanseatic League to implement such a general law for its towns⁶⁷, the non-Hanseatic towns would still have been subject to other jurisdictions, such as those of England, Scotland, and Denmark. This patchwork of jurisdictions in medieval Northern Europe made the coming into being of a supra-territorial law or a common maritime court impossible. Even today, in the European Union, international laws only exist in very restricted areas, and many national regulations remain in existence and continue to differ from each other.

Practical solutions

The question remains how the parties decided to which court to bring their case, especially when burghers from several different towns were involved. As mentioned above, the cases were dealt with by the home court of either one of the parties, by the court of

the port of arrival or destination, which may have been different from the home towns of the involved parties, or, especially in cases of damage to ship and/or cargo, at the port nearest to where the accident had taken place. The Alt-Stettin skipper pleaded his case before the Wisby court because his ship was wrecked near Gotland. He did, however, subsequently have to go to Riga to claim his freightage from the merchants who had transported goods on his vessel. The Staveren skipper from the ship that burned off the coast of Norway went to Lübeck, because that was where the involved merchants lived. The fact that merchants often no longer accompanied their goods resulted in the skipper having to go to the merchants' home town if he wanted to claim freightage or compensation for damages. In the case of the Amsterdam skipper and the Kampen merchants, the merchants may have been on board or in Danzig. Claimants in general probably chose a court out of practical reasons because it was in their best interest to receive any claimed sums of money as soon as possible.

That a different law than the claimant's own may have been valid at this chosen court was in general probably not much of an issue. In the Kampen Town Law we find a remark supporting this:

We have written this law regarding ships which come to our ports with guests or with burghers [of Kampen], and when they come to other ports in other lands, they should abide by the law that is decent and customary there⁶⁸.

The Kampen council expected its burghers to subject themselves to foreign laws when abroad, even though it supposed these laws to be different from its own. That skippers and merchants expected other laws to apply abroad is also confirmed by the case from Kampen mentioned above in which a pilgrimage was pledged when a vessel was in need. Some people aboard the ship were wondering what the Kampen law laid down in cases like this, but the skipper replied that he wanted to abide by the law of the place where his ship would run aground.

CONCLUSIONS

The regulation of sea shipping, though characterized by contacts and relations between people from various different territories, has been shown to have been far from supra-territorial in medieval Northern Europe. In Northwestern Europe some customary sea laws came into existence, but these needed the authority of kings or lesser lords to be implemented as the law in a particular country or region. At the same time, many Northern European towns created their own maritime regulations as part of their law. Many different jurisdictions were therefore in charge of maritime justice in Northern Europe, sometimes making use of the differing collections of written laws available to them, but at other times deciding through common sense what was lawful in a particular case. Even based on common sense, however, the different courts would come to varying decisions.

Although merchants and skippers had specific needs which made the drawing up of maritime laws necessary, they did not as a whole make up a separate legal community

subject to its own jurisdiction. Medieval maritime traders were, in general, first and foremost burghers of a town and as such subject to its jurisdiction. When encountering legal problems abroad, practical reasons dictated their decision as to where they would take their case to court. This would often mean that they had to seek justice from a foreign legal authority. However, having to deal with different customs and uses was inherent to medieval international trade, and merchants and skippers therefore probably did not think much of bringing their matters before the court of a foreign port where they had in general been granted equal rights to a fair trial as resident traders.

NOTES

- ¹ K.-F. Krieger, *Ursprung und Wurzeln der Rôles d'Oléron*, Cologne - Vienna 1970, p. 72.
- ² For example: R. Wagner, *Handbuch des Seerechtes I*, Leipzig 1906, p. 67; T. Runyan, *The Rolls of Oleron and the Admiralty Court in Fourteenth-Century England*, in "American Journal of Legal History", 1975, 19, p. 98; O.F. Robinson, T.D. Fergus, W.M. Gordon, *An Introduction to European Legal History*, Abingdon 1985, p. 161.
- ³ Northwestern European maritime law is generally considered to constitute a largely separate tradition from the law of the sea in the Mediterranean area and both traditions have their own historiography. See for example H. Pohlmann, *Die Quellen des Handelsrechts*, in H. Coing (ed.), *Handbuch der Quellen und Literatur der neueren europäischen Privatrechtsgeschichte I, Mittelalter (1100-1500). Die gelehrten Rechte und die Gesetzgebung*, Munich 1973, p. 806; G. Landwehr, *Seerecht (Seehandelsrecht)*, in *Handwörterbuch zur deutschen Rechtsgeschichte IV*, Berlin 1990, coll. 1598-1605; Wagner, *Handbuch des Seerechtes* cit., p. 67; K. Wolter, *Die Schiffrichte der Hansestädte Lübeck und Hamburg und die Entwicklung des Hansischen Seerechtes – unter besonderer Berücksichtigung der rechtlichen Bestimmungen über Reisenotlagen und Schiffskollisionen*, Hamburg 1975, p. 2. In this chapter the focus will therefore solely be on Northwestern European sea laws and legal practice.
- ⁴ This chapter is based on my thesis *Medieval Maritime Law and its Practice in the Towns of Northern Europe. A Comparison by the Example of Shipwreck, Jettison and Ship Collision*, unpublished PhD Thesis, University of Aberdeen 2004, and on the forthcoming publication of this thesis on the website of the library of the University of Groningen.
- ⁵ C. Müller-Boysen, *Kaufmannsschutz und Handelsrecht im frühmittelalterlichen Nordeuropa*, Neumünster 1990, pp. 138-139.
- ⁶ In addition, they were sometimes granted a small space in the hold of the ship to transport goods on their own account. This was known as *voeringe*.
- ⁷ J. v. der Decken, *Das Seearbeitsrecht im Hamburger Stadtrecht von 1301 bis 1603*, Frankfurt am Main 1995, pp. 34, 42.
- ⁸ The *Rôles* did not originate on Oléron, as the name might suggest. The original of these written laws was presumably kept on the island and copyists of the text subsequently joined the name of the island to the law. In the oldest extant copy (the *Liber Horn*) it says: "Ceo est la copie de la chartre Doliroun des jugemenz de la meer". Krieger, *Ursprung und Wurzeln* cit., p. 120.
- ⁹ Guildhall Archives, London, Ms. Liber Horn and Ms. Liber Memorandum.
- ¹⁰ This report claims that Richard I (1189-99) wrote the laws at Oléron on his way back from the Holy Land and subsequently brought them to England. T. Twiss (ed.), *The Black Book of the Admiralty I*, London 1871, p. lviii. This is not consistent with historical fact, but the mention of the laws does show that they were in use at the time of the report.

- ¹¹ A privilege from King Charles V of France granted Castilian merchants the right to be judged according to the “coutume de la mer et les droiz de Layron” at the court of Harfleur. Art. 42 of the ordinance of April 1364, in Secousse (ed.), *Ordonnances des Roys de France de la troisième race, recueillies par ordre chronologique IV*, Paris 1734, pp. 423-438 (art. 42 is on p. 436).
- ¹² The texts of the various manuscripts show that there was probably more than one translation. Frankot, *Medieval Maritime Law* cit., p. 43.
- ¹³ This date is based on additional research for the forthcoming internet publication of a revised version of my thesis (*Of Laws of Ships and Shipmen. Medieval Maritime Law and its Practice in the Towns of Northern Europe*, forthcoming 2007, § 5.5).
- ¹⁴ The *Ordinancie* is sometimes called *Ordinancie van Amsterdam* or *Staveren*, due to these placenames having been named as their place of origin in some of the manuscripts. The actual place of origin is irrelevant, as the laws are codified customary laws which were presumable held in the Zuiderzee area before having been written up.
- ¹⁵ See for example: Wolter, *Die Schifffrechte der Hansestädte* cit., p. 41.
- ¹⁶ The *Privilegieboek* of Amsterdam (ca. 1413) and the *Oldermansboek* of Groningen (ca. 1434-39).
- ¹⁷ The words “town law” in this study indicate a collection of customs, privileges and by-laws (*keur, Willkür*). Cf. G. Dilcher, *Stadtrecht*, in K.S. Bader, G. Dilcher, *Deutsche Rechtsgeschichte. Land und Stadt – Bürger und Bauer im alten Europa*, Berlin 1999, p. 613.
- ¹⁸ In this letter, in which the council of Hamburg provides that of Lübeck with advice on some maritime regulations, the sea law is referred to as *Scipseghelinghe*. K. Hohlbaum (ed.), *Hansisches Urkundenbuch (HUB) I*, Halle 1876, no. 538 (1259).
- ¹⁹ “De meine raet unde dhe borghere van der stad van Hamborch hebbet dit schiprecht gewilkoret unde uth ghegheven.” Hamburg Ship Law, art. 1, in J.M. Lappenberg, *Die ältesten Stadt-, Schiff- und Landrechte Hamburgs*, Aalen 1966, reprint of Hamburg 1845.
- ²⁰ “Hyr eyndet dat Gotlansche water recht dat de gemeyne kopman unde schippers georderet un ghemaket hebben to Wisby, dat sik alle man hyr na richten mach.” Colophon in *Dat Gotlansche Waterrecht*, Osnabrück 1967, facsimile of Copenhagen 1505.
- ²¹ All the constituent parts were not correctly identified until the 19th century.
- ²² D.C.J. Schlyter (ed.), *Wisby Stadslag och Sjöriätt*, Lund 1853, p. xcv.
- ²³ J. Bolland (ed.), *Die Bilderhandschrift des hamburgischen Stadtrechts von 1497. Erläutert von Heinrich Reincke*, Hamburg 1968, p. 144.
- ²⁴ K. Koppman (ed.), *Die Recesse und andere Akten der Hansetage von 1256-1430*, Leipzig 1870-76 (*HR 1*), II, no. 156, 1378 May 30, § 23; no. 157, 1378 May 30, §§ 1-4; *HR 1*, II, no. 220, 1380 Oct 21, §§ 18-19; *HR 1*, VI, no. 68, 1412 Apr 10, §§ 32-34, 40-43, 47-48; B. §§ 28-34, 44; *HR 1*, VI, no. 397, 1417 May 20-Jul 28, §§ 33-35, 109, 114-116; no. 398, 1417 Jun 24, §§ 14-23; *HR 1*, VI, no. 556, 1418 Jun 24, A. §§ 65-68; B. §§ 34-46; no. 557, 1418 Jun 24, §§ 20-32; G. Freiherr von der Ropp (ed.), *Die Recesse und andere Akten der Hansetage von 1431-1476*, Leipzig 1876-1890 (*HR 2*), I, no. 321, 1434 Jun 5, §§ 13, 20-22, 29-30; *HR 2*, I, no. 396, 1435 May, §§ 1-6; *HR 2*, II, no. 439, 1441 Mar 12, §§ 22-24, 30-31; *HR 2*, III, no. 288, 1447 May 18, §§ 30-37, 40, 54, 55, 63-65, 79, 81-82, 88-95; *HR 2*, VI, no. 356, 1470 Aug 24, §§ 28, 31-33, 38-40, 42.
- ²⁵ D. Schäfer, F. Töchen (eds), *Die Recesse und andere Akten der Hansetage von 1477-1530*, Leipzig - München 1881-1913, I, no. 367, 1482 Apr 22.
- ²⁶ The term customary sea laws (*Seegewohnheiten*) has been adopted from Götz Landwehr, *Das Seerecht der Hanse (1365-1614)*, Hamburg 2003, p. 13. Landwehr also makes a distinction between these customary laws and the maritime regulations of the towns.
- ²⁷ Dilcher, *Stadtrecht* cit., pp. 613-614.
- ²⁸ Cf. with the use of Roman law in the Italian city states in Ann Katherine Isaacs’ chapter.

- ²⁹ Frankot, *Medieval Maritime Law* cit. The choice of towns was first and foremost based on the availability of sources, which is relatively good for each of the five towns. An even spread of towns across Northern Europe was an additional desideratum.
- ³⁰ We can be sure that Lübeck possessed copies of all the *Hanserecesse* and made use of them, even though not all of them are still available in manuscript form today. As the unofficial head of the Hanse, Lübeck actively took part in devising these rules and was in charge of replicating the *Hanserecesse* to be sent out to all other active Hanse towns.
- ³¹ Initially, the German burghers of Danzig probably made use of unwritten Lübeck law. A copy of Lübeck law was requested for Danzig by Duke Swantopolk, then ruler of Eastern Pomerania, in 1263. Only thirty years later, however, Danzig was granted Magdeburg law by King Przemysław of Poland (1294-5). In 1346, the Teutonic Order provided the town with Kulm law, which contained mainly Magdeburg law.
- ³² The relation between Kampen and the Hanse was troubled for a long period of time. In addition to cooperating with the Hanseatic towns, the town occasionally functioned as a neutral power between the Hanseatic League and its enemies, and sometimes as a blockade breaker at the expense of the Hanse. Despite this, the town was very interested in the activities of the League and attended many meetings. In 1441, Kampen applied for (re)admission into the Hanse and was accepted. It remained a member in the 16th century.
- ³³ P.G.B. McNeill (ed.), *The Practicks of Sir James Balfour of Pittendreich II*, Edinburgh 1963, pp. 614-644; W. Welwod, *An Abridgement of All Sea-Lawes*, London 1613, pp. 3, 49; P.J. Hamilton-Grierson (ed.), *Habakkuk Bisset's Rolment of Courtis II*, Edinburgh 1920-21, pp. 202, 250-256.
- ³⁴ For my research into maritime law, I compared the regulations and court decisions regarding these three subjects. Frankot, *Medieval Maritime Law* cit.
- ³⁵ B. Diestelkamp, *Reichsweistümer als normative Quellen*, in P. Classen (ed.), *Recht und Schrift im Mittelalter*, Sigmaringen 1977, p. 309.
- ³⁶ "Begherende des van deme rade vorscreven eyn Lubesch recht afftoseggende". Archiv der Hansestadt Lübeck (AHL), Altes Senatsarchiv (ASA) Kanzlei, Niederstadtbuch (NStB) (Urschrift) 1451-1465 Palmarum, fol. 468r (W. Ebel (ed.), *Lübecker Ratsurteile (LRU) IV*, Göttingen 1967, no. 52), 1461 Mar 8.
- ³⁷ Lübeck functioned as a court of appeal for other towns using Lübeck law. See also below.
- ³⁸ "Dat recesz van den gemenen Hanse steden int jar XLVII." *LRU IV*, no. 117b (formerly AHL, ASA Interna, Appellationen, Konv. 17, no. 174), 1471 Jun 22. This citation from *LRU IV*, no. 117a.
- ³⁹ *LRU IV*, no. 282a (AHL, Codex Ordaliorum Lubecensium [Cod. Ord. Lub.], no. 239), 1486 May 19.
- ⁴⁰ Indeed, for Hanseatic statutes to gain validity, they had to be incorporated into the town law. Only then could the population of a town swear an oath to abide by these regulations. Landwehr, *Seerecht der Hanse*, p. 30; E. Pitz, *Bürgerreinigung und Städteeinung. Studien zur Verfassungsgeschichte der Hansestädte und der deutschen Hanse*, Cologne 2001, pp. 408-409.
- ⁴¹ *LRU IV*, no. 282 b (formerly AHL, ASA Interna, Appellationen, Konv. 17 fasc. 34), 1486 Mar 6.
- ⁴² For example: Tallinna Linnaarhiiv, Tallinna Magistraat, no. Bi 3, fol. 46r [no date, late 15th century].
- ⁴³ "van geworpenn gude hefft de raed besloten und utghesproken". Archiwum Państwowe Gdańsku (APG), 300, R/Fq, 1, fol. 19v.
- ⁴⁴ Diestelkamp, *Reichsweistümer* cit., p. 310; W. Ebel, *Geschichte der Gesetzgebung in Deutschland*, Göttingen 1988, 2nd edition extended by F. Ebel, p. 16.
- ⁴⁵ APG, 300, R/Fq, 1, fol. 23v-24r.
- ⁴⁶ "Wente desulven zaken in vortijden bij dem rade nicht gehandelt noch gehoret syn, so heft de rath daromme geschreven dem Copmanne to Brugge und en gebeden dat se daromme in radeswyse willen vorhoren by dem rade to Damme wes eyn recht darvan syn mach."

- ⁴⁷ APG, 300, 27/2, fol. 73v-74v, Danzig to [Lübeck], 1433 on or before May 30.
- ⁴⁸ In the letter, the words “after the *bonnig* had been broken” are used, whereas in the judgment on which the quotation is based the words “wanted to break the *bonnich*” can be found. I have not come across the term *bonnig* anywhere else.
- ⁴⁹ The skipper quoted judgment no. 5, but the council eventually applied the fourth judgment of its collection of judgments. Frankot, *Medieval Maritime Law* cit., p. 156.
- ⁵⁰ APG, 300, 27/7, fol. 52v-53r, Danzig to Kolberg, Stettin, Greifswald and Stralsund, 1491 Dec 24.
- ⁵¹ Selling ships outside the Hanse was forbidden according to article 81 of the 1447 *Hanserecesse* (*HR* 2, III, no. 288); trade with persons outside the Hanse according to article 14 of the 1447 *Hanserecesse* (*HR* 2, I, no. 321).
- ⁵² Gemeentearchief Kampen (GAK), Rechterlijk Archief, no. 6, fol. 129v, [1489?].
- ⁵³ Aberdeen City Archive (ACA), Aberdeen Council Register (ACR) V¹, p. 216, Curia ballivorum, 1454 Nov 5.
- ⁵⁴ “For alsme kile fraucht as the auneris may optene of them be the watter law in the Feire or the Moy”. ACA, ACR VII, p. 170, Curia ballivorum, 1489/90 Mar 2.
- ⁵⁵ H.L. MacQueen, W.J. Windram, *Laws and Courts in the Burghs*, in M. Lynch, M. Spearman, G. Stell (eds.), *The Scottish Medieval Town*, Edinburgh 1988, p. 219.
- ⁵⁶ W. Croft Dickinson (ed.), *Early Records of the Burgh of Aberdeen*, Edinburgh 1957, p. cxliii; T. Thomson, C. Innes (eds.), *The Acts of the Parliaments of Scotland I*, Edinburgh 1814, p. 723.
- ⁵⁷ Frankot, *Medieval Maritime Law* cit., pp. 242-243.
- ⁵⁸ *Ibid.*, p. 246.
- ⁵⁹ Some regulations in the *Rôles d’Oléron* do refer to the authority of the skipper in cases of discipline aboard the ship.
- ⁶⁰ Lübeck Town Law, art. 85, in G. Korlén (ed.), *Norddeutsche Stadtrechte. Das mittelniederdeutsche Stadtrecht von Lübeck nach seinen ältesten Formen*, Lund- Copenhagen 1951. This article was written between 1263 and 1275.
- ⁶¹ Cf. with the Italian ‘merchant’ states in Ann Katherine Isaacs’ chapter.
- ⁶² AHL, ASA Kanzlei, NStB (Reinschrift) 1481-88, fol. 265r (W. Ebel (ed.) *LRUI*, Göttingen 1955, no. 321), 1484 Aug 21.
- ⁶³ APG, 300, D/20, 234, Amsterdam to Danzig, 1486 Oct 27. Calendar in H.A. Poelman (ed.), *Bronnen tot de geschiedenis van den Oostzeehandel I, 1122-1499 eerste stuk*, The Hague 1957, no. 2823.
- ⁶⁴ K. Kunze (ed.), *HUB VI*, Leipzig 1905, no. 549, 1425 Aug 21.
- ⁶⁵ APG, 300, D/39, 57, Grand Master to Danzig, 1435 Mar 19.
- ⁶⁶ *LRUIV*, no. 239 (AHL, Cod. Ord. Lüb., no. 189), 1483 Oct 10.
- ⁶⁷ This would only have been possible if all the autonomous towns and, in cases where the towns were subject to a local lord, relevant local lords had agreed to implement such a general law in their respective jurisdictions.
- ⁶⁸ “Dit recht heb wi laten scrijven van scepen de comen mit ghasen oft mit borgheren tot onser havene ende soe wannen sie comen tandern havenen in andern lande, dar nemen sie dat recht alsoe daer zedelic ende woentlic is.” GAK, Oud Archief, no. 5, *Dat Boeck van Rechte*, art. 5; no. 6, *Dat Gulden Boeck*, art. 14.

BIBLIOGRAPHY

- Decken J. v. der, *Das Seearbeitsrecht im Hamburger Stadtrecht von 1301 bis 1603*, Frankfurt am Main 1995.
- Diestelkamp B., *Reichsweistümer als normative Quellen*, in Classen P. (ed.), *Recht und Schrift im Mittelalter*, Sigmaringen 1977.

Dilcher G., *Stadtrecht*, in Bader K.S., Dilcher G., *Deutsche Rechtsgeschichte. Land und Stadt – Bürger und Bauer im alten Europa*, Berlin 1999.

Ebel W., *Geschichte der Gesetzgebung in Deutschland*, Göttingen 1988, 2nd edition extended by F. Ebel.

Frankot E.B.I., *Medieval Maritime Law and its Practice in the Towns of Northern Europe. A Comparison by the Example of Shipwreck, Jettison and Ship Collision*, unpublished PhD Thesis, University of Aberdeen 2004.

Krieger K.-F., *Ursprung und Wurzeln der Rôles d'Oléron*, Cologne - Vienna 1970.

Landwehr G., *Das Seerecht der Hanse (1365-1614)*, Hamburg 2003.

MacQueen H.L., Windram W.J., *Laws and Courts in the Burghs*, in Lynch M., Spearman M., Stell G. (eds.), *The Scottish Medieval Town*, Edinburgh 1988.

Müller-Boysen C., *Kaufmannschutz und Handelsrecht im frühmittelalterlichen Nordeuropa*, Neumünster 1990.

Pitz E., *Bürgereinung und Städteeinung. Studien zur Verfassungsgeschichte der Hansestädte und der deutschen Hanse*, Cologne 2001.

Schlyter D.C.J. (ed.), *Wisby Stadslag och Sjörätt*, Lund 1853.

Wolter K., *Die Schiffrichte der Hansestädte Lübeck und Hamburg und die Entwicklung des Hansischen Seerechtes – unter besonderer Berücksichtigung der rechtlichen Bestimmungen über Reisenotlagen und Schiffskollisionen*, Hamburg 1975.