

Chapter 8

Dutch *De Jure* Myths (1581–1764)

Based on the findings on European colonial law and Spanish colonial legal provisions between 1493 and 1573, this chapter examines the emerging subsequent legal provisions of famous Dutch jurist Hugo Grotius of 1609 (*Mare Liberum*) and 1625 (*De Jure Belli ac Pacis*), which present the most elaborated legal foundation of the seventeenth century and main legal source of the valid colonial law about occupation and treaty making. After a comparison of the Grotian and Vitorian legal thought and provisions, which concludes that Grotius deviates from Vitoria's "just" war causes in one significant aspect, this chapter is investigating the reflection of the Grotian colonial law in the practices of the West India Company (WIC), established in 1621, then the practices of the Dutch on the Wild Coast and elsewhere until the disbandment of the first WIC in the early 1670s.

The Legal Writings of Hugo Grotius (1609–1630)

Similar to the papal bulls of 1493 for the Columbus voyages, the legal writings of Hugo Grotius *Mare Liberum* and *De Jure Belli ac Pacis* provided the legal foundation for the first Dutch enterprises in the Americas and elsewhere, which commenced during the "Dutch revolt" against the Spanish Crown.¹ Starting with the grant of the "deputies of the nobility" for the "first voyage to the Indies" to the English Captain Butz in June 1581² and followed by several voyages of Dutch merchants from Rotterdam, Amsterdam, Haarlem, Middelburg, and Eukhuizen to "the land of Guiana"³ between 1597 and 1604,⁴ a population project for Guiana

1 Armitage, "Introduction", p. xii.

2 Along with those of "Dordrecht, Haarlem, Delft, Gouda, and Gorinchen" (Holland Estates, "Proceedings", 1581, in: BC, No. 1, pp. 3–9, at 6).

3 Dutch States General, "Proceedings", 1597, in: BC, No. 2, pp. 9–11, at 11; Holland Estates, "Proceedings", 1597, in: BC, No. 3, pp. 11–12, at 11, respectively to the "country from the north coast of Brazil and the regions of Guiana" (Dutch States General, "Proceedings", 1 March 1604, in: BC, No. 11, p. 36).

4 For example, those voyages were granted in September 1597 (Dutch States General, "Proceedings", 1597, in: BC, No. 2, pp. 9–11), November 1598 (Dutch States General, "Proceedings", 1598, in: BC, No. 4, pp. 12–13), and November 1599 (Dutch States General, "Proceedings", 1599, in: BC, No. 6, pp. 22–23). See also Holland Estates, "Proceedings", 1597, in: BC, No. 3, p. 11; Dutch States General, "Proceedings", 1599, in: BC, No. 6, pp. 22–23; Zeeland Estates, "Proceedings", 20

was, nevertheless, denied in 1603 after the Vereenigde Oostindische Compagnie (VOC) was established in March 1602,⁵ since the States General “cannot for the present take action on the matter”.⁶ Instead, the Geoctroyeerde Westindische Compagnie (WIC) was established in June 1621 by Willem Usselincx, after the end of the Twelve Years’ Truce with Spain in the same year (1621).⁷ Nevertheless, the Dutch were already present on the South American Wild Coast with tobacco plantations and forts in August 1613 and first short-term settlement in 1615 on the rivers Corentyne,⁸ Suriname, Cayenne, Wiapoco, and Amazon, some of them among Indigenous Peoples⁹ and had also entered the scene in North America in 1614 with New Netherland.¹⁰

In this context, Hugo Grotius was, with certainty, involved in the negotiations of both WIC and VOC. Notably, the Dutch jurist had participated in the

November 1599, No. 7, pp. 23–25, at 24; Dutch States General, “Proceedings about the Action relative to a certain Freedom of Convoy, provisionally granted by the States General, 1602, and awarded by the Admiralty of Amsterdam, 1604”, 10 July 1602/12 January 1604, in: BC, No. 8, pp. 25–26; W. Usselincx (?), “Memorial to the Dutch States General on the Colonization of Guiana”, 1603, in: BC, No. 9, pp. 27–36, at 27; Dutch States General, “Proceedings”, 25 February 1603, in: BC, No. 10, p. 36; Dutch States General, “Proceedings”, 1 March 1604, in: BC, No. 11, p. 36. The first full report of the Dutch voyages represents the so-called “Cabeliau report” of February 1599, which narrates the voyage of skipper Jacob Cornelisz. alias Oom from Schiedam between December 1597 and October 1598 (A. Cabeliau, “Report to the States General of the earliest Dutch voyage to the Coast of Guiana (3 December 1597–28 October 1598)”, 3 February 1599, in: BC, No. 5, pp. 13–22; the same report also in: BRC, serial No. 8, pp. 18–20).

5 Dutch States General, “Proceedings”, 25 February 1603, p. 36.

6 Ibid. The Dutch Original reads “populatie van Guiana” (ibid.).

7 M. J. van Ittersum, “The Long Goodbye: Hugo Grotius’ Justification of Dutch Expansion Overseas, 1615–1645”, *History of European Ideas* 36 (2010) 4, pp. 386–411, at 388.

8 Alternative spellings are Corentine or Corantijn.

9 Council of the Indies, “Report to King of Spain”, 29 July 1615, in: BRC, serial No. 17, pp. 43–44, at 43. In contrast, the Dutch settlement New Netherland on Manhattan island was established after the WIC establishment in 1621, as the “provisional order” for the settlement was granted in 1624 for “colonists going to New Netherland”, followed by “Instructions” and “Further Instructions” for the first (provisional) Director Willem Verhulst in 1625 (J. Schiltkamp, “On Common Ground. Legislation, Government, Jurisprudence, and Law in the Dutch West Indian Colonies: The Order of Government of 1629”, *De Halve Maen* LXX (Winter 1997) 4, pp. 73–80, at 73), which were followed by an agreement with the Lenape of Manhattan in 1626 (Banner, *How the Indians Lost Their Land*, pp. 19; 75; Jennings, *The Invasion of America*, p. 132).

10 The States General of the United Netherlands, “General Charter for Those Who Discover Any New Passages, Havens, Countries, or Places”, The Hague, 27 March 1614, Avalon Collection: http://avalon.law.yale.edu/17th_century/charter_010.asp; States General of the United Netherlands, “Grant of Exclusive Trade to New Netherland”, 11 October 1614, The Hague, https://avalon.law.yale.edu/17th_century/charter_011.asp.

founding negotiations of the WIC “until August 1618”¹¹ and had also “cooperated closely” with the Dutch East India Company (VOC) between 1604–1615,¹² leading to the publication of *Mare Liberum* as part of *De Jure Pradae*¹³ in 1604,¹⁴ at the request of the VOC, to legally dismiss Portuguese claims in the East Indies¹⁵ after the Dutch had seized the Portuguese carrack Santa Catarina in the Singapore Straits in 1603.¹⁶ *Mare Liberum* was published as monograph by Elzevier in 1609,¹⁷ wherein Hugo Grotius concludes that the Portuguese had “fail[ed]” in acquiring legal title to possession and obtaining the “right over the people, countries, and jurisdictions”.¹⁸ Moreover, *Mare Liberum* confirms the colonial legal provisions of the Spaniard Francisco de Vitoria by dismissing discovery (*inventio*) and *res nullius* as valid legal means of colonial appropriation,¹⁹ since “discovery per se gives no legal rights over things unless before the alleged discovery they were *res nullius*”,²⁰ which does, most notably, not apply to areas of

11 Van Ittersum, “The Long Goodbye”, p. 386; Kambel and MacKay, *The Rights of Indigenous Peoples and Maroons in Suriname*, pp. 40–41.

12 Van Ittersum, “The Long Goodbye”, p. 386. Martine van Ittersum also points out that Grotius had continued during the truce period, “as the [VOC] Company’s spokesman and political adviser” and had acted as “chief negotiator” in the dispute with the English East India Company (EIC) in spring 1613 in London and in this context had prepared all the Dutch memoranda and “the final report for the States General” (*ibid.*, pp. 388–389).

13 David Armitage in this context emphasizes that Grotius initially named the work *De rebus Indicis* (On the Affairs of the Indies), which was renamed by the first editor in *De Jure Praedae Commentarius* (Commentary on the Law of Prize and Booty) (Armitage, “Introduction”, p. xiii). In addition, van Ittersum revealed that this Commentary was only discovered in 1864 and “[i]ts sole surviving copy is Ms. BPL 917 in Leiden University Library”, representing “an autograph of 163 folios” (Van Ittersum, “The Long Goodbye”, p. 388).

14 *Ibid.* See also Kambel and MacKay, *The Rights of Indigenous Peoples and Maroons in Suriname*, p. 41, while David Armitage asserts that “[i]ndeed, it was at the insistence of the Zeeland Chamber of the VOC in the autumn of 1608 that Grotius prepared *Mare Liberum* for publication, just as it had been at the VOC’s behest that he had originally written it as part of a larger work in 1604” (Armitage, “Introduction”, p. xii).

15 *Ibid.*, p. 14.

16 Van Ittersum, “The Long Goodbye”, p. 388.

17 Armitage, “Introduction”, p. xi.

18 Grotius, *Mare Liberum*, p. 20. Examining the three components possession, navigation, and trade, Grotius also argued that the “Portugals” had not acquired an exclusive right to navigating the sea (p. 38) and also not the right for exclusively trading with the Indians (Grotius, *Mare Liberum*, pp. 52–57).

19 Hugo Grotius specifies the area as “Java, Tobrobana and the greatest part of the Moluccas”, whereas the second usual refers to Ceylon/Sri Lanka, but, as David Armitage notes, was applied by Hugo Grotius as reference to Sumatra (Armitage, “Introduction”, p. 13, Annotations).

20 Kambel and MacKay, *The Rights of Indigenous Peoples and Maroons in Suriname*, p. 41.

“native rulers”.²¹ Grotius reasons that “[t]hese islands [. . .] always had their kings, their commonwealth, their laws and their liberties”, wherefore “the Portuguese are not lords of those parts wither the Hollanders go” and “have no right of dominion over those Indians”, as “no man is lord of that thing which neither he himself ever possessed nor any other in his name”.²² Hence, Grotius insists that “neither the substance nor jurisdiction of the Indians should be accounted in that nature as if they had been no man’s before”. Confirming Francisco Vitoria’s legal provision of the sixteenth century, Grotius, furthermore, emphasized that they have “both publicly and privately authority over their own substance and possessions, which without just cause could not be taken from them”.²³

Hugo Grotius elaborated the “just” causes of “conquest” as early as 1625 in his eponymous legal treatise *De Jure Belli ac Pacis*,²⁴ which were categorized as (1) self-defense,²⁵ (2) recovery of property as “the obtaining of that which belongs to us or is our due”²⁶ and (3) punishment as “a return for a crime”.²⁷ In result, Hugo Grotius confirms some of the most relevant of Vitoria’s eight “just” causes of war, such as the prohibition of commerce, which was rejected by his

²¹ Armitage, “Introduction”, p. xv. The Dutch jurist reaffirmed this in “The Law of War and Peace” of 1625 by stating that “discovery” only applies “to those things [sic!] which belong to no one” [res nullius] (Grotius, *The Law of War and Peace*, Book 2, chapter 22, “On Unjust Causes of Wars”, para IX). See Gilbert, *Indigenous Peoples’ Land Rights*, p. 48.

²² Grotius, *Mare Liberum*, p. 13. At the same time, Grotius reaffirms Vitoria (chapter 3) by likewise rejecting the legal validity of papal donations, since the pope had no authority to grant the Portuguese any “right of dominion over the Indians by title” (Grotius, *Mare Liberum*, pp. 15–16; 17; 38).

²³ *Ibid.*, pp. 14; 20. Lindley, *Backward Territory*, p. 13, who indicated that “Grotius followed Vitoria in maintaining that the Spaniards had no right to take the Indians’ territory” (*ibid.*). Instead, Grotius determines it as “shameless [. . .] to claim for oneself by right of discovery what is held by another” (Grotius, *The Law of War and Peace*, Book 2, chapter 22, “On Unjust Causes of Wars,” Part IX). See Lindley, *Backward Territory*, pp. 13–14; Doyle, *Title to Territory*, pp. 38–39.

²⁴ Nonetheless, Grotius dismissed a Portuguese title based on conquest in *Mare Liberum*, since the Portuguese “had no war at that time with many nations to whom the Hollanders went and so therefore no right could be gotten to them” (Grotius, *Mare Liberum*, p. 15).

²⁵ Grotius clarifies that self-defence is not applicable as just cause for a public war, when the war “has as its only purpose to weaken the power of a neighbour” even it “growing power” would be “a source of danger” since “complete security is never guaranteed to us” (Grotius, *The Law of War and Peace*, Book 2, chapter 1, “The Causes of War: First, Defence of Self and Property”, Part XVII) and also prohibited for the party “who has himself given just cause for war” since “[h]e who has done injury to another ought first to offer satisfaction to him whom he has injured” (*ibid.*, Part XVIII).

²⁶ *Ibid.*, Part II.

²⁷ *Ibid.*, chapter 20, “On Punishments”, Part I.

Portuguese contemporary Serafim De Freitas,²⁸ and the punishment of cannibalism by war “against those who eat human Flesh”, which was perceived as a violation of the law of nature.²⁹ More general, Grotius also indicates that in case of a “just” cause of war (conquest), the victor legally acquires both property and sovereignty, since “(j)ust as private property can be acquired by means of a war that is lawful [. . .], so by the same means public authority, or the right of governing, can be acquired”,³⁰ which includes “both the right of him who rules over a people and the right, which the people itself has in the sovereign power; only in so far, however, as is permitted by the measure of the penalty which arises from a crime, or of some other form of debt”.³¹ Nonetheless, the area would be only “regarded as captured”, when “surrounded by permanent fortifications that the other party will have no access to it openly unless these have first been taken”.³²

Likewise, Hugo Grotius agrees with Vitoria on some “unjust” causes of war, such as the “desire for richer land”,³³ the punishment of infidels,³⁴ and the denial of Christianity,³⁵ since “[w]ars cannot justly be waged against those who are unwilling to accept the Christian religion”.³⁶ However, the Dutchmen significantly differs from Vitoria in the central aspect of the spread of Christianity as “just” cause of waging war, which Vitoria had declared as “just” in the cases, when Indigenous Peoples hinder the preaching of the Gospel or conversion, which is clearly rejected by Hugo Grotius, since “[w]ar cannot be justly made against those who refuse to embrace the Christian Religion” and also dismisses “the Use of compulsive Means, in gaining Converts to Christianity”, since “it

²⁸ Doyle, *Title to Territory*, pp. 38–39; 42. Almost a century later, John Locke in his *Two Treatises of Government* of 1690 indicated that the conqueror in a “just cause” war is acquiring “a despotic right over the persons of all those who actually aided and supported the war against him”, but this appropriation is not extending to “the children of the captives” and in the case that the conqueror “tries to take their properties, he is an aggressor, and thereby puts himself into a state of war against them” (J. Locke, *Second Treatise of Government*, 1650, www.earlymoderntexts.com/assets/pdfs/locke1689a.pdf [accessed 18 September 2018], chapter 16, pp. 58–65, para. 196).

²⁹ Grotius, *The Law of War and Peace*, Book 2, chapter 10, “On Punishments”, Part X, para 3.

³⁰ Ibid., Book 1, chapter 3, “Distinction Between Public and Private War”, Part VIII.

³¹ Ibid., Book 3, chapter 15, “Moderation in the Appropriation of Sovereignty”, Para III.

³² Ibid., chapter 6, “On The Right of Acquiring Things Taken in War”, Part IV.

³³ Ibid., Book 2, chapter 22, “On Unjust Causes of Wars”, Part VIII.

³⁴ Grotius, *Mare Liberum*, p. 15.

³⁵ Grotius, *The Law of War and Peace*, Book 2, chapter 20, “On Punishments”, Part XLVIII.

³⁶ Ibid., chapter 20, “On Punishments”, Part XLVIII. This was already emphasized in his earlier book of 1609 (Grotius, *Mare Liberum*, pp. 10; 19).

was not the Intention of the Author of Christianity, that any should be forced by temporal Punishments”.³⁷

In general, Martine van Ittersum questions the application of the conquest practice by the Dutch in the Americas, since the Grotian conceptualization of the “Dutch empire” would have been “maritime and mercantile”, not “territorial”³⁸ and his vision more of the kind of the “hit-and-run raids of Dutch privateers in the East and West Indies”,³⁹ as Grotius still in the 1640s indicated that “his compatriots had ventured into the East and West Indies as merchants, not conquerors”, while it would be also “doubtful that the places where they had set up shop could be considered conquests”.⁴⁰ Therefore, van Ittersum implicitly points to Grotius’ overlooked distinction between “conquest” and “occupation” as legal means of acquisition, which crucially differ in *what* was appropriated.

At the same time, the legal means of “occupation” unquestionably also presents a notable distinction between Vitoria and Grotius, which the Dutch jurist has extensively elaborated.⁴¹ Introduced in *Mare Liberum* to dismiss the legal claim of the Portuguese, since they “lacked ‘garrisons’ over there” and therefore have “no ‘right to dominion’ in the East Indies”, Grotius reaffirmed “occupation” in his “legal opinion of March 1632”⁴² and also in *De Jure Belli ac Pacis* by carefully distinguishing between property and sovereignty, which the Dutchman considers as “distinct”.⁴³ Hence, Grotius most strikingly determines that occupation *only* lawfully acquires land as property, not sovereignty or jurisdiction.⁴⁴ Based on the assumption that occupation has replaced the division in

37 Grotius, *Law of War and Peace*, Book 2, chapter 10, “On Punishments”, Part XLVIII, para 1.

38 Van Ittersum, “The Long Goodbye”, p. 387.

39 Ibid., p. 408.

40 Ibid. Van Ittersum suggests that this was arguably based on de facto events, namely that “[t]he WIC conquests in Brazil did not last long enough to convince him otherwise” and he “did give any thought to Dutch settlement in the Hudson valley” (ibid.).

41 In contrast, in the legal writings of Vitoria “occupation” plays only a marginal role, but already suggests what Grotius elaborated more precisely (Vitoria, *On American Indians*, p. 279, para 2). See chapter 3.

42 Van Ittersum, “The Long Goodbye”, pp. 397–398.

43 Grotius, *The Law of War and Peace*, Book 2, chapter 3, “Of Original appropriation of Things, With Special Reference to the Sea and Rivers”, Part IV.

44 Grotius defines sovereignty as “actions”, which “are not subject to the legal control of another” (Grotius, *The Law of War and Peace*, Book 1, chapter 3, “Distinction Between Public and Private War; Explanation of Sovereignty”, Part V), which includes “the right of eminent domain [. . .] but also full private ownership”, which would be “first acquired in common for the state or its head” and then distributed “individually to private persons” (Grotius, *The Law of War and Peace*, Book 2, chapter 3, “Of Original appropriation of Things, With Special Reference to the Sea and Rivers”, Part XIX), while also indicating that “the common subject of

acquiring an “undivided whole”, occupation in the Grotian legal thought acquires “private ownership” for “a thing which has definite limits”⁴⁵ and “is ordinarily employed by a people, or by the ruler of a people”,⁴⁶ whereupon the acquired limited area is divided among individuals. Most notable, Grotius remarks that even if the area is not occupied yet, it “ought not [. . .] to be considered as unoccupied property; for it remains subject to the ownership of the first occupant, whether a people or a king”,⁴⁷ which applies also, if the limited occupied area has “not yet been assigned to individual owners”, since the area is still occupied “in respect to sovereignty, which remains unimpaired in favour of the original people”,⁴⁸ who are still holding “(t)he jurisdiction over the lands” and the control over the “territory” from which “[the lands] were taken [by occupation]”.⁴⁹ Consequently, this overlooked legal provision implies that the Dutch in cases of occupation just acquire “private ownership” of an occupied limited area, while sovereignty and jurisdiction remains with the Indigenous Peoples,⁵⁰ who are clearly recognizes as rulers and lords by Hugo Grotius.

Finally, the Dutchman enshrines the conclusion of treaties and agreements as third legal means of colonial appropriation, whereas the Spaniard Vitoria considers this as “unjust” means in times of war. Nevertheless, Grotius considers them as

sovereignty is the state”, defined as “perfect association” (ibid., Book 1, chapter 3, “Distinction Between Public and Private War; Explanation of Sovereignty”, Part VII) of “many fathers of families unit[ing] into a single people” (ibid., Book 2, chapter 5, “On the Original appropriation of Rights Over Persons”, Part XXIII).

45 Grotius, *The Law of War and Peace*, Book 2, chapter 2, “Of Things Which Belong to Men in Common”, Part III, paras 2–3.

46 Ibid., Part II, para 5.

47 Ibid., Part IV.

48 Ibid., Part XVII.

49 Grotius, *The Law of War and Peace*, Book 2, chapter 3, “Of Original appropriation of Things, With Special Reference to the Sea and Rivers”, Part IV, para 2. Moreover, Mark Lindley already in 1926 raised awareness for this striking difference by indicating that “[f]rom one part of ‘De jure belli ac Pacis’ (1625), it might appear that Grotius held the view that the sovereignty over inhabited lands could be acquired by occupation [. . .], [b]ut later on he states that governments are not occupiable” (Lindley, *Backward Territory*, pp. 13–14).

50 Moreover, Grotius (same as Vitoria) is refuting the applicability of *res nullius*, as the Dutch legal scholar considers the appropriation of property based “on the notion that merely because somebody takes something [implies that] it becomes hers or his” would represent “theft” (Fitzmaurice, *Sovereignty, Property*, p. 24), wherefore the appropriation of property by Europeans in the Americas and elsewhere requires the consent of Indigenous Peoples in the form of agreements or treaties (ibid.). See Gilbert, *Indigenous Peoples’ Land Rights*, p. 12; Armitage, “Introduction”, p. xv; Doyle, *Title to Territory*, p. 42; Pagden, “Dispossessing the Barbarians”, pp. 80–81; Van Ittersum, “The Long Goodbye”, p. 393.

“entirely lawful” with regard to movable property, since monopoly contracts “with another [nation] to purchase all the commodities of a particular kind, which are the produce of that country only”, on the condition that “the buyer should be willing to sell on these goods ‘at a reasonable rate’” and as long as those “monopoly contracts to be valid” were “not involv[ing] necessities of life, but only goods traded for ‘mere profit’”.⁵¹ In addition, Grotius also indicates that it would be lawful to exchange produce for alliances in times of war, which the Dutchman exemplifies in the case of the “hard-pressed Ternatans”, whose “‘king and chief nobles’ [. . .] had been so overburdened by ‘the most grievous and dangerous wars of the Spaniards’” and had, in exchange for an alliance with the Dutch, therefore “signed over to the VOC all present and future clove harvests”. The argument was reaffirmed by Grotius during the VOC negotiations with the English in April 1613, as exclusive trade contracts were “particularly appropriate when ‘a nation’ extended protection to ‘the people with whom they ma[d]e such a contract’, as this would incur ‘extraordinary expense’”,⁵² and again in *De Jure Belli ac Pacis*, since it would be “lawful”, to exchange the protection of “one people to anticipate another in obtaining a pecuniary advantage, especially of there is a reason; as, for instance, if the people which has obtained the concession has taken to the other under its protection and on that account is incurring expense”. Notable, those contracts exclusively acquired movable property, not immovable land, sovereignty, or jurisdiction.

Nonetheless, Grotius in *De Jure belli ac Pacis*⁵³ also indicates that property in general might be lawfully alienated by the “consent” of the provider in “either words or other external signs”, while “in some places it is the custom to require a declaration in the presence of the people, or before a magistrate, and insertion in the public records”, whereas “a mental act of will is not sufficient”. In the same manner, the Dutch legal scholar also recognizes the alienation of sovereignty “in its entirety” by treaty or agreement as lawful, provided the sovereignty is alienated “by the one under whose control it in reality is; that is [. . .] by the king, if he holds the sovereignty by inheritance, otherwise by the people, but with the

51 Van Ittersum, “The Long Goodbye”, p. 393. Martine van Ittersum refers to Grotius basic assumption that “[n]obody was at liberty to ‘hinder one nation from trading with another distant nation’”, wherefore “[f]ree passage should be granted to both persons and merchandise” (ibid.).

52 Ibid. This support was said to have been conducted with “‘strong ships, open warre, taking some forts from the Portugals and partly by building some others, at [the inhabitants’] entreaty” (ibid.).

53 Grotius, *The Law of War and Peace*, Book 2, chapter 2, “Of Things Which Belong to Men in Common”, Part XXIV.

consent of the king, because he also has a certain right as possessor of a kind of life interest which ought not to be taken away against his will". Crucially, Grotius also emphasizes that the alienation of "sovereignty over a part of a people cannot be alienated by the people against the will of the part", whose "consent" would be required, while "in turn it is not right for a part to withdraw from the body unless it is evident that it cannot save itself in any other way".⁵⁴

In short, Hugo Grotius recognizes three legal means of Dutch colonial appropriation, namely conquest, occupation, and treaty making (alienation by consent). While Grotius most significantly differs from Vitoria in his clear rejection of punishments for the refusal of Christianity as "just" cause of waging war, the Dutchman also clearly distinguishes between property, sovereignty, and jurisdiction, which are acquired by "conquest" or treaty alienation, whereas occupation just acquires land as property. The following Section examines the reflection of the Grotian legal provisions in the practices of the WIC by investigating the WIC Charter (1621), the Order of Government (1629) and the WIC practices on the "Wild Coast".

The Grotian Legal Thought and WIC Practices (1621–1752)

Although Grotius did not share the "fear that a new, chartered company would endanger the Twelve Years' Truce [with Spain]",⁵⁵ the WIC only came into being after the Truce on 1 July 1621 and, on the basis of the Charter of 3 June 1621, to monopolize "navigation, trade and commerce" in Americas and elsewhere,⁵⁶ after Dutch private merchants had been travelling to the "Indies" since June 1581

⁵⁴ Grotius, *The Law of War and Peace*, Book 2, chapter 6, "On Secondary Appropriation of Property by the Act of Man; Alienation of Sovereignty; The Attributes of Sovereignty", Part III.

⁵⁵ Van Ittersum, "The Long Goodbye", p. 388. Moreover, the Dutch legal scholar Hugo Grotius in 1618 changed his position several times, since in July 1618 he raised scepticism about the WIC scheme, questioned "the motives of its promoters, in particular [of WIC founder] Willem Usselinx" and in general dismissed it "as nothing more than a flimsy excuse for outright piracy", but in December of the same year 1618 "emphatically denied that he had ever prevented Usselinx from submitting his plans to the provincial and federal authorities" and "had laboured for their rejection". Hence, Grotius "had spoken many times in the States of Holland in favour of the WIC's establishment" and presented arguments "in favour of the WIC" (Van Ittersum, "The Long Goodbye", p. 391).

⁵⁶ The States General of the United Netherlands, "Charter of the Dutch West India Company", The Hague, 3 June 1621, in: BRC, serial No. 18, pp. 44–46, at 44. Willem Usselinx had shortly afterwards also established the Swedish equivalent on behalf of the Swedish king Gustav Adolf (King Gustav II Adolph, "Warrant for William Ussling to Establish a General Company for Trade to Asia, Africa, America and Magellanica", Stockholm, 21 December 1624, Avalon Collection: http://avalon.law.yale.edu/17th_century/charter_012.asp).

and to “Guiana” since 1597, and ventures to “populate the coasts of Guiana in America” were rejected by the States General in 1603⁵⁷ because they “cannot for the present take action on the matter”:⁵⁸ Nevertheless, attempts were made to establish Dutch settlements on the Wild Coast from August 1613 onwards.

The States General of the United Provinces granted the West India Company to carry on “profitable business [. . .], protected and maintained in the parts hereafter enumerated” for twenty-four years by the WIC Charter at The Hague on 3 June 1621. This Charter spatially defined the area in which trade should only be permitted with the consent of WIC, as encompassing “the West Indies, Africa, and other countries”, that is “the coasts and lands of Africa, from the Tropic of Cancer to the Cape of Good Hope” and “the countries of America and the West Indies”, extending from the “southern extremity of Newfoundland through the Straits of Magellan, Le Maire, and other straits and channels lying thereabouts, to the Strait of Anjan”, including the North and South Sea and “any of the islands situated either on the one side or the other, or between them both”, as well as “the Australian and southern lands extending and lying between the two meridians, reaching the east of the Cape of Good Hope, and in the west to the east end of New Guinea, inclusive”.⁵⁹

Thus, the “Wild Coast” in northeastern South America was reserved exclusively for servants of WIC Zeeland, with the exception of Abraham van Pere in Berbice. This was reaffirmed in June 1634,⁶⁰ May 1635,⁶¹ June 1635, and

57 W. Usselinx (?), “Memorial to the Dutch States General on the Colonization of Guiana”, 1603, in: BC, No. 9, pp. 27–36, at 27. The Dutch original reads “de populatie van de costen van Guiana in America” (ibid.).

58 Dutch States General, “Proceedings”, 25 February 1603, p. 36.

59 States-General, “WIC Charter”, The Hague, 3 June 1621, pp. 44–45.

60 West India Company (Zeeland Chamber), “Proceedings”, 29 June 1634, in: BRC, serial No. 34, p. 74; West India Company, “Proceedings”, 1634–1636, in: BC, No. 23, pp. 69–72. According to Cornelis Goslinga, the exclusive rights were challenged by the Amsterdam Chamber of the WIC, who had threatened to repeat the effort of Theodore Claessen by sending their own colonists to Cayenne in 1634 (Goslinga, *Wild Coast*, p. 417).

61 West India Company (Zeeland Chamber), “Proceedings”, 21 May 1635, in: BRC, serial No. 35, p. 75. Therefore, the WIC in Zeeland indicated that trade was only permitted for those “who have there such interests as the Councilor de Moor [of Tobago], but without any body further being at liberty to navigate there” (West India Company, “Proceedings”, 1634–1636, p. 70). Furthermore, the WIC indicated that “the trade to the Wild Coast shall be done by the Company alone, and by no private individuals” (ibid.).

June 1636.⁶² Nevertheless, exceptions were made in May 1632 and July 1633 due to current events and circumstances, when free navigation was temporarily permitted “to the coast of Brazil; item, in the West Indies, to wit, the River Oronoque westwards along the coast of Carthagená, Portobello, Honduras, Campeche, the Gulf of Mexico, and the coast of Florida, together with all the islands lying within the boundaries [*limiten*]” for the military reason “to injure and offer hostility to the King of Spain, his subjects, and adherents, both on land and water”.⁶³ Moreover, free trade was permitted in August 1648 for “all ships in the respective provinces, either armed or unarmed [. . .] to sail for private trade in timber, salt, tobacco, cotton, or other wares and products there obtainable to a certain area within the Charter of the West India Company”.⁶⁴ Crucially, it instead remained prohibited “to go east along the Wild Coast, much less to the Amazon or the Maransan [*sic!*], or further north than Cape Florida [. . .] under the penalty that whoever shall be found to do or to have done contrary to this shall confiscate both ship and cargo”,⁶⁵ wherefore the Orinoco became the boundary of Dutch free trade and the “Wild Coast” until the Amazon remained reserved for the WIC.

62 West India Company (Zeeland Chamber), “Proceedings”, 14 May 1637, serial No. 36, p. 75, 2 June 1636: “[The Deputies] shall also come prepared to consider and, if need be, to amend the Regulations for the management of New Netherland, Curaçao, Cape Verde Senegal, Gambia, Sierra Leone, the Wild Coast, Fernando Noronho, and the Colonies planted here and there; and to this end each from his own Chamber will bring with him all books and papers for information thereon”.

63 Dutch States General, “Orders and Regulations”, 14 May 1632 and 15 July 1633, in: BRC, serial No. 33, p. 73. In contrast, sailing to the coasts of Africa or New Netherland remained prohibited.

64 Accordingly, the States General kept permitting “private trade in timber, salt, tobacco, cotton, or other wares and products” in the area “from the River Oronoque westwards along the coasts of Paria, Cumaná, Venezuela” (West India Company, “Proceedings”, 1630–1632, in: BC, No. 21, p. 65), “Carthagená, Portobello, Honduras, Campeche, the Gulf of Mexico, and the coasts of Florida, as well as between and around all the islands situated in those parts, including even Curaçao, Buenayre, and Aruba”, while strictly and explicitly prohibiting the Wild Coast until the Amazon (Maransan) and north of Cape Florida. At the same time, as it was also prohibited “without permission to come on any account whatever, or in any manner, to the Virginias, New Netherlands, Nova Francia, and other places situated thereabouts, or to sail to or along the coasts of Africa, Brazil, or anywhere else where the Company has trade, under [. . .] penalty” (Dutch States General, “Resolution”, 10 August 1648, in: BRC, serial No. 55, pp. 135–138, at 136).

65 *Ibid.*

Reaffirmed in the unmodified Charter of 4 July 1647, which was granted for “twenty-five consecutive years”,⁶⁶ both the renewed Charter of 23 January 1664⁶⁷ and the subsequent Charter of the second WIC of 20 September 1674,⁶⁸ which was adopted after a provisional period and discussions since June 1669,⁶⁹ had replaced the “Wild Coast” with “Isekepe and Bauwmerona [Pomeroon], situated on the continent of America, as well as the Islands of Curaçao, Aruba, and Buonnaire”.⁷⁰ Prior, in relation to New Netherlands, the States General had also claimed in January 1664 that the WIC “in conformity with the aforementioned Charter, was empowered, and still is empowered, to establish Colonies and settlements of people on lands which are not occupied by others”.⁷¹

Therefore, the WIC Charter of 1621 had in the Grotian spirit emphasized the legal means of treaty making and occupation by instructing its servants “to make in our name and authority within the limits set forth above, contracts, leagues and alliances with the Princes and natives of the lands therein comprised” to “hand over such contracts and alliances [. . .] made with the aforesaid Princes and nations together with the situation of the fortresses, strongholds, and settlements taken in hand by them” and to “build there some fortresses and strongholds”.

66 Dutch States General, “Continuation of the Charter of the West India Company”, 4 July 1647, in: BRC, serial No. 53, pp. 132–133, at 132. The WIC Charter was already provisionally “prolong[ed] and renew[ed]” on 22 March 1646 to run into effect on 1 January 1647 (Dutch States General, “Continuation of the Charter of the West India Company”, 4 July 1647, in: BB3, serial No. 6, p. 56).

67 Dutch States General, “Renewal of the Charter of the West India Company”, in: BRC, serial No. 70, pp. 150–152, at 151.

68 Dutch States General, “Charter of the New West India Company”, 20 September 1674, in: BRC, serial No. 85, pp. 173–175.

69 G. L. Burr, “Territorial Rights of the Dutch West India Company”, Washington, April 1896, in: BC, pp. 97–119, at 103, footnote 1. According to George Lincoln Burr, the long period of negotiations before the renewal of the WIC Charter was caused by the uncertain situation of New Netherland, as “[o]n April 2, 1674, this provincial body submitted to the States General another draft, in which to the two places on the American mainland, Essequibo and Pomeroon, was added New Netherland (which the Amsterdamers still hoped to regain from the English), and also a provision that the new West India Company might retain ‘such further places and districts on the American mainland as it should take actual possession of by the creation of forts, warehouses, or established trade’” (ibid.).

70 Dutch States General, “Charter of the New West India Company”, 20 September 1674, pp. 173–175. See also chapters 9, 10, and 12. Also designated were “the coasts and lands of Africa, reckoning from the Tropic of Cancer to the height of 30° south [sic!] of the Equator, with all the islands in that district lying off the aforesaid coasts, and particularly the Islands of St. Thomé [sic!], Annebon, Isle of Prinicpe, and Fernando Polo” (ibid.).

71 Dutch States General, “Renewal of the Charter of the West India Company”, in: BRC, serial No. 70, pp. 150–152, at 150–151.

Moreover, the WIC Charter had also ordered to “appoint governors, soldiers, and officers of justice”, and more generally, to “do everything necessary for the preservation of the places and the maintenance of good order, police, and justice”, and what “the welfare of the land and the profit and increase of trade shall require”,⁷² which in terms of the colonial practices of occupation and purchase agreements violates the sovereignty and jurisdiction of the respective Indigenous Peoples, as both practices only legally acquire land as property.

Accordingly, the Order of San Salvador of 1 November 1624,⁷³ which served as a “blueprint” for the Order of Government of 16 October 1629 and was intended to establish a “central government” and unified “Dutch laws and legal institutions [. . .] for all Dutch colonies in the Americas”,⁷⁴ again emphasized the conclusion of treaties and agreements in Article 15 of 69 Articles and mainly included legal provisions on criminal law, marriage practices, and the alienation of property,⁷⁵ based on the *schependomsrecht* of North Holland and northern South Holland (“the properties return to the line whence they came”) of 1580. The *aasdomsrecht* of Zeeland and South Holland (“the next in blood inherits the properties”), on the other hand, was applied “in various colonies from the very beginning”, in Berbice in 1732, in Curaçao in 1752, and in all colonies in 1774. The *aasdomsrecht* had already been applied by the VOC in the East Indies since January 1661,⁷⁶ on the basis of Grotius’ legal opinion of March 1640 on the inheritance of a Zeeland-born VOC merchant of Batavia (Jakarta) and of April 1640 on the legal provisions of “last wills and testaments drawn up in barbaric lands (*barbarische landen*)”,⁷⁷ which reaffirmed the legal provisions of *De Jure Belli ac Pacis* of 1625.⁷⁸

⁷² States General, “WIC Charter”, The Hague, 3 June 1621, pp. 44–46. The Dutch original reads “authoriteit binnen de Limiten”, respectively “sal mogen maecken Contracten, Verbintenissen ende Alliancien met de Princen ende Naturalen vande Landen daer inne begrepen”, respectively “Contracten ende Alliancien als sy mette voorschreve Princen ende Natien” and “van vructbare ende onbewoonde Quartieren” (ibid.).

⁷³ The cases of San Salvador (1624), Recife, and Olina (since 1630) are often erroneously indicated as Dutch “conquest” (Van Ittersum, “The Long Goodbye”, p. 401; Schiltkamp, “On Common Ground”, p. 73), since the Dutch had captured Portuguese forts. However, this does not refer to Indigenous Peoples. Moreover, it says nothing about, what the Portuguese had actually lawfully acquired from the Indigenous Peoples.

⁷⁴ Schiltkamp, “On Common Ground”, pp. 73–74.

⁷⁵ Ibid., pp. 77–80.

⁷⁶ Ibid., p. 78, footnote 32.

⁷⁷ Van Ittersum, “The Long Goodbye”, p. 401.

⁷⁸ Grotius, *The Law of War and Peace*, Book 2, chapter 9, “When Sovereignty or Ownership Ceases”, Part XII. Precisely, Grotius indicates that “[i]t is clear legal principle that the person of

Despite the failure of the unification of all Dutch colonies in the Americas,⁷⁹ the WIC servants concluded several agreements in North America, based on the WIC order of 1625 to the first governor of New Netherland, Willem Verhulst, “that the Indians should not be deprived of their land”, but instead be persuaded “with good words” to draw up a contract and had that contract signed “according to their custom”,⁸⁰ since “*such contracts may be very useful to the Company on other occasions*”.⁸¹ However, those contracts were purchase agreements of land as property in nature, as exemplified by the first agreement between the German governor of New Netherland Peter Minuit and the Lenape of Manhattan about 4 May 1626.⁸² Rather vaguely documented by a short comment in the letter of Peter Schaghen to the States General of 5 November 1626, which reads: “hebben t’eylant Manhattes van de wilde gekocht, voor de waerde van 60 guld: is groot 11000 morgen” (have bought the island of Manhattan from the savages for worth 60 guilders; it is 11,000 morgen in size),⁸³ the notification clearly indicates that the agreement was transferring land as property by purchase, which is confirmed by Stuart Banner, who emphasized that the Lenape “don’t seem to have vacated the island afterwards”.⁸⁴ In addition, WIC agreements had been concluded with the “the grand sachem of the Pequot Indians” for the upper Connecticut Valley in 1633,⁸⁵ but also on the African coast of Guinea between 1642 and 1656.⁸⁶ This practice was confirmed on 27 August 1648,

the heir is considered the same as the person of the deceased in all that concerns the continuation of ownership of both public and private property” (ibid.).

79 Schiltkamp, “On Common Ground”, p. 75. Nevertheless, Jacob Schiltkamp claims that the legal provisions of the Order of Government of 1629 would have had remained in force for “almost 300 years”, as the “last elements of the Order” vanished in the three former Dutch colonies Berbice, Essequibo, and Demerara only in 1917 (ibid., p. 74).

80 Ibid., p. 78.

81 West India Company, “Instructions of 1625”, in: Jennings (ed.), *Invasion of America*, p. 132 (emphasis added).

82 Banner, *How the Indians Lost Their Lands*, pp. 19, 75; Jennings (ed.), *Invasion of America*, p. 132.

83 Peter Schaghen, “Letter to the Dutch States General (5 November 1626)”, available from <http://www.lettersofnote.com/2011/07/sale-of-manhattan.html> (accessed 29 July 2018).

84 Banner, *How the Indians Lost Their Land*, pp. 75–76.

85 Jennings, *Invasion of America*, p. 134. For the treaty making practice of the Dutch in the East Indies, see Armitage, “Introduction”, p. xv.

86 Nationaal Archief The Hague (hereafter HaNA), West India Company, “Contracts met Koning van Groot Accra Ochien”, 30 August 1642 and 4 August 1649, OWIC, 1.05.01.01, IN12; HaNA, Hoofdlieden Joumoree “Eed van Trouw”, 16 January 1650, OWIC, 1.05.01.01, inv.nr. 13A, NA; HaNA, Opperhoofden van Anta en Boutrij, “Eed van Trouw aan de Staten-Generaal”, 27 August 1656, OWIC, 1.05.01.01, inv.nr. 13A, NA. According to Jacob Schiltkamp, those contracts

when New Netherlands governor Johannes de Laet was instructed by the Dutch States General, in accordance with Article 2 of the WIC Charter of 1621, to deliver “unto the assembly authentic copies of such treaties, contracts, and capitulations as the said West India Company hath made and concluded with the kings, princes, and potentates within the limits of their charter”, the “authentic copies” of which were intended to “be locked up and preserved”.⁸⁷

Occupied at the same time, the WIC practices on the “Wild Coast” are presenting an exceptional case, since treaties or agreements with Indigenous Peoples are *not* recorded for the period of the first WIC between 1621 and 1674 and no conquest attempt took place. Therefore, the Dutch appropriation practice on the “Wild Coast” since August 1613, including Essequibo (1616/1624) and Berbice (1627), was limited to occupation, which lawfully acquired land as property, but not sovereignty or jurisdiction. Hence, the non-acquisition of Dutch jurisdiction and sovereignty on the “Wild Coast” between the Orinoco and Amazon is reflected in the “Conditions for Colonists” for the “Wild Coast and adjacent islands” of 12 June 1627, which omitted the insertion of jurisdictional rights.⁸⁸ By contrast, the “Conditions” for the “Wild Coast of *Brazil*” of 22 November 1628 had included the same, namely the right of “intermediate and inferior” jurisdiction, the grant about an area of seven or eight Dutch miles as an “everlasting hereditary fief” and the legal provisions about inherited property, but instead in Article 9 had instructed that “[t]hose who send over this colony, shall provide it with proper instructions, in order that it may be governed and ruled in accordance with the law of the land”.⁸⁹ Moreover, the “Order of San Salvador” of 1624 reflected the different reality in Brazil, since the legal provisions of Article 43 distinguished

were “called a ‘pen’”, which “laid down the mutual rights and obligations of both parties”, while “[t]he head of the tribe, who had different titles, depending on the tribe, like king, caboc-
eer, etc., had to swear according to the customs of his tribe” (Schiltkamp, “On Common Ground”, p. 80). However, no contracts of the (Old) WIC are preserved for Essequibo.

87 States General, “Minutes”, 27 August 1648, in: Burr, “Territorial Rights of the Dutch West India Company”, p. 111, footnote 1.

88 West India Company, “Conditions for Colonists on the Wild Coast and adjacent islands”, 12 June 1627, in: BC, No. 17, pp. 47–53.

89 West India Company, “Conditions for Colonists and Patrons on the Wild Coast”, 22 November 1628, in: BRC, serial No. 30, pp. 65–69, at 66, emphasis added. At the same time, both colonists and private persons had been treated equal with regard to the extraction of salt, since “[w]hosoever, be it colonists of the patrons for their patrons, or free people for themselves, or other private persons for their masters, finds a suitable locality for making salt-pans, is at liberty to occupy the same, and to work it in full ownership, to the exclusion of all others”. Article 9 provided that the WIC shareholders “who send out these Colonies shall provide them with appropriate instructions that they may be governed and ruled according to the form of [g]overnment, both administrative and judicial, framed, or to be framed, by the Directors in session of the

between those Indigenous Peoples, who were “in contact with a European man” and would be “subject to the same laws as all other inhabitants”, including property rights (houses, farms, possessions) and rights of inheritance based on a modified *aasdomsrecht*, since property “could be obtained by their heirs unless the heirs lived under the authority of the enemy”, and those cases, where Indigenous Peoples, who stayed “among themselves” and the “Order” had no legal effect.⁹⁰ Instead, Caribbean historians argue for the “Wild Coast” of Essequibo and Berbice, such as Caesar Gravesande, who suggests from a comparative perspective that Dutch jurisdiction was “far more widespread than that of the Spanish, at least up to the beginning of the eighteenth century”,⁹¹ and Alvin Thompson, who indicates that “the Dutch had very little jurisdiction over the areas beyond the plantations”.⁹² Ellen-Rose Kambel and Fergus MacKay argue for Suriname that “at least for the first 200 years of Suriname’s existence, the Dutch never considered Indigenous peoples or their lands to be under their jurisdiction”.⁹³

WIC Agreements and Orders on the Wild Coast (1672–1764)

In contrast, the agreements concluded on the “Wild Coast” of Essequibo and Berbice were limited to the prohibition of enslavement. A first agreement was, thus, concluded in 1672, which “promises that the Indians would not be reduced to slavery”⁹⁴ and coincided with a period of legal uncertainty of both the WIC

Board of Nineteen; which instructions they shall first submit to the Directors of the respective Chambers” (ibid., pp. 65–69).

90 Furthermore, Article 17 enshrined that “[t]he same rule applied to the Spaniards and Portuguese” (ibid.).

91 Gravesande, “Amerindian Jurisdiction”, p. 11.

92 Thompson, “Amerindian-European Relations in Dutch Guyana”, p. 86.

93 Kambel and MacKay, *The Rights of Indigenous Peoples and Maroons*, p. 54.

94 Menezes, “The Dutch and British Policy of Indian Subsidy”, p. 66; Menezes, *British Policy Towards the Amerindians*, p. 68. In particular, she is referencing the Tribunal of Arbitration between Great Britain and the United States of Venezuela, 1899, Proceedings, p. 200, which is not available in full text, whereas Jan Jacob Hartsinck’s “Beschryving van de Volksplanting van Berbice” (1770), for the year 1672 is just citing a boundary treaty between the two Dutch colonies of Essequibo and Berbice (J. J. Hartsinck, *Beschryving van de Volksplanting van Berbice, met de aanhoorige Landen*, Vol. I, p. 281), which was followed by a boundary agreement between Suriname and Berbice in 1686, when the extent of “the original colony of Suriname”, which “encompassed the lands between the Marowijne and Coppename Rivers”, was modified and the boundary between the two colonies placed “at the mid-point between the Corantijn and Berbice Rivers”, wherefore Ellen-Rose Kambel and Fergus MacKay claim that “[t]he area between the Coppename and half-way between the Berbice and Corantijn Rivers thus became

and the Dutch settlement in Berbice. Thereupon, the WIC on 14 September 1678 granted “the Colony on the river named Berbice on the solid coast of America” to Abraham van Pere as “immortal hereditary fief”,⁹⁵ which was valid until 1701 and included the right to the subsurface resources, minerals, rivers, springs, and, same as for the Walcheren cities in the Dutch settlement Nova Zeelandia in Pomeroon on 24 December 1657,⁹⁶ also the “high, middle and low jurisdiction, tithes, fishers and mills”,⁹⁷ after Abraham van Pere had established the colony in 1627. Notably, the grant of jurisdiction was violating the colonial law of Hugo Grotius, since van Pere and the WIC had only legally acquired land as property, but not jurisdiction or sovereignty for the Berbice. Nevertheless, the WIC grant was followed by another agreement, concluded between the Arawak of Berbice and the Dutch in the United Provinces on the other side of the Atlantic in the early 1700s, where the Arawak “Schotjes” were “well received and sent back with presents and with clothes and handsome furnishings”, whereas the content of the agreement is unknown and the original document, despite the related order of the WIC Charter, not preserved.⁹⁸

Moreover, the enslavement prohibition was inserted in the agreements concluded between Suriname Governor Cornelis van Aerssen van Sommelsdijk and “Caribs, Arawaks and Waraus”, respectively “(different groups of) Caribs” in 1684/85,⁹⁹ after Dutch practices had in 1678 prompted sudden joint Carib,

part of the colony of Suriname and subject to the sovereignty of the States General through the Society WIC” (Kambel and MacKay, *The Rights of Indigenous Peoples and Maroons*, p. 39). Those treaties were concluded among the Dutch colonies, not with the Indigenous Peoples of the area.

⁹⁵ HaNA, West India Company, “Register of WIC resolutions: Grant to Abraham van Pere”, 14 September 1678, 1.05.06 invnr. 48, in: Hyguens, *Plakaatboek Guyana 1670–1817*; http://resources.huygens.knaw.nl/retroboeken/guyana/#page=0&accessor=search_in_text&view=transcriptiePane&source=berbice (accessed 14 August 2018). The Dutch original reads “oonsterflijk erfleen”.

⁹⁶ West India Company, “Provisional Contract between WIC Zeeland and the Walcheren Cities”, 24 December 1657, in: BC, No. 36, p. 125. See also Committee governing the three Walcheren Cities, “Nova Zeelandia”, 1658, in: BRC, serial No. 62, p. 146.

⁹⁷ HaNa, West India Company, “Register of WIC resolutions: Grant to Abraham van Pere”, 14 September 1678.

⁹⁸ Menezes, *British Policy*, p. 68; Menezes, “Indian Subsidy”, p. 66. The conclusion of this treaty also entailed the transfer of presents, clothes, and furnishings to the Arawak (Gravesande, “Amerindian Jurisdiction”, p. 8).

⁹⁹ Gravesande, “Amerindian Jurisdiction”, p. 8; Menezes, *British Policy Towards Amerindians*, p. 68; Menezes, “The Dutch and British Policy of Indian Subsidy”, p. 66; Kambel and MacKay, *The Rights of Indigenous Peoples and Maroons in Suriname*, p. 51.

Arawak, and Warao attacks and resulted in the “Indian war” between 1678 and 1686,¹⁰⁰ which had “nearly drove the European settlers from the colony”¹⁰¹ and had reached Essequibo until 1688.¹⁰² Previously, the Dutch had exchanged New Netherlands for Suriname with the English in the Peace of Breda in July 1667,¹⁰³ after an English colony in Suriname had been captured by Dutch Captain Abraham Cruijnsen in February 1666¹⁰⁴ and New Netherland had been seized by the English in August 1664.¹⁰⁵

Nevertheless, the agreements of 1684/85 are considered to have aimed to “establish peace with the Indians”, whereas the only known content of the “lost” agreements is the prohibition of enslavement¹⁰⁶ and recognition of “the freedom of the indigenous peoples”.¹⁰⁷ In addition, the participation of the “Caribs of the Coppename” as one of the contracting indigenous parties of the agreement remains unlikely, since the Coppename (Condie) Maroons, representing a “group of escaped slaves [. . .] intermarried with Caribs of the Coppename river”,¹⁰⁸ were also reported as having been expelled by van Sommelsdijk before August 1684¹⁰⁹ and attacked the Spanish in Orinoco and Trinidad in union with the French in July 1682,¹¹⁰ before they had captured Santo Tome and took refuge in Waini, Amacura, and Barima until May 1686.¹¹¹

In contrast, no such agreement is recorded for the colony of Essequibo. Instead, some orders of the WIC to its servants and colonists concerning the strict prohibitions of trading “red slaves” by colonists had been issued for the

100 In contrast, chapter 11 reveals that the “Indian war” extended at least until 1688. A similar practice was applied in Suriname by English predecessor Lieutenant-Colonel Anthony Rowse, who had made “a forme peace with the Indians soone after his landing” in 1650 (Scott, “Description of Guayana”, after 30 April 1668, p. 170), before the plantation colony “Torarica” was established in 1651 (Postma, “Suriname and its Atlantic Connection”, p. 289).

101 Ibid., p. 290.

102 Commander Pomeroy Jacob de Jonge, “Letter to the West India Company”, River Pomeroy, 28 January 1688, in: BRC, serial No. 113, p. 206.

103 Postma, “Suriname and its Atlantic Connection”, p. 289.

104 Scott, “Description of Guayana”, after 30 April 1668, p. 169.

105 Postma, “Suriname and its Atlantic Connection”, p. 289.

106 Kambel and MacKay, *The Rights of Indigenous Peoples and Maroons in Suriname*, pp. 51–52.

107 Accordingly, a recorded “(s)upport for this is found in a 1781 ordinance which prohibited all unlicensed trade with ‘Indian nations with whom this province has concluded an agreement of peace and friendship’” (ibid., p. 52).

108 Ibid.

109 Commander Essequibo, “Letter to WIC”, 18 August 1684, p. 59.

110 Beekman, “Letter to the West India Company”, 18 July 1682, p. 155; commander Essequibo, “Letter to WIC”, Essequibo, 18 August 1684, p. 187.

111 Commander Essequibo, “Letter to WIC”, 1 May 1685, p. 60.

Mazaruni and Cuyuni in 1681,¹¹² 1712–1714,¹¹³ 1717,¹¹⁴ and 1730, whereas WIC servants were still permitted to trade in “red slaves” in 1731.¹¹⁵ Moreover, the WIC issued several prohibitions of ill-treatment, tyranny, and forced slave work in 1729¹¹⁶ and inserted prohibitions of prejudice, interference, and injury as conditions of land grants between October 1740 and 1746,¹¹⁷ whereas the conclusion of a treaty of commerce with the Magnauts failed in August 1764¹¹⁸ and the content of an agreement with Akawaoi, Arawak, Warau, and Caribs¹¹⁹ in 1769 is unknown.¹²⁰ In contrast, prohibitions of ill-treatment (New Netherland 1625;

112 Commander Essequibo Abraham Beekman, “Letter”, 21 August 1681, in: BC, No. 61, p. 82.

113 Commander Essequibo “Letter to WIC Zeeland”, 19 April 1713, in: BRC, serial No. 150, p. 236. The renewed prohibition was confirmed by the Court in July 1730, since “[c]oncerning the advantages of the trade in the rivers of Masseroeny and Cajoeny for the Honourable Company alone, this consists only in red slaves, and the order has been renewed because the veto was one kept up by all former commanders. But most of the Indians having left those parts that trade is now of less profit, except for the orange dye” (Court of Policy Essequibo, “Letter to West India Company”, 14 July 1731, in: BB3, serial No. 65, p. 83). Moreover, it is indicated that the WIC plantation that Polwijk “sometimes buys one or two red slaves in a whole year, [. . .] mostly children of about 8 or 10 years old [. . .] for about twelve or thirteen axes and choppers, together with a few provisions” (ibid.). See also Court of Policy Essequibo, “Letter to WIC Zeeland”, 14 July 1731, in: BRC, serial No. 188, p. 14.

114 Free Settlers of the Colony of Essequibo in America, “Memorial”, River Essequibo, 24 May 1717, in: BRC, serial No. 156, pp. 246–248, at 247. It was only loosened for the river Orinoco [sic!] at the request of the colonists in November 1717, perceived by them as being “outside the territory of the Noble Company, where the same has no more power than a private merchant, which is in Spanish possession” (ibid.), who were then allowed by the WIC “to buy or get by barter in the Orinoco six red slaves only and no more, for their own service and use; and for each of such red slaves they will be required to pay to the Company for the importation of the same 6 guilders once, and, moreover, the poll-tax for each red slave, to the amount of 1 rix-dollar per year. And the said inhabitants shall not be allowed to export from there any red slaves, or to sell him to any one whosoever, except to inhabitants of Essequibo” (West India Company [the Ten], “Letter to commander Essequibo”, 30 November 1717, in: BRC, serial No. 158, p. 248).

115 Court of Policy Essequibo, “Letter to WIC Zeeland”, 14 July 1731, p. 14; Court of Policy Essequibo, “Letter to WIC Zeeland”, 14 July 1731, p. 83.

116 Commander Essequibo, “Letter to WIC”, 4 July 1729, in: BRC, serial No. 181, pp. 9–19, at 9.

117 Court of Policy Essequibo, “Digest of Land Grants”, 13 November 1720–8 November 1771, pp. 187–205.

118 Director General Essequibo Laurens Storm van’s Gravesande, “A Brief Treatise concerning the Honourable Company’s Trading-places”, August 1764, in: BB3, serial No. 171, enclosure 1, pp. 129–131, at 129.

119 Ibid. See also M. Colchester, *Guyana: Fragile Frontier*, London: Latin American Bureau, 1997, p. 13.

120 Menezes, *British Policy Towards Amerindians*, p. 68; Menezes, “The Dutch and British Policy of Indian Subsidy”, p. 66.

Curaçao 1636; 1643) and enslavement (Brazil 1636; Article 87 of the Brazil Instructions)¹²¹ in other American WIC colonies had been ordered significantly earlier.

In sum, this chapter has revealed that the treaty-making practice in Esse-quiibo, Berbice, and Suriname significantly differed from the WIC practices in other Dutch colonies in the Americas and Africa, since the agreements were focused on the prohibition of enslavement, wherefore no legal title for the appropriation of sovereignty, jurisdiction, and land as property was acquired by the Dutch by the Grotian legal means of treaty making. Thus, the following chapter examines the WIC practices of occupation and conquest on the “Wild Coast” and adjacent island of Tobago between 1581 and 1673 to determine both whether the Dutch had appropriated the area by those legal means and what was actually lawfully acquired.

¹²¹ Schiltkamp, “On Common Ground”, pp. 78–79. Peter Jacobsz. Tolck was governor of Curaçao from 1639 until 1641 (C. Goslinga, *A Short History of the Netherlands Antilles and Surinam*, The Hague: Martinus Nijhoff, 1979, p. 29).