

İSAM KONUŞMALARI

Osmanlı Düşüncesi · Ahlâk · Hukuk · Felsefe-Kelâm

İSAM PAPERS

Ottoman Thought · Ethics · Law · Philosophy-Kalam

hazırlayan / compiled by
Seyfi Kenan

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OPENNESS AND INTERDISCIPLINARITY IN OTTOMAN AND ISLAMIC STUDIES AND THE HUMANITIES: INTRODUCTION TO İSAM PAPERS

Seyfi Kenan

Assoc. Prof., Marmara University

I still vividly remember the lunch I had with the German philosopher Karl-Otto Apel and his spouse in Sultanahmet, when Apel took a long and hard look at the Hagia Sophia and remarked: “Well, I think minarets are a novel Turkish invention. [Pointing to the minarets in the museum], they certainly made the building look more aesthetic. I envisioned the whole building without them for a moment, it just looked strange!..” Minarets surely are not a Turkish invention, but the Turkish style of building minarets certainly has distinct characteristics that reflect the spirit of the times, just as any other building does. While Apel was touring the city when he came to deliver a conference at ISAM in 2005, he was also deeply surprised during his visit to the Topkapı Palace. He had already traversed the Topkapı Palace from the gate all the way to Sarayburnu when he still asked me in open-eyed curiosity: “Where is the palace?”

İstanbul has changed tremendously since Ahmed Hamdi Tanpınar wrote about it in his fascinating *Beş Şehir/ Five Cities*. But, this is not the whole story. The dramatic transformation of the city since 2005 would surprise Apel, an outsider, as the city is on the verge of losing the silhouette that makes it unique and unrivaled among comparable cities around the world. İstanbul’s residents, however, should feel happy as they are granted a few designated spots, they

were told, where they can happily enjoy looking at their city's classic, unrivaled but miniaturized landscape today. İstanbul, as Tanpınar observed, was considered to be as holy as Mecca and Medina for the old generation, but this is no longer the case after reckless modernizing interventions of the recent years, which are about to impair the city's landscape. Even outsiders such as UNESCO protested against the interventions, albeit fruitlessly, which makes the situation far more ironic. Over the last few decades, the people who are in charge of the city managed to gain a new habit of asking İstanbulites what color they would prefer to see on public busses, or which design they would like to have on the Bosphorus-crossing ferries. But no one asked the public about critical matters, or existentially vital issues; no one appealed the people who chose İstanbul as their "house of being" about a radical modern project that aimed to make a dramatic changes in their city, be it a neighborhood transformation—urban transformation or renewal is something else— or an eclipse of their city's landscape; and any reasonably democratic-minded person would ask why, or what gives them the right or legitimacy to do so?

This collection of articles surely could not dare to miss a paper on "İstanbul Culture and Aesthetic" authored by Beşir Ayvazoğlu where he deciphers not only the Turkish touch on the city that gave it its final form until the modern era, but also the process through which the Ottomans inherited and appropriated the existing Greco-Roman legacy. Although İstanbul began bearing a Turkish-Islamic signature since 1453, the city never rejected its Roman legacy. Mehmed II (Mehmed the Conqueror) respected this legacy more than his descendants esteemed his legacy, as Ayvazoğlu points out. Ottoman Turks felt confident enough to perceive themselves as the heir of Roman Empire as well. Thus, multicultural co-existence of İstanbul, and also the Ottoman Empire in all aspects was not an unavoidable situation or an imposed direction but a conscious choice for the Ottomans. Born as a result of this choice, "millet system" paved the way for all religio-cultural communities and minorities to learn their own languages and live in their own cultures and traditions.

Cities are like the jugular veins of cultures and civilizations. From ancient cities such as Troy and Babylon to modern metropolises like New York and Beijing, they are not only the places where one

can glean the political and economic power relations of the period, but they also serve cradles of sorts where significant dreams and *sui generis* worldviews blend and mingle with one another. Certain cities that emerged out of the spirit of time and out of particular worldviews may come forward time to time. Some of them may quickly fade away and become history, but some survive, endure and preserve their significance and value for a long time. İstanbul surely falls into the latter category, and there is no doubt that millions of people who came from, and still come from different regions, worldviews and lifestyles, religious traditions and ethnic backgrounds contribute the most, compared to other geo-strategic factors, by turning this city into İstanbul, as it become the house of Turkish being which offers a unique and precious living experience, and makes a peaceful and mutually respectful co-existence possible.

If anyone wonders, “Is there be any connection between love and the city?” Behçet Kemal Çağlar daringly responds “Surely, yes,” and poetically says “What does a heart know of love, if that heart loves not İstanbul.” This became a unique aesthetic experience when Münir Nurettin Selçuk, the maestro of classical Turkish music, set Çağlar’s words to a beautiful and moving melody. I suppose I cannot get away with contending that this line alone is enough to make every other city jealous of İstanbul. In the meantime, I must express my sincere gratitude to Metin Kunt who helped me in refining the translation of this verse, “İstanbul’u sevmese gönül aşkı ne anlar” all the way from England, where my quest for refining the translation found him while he was awaiting tendon surgery. Although I initially felt embarrassed because I unknowingly asked for his help in such a difficult time, I must confess that I am happy in retrospect because I asked for a revision from the right person, as Kunt was taught literature by the very poet who penned this line – a fact that turns this attempt into an unforgettable, almost miraculous event. And, I hope he will have a successful surgery and get well soon.

In the first chapter of this book, Metin Kunt analyzes the process of differentiation of dynasty and governance in the context of 16th century Ottoman polity, the period when Turkish İstanbul almost received its final shape after Mehmed II’s major comprehensive venture, which began in 1453. In a dynastic state such as the

Ottoman Empire, it is difficult to distinguish dynastic matters from affairs of state. While it is true that the political organization of the state allowed for a degree of independence for officials who enjoyed having their own sources of income, these officials nevertheless owed their positions to the will of the sultan. However Metin Kunt unveils a new development, though it proved to be a brief one, in the mid-16th century. The grand vezirs, not the sultan, were the ones in charge of administrative policy, although the decisions were ultimately subject, of course, to the approval of the sultan; furthermore, the advancement of officials became routine according to the so-called Ottoman custom (*kânûn-ı Osmânî*). The great Sultan Suleyman, called *Kânûnî* in Ottoman Turkish, the “Lawgiver”, came to act as a *law abiding* sultan, allowing for the emergence of state mechanisms that were independent of the sultan.

Finally, I should mention that Metin Kunt’s paper was inspired by the History of Ottoman Thought workshop series, which he himself was part of the organization. This series, a collaboration between Harvard University, İSAM and Sabancı University, emerged as a long-term project to explore vigorously and diligently this pristine field. Along with Cemal Kafadar, Hülya Canbakal, I was also part of the series and I would like to think of Kunt’s article as an early fruit of this enterprise.

During her visiting scholar program at İSAM in the spring of 2011, Martha Mundy, who is one of the leading scholars in legal anthropology, pulled the material together that she collected in Damascus and İstanbul, and wrote an article on the intersection between ethics and politics in the law. It seems that the debate about the changing forms of land tenure was far fiercer in Shafi’i Damascus than anything she had seen among the Hanafis during the Ottoman period. And hence, the Damascene jurists of the late 17th and 18th century could draw upon the work of a Shafi’i scholar who had written over three hundred years earlier in support of a change in doctrine being consolidated in the 18th century. More generally, the example Mundy used in the research raises – for her – wider questions about the different paths of Shafi’i and Hanafi jurisprudence under Ottoman rule and the centrality of debate over forms of property in agricultural land and the rights of the cultivator, across the long centuries from the

Mamluks to the Ottomans. These were, and remain, central problems of social justice in the 18th century debated in the Islamic jurisprudential tradition in a manner that few today would dare.

Colin Imber questions how Islamic Ottoman law was in his article, especially how the relationship between sacred and secular law was formulated within the Ottoman legal system. Scrutinizing earlier scholarship on this issue, Imber starts with a critique of Halil İnalçık, specifically his account of the origins of *kānūn*, who has been influential in forming the notion in this field after his teacher, Ömer Lütfi Barkan. I must affirm that I dared to send a copy of Imber's article to İnalçık for his response despite the fact that Halil Hoca was 96 years old, but he kindly responded saying that "that is OK" with a sigh. Although Imber criticizes İnalçık in certain aspects, he reaches almost the same conclusion, I must say, with İnalçık and also with Barkan when he writes "in the Ottoman Empire, Islamic law operated largely in the private sphere and secular law in the public."

In the following article, Viorel Panaite analyzes an Ottoman manuscript preserved in the Bibliothèque Nationale de France, which was conceived by François Savary de Brèves during his mission to the Ottoman Court (1593-1605) as a guidebook for the consuls of France in the Mediterranean. The manuscript can be considered as a basic source for researching the juridical status of Western merchants in the Ottoman Empire (the *Capitulatory Régime*) during the late sixteenth and the early seventeenth centuries. It seems that the manuscript contains various types of documents, such as peace and commerce treaties (*'ahdname-i hümayun*), legal opinions (*fetva*), Imperial orders (*hüküm*), correspondence (*name-i hümayun*), Grand Vizier's reports (*telhis*), and ambassadors' petitions (*'arzuhâl*). Moreover, this historical document also provides information on the legal condition of foreigners in the Ottoman world (*müste'minlik*), *Capitulations* granted by the Ottoman sultans to the Kings of France, commercial privileges of Western merchants in the Levant, Western consuls in the Mediterranean harbors, protection of Western merchants without a separate ambassador at the Ottoman Court, Christian captives in the House of Islam, and piracy in the Mediterranean Sea. The substance of the documents offers a complex picture of the Western trade and merchants (especially the French ones) in the main Ottoman harbors

in the Mediterranean, such as Alexandria, Aleppo, Istanbul and Galata, Gallipoli, Algiers, Tunis and Tripoli of Libya, Chio, Antalya and Avlonya.

Hedda Reindl-Keil examines lifestyles of Ottoman administrators, the consumption of luxury goods and gift exchanges from the 16th to the 18th centuries in her paper that she first eloquently presented and then wrote in Turkish. After studying Ottoman and Middle East history at Munich and İstanbul universities, she completed her doctoral program in Munich with a dissertation entitled *Männer um Bāyezīd. Eine prosopographische Studie über die Epoche Sultan Bāyezīds II. (1481-1512)*. Using the Ottoman archives and the travel notebooks of Western travellers, Reindl-Kiel analyzes the way Ottoman ruling elites consumed luxury goods, and their habits of gift exchange as well as the context and background of these attitudes towards consumption. Although there are enough resources regarding luxury items and gifts in the archival records, as she points out, there is surprisingly limited information on the lifestyles of Ottoman ruling elites. Reindl-Kiel emphasizes that gifts varied depending on the characteristics of the period, while the value of the gifts were proportionally balanced according to the status of the person to whom it was given.

The second chapter gives ample space to *kalam* and philosophy. When the intersection in these fields is concerned, especially the formative period of Islamic theology and philosophy (i.e. 8th-10th centuries) and the later period such as 13th-14th centuries, there is no doubt that one of the leading scholars whose name come to mind first in Western scholarship writing in German or English Languages is Josef van Ess. I met him in Cairo during a lecture he delivered in an institute nearby Tahrir square in 1992, after which we briefly discussed about his recent article on İbn Rāvendī and my fresh work on Ebû Bekir Râzī at that time. It was a pleasing moment to host van Ess in 2011 at İSAM almost two decades later to deliver his successive lectures grappling with *kalam* on the one hand, and with Islam and enlightenment on the other. When he delivered his papers, it was surprising to observe that he remained active more than three hours without a break during certain meetings, and still, neither he nor his courteous wife by his side showed any signs of exhaustion. His wife

apparently received most of her education in Turkey in 1930s and 1940s because her parents managed to escape from Nazi regime. Later, her entire family returned to Germany after the World War II where she met Josef van Ess while she was pursuing a doctoral degree on the late Ottoman intellectual history. I should conclude by saying that Ess' major contribution is *Theology and Society in the 2nd and 3rd Century Hijrah: A History of Religious Thought in Early Islam*, which comes in six volumes.

Finally, the last paper is on moral philosophy. One of the leading philosophers of ethics who predominantly examines philosophical ethics in his writings, with special interest in God's presence and importance in this perennial enterprise, John Edmund Hare examines the central tenet of divine command theory while he also responds to certain main objections to the view in his paper. Mostly analyzing the intersection of theology and moral philosophy in his works, Hare's best known book is called *The Moral Gap* where he develops an account of the need for God's assistance in meeting God's moral demands. He outlines and analyzes various philosophers' responses to the gap –which he finds to be identified in Kant's writings– between human ethical ability and human ethical duty; between what is possible and what is required. He sees this “moral gap” as being ultimately unbridgable without the help of religion.

Besides all these papers, there were several others who presented their interdisciplinary work during the 2010-2011 ISAM meetings that I organized with the support of several other fellows at the research center. Those papers, however, were either published or pending publication, and thus, this volume went forward with its current scope to avoid repetition. The papers were delivered by Tayyar Altıkulaç, who is one of the leading scholars on Quran in the world, on *the History of Quran and The Early Manuscripts* in April 2010; Harvey Cox, the author of *The Secular City*, on *The Future of Religion in the Secular City* in May 2010; Emre Dölen on *Universities in Turkey from Past to Present* in October 2010; Orhan Okay, the leading scholar on the late Ottoman intellectual history, on *Tanpınar's Envision of İstanbul* in December 2010; Feridun Emecen on *Selim I and the Arab World* in January 2011; Hakan Erdem on *Slavery in the Late Ottomans* in February 2011; Selçuk Akşin Somel on *Educational Reforms and Order*

in *the 19th Century Ottoman World* in April 2011; Şevket Pamuk, the author of *Monetary History of the Ottoman Empire, on Centralization of Monetary Structures in Both Europe and the Ottomans, and the Formation of the Modern State* in April 2011; and finally Selçuk Mülayim, who is one of the leading scholars on the Ottoman art and architecture, on *Nomenclatures of Ottoman Architecture* in June 2011.

As far as how a work can be related with its author is concerned, we may observe that there is an existential affinity between author and his or her work, as Sartre points out. What I mean is that as soon as an author completes producing or writing his or her work, that work begins to produce or write its author in return, designating or sometimes even defining his or her own being in the world, just as the way his works define Fârâbî or Gelibolulu Mustafa Âlî, or the way her works define Fatma Aliye or Halide Edib, even the way his articles and thousands of letters construct Namık Kemal in Turkish intellectual history. This work could be a book, but it could be a work of art – such were Karahisari’s novel calligraphies or Levnî’s creative miniatures. This work can be even educating students or initiating a *sui generis* school of thought too, just as Confucius’ or Socrates’ or Abu Hanifa’s works did; in fact, none of them had written a book or even a treatise, but they raised many students through whom we know and designate who these phenomenal personalities were in history. I think that similar existential relationship could be observed between institutions and their works, research, and even its graduates. The works or research of an institution can shape the way it exists and perseveres. İSAM started up as an interdisciplinary research center specializing not only in Islamic studies but also in humanities and Ottoman studies to fill a gap in Turkish scholarship. It fulfilled the needs in pressing fields during the late 1980s through *the Encyclopedia of Islam*, which was envisioned as the most comprehensive encyclopedia on Islamic religion, culture and civilization. Several young, passionate research candidates who came from different regions, diverse backgrounds and dispositions created a unique atmosphere by asking questions and seeking answers through taking a new look at things based on convincing evidence in a tolerant environment while pursuing their respective studies in an interdisciplinary mindset without feeling the threat of any imposing contention or ideology. And, I hope these

founding principles will last and the research center will sustain it by keeping its interdisciplinary outlook, as well as its tolerant and all-embracing attitude.

Finally, I owe thanks to all fellows at the research center including especially Vildan Serdarođlu Cořkun who diligently helped me in the process of organizing these meetings, and also Bayram Güneř and his staff, who competently and efficiently arranged for all the technical and the practical matters that made these proceedings functional, and finally Ender Boztürk who has patiently done the graphic design while managing the affairs in the center by being jack of all trades. Moreover, I would like to express my sincere appreciation to Mehmet Bulğen who volunteered to translate Josef van Ess' papers into Turkish, and to my colleagues Harun Anay and B. Harun Kűçük for their assistance without being asked when I needed in the process of preparing this book.

BEING A WESTERN MERCHANT IN THE OTTOMAN MEDITERRANEAN

Viorel Panaite

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Foreigners in Islamic Ottoman judicial view (*müste'min*)

The general attitude of Islam towards the foreign merchants wavered between indifference and hostility.¹ According to certain historians and jurists, only economic reasons, such as obtaining certain merchandise or money from tax-collecting, encouraged the Muslims authorities to grant commercial privileges to the Western merchants.² This attitude towards foreigners had common points with Roman and Byzantine law.

The foreigners' judicial position in Ottoman dominions was mainly defined by the Islamic holy law (*şeri'at*), in the branch called *siyer*, which generally described the lawful conduct of Muslim

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- 1 These pages are excerpts from a planned book on Western trade and merchants in the Ottoman Mediterranean during François Savary de Brèves's time; the basic source is the *Manuscrit Turc 130* from the Bibliothèque Nationale de France. I found this manuscript during my stay in Paris, at École des Hautes Études en Sciences Sociales, Centre d'histoire du domaine turc, as a visiting researcher between 2001 and 2003. I would like to thank Prof. Gilles Veinstein for his support. For this article, I have also used information gathered during my stay at Folger Shakespeare Library, Washington D.C., in 2005-2006, as a fellow of the Andrew Mellon Foundation.
- 2 John Gilissen, "Le statut des étrangers, à la lumière de l'histoire comparative", *L'Étranger, première partie, Recueils de la Société Jean Bodin*, Bruxelles 1958, pp. 5-57.

community towards the infidels, peace and commerce agreements (in Turkish, *'ahdname*; in Western languages, *Capitulations*) and customary practices. In the Ottoman Empire, non-Muslims who had taken an oath of allegiance and agreed to pay tribute to the sultan were called “treaty-people” (*ehl-i 'ahd* or *mu'ahidîn*). These terms derived from the Arab word *'ahd*, which implied engagement, agreement, convention or oath. According to *şeri'at* there were two categories of “treaty-people”: *müste'mins* (tolerated and protected non-Muslim foreigners) and *zimmis* (non-Muslim Ottoman subjects).³

According to the *jihad* doctrine, the world was divided in two parts: *dar al-harb* (House of War) and *dar al-Islam* (House of Islam). Between them should, theoretically, be a permanent state of war. Consequently, the life and property of an inhabitant of the House of War (*harbî*) who ventured into Muslim lands were completely unprotected, unless he was given a “temporary safe-conduct” (*aman*). If he obtained *aman*, he would be called a “beneficiary of protection” (*müste'min*). Initially, the concession of certain rights to the inhabitants of the House of War (*harbî*) was legitimated by the verse in the Qur'an, 9/6, “protect the infidels who look for protection”. In the Ottoman epoch, the *Capitulations* granted to the Western sovereigns implied a general safe-conduct for their subjects (envoys, merchants, travelers, etc.)

From the perspective of the late eighteenth and nineteenth century, Western scholars, such as Mouradgea d'Ohsson, defined the foreigner in the Ottoman Empire in a manner that was closer to the European view than to the Islamic one. The *müste'mins* were all Europeans who came into the Ottoman Empire for commerce, or were established in the Ottoman towns.⁴ Returning to the sixteenth century, the famous jurist Ibrahim al-Halebî (d. 1549) stated in a chapter devoted to foreigners: “Any enemy who enters with safe-conduct into our territories is called *müste'min*”.⁵ In the judicial opinions (*fetva*) issued by the *şeyh ül-Islam* or simple muftis, the

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3 A. Morabia, *La notion de ġihad dans l'İslam médiéval des origines à al-Gazali*, Paris 1975, p. 290.

4 I. Mouradgea d'Ohsson, *Tableau général de l'Empire Ottoman*, Paris 1784, vol. I, p. 15.

5 İbrâhim al-Halebî, *Şerh-i Mülteka el-Ebhur (Mevkufat)* (ed. Nedim Yılmaz), İstanbul 1993, I, p. 336.

foreigner was similarly defined: “Zeyd enemy who [comes] from the House of war and enters into the House of Islam with safe-conduct” (*Zeyd-i harbî dar-i harb’dan amanla dar-ı İslam’a çıkub*).⁶ In fifteenth- to seventeenth-century official documents, such as orders, law codes and treaties, the concept of *müste’mins* was seldom used for foreign merchants, being replaced by similar but ambiguous idioms, such as “infidel who was not a tribute-payer” (*haracgûzar olmayan kafir*) in 1476 and “infidels (*kafirler*) who come from Venice and other countries” in 1484.⁷ In the following centuries, foreign merchants were called by phrases specific to the *şeri’at*: “infidels who come from the House of War” in 1586; “infidels of the House of War” in 1650; “the merchants’ group who comes from countries of infidels” in 1734, and “the merchants of the House of War” (*dar ül-harb tüccarı*) in 1750-1751.⁸

It should be emphasized that in the judicial opinions of the *Manuscrit Turc 130*, *müste’minlik* is the term used to define the judicial condition of Western merchants during their stay in the Ottoman dominions. An instance is as follows: in a judicial opinion dealing with the French trade in the Mediterranean, the grand mufti underlined that the clause from the Imperial Charter protecting the French subjects in the Ottoman Empire was actually a characteristic of the judicial status of foreigners in Islam (*ancak müste’minlik şartı tastîr olunmuş iken*), and not only a stipulation specific to the Ottoman-French relationship (*dost ile dost düşman ile düşman olmak şartı olmayub*).⁹

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6 M. Bianchi, “Recueil des Fetvas, écrit en turc et en arabe, par Hafiz Mohammed ben Ahmad ben Elcheich Moustafa Elkedousy”, *Journal Asiatique*, 4 (1824), pp. 180-1.

7 R. Anhegger - H. İnalçık, *Ķânünnâme-i Sultânî ber Müceb-i ‘Örf-i Osmânî*, Ankara 1956, doc. 53, doc. 56; M. Berindei, M. Kalus-Martin, G. Veinstein, “Actes de Murad III sur la région de Vidin et remarques sur les qânun otomans”, *Südozt- Forschungen*, 35 (1976), p. 54.

8 Ömer Lutfi Barkan, *XV ve XVI. Asırlarda Osmanlı İmparatorluğunda Zirâi Ekonominin Hukukî ve Malî Esasları: Kanunlar I*, İstanbul 1945, doc. 93; Valeriu Veliman, *Relaşiile româno-otomane (1711-1821). Documente turceşti*, Bucureşti 1984, doc. 73, 122, 150.

9 BNF, DO, Turc 130, f. 27r.

On the other hand, the term *Frank* (with its Ottoman variations *frenk*, *frenc*, *efrenc*, *firenk*, *pl. efrenciyâ*) was used at origin to designate all infidels, being the oldest concept used in the Mediterranean and Black Sea area for defining the Europeans who entered the House of Islam. The formula “the Frank who doesn’t pay tribute” (*harac-gûzar olmayan Firenk*) was used to designate the infidels from the House of War who entered the House of Islam.¹⁰ In the fifteenth and seventeenth centuries, *firenk* (*frank*) was used to designate the Western merchants, ships makers, ships captains and owners travelers and adventurers in the Ottoman dominions.¹¹

Because the Europeans coming to the Ottoman Empire saw themselves as Englishmen, Frenchmen, Venetians, Germans, Poles, etc. – as Bernard Lewis says, the Ottomans started to see them as different groups, but with a territorial and political identity, rather than an ethnic or national one.¹² After this, the foreign merchants were no longer called by imprecise judicial concepts (*kafir*, *harbî*, *franks*) but by names indicating their origin state: *Lehlü* (the Poles), *Venediklü* (the Venetians), *İngilterelü* (the Englishmen), *Francalu* (the Frenchmen), *Nederlandalu* (the Dutchmen) and so on.

The foreigner status is better understood if it would be compared with the judicial condition of non-Muslim Ottoman subject (*zimmî*). The Hanefî jurist ash-Shaybani stated that a *mûste’min* “does not enjoy the *zimmî* status because he is an enemy person.”¹³ Also, unlike a non-Muslim subject, the foreigner could only dwell in Ottoman territories for less than one year, during which he was exempted from the poll tax; after one year in *dar al-Islam*, he became a *zimmî*. This rule of *şeri’at*, however, was not observed in Ottoman practice. A clause included in *Capitulations* regularly gave foreign merchants the privilege to remain for an unlimited time in the Ottoman Empire without paying *cizye* and becoming the sultan’s protected subject.

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10 Anhegger - İnalçık, *Ķânünnâme*, doc.53.

11 Anhegger - İnalçık, *Ķânünnâme*, doc.55.

12 B. Lewis, *The Muslim Discovery of Europe*, London 1982, p. 173.

13 *The Islamic Law of Nations. Shaybani’s Siyar* (trans. M. Khadduri), Baltimore 1966, p. 173.

Despite the theoretical state of war between the House of Islam and the House of War, in practice, peaceful relationships with non-Muslims proved necessary, and various peace agreements were concluded between sultans and European rulers. In the Ottoman-Turkish language, these were called *'ahdnames* (*Capitulations*) and implied a general permission for access and guarantee of safety (*aman*) for Western merchants, ambassadors or travelers entering and staying in the Ottoman dominions.¹⁴

As concerns the diplomatic model of the Imperial Charters (*'ahdnames*) by which the Ottomans regulated the foreigners' status in their dominions, the following should be taken into account: a) the Venetian experience in the Levant; and b) the customary practices which were actually imposed on all who were in a position to grant or receive commercial privileges. The main articles of the *Capitulations* concerning trade and merchants can be summarized in the following categories: safe access by land and sea, safety of their persons and properties, freedom and security of trade, commercial and financial privileges, and individual responsibility for debts and crimes.¹⁵

The Manuscript Turc 130 (BNF, Division Orientale)

At the Bibliothèque Nationale de France (BNF), Division Orientale, there is a manuscript consisting of 278 folios, and including Ottoman documents from the late sixteenth and early seventeenth

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- 14 For details, see: Viorel Panaite, *The Ottoman Law of War and Peace. The Ottoman Empire and Tribute Payers*, No. DLXII, East European Monographs, Boulder: Distributed by Columbia University Press, New York 2000; Viorel Panaite, "Peace Agreements in Ottoman Judicial and Diplomatic View. 15th – 17th Centuries", *Pax Otomana. Studies in Memoriam Prof. Dr. Nejat Göyünç* (ed. Kemal Çiçek), Ankara & Haarlem: Yeni Türkiye & Sota, , 2001, pp. 277-308.
- 15 N. Sousa, *The Capitulatory Regime of Turkey. Its History, Origin and Nature*, Baltimore 1933; H.J. Liebesny, "The Development of Western Judicial Privileges", *Law in the Middle East* (ed. M. Khadduri - H.J. Liebesny), Washington 1955, pp. 309-333; H. İnalçık - J.Wansbrough, "İmtiyâzât", *Encyclopédie de l'Islam* (Nouvelle Édition), Leyde – Paris: Brill 1975, III, 1207-1225; Viorel Panaite, *Diplomație occidentală, comerț și drept otoman. Secolele XV-XVII (Western Diplomacy, Commerce and Ottoman Law. 15th to 17th Century)*, Editura Universității din București 2004.

century (BNF, DO, Turc 130).¹⁶ On the folio 1 recto, one can read the following note: “*Mémoires de l’Ambassade de Monsieur de Brèves en Levant, très curieux et nécessaire à ceux qui sont employés pour le service du Roy à la Porte Ottomane. Du Ryer de Malezair.*”¹⁷

André Du Ryer de Malezair was born in Marcigny, Saône-et-Loire, probably in the last decade of the 16th century, and died at Malezair, probably in 1660.¹⁸ Of the upbringing, youth and education of André du Ryer, there is no information. His career began as a “gentilhomme ordinaire de la chambre du roi.” The first record of his existence in Paris is shortly before 1616. He was there introduced to François Savary de Brèves, former French ambassador in Istanbul, who was to have a decisive effect on his entire career. Having singled him out as a promising linguist and a man of intelligence, Savary de Brèves dispatched Du Ryer to Egypt in order to study Ottoman and Arabic. In 1621, Savary de Brèves recalled him to Paris and established that he had made adequate progress. Two years later, in 1623, Du Ryer was appointed as French vice-consul in Alexandria, Egypt, one of France’s main and earliest trading partner in the Levant, and where there had been a consular representation since the early 1550s. Du Ryer was dismissed from the consul office in Egypt in January 1626. Certain documents state that he left his office in Egypt before 1630, and then spent a period in Istanbul working for the interests of France and its merchants. He came back to France in the same year, 1630, where he was appointed “gentilhomme ordinaire de la chambre du roi.” In 1630 Du Ryer published the first edition of his Ottoman grammar,¹⁹ in which

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- 16 For a detailed description of the *Manuscrit Turc 130*, see also: Viorel Panaite, “A French Ambassador in Istanbul and his Turkish Manuscript on Western Merchants in the Ottoman Mediterranean (late sixteenth and early seventeenth century)”, *Revue des Études Sud-Est Européennes*, Académie Roumaine, Institut d’Études Sud-Est Européennes, XLII / 1-4, Bucarest 2004, pp. 117-132.
- 17 E. Blochet, *Catalogue des Manuscrits Turcs de la Bibliothèque Nationale*, Tome I: *Ancien Fonds*, Paris: Bibliothèque Nationale, 1932, pp. 53-4.
- 18 Alastair Hamilton - Francis Richard, *André du Ryer and Oriental Studies in Seventeenth-Century France*, London: The Arcadian Library in association with the Oxford University Press, 2004.
- 19 *Rudimenta grammatices linguae Turcicae, quibus ejus praecipuae difficultats ita explanantur, ut facile possint a quolibet superari, viam monstrante Andrea du Ryer*, Paris: excudebat A. Vitray, 1630.

he announced also the preparing of an Ottoman-Latin dictionary; however, this later work was never published.²⁰ But his French translation of the Qur'an, published in 1647, became famous in Europe, being re-translated in Dutch, English, German, and published more times during the seventeenth and eighteenth centuries.²¹

François Savary, Count and Seigneur de Brèves²² was probably born in 1560 in Maulévrier, Bourbonnais, and died in Paris on 22 April, 1628.²³ He received a good education, including history and politics. François Savary de Brèves occupied two diplomatic positions during his career: representative of France to the Ottoman Court between 1593 and 1605²⁴; French ambassador to Rome from 1607 to 1615.²⁵ Until

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- 20 Bibliothèque Nationale in Paris preserved two manuscripts of *Dictionarium Turcico-Latinum. Türk ve Latin Lugatlaridir* (BNF, DO, Supl. Turc 464, 465).
- 21 *L'Alcoran de Mahomet, translaté de l'arabe en françois, par le sieur Duryer, sieur de la Garde Malezair*, Paris 1647; *The Alcoran... translated out of Arabique into French... and newly Englished...*, London 1649; Amsterdam 1770, 2 vols. Du Ryer's other translation was *Gulistan, ou l'Empire des Roses, composé par Saadi, prince des poètes turcs et persans*, Paris 1634.
- 22 Also marquis of Maulévrier, baron of Semur and Attais. Here are some short biographies which contain data, frequently incorrect, on his life: Abbé d'Artigny, *Nouveaux mémoires d'histoire, de critique et de littérature*, Paris 1752, tome IV, art. LXIX, pp. 345-375; J.L. Bacqué-Grammont, Sinan Kunalalp, Frédéric Hitzel, *Représentants permanents de la France en Turquie (1536-1991) et de la Turquie en France (1797-1991)*, Istanbul-Paris 1991, p. 16; Isabelle Petitclerc, *François Savary de Brèves, ambassadeur de Henry IV à Istanbul (1585-1605). Diplomatie française dans l'Empire ottoman et recherche orientaliste*, thèse de doctorat, Université de Paris IV, 1988, ANRT, Lille 1989 (unpublished work); René Pillorget, Suzanne Pillorget, *France baroque. France classique. 1589-1715. II. Dictionnaire*, Paris 1995, pp. 1079-80.
- 23 His father was married in 1544 to Françoise de Damas, dame of Brèves, a title that passed to the Savary family. Thus, we can understand the origin of his name. He was buried in the convent Annonciades of St-Eutrope-lez-Chanteloup, founded by him nearby Arpajon.
- 24 Some historians have improperly indicated other periods of his embassy (1589-1607, in Eugène Plantet (ed.), *Correspondance des Beys de Tunis et des Consuls de France avec la Cour. 1577-1700*, vol. I, Paris 1893, p. 5, n. 1).
- 25 In 1615 he was recalled to France and appointed until 1618 as "governor" (teacher) of Jean-Baptiste Gaston, the only brother of King Louis XIII (duke Gaston d'Anjou; Gaston d'Orléans).

today, the few pages on his diplomatic activity in the Ottoman Empire were exclusively based on non-Ottoman sources, e.g. the rich correspondence with King Henry IV,²⁶ the correspondence between King Henry IV and Ottoman high dignitaries,²⁷ or the English and Venetian envoys' dispatches and reports.²⁸ The documents of the *Manuscrit Turc 130* preserved in Paris decisively enlighten the "Turkish period" of Savary de Brèves' life.

François Savary de Brèves conceived this manuscript during his mission to the Ottoman Court (1593-1605) as a guidebook for the consuls of France in the Mediterranean. To date, it has not been possible to establish how much this manuscript circulated inside or outside the empire, nor how much it influenced the French diplomatic and consular milieu. It is only certain that one of the direct beneficiaries was André Du Ryer de Malezair, disciple of Savary de Brèves, who was appointed for a short time as French consul to Egypt (1623-1626).

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- 26 Jules Berger de Xivrey, *Recueil des lettres missives de Henri IV*, Paris 1843-76 (in vols. IV-IX are included Henry IV's letters to François Savary between 1589-1606). Some excerpts were also published in I. de Testa, *Recueil des traités de la Porte Ottomane avec les puissances étrangères*, Vol. I, Paris, 1864, pp. 96-7, 159-73; and François Emmanuel-Guignard, Comte de Saint-Priest, *Mémoires sur l'ambassade de France en Turquie et sur le commerce des Français dans le Levant, 1525-1770* (ed. Charles Schefer), Paris 1877 (reprinted, Philo Press, Amsterdam 1974), pp. 439-441. This correspondence was used by Paul Masson in his discussion on the Anglo-French rivalry in the Levant (Paul Masson, *Histoire du commerce français dans le Levant au XVIIe siècle*, Paris 1896).
- 27 Also, the letters between M. de Brèves, and the French officials or Municipalité de Marseille, demonstrate his strong actions in supporting the French commerce in the Levant, and his fidelity in the service of the King Henry IV ("son bon Roy") (Octave Teissier, *Inventaire des Archives Historique de la Chambre de Commerce de Marseille*, Marseille 1878, p. 87).
- 28 The dispatches of the English ambassadors offer an image of the diplomatic intrigues in which they were involved (on the Dutch case, see Klass Heeringa, *Bronnen tot de geschiedenis van den Levantschen handel*, 'S-Gravenhage 1910). Reports of Venetian baylos were used as sources by A.L. Rowland, to write his study "England and Turkey: the rise of diplomatic and commercial relations." *Studies in English commerce and exploration in the reign of Elizabeth*, Philadelphia 1924, part I, pp. 154-69.

Two particularities make this manuscript a valuable source for studying the Ottoman Mediterranean in the late sixteenth and early seventeenth century.

First, it has to be pointed out that there is a large spectrum of documents concerning the same topic, i.e. Western trade in the Mediterranean, and signed by various Ottoman dignitaries. The manuscript contains around 250 various documents, issued from different chanceries in Istanbul: Imperial Charters, *lettres-patentes*, Imperial orders and letters (*name-i hümayun*), reports (*telhis*) of Grand Vizier and judicial opinions (*fetva*) of the grand mufti, letters of Ottoman high officials, translations of King Henry IV's letters, ambassadorial petitions to the Ottoman government etc. Thus, there is a sufficient documentary base for drawing a comprehensive picture of Western trade and merchants in the Ottoman Mediterranean.

On the other hand, it is necessary to emphasize that the Ottoman sources that have been known to date on the French trade in the Levant were far more abundant for the period after 1620 than any preceding period. But this manuscript brings to light documents about the last decade of the sixteenth and first years of the seventeenth century. Except for a few documents dated before 1595, most of these were written between 1596 and 1602. Consequently, from the chronological point of view, this manuscript puts at our disposal a great number of documents, issued over a very short period of time; these will be useful to formulate statements and to come to accurate conclusions.

Other features of this manuscript also deserve our notice.

This manuscript was not incidentally written, as happened with many manuscripts in which an anonymous copyist transcribed documents without respecting the chronological, substantial or formal relevance between them. As concerns the last aspect, it is possible to say that the numbering of folios is specific to Ottoman manuscripts. However, the documents were copied from the right to the left of the manuscript only from folio 2r to folio 30v. Then, the scribe/s recorded the manuscript from the left to the right, transcribing all Ottoman documents from the last folio (278r) to folio 38v.

Most documents were transcribed with serious attention, specific to a planned work, with each document being made to head the

a separate page. The author's intention was primarily to make the texts accessible, and thus he gives the minimum of annotations in Ottoman Turkish; these are mainly devoted to the diplomatic aspect and content of documents. Sometimes, an informative annotation in French was added to certain documents. This means the author was very familiar with the content of documents, and did not transcribe them in a random manner.

All these observations made on the external aspect of the manuscript and included documents not only reveal the European origin of the author, but also the fact that probably a number of copyists contributed to its preparation. The appearance of this manuscript indicates that it was written in at least two stages. It seems it was begun in a planned manner, abandoned for a while, and then taken up again later.

The structure and substance of the *Manuscrit Turc 130* are relevant to the initial intentions of Savary de Brèves, that is, to write a guidebook for the French ambassadors and consuls who were residing in the Ottoman Mediterranean. Considering the order of document transcription, one can speak about an incipient design to structure this work in three sections: a) diplomatic section (chapter of *Capitulations*), b) judicial section (chapter of judicial opinions); c) administrative section (chapter of decrees).

a) *Diplomatic section.* The *Capitulations* formed one of the judicial bases for consuls in their dealings with the Ottoman authorities. Thus, the manuscript begins with the three Imperial Charters (*ahdname-i hümâyûn*) in which commercial privileges were granted to the kings of France in the second half of the sixteenth century. These are: the *ahdname-i şerif*, granted by Sultan Selim II to King Charles IX in 977/1569; the *ahdname-i şerif*, granted by Sultan Murad III to King Henry III in 989/1581; the *ahdname-i şerif*, granted by Sultan Mehmed III to King Henry IV in 1005/1597.

It must be emphasized that the famous text of 1536 - considered for many years to be the corner stone of the capitulatory system - was not copied in the manuscript. This proves once again that the preserved text never had any validity in law, but was rather a treaty project between King Francis I of France and Sultan Süleyman the

Magnificent. On the other hand, the *Capitulations* of 1604 are also missing, which is supplementary evidence that the manuscript was finished before 1604, during Savary de Brèves' stay in Istanbul.

Considering the petitions and imperial orders that Savary de Brèves presented to the local authorities, there can be no doubt that most provisions laid down in the *Capitulations* were not observed in practice. It was for this reason that the French ambassador included judicial and administrative sections in his planned guidebook.

b) Judicial section. Ottoman manuscripts with copies of peace and commercial treaties granted to Christian sovereigns can frequently be found in archives and libraries. Astonishingly enough, – it is possible to say that this is the only manuscript structured in this manner, at least, of those discovered to date – is the fact that the above-mentioned chapter of Imperial Charters (*ahdname*) is continued with a special section dedicated to judicial opinions (*fetva*)²⁹. The majority were signed by the *şeyh ül-Islams* (grand muftis) from the Sa'adüddin family.³⁰

In order to define the judicial conditions for Western merchants, the ambassadors could ask for judicial opinions (*fetvas*).³¹ Taking into consideration that all judicial answers were favorable to French commercial interests in the Ottoman Mediterranean, one can affirm that these opinions were issued upon the request of Savary de Brèves, who had friendly relations with religious officials in Istanbul.³² The judicial opinions of this manuscript were deliberately included by Savary de Brèves, placed after the diplomatic section of his guidebook,

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29 BNF, DO, Turc 130, f. 26r-30v.

30 *İlmiye Salnâmesi: Osmanlı İlmiye Teskilâtı ve Şeyhülislâmlar*, Ankara 1998, no. 23.

31 The Venetian asked for this kind of *fetvas*, which were preserved in the Archives of Baylos in Istanbul (now *Archivio di Stato di Venezia*). The case of the Venetian was emphasized in recent articles (Giustiniana Migliardi O'Riordan, "Présentation des Archives du Baile à Istanbul", *Turcica*, 33 [2001], pp. 339-367).

32 *Calendar of State Papers and Manuscripts, relating to English Affairs, Existing in the Archives and Collections of Venice and in other Libraries of Northern Italy* (ed. Horatio F. Brown), Vol. IX. 1592-1603. London 1897, doc. 1160: Report of 20 March 1603 of Giovanni Carlo Scaramelli, Venetian Secretary in England, to the Doge and Senate.

to explain and legitimize - from the point of view of Islamic Ottoman law - the articles of the *'ahdname* that had been granted by Sultan Mehmed III to King Henry IV in 1597.

c) *Administrative section.* The final section is a miscellaneous collection of more than 200 documents (for the most part imperial decrees), that have various chancery forms and authors, but a common context, i.e. Western (especially, French) trade and merchants in the Ottoman Empire in the late sixteenth and early seventeenth century. These texts illustrate the practical aspects of commercial diplomacy in the Ottoman Court, and reveal the abuses of Western merchants by provincial authorities. More precisely, the documents offer data on the following topics: Western ambassadors and their commercial diplomacy in the Ottoman Court; the procedure of granting Imperial Charters and new commercial privileges in the Ottoman Empire; the judicial condition of Western foreigners, especially of French merchants and the protégés of France; various aspects of Western trade in the Ottoman Mediterranean (interdiction of taxes on money (*guruş*) brought by foreign merchants, the merchants' right over their merchandise); navigation in the Ottoman Mediterranean (maritime powers, enemy ships / *harbî gemiler*); piracy and its effects on international trade in the Mediterranean; Christian and Muslim prisoners, including the prohibition to enslave Western merchants and confiscate their merchandise in Ottoman dominions; conflicts between the French communities and the local authorities, which generally involved *avantias*, i.e. arbitrary payments extorted from the community as a whole and taxes imposed based on former practices; the responsibilities and rights of the French ambassador in Istanbul and the French consuls in the major Ottoman ports and towns, such as Alexandria, Aleppo, Antalya, Tunis, Algiers etc. (a consulage of 2%); the powerful executive relationship between the central authorities in Istanbul and provincial officials (punishment for failure to observe imperial orders).

Considering the addressees of the imperial orders and the ordinary letters, the major Mediterranean towns, ports and regions mentioned in the manuscript, which we must join together to complete the Ottoman Mediterranean puzzle, are as follows: Egypt (*Misr*) and Alexandria (*Iskenderiyye*), Aleppo (*Haleb*), Algiers, Tunis and

Tripoli in Lybia (*Trablus-u Garb*), Chios (*Sakiz*) Antalya, Istanbul and Galata, Gallipoli and the Boğaz fortresses, and finally Avlonya (Vlora, Valona).

I would like to mention once again that the judicial section – that is the collection of *fetvas* issued by the grand mufti - were deliberately included by the French ambassador after the diplomatic section of this manuscript in order to explain and legitimize the Capitulatory régime from the point of view of Islamic Ottoman law.

***Fetva* - as a Judicial Source of Ottoman law**

Judicial opinions (*fetva*),³³ issued by a *mufti* upon application by a Muslim, were documents that set out to state and explain rules of the *şeri'at*, and were - according to Halil Inalcık - the most important Ottoman contribution to the *şeri'at*.³⁴ There are contradictory opinions about the origin and functions of muftis in Ottoman history.³⁵ According to Haim Gerber, the mufti was a religious-judicial expert especially qualified to provide judicially authoritative answers; his position in the Ottoman judicial hierarchy was between jurists (writers of judicial manuals who occupied the highest level) and

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33 For general aspects concerning *fetvas*, see: Midhat Sertoğlu, *Resimli Osmanlı Tarihi Ansiklopedisi (ROTA)*, İstanbul 1958, p. 106 (*Fetva*); U. Heyd, "Some Aspects of the Ottoman *Fetva*", *BSOAS*, XXXII / 1 (1969), pp. 35-56; Hilmar Krüger, *Fetwa und Siyar*, Wiesbaden 1978; Haim Gerber, *State, Society, and Law in Islam. Ottoman Law in Comparative Perspective*, Albany: State University of New York Press, 1994, pp. 79-112 (Chapter 3: "The *Fetva* in the Judicial System"); E. Tyan - J. R. Walsh, "Fatwā", *Encyclopaedia of Islam (EI²)*, II, 866-867 (II. Ottoman Empire, by J. H. Walsh); Imber, *Ebu's-su'ud*, 24-64 (Chapter "The Law: *shari'a* and *qanun*").

34 Colin Imber defined *fetva* "as one of the three major categories of Ottoman judicial documents", the other two being Sultanic decrees and certificates issued by judges (Imber, *Ebu's-su'ud*, 51-5; Inalcık, *Ottoman Empire*, 173-4).

35 Most recently, between J. H. Walsh - R. C. Repp. On the institution of *mufti* and *şeyh ül-Islam*, see E. Tyan - J. R. Walsh, "Fatwā", *EI²*, II, 866-867 (II. Ottoman Empire, by J.H. Walsh); J. H. Kramers - R. W. Bulliet - R. C. Repp, "Shaykh al-Islām", *EI²*, IX, 399-402 (R.C. Repp, on *şeyh ül-Islam* in the Ottoman empire). On *müftilik* till the sixteenth century see R.C. Repp, *The Müfti of Istanbul: A Study in the Development of the Ottoman Learned Hierarchy*, London: Oxford University Press, 1986.

judges (the *kadis* who were situated on the lowest level), probably somewhat nearer to the jurist.³⁶ The chief *mufti* of Istanbul, known in Turkish as the *şeyh ül-Islam*, occupied the foremost religious office in the empire, and was also known as the “head of scholars” in the law-codes of Mehmed II.³⁷ The *fetvas* were used mainly during the private trials that took place before the *kadi*. However, there is evidence that the *şeyh ül-Islam* was applied to in the political, diplomatic and administrative life of the state, with the sultans having recourse to and following the advice offered by the grand mufti, even from the fifteenth century; however, as a rule, this took place more in the seventeenth and eighteenth centuries in order to legitimize orders from a religious-judicial point of view as well.³⁸ The general image of a *fetva* is that it was a specific document worded in such a way as to eliminate all personal and contextual details (in this way preventing any influence upon the *kadi*’s decision). It contained two sections, the question (*mesele*) and the answer (*el-cevab*). The former exposed, as briefly as possible, the query in dispute, and asked the question “it is possible?” In the latter, the *mufti* answered laconically “yes” (*olur*) or “no” (*olmaz*), sometimes including explanations from precedent religious - judicial texts.³⁹

Usually no real name of individuals or places was included, with only the conventional/traditional ones being used (*dar al-harb* and *dar al-Islam* for territories, Zeyd, ‘Amr, Bishr for males, Hind, Zeynab and Khadija for females). Exceptions exist, and in this respect the legal opinions from the *Manuscrit Turc 130* are good instance. *Fetvas* were very rarely preserved as original or isolated documents, but can be more frequently found in *kadi* court records (*şeri’at sicilleri*) and

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36 Gerber, *Ottoman Law*, pp. 79-88.

37 In Mehmed II’s *kânûnnâmes* (*Turski izvori za istoria na pravete v bulgarskite zemli* [ed. D. Galabov], Sofia 1961, I, 11).

38 Repp, “Shaykh al-Islam”, p. 402; Gerber, *Ottoman Law*, pp. 79-112. The European observers underlined also this role of *fetvas* (D’Ohsson, *Tableau*, V, 71; A. L. Castellan, *Moeurs, usages, costumes des Othomans et abrégé de leur histoire*, vol. I, Paris, 1812, pp. 9-10).

39 Sertoğlu, *ROTA*, p. 106; Heyd, “Fetva”, pp. 35-56. J. R. Walsh was not right to state that the answer was “never supported by reasons or citations from authority” (Walsh, “Fetwā”, 867).

orders of the sultan (*hüküm*); they are often found in collections of *fetvas*.⁴⁰ Usually, these collections brought together judicial consultations issued by a single *şeyh ül-Islâm*, but starting from the seventeenth century, the *fetvas* that were relevant to questions put into practice were gathered in thematic collections, becoming manuals of Islamic law for scholars. They also contained chapters on relations with non-Muslims, e.g. they dealt with subjects ranging from *siyer*, *cihad*, *zimmî*, *müste'min*, *harâc* to *cizye*.⁴¹

In the sixteenth century, the most famous judicial opinions were issued by the great *şeyh ül-Islâm*s Zenbilli Ali Efendi⁴² and Ebussuud Efendi;⁴³ these also act as basic sources for the relationship between Ottomans and non-Muslim states, groups and persons.

From the seventeenth and eighteenth centuries, the most known *fetva* collections belong to the following *şeyh ül-Islâm*s: Minkarîzade

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40 I have sometimes found original *fetvas* among the pages of *fetva* collections in Topkapı Palace Museum Library (TKSMK) and Süleymanîye Library (SK) in Istanbul. For details on the structure of these collections, see: Krüger, *Fetwa*, pp. 136-9.

41 For instance: *Defter-i Sukuk* (TKSMK K. 778); *Siyâsete Mute'allik Fetvalar* (*Fetvâs* concerning politics) (TKSMK, H. 1650); *Fetava fî Hakk-i Musâdere* (*Fetvâs* concerning the right of capture) (TKSMK, B 107).

42 Zenbilli-Ali Efendi officiated as *şeyh ül-Islâm* between 1503-1525/6, until his death. I have consulted the manuscript *Fetava-yi 'Âli Ef.* (SK, Fatih, 2390), but there are another three manuscripts in the Süleymaniye Library in Istanbul.

43 Ebussuud Efendi (898-982/1492-1574) officiated as *şeyh ül-Islâm* for 30 years, between 1545 and 1574, being considered one of the greatest Ottoman *şeyh ül-Islâm*. His *fetvas* were used as examples in the seventeenth and eighteenth centuries (Repp, *Müfti*, pp. 272-304; Hasan Basri Erk, *Meşhur Türk Hukukçuları (Célébres juristes turcs)*, İstanbul, f. a., pp. 117-39; Ahmet Özel, *Hanefi Fıkıh Âlimleri*, Ankara: Türkiye Diyanet Vakfı, 1990, p. 120). Certain *fetvas* were published by M. E. Düzdağ, F. Selle and A. Akgündüz (M. E. Düzdağ, *Şeyhülislâm Ebussuud Efendi Fetvaları Işığında 16. Asır Türk Hayatı*, İstanbul 1983; Friedrich Selle, *Prozessrecht des 16. Jahrhunderts im Osmanischen Reich. Auf Grund von Fetwas des Scheichülislame Ebüssuud und anderer unter des Regierung des Sultans Süleiman des Prächtingen*, Wiesbaden: Otto Harrassowitz, 1962; A. Akgündüz, *Osmanlı Kanunnameleri. IV. Kitâb: Kanunî Sultan Süleyman Devri Kanunnâmeleri. I. Kasım. Merkezi ve Umumi Kanunnâmeler*, İstanbul 1992, pp. 40-100).

Yahya Efendi, in office between 1662 and 1674,⁴⁴ Çatalcalı Ali Efendi, who was twice in office, first between 1674-1686, and then again, until his death, in 1692,⁴⁵ Ankaravî Mehmet Emin Efendi, in office between 1686 and 1687,⁴⁶ Ebu-Sa'idzade Feyzullah Feyzi Efendi, who was in office between 1690 and 1694, with a small interim period, (the latter's *fetva* collections are known as the *Fetava-yi Feyziyye*),⁴⁷ Menteshizade Abdurrahîm Efendi, in office between 1715 and 1716,⁴⁸ and Yenişehirli Abdullah Efendi, who had a long official mission as *şeyh ül-Islam* between 1718 and 1730.⁴⁹

Also, the collection of *fetvas* issued by the simple *mufti* 'Alî Efendi Akkirmânî (d. 1030/1621) should be mentioned here. There

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44 I have consulted three manuscripts: *Fetava-yi Yahyâ Efendi* (SK, Hamidiye, 601: *Bâb al-üşr ve al-harâc*, f. 12a-16b; *Kitâb as-siyer*, f. 17a-21b; on *zimmîs*, f. 21b-25b); *Fetava-yi Yahyâ Efendi* (TKSMK, A 788); *Fetava-yi Minkârizâde Yahya Efendi* (Princeton University Library [PRUL], GYC, 2389 Y, ms. of 1798).

45 Many manuscripts of his *fetvas* collections are preserved in the Princeton University Library: *Fetava-yi Ali Efendi* (PRUL, GYC, 2509Y, mss of 1183/1769, 286 folios; 2456Y; 3027Y; NSC, 1014. Also, *Fetava-yi Ali Efendi* (TKSMK, M. 378, ms. of 223 folio). At the same time, his judicial opinions were frequently published in the nineteenth century (*Fetava-yi Ali Efendi*, Ali Çatalcalı Şeyhülislâm'dan toplayıp tertip eden: Salih ibn-i Ahmed el-Kefevî, İstanbul, editions 1245/1829, 1258/1842, 1272/1856, 1278/1862, 1283/1866, 1311/1893; Ali Efendi, *Fetava*, İstanbul 1324-1325/1906-1907), and once in modern Turkish (*Şeyh'ül-Islâm Ali Efendi Fetvaları*, Müellifi: Salih b. Ahmed el-Kefevî, Osmanlıcadan sadeleştiren: Nevfel Dinç, no place, no date).

46 *Fetava-yi Ankaravî*, İstanbul 1281/1864-5.

47 A manuscript in PRUL, GYC, 3762 Y: *Kitâb as-siyer*, f. 17a-18a. More published editions: *Fetava-yi Feyziyye Maan Nûkul*, Feyzullah Şeyhülislâm, İstanbul 1266/1850; Feyzullâh Efendi, *Fetava-yi Feyziyye*, İstanbul 1324-25 / 1906-1907.

48 Published *fetvas*: Abdurrahîm Efendi, *Fetava*, İstanbul 1243/1827; Abdürrahim Mentêşi-zade, *Fetava-yi Abdürrahim*, İstanbul: Dar üt-Tabaat ül-Mamuret üs-Sültaniye, Cild I-II, 1243/1847.

49 Manuscripts: *Fetava-yi Abdullah Efendi* (TKSMK H. 173); *Behcetü'l-fetava* or *Fetava-yi Abdullah Efendi el-Yenişehir* (Hungarian Academy Library, Budapest, Török Qu. 18). Published *fetvas*: *Behcetü'l-fetava Maan-Nûkul*, Ebülfazl Abdullah. Tertip eden: Mehmed Fıkhîy ül-Aynî, İstanbul: Matbaa-i Âmire 1266 / 1849; 2. Bas. 1289/1872.

are very few details about his life and activities. According to Mehmed Süreyya's *Sicill-i Osmânî*, he served as a *müderris* (professor) and *mufti* for almost thirty years in many places of the Ottoman Empire. But it seems that he had a connection with the *Akkirman* (White Fortress), where he may have been born.⁵⁰ The great number of manuscripts that include his *fetvas* (I have counted seven)⁵¹ suggests that his judicial activity was appreciated by the *ulemas*.

One of the questions that occurs is, what relevance do the *fetvas* have for the legal position of Western merchants in the Ottoman Empire?

In this respect, it is to be noted that in any collection of judicial opinions, in addition to the chapters dedicated to sovereignty (*hükümet*), conduct of state (*siyer*), holy war (*cihad*), protected peoples (*zimmî*), poll-tax (*cizye*), it is included a chapter with *fetvas* concerning the status of foreigners (*müste'min*), etc. In relations with non-Muslims, the Ottomans extracted the basic rules from *siyer*, the branch of *şeri'at* which generally described the lawful conduct of Muslim community towards the infidels of enemy territory (*harbî*), as well as towards the beneficiaries of covenant (*mu'ahidîn, ehl ül-'ahd*), who may reside temporarily (*müste'min*) or permanently (*zimmî*) in the house of Islam. It is to be emphasized that the Ottoman law of nations was not a pure Islamic law. On the contrary, there is enough evidence that customary practices functioned in the Mediterranean in matters of war, peace, trade, and foreign relations, in spite of all the religious, political and judicial differences between Islam and Christendom.

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50 Mehmed Süreyya, *Sicill-i Osmânî*, III, 509; Süreyya, *Sicill-i Osmânî* (ed. 1996), I, 251.

51 *Fetava-yi Ali Âkkermânî* (TKSMK, A 842, ms. of 458 folio, 203 x 124, nesih). This is a collection (*mecmu'a*) of *fetvas* issued by Akkermanlı Ali Efendi and compiled by Derviş Mehmed b. Hasan İstanbûlî in 1040/1630-1631. The most important chapter for our research is *Kitâb as-siyer*, f. 94b-108b. Other manuscripts: *Fetava-yi Akkirmânî Maa Üskübî* (SK, Hkm. 405; mss. of 397 folio, nesih, *Kitâb as-siyer*, f. 87a-98b); *Fetava-yi Akkirmânî* (SK, M. Hafid Ef. 98, mss. of 206 folio, talik); Millet Kütüphanesi (İstanbul, Murad Molla, 1118; Beyazıt Devlet, Veliyyüddin, 1470, 1471). There is also a manuscript in Konya.

Less usual are the judicial opinions included in the *Manuscript Turc 130* from the Bibliothèque Nationale; these directly concern the judicial condition of Western merchants (especially the French, English and Dutch) in the Ottoman Empire.

Summaries of the Judicial Opinions from the *Manuscript Turc 130*

Ambassadors could request judicial opinions (*fetvas*) in order to define the legal position of Western merchants.⁵² Taking into consideration that all judicial answers were favorable to French commercial interests in the Ottoman Mediterranean, one can affirm that these judicial opinions were issued upon the request of Savary de Brèves, who had friendly relations with religious officials in Istanbul.⁵³ In December 1602, the Venetian secretary in London offered clear evidence in this respect, saying “in dispatches of December last the English Ambassador at Istanbul enclosed a decree passed by the Turks, drawn up by the Mufti on religious grounds at the instance of the French Ambassador.”⁵⁴

The judicial opinions were deliberately included by Savary de Brèves after the diplomatic section of this manuscript to explain and legitimize - from the point of view of Islamic-Ottoman law - the commercial privileges and the judicial condition of Western merchants in the Ottoman Mediterranean. Analyzing the substance of these judicial opinions, one can understand the questions that were posed to the Hanafî imams (*bu mesele beyanında e'imme-i hanefiyeden cevab ne vecihledir ki* / “in what manner has it been answered to explain this

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52 The Venetians asked for this kind of *fetvas*, which were preserved in the Archives of Baylos in Istanbul (now *Archivio di Stato di Venezia*). The case of Venetians has been emphasized in recent articles (Giustiniana Migliardi O'Riordan, “Présentation des Archive du Baile à Istanbul”, *Turcica*, 33, 2001, pp. 339-367; Dilek Desai, “Les documents en ottoman des fonds des archives du Baile à Istanbul”, *Turcica*, 33 [2001], pp. 369-377).

53 The pages on *fetvas* are based on the article Viorel Panaite, “Western Merchants and Ottoman Law. The Legal Section of the Manuscript Turc 130 from the Bibliothèque Nationale in Paris”. *Revue des Études Sud-Est Européennes*, Bucarest, XLV, 1-4, 2007, pp. 45-62.

54 *State Papers. Venice*, IX, doc. 1160: Report of 20 March 1603 of Giovanni Carlo Scaramelli, Venetian Secretary in England, to the Doge and Senate).

question by the Hanafi imams”) were connected with the articles of the Imperial Charter granted by Sultan Mehmed III to King Henry IV in 1597. The *şeyh ül-Islam*s gave generally very short answers (*el-cevab*), but in certain cases they went into more detail. In five judicial opinions the first question is followed by a supplementary one (*suret-i mezburede*), which of course imposes an additional answer.

Here are the short summaries of the judicial opinions copied in the *Manuscript Turc 130*:

f. 26r: judicial opinion issued by the *şeyh ül-Islam* Mehmed Efendi (1601-1603), son of the famous annalist Hoca Sa’adeddîn. Signature: *Ketebehû el-fakîr Mehmed bin Sa’adeddîn ‘ufiye ‘anhüma*.

This *fetva* concerns the rivalry between France and England to protect the merchants who did not have separate ambassadors representing them to the Porte. All contrary documents were annulled by a newer one, which confirmed that the Dutch and other foreign merchants had come to the Well-Protected Dominions under the banner of the king of France.

f. 26v: judicial opinion with supplementary explanation issued by the *şeyh ül-Islam* Mehmed Efendi (1601-1603). Signature: *Ketebehû el-fakîr Mehmed bin Sa’adeddîn ‘ufiye ‘anhüma*.

According to this opinion, the new clauses included in the *‘ahdnâmes* on the occasion of their renewal had to be explained. In addition, the article which stipulated that seized merchandise be indemnified had to be elucidated. Moreover, any governor who permitted and participated in piracy with his own ship was liable to pay damages and be removed from his office.

f. 26v: judicial opinion issued by the *şeyh ül-Islam* Mehmed Efendi (1601-1603). Signature: *Ketebehû el-fakîr Mehmed bin Sa’adeddîn ‘ufiye ‘anhüma*.

The grand mufti forbid Ottoman ships from pillaging and enslaving Frenchmen who were traveling from a *harbî* country to the Ottoman dominions with a *harbî* ship.

f. 26v: judicial opinion issued by the *şeyh ül-Islam* Mehmed Efendi (1601-1603). Signature: *Ketebehû el-fakîr Mehmed bin Sa’adeddîn ‘ufiye ‘anhüma*.

This *fetva* concerns a civil trial between the *müste'min* Zeyd and the Ottoman 'Amru. The situation would be decided in favor of the latter if he could prove, with witnesses, that the claimed merchandise had belonged to him.

f. 27r: judicial opinion issued by the *şeyh ül-Islam* Mehmed Efendi (1601-1603). Signature: *Ketebehû el-fakîr Mehmed bin Sa'adeddîn 'ufiye 'anhüma*.

The Ottoman ships were forbidden to enslave French merchants trading between two *harbî* countries or to confiscate their merchandise.

f. 27r: judicial opinion with a supplementary explanation issued by the *şeyh ül-Islam* Mehmed Efendi (1601-1603). Signature: *Ketebehû el-fakîr Mehmed bin Sa'adeddîn 'ufiye 'anhüma*.

A *hâkim* who had imposed taxes by force upon the *müste'min* merchants was to be dismissed.

f. 27v: judicial opinion issued by the *şeyh ül-Islam* Mehmed Efendi (1601-1603). Signature: *Ketebehû el-fakîr Mehmed bin Sa'adeddîn 'ufiye 'anhüma*.

The Western merchants coming to the Ottoman dominions under the French banner were under the protection of France. Invoking as pretext that the non-treaty merchants should be still considered as *harbî*, certain Ottoman officials were seizing their goods and merchandise. These actions had to be condemned.

f. 27v: judicial opinion with a supplementary explanation issued by the *şeyh ül-Islam* Mehmed Efendi (1601-1603). Signature: *Ketebehû el-fakîr Mehmed bin Sa'adeddîn 'ufiye 'anhüma*

Reimbursement for merchandise seized and punishment by long imprisonment for the commanders of ships who had seized *müste'min* merchandise; such an action was considered to be a violation of a peace that had been concluded in public interest; the claims of the injured *müste'min* were rejected.

f. 28r: judicial opinion with two supplementary explanations issued by Mehmed Es'ad Efendi, other son of the annalist Hoca Sa'adeddîn, probably when he occupied the office of *Anadolu*

kadı'askeri (1010/1601-2) or *Rumeli kadı'askeri* (1012/1603-4). Signature: *Ketebehû el-fakîr Es'ad 'ufiye 'anhüma*.

Interdiction imposed on newly-arrived monks who were occupying a church that belonged to well-established monks; nobody should interfere with another if they were practicing their faith in their houses; nobody may ask something because they preserved their old timetable.

f. 28v: judicial opinion with a supplementary explanation issued by the *şeyh ül-Islam* Hoca Sa'deddin Efendi (1598-1599). Signature: *Ketebehû el-fakîr Sa'adeddîn 'ufiye 'anhüma*.

The rivalry between France and England concerning the right of protection over the *harbî* merchants who did not have their own ambassadors to the Porte; such people have to be treated according to the Imperial Charter granted to the king of France; the sultan should not allow to be allowed to violate a pact, in accordance with the Imperial Charter granted to France.

f. 28v: judicial opinion issued by the *şeyh ül-Islam* Mehmed Efendi. Signature: *Ketebehû el-fakîr Mehmed bin Sa'adeddîn 'ufiye 'anhüma* (1601-1603).

Interdiction on the Ottoman authorities enslaving the *harbî* subjects who have settled in a *müste'min* country and coming - in this manner - into the Well-protected Dominions.

f. 29r: judicial opinion with a supplementary explanation issued by the *şeyh ül-Islam* Mehmed Efendi (1601-1603). Signature: *Ketebehû el-fakîr Mehmed bin Sa'adeddîn 'ufiye 'anhüma*.

Punishing the captains of defensive Ottoman ships who enslaved a *müste'min* and confiscate his ship and provisions; it is permitted that the banned merchandise on the ship be confiscated.

f. 29r: judicial opinion with a supplementary explanation issued by the *şeyh ül-Islam* Mehmed Efendi (1601-1603). Signature: *Ketebehû el-fakîr Mehmed bin Sa'adeddîn 'ufiye 'anhüma*.

The captains of Ottoman ships who had enslaved *müste'mins* and seized their merchandise were convicted to long terms of imprisonment.

f. 29v: judicial opinion issued by the *şeyh ül-Islam* Mehmed Efendi (1601-1603), and a supplementary explanation signed by Ebu'l Meyâmin Mustafâ Efendi, *şeyh ül-Islam* in 1603-4 and 1616. Signatures: *Ketebehû el-fakîr Mehmed bin Sa'adeddîn 'ufiye 'anh*; *Ketebehû el-fakîr Mustafa 'ufiye 'anh*.

A *hâkim* (judge) who did not observe an Imperial order that liberates slaves seized contrary to a pact, nor prohibit the sale these slaves, is dismissed.

f. 29v: judicial opinion issued by the *şeyh ül-Islam* Mehmed Efendi (1601-1603). Signature: *Ketebehû el-fakîr Mehmed bin Sa'adeddîn 'anhumâ*.

A *müste'min* band - who carried out piracy, seizing the ships of another *müste'min* group - is forbidden to enter the Ottoman empire on threat of punishment.

f. 30r: judicial opinion with a supplementary explanation issued by the *şeyh ül-Islam* Mehmed Efendi (1601-1603). Signature: *Ketebehû el-fakîr Mehmed bin Sa'adeddîn 'anhumâ*

Prohibition of confiscation of merchandise belonging to the merchants protégés who carried on trade with French ships, invoking the fact that they are *harbî*; the merchandise must be indemnified; punishment was to be referred to the local representatives of the sultan.

f. 30v: judicial opinion issued by the *şeyh ül-Islam* Mehmed Efendi (1601-1603). Signature: *Ketebehû el-fakîr Mehmed bin Sa'deddîn 'anhumâ*

Interdiction of confiscation of *müste'min* merchandise that was bought with money, even if earlier other *harbîs* had pillaged this merchandise from a Muslim in the House of War and sold it to that *müste'min*.

The inclusion of a judicial section in the *Manuscrit Turc 130* of the Bibliothèque Nationale made from this manuscript an unique evidence. Here then, apparently for the first time in a surviving Ottoman manuscript, it's clearly proved the necessity of judicial legitimization of the stipulations found in peace agreements (*'ahdnames*) by judicial opinions (*fetvas*).

French Commerce, North African Piracy and Ottoman Law

More documents from the *Manuscrit Turc 130* offer information about North African piracy and its effects on the French trade in the Mediterranean, as well as about Christian captives. Among these there are more judicial opinions (*fetvas*) and imperial orders (*hüküms*).⁵⁵

“The Mediterranean” Alberto Tenenti says “was not exactly sailed by ships exchanging cheerful greetings at every encounter: to use a contemporary simile, it much more resembled a forest teeming with bandits.”⁵⁶ In the early sixteenth and seventeenth century, the privateers and corsairs posed a daily threat in the Mediterranean, making merchant shipping a dangerous profession. Actually, the last two decades of the sixteenth century represent the beginning of a new golden epoch in the history of piracy in the Mediterranean, an epoch that would last about one hundred years.

Historians disagree about the consequences of piracy in the historical evolution of the Mediterranean. For instance, Alberto Tenenti emphasizes the direct connection between piracy and the decline of Venetian navigation in the Levant.⁵⁷ In addition to human loss, the authorities of that time often had to determine the material damages caused by piracy. In the last decade of the sixteenth century, François Savary de Brèves, who was directly interested in the success of Marseille’s commerce in the Levant, evaluated annual damages caused by piracy alone to be between 500,000 and 600,000 *écus*.⁵⁸ On the other hand, certain Mediterranean communities used piracy to compensate

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55 For details, see also: Viorel Panaite, “French Commerce, North African Piracy and Ottoman Law in the Mediterranean (Close-Sixteenth and Early-Seventeenth Century).” *Revue Roumaine d’Histoire*, Bucarest: Editura Academiei Române, XLVI / 1-4 [2007], pp. 69-81.

56 Alberto Tenenti, *Piracy and the Decline of Venice. 1580-1615*, translated from *Venezia e i corsari, 1580-1615*, Bari 1961, with an introduction and glossary, by Janet and Brian Pullan, University of California Press, Berkeley and Los Angeles 1967, p. 29, 61.

57 Tenenti, *Piracy. Venice*, p. 30.

58 *Histoire du commerce de Marseille publiée par la Chambre de Commerce de Marseille*, sous la direction de Gaston Rambert, Tome III, *De 1480 à 1515* par Raymond Collier; *De 1515 à 1599* par Joseph Billioud, Paris 1951, p. 549.

for the damages caused by the strong commerce in the European ports, particularly the Italian ones. Visible evidence of this partial success was the continuous development of the North African towns (Algiers numbered as many as 100,000 inhabitants in the seventeenth century) in comparison with the economic decline of the traditional Mediterranean ports, like Genoa, Venice and Barcelona.⁵⁹

Piracy was not specific to a community or race. The pirates could be of any ethnicity or religion. In the Mediterranean, Muslims and Christians practiced piracy alike. According to the *Lex mercatoria*, “a pirate is a sea-thief, or an enemy to human kind, who aims at enriching himself by marine robberies, committed either by force, fraud or surprise, on merchants or other traders at sea.” All were not equally bad, but even the best of them were dangerous to the fair trader.⁶⁰ If it is possible to make a distinction, it is possible to say that a special appetite for robbery on the high seas manifested itself in the renegades (apostates), who, as a rule, made up the crews of pirates. The editor of Nicolas de Nicolay’s *Les quatre premiers livres des navigations et pérégrinations orientales* illustrated the edition of 1568 with a ‘generic renegade’; this illustration became famous in the sixteenth century.⁶¹ In Algiers, most

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59 Maurice Aymard, “Chiourmes et galères dans la Méditerranée au XVI^e siècle”. *Histoire économique et sociale du monde méditerranéen 1450-1650. Mélanges en l’honneur de Fernand Braudel*, Toulouse 1973; Michel Fontenay, “L’Empire ottoman et le risque corsaire au XVII^e siècle”. *Actes du II^e Colloque International d’histoire. Économies méditerranéennes, équilibres et intercommunications. XIII^e-XIX^e siècles*, Athènes 1985, pp. 429-459; Michel Fontenay, “La place de la course dans l’économie portuaire: l’exemple de Malte et des ports barbaresques”. *Annales. Économies, Sociétés, Civilisations*, XLIII/6 (1988), pp. 1321-47; Philippe Hiély, *XVII^e siècle, âge d’or de la piraterie en Méditerranée*, vol. I-II, Marseille 1996.

60 Wyndham Beawes, *Lex mercatoria rediviva: or, the merchant’s directory... Extracted from the best writers both at home and abroad; more especially from those justly celebrated ones of Messieurs Savary; improved and corrected by the author’s own observations, during his long continuance in trade. The whole calculated for the use and service of the merchant, lawyer, senator, and gentleman*, London 1752, p. 257.

61 See the illustration *Les Yurongnes* in Nicolas de Nicolay, *Les quatre premiers livres des navigations et pérégrinations orientales*, Lyon 1568.

of the pirates were renegades. Actually, the renegades were ‘more (numerous) than the other inhabitants, the Moors, Turks and Jews of Algiers.’ According to Antonio de Sosa’s description, who gave an extensive list of nations, in the second part of the sixteenth century there was “no Christian nation in the world from which there are no renegades in Algiers.”⁶²

There were various forms of sea-plundering, from uninhibited piracy to licensed piracy.⁶³ Sometimes a piracy of extreme violence was practiced; here the main aim was to rob the ships, and consequently the people were killed without mercy. Yet, the most frequently piracy used was the robbery of the ship, the taking of captives and selling the people as slaves.

No ship could be sure that it would be able to navigate safely in the Mediterranean. In October 1590, two Turkish galleys, on their way from Algiers to Istanbul, approached the coast and fell into the hands of Christian pirates, consisting of rebelling galley slaves led by a Genoese renegade.⁶⁴ In January 1591, the English captured a Catalan ship that was sent to Barbary with all its crew and cargo; the people were sold to the Turks and Moors as slaves.⁶⁵ Such examples are very common in contemporary sources.

From time to time, the people of France learned about acts of piracy carried out by ‘Turks’ (*Turcs*) and the victims of these acts who were from amongst their compatriots.⁶⁶ At the same time, the same public read from publications about the contra-piracy actions initiated by the Christian sovereigns or local authorities. Some of

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62 Maria Antonia Garcés, *Cervantes in Algiers. A Captive’s Tale*, Nashville: Vanderbilt University Press, 2002, p. 35.

63 Kenneth R. Andrews, *Elizabethan Privateering. English Privateering during the Spanish War, 1585-1603*, Cambridge: University Press, 1964, p. 15.

64 *Calendar of State Papers and Manuscripts, relating to English Affairs, Existing in the Archives and Collections of Venice and in other Libraries of Northern Italy* (ed. Horatio F. Brown), Vol. VIII: 1581-1591. London 1894, doc. 975, p. 507.

65 Tomaso Contarini, the Venetian ambassador in Spain, to the Dodge and Senate (*State Papers. Venice*, vol. VIII, doc. 1003, p. 519).

66 *Cruel Martyre de la personne du très-valeureux capitaine M le Cte de La Richardièrre, mis a mort par les mains des Turcs...*, Paris 1620.

these actions were replied to by taking some of the *Turcs* prisoners and confiscating their ships.⁶⁷

Four main groups of corsairs⁶⁸ were active in the Mediterranean: Uskoks,⁶⁹ the Knights of Malta,⁷⁰ Northern Europeans (English and Dutch) and Muslims from North Africa. Directly affecting French commerce in the Mediterranean, there is more information about North African and English piracy in official documents from the *Manuscrit Turc 130*. In following pages, I shall examine more imperial orders (*hüküm*) and a judicial opinion (*fetva*) concerning the piracy carried out by people from Algiers, Tunis and Tripoli (the so-called Barbary in Western sources), either humble subjects, captains of ships (*re'is*) or local high-officials (*hâkim*).

At the close of the sixteenth century, piracy was an everyday event at sea in the area of the North African (Barbary) coast;⁷¹ attacks

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- 67 *Récit de la prise de plusieurs vaisseaux des Turcs... Grand Duc de Toscane...*, S.l, n.d.; *Histoire véritable de la prise des vaisseaux, de plusieurs corsaires et pirates turcs, et sont prisonniers à Vallongne*. A Paris, chez le veufue du Carroy, rue des Cannes, à l'enseigne de la Trinité, 1620; *La victoire obtenue par M. le général des galères de France sur les plus redoutables corsaires du Turc...*, Paris 1620; *La lettre d'un gentilhomme de M. le Baron de Cesi, ambassadeur pour le roi en Levant... touchant la prise de cinq galères turques et autres grands exploits de guerre faits par les cosaques et polonais sur les Turcs et les Tartares...*, Paris 1620.
- 68 Pál Fodor, "Piracy, Ransom Slavery and Trade. French participation in the liberation of Ottoman slaves from Malta during 1620s", *Turcica*, 33 (2001), pp. 119-34.
- 69 Uskoks (South Slave refugees) were especially pirating in the Adriatic Sea. The Habsburgs and the Papal State used them often to damage Venetian and Ottoman commerce in the Dalmatian area (See, Kálmán Bend, "Les uscoques entre Venise, la porte ottoman et la Hongrie". *Venezia e Ungheria nel contesto del barocco europeo*, Florence 1979, pp. 399-408; Catherine Wendy Bracewell, *The Uskoks of Senj. Piracy, Banditry and Holy War in the Sixteenth Century-Adriatic*, Ithaca-London 1992).
- 70 See: Paul Cassar, "The Maltese corsairs and the Order of St. John of Jerusalem", *Scientia* XXIX/1-2 (Malte 1963), pp. 26-69; Peter Earle, *Corsairs of Malta and Barbary*, London 1970; Michel Fontenay, "Corsaires de la fois ou rentiers du sol. Les Chevaliers de Malte dans le 'corso' méditerranéen au XVIIe siècle", *Revue d'histoire moderne et contemporaine*, XXXV (1988), pp. 361-84.
- 71 Laugier de Tassy, *Histoire des États barbaresques qui exercent la piraterie*,

consisted of ambushes and surprise attacks, and numerous French merchant vessels fell victim to these. Both the regular navy and private ships were sent to plunder Western commercial shipping and Christian territories. Even if these sometimes operated individually, the fleet operation was much more common for the Barbary corsairs.⁷² Let us add that the Muslim pirates described their robbing actions against Christian ships as being a 'religious duty' (*farz*), as a holy war against the infidels.⁷³ Actually, only the Muslim corsairs from the North Africa abused the *jihad* doctrine and used it to legitimize enslaving Christian merchants and robbing their ships in the Mediterranean. Some late but significant evidence belongs to the Moroccan pilgrim Abu Salim al-'Ayyashi, who indicated in the 1660s that the corsairs' activity in Tripoli was a holy war that had economic benefits.⁷⁴

In 1593, Murad III allowed the Janissaries in Algiers to participate in privateering ventures, together with the local corsairs. Of course, ideologically, this was a struggle against the infidels.

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contenant l'origine, les révolutions de l'état présent des royaumes d'Alger, de Tunis, de Tripoli et de Maroc, avec leurs forces, leurs revenus, leur politique et leur commerce par un auter qui y a résidé plusieurs années avec caractère public (Laugier de Tassy), traduite de l'anglois, 2 vols., Paris 1757; Godfrey Fischer, *Barbary Legend. War, Trade and Piracy in North Africa, 1415-1830*, Oxford: Clarendon Press, 1957.

72 Earle, *Corsairs*, p. 11-12; Christianne Villain-Gandossi, "Contribution à l'étude des relations diplomatiques et commerciales entre Venise et la Porte ottomane au XVIe siècle. Part 2", *Südost-Forschungen*, XXVII, Munich 1969, pp. 18-19.

73 M. du Caurroy, "Législation musulmane sunnite: rite hanéfi." *Journal Asiatique*, IV série, tome 12 (1848), p. 13, n. 6; *Piracy and Diplomacy in Seventeenth-Century North Africa. The Journal of Thomas Baker, English Consul in Tripoli, 1677-1685* (Edited with an Introduction by C.R. Pennell), London - Toronto 1989, p. 45.

74 N.R. Bennet, "Christian and negro slavery in eighteenth century North Africa". *Journal of African Studies*, I (1980), pp. 64-83; Murray Gordon, *L'esclavage dans le monde arabe. VIIe-XIXe siècle* (Traduit de l'anglais par Colette Vlérick), Paris 1987, p. 33. Yet, the raids launched in Africa for capturing slaves were rarely preceded by the procedure specific to the Holy War (Allan G.B. Fischer and Humphrey J. Fischer, *Slavery and Muslim Society in Africa*, Londres 1970, p. 101).

Practically, the sultan was responding to the request of the governor of Algiers, Şaban Pasha, who was confronted with financial difficulties. He was promised that the corsairs would contribute a greater share of their booty to the provincial treasury. Actually, this permission encouraged the men living on the borders to engage in private enterprise. In the last decade of the sixteenth century, Sultan Murad III and then Sultan Mehmed III ordered the governors (*sancak-beyi*), corsairs and Janissaries in Algiers to obey their governor-general and help collecting the taxes.

The central administration in Istanbul wanted to control the Barbary corsairs; however, it found it difficult to efficiently control the naval border. This affected Western trade and merchants in the Mediterranean. Being unable to destroy piracy, the Ottomans implemented some defensive counter-measures on land or close to shore against pirate incursions, such as patrols of frigates searching for the elusive pirates close to shore.⁷⁵

Piracy in the Mediterranean was not specific to humble people who chose to use the sea to secure a livelihood. Piracy was also a form of financial gain employed by certain Ottoman local authorities. In North Africa in particular, they assisted the pirates, fitting out pirate ships. Moreover, they used middlemen, sometimes Jewish residents of Istanbul, who would sell the plunder, giving a share of the profits to the Turkish officials.

The governors-general fitted out ships themselves, making in this way a sort of navy which was the equivalent of the regular navies of France or other Mediterranean states. On the other hand, the *beylerbeyis* from Barbary licensed private individuals to equip ships on their own account. The private pirates had to pay a share of their booty to the governors-general, normally one-eighth. Antonio de Sosa enumerates 32 captrains (*re'is*) who lived in Algiers in 1581, ten of whom were Turks and the rest who were for the most part Christian apostates, in particular, Italians. These *re'is* owned private ships, built both by their own slaves and public slaves. After

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 75 Andrew C. Hess, *The Forgotten Frontier. A History of the Sixteenth-Century Ibero-African Frontier*, Chicago - London: The University of Chicago Press, 1978, pp.109-110.

successful expeditions at sea, the *re'is* would give great feasts.⁷⁶ As many French subjects had been enslaved, a clause concerning prisoners from countries subject to France was included in the '*ahdnames* of 1569⁷⁷ and 1581. They were to be set free and their possessions returned without default; whoever the governor-general was should be dismissed and the stolen goods be compensated.⁷⁸ Following the most favored nation clause, a similar article was included in the British *Capitulation* of 1580.⁷⁹

Being asked by the ambassador François Savary de Brèves, Sultan Mehmed III added a new clause in the '*ahdname* granted to King Henry IV of France in February 1597. According to this new article, the pirates of Barbary were blamed for enslaving French merchants and it was requested that they be set free. Moreover, the responsibility of the *beylerbeyis* of Algiers, Tunis and Tripoli of Libya, who had tolerated or participated to the piracy activities, was emphasized.⁸⁰

François Savary de Brèves constantly complained via petitions (*arz*) to the Sublime Porte about the piracy attacks against French commercial ships. As a result of these petitions, the sultan issued more imperial commands, reiterating his protection over the French vessels and merchants and his ban on any abuse against them. In the Başbakanlık Osmanlı Arşivi (Office of the Prime Minister's Archives) in Istanbul a register (*defter*) with imperial commands, dispatched between 1st June 1592 – 21st July 1597 (1 *Ramazan* 1001 - 2 *Zilhicce*

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76 Garcés, *Cervantes*, p. 37.

77 I. de Testa, *Recueil des traités de la Porte Ottomane avec les puissances étrangères*, Paris 1864, Vol. I, pp. 91-96; François Emmanuel Guignard, Comte de Saint-Priest, *Mémoires sur l'ambassade de France en Turquie et sur le commerce des Français dans le Levant, 1525-1770* (ed. Charles Schefer), Paris 1877, pp. 385-393.

78 Saint-Priest, *Mémoires*, pp. 381-392.

79 Richard Hakluyt, *The Principal Navigations, Voyages, Traffiques and Discoveries of the English Nation, made by Sea or over-land to the remote and farthest distant quarters of the Earth at any time within the compasse of these 1500 Yeeres: Divided into three several parts, according to the positions of the Regions whereunto they were directed*, Vol. 3, Imprinted at London, 1598-1600, III, p. 60.

80 BNF, Division Occidentale, Fr. 3653, f. 1r-6v; Saint-Priest, *Mémoires*, pp. 398-410.

1005) to the governors, judges and other officials of Ottoman towns and provinces around the Mediterranean has been preserved. Among these, one can also find the *hüküms* concerning North African piracy, addressed to the local authorities of Algiers, Tunis and Tripoli.⁸¹

Certain documents from the *Manuscrit Turc 130* complete the information from the above-mentioned register.

The first series of edicts is dated from the third period (*evahir*) of *Safer* 1006, but taking in consideration the French notes indicating *Écrit le 10 octobre 1597*, one can affirm more precisely that these *hüküms* were issued on 28 *Safer* 1006. Invoking the commercial privileges granted by the Imperial Charter of February 1597, François Savary de Brèves complained to the Ottoman Court that the corsairs and pirates from the three centers of North Africa “had made the French merchants prisoners and robbed their ships”. As a result, the French merchants “abandoned commerce for the well-protected dominions”.⁸²

Following the petitions submitted by the French ambassador, Mehmed III dispatched more circulars to the local authorities of Algiers, Tunis and Tripoli, for example, to the governors, judges, commanders of Janissaries, captains and soldiers (*beylerbeyine ve kadısına ve hassa ü gönüllü re’islerine ve yeniçeriler ağasına ve yoldaşlarına*). The sultan’s commands strongly reiterated, with complete certainty, that the French subjects were under protection, and every Ottoman

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81 This register is entitled *Fransa elçisinin ‘arzı üzerine Tunus, Sakız, Mısır, Halep, Trablus-Şam, Galata, Cezâyir-i Garb, Rodos, Roma, Nakşa, Suğla ve İstanbul’un beylerbeyi, muhafız, kadı, bey ve sâ’ir ümerasına gönderilen hükümlerin kayıtlarını havi defter* (Bâb-ı Asaî, Divan Beylikçi Kalemi, Düvel-Ecnebiye, nr. 901 = BOA, A.DVN.DVE, 901, 12 folios; Bâb-ı Asâfi Divan Kalemleri. *Defter Kataloğu*, 880-1252, p. 15).

82 BNF, DO, Turc 130, f. 200r-199v (*Cezâyir beylerbeyisine emr-i şerif ki gemiler ile Franca pâdişâhi istediği yere gide. Écrit le 10me octobre 1597*); f. 185v (*Tunis beylerbeyisine hüküm* (above: *Cezâyir ve Trablusa bu minvâl üzere birer hüküm verilmiştir*; at the end: *Aus Bacha du Tunis Aus fins que il donna une galere Au motaferaga & aus hommes de l’ambassador de France pour les gider en Arger écrit le 10 octobre 1597*); f.184r-183v (*Cezâyir kapudânlarından Murâd reise*); f. 183r-182r (*Trablus beylerbeyine ve kadısına hassa ve gönüllü reislerine ve yeniçeriler ağasına ve yoldaşlarına. Tunis ve Cezaire bu minvâl üzere hükümler verilmiştir*).

subject should protect them: “henceforward, you must be careful that nobody troubles any Frenchman in contravention of the Imperial letter” (*min ba’d nâme-i hümâyûna muhâlif Frâncaluları kimesneye rencide etdürülmeyüb beğâyet hazer eylesesin*). On the same date, the sultan dispatched an order to Captain Murad of Algiers (*Cezâyir-i Garb kapudânlarından Murâd re’is*). He asked him not to take prisoners or rob the combatants coming from Marseille, due to the friendship between the sultan and the king of France. The latter directly informed the sultan about actions that were contrary to the existing agreement between them, and the sultan replied that he had already dispatched orders to the governors-general of Algiers, Tunis and Tripoli.⁸³

According to the *Manuscrit Turc 130*, another series of *hüküm*s was sent from Istanbul to the local officials of North Africa between 5 and 14 July 1598 (*evâ’il-i Zilhicce 1006*). This month should be considered a turning point in the question of the French captives in the Mediterranean. In these orders, Mehmed III reiterated the interdiction against piracy against Western merchants who had entered the Ottoman dominions, sending this to the commanders of the Janissaries, the heads and lieutenants of foot-soldiers from Algiers, Tunis and Tripoli (*Cezâyir ve Tunis ve Trâblus-u Garbda olan yeniçeriler ağalarına ve yâyâ-bâşlarına ve kethüdâlarına*).⁸⁴

The most important was a general command, summarized in the heading as being an “imperial order for punishing those who failed to obey the Imperial command” (*emr-i pâdişâhiya itâ’at etmeyenlere siyâset olmak için hüküm-ü hümâyûn*). In the text of this *hüküm*, the addressees were governors-general, governors and ship captains (*beylerbeyi, beyi, kapudan, re’is*) who had taken French merchants or their protégés prisoners, robbing them of their merchandise in contravention of the Imperial Charter granted to the king of France. Moreover, they were accused of failing to apply the practice of the Imperial commands and not releasing the French captives.⁸⁵

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83 BNF, DO, Turc 130, f. 184r-183v.

84 BNF, DO, Turc 130, f. 140v-r (*Cezâyir ve Tunis ve Trâblus-u Garbda olan yeniçeriler ağalarına ve yâyâ-bâşlarına ve kethüdâlarına*).

85 BNF, DO, Turc 130, f. 147v-146v (*Emr-i pâdişâhiya itaat etmeyenlere siyaset olmak için hüküm-ü hümâyûn*).

Neither the Imperial Charter of February 1597 nor the Imperial commands (*hüküm*) dispatched in the summer or autumn of the same year put an end to the abuses committed by the local officials in Algiers, Tunis and Tripoli against French ships and merchants.

Consequently, François Savary de Brèves continued to complain to the Ottoman officials in Istanbul. Moreover, this question was submitted to the attention of the grand mufti, who was asked to express the Islamic judicial point of view on the piratical actions of local governors' against the French. This *fetva*, copied also in the *Manuscrit Turc 130*, was issued by Mehmed bin Sa'adüddin in 1601-1603, when he occupied the office of *şeyh ül-Islam* for the first time.⁸⁶

He started his judicial opinion by affirming that it was absolutely and lawfully necessary to act according to the conditions and rules that had been included in the renewed Imperial Charter. In this way, for the first time the friendship with the king of France, which was a lasting and old friendship of the ancestors, with the Happy Padişah, the master of world (*cedd-i dostlukda sâbit kadem olan Franca kıralının dostluğun hıfz için*) was secured. In the first answer (*el-cevâb*), Mehmed bin Sa'adüddin replies that the new clauses from a '*ahdnâme* should be explained to their addressees, such as the provincial officials.

In a related judicial opinion, it was demonstrated that, contrary to the Imperial Charter (*hilaf-ı 'ahdnâme-i hümayûn*), a local official – called generically Zeyd - gave his own galley to *levendat* and sent it to carry out piracy (*hükâmıdan Zeyd kendü kadırgasın levendata verüb korsanlığa gönderüb*). When someone from the French ships had loaded merchandise with permission and protection from the

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86 This judicial consultation is signed *Ketebehü elfakır Mehmed bin Sa'adeddîn ufiye anhüma*. This signature belonged to Mehmed Efendi (Hoca Sa'adeddîn Efendizade), *şeyh ül-Islam* in 1601-1603 (for one year and five months), and between 1608-1615 (for seven years). He was one of the sons of the famous chronicler Sa'adeddîn, born in 1568. His signature can also be identified at the end of other fourteen *fetvâs* (nos. 2, 3, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 16, 17) copied by Savary de Brèves in this manuscript (*İlmiye Sal-nâmesi: Osmanlı İlmiye Teşkilâtı ve Şeyhülislâmlar*, İstanbul: Matbaa-i Âmire, 1334 / 1916 [edition in modern Turkish transliteration], Ankara 1998, no. 24; I. H. Danişmend, *İzahlı Osmanlı Tarihi Kronolojisi*, İstanbul: Türkiye Yayınevi, 1947-1948 [reprinted, 1971], V, pp. 118-119).

Well-Protected Dominions and had returned to the French country, this Zeyd's galley cut it off and confiscated some merchandise from the French ship (*Franca vilâyetine giderken rast geldüklerinde niçe metâ'ların gâret eyleyüb*). The problem (*mesele*) here was whether this act should be punished the *hâkim* (a generic term for reprimanding any local official) against the persons who had participated in this act, had tolerated the piracy or had lent his ship.

In the final answer to this specific question, Mehmed bin Sa'adüddin laid out the required punishment. According to this, the local Ottoman official should pay damages for the seized merchandise, because his action was contrary to the pact with France. Of course, this punishment would be applied after it was concluded that Zeyd was, indeed, the person who had pillaged the French ship, and after it had been verified and estimated beyond a doubt what merchandise had been seized and deposited on his own ship.

So, the *şeyh ül-Islam* strongly reprimanded Ottoman officials for acts of piracy; they should carefully observe the clauses of the *Capitulations* granted to the king of France. In this respect, it was emphasized that the article of the Imperial Charter of 1597 stated that "the goods and provisions confiscated contrary to the Imperial Charter should be indemnified to the owner". Here, Mehmed bin Sa'adüddin has given the answer that the sultan required, legitimizing the punishment imposed by the central government in Istanbul. When a governor did not put in practice the Imperial orders that demanded that seized goods be returned, he should be removed from his office (*hâkim-i zâlim mahall-ı hükümetinden ref' olunmak lâzımdır*).⁸⁷ The main reason invoked was that this Ottoman official had severely affected the peace between the sultan and the king of France.⁸⁸

The former clauses that had forbidden piracy against the Frenchmen were also registered in the *'ahdname* of 1604, but with a wider scope. Confirming all earlier orders that had been issued by his ancestors, Sultan Ahmed I granted King Henry IV the right to

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87 BNF, DO, Turc 130, f. 26v.

88 On "The Fixed Penalties", see Colin Imber, *Ebu's-Su'ud. The Islamic Judicial Tradition*, Stanford – California: Stanford University Press, 1997, pp. 89-94. Also, see Uriel Heyd, *Studies in Old Ottoman Criminal Law*, Oxford 1973.

intervene directly against the Barbary pirates.⁸⁹ This authorization was given as the Ottoman authorities hammered away at the problem of piracy, as abundantly proven by documents from the *Manuscrit Turc 130*.

Marseille's commerce was directly affected by the Barbary corsairs in the early seventeenth century. An extreme action took place in June 1604, when the Janissaries of Bône, supported by the Algerian galleys of Murad *re'is*, destroyed the Bastion of France.⁹⁰ Advice for destroying the North African pirates continued to come from a number of directions, even after François Savary de Brèves left Istanbul. The most professional recommendations addressed to the authorities in Paris came from the French ambassadors and consuls in the Ottoman dominions. For instance, Gontaut Biron Baron de Salignac, French ambassador at the Ottoman Court in 1605-1610, wrote to King Henry IV in March 1609, saying that: "il seront bien plus honorable de faire une descente en Barbarye, y prendre, sacager et ruyner Byserte en plein jour avec artillerye, bien que la place ne la méritte pas, et y demeurer tant de temps que ceux de Thunis et d'Arger".⁹¹ Marseille had the most at stake in destroying the Barbary pirates. There is evidence that there were a lot of plans but not so much action. Certain actions against Algiers took place, but they were over cautious or insufficiently prepared. In practice, no European power made any decisive movement to eradicate North African piracy.⁹²

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89 Testa, *Traités*, Vol. I, p. 146.

90 Charles de la Roncière, *Histoire de la marine française. IV. En quête d'un empire colonial*. Richelieu. Paris 1910, p. 365.

91 BNF, Division Occidentale, Fr. 16146, f. 235, cf. Roncière, *Marine française*, 365, n. 6. For other information, see *Ambassade en Turquie de Jean de Gontaut Biron, baron de Salignac, 1605-1610. Correspondance diplomatique & documents inédits* (ed. Comte Théodore de Gontaut Biron), Archives Historiques de la Gascogne, no. 19. Paris 1889.

92 In 1600, the captain of Provence ship wrote and made known a plan, called *Dessein pour aller bruler les vaisseaux de Tunis*, to destroy the pirate ships which sheltered in the port of Tunis (Eugène Plantet, *Correspondance des Beys de Tunis et des Consuls de France avec la Cour. 1577-1830*, Vol. I, Paris 1893, doc. 4).

Western Piracy in the Ottoman Mediterranean

Few documents from the *Manuscript Turc 130* offer information about the actions of North European corsairs in the Mediterranean, especially by the English. Among these there is a judicial opinion issued by Mehmed bin Sa'adüddin, who held the office of *şeyh ül-Islam* in 1601-1603.⁹³

From the bibliography on Western piracy in the Mediterranean,⁹⁴ I would like to emphasize Kenneth Andrews's book on English privateering during the Spanish War (1585-1603), the period when the documents from the *Manuscript Turc 130* were also issued. The main topics analyzed in his book concern the connection between privateering and the Sea War, the privateering regulations and materials, and the men involved in this activity, be they amateurs, professionals or great merchants. Last, but not least, it is important to reveal the consequences of privateering, including the rewards and profits for corsairs, as well as the damage inflicted on the merchants.⁹⁵

Piracy was one of the ways to impose English commercial interests in the Levant, to the detriment of both France and Venice. The

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93 Viorel Panaite, "A Judicial Opinion on Western Piracy in the Ottoman Mediterranean at Close-Sixteenth and Early-Seventeenth Century". *Revue des Études Sud-Est Européennes*, Académie Roumaine, Institut d'Études Sud-Est Européennes, XLVII/1-4, Bucarest 2009, pp. 165-173.

94 Anthony D. Alderson, "Sir Thomas Sherley's Piratical Expedition to the Aegean and his Imprisonment in Istanbul." *Oriens. Journal of the International Society for Oriental Research*, vol. 9 (1956), pp. 1-40; Alberto Tenenti, *Naufrages, Corsaires et Assurances maritimes à Venise, 1591-1609*, Paris 1959; Alberto Tenenti, *Piracy and the Decline of Venice, 1580-1615*, translated from *Venezia e i corsari, 1580-1615*, (Bari 1961) with an introduction and glossary by Janet and Brian Pullan (Berkeley and Los Angeles, University of California Press, 1967); Kenneth R. Andrews, *Trade, plunder and settlement. Maritime enterprise and the genesis of the British Empire, 1480-1630*, Cambridge - New York, Cambridge University Press, 1984; David Delison Hebb, *Piracy and the English Governemnt, 1616-1642*, England: Scholar Press, 1994; M. Fusaro, *Uva passa. Una guerra commerciale tra Venezia e l'Inghilterra (1540-1640)*, Venezia 1996.

95 Kenneth R. Andrews, *Elizabethan Privateering. English Privateering during the Spanish War, 1585-1603*, Cambridge: University Press, 1964. Passim.

English and Dutch corsairs entered the Mediterranean competition after 1580. Their privateering was a violent form to increase the commercial profit, and also to exclude other Western traders from the Levant. As a result, England and Holland succeeded in controlling Mediterranean commerce after only thirty years of competition with Venice and France.

“Trade and plunder were inseparable in the sixteenth century.”⁹⁶ The Northern pirates, such as the English and the Dutch, combined piracy with trade as soon as they entered the Mediterranean, and were fully equipped for both activities.⁹⁷ In December 1602, the former Venetian consul in Cairo was attacked when he was returning from Egypt by English buccaneers from Modon. On that occasion, Agostino Nani, the retiring Venetian ambassador in Istanbul, made a significant comment on the connection between English trade and privateers: “It will be difficult to root out the English from Zante, for there are seven English *bertoni* lying in the port, and though they are said to be merchants, more than one of them would not shrink from piracy.”⁹⁸

In 1675, Jacques Savary published a famous work for that time, titled *Le parfait négociant ou Instruction générale pour ce qui regarde le commerce de toute sorte de marchandises, tant de France que des pays étrangers* (Paris, 1675). After seventy-five years, it would be used by Wyndham Beawes to compose *Lex mercatoria rediviva: or, the merchant’s directory*.⁹⁹ In Beawes’s translation, privateers (with

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96 Andrews, *Elizabethan Privateering*, p. 15.

97 Tenenti, *Piracy*, p. 61.

98 “I will say no more about the miserable misfortune which befell the illustrious Signor Zuanne da Mosto when, returning from his consulate in Cairo, he has plundered by English buccaneers. If the pirates are, as is reported, at Modon disposing of their booty, I will do all I can to attempt its recovery...” – wrote Agostino Nani, retiring Venetian Ambassador in Istanbul, to the Doge and Senate, in an original dispatch of the 23rd December 1602, sent from Zante. *State Papers. Venice*, IX, doc. 1109).

99 Wyndham Beawes, *Lex mercatoria rediviva: or, the merchant’s directory. Being a complete guide to all men in business... Containing an account of our trading companies and colonies, with their establishments, and an abstract of their charters; the duty of consuls, and the laws subsisting about aliens, naturalization and denization... Extracted from the best writers both at home and abroad; more ☞*

its synonymous ‘capers’, which are smaller vessels) were generally respected private ships of war, fitted out by the English sovereign or by private individuals in order to annoy the enemy. The rulers’ employment of the private individuals was only temporary and occasional. Though such appointments were ancient and very useful in a war, as they distressed the enemy, the privateers’ actions could easily slide into piracy, taking action against “persons and goods of innocent traders.” The English privateers operated especially during the winter months.¹⁰⁰

In the reports of the Venetian *baylos* at Istanbul, dispatched at the end of the sixteenth and beginning of the seventeenth century, the Northern corsairs were constantly encountered.¹⁰¹ These reports relate about how the Mediterranean was infested with English pirates, who were in league with Turks, and their headquarters in Algiers.¹⁰² Moreover, the Venetian ambassadors wrote about the English pirates who infected the waters of Gallipoli.¹⁰³ The English corsairs fitted out at Algiers, being provided with supplies and ‘much artillery’ by the local pashas (‘the king of that country’).¹⁰⁴ Certain imperial orders were dispatched from Istanbul forbidding English trade to Tunis, or other Barbary ports frequented by pirates¹⁰⁵ because merchandise, such as sugar, was taken from French ships and sent from Barbary for sale in England.¹⁰⁶

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especially from those justly celebrated ones of Messieurs Savary; improved and corrected by the author’s own observations, during his long continuance in trade. The whole calculated for the use and service of the merchant, lawyer, senator, and gentleman, London: Printed for the author, J. Moore, sold E. Comyns, 1752.

100 Beawes, *Lex mercatoria*, pp. 236-249.

101 During François Savary de Brèves’ mission, the following Venetian ambassadors resided at Istanbul: Lorenzo Bernardo (1589-1591), Matheo Zane (1593-1596), Marco Venier (1596-1599), Agostino Nani (1597-1599; 1600-1602), Francesco Contarini (1602-1604), Ottaviano Bon (1604-1607) and, then, Simone Contarini (1608-1612).

102 *State Papers. Venice*, IX, doc. 333.

103 *State Papers. Venice*, IX, doc. 371.

104 *State Papers. Venice*, IX, doc. 369.

105 *State Papers. Venice*, IX, doc. 364, 367.

106 *State Papers. Venice*, IX, doc. 503.

English privateers found shelter in certain Ottoman fortresses around the Mediterranean. One of these harbors was Tunis, where the pirates were usually sharing the loot with the local governor-general (*beylerbeyi*). The French ambassador at Istanbul, François Savary de Brèves, complained to the sultan about this in June 1603.¹⁰⁷ Francesco Contarini noted all the details in his report of 28 June, 1603. “The *Beylerbey* of Tunis has made vast gains by keeping on good terms with English privateers. He has been able to spend four thousand sequins on securing his removal. In Tunis the English are said to have twelve French prizes. An English *berton* arrived here with only hundred and ten pieces of cloth. She drew off again in alarm at the great galleys. Everyone supposes her to be a privateer, and the grand vizier is urged to take vigorous steps against her.”¹⁰⁸

The Ottoman government could not do much against the English privateers, because foreign pirates were in the habit of taking their prizes under the shelter of Ottoman forts. They made terms with the governors, and sold their booty at a low price. Moreover, the Ottoman officers praised, honored, favored and protected the English commanders of privateers. Of course, in return for this, the English gave many presents. One of the consequences was that the judicial customs suffered. The above accusations were made by Sultan Ahmed I in the *hüküm* sent to the *beylerbeyi* of Cyprus in September, 1603, ordering that an enquiry be opened and that Pervis, the English privateer who captured the Venetian ship *Balbiana*, be imprisoned.¹⁰⁹

After English corsairs captured and plundered French or Venetian vessels which carried merchants and merchandise, they carried the prizes to harbors in North Africa. Being informed by the Western

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107 *Calendar of State Papers and Manuscripts, relating to English Affairs, Existing in the Archives and Collections of Venice and in other Libraries of Northern Italy* (ed. Horatio F. Brown), Vol. X: 1603-1607, London 1900, doc. 84.

108 *State Papers. Venice*, vol X, doc. 85.

109 On 27 September 1603 Francesco Contarini, the Venetian *baylo* at Istanbul, wrote that “the English ambassador put in irons that Consul Jonah who came here some days ago from the Morea, with letters proving that he had defended Patras, and who received a present for it. He is accused of writing secretly to England to solicit the post of Ambassador here” (*State papers. Venice*, X, doc. 133, 134).

ambassadors, the sultan would usually order the governors-general to recover the goods and hand them over to the agents of the ambassadors, who actually were the bearers of imperial orders addressed to Ottoman local authorities. If the goods had been sold, the officials were to extract all the money accruing from the sale from the English and to punish them. Copies of such imperial orders to the *beylerbeyis* and *kadis* of Tunis, Algiers and Tripoli were usually enclosed in the dispatches of the Venetian *baylos* in Istanbul.¹¹⁰

Attitudes towards the English privateers in the Mediterranean differed. The Venetian and French diplomatic reports and petitions frequently blamed the English privateers, asking that the English be excluded from the Mediterranean. An instance is Agostino Nani's report of 28 October, 1600: "The damage which the English continually inflict on shipping is growing so intolerable that every prince who is interested in the injury suffered by his vessels and subjects most reasonably desires that English ships should be excluded from every harbor, for this is the only way to curb the rapacity of this people."¹¹¹ François Savary de Brèves suggested to King Henry IV that the alliance with Venice would be a solution for fighting against English pirates in the Mediterranean.¹¹²

The Venetians preferred to sequester the English capital in Venice. In original minutes of the Venetian Senate of 8 July, 1600, English commerce was appreciated as being of great importance,

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110 In a report of 17 May 1603, it was noted that orders from the sultan to the *beylerbeyi* and *kadı* of Tunis, where the case of the English corsair Williman Piers was discussed, were enclosed in the preceding dispatch of Francesco Contarini (*State papers. Venice*, X, doc. 42).

111 *State Papers. Venice*, IX, doc. 923.

112 In a letter of 23rd March 1600, one can read: "de s'unir avec les Venetiens contre d'Angleterre..."; "Toute le remede que j'y sache est que V.M. doit remedier du costé d'Angleterre, ou bien s'unit avec les Seigneurs de Venize et escrire à ce Seigneur en ce sujet lui remonstrant les dommages que lesdicts Anglois font par les mers de Levant et demande à sa Haultesse qu'il soit interdict à ces Anglois de venir traficquer par ces mers, à deffault de quoy on abandonnera leur amityé" (BNF, Division Occidentale, Fr. 16144, f. 276-288, cf. Isabelle Petitclerc, *François de Brèves, Ambassadeur de France à Istanbul*, thèse de doctorat, Université de Paris 1988, A.N.R.T. Lille 1989, p. 218).

but the English ships were criticized for having committed and still committing “acts of depredation throughout the Levant upon Venetian merchants.” Actually, the privateers acted “against the Queen’s expressed intention.” It was proposed that the capital of English subjects in Venice be sequestrated.¹¹³

The French were more radical. François Savary de Brèves demanded that “the English should be debarred from trading, and their alliance – the *ahdname* of 1580 – rejected.” Practically “it was incumbent on the Turks to see that these vessels found no shelter in the ports of the Grand Signor; for, if they could not find safe harbor nor market for their spoils, they would be forced to adopt another line.”¹¹⁴

To fight against English privateers would mean that François Savary de Brèves first fight against the English ambassador and consuls in the Ottoman Empire. Here is the origin of his hostile behavior toward the English colleagues. In this diplomatic fight against the English, the French ambassador was supported by his friends from the judicial milieu, such as the *kadı-’asker* in 1600. According to Girolamo Capello’s report of the 29th July 1600: “In this negotiation he has made such progress that he has won over Achmet Pasha and the Capudan Pasha (*Kapudan Paşa*), who has been reconciled with him; he is assisted in this by the preaching Emir and the Cadileschier (*kadı-’askeri*).”¹¹⁵

Meanwhile, the English were trying to find moderate solutions concerning the English privateers in the Mediterranean. In this respect, Henry Lello, the English ambassador at the Ottoman Court, emphasized more and more frequently that the English privateers’ actions could only be kept within reasonable limits with the existing English - Ottoman peace agreement. If not, the consequences would be grave for commerce in the Levant. The English corsairs would pillage the coasts and islands of the Ottoman Empire, and would seize shipping from Syria and Egypt.¹¹⁶

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113 *State Papers. Venice*, IX, doc. 895.

114 Information noted by Girolamo Capello in his report to the Doge and Senate of 29th July 1600 (*State Papers. Venice*, IX, doc. 903).

115 *State Papers. Venice*, IX, doc. 903.

116 *State Papers. Venice*, IX, doc. 291.

The active presence of English pirates in the Mediterranean preying on Turkish shipping, was recognized by the English ambassador Henry Lello (1597-1607)¹¹⁷ in his reports of 1603 to Robert Cecil, the English secretary of state at this time. However, he blamed Savary de Brèves' attempts to take advantage of this situation, trying to bring about a rupture between England and Turkey to the advantage of France. He told the Turks: "the English government secretly countenanced these pirates, did nothing to prevent their depredations, and actually welcomed them when they returned to England with their ill-gotten gains."¹¹⁸ At the same time, Henry Lello indicated another aspect of the problem, claiming – justifiably or not – that other pirates - some of them being French - sailed under the English colors, and the Turks could not tell the difference.¹¹⁹

In 1603, an Ottoman agent was dispatched to London. He arrived first in Paris, where the French authorities tried to prevent his going to England: "lest he should discover the falsity of the French insinuations". The correspondence between the high officials of that time is illustrative for the English view on the Levantine trade and privateering. The Ottoman envoy should go to England, because only in this way could the decay of English trade in the Levant, considered by an English official as being "the best we have in the world", be avoided.¹²⁰ Another English official accused the French authorities of double-dealing, considering that the Ottoman attitude offered a form of pressure against the conclusion of peace between England and Spain and in keeping the war going.¹²¹ In this context, a heated

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117 Henry Lello was the English representative at Istanbul between 15 December 1597 and June 1607, as agent until 1599, and then as resident ambassador, after the public audience from 14 September 1599. He was initially sent out by the Levant Company in March 1597 to act as Edward Barton's secretary. After the latter died, Henry Lello was in due course confirmed as ambassador at the Ottoman Court, taking over the duties of English ambassador in Istanbul in 1597.

118 Maurice Lee Jr., *James I and Henri IV. An Essay in English Foreign Policy. 1603-1610*. Urbana – Chicago - London: University of Illinois Press, 1970, p. 30.

119 Lee, *James I. Henri IV*, p. 30.

120 Wilson's letter to Robert Cecil, from 7 November 1603 (Lee, *James I. Henri IV*, p. 30).

121 Parry's letter to Robert Cecil (Lee, *James I. Henri IV*, p. 31).

discussion of the Ottoman problem between King James I, who, as a good Christian, wanted to have nothing to do with the Turks, and other members of the English Privy Council, “where everything is weighted in the scales of material interests”. The latter disagreed the king’s opinion and persuaded him to write to the sultan to establish friendly relations.¹²²

The Ottomans were situated in the middle of this commercial conflict and their attitude toward the English privateers varied according to the dignitary’s position and interest. First, the Ottomans were preoccupied with investigating French and Venetian allegations. In this respect, the Kapudan Pasha was regularly charged to inquire whether the French and Venetian ambassadors’ allegations were true. In a report dated 29 July, 1600, Girolamo Capello, the Venetian ambassador in Istanbul, noted that “the French ambassador, thanks to his continual complaints against the English ambassador on account of the mischief done by the English to French vessels in these seas, has at length obtained an order instructing the Kapudan Pasha to open an inquiry on the subject, and to discover if the facts alleged by the French Ambassador are true.”¹²³

The constant complaints made by François Savary de Brèves about the English privateering in the Levant caused greater reactions from the Ottoman authorities in the end. Thus, under French pressure, the sultan promised the king of France that the friendly relations would be severed with England. In August 1603, Mehmed III wrote to Henri IV that “he would inform James I that English piracy must cease, or reprisals and a rupture of relations will follow.”¹²⁴

Moreover, the French ambassador succeeded in obtaining a judicial opinion from the *şeyh ül-Islam* condemning English piracy. In Islamic law treatises one can find certain rules concerning foreigners’ piracy in the House of Islam. Thus, Muhammad ash-Shaybani had

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122 Robert Cecil’s letter to Parry, from January 1604 (Lee, *James I. Henri IV*, p. 31).

123 *State Papers.Venice*, IX, doc. 903.

124 *Report on the Manuscripts of the Marquis of Salisbury*, vol. XV, M.S. Giuseppi and D. McN. Lockie, eds., London 1930, pp. 225-26, cf. Lee, *James I. Henri IV*, 30.

already blamed the *müste'min* group who attacked, killed or enslaved other *müste'min* in the House of Islam. If a treaty of protection was concluded with the victimized *müste'min* group, then the Muslim sovereign was obliged to protect it against other *müste'min*.¹²⁵

A *fetva*, issued by the *şeyh ül-Islam* Mehmed bin Sa'adüddin (1601-1603) at the beginning of the seventeenth century and copied in the *Manuscrit Turc 130*, posed the question of the violent actions of the English privateers in the Mediterranean. In Islamic judicial terms it was about a *müste'min* band who was carrying out piracy in Islamic seas. Should this group be forbidden from coming to the Ottoman waters, and should they even be punished? The judicial answer was affirmative. Yes, a *müste'min* band who was plundering ships of other *müste'min* group in the Ottoman seas could be forbidden from coming to the Ottoman empire and could be punished (*bu vecihle sa'y bi'l-fesād eden taht-ı âmāndan hārci olub müstahak-ı 'ukūbet-i lâzıma olurlar*).¹²⁶ Here is the summarized translation of this precious judicial text.

The question (*mesele*): As a consequence of their *müste'min* status, a group of foreigners enters the Well-protected Dominions with their ships (*müste'min tâ'ifesinden bir tâ'ife müste'minlik bahanesiyle gemiler ile Memâlik-i mahrûseye dahil olub*). These foreigners are not attacked by the Ottoman ships guarding the Well-protected Dominions, either when they navigate on the sea or when they enter the harbors, because they are beneficiaries of protection (*müste'mindir deyü ta'arruz olunmmakla*). In practice, this band of foreigners comes to Ottoman harbors not to carry out commerce but to seize the ships of other Western merchants (*deryada buldukları aher müste'min ta'ifesinin... gemilerin garet eylemeleri ile benderlere tüccar ta'ifesi... gelüb*). The *beyt ül-māl* is charged with establishing the damages, and whether the Muslim ships were also seized by the above privateer group. In the case of a positive result, the question

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125 Muhammad ibn al-Hasan ach-Chaibānī, *Le Grand Livre de la Conduite de l'Etat (Kitāb as-Siyar al-Kabīr)*. Commenté par... as-Sarakhsī. Traduit par M.Hamidullah, Editions Türkiye Diyanet Vakfı, Ankara 1989-1991, vol. III, pp. 365-6.

126 BNF, DO, Turc 130, f. 29v.

for the *şeyh ül-Islam* Mehmed bin Sa'adüddin is whether the Islamic law allows the sultan to forbid the abovementioned foreigners - who are still among the *müste'mins* - to enter or leave the Well-protected Dominions.

The answer (*el-cevâb*): This *müste'min* band - which exerts themselves in making malice - is not included in the benefit of protection (*taht-ı amandan hâric olub*), and deserves to be punished (*ukûbet-i lâzim olurlar*).

Signature: Written by the humble Mehmed bin Sa'adüddin, May God preserve his health.

To this judicial opinion is added an related confirmation issued by the *şeyh ül-Islam* Ebu'l Meyâmin Mustafâ Efendi (1603-4, 1616).

The question (*mesele*): Is it necessary to act according to this illustrious judicial opinion? May this be explained and may it be rewarded.

The answer (*el-cevâb*): Allah knows. It is necessary (*lâzımdır*).

Signature: Written by the humble Mustafa, God's preserving his health.

According to a report by Giovanni Carlo Scaramelli, the Venetian secretary in England, made to the Doge and Senate, dated 1603, March 20, and related to how the French ambassador, François Savary de Brèves, had succeeded in obtaining this judicial opinion against English privateers from the grand mufti: "...Then inside the Straits of Gibraltar, how can the English be endured, seeing that under the guise of merchants they plunder the very life of all the foreign shipping they find? On this I need not enlarge further, except to say that in dispatches of December last the English ambassador at Istanbul enclosed a decree passed by the Turks, drawn up by the Mufti on religious grounds at the instance of the French ambassador, that English vessels shall always render an account of all goods bought and sold in Barbary and elsewhere within Turkish dominions; the English ambassador is charged to see the order carried out. This information is extremely disliked".¹²⁷

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127 *State Papers. Venice*, vol. IX, doc. 1160.

In most part, the present paper is a synthesis of four studies that I have already published (they are quoted in notes). Due to publishing reason, other studies remained outside of this extensive paper. Based also on the records from the *Manuscrit Turc 130*, they are dedicated to complementary aspects of the Capitulatory régime in the Ottoman Empire, such as commercial navigation, diplomacy and consulates.¹²⁸ All these studies will be included as chapters in a planned book on the Western trade and merchants in the Ottoman Mediterranean at the close of sixteenth and the early seventeenth centuries.

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128 Viorel Panaite, “Two Legal Opinions (*Fetvâs*) from the *Manuscrit Turc 130* (Bibliothèque Nationale, Paris) on the Western Non-Treaty Merchants in the Ottoman Mediterranean”. In *Enjeux politiques, économiques et militaires en mer Noire (XIVe-XXIe siècles), études à la mémoire de Mihail Guboglu*. Sous la direction de: Faruk Bilici, Ionel Căndea, Anca Popescu, Musée de Braïla-Editions Istros, Braïla, 2007, pp. 169-194; Viorel Panaite, “French Commercial Navigation and Ottoman Law in the Mediterranean according to the *Manuscrit Turc 130* (Bibliothèque Nationale de France)”. *Revue des Études Sud-Est Européennes, Académie Roumaine, Institut d’Études Sud-Est Européennes*, Bucarest, XLVI, 1-4, 2008, pp. 253-268; Viorel Panaite, “Western Diplomacy, Capitulations, and Ottoman Law in the Mediterranean. 16th and 17th Centuries: The Diplomatic Section of the *Manuscrit Turc 130* from the Bibliothèque Nationale in Paris”. In *Erken Klasik Dönemden XVIII. Yüzyıl Sonuna Kadar Osmanlılar ve Avrupa: Seyahat, Karşılaşma ve Etkileşim / The Ottomans and Europe: Travel, Encounter and Interaction from the Early Classical Period until the End of the 18th Century*, Seyfi Kenan (ed.), Istanbul: ISAM Publications, 2010, pp. 357-387; Viorel Panaite, “French *Capitulations* and Consular Jurisdiction in the Eastern Mediterranean at late-sixteenth and early-seventeenth century”. In *Well-Connected Domains: Intersections of Asia and Europe in the Ottoman Empire*, in series “The Ottoman Empire and Its Heritage”, Brill, Leiden, 2013 (in print).