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THE PROBLEM OF PIRACY IN THE RELATIONSHIP BETWEEN THE CHRISTIANS AND ARABS FROM NORTHERN AFRICA BETWEEN THE 11TH AND 15TH CENTURIES

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Summary

Throughout the period between the 11th and 15th centuries, Christian and Arabic countries as well as territorial dominions, although faced with feudal political chaos, managed to take joint action against pirates. Piracy was unanimously treated as a major risk both to inshore safety and safety at sea, as well as to trade and economic growth. Attempts were made to establish institutional framework for prosecuting the pirates and setting terms under which respective counties would remain legally liable. International treaties had laid foundations for the aforementioned framework and imposed certain liabilities on the countries. A number of treaties concluded during the period under discussion and published by an archivist in the 19th century enables modern researchers to get to know the Law of Nations created somewhere in between the Islamic and European legal cultures.

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I.

K. Marks wrote that *Koran and the Muslim law based on it bring geography and ethnography of the whole world down to a simple and convenient form of dividing the world into two halves: orthodox believer and non believer. A non believer is a Giaur, an enemy. Islam curses non believers and sustains a state of constant hostility between the Muslims and non believers. The pirate ships of the berberic countries were a holy fleet of the Islam.*[1] In the 19th century a conviction in the minds of the Europeans was well seeded, cherished until present day, that there is a traditional hostility between the Christians and the Muslims and particular cruelty of the berberic piracy. Although the Christians also performed piracy enhanced in the times of colonial rivalry and religious wars, but European countries did not see it as a major threat for the safety at sea. Piracy was even a sanctioned legal institution of the marine war, entailing the participation of private ships in military actions on the basis of an authorization from a country in the form of letters of marque. The letters ensured legality and therefore freedom to perform military activities at sea including looting ships and property belonging to the enemy. Some of the captured loot was given to the state, and the rest was treated as remuneration for service. The pirates were called marine robbers, thieves at open sea, outlaws. They created crews organized in a democratic way consisting of outlaws, observing their own moral and legal code and insubordinate to any external authority or institution. While corsairs attacked only the enemies of their principal, the pirates attacked every ship without any exception as well as ports.[2]

The development of the rule of free trade and freedom of seas in the 19th century made countries to undertake steps to offer legal security of navigation. In 1815, at Wienna Congress, a Declaration of Superpowers concerning the abolition of black slave trade was passed, attached to The Final Act, which forbade piracy, and in 1856 at a Congress in Paris corsair activity was banned as well. Due to the resistance of some western countries it was not possible to codify the law

[1] Cit. for K. Libera: *Prawo konsularne*, Warszawa 1952, p. 8.

[2] See A. Walczak: *Piractwo i terroryzm morski*, Szczecin 2004; S.P. Menefee: *Świat piratów morskich*, Gdańsk 1982; A. Makowski: *Aspekty prawne międzynarodowych sił morskich w zwalczaniu piractwa*, "Prawo Morskie", vol. XV, pp. 21–27; F. Braudel: *La Méditerranée et le monde Méditerranéen à l'époque de Philip II*, Paris 1987, vol. II, p. 191; R. Coulet du Gard: *La Course et la Piraterie en Méditerranée*, Paris 1980.

in order to fight piracy or even define the procedure until the first international conference regarding the sea was organized in Geneva in 1958.[3]

The Convention of United Nations with regards to sea which is in power at present was passed in 1982. In art. 101 the Convention defines marine piracy as:[4]

a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
   – on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft,
   – against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

The acts of piracy, as defined in article 101, committed by a warship, government ship whose crew has mutinied and taken control of the ship are assimilated to acts committed by a private ship. A ship is considered a pirate ship if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in article 101. The same applies if the ship has been used to commit any such act, so long as it remains under the control of the persons guilty of that act. A ship may retain its nationality although it has become a pirate ship. The retention or loss of nationality is determined by the law of the State from which such nationality was derived.

On the basis of art.105, on the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship, or a ship taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, or property, subject to the rights of third parties acting in good faith. A seizure on account of piracy may be carried out only by warships or

[3] L. Łukasik: *Społeczność międzynarodowa wobec problemu piractwa morskiego – wybrane aspekty prawne*, "Prawo Morskie", vol. XXV, p. 136.

[4] *Konwencja Narodów Zjednoczonych o prawie morza*, sporządzona w Montego Bay dnia 10 grudnia 1982 r., Dz. U. z 2002, Nr 59, poz. 543.

military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

In the light of penal code, the seizure of control over a marine ship is often connected with violence and illegal deprivation of freedom and taking crew members and passengers hostage. While a robbery is any illegal violent act, deprivation of freedom or an act of looting or threat directed against a ship, people or property on board of the ship within the boundaries subject to jurisdiction of the given country. An attack on territorial waters described as marine buccaneering is not a piracy in terms of international law. The people committing such act are subject to the jurisdiction of the country where the offence is committed, while pirates can be prosecuted by every country. So the offence is only differentiated by the place where it was committed – in case of piracy it is high sea (open) not subject to jurisdiction of any country.[5]

II.

In this article we will try to focus our attention to the problem of piracy in the western part of the Mediterranean in distant past – between the 11th and 15th centuries. In the 11th century, as a result of developing economy in southern Europe, Christian merchants entered into trading contracts with all centers of exchange around the Mediterranean. The demand for the exchange of goods of all types from the distant regions of the world broke through the cultural and religious prejudices and bans between the Muslim merchants and Christian ones. In this particular period of common interests between those cultures, attempts were made to create a stable, safe zone for international trade. Diplomatic missions of emissaries, the system of protection of consuls outside the boundaries of the country and regulated in treaties guarantees of rights and freedom of foreigners in foreign countries, created institutional framework for the development of world trade. At the same time local religious conflicts, wars, dispersion of feudal power political instability of the region and increasing pirate actions corsair activity and contraband were a serious threat for its safety. Preventing wars was impossible, and the evolution of the system of feudal organization of the state towards national states with a strong central power required time. The more we

[5] K. Wardin: *Współczesne piractwo morskie zagrożeniem dla międzynarodowego transportu morskiego*, Zeszyty Naukowe Akademii Marynarki Wojennej 2009, XLX, no. 3 (178), p. 91.

must appreciate the fact that in this difficult period – in the civilizational, social and political way – there were joint and loyal attempts to fight with crime at sea. The idea failed shortly after the fall of Constantinople to the Turks in 1453. The political and trading rivalry between the Osmans and the Europeans in the Mediterranean, periodically leading to warfare, shook in the 16th century the foundations of regional trading cooperation. In this rivalry the greatest victors were the pirates themselves – Christian and Arab alike[6]. The controlled marine routes, blocked ports and even actively participated in the policies of marine superpowers. They idea of joint counteraction to piracy was revived in the 19th century but the first realistic success were the provisions of the international Geneva Convention in 1958.[7]

III.

At around 800 B.C., the marine expansion of the Arabs began in the western part of the Mediterranean, although the majority, which invaded the Iberian peninsula set up a Cordoba Caliphate, did not feel connected with the sea. The Arabs said that they are land people and the earth belongs to them and the Christian are people of the sea. The firs Caliphs did not bring to their mind that it was possible to "row" at sea. One Arab poet Ceuty refused to take an invitation to Seville, explaining that he was not Moses, who could cross the sea and neither did he intend to build an Arc like Noe did.[8] However, in 650 B.C. Mouawyia, the future Caliph, who gave great significance to the strategic role of the fleet and marine expeditions in order to spread Islam and defend from Byzantium, received from the Caliph Othman consent to a marine expedition. Since the 9th century Arab attacks on Mediterranean islands increased significantly. In 814 the Arabs attacked Sardinia and Corsica, in 816 Balears and again Sardinia in 820 and in 831 they seized the country of Palermo. In 838 they attacked Marseille and in 840 they reached Rhone. An unexpected attack of the Vikings in 844 on Seville was a consequence of the developing marine power of the Arab state. Until then their

[6] See R. Crowley: *Morskie Imperia. Batalia o panowanie na Morzu Śródziemnym 1521–1580*, Poznań 2012.

[7] See R. Zaorski: *Konwencje genewskie o prawie morza*, Gdańsk 1962.

[8] N. Barbour: *L'influence de la géographie et de la puissance navale sur le destin de l'Espagne musulmane et du Maroc,* Revue de l'Occident musulman et de la Méditerranée, Année 1970, vol. 8, no. Spécial, p. 48.

fleet was only aimed at defense, but attack on Balears in 849 and, however fruitless, expeditions to Galicia in 859 announced their vaster marine activity.[9] At the same time we see the increase of extensive trade between the ports of Andalusia and the Muslim ports and Christian neighbors

Between 900 and 975 Andalusia reached its peak as marine superpower. The admiral of the Andalusia fleet Abdurrahman al-Rumahis was the third dignitary in the hierarchy of the Caliphate. The marine expansion of Andalusia was oriented at the west Maghreb and France. The interest in France was due to the seizure by Arab pirates a nobleman's castle in 888 near the village of Fraxinet in the Southern coast of Provence. Fraxinet was changed into a stronghold which became a role model for similar strongholds newly set up on the captured lands to the North as far as Savoie and Piedmont.[10] The successes of the Arab pirates stemmed from the support of caliph Abd ar-Rahman III, the local people, taking advantage and participating in the looting expeditions and local Frankish rulers, who used the pirates as mercenaries in the private wars against each other. In 931 an Italian king Hugon from Arelatu, with the aid of Bisantine warships, destroyed the pirate fleet and the walls of the stronghold, but finally made an agreement with the Arabs on the basis of which they retained Flaxinet, in return for military help against his competitor to the throne. Lack of support from the new caliph Hakam II and the increase of French power caused the Arabs to leave the area of Grenoble and after the battle in 972 they moved back from the St. Bernard's Pass and finally in 975 they left Fraxinet as well. The abandoning of the strongholds – *fraxinum*-was the beginning of an end for the caliphate which swamped in civil war, divided in 1030 into multiple independent emirates, finally fell in 1212. The Muslims never tried to rebuild their marine power again but in the straits and in the immediate proximity of the shoreline they have always been present.

The geographical closeness on the one hand generated conflicts between cultures hostile by nature, but on the other, the vicinity and necessity to share common area forced cooperation. The treaty entered into by Charles the Great and sultan Aaroun-al-Raschid (Harun-al Rashid) facilitated economic growth in the area of the Mediterranean. The Arabs took control in the eastern part of the Mediterranean of the route towards Far East and became go-betweens in the trade with Europe. Christian merchants still, as in ancient times, provided Europe with

[9] Ibidem, p. 49.

[10] M. Ballan: *Fraxinetum, A Glimpse into the Mediterranean World of the Tenth Century?*, "A Journal of Medieval and Renaissance Studies" 2010, vol. 41, pp. 23–76.

oriental goods and the East in skin, fabric, salt and salted fish, Similar conditions of life, because of the climate and access to sea, which was a common source of food and sailing route gradually made Christians and Muslims closer to each other despite religious and cultural differences. While in the East the cultural religious and trading rivalry of the Muslims, Greek and Latin people and feuds about sacred shrines for both cultures in Jerusalem, temporarily turned into military conflicts, the relations in the West, between Maghreb, the caliphate in Cordoba and south west Europe were decisively more peaceful. The capture of sacred places in Bethlehem and Jerusalem by the Muslims and the expansion of Islam in the Byzantine territory was a reason for religious wars. Military expeditions of the Muslims and those of the Crusaders true, made trading contacts difficult but there was never a total loss of relations.

IV.

On the other hand, religious tolerance and personal safety and property guarantees for the Christians in Arab lands in the western part of the Mediterranean created a kind of peaceful coexistence of the people from both cultures. It enhanced the development of industry in Italian towns and trading centers on African coast where routes from Northern Europe and trans-Saharan caravans met. In between crusades, Christian knights even hired themselves for military service with Muslim rulers. Even the relations between the Vatican and those rulers were more than diplomatic. From the remaining correspondence we learn that with their consent they sent Catholic priests to Maghreb, set up bishoprics and built churches in the Christian districts.

The political and trading relations between Christians and Muslims in the Mediterranean were regulated by the treaty of peace and trade. The doctrine of the Islamic law excludes peace between Muslims and the "infidels" but at the same time allows for "truce" during which the non-Muslims can safely be in the area of a Muslim state. The institution of truce was the basis for making treaties with Christian states, soothing he doctrine of the constant duty to convert to Islam all "infidels" or their irradiation in case of resistance. In the Arab language such treaties guaranteeing truce were called *soulhy*.[11] The treaties were made at the

[11] .J.-C. Aristid Gavillot : *Les capitulations et la réforme judiciaire. Essais sur les droits des Européens en Turquie et en Egipte*, Paris 1875, p. 5.

request of the Christians who demand for the same legal security of the person and property, freedom of trade, mixture and freedom of religious practices to be respected in the non-Christian countries as in their own. And to obtain legally guaranteed trading benefits, covering duty concessions and ex territorial activity in a Muslim country.[12]

The signed treaties had the character of royal charters, which were a particular form of promulgated trading conventions. The contained two main guarantees: protection of life and propert of the Christians and some right in return for specific duties. Amongst the rights and freedoms, the treaties guaranteed at the territory subordinate to Muslim authority: safety of persons, freedom of transactions, jurisdiction and irresponsibility of consuls of Christian countries before the Muslim authorities, extra territorial character and safety of fondouks, of allotted districts with building property, churches and cemeteries, individual responsibility in civil and criminal matters, a free access to foreigner's ports, coming on ships belonging to the party of the treaty, the ban to apply *ius caducum* and mutual ban of piracy, protection of castaways and wrecks and therefore canceling, in mutual relations, *ius naufragii*, which allowed the inhabitants of the coast to seize things the sea threw into the shore. The canceling of coastal law although made the relations more civilized, failed to fully prevent looting. On the basis of adopted treaty decisions, it was possible to demand compensation for inflicted damages.[13]

Duties and obligations of ensuring public order and police laws concerned merchants as well as travelers found on their ships and also their rulers. Muslim rulers made reservations that free access to ports is only limited for the Christians. The articles of the treaty guarantees the freedom of religion and religious practices containing duty laws and regulating the rules of export and import, expropriation and the rules concerning the fight with contraband and piracy, were mutually minding for all entities of both contracting parties – Christians on Muslim territory and Muslims on the territories of Christian rule. (85) The charters and obligations concerned the time and place of stay in the cities (ports) indicated in the treaty and on coastal waters and high sea. The basis of the guarantees of observing the treaty was a rule *pacta sund servanta,* the rule of "good faith" – *bonae*

[12] *Grand dictionnaire encyclopédique Larousse*, vol. 2, Paris 1982, p. 1758; J. Dalègre, *Grecs et Ottomans 1453–1923 de la chute de Constantinopole à la disparition de l'empire Ottoman*, Paris 2002, p. 130.

[13] L. de la Mas Latrie: *Traités de paix et de commerce. Dokuments divers concrnat les relations des chrétiens avec les Arabes de l'Afrique septentrionale*, Paris 1866, vol. 1, p. 311.

fidei iudicia. The institution of "good faith" was connected with the medieval institution of care, to which the senior obliged himself in feudatory relations and the Muslim institution called *aman*, understood as patronage and care.[14] *Bona fides* was a civilistic general clause, known from ancient times especially in Roman law. In the Middle Ages it was referred to in international law[15] (page 664) and it was applied as protection of legal trust and protection and the aim of the treaty.[16] Reference was made to *bonae fidei iudicia* i *ius gentium*, especially in the conclusion of the acts and during performing treaty obligations.[17]

The example of respecting the rule of "good faith" is the case of 1315, concerning the councilors of Barcelona. On the demand of archbishop of Sevile and admiral king of Castile, four armed galleys from Sevile took part in the convoy protecting merchants from Barcelona and Valencia. The merchants had good reasons to fear attacks from sailors, sailing under the flag of the hostile kingdom of Tlemcen. After 20 days of the expedition and looting enemy ships, there was a disagreement about the division of the loot and slaves who were the subjects of the sultan of Tunis and Bougie. One of the commanders of the convoy, representing Barcelona, not only refused to participate in the spread of loots, in the part coming from the property belonging to the subjects of the sultan, but even insisted on setting those slaves free and returning their goods to them.[18]

Peace treaties, friendship and trade, which remained until our times, and which are known to us, were usually signed in the interest of the Christians, although they contained the clause of mutuality. The Muslim rarely traveled towards European coasts. Therefore, there was no need to establish a steady Arab consul in a Christian country. The local ruler or government took care over the foreigners, resembling the ancient Greek institution called *procsenos*, or the Roman *pretor peregrinus* decided disputes between the Roman citizen and the foreigner and between foreigners.[19]

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[14] R. Kolb: *La bonne foi en droit international public*, Revue Belge de Droit Internationale 1998/2.

[15] Ibidem, p. 664.

[16] Ibidem, pp. 662–664.

[17] Ibidem, p. 664.

[18] *Lettre des conseillers de municipaux de Barcelone, de 6 novembre 1315*, in: L. de la Mas Latrie : *Traités de paix et de commerce*, vol. 2, p. 311.

[19] See J. Sutor: *Prawo dyplomatyczne i konsularne*, Warszawa 1977.

It must be noted that almost every treaty, directly or indirectly, regulated the issue of prosecuting piracy in the Mediterranean and the responsibility of countries for the inflicted damages by their own subject, dealing with buccaneering.

V.

Piracy is an intrinsic phenomenon connected with the entire area of the Mediterranean both in the East and West. The procedure was regarded as crime since ancient times, but the countries due to political and material weakness, especially strong fleet, were unable to prevent it or prosecute the culprits of these crimes. Rivalry between scattered centers of power increasingly aided the impunity of the pirates, especially that feudal rulers often used the pirates in private wars. It is difficult to establish nowadays, without thorough investigation, how much authorization the pirates had from the states for their actions at sea, conducted as part of the "holy war" – legal in the light of Islam law, and how much and when it was sole sea robbery. While Christian piracy, right from the ancient times, was a crime, although ineffectively persecuted.

In the East, war conflicts facilitated robberies at sea which Latin and Greek pirates specialized in, as well as contraband. Both Popes and rulers, in their decrees, forbid certain goods to be sold to the Muslims described as *negotia prohibita*. Those consisted of war goods-iron, ropes for ships, building timber, linen and hemp. It was also prohibited to trade with Christian slaves, which the pirates sold to harems and military formations, eg. Mamelut police. Constant Christian-Muslim wars created constant demand for war articles. Neither the ban to trade, nor the consciousness that the smuggled weapons and other goods may be used against Christians, did limit contraband. What is more, merchants themselves dealt with this procedure, unsaturated in their greed. For example, Segurano Salvago, a ship owner from Genoa, transported from Port Euxin in Capadoccia to Alexandria around two thousand children kidnapped from the Black Sea region and sold them as slaves.[20]

Piracy was, in the Middle Ages, unanimously condemned as a crime against God, the Church and Christianity and public unhappiness.[21] Both the Church and

[20] L. de Mas Latrie: *L'officium robarie ou l'office de la piraterie à Gênes au Moyen Âge,* Biblithèque de l'école des Châtre, Années 1892, vol. 53, no. 53, p. 266.

[21] Ibidem, p. 264.

secular rulers tried to counteract contraband and piracy. Their actions intensified in the 13th century in connection with crusades and trading rivalry of the Italian countries with Byzantium and Arab markets. There were attempts to secure trading ships from the attacks by organizing expeditions safeguarded by war ships. There were voices that the Church should even participate financially in those activities. A symbol of the policies of the authorities was threatening these crimes by severe sanctions such as: excommunication, confiscation of property on land, ships and goods, also done in Aran ports. By the end of the 13th century a so called Office for Piracy was established in Genoa-Officium Robarie. Its function was to monitor the problem of piracy and compensation of losses the sailors and merchants incurred from pirates from Genoa. All these actions proved absolute inefficiency of Popes' decrees and the secular public authorities.

VI.

There were complex reasons underlying the development of piracy amongst Christian sailors: 1) the increase of sea trade as a result of the crusades and economic development; 2) the fact that corsair activity in the public law had the form of legal and regular actions during war; 3) including trading ships in war actions; 4) lack of country owned fleet or an inadequate potential of such in eliminating robbers; 5) lack of ability to ensure safety to trading ships; 6) political rivalry of the feudal masters, cities and communes who used pirate fleets in private wars. Systematic development of the Sicilian piracy since the expeditions of the Normans in the tenth century in African ports is an example of the complexity of the problem. Acquisition of maritime trade by merchants from Venice, Genoa and Tuscany caused the collapse of many local markets. It was especially felt in Sicily. An economic collapse and the resulting downfall of real political power, caused that Sicily was one of the first countries, in the period after the surrender of Constantinople, where the Greek and Turkish pirates found their outpost. In a few years Favignana and Marettimo (according to Samuel Butler, Marettimo was the homeland for Odysseus) – two islands in the area of the peninsula and the city of Trapani, became the hideout for pirates, from where they set out on expeditions against ships sailing towards Sardinia and North Africa.[22] Trapani, once a rich town, like Messina, located in the north-eastern part, was depopulated in a short

[22] L. de la Mas Latrie: *Traités de paix et de commerce*, vol. 1, p. 318.

time and trade died out completely. The terrorized people in the coastal towns and local villages lost the sources of their income and existence.

At the same time, good relations between the inhabitants of the coast of Africa and Sicily were seriously threatened, despite particularly good intentions of the old Sultan of Tunis, Abu Omar. By the decision of the states in Palermo in 1458 a decision was made to build a system of protection of the coast, but in fact it resembled more war preparations than peaceful ones. For ten years, between 1470 and 1479, there was an exchange of diplomatic correspondence between the ruler of Tunis and king Ferdinand, the king of Naples and Jan, the king of Aragon, Sicily and Navarre. Alfons V African, the king of Portugal, joined the negotiations in 1472, and while in Tunis, demanded from the currently reigning vice king of Sicily, to negotiate the release of 500 Christian prisoners of war, remaining in the countries of the emir. A peace treaty was signed then, which according to Muslim law in the relationships with Christians could only have a temporary character. The prisoner were freed and the sultan, to secure the interest of the subjects of Sicily, even appointed a special consul. Those functions together with the title of the vice king were given to a banker, a member of Royal Council in Palermo, Jacob Bonanno.[23] The existence of the treaty was prolonged but the final agreement was not reached, despite great efforts of the Tunisia party and Sicilian advisors, because Barcelona and Naples had the decisive negotiating position and were absolutely uninterested in the ordering of mutual relations. Generally in the 15th century the relations between Aragon and Barcelona, temporarily independent, were friendly with the rulers of Tunis, and Catalonian merchants would safely reach the ports of Maghreb. Meanwhile, the connection of Castile and Aragon caused king Ferdinand and queen Isabela focus their efforts on the struggle with Maura, and the merchants of Italian Republics in care of their own trading business were interested in the destabilization of Sicily. In this way, Naples and Castile sacrificed Sicily for their own interests and indirectly caused the strengthening of safety for the hideouts of Sicilian pirates, and growing criminality of the local people deprived of the possibility of legal sources of income.

King Louis XI conducted a different policy towards the Arab countries, and acted extensively to deepen the relations with the African coast rulers. A particularly friendly relations with sultan Abu-Omar Othman caused that merchants from Provence reached African ports safely. From the notarial documents displayed in

[23] Ibidem, p. 319, see treaties in vol. 2, pp. 171–174.

Perpiganan it appears that merchants from Roussilion, a province which belonged to the rulers of Aragon, also profited from those friendly French-Muslim relations. Having the guarantees of safety from the Muslims, they could bravely face Christian pirates.

VII.

It must be noted that almost every treaty contained an agreement on the joint prosecution of piracy. A collection of treaties and other documents collected and published by L. de la Mas Latrie, is a valuable source of knowledge of the international aspect of this particular problem. The collection contains 84 original treaties and other diplomatic documents. The oldest treaty comes from 1155 and the last from the beginning of the sixteenth century. In this article we are going to merely point out some examples that illustrate the above issue.

For example, in 1236 a treaty was signed between the kingdom of Tunis and Genoa. In the treaty it was decided that if a citizen of Genoa or another, being under the power and care of Genoa, attack Saracens in the sea, will be traced, prosecuted and sentenced to death as well as loss of their property to the benefit of the Saracens. Furthermore, the treaty obliged the people of Genoa to participate in the actions of the Saracens organized against the pirates.

In 1314[24] 1323 a treaty was signed in Barcelona for four years between Jacob II, the king of Aragon, Valencia, Sardinia and Corsica and the king of Tunis to provide armed Christian galleys in order to track pirates together.[25] At the same time Jacob II referred to the king of Morocco, Abu al-Hasasan with the request for financial aid and sending the Aragon knights, being in his service, in connection with war for Sardinia and Corsica.[26] He skillfully reminded him about the galleys which he had sent as help for his predecessor, who fought for Ceuta with the king of Grenada. At the same time he offered a renewed treaty of peace and friendship in return for the return of knights, he offered to send a few Aragon galleys to

[24] *Traité de paix et de commerce conclu pour dix année entre Jaques II, rois d'Aragon, de Valence, de Sardaigne et de Corse, et Abou-Yahia Zakaria El-Lihyani roi de Tunis et de Bougie*, in: L. de la Mas Latrie: *Traités de paix et de commerce*, vol. 2, p. 306.

[25] Traité de paix et de commerce conclu pour le quatre ans entre Jaques II, rois d'Aragon, de Valence, de Sardaigne et de Corse, et Abou-Yahia Abou-Bekr, roi de Tunis et de Bougie en 1314; L. de la Mas Latrie: *Traités de paix et de commerce*, vol. 2, p. 319.

[26] *Lettre de Jaques II, roi d'Aragon, á Abou-Saïd-Othman, 1323, I mai, de Barcelone*, in: L. de la Mas Latrie: *Traités de paix et de commerce*, vol. 2, p. 315.

defend the coast of Morocco from the pirate attacks. The signed treaty in 1339 decided about taking mutual actions in order to trace pirates and prosecute them by the country from which they came. The countries obliged themselves to repair damaged done by their own pirates or corsairs. The treaties signed by Florence and Pisa with Tunis in 1392 and 1421 concerning the elimination of piracy, were closely bound to the practices applied in the region of undertaking joint actions against the pirates. The most important provision concerned the obligation of Italians to participate in every war expedition organized by the sultan against Toscana pirates and all other pirates entering the ports of Toscana.[27] From the act written in Latin stems the duty of providing armed galleys, but in the Arab text there was a clearly phrased order to subject the galleys under the command of the sultan. It is possible that the translator (drogman) compiled the Latin text in a way to make it more appropriate for the ambitions of the Christians. The parties to this treaty decided that the authorities of Florence and Pisa will search pirates on land, as well as at sea. The procedure of piracy connected with an illegal apprehension of the subjects of the sultan was threatened with death penalty and the loss of property on land and goods on the ship to the benefit of the sultan. Another treaty was made on 23 April 1445 for a period of 31 years. In art. 7 and 8 the decisions from the previous agreement were repeated.[28]

Conclusion

In the Middle Ages, just like in Roman times, there was a difference in waging war against hostile parties from looting pirate feats on ships under any flag. War in the light of then-existing law had a legal character and all acts against life and private and public property were not treated as violation of the law. However, acts of piracy were acts of sea robbery and barbarianism (primitive, savage uncivilized actions). Robbery and looting at sea and within the ports was a crime, punishable by highest possible sentences in all countries of the Mediterranean.

[27] Traité perpétuel de paix et de commerce entre Abou-Farès Abd-el-Aziz, roi de Tunis, d'une part, la république de Florence et de Pise et le seigneur de Piombino, d'autre part, conclu en 1421, in: L. de la Mas Latrie: *Traités de paix et de commerce*, vol. 2, pp. 352, 353.

[28] *Traité de paix et de commerce conclu pour la trente et un années solaire entre la république de Florence et de Pise et le roi de Tunis, 1445, 23 avril [á Tunis]*, in: L. de la Mas Latrie, *Traités de paix et de commerce*, p. 357.

The procedure of piracy has a tradition as long as the history of sea transportation. For thousands of years people were conscious of the strategic and economic significance of marine communication, which had at its disposal the area of seas and oceans covering 70,8% of the Earth's surface. Aristotle wrote that *as concerns marine forces, possessing them in certain amount is useful. Because a country should cast fear not only amongst its own citizens but also on some of their neighbors, as well as to be able to offer help both on land and at sea. When establishing the quantity and number of those forces one must take into account the country's living interest. Because if it takes leading position and enters great politics, it must be in possession of a marine force suitable for the tasks*.[29]

This fact was also evident to organized criminal groups. Not only due to anticipated profits, but also because of the fact that the vastness of the seas and jagged coastline made searching and prosecution difficult. The marine area guaranteed higher probability of impunity than land.

The development of national markets and the intensification of international trade, on one hand, and the escalation of political and economic rivalry of the marine countries on the other, facilitated in the 16th century and centuries that followed, an increase of danger of piracy and corsair activity on the Mediterranean. All countries presented a surprising political particularism and attained their goal by all means also using mercenaries and corsairs. One can risk a thesis that between the 11th and 15th centuries, the Christian and Arab countries and territorial rulers, even though existed in the conditions of total feudal chaos, were able to work out common actions in order to eradicate sea criminals. They were treated unanimously as threat for the trade and economic development. We must give credit to the fact that they managed to create institutional framework for common eradication of pirates and to work out rules of legal responsibility of each state. However, there was lack of ability to effectively counteract robberies. The administrative organization, even though professional in some states, was based on bureaucracy, was financially, material and logistically inefficient to fight piracy. Apart from Venice, the countries did not possess a sufficient fleet of war ships or system of convoys.[30] In most countries political power was weak and unstable, and often hired pirate mercenaries in their struggle for succession. From the treaties and the remaining diplomatic correspondence, which L. de la Mas

[29] Arystoteles: *Polityka,* Warszawa 2011, p. 192.

[30] B. Doumerc: *Des Echelles du Levant aux brumes atlantiques*, in: *Venice 1500, La puissance, la novation et la concord: le triomphe du mythe,* ed. Ph. Braunstein, Paris, pp. 132–133.

Latrie collected, it appears that due to technological advantage in shipbuilding, the political relations in Europe and the increase of marine rivalry between the countries, a greater responsibility for pirate acts until the 15th century lies on Christians, although in European tradition it is the Muslims who bear the blame for barbarian acts.[31] It was due to the fact that from European perspective it was thought that Christians suffered more from pirate attacks then Muslims. Higher level of development of trade on the part of the Christian merchants automatically generated an impression of higher losses in confrontation with Muslim pirates. Christian piracy developed in the times of crusades and the conquering of Sicily by the Normans, who joined Italian robbers.

PROBLEM PIRATÓW W RELACJACH ŻEGLUGOWYCH POMIĘDZY CHRZEŚCIJANAMI I ARABAMI Z AFRYKI PÓŁNOCNEJ OD XI DO XV WIEKU

Streszczenie

W okresie od XI do XV wieku chrześcijańskie i arabskie państwa oraz władztwa terytorialne, mimo że funkcjonowały w warunkach feudalnego chaosu politycznego, były zdolne do wypracowania jedności działań skierowanych przeciwko piratom. Piractwo traktowano zgodnie jako zagrożenie bezpieczeństwa morskiego i przybrzeżnego a także zagrożenie handlu i rozwoju gospodarczego. Próbowano stworzyć ramy instytucjonalne do wspólnego ścigania piratów oraz wypracować zasady odpowiedzialności karnej państw. Ich podstawą były zawierane traktaty międzynarodowe, nakładające na państwa określone zobowiązania. Zbiór traktatów z tego okresu opublikowany w XIX wieku przez archiwistę umożliwia współczesnym badaczom zapoznać się z prawem międzynarodowym tworzonym na pograniczu islamskiej i europejskiej kultury prawnej.

[31] L. de la Mas Latrie: *Traités de paix et de commerce*, vol. 1, pp. 233–234.