

FRENCH COMMERCIAL NAVIGATION AND OTTOMAN LAW IN THE MEDITERRANEAN ACCORDING TO THE *MANUSCRIT TURC 130* (BIBLIOTHÈQUE NATIONALE DE FRANCE)¹

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After 1569, in Islamic-Ottoman legal and diplomatic view, the Frenchmen were considered 'beneficiaries of temporary protection' (*müste'min*) during their stay in the Ottoman dominions. According to certain legal opinion (*fevâ*) from the *Manuscrit Turc 130* (Bibliothèque Nationale de France), one can distinguish more situations in which they were abusively made captives and their merchandise were robbed: a) When the Frenchmen were navigating on their own vessels into and from Ottoman dominions; b) When the Frenchmen were engaged with their ships in a carrying trade of 'enemy' merchandise (*harbî metâ'*); c) When the Frenchmen were navigating on a ship (*harbî gemisi*) belonging to a Western power, which was enemy to the Ottoman empire; d) When the Frenchmen were implied in carrying on provisions, forbidden or not, to an enemy country.

The *Manuscrit Turc 130*² from the Bibliothèque Nationale, Division Orientale³, in Paris gathers between the same covers different types of Ottoman official documents (Imperial charters,⁴ legal opinions,⁵ orders, letters, reports etc.), illustrating

¹ This is a chapter from a planned book on Western trade and merchants in the Ottoman Mediterranean during François Savary de Brèves' time and having as a basic source the *Manuscrit Turc 130* from the Bibliothèque Nationale de France. To write these pages I have also used information gathered during my stay at Folger Shakespeare Library, Washington D.C., in 2005–2006. I would like to thank to all from the Folger Library who supported me to enrich my documentation on the Mediterranean.

² For a detailed description of the *Manuscrit Turc 130*, see Viorel Panaite, "A French Ambassador in Istanbul and his Turkish Manuscript on Western Merchants in the Ottoman Mediterranean (late sixteenth and early seventeenth century)", *RESEE*, XLII, 1-4, 2004, pp. 117–132. The documents were copied from right to left from the folio 2r to folio 30v only. Then, the scribe (scribes) opened the manuscript from left to right, and transcribed all Ottoman documents from the last folio (278r) to the folio 38v.

³ Henceforward: Bibliothèque nationale de France - BNF, Division Orientale - DO.

⁴ Viorel Panaite, 'Western Diplomacy, Capitulations and Ottoman Law in the Mediterranean (16th – 17th Centuries). The Diplomatic Section of the *Manuscrit Turc 130* from the Bibliothèque Nationale in Paris', in *Revue Roumaine d'Histoire*. Editura Academiei Române, Bucarest, Tome XLIV, nos. 1-4, Jan-Déc., 2005, p. 69-88.

⁵ Viorel Panaite, "Western Merchants and Ottoman Law. The Legal Section of the Manuscript Turc 130 from the Bibliothèque Nationale in Paris", in *Revue des Etudes Sud-Est Européennes*, Académie Roumaine, Institut d'Études Sud-Est Européennes, Bucarest, XLV, 1-4, 2007, p. 45–62.

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the legal status of Western trade and merchants into the Ottoman dominions at late-sixteenth and early-seventeenth century. Particularly, these documents offer information on Imperial Charters with commercial privileges granted to the French Kings in the second half of the sixteenth century, on legal condition of Western non-treaty Westerners, especially the Dutch merchants until the granting of their first '*ahdname* in 1612,⁶ on commercial navigation and carrying trade in the Ottoman Mediterranean, on the French consuls in the Levantine harbors, on prohibited merchandise and tax exemptions, on piracy⁷ and captives etc.

The Ottoman legal and diplomatic attitude towards the French commercial navigation in the Mediterranean is illustrated in the *Manuscrit Turc 130* by the Imperial charters ('*ahdname*) of 1569, 1581 and 1597 and more legal opinions (*fetvâ*). Accordingly, the Ottoman authorities and subjects were legally forbidden to make captive the Frenchmen, to confiscate their ship or to seize their merchandise. Despite the diplomatic interdictions formulated in the Imperial Charters of 1569 and 1581, the French subjects were still robbed and make captives in the Ottoman dominions in the last two decades of the sixteenth century. As a consequence of these abuses, new stipulations on the free traffick and safe navigation were included in the '*ahdnames* of 1597 and 1604, granted to the King Henry IV of France.⁸

One can distinguish more situations in which the French subjects, considered 'beneficiaries of protection' (*müste'min*) during their stay in the Ottoman dominions, were abusively made captives and their belongings and merchandise were robbed.

- a. When the Frenchmen were navigating on their own vessels into and from Ottoman dominions.
- b. When the Frenchmen were engaged with their ships in a carrying trade of 'enemy' merchandise (*harbî metâ*'). In this context, the Ottoman captains at sea abusively invoked for robbing and enslaving them the following pretext: "The merchandise loaded on <French> ship belongs to the enemy" (*gemide olan metâ' harbînindir*).
- c. When the Frenchmen were navigating on a ship (*harbî gemisi*) belonging to a Western power, which was enemy to the Ottoman empire. In this case, for robbing and enslaving them, the Ottomans invoked the pretext: "You navigate on an enemy ships" (*harbî gemilerinde bulundunuz deyü*).

⁶ 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 (XIV^e-XXI^e siècles), études à la mémoire de Mihail Guboglu*. Sous la direction de: Faruk Bilici, Ionel Cîndea, Anca Popescu, Musée de Braïla-Éditions Istros, Braïla, 2007, p. 169-194.

⁷ Viorel Panaite, 'French Commerce, North African Piracy and Ottoman Law in the Mediterranean', in *Revue Roumaine d'Histoire*. Editura Academiei Române, Bucarest, Tome XLV, nos. 1-4, 2006 (in print).

⁸ In his *Note sur quelques articles des lettres-patentes du 20 mai 1604*, the French ambassador, François Savary de Brèves, emphasized these abuses as the main reason for the granting of the Imperial Charter to the King Henry IV in 1604 (Ignace de Testa, *Recueil des traités de la Porte Ottomane avec les puissances étrangères*, Vol. I, Paris, 1864, p. 154-159; G. Pélissié du Rausas, *Le régime des capitulations dans l'Empire Ottoman*, 1er édition, vol. I, Paris, 1902, p. 136).

- d. When the Frenchmen bought provisions from the Well-protected dominions and carried on to an enemy country. Sometimes, a French could be the crew's member of a ship belonging to the Ottoman subjects (Muslim or non-Muslim) implied in carrying on forbidden merchandise. The pretext invoked by Ottomans for robbing and enslaving them was: "You buy and carry on provisions to the enemy" (*düşmana zahîre alur gidersin*).

Concerning these aspects of commercial navigations, let us emphasized the similarities between Ottoman and European sea-laws, which can astonish the historians and jurists who have usually seen the differences and not the common places between the two systems of law.

European jurists wrote chapters 'Of questions of Ownership between Belligerents,' which include also – according to the English scholar Richard Zouche (1590–1661) – 'disputes about particular acquisitions, as when single things are captured from enemies, pirates, or others.' Eight questions of ownership on sea are formulated as questions by Richard Zouche in his *Iuris inter Gentes*, trying to give answers according to the maritime usages.

5. Whether the goods of friends may be captured on an enemy ship?
6. Whether the ships of friends carrying the goods of enemies may be made prize?
7. Whether the property of friends may be intercepted on its way to enemies?
8. Whether when a particular article is contraband, the material out of which that article is made may be intercepted?
9. Whether when a particular article is contraband and accessory of that thing may be captured on its way to enemies?
10. Whether contraband goods caught on the way to a hostile place may be captured as destined for enemies?
11. Whether those to whom has been given to capture persons on their way to enemies may capture persons returning from enemies?
12. Whether innocent goods are liable to forfeiture on account of illicit goods?

The fact that he invoked sometimes the Turks as virtual enemies and Turkish do as a 'hostile place' is an evidence that the theory of a permanent conflict between Christian Europe and the Ottoman Empire did not disappear.⁹

a. Robbing French ships and enslaving French merchants

The actors of an usual case of Ottoman abuse at sea, which was blamed in the legal opinions of the *Ms. Turc 130*, were the Ottoman ships captains (with generic names, *Zeyd ü 'Amr ü Bekr re'isler*). The victims were not 'enemy' merchants, ships or merchandise, but French ships, authorized merchandise, belonging to

⁹ Richard Zouche, *An Exposition of Feacial Law and Procedure, or of Law between Nations, and Questions concerning the Same*, vol. Two, The Translation by J. L. Brierly, Carnegie Institution of Washington, 1911, p. 120–124.

French merchants, who had already obtained the privilege to load merchandise from their country and other ports on their ships (*gemilerine metâ' tahmîl edüb*), and come for selling them into the Well-protected Dominions. Consequently, the Ottoman captains could not legitimate the merchandise seizure in an abusive manner.

These attacks took often place nearby the Ottoman ports, just before the arrival of a Western ship into a harbor. The Ottoman captains did not make captives from the passengers and did not seize the ship, but robbed only the merchandise loaded on ship. An eventual complaint of the damaged merchants could be hardly proved, the robbed merchandise being carried on from abroad and not bought from the local market. When the Western merchant arrived to the port, he complained to the local officials. The only reaction of the Ottoman *re'is* was almost puerile, being actually a contra-accusation of piracy against the Western ship's captain. They affirmed that in fact their ship were pillaged by the foreign merchants (*aña binâen gâret olundu*), and not vice-versa.

All circumstances were exposed to the *şeyh ül-Islam* Mehmed bin Sa'adeddîn (1601–1603).¹⁰ The question (*mesele*) here involved legal punishment for the above captains,¹¹ according to the opinion of the Hanafî *imâms*.

The general solution was to reimburse the seized merchandise and to receive a very severe punishment (*aldukların redd ü ta'zir eşedd*). But, due to the fact that the action should be considered a violation of peace (*'akd olunan sulhı naksa*), which had been concluded for the public affairs, the Ottoman captains may be punished by an incarceration for life (*habs-ı ebed*).

Somebody from the group of Ottoman captains, who had pillaged the aforesaid merchandise, testifies against the declaration of Nikola and Mihâl, <and> claims saying that «he was consequently pillaged». Does their testimony be audible? In answer to this question was negative: it was not possible to listen the Ottoman captains' testimony against the declaration of the Western ship's captain and clerk. Here is the transliterated text of this legal opinion:

BN, DO, Turc 130, f. 27v:

- (1) *Bu mesele beyânında e'imme-i hanefiyeden cevâb ne vecihledir ki:*
 (2) *Frâncalulardan 'ahdnâme-i hümayûn mücebince vilâyetlerinden ve gayriden gemilerine metâ' tahmîl edüb Memâlik-i mahrûseye ticârete*

¹⁰ All legal consultations quoted in this article were signed *Ketebehû el-fakîr 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, and was 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 (*Ilmiye Salnamesi. Osmanlı Ilmiye Teşkilâtı ve Şeyhülislâmlar*, Matba'a-i Âmiré 1334 / 1916 (edition in modern Turkish transliteration), Ankara, 1998, no. 24; I. H. Danişmend, *İzahlı Osmanlı Tarihi Kronolojisi*, Cilt 5, Türkiye Yayınevi, İstanbul, 1947–1948 (reprinted, 1971), p. 118–9).

¹¹ On "The Fixed Penalties", see Colin Imber, *Ebu's-su'ud. The Islamic Legal Tradition*, Stanford University Press, Stanford, California, 1997, p. 89–94. Also, see Uriel Heyd, *Studies in Old Ottoman Criminal Law*, Oxford, 1973.

gelürken deryâda rast (3) gelüb mezbûrların metâ'ların gâret eden Zeyd ve 'Amr ve Bekr ve Beşr re'islere şer'an ne lâzım olur? Beyân buyurulub müsab oluna

(4) *El-cevâb: (5) aldukların redd ve ta'zir eşedd belke maslahat 'amme için 'akd olunan sulhı naksa cehdleri cehetinden habs-ı ebed olunurlar. Ketebehu el-fakîr Mehmed bin Sa'adeddîn 'ufiye 'anhümâ*

(6) *Suret-i mezbûrda Zeyd ve 'Amr ve Bekr ve Beşr'in gâret etdikleri metâ'i mezbûrlardan taleb olundukdan mezbûrân Zeyd ve 'Amr ve Bekr ve Beşr zikr olunan (7) metâ' harbî kâfirlerin idüğine geminin re'isi olan Nikola ve kâtibi olan Mihal ikrâr etdiler aña binâen gâret olundu deyü iddi'a edüb (8) Nikola ve Mihalın ikrârına metâ' mezbûru gâret eden ta'ifenin ba'zı şehadet etseler şehâdetleri mesmû'a olur mu ? Beyân buyurula.*

(9) *El-cevâb: (10) Olmaz.*

Ketebehu el-fakîr Mehmed bin Sa'adeddîn 'ufiye 'anhümâ.¹²

Another legal opinion of Mehmed bin Sa'adeddîn introduced other nuances and indicated a punishment by long imprisonment of the Ottoman ships' captains who had enslaved protected foreigners (*müste'min*) and seized their merchandise.

Three Western merchants (*müste'min*), called generically *Mihâl*, *Nikola* and *Aleksi*, were navigating with their ships, loaded with merchandise in the Well-protected Dominions. During their travel at sea, they met three captains of Ottoman ships, called with generic names *Zeyd*, *'Amr* and *Bekr*. Even if it was an accidentally or planned encounter, the consequence taking in consideration by the Grand Mufti was the same, that is the Western ships and merchandise were seized and pillaged (*metâ'ların ahz ü gâret etmeğe*). The question here is whether this action was legally or nor?

According to the *şeyh ül-Islam*'s first answer, this kind of action was contrary to the Holy Law: 'it is not possible' (*olmazlar*). The situation became more complicated and grave if the three Ottoman captains should not obey to the sultan's order, and should not give back the seized merchandise to the above-mentioned *müste'mins*. In this case, they had to be chastised by a severe punishment and long imprisonment (*ta'zîr şedîd ü habs-ı medîd*). Here is the transliterated text of this legal opinion:

BN, DO, Turc 130, f. 29r:

(1) *Bu mesele beyânında e'imme-i haneftiyeden cevâb ne vecihledir ki: Memâlik-i mahrûseye metâ' getirüb izn-i sultanî ile (2) ticâret eden Mihal ve Nikola ve Aleksi nâm müste'minler gemilerine metâ' vaz' edüb deryâda ticâret için mahrûse-i mezbûreye (3) gelürlerken deryâda Zeyd <ve> 'Amr ve Bekr re'islerin gemileri rast gelüb mezbûrların meta'ların ahz ü garet etmeğe şer'an kâdir olurlar mı ? (4) Beyân buyurulub müsâb oluna*

¹² BNF, DO, Turc 130, f. 27v (fetva 8 + 8a).

El-cevâb: Allah te'âla â'lem (5) Olmazlar

Ketebehû el-fakîr Mehmed bin Sa'adeddin 'ufiye 'anhümâ

(6) *Suret-i mezbûrede Zeyd ve 'Amr ve Bekr garet etdükleri metâ' zikr olunan müste'minlere redd oluna deyü emr-i pâdişâhı varid oldukda emre ita'at (7) etmiyen Zeyd ve 'Amr ve Bekre şer'en ne lâzım gelür ?*

El-cevâb: Allah â'lem (8) ta'zîr-i şedîd ve habs-i medîd.

Ketebehû el-fakîr Mehmed bin Sa'adeddin 'ufiye 'anhümâ.¹³

**b. 'Merchandise loaded on <French> ship belongs to the enemy'
(gemide olan metâ' harbîindir)**

Carrying trade was an integral part of the maritime commerce. When a merchant had not his own ship to transport his merchandise from a harbor to other, he could hire a ship by paying to its owner a sum of money for this work. This tax was called *navlun* in Ottoman documents or *nolis* in Western ones.¹⁴ The method of underbidding was used by the Dutch and English in competition with the French for the Mediterranean carrying trade.¹⁵ Yet, the French ships were solicited in the carrying trade more than the Dutch and English ones, because the Provençal shipmasters relied on speed to escape from pirates and outdistance competition: 'their vessel were therefore more highly manned than those of any other nation, with only a third of the cargo space possessed by a Dutchman with the same size of crew.'¹⁶

In the Ottoman seas, this commercial navigation was abundantly practiced. *Harbî* merchants, like Spaniards, used frequently *müste'min* ships, like those belonging to the Venetian and French, for carrying on their merchandise. Also, the Western merchants used ships belonging to the Ottoman subjects (Muslims, Jews or Christians) and vice versa to carry on merchandise.

To legitimate the enslaving of Western merchants and robbing their vessels, the Ottomans labeled as 'enemy' (*harbî*) the respective merchants, merchandise and ships. This was actually a selective piracy, which was not specific to the Islamic

¹³ BNF, DO, Turc 130, f. 29r (fetva 13+13a).

¹⁴ *Navlûn*, originally from the Greek *nol*, but it is an Arabic cultural borrowing. It means 'freight duty'. «There is in Turkish a doublet of *nol*: *navlun*, *navlon*... Both Turkish variants, the hapax *nol* and the current *navlun*, go back to the same basiss, Gr. *naulon* 'fare, freight', and both have reached Turkish through the intermediate stage of another language: *nol* through Italian, and *navlun* through Arabic. A direct derivation of Turk. *navlun* from Gr. *naulon* is improbable because the final nasal of Greek had already disappeared by the period of Turkish borrowings. The history of the term may, then, in brief have been the following: Gr. *naulon* spreads in the eastern Mediterranean, and through the medium of Lat. NAULUM, recorded in the Vulgata, to the West. In the East, it is found in the Balkan languages.» (Andreas Tietze and Henry & Renée Kahane, *The Lingua Franca in the Levant. Turkish Nautical Terms of Italian and Greek Origin*, University of Illinois Press, Urbana, 1958, p. 8, and no. 443, p. 317–8).

¹⁵ For Italy, the Dutch and English cargoes were usually landed at Leghorn.

¹⁶ Sonia P. Anderson, *An English Consul in Turkey: Paul Rycout at Smyrna. 1667–1678*. Oxford: Clarendon Press, 1989, p. 58.

world, only. In 1609, the pirates of Sicily and Naples attacked Venetian ships, but confiscated only the merchandise 'belonging to the Turks, Jews and other like them'.

We are also informed that when the ships of Sicily and Naples began their piracy, claiming (although they really wanted to do just what they liked) that they were removing from our ships only merchandise belonging to Turks, Jews and similar peoples, the Consul in Syria for the time being, together with the Council of Twelve, decreed for the purpose of avoiding these unfortunate occurrences that merchants of these nations should not be able to lade goods on Venetian vessels. Turkish and Jewish merchants are greatly aggrieved at this prohibition, firmly believing that these orders were made in order to compel them to sell their silk and other merchandise to our Venetian merchants on terms favorable to the Venetians. The result of their objections has been that they are more willing to sell their silk and other goods to foreigners rather than Venetian merchants, bringing not only disadvantages to themselves, but also loss and damage to the customs revenue of Your Serenity.¹⁷

In the Imperial Charter of 1597, it was for the first time included a special article forbidding to confiscate the *harbî* merchandise, which had been loaded on the *müste'min* ships and carried on to and from Ottoman ports.

Que les marchandises qui seront chargés à *nollis* sur les vaisseaux François appartenantes aux ennemis de notre grande Porte ne puissent être prises sous couleur de dire qu'elles sont d'ennemis, puisqu'ainsi est notre vouloir.¹⁸

The abuse committed by the Ottoman ships did not end once a clause was registered in the Imperial Charter of 1597. Moreover, it appeared cases when not only the enemy merchandise was confiscated, but the French vessels and sailors were maltreated.

Besides, once the Western merchants who were navigating under the French banner obtained the same privileges as the French subjects, the distinction between the two groups became more complicated. Their merchandise which was loaded

¹⁷ From a memorandum of 11 August 1609, addressed to the Doge of Venice by the *Cinque Savi alla Mercanzia* (cf. 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. 178-9, n. 21).

¹⁸ BNF, Fonds français, no. 3653, f. 1r-6v. The *'ahdname* of 1597 was published in 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*, edited by Charles Shaffer. Paris, 1877, p. 398-410, with the title *Confirmation d'alliance avec le Grand Seigneur par Henry Quatre, 1597*. «Les capitulations d'entre les Majestez de Henry quatrième, Empereur de France et Sultan Mehemet, Empereur des Mousolmans; à présent régnant, renouvelées en l'année 1597, augmentées de plusieurs point très utiles et importants aux subjects du Roy trafficquant par cest Empire, par le soign et diligence du S. de Brèves, gentilhomme ordinaire de la Chambre du Roy, Conseiller en son conseil d'Etat et son ambassadeur pour près le Grand Seigneur».

and carried on with French ships after paying *navlun* could be confused with an 'enemy' merchandise. Moreover, the Western merchants protégés, like the Dutch, could be involved in carrying trade with their ships, transporting *harbî* merchandise.

Practically, when the Muslim ships encountered the above-mentioned French vessels at sea, they seized the loaded merchandise, contrary to the Imperial Charter, invoking as excuse that the merchandise on ship belongs to an 'enemy' merchant (*gemide olan metâ' harbînindir*). The *Capitulations* of 1597 had already cancelled this argument, the respective article being exactly repeated in the legal opinion's text. In the Imperial Charter was stipulated that the *harbî* merchants – after paying *navlun* – may load their merchandise to the French ships, and nobody may cause trouble with the pretext it is about an 'enemy' merchandise (*metâ' harbînindir deyü bir ferd rencîde eylemiye*).

This abuse was claimed to the Ottoman Court by François Savary de Brèves. Due to the French ambassador's friendly relation with the Ottoman *ulemas*, this question arrived to be submitted to the Grand Mufti's attention. The *şeyh ül-Islam* was asked to explain whether this action of seizing would be lawfully according to Imperial Charter and Islamic law ('*ahdnâme-i hümayûna muhâlif alub gâret şer'en câ'iz olur mu*). Mehmed bin Sa'adeddin's answer (*el-cevâb*) was negative: 'It is not possible' (*olmaz*). He based his opinion on the article of Imperial Charter, accordingly it had been prohibited to seize 'enemy' merchandise carried on with French ships.

Taking in consideration that the Ottomans' abuse has extended from the *harbî* merchandise to the French sailors, merchants, ships and merchandise, an interrelated and supplementary legal opinion was added to the above-quoted one.

The question was formulated in the following manner. Besides the seize of the *harbî* merchandise carried on with the French ship, the Ottomans enslaved the French *müste'mins* and confiscated their merchandise, which was in fact imported into and exported from the Well-protected Dominions and not into and from the Abode of War. To have a strong legal justification, the Ottomans forced the French ship's captain and clerk to declare that their vessel should belong to an "enemy" (*gemi re'isine ü kâtibine ikrâh ile «harbînindir» dedürüb*).

The *şeyh ül-Islam* Mehmed bin Sa'adeddin was asked to explain how should be punished, according to the *şeri'at*, those who had seized in the above-said manner (*gâret eyleyen kimesnelere şer'en ne lâzim olur*). Actually, the question involves legal condition of the French ships and sailors who made a carrying trade?

The Grand Mufti's answer (*el-cevâb*) implied, first, that the confiscated merchandise should be indemnified (*aldıkları redd olunub*) to the owners. And, second, that the Ottoman local authorities had to punish all Ottoman subjects who would violate the Imperial Charter and would act against the peace agreement between the Sultan and the King of France ('*akd olunan sulhu nakza ve hilâf-ı 'ahdnâme-i hümayûn 'amele cesâret edenin cezâsı*). In other words, neither a French ship nor a French crew should be robbed when they were implied in carrying trade on the Mediterranean.

Here is the transliterated text of the above-commented legal opinion, as it was copied in the *Ms. Turc 130*:

BN, DO, Turc 130, f. 30r:

(1) *Bu mesele beyânında e'imme-i hanefiyeden cevâb ne vecihledir ki: 'Asitane-i sa'adetde müstakil (2) elçileri olmayan tüccâr tâ'ifesi Memâlik-i mahrûse benderlerine Frânca pâdişâhu bayrağı ve nâmı ile gelüb gitmeğe izn-i 'ali verilüb (3) ve harbî tüccâr ta'ifesi navlun ile Frâncuların gemilerine metâ' tahmîl eyledüklerinde «metâ' harbînindir deyü bir ferd rencîde (4) eylemiye» deyü 'ahdnâme-i hümayûnda tasrîh olunmuş iken ehl-i islâm gemileri deryâda mezkûr Frânca gemilerine rast geldüklerinde (5) «gemide olan metâ' harbînindir» deyü 'ahdnâme-i hümayûna muhâlif alub gâret şer'en câ'iz olur mu. Beyân buyurub müsâb oluna.*

(6) *El-cevâb: Allah â'lem (7) Olmaz.*

Ketebehû el-fakîr Mehmed bin Sa'adeddin 'ufiye 'anhümâ

(8) *Suret-i mezbûrede Frâncalu gemide bulunan harbî metâ'yı garet eyledüklerinden ma'ada Frâncalu metâ' ile Memâlik-i islâmiyyeye gelen (9) ve Memâlik-i mahrûse benderlerinden izn-i hümayûn ile Frâncular tahmîl eyledüğü metâ'ı deryâda bulduklarında gemiyi ahz edüb (10) gemi re'isine ve kâtibine ikrâh ile «harbînindir» dedürüb gâret eyleyen kimesnelere şer'en ne lâzım olur ? Beyân buyurulub müsâb oluna.*

(11) *El-cevâb: (12) Aldıkları redd olunub nizâm-ı umur-ı 'alem için 'akd olunan sulhu (13) nakza ve hilâf-ı 'ahdnâme-i hümayûn 'amele cesâret edenin cezâsı nâzimân-ı umur-ı (14) dîn <ü> devlet olan vükelâ-ı saltanat irâ<de>sine havâle olunur.*

Ketebehû el-fakîr Mehmed bin Sa'adeddin 'ufiye 'anhümâ.¹⁹

The above-commented legal opinion did not put an end to the abuse of the Ottoman ships' captains. That is why the interdiction to enslave the Frenchmen and rob their ships and merchandise when they made a carrying trade would be reaffirmed in the new Imperial Charter, obtained by François Savary de Brèves in 1604.

When enemy merchants have loaded French ships with merchandise, paying *navlun*, nobody may maltrated the Frenchmen on the grounds that «the merchandise is *harbî*».²⁰

¹⁹ BNF, DO, Turc 130, f. 30r (fetvâ no. 16 + 16a).

²⁰ "Si des négociants *harbî* ont chargé, moyennant *navlis*, des marchandises sur navires français, les Français ne seront pas molestés, sous le prétexte 'que le marchandise est *harbi*'" (Bibliothèque d' Arsenal, Ms. 4769 (Tome III), f. 299–322; Ahmed Feridun Bey, *Mecmu'a-ı Münşe'at es-Selâtin*, II, Istanbul, 1264–1265 / 1848–1849, p. 400–405; M. (Fr.-Alphonse) Belin, *Des Capitulations et des traités de la France en Orient*, Paris, 1870 (Extrait du contemporain Revue d'économie chrétienne, 1869); Saint-Priest, *Mémoires*, p. 420–430; Testa, *Traité*s, I, p. 141–51). Also, this stipulation could be similarly found in the *Capitulations* granted to England in 1601 and the Dutch Republic in 1612 (Alexander H. de Groot, *The Ottoman Empire and the Dutch Republic. A History of the Earliest*

Let us note that the European classic jurists approached this question, too. For instance, Richard Zouche put directly the question ‘Whether the ships of friends carrying the goods of enemies may be made prize?’ To argue his answer to this question, he quoted *Consolato del Mare* (‘in which the law of the Mediterranean is contained’), Alberico Gentili and Hugo Grotius. According to *Consolato del Mare*, ‘one who seizes the enemy goods in a friendly ship is bound to pay freight for that part of the voyage which the ship has performed.’ More practical instances were invoked as sources for these customary rules. One of them concerns ‘a French edict which enacts that if enemy goods are found in the ship of an ally, even the ship is lawfully confiscated.’ Zouche adds: ‘But it is more equitable to release the ships of a friendly power after removing their cargoes, unless they carry contraband.’²¹

c. “You are on enemy ships” (*harbî gemilerinde bulundunuz deyü*)

A stipulation from the Imperial Charter of 1597 had forbidden – for the first time in the French *‘ahdnames* series – to make captives the French subjects and to rob their goods when they were found on an ‘enemy’ ship (*harbî gemisi*). Protection against enslaving and robbing was yet conditioned by the fact that the Western subjects should not be members of a pirate ship’s crew (*kursân gemide fesad üzere*). In this case, they could be enslaved, although they were *müste’mins* (‘beneficiary of protection’) from the Islamic point of view.

Et parce qu’aucuns sujets de France navigant sur vaisseaux estrangers pour exercer la marchandise, sont faits le plus souvent esclaves et leurs marchandises prises, par ce, Nous commandons que d’ici en avant ils ne puissent être faits esclaves sinon qu’ils soient pris sur vaisseaux de course, et commandons que ceux qui ont été pris autrement soient faits libres, leurs marchandises et robes restituées sans aucune contradiction.²²

In the *Ms. Turc 130*, it was copied a legal opinion legitimating the above-quoted stipulation. It was issued by the *şeyh ül-Islam* Mehmed bin Sa’adeddin Efendi (1601–1603). Here is the transliterated text of this *fetvâ*:

BN, DO, Turc 130, f. 26r:

- (1) *Bu mesele beyânında e’imme-i hanefiyeden cevâb ne vecihledir ki:*
 (2) *Françalulardan Zeyd müste’min ticâret için harbî vilâyetine dâhil olub ba’dehu harbî gemi ile âher vilâyetine giderken ehl-i islâm*

Diplomatic Relations. 1610–1630, Nederlands Historisch-Archaeologisch Institut, Leiden-Istanbul, 1978, p. 236–7 and 250).

²¹ Zouche, *Law between Nations*, 122.

²² BNF, Fonds Français no. 3653, f. 1r–6v; Saint-Priest, *Mémoires*, p. 402.

gemileri (3) rast geldikde çekdirir gemide olmayub fesâd üzere değil iken mücerred harbî gemide bulunmağla mâ-melekin gâret ve kendüsin esîr (4) eylemeğe şer'en kâdir olurlar mı? Beyân buyurula.

El-cevâb: (5) Olmazlar.

Ketebehu el-fakîr Mehmed bin Sa'adeddîn 'ifâ 'anhümâ²³

To understand better this abstract juridical text, let imagine that a French merchant was traveling for trading to Spain, which was an enemy of the Ottoman Empire at that time. He sold there his merchandise, bought another one, loaded it on a Spanish ship and navigated to an Italian town. According to the Islamic legal view, it meant that our French subject had entered in the House of War (*ticâret için harbî vilâyetine dâhil olub*) and, then, had traveled to another country on an 'enemy' ship (*harbî gemi ile âher vilâyetine giderken*). During the journey from Spain to Italy, the ship met – accidentally or not – Muslim vessels (*ehl-i islâm gemileri rast geldükde*). The Ottoman captain robbed the merchandise loaded on ship and made captive the respective French merchant, despite he was a *müste'min* and should be protected (*mâ-melekin gâret ve kendüsin esîr eylemeğe*). What the *shari'a* said in this respect? (*şer'en kâdir olurlar mı*).

The answer given by the Grand Mufti was short and clear: 'It is not possible' (*olmazlar*), blaming the Ottoman ships' captains who enslaved the French traveling on an 'enemy' ship. Yet, a nuance was introduced when the question had been put. Being on an 'enemy' ship, the respective French should not be liable to cause injury to Muslims (*fesâd üzere değil iken*), an allusion to the frequent cases when Frenchmen, as well other Western subjects, were members of pirate ships' crews.²⁴

The generic case from the legal opinion of 1601–1603 was not an imaginary one. It was based on real cases of French subjects made captives by the Ottomans when they were found traveling on 'enemy' ships. As evidence, we shall quote a letter dispatched by Jacques de Vias, the French consul at Algiers, to the governors of Marseille. Let us emphasize that this letter was written on 29th September 1602 and the above-commented legal opinion was issued in 1601–1603, both being dated in the period when François Savary de Brèves was still ambassador at the Ottoman Court.

The French consul related that a Spanish ship was captured by the corsairs of Algiers. On the ship there were also five Frenchmen, who were made prisoners and were carried to Algiers, like the the entire crew and passangers. France had peaceful relations with both Constantinople and Algiers. So, theoretically, the five Frenchmen should be released. The French consul tried almost successfully to obtain their setting free. But Murad Re'is and the Pasha of Algiers remembered that twenty Turks had been made captives in similar circumstances, being members

²³ BNF, DO, Turc 130, f. 26r (fetva no. 3).

²⁴ *mâdâm ki kendü hallerinde ticâret üzere olub kursan gemisinde fesad üzere olmayalar* (Groot, *Ottoman-Dutch*, p. 252–3).

of the crew of an Algerian pirate ship. They still served on Provence's galleons. The Algerian officials proposed an exchange of prisoners, threatening that all French travelers and merchants found on 'enemy' ships will be made captives or killed in future. In his turn, Jacques de Vias advised the governors of Marseille to accept the Algerian officials' proposal. I don't know the end of this story. But it is possible that the above-commented *fetvâ* copied in the *Ms. Turc 130* be connected directly to the case described by the French consul at Algiers, although there is no explicit element to support this idea.²⁵

The abuse of the Ottoman ships' captains determined the French ambassador at Constantinople to send more petitions to the Ottoman Court. As François Savary de Brèves would declare himself, he had a decisive contribution in stipulating the protection of the Frenchmen traveling on an enemy ship.

Et parce qu'il arrive que quelques sujets du Roi, par commodité de passage, s'embarquent sur des vaisseaux qui appartiennent aux ennemis du Grand Seigneur, qui par rencontre sont pris par les Turcs, j'ai fait ordonner par la Capitulation à l'article 10, qu'ils ne le soient pour l'advenir, ni leurs marchandises retenues, et que, s'il s'en trouve de ceste façon faits esclaves, qu'ils soient faits libres.²⁶

Consequently, Ahmed I re-affirmed in the '*ahdname*' granted to the King Henry IV – more strongly and clearly than in the Imperial Charter of February 1597 – the prohibition to enslave French subjects, invoking the pretext: 'you are on enemy ships' (*harbî gemilerinde bulundunuz deyü*).

Si un marchand français, ayant pris passage sur un navire *harbî*, s'y tient dans les bornes de son état, il serait contraire à la loi de la réduire en esclavage et de s'emparer de ses biens, sous le prétexte «qu'il se trouvait sur navire *harbi*». Tant que les Français s'en tiendront, dans les bornes de leur état, à faire le commerce, et tant qu'ils ne participeront pas aux brigandages des corsaires, on ne pourra, sous ce prétexte, les faire esclaves et saisir leurs biens. Nous déclarons aussi que ceux qui seront trouvés sur des vaisseaux de corsaires seront esclaves de bonne guerre.²⁷

Interdiction to enslave Western *müste'mins* and rob their goods when they made commerce or, pure and simple, travel on 'enemy' ships was generalized by the Sultan Ahmed I in the first decades of the seventeenth century. Consequently, this clause could be also found in the first '*ahdname*' granted to the Dutch Republic in 1612.

So long as the Dutch merchants board ships of the enemy of Islam to exercise their own trade they may not be detained on the pretext of being on enemy ships nor their goods be taken, since they have

²⁵ Chambre de commerce de Marseille, Serie AA. Art. 460, cf. Octave Teissier, *Inventaire des Archives Historique de la Chambre de Commerce de Marseille*, Marseille, 1878, p. 197–8.

²⁶ *Note sur quelques articles du précédent traité* (Testa, *Traités*, I, p. 154–159; Pélissier du Rausas, *Capitulations*, I, p.140–141).

²⁷ Feridun, *Münşe'at*, I, p. 400–405; Belin, *Capitulations*, p. 123; Testa, *Traités*, I, p. 141–145.

been doing their own trade and not behaving in a hostile manner on corsair ships. They may not be seized on that pretext nor taken prisoner.²⁸

The Western jurist Richard Zouche would also try to answer the question *Whether the goods of friends may be captured on an enemy ship?*, as the Grand Mufti did. 'It is commonly said that if a ship is liable to capture, the goods are also held liable.' There is a custom, which became a rule of law of nations, accordingly it ought not to be accepted that 'things found in an enemy's ships are deemed enemy property.'²⁹

d. 'You buy and carry on provisions to the enemy' (*düşmana zahîre alur gidersin*)

Let us come back to the Ottoman Mediterranean at early-seventeenth century. The French subjects were also involved in the maritime commerce between the Ottoman dominions and Christian countries, or between two Mediterranean countries. Certain navigation routes passed inevitably through the waters controlled by the Ottomans. When an Ottoman ship met such a vessel, it happened that the captains have confiscated the merchandise (cereals, especially), robbed and even enslaved the crew and passengers.

Sometimes, among the peoples on that vessel could be French subjects. To rob and make them captives became a diplomatic and legal problem. That is why Mehmed bin Sa'adeddin Efendi, *şeyh ül-Islam* in 1601–1603, was asked to give his legal opinion on the French carrying trade in the Mediterranean, explaining the legal position of the French ships, merchants and sailors who loaded and carried on 'enemy' merchandise between two *harbî* countries. Here is the transliterated text of the legal opinion copied in the *Ms. Turc 130*:

BN, DO, Turc 130, f. 27r:

(1) *Bu mesele beyânında e'imme-i haneftiyeden cevâb ne vecihledir ki:*
 (2) *Pâdişâh-ı islâm ebeddet sultanatihu ila yevm ül-kiyâm hazretlerinin 'atebe-i 'ulyâlarıyla kadimden dostluk üzere olan Frânca kıralı (3) re'âyâsı Memâlik-i mahrûseye gelüb gitudüklerinde dahl ü ta'arruz olunmıya ve deryâda gemilerine rast gelindükde bir ferd rencide eylemiye (4) deyü mâbeyinde müna'kid olan 'ahdnâme-i hümâyûnda musarrah olub dost ile dost düşman ile düşman olmak şartı olmıyub (5) ancak müste'minlik şartı tasfîr olunmuş iken Frâncaludan Zeyd müste'min gemisi ile ticâret için harbî vilâyetine varub (6) gemisine buğday ve gayrı zahire tahmil edüb âher harbî vilâyetine alub giderken*

²⁸ Groot, *Ottoman-Dutch*, p. 236.

²⁹ Zouche, *Law between Nations*, p. 122, quoting Hugo Grotius, *De iure belli ac pacis*, III, 6, #6; *Consolato del Mare*, ch. 237 ('in which the law of the Mediterranean is contained', Zouche said).

deryâda ehl-i islâm gemileri rast (7) gelüb düşmana zahîre alur gidersin deyü gemiyi girift ve kendüsin esîr etmeğe şer'an kâdir olurlar mı ? Beyân buyurula.

(8) *El-cevâb: (9) vech-i meşrûh üzere olıcak olmazlar.*

Ketebehu el-fakîr Mehmed bin Sa'adeddîn 'ufiye 'anhümâ.³⁰

In the question (*mesele*) was emphasized the ancient friendship between the King of France and the Sublime Porte ('*Atebe-i 'ulyâlarıyla kadimdem dostluk üzere olan Franca kıralı*). Accordingly, in the Imperial Charter concluded between the two sovereigns (*mâbeyinde müna'kid olan 'ahdnâme-i hümayûnda musarrah olub*) is explicitly stipulated that the subjects of the King of France may come into and leave the Well-protected Dominions (*Franca kıralı re'âyası Memâlik-i mahrûseye gelüb*). No Ottoman official and subject may undertake any hostility against them, and cause damage when encounters their ships on sea (*deryâda gemilerine rast gelindükde bir ferd rencide eylemiye*).

It is worthy to comment what the Grand Mufti said in connection with the above privilege. This was not a simple stipulation which had been granted as a consequence of the alliance between the Sultan and the King of France, a usual alliance defined by the formula "be friend to the friend and enemy to the enemy" (*dost ile dost düşman ile düşman olmak şartı olmıyub*). But, the safety access into the Ottoman dominions and seas, included as a privilege in the French Capitulations, became a rule of the *şeri'at*, being actually a "stipulation <which characterized> the status of foreigner" (*ancak müste'minlik şartı tasîr olunmuş*). Having the legal status of *müste'min*, a French subject went to an enemy country (*harbî vilâyetine*) for trading, and loaded wheat and other provisions on his ship (*buğday ve gayrı zahire tahmil edüb*). Then, he carried them to other enemy country. When he was navigating on the Ottoman seas, it happens to encounter Muslim ships whom captains robbed the ship and enslaved the French merchant (*gemiyi girift ve kendüsin esîr etmek*), with the pretext «you buy and carry provisions to enemy» (*düşmana zahîre alur gidersin*). Should be this action permitted by the *şeri'at*?

The answer (*el-cevâb*) was negative: it is not possible to act in the above-mentioned manner (*vech-i meşrûh üzere olıcak olmazlar*). Consequently, Mehmed bin Sa'adeddin Efendi considered illegally and abusively the action of that captain.

In the French '*ahdnames* of 1569, 1581 and 1597, there was no distinct clause concerning the situation of the French merchants transporting cereals between two 'enemy' countries. That is why in the text of the above legal opinion was only invoked the general article registered for the first time in 1569, which affirmed the protection of the French ships in the Ottoman dominions and forbade the Ottoman ships' captains to trouble them.³¹

³⁰ BNF, DO, Turc 130, 27r (fetva 5).

³¹ BNF, Fonds Français no. 3653, f. 1r-6v; Saint-Priest, *Mémoires*, p. 402.

The interdiction to make captives and robbed the French merchants, which carried on and traded provisions between the Mediterranean states, was affirmed – for the first time in the series of the French Imperial Charters – in a special clause of the 1604 *'ahdname*. Considering that the *jihad* ideology still regulated the relations of the Ottoman Empire with non-Muslims, the permission to transport merchandise, including cereals, to and from states of the House of War was indeed a real privilege.

Si un Français, ayant chargé, sur navire lui appartenant, des céréales provenant de pays harbi, et destination harbi, est rencontré par des navires musulmans, ceux-ci ne pourront s'emparer du navire et réduire le Français en esclavage, sous le prétexte «qu'il transportait des vivres à l'ennemi».³²

This is not a practice specific to the Ottomans, only. There was a general custom in the European and Mediterranean area, accordingly, a state had the right to capture a ship of another state who supplied an enemy of the former.

Moreover, one can find instances of French ships which captured neutral vessels transporting troops and provisions for the enemies of France. Here is an example of 1597, when Genoa claimed that one of its ship was capture – on this reason – by the French war vessels: "le bâtiment ayant été déclaré de bonne prise comme transportant des troupes ennemies de la France, et les marchandises en ayant été réparites entre les ayants droit".³³

In Richard Zouche's words, this question sounded in the following manner: 'Whether contraband goods caught on the way to a hostile place may be captured as destined for enemies?' Having tried to answer this question, Richard Zouche invoked the Turk as a classic instance of an enemy, a Turkish port as a 'hostile place' and invoked the premise that the 'contraband goods should not be carried.' The quoted instance is that of a 'Genoese ship, laden with a cargo of great value, <which> was captured on its voyage, charged with carrying arms and contraband goods to the Turks.' Was this a lawful action, conforming to the law between nations? No, said those implied in this kind of transportation, arguing that 'there was no clear proof that the ship was bound for a Turkish port.' That is why 'the ship and goods ought to be restored.' For the jurists the first problem was to define 'the way to a hostile place,' or when a person should be considered as intending to go to a prohibited place. The answer: 'if he has been found on the confines of that place and off the route to the place to which he alleges that he was bound.' The person implied in this transport 'is liable to be punished as if he had reached the hostile place.'³⁴

³² Feridun, *Münşe'at*, I, p. 400–405; Belin, *Capitulations*, p.123; Testa, *Traités*, I, p. 141–145.

³³ Jules Berger de Xivrey (ed.), *Recueil des lettres missives de Henri IV*. Collection de Documents inédits sur l'histoire de France. Première Série. Histoire Politique. Paris: Imprimerie Royale / Impériale, Tome IV: 1593–1598, Paris, 1848, p. 1057.

³⁴ Zouche, *Law between Nations*, p. 125.

One can say that the carrying trade of forbidden merchandise was a legal question in both the European classic writings of international law and Ottoman legal texts.

A special case consisted in the situation when the French subjects were hired as crew members of the ships belonging to the Ottoman non-Muslim subjects (*zimmî*), such as Jews, Armenians or Christians. Sometimes, they involved in taking contraband foodstuffs (*zahire*) from the Ottoman dominions to the enemy countries. When they were caught, they were severely punished, starting with the confiscation of merchandise.

The French subjects who were found on these ships by the Ottoman authorities were frequently made captives. That is why Savary de Brèves complained to the Ottoman Court, asking that a new clause be included in the 'ahdname of 1604, stipulating no French subject should be enslaved even if they should be found on a *zimmî* ship transporting prohibited merchandise to a *harbî* country. A such a clause was also registered in the 'ahdnames granted to England and the Dutch Republic. If the Western subject would prove that he belonged to a nation which had been granted a "safe-conduct" (*aman*), then he would not be enslaved.

When a protected subject (*zimmî*) is leaving our well-guarded dominions taking (contraband) foodstuffs and is seized, may not the Frenchman in his company be made prisoner.³⁵

Two conclusions of this article should be drawn.

On the one hand, the *Manuscrit Turc 130* illustrates clearly and undoubtedly – apparently for the first time in a surviving Ottoman manuscript – the legitimization of clauses from the French *Capitulations* ('ahdname) by legal opinions (*fetvâ*). These pages have thrown into relief the stipulations on French commercial navigation and carrying trade in the Mediterranean at close-sixteenth and early-seventeenth century.

On the other hand, one can easily observe the similarities between the Ottoman and European sea-laws, as far as the Mediterranean commercial navigation is concerned. The common places between the two systems of law can astonish the historians and jurists who have usually seen the differences and not the similarities.

³⁵ Feridun, *Münşe'at*, II, p. 400–405; Belin, *Capitulations*, p. 123 («Si l'un de nos sujets *zimmis* est pris, tandis qu'il porte à l'ennemi des vivres tirés de pays musulmans, les Français trouvés sur ce navire ne seront pas faits esclaves»). From the Dutch 'ahdname of 1612: "Nor, when a protected subject (*zimmî*) is leaving our well-guarded dominions taking (contraband) foodstuffs and is seized, may the Dutchman in his company be made prisoner (*ve zimmîlerden biri memâlik-i mahrusemizden zahire alub giderken girifti olundukda Nederalandalulerden bile olanlar cebren eştir olunmayalar*)" (Groot, *Ottoman-Dutch*, p. 236–7 and 250).