Flotsam and Jetsam in the Historiography of Maritime Trade and Conflicts

Louis Sicking and Alain Wijffels

Medieval and early-modern long-distance trade was fraught with risks. Maritime long-distance trade entailed specific risks. Adverse human and natural factors could easily result in a commercial venture's partial or total loss. Such risks, especially when they materialized, often created conflicts of interests, which, in turn, could affect how the partially or entirely failed venture could be dealt with, but also how the various actors involved in the conflict of interest would deal with each other in future business ventures. Not surprisingly, historians have shown great interest in the various ways those actors have tried to manage and solve the ensuing disputes. Through the study of conflict management and resolution, much information can also be gained on the business practices themselves, and the different social groups who played, directly or indirectly, a part in their preparation, in carrying them out, and eventually in dealing with the anticipated or unanticipated effects of such enterprises. These social actors were manifold: apart from the merchants themselves, they include (and could at times be the same as the merchants) sailors, investors, holders of public offices, privateers, pirates...

Long-distance trade quickly developed the role of agents, already ubiquitous in ancient sources. Agents both facilitated and complicated long-distance commercial operations and relations. They often reflected, but also bridged, the cross-cultural hurdles which had to be overcome. Those cross-cultural hurdles were even enhanced when they implied different religions and political cultures. In the case of disputes, they also entailed different mechanisms for handling conflictual situations. Conflict management and resolution operated characteristically in a context of multi-governance and pluri-jurisdictional polities with concurrent social networks and institutions, as illustrated for eleventh- and twelfth-century Cairo in J. Goldberg's key-note address. Jewish merchants were able to bring their interests and cases before either Jewish or Islamic jurisdictions, though the rationale for preferring one or the other option could depend on the circumstances and the effects they sought.

Although maritime commercial practices varied from one marine region to the other around the European world, and differences were exacerbated by particular laws, institutions, and jurisdictions which often anchored locally, international trade still developed in spite of all the cultural, religious and political barriers. Merchants who engaged in far-distance trade had nonetheless to anticipate, and if possible, calculate, the hazards of the seas, of hostile populations on their journey, but also of different legal systems and different ways of doing business. Merchants, rulers and their delegated authorities had to address the difficulties of transcending such difficulties which could impede trade. Agents had to be persuaded and enabled to make firm commitments without finding themselves deprived of remedies when other parties failed to comply with their obligations. Agents themselves were not above the fray and suspicion. Some degree of institutional connections proved in some cases (as that of the Royal Aragonese, the Catalan and the Valencian mercantile institutions) effective in detecting and sanctioning those who had cheated the system and made it possible to develop alternative arrangements for dealing with issues arising from the principal-agent relations.¹

1 **The Normative Power of Conflict and Violence in Pre-modern Maritime Conflicts**

From the high Middle Ages, maritime trade and various forms of conflict developed hand in hand. Those who went out to sea, whether seafarers involved in transporting goods, merchants, or fishermen, were willing to take risks. In medieval terms, they would face 'aventure'.² The perils of the sea were manifold, but so were the perspectives for profit. The Vikings, designated as such by their enemies, were seeking both adventure and profit. In their eyes, trading and plundering were intrinsically associated.³ In the medieval Atlantic and Baltic Europe, too, trade and robbery were two sides of the same coin. The commercial network known as the Hanse suppressed or used piracy, which was an endemic occurrence.⁴ The same was true for the maritime entrepreneurs

1 Eggertsson (1990) 40–48. Greif (2000); Greif (2005); Greif (2008); Grafe and Gelderblom (2010) and S. Ogilvie (2011).

2 De Boer (2007) 49–68. Tranchant (2008) 9–45. Tranchant (2013) 7–14.

3 Fitzhugh (2000) 14. Blockmans and Hoppenbrouwers (2014) 101–102.

4 Rohmann (2017) 1–49. U. Kypta and T. Geelhaar (2013) 198.

of the medieval Mediterranean. According to the *Llibre del Consolat de Mar*, the skipper and merchants on board a merchant ship could collectively decide to attack an enemy ship and then divide the loot taken.⁵ In the medieval maritime environment, economic and violent actors were often the same.⁶ Originally, maritime violence and robbery did not necessarily entail an emotionally charged negative connotation. A common saying in the late-medieval Hanseatic world expressed the common view by stating: 'to rob is no shame, the best of the land do it'.⁷ If the opportunity arose, anyone sailing on the seas would seize it and reap a profit.

For a long time (and still frequently nowadays), historians have relied on an overwrought opposition between peaceful traders and violent pirates in order to explain or understand the mechanisms of maritime enterprise. However, one should be weary of applying such a modern distinction, on which entire historiographical narratives have been built for pre-modern times.⁸ Before the emergence of the modern state, the notion of a monopoly of violence hardly prevailed, and even when such a claim became part of the discourse of late-medieval and early-modern governments, it remained far from a reality. First and foremost, pre-modern societies were shaped by legal and normative pluralism. Modern categories such as peaceful trade and violent robbery prevent therefore an adequate understanding of pre-modern developments of maritime conflicts and maritime conflict management. Conflict management was inherent to maritime enterprise, and is a central theme of the present volume.⁹ In this context, it is worth recalling that Frederic Lane, a historian of the Mediterranean world mostly known for his classic study *Venice. A Maritime Republic*, developed a model which makes it possible to integrate the use of violence among the options available to those involved in maritime commerce.¹⁰ As Lane and others have shown, in order to understand maritime enterprise in pre-modern times, long-distance or international trade can only be fully understood when the use of violence is taken into account.

5 Sohmer Tai (2012) 842–843. Sohmer Tai (2007) 5 (accessed 13 March 2017). Coulon (2004) 202.

6 Heebøll-Holm, Höhn, and Rohmann (2019) 29.

7 Sicking (2018) 435.

8 See Sicking (2018) and Heebøll-Holm, Höhn and Rohmann (2019).

9 This is recognized in recent research not only by medieval historians, but also by early modern historians. See for example Parrott (2012) 35–40.

10 Lane (1979). See more recently Bullard, Epstein, Kohl and Stuard (2004) 88–119.

Besides the use of violence, many other coercive measures were used in maritime trade, including blockades, the closure or relocation of trading posts, or the taxation of competitors (all which have been recognized as key factors in the success of the Hanse in Northern Europe).¹¹ When it is recognized that peaceful trade and violence were inseparable features in pre-modern maritime operations, the importance of maritime conflict management becomes obvious, although conflicts did not arise from the use of violence alone. Maritime conflict management includes a variety of devices, such as conflict enforcement through naval warfare, privateering, piracy and blockades, conflict resolution, whether through formal judicial and administrative procedures, or through more informal, possibly private, channels, but also conflict avoidance (for example through negotiations and diplomacy).

2 From Conflict Resolution to Conflict Management

The history of conflict resolution has often been studied through the prism of diplomacy and the law of nations. More recently, the emphasis has shifted to the process of conflict resolution itself. This, in turn, has fostered a more detailed interest in the different actors and institutions involved, alongside in-depth case studies. Conflict management has a broader meaning than conflict resolution, as the concept includes alternative modes of dealing with conflicts which do not necessarily result in resolving the differences. Beyond classical issues such as naval warfare, piracy and privateering, medieval historians and historians exploring the worlds of the early modern Mediterranean and Atlantic have increasingly directed their attention to forms of conflict settlement and conflict avoidance, but also looked into the vast diversity of formal judicial procedures and informal or private mechanisms of settling disputes.¹²

Maritime conflicts have been a developing area of research on conflict management, but it is an area which requires still more attention, because the overall emphasis has been on state formation, and has therefore remained predominantly land-oriented. The present volume aims instead at focusing on the maritime perspective, following an approach centred on the actors and their disputes. How did victims of maritime conflicts claim compensation

¹¹ See for example Höhn (2019) 143–144.

¹² Some recent literature Cordes and Höhn (2018); Sicking (2017); Miranda and Wubs-Mrozewicz (2017).

or restitution? How and to what extent could they count on the support from authorities and polities? How did individual actors and public institutions negotiate disputes which transcended jurisdictional boundaries (for example, those involving reprisal and piracy)? What strategies were activated in order to achieve resolution of those conflicts, and how effective were those strategies?

3 The Mediterranean and the Atlantic: Contrasting and Common Features

The Mediterranean has sometimes been perceived as an ‘interface’ between opposite religious-normative systems, Christianity and Islam. Piracy was acceptable (or even encouraged) against sailors of the other faith, which had the effect of blurring the distinction between privateering (or *corso*) and piracy (D. Valérian). Along the Atlantic coast, by contrast, piracy began to be systematically criminalised from the late fourteenth century onwards in the policies of the French and English kings (P. Prétou, T. Heebøll-Holm).¹³ Perhaps, as suggested by some authors, those policies should be seen in the context of the kings’ increasing interests in asserting their claims on some form of jurisdiction over sea-territories. However, T. Heebøll-Holm points out that the English king’s claims of ‘sovereignty’ over the sea could practically not be implemented, and have to be distinguished from the criminalisation of pirates through the device of high-treason applied to the king’s own subjects, which may be seen as a strategy which aimed at reinforcing the king’s authority and control over the realm’s available maritime resources. Prétou argues that the criminalisation of pirates did not work to the advantage of merchants, an argument which undermines the conventional dichotomy between the peaceful trader and the violent pirate, which would then appear to have been a political-legal construct of royal authority bent on increasing its power. Whereas damage inflicted through plundering could earlier on have been discharged as if a matter of accounting, the pirate now risked capital punishment. In contrast, the Mediterranean *corso* remained a system which could be settled financially. Even so, even in the Atlantic regions, financial settlement of plundering remained an

13 This phenomenon has also been recognized for the Hanse. Hanseatic efforts to criminalize piracy may have preceded those of England and France. Sicking (2018) 451. Rohmann (2017) 12–14.

option. Much depended on the political and diplomatic circumstances. The diversity of maritime conflicts offered both the private and public actors a range of opportunities, but also imposed some restrictions. Faced with a dispute, merchants could request the support of their ruler, or of their opponents' ruler. Such requests often offered the authorities whose support was sought a chance to enhance their authority. That was the case when the authorities provided help to their own subjects (who, for example, had been forced to contribute with their ships to their king's war-fleet, L. Jean Marie), but also when the authorities gave assistance to foreign merchants. Broader political and diplomatic considerations could convince a ruler to help settling a dispute where foreign merchants were involved in his realm. Diplomatic alliances between kings were nonetheless no full-proof guarantee for a successful or efficient settlement of damage claims between their subjects (T. Viúla de Faria).

Conflicts of interests are an essential feature of public and private commercial governance. Merchants who start on a venture will need to negotiate. Public authorities are concerned about trade balance, but also about the broader effects of trade on their domestic economy and social welfare, since a high rate of employment may secure a degree of social peace. Domestic peace and peace in foreign affairs can nonetheless prove elusive, and all social and political actors will therefore find it prudent to incorporate a calculation of such risks when planning commercial ventures and policies. Moreover, some conflicts of interests tend to be structural, inherent to particular trade relations. In addition, there is always the risk of the bargain turning wrong, or some external factor interfering with the planned enterprise. All risks had somehow to be accounted for in the calculation of costs. Some risks could be prevented or minimised, though not all could be insured against. Conflicts belonged to the risks of any venture and could occur in various ways. Conflict calculation was a day-to-day ingredient in trade planning, whether by individual merchants, firms and joint-ventures, or policy makers. Conflict resolution, which could take different forms, was one way to control and thus limit the risks, but it stood at the tail end of a whole panoply of devices of conflict management, which was often a more realistic approach to deal with conflicts of interests for which there was no quick or obvious outcome (J. Goldberg). Not all the devices of conflict management and resolution were judicial or even governed by legal considerations. During the later Middle Ages and the transition to early-modern times, judicial proceedings, whether state-controlled or not, as a form of conflict management were often (in contrast to the meaning given nowadays to the phrase) a newly available option of 'alternative dispute

resolution' which presupposed the possibility of establishing a stable model of *trias forensis* acceptable to all those interest groups who had a stake in containing the strife.

Such general developments have received fresh attention from historians and legal historians in recent decades. The accumulation of evidence may by now suggest more general considerations about the techniques and features of conflict management and resolution in former times, but the dialectics of such historical research require that the particular features of a specific period, region or social group and their impact on conflict management patterns continue to be studied in their own right. The nowadays well-established comparative approach is one way to bridge the constantly shifting gap between specific findings and generalizations. The present volume reflects such an approach. Its original vantage-point is to bring together two experiences which in the past have often been viewed separately. The one is that of maritime (mostly commercial) relations in the Mediterranean and the other in the Atlantic, connecting countries and communities which happened to have coastlines on either one or both seas. Until recently, students of the maritime dimension have mainly studied either the Mediterranean or the Atlantic region, producing separate historiographies.¹⁴ These two areas were of course not unconnected. Indeed, a great deal of maritime trade since the Middle Ages between Northern and Southern Europe (and Northern Africa and the Middle East) depended on the fluid and intensive intercourse that characterised the connexion between the Mediterranean and the Atlantic worlds. However strongly intertwined the two worlds could be, they nevertheless retained distinctive features, because of their respective geographical environment, political forces and dynamics, climate and weather conditions, and many other factors. Anyone who has sailed in the Mediterranean and along the Atlantic coast through the Channel to the North Sea, will have realised that the maritime conditions are not quite the same everywhere. Inspired by global history there is now a growing interest in questions regarding the connections between different seascapes.¹⁵ The present volume aims to contribute to

14 These historiographies have also resulted in syntheses focusing on a particular seascape. For example Abulafia (2011), North (2011) and Butel (1997).

15 For instance Aznar Vallejo and González Zalacain (2015), the conference *Insularities Connected. Bridging Seascapes, from the Mediterranean to the Indian Ocean and Beyond* organised by Antonis Hadjikyriacou and Sakis Gekas at the Institute for Mediterranean studies, Rethymno, Crete, 10–12 June 2016 and the conference *Entre Mers – Outre-Mer: Spaces, Modes and Agents of Indo-Mediterranean Connectivity (3rd Century BCE–18th Century)* that was held at Heidelberg University in 2014 which resulted in Jaspert and Kolditz

connect the Mediterranean and the Atlantic from the perspective of conflict management; it brings together a range of scholars working on these two areas of research, allowing for a comparative and long-term perspective. This may reveal connections between the different seascapes and shed a useful light on the multiplicity and complexity of the paths chosen for the management of disputes.

The collected essays thus reflect the successive stages at which conflict management was required. At each stage, they also illustrate how public authorities and private merchants, whether individually or in some form of association, approached the issues.

4 Anticipation and Prevention of Conflicts

Among the strategies which appear from the earliest periods onwards, reconaissance of the regions where trade was to take place played an important role. Information was required about the market overseas: What were the demands and what goods were being offered? What factors affected foreigners' trade: local usages, restrictions, taxes, recurrent warfare or unrest... Also, and here the contingency of potential conflicts appears, what mechanisms of protection were available to merchants who, through misfortune or disputes, were stranded or ill-treated in a foreign environment? In that context, several contributions illustrate how merchants tried to cope with the inevitable multi-normativity they faced in the course of international commercial expeditions. Jewish merchants in eleventh and twelfth century Cairo 'were often eager to gain the greatest legal protections each kind of contract they entered into could offer – perhaps stronger evidence to their *ex ante* trust in the legal system's protective capacity than incidence of lawsuits or their resolution' (J. Goldberg). Young men who still had to learn the trade were sent abroad to understand the workings of foreign markets, their institutions, and were also, as in medieval Norway, encouraged to get a grasp of the various laws governing commercial operations (I.P. Grohse). Multi-normativity was probably always the common feature of maritime trade, whether in the Mediterranean or along the Atlantic. The regional diversity of normative systems remains a controversial issue. In contrast to earlier theories on overarching trans-regional maritime laws and on a general mercantile law, partly based on enactments or

(2018). See also the exhibition at Institut du monde arabe in Paris and the Mucem in Marseille and the catalogue *Aventuriers* (2016).

compilations of laws applicable in the Byzantine empire, in Norway, along the Atlantic coasts (*Rôles d'Oléron*) or in parts of the Mediterranean (*Consolato del Mar*), most of the contributions in this volume prefer to emphasise the nowadays more fashionable theme of the diversity of particular customs and laws and the ensuing 'legal pluralism' (D. Penna, I.P. Grohse, E. Aznar Vallejo & R.J. González Zalacain).¹⁶

Byzantine legislation, largely based on older layers of Roman law, with regard to shipwrecks and salvage, proved difficult to implement in regions where local populations perceived their legitimate interests to be better secured by other customs. The imposition of harsher penalties by the imperial lawmaker reflects the difficulty of regulating such practices. Some influential groups, such as Italian merchants from Venice or Genoa, succeeded in obtaining a specific legal regime of protection, which the emperors would then, or so they promised, more strongly enforce (D. Penna). In the late Middle Ages, the rulers of Castile would be confronted with similar conflicts of interests and heterogeneous norms (E. Aznar Vallejo & R.J. González Zalacain). The professional groups and local communities involved were a complex network of partly overlapping, partly diverging, interests, whose particular norms contributed to the overall complex normativity characteristic of maritime trade (A.M. Rivera Medina). Conventions made between rulers as part of the high politics of international relations, such as the treaties pledging amicable relations between the English and Portuguese Crowns, were only part of the equation in private merchants' and public authorities' calculations: during the recurrent hostilities during the Hundred Years' war, such treaties and diplomatic ties between the kings of England and Portugal proved often at best an unreliable default line for arguing compensation if they had failed to protect Portuguese merchants against acts of piracy or official interventions. Despite the formal framework of the treaties, merchants therefore constantly faced a diversity of risks and ensuing conflicts. For some, of course, risk assessment also entailed a commercial assessment of the opportunities wars and war-bound disturbances offered (T. Viúla de Faria).

Private and public interests could clash, but also overlap and coincide. Medieval kings who required naval capacities in wartime would seize private vessels, but their actions would have to balance the advantages of such seizures with the need to keep trade going until the war broke out and even during wartime (L. Jean-Marie, T. Viúla de Faria): in such cases, from the vantage-point of

16 This corresponds with the conclusions of Cordes (2017) 69–85 and Frankot (2012).

the merchants, the calculation of profit and risk became highly speculative (T. Heebøll-Holm). The manipulation of foreign policy in connection with warfare did not end with medieval times, as exemplified by the Dutch handling of the relatively brief and non-momentous war with Algiers in 1755–1757, an example which moreover shows that the merchant community itself could be divided, owing to internal rivalries (T. Allain). Therefore, in many contributions, it becomes obvious that it is not possible to recognise a clear-cut divide between private and public interests: a late-seventeenth century case in which the Portuguese Jewish merchant community in London successfully challenged the surveyor of the customs' attempts to crack down on illicit trade and tax evasion may be an indication that considerations in favour of maintaining the edge over foreign (here specifically, Dutch) competitors could set off the ordinary due process of law (C. Cotic Belloube).

Even piracy, one of the major factors of risk calculation for sea-merchants over the centuries, may not have been a topic of consistently straightforward public policy. Several contributions emphasise how the central authorities' fight against piracy has been instrumental in asserting the sovereign's supremacy both with regard to sea territory and to coastal communities which had traditionally enjoyed a degree of self-government (D. Valérian, T. Heebøll-Holm, P. Prétou). However, even the development of privateering, entailing a political and legal distinction which in theory should have entrenched even further the specific definition of the pirate, did not remove the 'fluid boundary of (il)legality' (C. Antunes & K. Ekama). For powerful companies such as the Dutch East and West Indian companies, privateering was both a threat and a commercial opportunity (*ibidem*), but, with the development of insurance techniques, even lesser merchants could somehow afford to view privateering as a calculated risk (P. Pourchasse).

Although multi-normativity continued to prevail throughout early-modern times, some progress towards common norms started to develop. Particularly in the Mediterranean, where the Northern and Southern coasts were divided by a deep religious and cultural fault-line, an inchoative system of common rules may be seen to have evolved: in the struggle against piracy, by state practice expressed through the progressive accumulation of treaties (D. Valérian), or by converging, yet distinct, practices in consular representation arrangements between Ottoman and Christian rulers.

Maritime trade, as the contributions in this volume make clear, took place against a backdrop of both war and peace. There is no clear border-line on the continuum of peaceful commercial ventures and aggressive forms of predatory expeditions. Conflicts were part of the risk assessment and the calculation

of costs. Conflicts were hazards as much to be anticipated as accidents, storms, acts of God. Any preliminary consideration of dispute resolution or management needs to take into account how conflicts were part of the considerations and planning before any commercial venture set out.

5 The Diversity of Conflicts

A conventional distinction would be to differentiate between private conflicts and conflicts which affect peace and order, hence threaten public policy. As with the distinction between the Atlantic seas and the Mediterranean, those are not hermetically separate categories, they are interconnected and cover a grey area where both meet: for example, when conflicts of private interests acquire such dimensions that they start spilling over into the macro-economic interests of a state, they become inevitably issues of public policy, even if the conflicts themselves remain peaceful. The two terms should be seen as the 'poles' on a spectrum. On the one side, private conflicts which remained within a (often, contractual) trade relationship, but could nevertheless affect a (limited) number of merchants joined in a formal or informal association. In order to remain private, disputes of this kind should be handled, when a settlement is sought, relatively peacefully, i.e. should not be marked by actions *vi et armis*. Moreover, as suggested, they should remain confined to private interests, without affecting public interests such as necessary and strategic exports or imports of a state, or diplomatic relations. Conflicts became public as soon as public authorities started taking actively an interest in them, other than providing a framework for their settlement. Public conflicts, in other words, affected the policies of political governance. Such conflicts could occur within the domestic space of a polity, but in the case of maritime trade, also on and beyond the high seas.

The present volume offers examples of a wide variety of such conflicts. On board of ships, the commanding officer and the crew were to some extent bound by common interests, but these could also diverge in case of breaches of the discipline and other violations of conventional social norms. The joint liability for losses in some cases was obviously a recurrent cause of disputes (D. Penna, I.P. Grohse, E. Aznar Vallejo & R.J. González Zalacain), in one particular case discussed in this volume even of mutiny (C. Antunes & K. Ekama). Inevitably, also, the internal relations within commercial networks, for example between principals and their agents, could lead to conflicts exacerbated by distance and delays of communication (*ibidem*). Interference of the authorities in the

existing networks of merchant communities encompassing rival nations abroad would cause tensions opposing such a community and the authorities responsible for the policies and those in charge of their implementation (C. Cotic Belloube). Barring circumstances which could lead to violence or other disturbances of the peace, the various networks of transporters and mariners, merchants and agents, both at home and abroad, were on the whole interdependent and shared therefore a common interest in avoiding or settling peacefully their disputes and escape the public eye's scrutiny and control. An intermediate situation was that of the ports where a consul was established. The latter often had a position combining commercial interests of his own and official duties, acting in addition as a mediator or intermediary between disputing parties, both private and institutional (T. Allain). Merchants forming a distinctive group or a particular nation abroad would be to some extent joined by common interests vis-à-vis the local and sovereign authorities where they were operating, and in relation with other foreign merchants, but such common interests did not preclude internal strife, whether in their outpost or on the home front (C. Taviani). Other networks involving merchants and other stakeholders in maritime trade were lobbying groups, whose actions could alternatively facilitate smooth relations or generate fresh disputes, not least because of the temptation or risk of corruption their interaction with office holders entailed (C. Cotic Belloube).

The more violent maritime operations, such as piracy and privateering, generated a use of force which authorities were at times keen to channel to their own advantage, but because of the threat they more often than not presented to their own merchant communities and to the sovereign's authority, they were subject to a pendulum of contradictory policies, which at times would support and incite their actions, at other times make a display of repression towards their perpetrators. Peace may have been a virtue and purpose of good governance, but the rulers' willingness to act in good governance seldom excluded warfare as a legitimate means of pursuing their policies. Toleration of piracy or active encouragement of privateering fitted on the scale of foreign policies which allowed for an intermediary range of policies between ensuring effectively peaceful relations and actual war (C. Antunes & K. Ekama, T. Allain). Acts of piracy, often a regular occupation of coastal communities (A.M. Rivera Medina, T. Heebøll-Holm), operating both on the Atlantic and in the Mediterranean (P. Prétou), would only more forcefully be fought against if they were perceived to harm the polity's prominent interests, supposing the polity's rulers held a sufficient position of power to extend their authority on the high seas (A.M. Rivera Medina, T. Heebøll-Holm, T. Viúla de Faria, P. Prétou), a

situation which was only to a limited extent achieved before the eighteenth century, and even then often required some joint diplomatic resolutions (T. Allain). *Lis lites generat*, was a saying sometimes heard with regard to litigation. Although the usual cliché about non-judicial or specialist commercial adjudicating bodies consists in pointing out the advantages, especially for merchants, of a swift and relatively less costly dispute resolution, examples are also occasionally to be found where the protracting of legal proceedings itself could enter the calculation of profits, by speculating on the accumulation of accrued compensation due (P. Pourchasse). Already in the Middle Ages, when the rulers' capacity to control the high seas was mostly limited, merchants had to take into consideration a diversity of strategies – some legal, some beyond the scope of the law – which might have helped them to seek compensation or cut their losses. The position was often different for investors or large-scale entrepreneurs who could diversify their ventures and for individuals, who would find themselves entangled in endless efforts to seek redress, without any certain prospect of recovering their claims or even their freedom (T. Viúla de Faria).

Historiography on the early-modern state has often emphasised how that early-modern state's development established itself by claiming successfully a 'monopoly of violence'. It is doubtful whether on the open seas, such a monopoly had been achieved by the end of early-modern times. From medieval times, recurrent (but intermittent) efforts were made in order to secure at least some of that authority in particular maritime areas, but maritime trade continued to navigate until the end of the Ancien Régime in waters which proved too elusive for the states' powers of the era. Control remained marginal and imperfect. An alternative typology of conflictual relations in that context might be based on the relative distinction between conflicts within the province of the state's power and jurisdiction, and at the other end those which were beyond the reach of the state's coercive sway.

6 Managing and Settling Conflicts

Conflict management in the context of maritime trade offers an exceedingly wide range of strategies. At one end of the scale, discreet negotiations between private merchants could result in finding a temporary or more permanent way out of a conflict of interests, while at the other end, public authorities would apply the full force of criminal law to mete out punishment – and depending on the type of conflict, that punishment could even extend to other states: in

early-modern international law, it was common to envisage war as a form of adjudication, handing out justice, since international courts above the sovereign states were not available.

Before the late Middle Ages, the logistics of maritime trade did not always make it possible to appeal to adequate judicial assistance and control. Merchants were therefore often bound to seek a negotiated way out of disputes. Such low-profile forms of dispute management are rarely documented and escape to a large extent historical investigation (J. Goldberg). Among mariners, usages are better known when they were consigned to writing. Thus, Norwegian customs reveal that the pattern of communal justice was extended to conflicts arising at or beyond the sea, where the skipper's administration of justice may at times have been replaced by a more collective form of justice among crewmen through 'an assembly of oarsmen' acting 'as prosecutors and jurors' (I.P. Grohse). Notarial instruments, when they can be properly contextualised, offer occasionally some insight in non-judicial settlements (C. Tavi-ani), for example by recording an arbitration (A. Belem Fernández Castro). Arbitration itself covers a wide range of forms of conflict management, whether informal or, when (semi-)official agents such as consuls intervened, in a more formal context (E. Aznar Vallejo & R.J. González Zalacain). Legal pluralism remained a feature in all jurisdictions until the end of early-modern times. The diversity of particular laws was in general sustained by a corresponding jurisdictional diversity. The studies both in the Mediterranean space and along the Atlantic show that conflicts related to maritime trade could be dealt with by ordinary, non-specialised courts, but sometimes more specialised commercial or maritime courts (prize courts, admiralty courts, merchants' courts ...) were available. Medieval Cairo was a commercial centre where several jurisdictional systems coexisted. An individual merchant's status, both within his particular (ethnic, religious, local...) community and in relation to merchants outside his community, however influential or prominent he was, ultimately depended on efficient interaction within the business network of his own community. Thus, the evidence from the Cairo Geniza on business practices involving Jewish merchants and on dispute management between them points out that preliminary steps towards litigation and actual procedural steps before a Rabbinic court may also have been strategies tending to involve, beyond the specific litigants, the wider community of merchants of those networks, who would therefore all be affected by litigation and its adverse publicity, and would therefore have indirectly a stake in the way the dispute was settled. Such considerations may have had an inhibitive or pacifying effect on full-scale formal proceedings, which could prove

detrimental not only to the litigating merchants, but to the merchant communities to which they belonged (J. Goldberg). Another example, that of merchants from Valencia involved in long-distance trade, suggests that the variety and complementarity of available adjudicating institutions may have had a favourable effect on the effective ways of managing and resolving merchants' disputes (A. Belem Fernández Castro). That, of course, applied to civil disputes, where compensation for damage was usually the central issue (P. Prétou, P. Pourchasse). Statute law on shipwrecks and salvage in the Byzantine empire included both civil sanctions, but also incentives, in particular for finders (D. Penna). The development of reprisals in the Middle Ages, which in maritime relations lived on in different guises throughout the early-modern period, became at times more associated with violent forms of state-controlled or -approved self-justice (L. Jean-Marie). The banned use of force, resulting in piracy, invited the implementation of harsher state justice, *viz.* through criminal procedures (D. Valérian, T. Heebøll-Holm, P. Prétou) and, ultimately, when state actors were involved, war (T. Allain).

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Case-studies are notoriously tricky for teasing out general conclusions. Some general findings may, notwithstanding, be drawn from the different essays in the present volume. Several authors insist on the great diversity of conflicts and methods of dealing with conflicts. Although such an observation may seem trivial, it should be linked with the argument put forward by Regina Grafe, who suggested that the success of long-distance trade cannot be attributed to a single institution or to better institutions, but should rather be explained through the mechanisms of institutional variation and complementarity. That hypothesis seems confirmed in the case of sixteenth-century Valencia (Belem Fernández Castro). The emergence of new institutions with adjudicating powers in maritime conflicts from the later Middle Age onwards may provide further evidence which will enable future research to test the hypothesis.

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