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PIRACY FROM THE MIDDLE AGES TO THE 19TH CENTURY

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During the Middle Ages and Modern times, piracy represented an inevitable element of developing commercial exchange. Whenever merchants travelled, they were always exposed to attacks and pillages. Between the 8th and 11th centuries, Vikings posed a great threat to shipping in the seas surrounding Europe. Subsequently they were replaced primarily by Arab and Berber pirates on the Mediterranean sea, British pirates on the English Channel and by Slavic Pirates on the Baltic sea[1]. In the 16th century, along with the creation of new trade routes linking Europe with Asia and the Americas, the patterns of European piracy spread all over the world. In the period from the beginning of the 18th century until the 1730s, known as "the golden age of piracy", thousands of men were involved in piracy along the shores of both Americas. Merely between 1716 and 1726, almost 5,000 Anglo-American pirates attacked and robbed merchant ships transporting goods between Europe and the New World[2]. During subsequent decades, their number gradually decreased and by the 19th century classic piracy had practically vanished.

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[1] On European piracy in the Middle Ages, see: A. Konstam, *Piarcy. The Complete History*, Osprey Publishing, Oxford 2008, at pp. 23–36.

[2] M. Rediker, *Between the Devil and the Deep Blue Sea: Merchant, Seamen, Pirates and the Anglo-American Maritime World 1700–1750*, Cambridge University Press, Cambridge 1987, at p. 254.

Although piracy has posed a real and constant danger from ancient times, for a long time it was not dealt with in the legislation of developing medieval European states. The main reason for this was that medieval rulers made use of pirates during wars and political conflicts. This practice was accompanied by creation of an institution known as privateering. From the early Middle Ages, European rulers issued letters of marque and reprisal authorizing private persons to attack enemy ships, especially during wartime[3]. However, privateers often continued to rob merchant ships (those belonging to subjects of the ruler who had previously been their employer!) upon the cessation of conflict. One of the most spectacular examples of this was a long-standing activity of the Catalan Company on the Mediterranean Sea. It was a mercenary army formed at the beginning of the 14th century by a Templar renegade, Roger de Flor. He recruited Spanish soldiers that were unemployed following the peace of Caltabellotta (1302) and offered their services to various Mediterranean rulers. In the first decade of the 14th century they were employed by Byzantine emperors, and the duke of Athens. Following a conflict with the latter, they seized control of the duchy of Athens and subsequently expanded such control to Neopatria with the city of Thebes. The Catalan state in Greece created in consequence thereof existed until the end of the 1380s. During this time, the Company conducted pirate activities threatening above all Venetian merchant ships, which led to numerous complaints and successive armed conflicts[4]. A similar situation occurred almost 200 years later on the Baltic sea, which was controlled at that time by the Hanseatic League. Following the end of the war between the Dukes of Mecklenburg and Denmark, at the beginning of the 1390s, unemployed privateers formed a kind of brotherhood known as the Victual Brothers. In 1394 they occupied Gotland and set up their headquarters in Visby. They attacked merchant ships regardless of their country of origin, which led to a crisis in Baltic Sea trade. It took almost five years for the Queen

[3] On the law of marque and reprisal, see: R. de Mas-Latrie, *Du droit de marque ou droit de représailles au Moyen Âge* [premier article], Bibliothèque de l'école de chartes 1866, Vol. 27, at pp. 529–577.

[4] R. Ignatius Burns, *The Catalan Company and the European Powers, 1305–1311*, Speculum 1954, Vol. 29, at pp. 751–771; K. M. Setton, *Catalan Domination of Athens 1311–1380*, Revised edition, Variorum, London, 1975.

of Denmark and the Hanseatic League to expel the pirates from Gotland. Despite this defeat, the Victual Brothers and their successors continued to threaten ships on the Baltic Sea and the North Sea[5]. Although similar situations were commonplace, for a long time no serious actions were taken to prevent them.

The first European regulations to mention piracy concerned the consequences of jettison in the event of danger. They encouraged crew members to defend their ships against pirates. They were based on the ancient *Lex Rhodia de iactu*[6]. In the 11th century the regulations contained in this code were included in *Tabula de Amalpha* (subsequently adopted by other Italian cities) and repeated in the collection of maritime laws of the crusader Kingdom of Jerusalem (*Maritime Assizes of the Kingdom of Jerusalem*). The latter was, in turn, adopted by the Duchess Eleanor of Aquitaine. After returning from the Second Crusade (1147–1149), in which she participated with her husband King Louis VII of France, Eleanor ordered the drawing-up of a code of maritime laws – the *Rules of Oléron*[7]. According to one of the articles thereof, each citizen was entitled to attack and despoil pirate ships without fear of any adverse legal consequences[8]. The code was first introduced in Aquitaine and a few years later in England. Subsequently, it became the basis for numerous codifications created in North-Western and Northern Europe during the following centuries. The regulations of the *Rules of Oléron* were translated into Flemish as the *Judgments of Damme* and adopted by Hanseatic towns.

[5] On the Victual Brothers and Hanseatic League policy against piracy, see: D. K. Bjork, *Piracy In The Baltic, 1375–1398*, 'Speculum' 1943, Vol. 18, at pp. 39–68.

[6] On *Lex Rhodia de iactu*, see: A. Tarwacka, *Romans and pirates: legal perspective*, Arcana Iurisprudentiae 1, Wydawnictwo Uniwersytetu Kardynała Stefana Wyszyńskiego, Warszawa 2009, at pp. 154–159; S. Płodzień, *Lex Rhodia de iactu. Studium historyczno-prawne z zakresu rzymskiego prawa handlowo-morskiego*, [Lex Rhodia de iactu. Historical and legal studies on roman commercial and sea law], 2nd ed., Wyd. KUL, Lublin 2010.

[7] I. Brujin, *Ship's Surgeons of the Dutch East India Company. Commerce and the Progress of Medicine in the Eighteen Century*, Leiden University Press, Leiden 2009, at p. 49.

[8] *The Federal Cases*, West Publishing Co., St. Paul 1897, Vol. 30, at p. 1187. This article is not included in all preserved versions of *Rules of Oléron* (for comparison, see: J.-M. Pardessus (ed.), 'Collection des lois maritimes antérieures au XVIIIe siècle', Imprimerie Royale, Paris 1828, Vol. 1, at pp. 323–354; T. Twiss (ed.), *Monumenta juridical. The Black Book of the Admiralty: with an Appendix*, Longman, London 1871, Vol. 1, at pp. 89–131). It is possible then that it was added later.

At the beginning of the 16th century, they were repeated in the Visby Rules, which became the most important collection of laws of the sea in Northern Europe[9]. More than one hundred and fifty years later, the *Rules of Oléron* were incorporated into the Declaration of Dutch States General and in the French *Ordonnance de la marine*. They were still in effect in the northern part of Europe in the 18th century when they were adopted as ordinances of various Baltic towns[10]. The code promulgated by Eleanor of Aquitaine also influenced collections of the laws of the sea drawn up in other regions. Regulations comparable to those contained in the *Rules of Oléron* were included in the most important medieval code of sea laws of Southern Europe – *Consolato del Mare*, which was drawn up at the end of the 14th century. In subsequent centuries it was adopted by the most important towns of the Western Mediterranean region[11]. In Modern times, with the development of European colonies in North America, the sea laws of Oléron also spread to this part of the world. In 1647, English colonialists at Rhode Island decided to adopt the *Rules of Oléron* as binding sea laws. These remained in effect until Rhode Island adopted the Constitution of the United States in 1790[12].

In 1201, a few years following the adoption of the *Rules of Oléron* in England, King John issued an ordinance most probably aimed at facilitating the fight against piracy. It imposed an obligation on all ships sailing the Channel to lower their sails when ordered to by the King's Admiral. Refusal to do so would lead to them being regarded as enemies, forced into port and seized[13]. Jurists from seventeenth-century England

[9] *Collection des lois maritimes*, at pp. 355–524; C. S. Cumming, *The English High Court of Admiralty*, 'Tulane Maritime Law Journal' 1993, Vol. 17, at pp. 216–217; W. Tetley, *Maritime Liens and Claims*, Éditions Yvon Blais, Montreal 1998, 2nd ed., at pp. 18 and 20–21.

[10] Ibidem, at p. 440, note 6.

[11] J.-M. Pardessus (ed.), 'Collection de lois maritimes antérieures au XVIIIe siècle', Imprimerie Royale, Paris 1831, Vol. 2, at pp. 1–360; K. Libera (ed.) 'Konsulat morski: według wydania barcelońskiego z r. 1494' [Sea Consulate according to the Barcelona Edition of 1494], PWN, Warsaw 1957.

[12] E. C. Benedict (ed.) *The American Admiralty. Its Jurisdiction and Practice with practical Forms and Directions*, Banks&Company, New York, 1910, 4th ed., at p. 86.

[13] T. W. Fulton, *The Sovereignty of the Sea. A Historical Account of the Claims of England to the Domination of the British Seas, and of the Evolution of the Territorial Waters: With Special Reference to the Rights of Fishing and the Naval Salute*, Blackwood Press, Edinburgh

argued that the main purpose of this Ordinance was to reinforce English domination on the sea. However, Thomas W. Fulton, who examined medieval states' policy seeking to expand their influence at sea, argues that the English kings did not begin to make claims to be "Lords of the English Sea in every side" until the 14th century, and that their earlier actions sought merely to ensure the safety of navigation[14].

Regardless of King John's genuine intentions, the content of the Ordinance of 1201 reflects one of the most important questions concerning rulers' involvement in the fight against piracy at the time – the limits of sovereignty at sea. Medieval monarchs used the fight against piracy as a pretext to enhance their position in the region. A military presence at sea served not only to guarantee the safety of navigation, but also to control the political situation. At the end of the 14th century, Flanders was striving to confirm its sovereignty over inshore waters and, in subsequent treaties with the Hanseatic League and Scotland, undertook to assume responsibility for all acts of violence committed there[15]. On the Baltic Sea in the 14th and 15th centuries, Denmark adopted a similar policy (especially during the Victual Brothers' period of activity). From the 13th century, Italian cities (especially Venice) treated the prevention and combating piracy as a feature confirming their hegemony over the Mediterranean Sea. Treaties concluded between Venice, Genoa and the most important Mediterranean monarchs in the 13th and 14th centuries seem to confirm the success, at least partially, of this policy[16]. The situation in this region was, however, quite complex because it bore witness to clashes between Christians and Muslims and the most important crusader

and London 1911 (reprint Lawbook Exchange Ltd., Clark 2002), at p. 6; R. P. Anand, *Origin and development of the law of the sea: history of international law revised*, BRILL, The Hague 1983, at p. 85.

[14] T.W. Fulton, *op. cit*., at pp. 36 and 42–43.

[15] F. L. Ganshof, *Le Moyen Age*, in: P. Renouvin (ed.) 'Histoire des relations internationales', Hachette, Paris 1953, Vol. 1, at p. 287.

[16] W. Grewe, *The Epochs of International Law*, (translated and revised by Byers), De Gruyter, Berlin 2001, at pp. 129–130. For Venice's policy against piracy in the Middle Ages and Early Modern Times, see: A. Teneti, *Piracy and the Decline of Venice, 1580–1615,* University of California Press, Berkeley 1967; I. B. Katele, *Piracy and the Venetian State: The Dilemma of Maritime Defense in the Fourteenth Century*, 'Speculum', 1988, Vol. 63, at pp. 865–889.

route to the Holy Land. Consequently, piracy was often seen as a crime against religion and in this context it became the object of interest of another important actor of the European political scene at that time – the Papacy[17].

As far back as the 9th century, the Holy Sea organized military expeditions against Muslim pirates. Furthermore, Crusader movement during this activity increased[18] and, for a long time, the Catholic Church took no active part in preventing Christian piracy and privateering. The condemnation of Christian pirates was mentioned for the first time at the IV Council of Lateran, in 1215, in regard to discussion of the crusade. In the papal "Constitution of the Expedition to the Holy Land", issued at the conclusion of the Council, piracy and privateering were condemned as extremely harmful to the crusade. Pirates attacking Christian ships sailing in this direction, as well as their accomplices and protectors, would be excommunicated. The same punishment was laid down for those who protected, collaborated or traded with pirates. The Pope went even further, ordering the punishment of all superiors of towns at which pirates ships landed, unless such leaders had fought against the pirates effectively and sufficiently. The same regulations were repeated in documents of the I Council of Lyon (1245) and the II Council of Lyon (1274)[19]. Apart from the decrees issued in the context of preparations to the crusade, during the Middle Ages the Papacy – apart from sporadic individual instances – was not involved in the fight against piracy. Nonetheless, it should

[17] On more than one occasion attitudes of the Papacy and Italian states towards the question of fight against piracy were contradictory. An example of that was activity of the Office of Piracy (*Officium Robare*) in Genua. In the end of the 13th century the city created an institution which collected in a special chest complaints against the citizens who had committed acts of robbery at the sea. Few times a year the chest was opened and the aggrieved merchants were indemnified. The reason of discontent of the Papacy calling to fight the infidels at that time was that there was no limitations for complaining merchants on account of their faith. On the Office of Piracy, see: L. de Mas-Latrie, *L'officium robaire ou l'office de la piraterie à Gênes au Moyen Âge*, Bibliothèque de l'école des chartes, 1982, Vol. 53, at pp. 264–272.

[18] B. Little, *Pirate Hunting: The Fight against Pirates, Privateers, and Sea Riders from Antiquity to the Present*, Potomac Books, Washington 2010, at p. 117.

[19] *Dokumenty soborów powszechnych. Tekst grecki, łaciński, polski*, [Documents of General Council. Greek, Latin and Polish Texts], Vol. II (869–1312), A. Baron, H. Pietras (eds.), Wydawnictwo WAM, Kraków 2003, at pp. 320, 388 and 406.

be noted that the Apostolic See issued regulations providing for the punishment not only of pirates but also of those who protect and traded with them far earlier than any secular power.

The European monarchs' involvement in fighting and preventing piracy began to increase because of a change in attitude towards the question of a sovereign's responsibility for the acts of his subjects. In the Middle Ages, a merchant robbed by pirates usually requested permission to sue them in a national court from the ruler of the country of their origin. Where this method of seeking justice failed, the aggrieved party could apply to his sovereign for assistance and intervention. In such cases, monarchs used their personal influence and authority, usually by writing a letter directly to the sovereign of the country of origin of the perpetrator, requesting that he execute justice. If such efforts also proved ineffective, monarchs issued letters of marque and reprisal to the amount of the merchandise stolen. However, the latter measure was relatively rarely undertaken[20]. The 13th century witnessed constant growth in acts of violence at sea and the number of cases remaining unadjudicated by the local courts, representing a reason for serious conflict between two monarchs. Simultaneously, sovereign involvement in the protection of their subjects' interests via diplomatic channels was growing. Those circumstances made it necessary for maritime states to seek new solutions to facilitate the settlement of such conflicts, reduce the number of complaints and clearly distinguish privateering from piracy. An interesting example of such efforts may be found at the beginning of the 14th century in England and France, who sought to resolve conflicts involving actions carried on at sea by both countries. Amongst those were accusations of acts of piracy. A special bilateral commission was created in 1306 to investigate the complaints of subjects of both sides concerning offences committed in peacetime. This commission was based on the customary methods of resolving border conflicts, adopted in the 12th century by England and France to settle disputes arising during times of truce[21]. Whilst neither commission managed to resolve conflicts,

[20] E. Lewis, *Responsibility for the Piracy in the Middle Ages*, 'Journal of Comparative Legislation and International Law' 1937, Vol. 19, at pp. 78–82.

[21] P. Chaplais, *Règlement des conflits internationaux franco – anglais au XIVe siècle (1293–1337)*, 'Le Moyen âge' 1951, Vol. 57, at pp. 269–302.

and the proceedings of both were halted for political reasons, similar commissions were created repeatedly during the Hundred Years' War. Analogous solutions were also applied to relations between England and Flanders, Norway and Castile[22]. In the second half of the 14th century, as an alternative to the creation of new commissions, the conflicting sides began to appoint "conservators" who investigated complaints every fifteen days of the truce. In 1414, the English King issued an Ordinance setting down the duties of such "conservators". An official was appointed in every port to inquire into all criminal acts committed in the port and at high sea. Since, however, their activity transpired to be ineffective, the 1414 Ordinance was suspended in 1435 and English kings ceased the appointment of "conservators". In 1450, the Act of Henry V entered into force, albeit with certain limitations, and the office of "conservator" never regained its former importance[23].

At the beginning of the 15th century, other measures against piracy were adopted by European monarchs. In 1412, in a treaty between England and Flanders, it was stipulated that merchandise brought to port by a pirate ship could not be bought or sold. If local officials permitted such transactions, they would be required to reimburse the aggrieved merchant from their own purse. A similar agreement was signed a few years later between England and Burgundy and then between England and Brittany. In the middle of the 15th century, comparable treaties were signed by many European princes[24].

Subsequent measures aiming to prevent piracy were adopted by English kings during the 14th century and were connected not only with the aforementioned aspects of piracy but also with the fact that, at that time, England had considerably expanded its influence at sea. As a consequence of the naval victory over the French in the Battle of Sluys in 1340, Edward III referred to himself as "Sovereign of the Narrow Seas" and enhanced efforts to take total control over the Channel. An important element of this policy were changes in English law aiming

[22] E. Lewis, *op. cit*., at pp. 82–83.

[23] R. G. Marsden, *The Vice-Admirals of the Coast*, 'The English Historical Review' 1907, Vol. 87, at p. 471; idem, *Early Prize Jurisdiction and Prize Law in England*, 'The English Historical Review' 1909, Vol. 96, at pp. 681–682; E. Lewis, *op. cit*., at p. 85.

[24] E. Lewis, *op. cit*., p. 86.

to ensure the safety of navigation. The middle of the 14th century saw the first reference to proceedings to rule upon the legality of a capture at sea before a maritime tribunal comprising an Admiral and Council[25]. The Admiral court investigated complaints submitted on the basis of maritime law (*lex maritima*) as opposed to common law (which was not framed to deal with offences at sea) as had previously been the case. Certain other sources of English maritime law remain unknown. During the reign of Edward III, various Acts of the King, the Admiral and the Admiralty Court were compiled in *The Black Book of the Admiralty*. During the reigns of succeeding kings, this register was constantly supplemented[26]. Those subject to the jurisdiction of the Admiralty Court were enumerated in two Admiralty Jurisdiction Acts dated 1389 and 1391. In the latter Act, piracy was mentioned amongst the main issues investigated by the Admiralty Court[27]. The Hundred Years' War and the War of the Roses in England inhibited the development of the Admiralty jurisdiction, but when the Tudor dynasty seized power, subsequent kings, who sought to create a strong navy, returned to strengthen the system of control over the Narrow Sea. The competences of the Admiral Court were expanded and, in 1536, following the signing of a treaty between Henry VIII and Louis XII in which both sides undertook to fight against piracy conducted by their subjects, the office of Vice-Admirals was created in England. Its primary duty was to prevent and punish sea robbery[28]. In the 16th century, however, the attitude of European monarchs towards piracy had altered decidedly.

The great geographical discoveries and creation of colonial empires by European states were accompanied by attempts to seize control over the seas by the greatest naval powers. The crucial point of this process

[25] Proceedings before an admiral are mentioned in 1353 and in 1357 – R. G. Marsden, *op. cit*., p. 469.

[26] L. H. Laing, *Historic Origins of Admiralty Jurisdiction in England*, 'Michigan Law Review' 1946, No. 45, pp. 166–168.

[27] F. L. Wiswall, *The Development of admiralty jurisdiction and practice since 1800: an English study with American comparisons*, Cambridge University Press, Cambridge 1970, p. 4; C. S. Cumming, *op. cit*., p. 224.

[28] P. Gosse, *Histoire de la piraterie*, Payot, Paris 1952, at p. 375; A. P. Rubin, *The Law of Piracy*, University Press of the Pacific, Newport 1988, at pp. 33–36; C. S. Cumming, *op. cit*., at p. 225.

was the treaty of Tordesillas of 1494 in which the newly discovered lands were divided between Spain and Portugal. The treaty was preceded by a few papal bullas which *inter alia* obliged both states to fight against piracy within their respective areas of influence. However, at that time, the problem of defining piracy returned. Those states involved in colonial conflicts made the definition of piracy conditional on political questions. The greatest naval powers: England, France and Netherlands vehemently opposed the Spanish monopoly of trade with colonies that was imposed after the treaty of Tordesillas. One of the most important instruments of putting pressure on Spain was to openly promote the piracy developing off the shores of Spanish America. A good example of that were the Sea Dogs – privateers employed by the English Crown and mainly engaged in attacks on Spanish ships on the Caribbean Sea. They were active from 1560 until the Treaty of London, which concluded the Anglo-Spanish war, was signed in 1605[29]. Later, in the 17th century, they were replaced by the filibusters and buccaneers. For a lengthy period they enjoyed the support of, above all, France and England, but also Denmark and Portugal. An element thereof participated in conflicts with Spanish ships on the Caribbean Sea without the authorization (letters of marque and reprisal) of any state involved in colonial conflict. They created their headquarters first on the island of Tortuga and then on Jamaica. Their activity was halted following the Treaty of Madrid, signed in 1670 between England and Spain. In this agreement, Spain recognized English possession of the Caribbean Sea and permitted English ships the freedom of movement in this region. It also called upon both sides to revoke all letters of marque and reprisal. From the time that England conquered Jamaica, the English King undertook, in consequence, to resolve the problem of piracy[30].

Paradoxically, at the same time, European states who employed privateers to gain an advantage on the Atlantic Ocean were waging open war against the Berber pirates, who posed a genuine threat to trade

[29] On the activity of Sea Dogs, see: N. Williams, *The Sea Dogs: privateers, plunder and piracy in the Elizabethan age*, Macmillan Pub. Co., New York 1975.

[30] V. Barbour, *Privateers and pirates of the West Indies*, 'The American Historical Review 1911, Vol. 16, No. 3 (April), at pp. 529–566; J. Latimer, *Buccaneers of the Caribbean: how piracy forged the empire*, Harvard University Press, Cambridge 2009; B. Little, *op. cit*., at pp. 154–160.

routes on the Mediterranean sea in the modern period (from the 16th to the 19th century)[31]. From the 16th century, in addition to the activities of secular powers, the papacy was involved in the fight against piracy in this region. The Holy See supported the creation of the Order of Saint Stephen in 1561. Its main duties were to fight the Ottoman Turks and pirates in the Mediterranean. During an existence that spanned almost a hundred and fifty years, the Order took an active part in military actions against piracy[32]. Despite the growing military and diplomatic involvement of various European states (primarily England, France and Holland) the problem remained unresolved until the 19th century. Such resolution required collaboration between the European states to effectively combat the Berber pirates, which was not possible for a long time because of political in-fighting[33].

A thesis of treatises on the law of nations, written during the 16th and 17 centuries, diverged widely from political practice of that time. Modern lawyers adopted the same attitude towards piracy as adopted in ancient times. Bacon had already described pirates as "*communes humani generis hostes [...] quos iderico omnibus nationibus persequi incumbit*"[34]. Gentili shared this view and very distinctly defined piracy as a sea robbery perpetrated in the absence of state authorization. Accordingly, he emphasized that military actions carried on by enemy states could not be perceived as piracy[35]. In this statement he referred to allegations often made by European states – especially England and Spain – against

[31] B. Little, *op. cit*., at pp. 203–207.

[32] On the history and activity of the Order of Saint Stephen, see: R. Bernardini, *Il Sacro Militare Ordini di Santo Stefano Papa e Martire, Ordine Dinastico-Familiare della Casa Asburgo Lorena*, Giardini, Pisa 1990.

[33] On military and diplomatic activities of European states in Mediterranean, see: C. R. Pennel (ed.), 'Piracy and diplomacy in seventeenth-century North Africa: the journal of Thomas Baker, English consul in Tripoli, 1677–1685', Fairleigh Dickinson University Press, Rutherford 1989, at pp. 18–25.

[34] F. Bacon, *The works of Francis Bacon*, Bayens and Son, London 1824, Vol. 10, at p. 314.

[35] A. Gentili, *The iure belli libri tres*, in: A. Gentili, *Opera omnia in plures tomos distribua*, J. Gravier, Neapol 1770, Vol. 1, at pp. 19–22; A.P. Rubin, *op. cit*., at pp. 23–26; L. Benton, *Legal Spaces of Empire: Piracy and the Origins of Ocean Regionalism*, 'Comparative Studies in Society and History' 2005, Vol. 47, at p. 705; W. Grewe, *op. cit*., at p. 305.

other naval powers and North African states[36]. Grotius did not share this opinion. In *De Iure Belli ac Pacis* of 1625 he argued that no attack committed outside the state of war could be justified by the consent of a state[37]. Simultaneously, as the only modern thinker, he called for absolute freedom of navigation on the High Seas. He emphasized, however, that in the event of a pirate attack on the High Seas, the military presence of a state constituted a sufficient reason to extend its jurisdiction in the area. Other writers generally agreed that all, and especially States, were obliged to capture and punish pirates[38].

Modern authors also analyzed the question of how captured pirates ought to be treated. Grotius held the view that pirates had natural rights in common with other people and that, accordingly, every agreement concluded with pirates should be upheld[39]. Gentili disagreed and argued that pirates had deprived themselves of natural rights and could be attacked in any manner, including prohibited methods[40]. Pufendorf concurred with this later thesis and added that pirates destroyed natural human bonds created by God, in consequence of which they were not only *humani generis hostes* but also atheist and unentitled to any privileges derived from religion[41]. This opinion was shared at that time by the Catholic Church. It was partially reflected (just as other lawyers' ideas of the period) in the law of the sea regulations issued by European states in the 17th and 18th centuries.

[36] On the influence of political factors on the interpretation of the regulations concerning piracy by European powers in the Modern times, see: A. Pérotin-Dumon, *The pirate and the emperor: power and the law on the seas, 1450–1850*, [in:] J. D. Tracy (ed.), 'The Political Economy of Merchant Empires', Cambridge University Press, Cambridge and New York 1991, at pp. 196–227.

[37] H. Grotius, *De iure belli ac pacis*, B. M. Telders (eds.), M. Nijhoff, The Hague 1948, at p. 112; L. Benton, *op. cit*., at p. 705; H. W. Blom, *Property, piracy and punishment: Hugo Grotius on war and booty in* De Iure praedae: *concepts and contexts*, BRILL, The Hague 2009, at pp. 381–383.

[38] S. Pufendorf, *De iure naturae de gentium libri octo*, ed. J. H. Hertius, David Mortier, London 1684, at pp. 1284–1285; H. Grotius, *op. cit*., at pp. 104–109; W. Grewe, *op. cit*., at p. 305.

[39] H. Grotius, *op. cit*., at p. 112.

[40] A. Gentili, *op. cit*., at pp. 121–123.

[41] S. Pufendorf, *op. cit*., at pp. 498–499; W. Grewe, *op. cit*., at p. 305.

The greatest European naval powers did not alter their attitude towards the question of preventing sea robbery until the turn of the 17th and 18th centuries, following the conclusion of the most violent colonial conflicts. In the aforementioned Treaty of Madrid, as well as in others peace treaties signed during that period (including the 1697 Treaty of Ryswick, signed upon the conclusion of the Nine Years' War; and the 1713 Treaty of Utrecht, signed upon the conclusion of the War of Spanish Succession), signatories declared that they would refrain from supporting piracy and would combat piracy instead. Indeed, at that time, the involvement of European states in preventing piracy was growing considerably. One predominant reason for this was that, following the cessation of large-scale military conflicts between the greatest naval powers, many unemployed sailors became pirates. This problem mainly concerned the inshore waters of North America, as a result of which England acquired a vested interest in fighting piracy.

Subsequently, two Navigation Acts were adopted in 1651 and 1660, granting a monopoly in transporting goods from the colonies to English ships. As a direct result of these Acts, English merchants became the target of increasingly frequent attacks from Anglo-American pirates. This, combined with commitments included in subsequent peace treaties signed at the turn of the 17th and 18th centuries, saw England take more resolute action against piracy. Although the first *ad hoc* Admiralty Court to judge pirates outside England existed as early as 1615, it was only in 1699 that James II of England issued the second Act against piracy which provided for the creation of special colonial maritime tribunals to investigate cases of sea robbery. It facilitated proceedings brought against captured pirates, since the colonial authorities need not transport prisoners to England. Previously, cases brought against pirates captured in colonies were most often heard by the common low courts[42].

In the second and the third decades of the 18th century, the instances of Anglo-American pirate attacks against English merchants increased further. Accordingly, in 1721 the English king issued an Act for the more effectual Suppression of Piracy. According to this ordinance "Anyone who truck[ed], barter[ed], exchang[ed] with pirates, furnished them with stores, or even consulted with them might be punished with

[42] P. Gosse, *op. cit*., at p. 375.

death"[43]. Other provisions stipulated that condemned pirates were not entitled to receive spiritual comfort and that crew members who had not defended themselves when their ship was attacked by pirates could be sentenced to six months of imprisonment[44]. During the few subsequent years, English colonial tribunals condemned approximately six hundred pirates to death. At the same time, another solution was also applied. At the beginning of the third decade of the 18th century, the English king announced the remobilization of the Royal Navy, which resulted in some sailors who had became pirates following demobilization deciding to return to military service. This considerably reduced the number of active Anglo-American pirates[45]. Another Act against piracy issued in 1744 provided for the punishment of captured pirates. Those pirates who had perpetrated violence would be punished with death, whilst otherwise they would be condemned to forced labour[46].

Thanks to these robust actions, England managed to almost totally eliminate classic piracy by the end of the 18th century. Since England was the greatest naval power at that time and had colonies all over the world, its methods of fighting piracy and legal regulations improving the security of navigation in different regions were adopted by numerous countries on different continents. Amongst those were the Unites States, which incorporated all English provisions concerning the prevention and punishment of piracy issued from the Middle Ages into its domestic law system. Nevertheless, certain European states adopted regulations concerning piracy which differed from those issued by Great Britain and, instead, followed a model adopted by France. In the Middle Ages, the ordinances of the French kings were based on the *Rules of Oléron*, as had also been the case in England. In subsequent centuries, this was supplemented mainly by regulations concerning the punishment of captured pirates. The *Ordonnance de l'amirauté* of 1584 stipulated that they should be punished by breaking on the wheel[47]. In 1681, the *Ordonnance*

[43] *British Maritime Cases 1648–1871*, Professional Books, Abingdon 1978, Vol. 24, at pp. 94–95; M. Rediker, *op. cit*., at p. 283.

[44] P. Gosse, *op. cit*., at p. 376.

[45] M. Rediker, *op. cit*., at pp. 282–283.

[46] P. Gosse, *op. cit*., at p. 377.

[47] The punishment of breaking on the wheel was introduced in France in 1538 – C. Osmont (ed.), 'Ordonnance de la marine, du mois d'août 1681. Commentée & Conferée

de la Marine was issued and represented the most important and most extensive codification of the law of the sea at that time. As regards the question of piracy, the provisions of the *Rules of Oléron* were repeated and Bacon was cited. Pirates, as *communes generis hostes*, were unprotected by the law even if they fell under attack by another pirate ship[48]. The *Ordonnance de la Marine* constituted the basis for numerous European codifications created during the 17th and 18th centuries. In 1718, whilst European states undertook increasingly resolute actions against sea robbery, the French king issued a further ordinance which stipulated that pirates would be punished with death and have their goods confiscated. Their accomplices would be punished with perpetual galley service[49]. As mentioned above, the provisions adopted and actions taken at that time by the European naval powers led to the almost complete eradication of piracy by the end of the 18th century.

During the Middle Ages and Modern times, sea robbery was often treated as an instrument of policy used during times of conflict with other states. European sovereigns hired privateers who, upon the cessation of hostilities, often continued to attack merchant ships as pirates. The frequent employment of private ships to attack enemy fleets was one of the main reasons why, for a lengthy period, no regulations against piracy existed in medieval law. Monarchs' interests in combating sea robbery (not sanctioned by a ruler) increased throughout the 13th century, when the existence of increasingly frequent pirates attacks and the corresponding increase in complaints directed to sovereigns and local courts by aggrieved merchants saw a growth in the involvement of princes in protecting the interests of their subjects via diplomatic channels. England was the first country which, by virtue of its location and long-standing conflict with neighboring France, began to amend its law. The next step was to sign subsequent treaties with different European maritime countries so as to clearly distinguish between piracy and privateering. This situation changed

sur les anciennes Ordonnances, le Droit Romain & les nouveaux Reglements', Charles Osmont, Paris 1714, at p. 52; T. Ortolan, *Règles internationales et diplomatie de la mer*, Henri Plon, Paris 1864, Vol. 1, 4th ed., at p. 211.

[48] C. Osmont, *op. cit*., at. p. 52.

[49] T. Ortolan, *op. cit*., at p. 211. The punishment of galley service was abolished in 1748 – J. R. Ruff, *Crime, justice, and public order in Old Regime France: the Sénéchaussées of Libourne and Bazas*, Croom Helm, London 1984, at p. 60.

in the 16th century when European states embarked upon the creation of colonial empires, which was accompanied by violent military conflicts at sea. Naval powers used privateers as an effective instrument to weaken their political enemies. Accordingly, the problem of defining piracy, which had existed as early as the Middle Ages, returned. The attitude of European states towards this question changed only at the end of the 17th century, following resolution of the most violent colonial conflicts. England, as the most important maritime power of that period, was particularly interested in suppressing piracy. Its resolute actions, followed afterwards by numerous countries throughout the world, led to the almost complete elimination of classic piracy by the end of the 18th century.