Identity and Security in the Mediterranean World ca. AD 640 – ca. 1517
Gladys Frantz-Murphy

Investigation of decrees of safe conduct issued by ruling dynasts in the Muslim world between the twelfth and sixteenth century revealed that five different Arabic terms, in some instances two or three in the same clause, have been translated as "nation." The documents themselves have been characterized as "state treaties" and categorized as "capitulations." While the terminology originated from the "headings" (caput) of their clauses, in the twentieth century the term capitulation was interpreted in the modern sense of "surrender." This interpretation would mean that ruling dynasts, even those who had expelled the Crusaders and conquered Constantinople, surrendered to those whom they had just conquered. The characterization of these documents and the use of "nation" in their translation to render five different Arabic terms raises questions as to the conceptualization of identity across time and place.

Many of these so-called "capitulations" begin with a treaty, or a truce but conclude with an appended safe conduct stipulating terms of trade without specifying a time limitation. Islamic jurisprudence advances the opinion that permanent peace treaties with non-Muslims, as well as truces of unlimited duration, were not possible. Thus, western writers have categorized even the stand-alone decree of safe conduct for commercial purposes as a state treaty, and insisted that these decrees of safe conduct could not possibly have originated in any Islamic legal form or practice. These documents explicitly state that they grant "safe conduct" (amān), and Muslim jurists expressly state that the "safe conduct" is an Islamic form. Yet western scholars have dismissed this assertion as a "legal fiction."

Writing from the French colony of Algeria in 1940, Brunschvig stated that "since the crusades commerce was carried on by treaties that represented the unilateral surrender of exorbitant trading privileges along with extraterritoriality to Christians who retained their nationality." Wansbrough, in a 1971

---


3 P. Holt, Early Mamluk Diplomacy (1260–1290). Treaties of Baybars and Qalawun with Christian Rulers (Leiden 1995) 3 refers to "commercial treaties" assimilating them to truces (hudna) between "Muslim and Christian powers."


5 J. Wansbrough, "The Safe-Conduct in Muslim Chancery Practice," BSOAS 34 (1971) 20–35, Pl. I–VI, at 30; cf. p. 34 where he presents G.P. Bognetti’s compelling argument in "Salvavcondotto" in G. Gentile and C. Tumminelli (eds.), Enciclopedia italiana di scienze, lettere ed arti (Rome 1938) XXX 574; Wansbrough, "Imtiyāzār" in Gibb, op.cit. (above, n. 4) III 1178–79: "the retention of the technical term amān is to be understood as an attempt at the rhetorical concealment of juridical innovation;" P. Holt, "Amān," in Gibb, op.cit. (above, n. 4) 429–430, at 430: "Nevertheless, these treaties, which later gave rise to the Capitulations, did not develop out of the Islamic concept of amān, but represent a type of treaty which had already come into being between the trading cities of Italy and the Byzantine Empire and the states of the crusades," citing R. Brunschvig, La Berbérie orientale sous les Hafsides des origines à la fin du XV siècle (Paris 1940) 431–432.

6 Ibid.
publication, wrote that, "from the twelfth century trade across the Mediterranean was by commercial treaties between Muslim Sultans and the Christian states of the Mediterranean." Categorizing these documents as "state treaties by which Muslim states surrendered exorbitant privileges to Christian nations," implies that Muslim rulers surrendered privileges to sovereign territorial nation-states that they had defeated on the eve of issuing the decree. Construing the safe conduct from the historical perspective of emerging European nation-states that dictated terms of surrender to the repeatedly defeated, nineteenth-century Ottoman Empire perhaps led to confounding these earlier commercial decrees with the later nineteenth-century, unequal treaties. Hans Theunissen, examining the entire corpus of political treaties and truces together with the corpus of commercial decrees of safe conduct, untangles these two documentary forms and resolves the apparent contradiction. The treaty and truce on the one hand, and the safe conduct on the other, represent two distinct forms with two distinct purposes: the treaty and truce being political; the safe conduct being commercial.

Decree of Safe Conduct

The following will focus on those decrees of safe conduct that are not appended to a political truce or treaty. These commercial decrees are addressed to Muslim officials to inform them that a foreign merchant community, and not a "nation," has been granted safe conduct for the purposes of commerce. This analysis presents evidence that, first, the intent and purpose of these decrees of safe conduct was to give legal identity and, so, security, to foreign merchants for the conduct of commerce within the territories under the legal jurisdiction of the ruling dynast, where those foreign merchants had no legal identity. Second, since antiquity the construction of the identity of "foreign" merchants in commercial grants of safe conduct was legal, and not national, and these documents construct legal and not national identity. Third, the form of these grants of safe conduct had both pre-Islamic and Islamic precedents.

While decrees of safe conduct were issued by ruling dynasts from across North Africa to Egypt, the Levant, and Asia Minor, areas which became over time parts of the Ottoman Empire, in both Arabic and in Turkish, the focus here will be on those decrees of safe conduct issued in Arabic from the twelfth century through the Mamluk period (1250–1517). While the earliest safe conduct in Arabic were issued in the form of a letter in response to a specific request, in the course of the thirteen century safe conducts were issued by Muslim rulers in the form of a decree to the ruler's officials, with copies given to the Consul as the representative of the foreign merchant community and to the relevant local Muslim officials. In order to further disassociate the decree of safe conduct from the form and purpose of political

---

7 Wansbrough, op.cit. (above, n. 5) 30.
8 Brunschvig, op.cit. (above, n. 5) 431–432; Wansbrough, op.cit. (above, n. 5) 30.
10 For eighteenth century Ottoman documents see M.H. van den Boogert, The Capitulations and the Ottoman Legal System (Leiden 2005).
documents – state treaty and truce – it is important to understand how Muslim rulers identified the merchants on whose behalf they issued these decrees.

Identity

Having misunderstood the form and purpose of the decree of safe conduct, western editors and translators have assigned the language of twentieth-century international relations to documents that were issued between the twelfth and seventeenth centuries. As evidence of this misinterpretation, five different Arabic terms, sometimes two in the same sentence or clause, have been translated as "nation." "Nation" conjoined with "state treaty" calls to mind the unequal treaties that were imposed upon non-western states in the wake of military defeat by European nation-states. Those nineteenth and early twentieth century treaties did indeed represent surrender. By the terms of those unequal treaties, rival European nations in pursuit of overseas empire extracted commercial privileges, e.g., from the Ottoman Empire beginning in 1838 and from China between 1842 and 1915. But such political, cultural, military and financial overtones are anachronistic when applied to commercial decrees issued from the twelfth to the seventeenth centuries. It is important to emphasize that these commercial decrees were not issued from a position of weakness, particularly not those issued from the imperial chanceries of successive dynasts who had defeated and expelled the Crusaders' States (the Mamluk Sultanate 1250–1517 in Egypt and Syria) and captured Constantinople (the Ottoman Empire 1281–1924). It is absurd to think that Sultan Mehmet II, upon his conquest of Constantinople in 1453, "surrendered" to the Genoese Consul.12 Neither is it likely that other victorious ruling dynasts understood their decrees as being treaties between themselves and Christian states or nations to which they were "surrendering extraordinary privileges."

The English translation of a Turkish "treaty" with England dated 1809, published in 1843 refers to the English "nation," and to "Christian nations" with reference to Scotland, France, and Ireland. Flemish merchants are referred to as, "merchants sailing under the English flag," merchants from Venice, and Poland, are referred to as "merchant strangers."13 Amari and Lane wrote in the wake of Napoleon and before most of the nation-states of Europe had come into existence. Wansbrough and Holt wrote in the second half of the twentieth century as the mandates and colonies that European nation-states had recently carved out of the Ottoman Empire gained their independence from Britain and France. Writing in 1863 Amari, a Sicilian writing before the establishment of Italy as a sovereign territorial "nation-state," qualified his translation of Arabic terms as "nazione" by acknowledging the difference between the political connotations of "nation" in 1863 and its possible fifteenth century meaning: "It is not possible to better refer to the Italian states of the middle ages."14 In his Arabic-English Lexicon, also published in 1863, Lane cites connotations attached to three of the five Arabic terms at issue that include "nation," but "nation" as a people, not as a political entity. Injecting the modern construct of a "nation" with its political

12 N. Iorga, "Le privilège de Mohammed II pour la ville de Péra (1er juin 1453)," Bulletin de la Section Historique 1 (1914) 11–32.

13 Great Britain, Commercial Tariffs and Regulations, Resources and Trade, of the Several States of Europe and America. Together with the Commercial Treaties between England and Foreign Countries, Pt. 8 (1843) 17–30, at p. 20 article 23, dated 1809. This "treaty" would be amended to become the "Treaty of Balta Liman" of 1838, the prototype and the first of the "unequal treaties."

14 M. Amari, I diplomati arabi del R. Archivio Fiorentino (Florence 1863) 438, note i.
overtones into pre-modern "state treaties" in translations of these documents fast forwarded their political and cultural framework half a millennium, obscuring the political and cultural framework in which they originated. Five terms in these decrees that have been translated "nation," go to the heart of the construction of identity.\textsuperscript{15} There is no evidence to suggest that issuing dynasts over a period of 500 years understood the identity of the merchants on whose behalf they granted these decrees as a national identity attached to a sovereign territorial nation-state. While the transliteration of the Latin "Franks" into Arabic attests that issuing Muslim dynast identified the Venetians as a subset of Franks, "all of the Frankish Venetians,"\textsuperscript{16} "Franks other than the Venetians,"\textsuperscript{17} it is unlikely that Venetians would have identified themselves as "Franks." Contemporaneous Arabic documentary and narrative sources shed light on the ruling dynasts' understanding of the five terms that Europeans writing from the mid-nineteenth into the late twentieth century have translated as "nation."

Three of the five Arabic terms have denotations and connotations that are inimical to the concept of a sovereign territorial nation-state. The first two terms are attested primarily in decrees and documents from North Africa. \textit{Qabila} denoted and still denotes and connotes a tribe, a people related through ancestry.\textsuperscript{18} As such, it has no connotation that can remotely be associated with the modern concept of a sovereign territorial nation-state. \textit{Ashira}, denoted and still connotes a clan, or a subdivision of a tribe.\textsuperscript{19}

The three remaining terms are attested in documents from throughout the Middle East. The first of these, \textit{jam\'a}, is widely attested in time and space. The term denoted and continues today to denote "a collection, a number together, an assemblage," and in modern Arabic "league, union, association; community; federation; religious community," etc. \textit{Jam\'a} has no ethnic or political connotation. Hartmann writing in 1918 translates the term as "Kolonie," with a footnote acknowledging the ambiguity of the translation.\textsuperscript{20} The contemporaneous Arabic documents refer to the "community (jam\'a) of Venetians" and not to the "Venetian nation."\textsuperscript{21}

\begin{footnotesize}
\begin{enumerate}
\item Moritz, \textit{op.cit.} (above, n. 16) 403, article 15, 2; Hartmann, \textit{op.cit.} (above, n. 16) 215.
\item Amari, \textit{op.cit.} (above, n. 14) 123, no. 59, "nazione," but p. 105 no. 53, "gente" – the accompanying contemporary Latin translation of no. 53 attests a pronoun.
\item Amari, \textit{op.cit.} (above, n. 14) 124, "ashira = schiatta," "gente," and as nazione p. 153. E.W. Lane and S. Lane-Poole, \textit{An Arabic-English Lexicon} (repr. Beirut 1968) s.v. "kinsfolk; nearer or nearest relations, or next of kin, by descent from the same father or ancestor: or a small sub-tribe; a small portion of the smallest subdivision of a tribe, less than a tribe, a community."
\item Hartman, \textit{op.cit.} (above, n. 16) 205, n. 1: "In this translation I use the word 'colony,' as one needs it for the entirety of foreign 'nationals' in a state, and it is especially necessary for foreign groups in Islamic countries."
\item Translated "nazione" Amari, \textit{op.cit.} (above, n. 14) 124: "Kolonie," Hartmann, \textit{op.cit.} (above, n. 16) 205
\end{enumerate}
\end{footnotesize}
The two terms remaining at issue are regularly attested in documents of Egyptian provenance, in thirteenth and fourteenth century North African documents, in later Turkish documents, and in contemporaneous narrative sources into modern times; often the two, jîns (pl. ajnâs), and tâ‘îla, (pl. tawâ’il), are attested in the same clause. In documents contemporaneous with the Arabic decrees, tâ‘îla, is well attested meaning a community characterized by a profession, or trade, a sect, a taxable unit, while Lane lists as a synonym "a firqa of men [i.e., a party, portion, division, or class thereof; as those of one profession or trade: a body or distinct community: a sect: a corps: and sometimes a people, or nation."22 In fact, tâ‘îla is the term used to refer to the "Party Kings" of Andalusia from 1010 to 1492, kings who represented the antithesis of a nation. In sixteenth century Egyptian court documents tâ‘îla indicates a "community" or "a professional guild."23 The translation "a professional guild" fits the sense of the Venetian merchant community, who were surely a body of men characterized by a profession or trade, and the translation "guild" is not burdened by the anachronistic overtones of "nation."

In Lane's Lexicon the fifth term jîns, a "genus, kind, or generical class comprising under it several species or sorts; or comprised under a superior genus in relation to which it is a species or sort," is the one term from among the five in question that can be associated with the concept of a people of common origin, hence, a "nation" as a people. However, "nation" bears the modern connotation of a sovereign territorial nation-state that exercises territorial law and has led to anachronistic assumptions about the documents in question.24 Hartmann's translation, published in 1918, notes the ambiguity in the terms jîns and tâ‘îla; he translates jîns "Nation" and tâ‘îla "Volk." Lane, writing in the mid-nineteenth century and citing eleventh and fifteenth century sources, translates jîns "kind" in accord with its pre-modern denotation as well as connotation and cites the example "people (al-nâsû) are of several kinds (ajnâsim, pl. of jîns)."25 Viladich translates jîns, "kind" when it modifies "ship," but, "nation" when it modifies "people," as does Ruiz Orsato.26 And while Viladich translates tâ‘îla as "group," Ruiz Orsato translates tâ‘îla as "nation."27

22 Translated "nation" in Wansbrough, op.cit. (above, n. 11) 66, article 13, p. 66, articles. 14, 18, p. 69 clauses 29 and 31; J. Wansbrough, "Venice and Florence in the Mamluk Commercial Privileges," BSOAS 28 (1965) 483–523, Ps. I–VIII, throughout; Hartmann op.cit. (above, n. 16) 206, 217; Amari, op.cit. (above, n. 14) 185, "nazione;" Holt op.cit. (above, n. 3) 124, in the plural, "community." Lane and Lane-Poole, op.cit. (above, n. 19) Pt. 5, p. 1803, col. 3.


26 M. Viladrich, "Jaque al sultan en el 'Damero maldito', Edicion de un tratado diplomatico entre los mercaderes catalanes y el sultanato mameluco 1429," in M.T. Ferrer i Mallol and D. Coulon (eds.), L'expansió catalana a la Mediterrània a la Baixa Edat Mitjana: actes del Sèminaire/Seminar organitzat per la Casa de Velázquez (Madrid) i la Institució Milà i
Holt translates jīns "nation," "all nations of people" al-nāsu 'ajnāsun. Wansbrough notes that the three terms — jīns, tā'īfa, and jamā'a — "appear to be used interchangeably with reference to the Florentines, and are rendered in the contemporary Italian translations as "nazione" or "generazione" without consistent distinction. In some instances Wansbrough translates jīns "nation," while in others "race." The following example of his translation of a decree attests these three terms in a single clause.

It has been mentioned that it is among the earlier privileges (shurūṭ) of the Venetians that from the Frankish nations (pl. tāwā'il) there are some who ... commit piracy ... capturing Muslims ... and attempting to sell them. And the Muslims compel the community (jamā'a) of Venetian merchants to buy (ransom?) the prisoners, but the offenders are not of the Venetian nation (jīns) ... when the offender is of the [Venetian] nation (pl. tāwā'il), they shall be liable for him, but when the offender is not of their number they shall not be liable for him.

Differentiating the terms as outlined above and avoiding the anachronistic "nation" the clause reads as follows:

It has been mentioned that it is among the earlier Venetian conditions (shurūṭ) that there are some from the Frankish guilds (tāwā'il) ... who commit piracy ... capturing Muslims ... and attempting to sell them, and Muslims compel the community (jamā'a) of Venetian merchants to buy the prisoners, and the offenders are not their kind (jīns) ... if the offender is from the Frankish guilds (tāwā'il) they shall be liable for him, but if the offender is not from them (minhum), they shall not be liable for him.

In this clause the community (jamā'a) of Venetian merchants is identified as being from the Frankish guilds (tāwā'il), so Venetians are identified as a subset of Franks. There are other Frankish guilds, and so guilds are a larger category than Venetians. And Venetian merchants are a kind (jīns), within the larger category of Frankish guilds (tāwā'il). And the largest category of people identified in these

27 jīns, Viladrich, op.cit. (above, n. 26) 195, clause 10, as "grupo"; R. Orsati, op.cit. (above, n. 26) 361, "nation."  
28 Wansbrough, op.cit. (above, n. 11) 71, n. 2 notes that "tā'īfa, jamā'a and jīns appear to be used interchangeably with reference to the Florentines, and are rendered in the contemporary Italian translations as "nazione" or "generazione" without consistent distinction, but see Amari, op.cit. (above, n. 14) 438 n. 1, and J. Wansbrough, Lingua Franca in the Mediterranean. (Surrey 1996) 138.  
29 Wansbrough, op.cit. (above, n. 22) 503, clause 19, trans. p. 517.  
30 See below for (sharṭ pl., shurūṭ) denoting "condition" and not "privilege."  
31 "The Venetian" is supplied by the editor, perhaps in an attempt to make sense of the clause.  
32 While the term is in the plural, as in the line above, in this instance it is translated as singular, again, probably in an attempt to make sense of the text.  
33 See below for (sharṭ pl., shurūṭ) denoting "condition" and not "privilege."
documents is "Franks" of various merchant *guilds* ṭawāʾif, some of which guilds are the Venetian *kind* (jins). And so it would seem that ṭaʾīfa is the well-attested sixteenth-century "guild, or taxable unit" documented by Hanna.34

Since the modern legal concept of a nation-state that exercises national territorial law had not yet come into existence, we may conclude that these Arabic decrees of safe conduct were not identifying merchants by the modern concept of a "nationality" attached to a sovereign nation-state that exercised territorial law. Law attached to the territory of the nation-state in which a person carried on commerce emerged in Europe only in 1804 from the Napoleonic Code. By contrast, in the Middle East since pre-Islamic times, law attached to the person, not to the territory. For example, in the Roman Empire, only Romans had been subject to Roman law, while other non-Romans, for example, Germans or Egyptians, were subject to their respective community's laws. So too, in the Muslim-ruled world only Muslims were subject to Islamic Law. In the Muslim-ruled Middle East into the twentieth century Orthodox and Coptic Christians, Jews, each religious community was subject to law that was administered by its community. These commercial decrees issued from the twelfth to the seventeenth century granted legal identity to persons who did not have legal status in the Muslim-ruled world because they were not members of any of the resident religious communities. While the role and status of the Consul in their place of origin differed over time and space, in the Muslim-ruled world the decree of safe conduct gave the Consul the legal status of the resident head of his guild, and so granted that guild a legal status similar to that of a resident religious community, thus, in effect, continuing the legal practice of the pre-Islamic Middle East.35

**Purpose: Security not Privileges**

Rather than inferring that ruling Muslim dynasts understood these decrees as "their surrender of privileges to Christian nations," much less nation-states (a political form that had not yet emerged) the inference that ruling dynasts understood these decrees as legal contracts that facilitated commerce is more likely. The decree represents public notice of a contract entered into with a legal representative, the Consul, who is held responsible for seeing that his merchant guild fulfills the terms of the contract, *i.e.*, abide by the terms of trade stipulated in the decrees. In return those merchants were granted security. And in these decrees the Consul is the head of a legal entity, which conceptually is more akin to that of a trade association, than to that of a sovereign nation-state.

The evolution of the meaning of the term "capitulations" in English also needs to be addressed. The *Oxford English Dictionary* cites the meaning of "capitulations," first attested in 1579 and as late as 1882 as, "A statement of the heads of a subject; summation, summary, enumeration. The making of terms, or of a bargain or agreement; stipulation."36 It is unlikely that the Arabic documents written between the

---

34 Hanna, *op.cit.* (above, n. 23) 194.

35 For example, Pisan Consuls into the fifteenth century were merchants with juridical authority, the manner of appointment and authority of Florentine Consuls changed over time, while Venetian Consuls were appointed by the Bailo in Constantinople and approved by the Venetian Signoria, A. Grunzwieg, "Le fonds du consulat de la mer aux archives de l'État à Florence," *BIBR* 10 (1930) 1–24, at 1–2; E. Dursteler, "The Bailo in Constantinople: Crisis and Career in Venice's Early Modern Diplomatic Corps," *MHR* 16.2 (2001) 1–30, at 5.

36 "Capitulation," in The *Oxford English Dictionary* (Online), <http://dictionary.oed.com> (6 April 2008) [n.d.], documents the evolution of the term from "heads of a subject" in 1579 to "clauses or terms of a treaty, stipulations, covenants, con-
The translation of the Arabic term *shaʿr*, as "privilege," is indicative of the prejudicial effects of the term "capitulations." The term *shaʿr* (pl., *shurṭ*) has never had such a denotation or connotation. The term denotes and connotes "condition," or "stipulation." In translations of these decrees *shaʿr* has been ignored, translated into contemporary Latin as "item," into nineteenth century Italian as "capitolo" (chapter), into German as "Bedingung," into Spanish as "cláusula" and "artículo" but only into English as "privilege." The term is first attested in a letter dated 1184 acknowledging the request for and grant of conditions (*shurṭ*) that were mutually agreed upon. In other early decrees clauses begin "ʿalaʾan," on condition that." The entry for these documents in the *Encyclopaedia of Islam* is surprisingly under the Arabic term *imtiyāzāt*, a term that does mean "privileges," but a term that is never attested in any Arabic or Turkish commercial decree. Therefore, no evidence suggests that ruling dynasts who issued these decrees thought that they were "unconditionally surrendering trading privileges."

The decree of safe conduct should be understood as being a commercial decree that enabled non-resident merchant guilds to engage in commerce in Muslim-ruled lands in security. In the twelfth century safe conduct was issued in the form of a letter in response to a petition; the safe conduct is attested as a decree in the thirteenth century. The number of the clauses in a safe conduct increased over time, and clearly reflects responses to specific conditions that had given rise to conflict and that were raised in a
petition to which the issuing dynast responds in the decree. The terms specified by the fourteenth century had expanded to include, for example: 1) in return for paying the import duties specified in the decree merchants were secure in their persons and property; 2) should a member of the guild die intestate while in Muslim-ruled territory his property would be held by his Consul until claimed by his heirs; 3) guild members were guaranteed access to repairs and maintenance of ships in Muslim-ruled ports, harbors and coasts, and 4) aid against pirates; 5) the guild was held collectively responsible for damages to the Muslim community by its members; 6) the guild was under the jurisdiction of its Consul in affairs between its members; 7) individual guild members who had a dispute with a Muslim would be heard by the port authority; but 8) could appeal to the Sultan’s authority, and documentary examples attest such an appeal to the Sultan; 9) if a Muslim had a dispute with an individual merchant, someone else from the merchant’s guild could not be held liable for that merchant; 10) the guild’s Consul was given a salary and residence as well as tax exemption on provisions imported for his personal consumption; 11) the guild was guaranteed that they would not be subject to the imposition of extraordinary exactions by local officials.

In fifteenth and sixteenth century decrees, the number of articles and the specificity of rights and duties increases. Conditions are explicitly reciprocal in some decrees, while documentary evidence indicated that reciprocity was enforced.44

Pre-Islamic Origins

A Genoese translation from the Greek attests the Italian "privilegio." The Greek is itself a translation of a decree of safe conduct issued in Constantinople, presumably in a lost Turkish original, by its conqueror, Sultan Mehmet II, in 1453 on behalf of the resident Genoese merchant community.45 The Greek, however, does not attest the term "privilege," ΚΑΙ ΝΑ ΔΙΣΟΥΝ ΚΟΜΗΡΚΙΟΝ ΚΑΤΑ ΤΗΝ ΝΟΜΗΝ ΚΑΙ ΣΥΝΗΒΕΙΑΝ, "and they should grant/permit commerce (κουμέρκιον) according to law and custom." This is rendered in the Genoese translation as "Scripto el presente privilegio," "I write the current privilege."46 First, it is important to note that the Greek koumerkion is a transliteration of the Latin commercium.47 And, the Latin term is the term for a Roman legal institution by which non-Roman citizens were granted the right to enter into contract with Romans according to the forms of Roman law. This right of "commerce" was enforceable in Roman courts and so gave legal status to non-Romans engaged in commerce in Rome.48

43 S.M. Stern, "Petitions from the Ayyubid Period," BSOAS 27 (1964) 1–32, at 2–3, a petition dated 1200 to the Ayyubid Sultan from Pisan merchants claiming to have a safe conduct the terms of which were violated by officials in Alexandria.

44 Amari, op.cit. (above, n. 14) 148, dated 1414, in which the ruler of Tunis guarantees safe conduct for Pisan merchants and explicitly stipulates that Muslims from Tunis will be guaranteed the same commercial conditions in Pisa. H. İnalçik, "İmtyätzät," in Gibb, op.cit. (above, n. 4) III 1178–1189, at 1180 for citations of demands for enforcement of reciprocity.


46 The contemporary Venetian translation, Dalleggio d’Alessio, of the same Greek document omits the phrase "and they should grant/permit commerce (κουμέρκιον) according to law and custom." This is rendered in the Genoese translation as "Scripto el presente privilegio," "I write the current privilege."46 First, it is important to note that the Greek koumerkion is a transliteration of the Latin commercium.47 And, the Latin term is the term for a Roman legal institution by which non-Roman citizens were granted the right to enter into contract with Romans according to the forms of Roman law. This right of "commerce" was enforceable in Roman courts and so gave legal status to non-Romans engaged in commerce in Rome.48

Second, in classical Latin a *privilegium*, was a bill, or a law, and by the twelfth century *privilegium* had become "a special right," a "special law, a private law." The Genoese translation of the Greek "commerce" as "privilege," therefore, points to the likely continuation of the Roman institution of extending legal status to non-Romans for purposes of commerce. This decree issued by Sultan Mehmet II, the Conqueror, is not a treaty between nations. It is a decree of safe conduct enabling foreign merchants to carry on commerce in security in the Sultan's territories.

**Islamic Origins**

As indicated above, though Muslim jurists assert that the origin of these decrees is in the document known as *amān*, "safe conduct," western writers have dismissed such assertions as fiction based on the Western assumption that the safe conduct was a political instrument. Referring to the safe conduct, Schacht, citing Brunschvig, states that "these treaties did not develop out of the Islamic concept of *amān.*" But Brunschvig provides no evidence for this assertion. His opinion, that the safe conduct, "derived much more from the notions and practice of Christianity itself, than from Muslim law, which is against it" does not constitute evidence. Wansbrough also asserts as a matter of opinion that, "The retention of the technical term *amān* is to be understood as an attempt at the rhetorical concealment of juridical innovation." The documentary record, however, shows a continuous tradition of the *amān*, "safe conduct," related to community identity attached to tax liability. First there are the similarities between these commercial decrees and the earliest *amān*, "safe conduct," granted by Prophet Muhammad and recorded in the document referred to as "The Constitution of Medina." Qalqashandi (d. 1418), as an official of the Mamluk chancery in Egypt, is widely acknowledged to have had access to original documents which he cites in his encyclopedia of chancery practice. In that encyclopedia he cites the *amān*, "safe conduct" issued on behalf of the people of Egypt by their conqueror in 640.

---

49 Brunschvig, *op.cit.* (above, n. 5) 431–432.

50 Wansbrough, *op.cit.* (above, n. 5) 30 "For Muslim jurists *amān* appears to have been the direct descendant of *djīwār*, even when their efforts to conceal the juridical limitations of the latter were not always successful." Theunissen, *op.cit.* (above, n. 9) 27, noted that, "The safe-conduct as well as the truce, and peace treaty, (*ḥudna*, ‘ḥad or *sulh*) were the instruments used to establish peaceful political and commercial relations between Muslims and non-Muslims. Though he uses the term "commercial privileges" in his discussion.

51 M. Lecker, *The "Constitution of Medina": Muhammad's First Legal Document* (Princeton 2004) 136–147, 205. Chapter 5, "The Treaty of the Jews," presents the argument for editing the text of that document, as it is in fact edited in one edition "the Jews of Banū Awf are secure (*amana*) from the believers," 139, rather than the vocalization that reads "the Jews of Banū Awf are one political community (*umma*) along with the believers," 136–147.

52 Documents that Qalqashandi cites have been recognized as copies of lost originals, originals that he would have had access to in his capacity as a clerk in the chancery, as is the case in many other instances, F. Bauden, "Mamluk Era Documentary Studies: The State of the Art," *Mamluk Studies Review* 9 (2005) 15–60, at 23. Qalqashandi tells us that copies of the decree were also given to the representative of the entity on whose behalf the public decree was issued. See also, Wansbrough, *op.cit.* (above, n. 11) 43 for copies being given to the petitioner. G. Khan, "A Copy of a Decree from the Archives of the Fāṭimid Chancery in Egypt," *BSOAS* 49 (1986) 439–453 and Ps. I and II, 448–449 for this practice in Fatimid documents, and S.M. Stern, *Fāṭimid Decrees. Original Documents from the Fāṭimid Chancery* (London 1964) 90 on Mamluk practice.
The people *ahl* of Egypt are granted security *(amān)* in their persons, their religion, their properties, their churches, their crosses, their pious and their great man, on condition that *(ālā 'an)* they deliver their tax assessed in money *(jīzya).*

This safe conduct, written in the third person impersonal, is a contract granting security in return for tax payment. It states, "If you agree to tax liability, we will grant you security."

A corpus of individual documents that has been characterized as "passports," "safe conducts," and "work permits," and that were issued 710 years after this safe conduct are also written in the third person impersonal, construed as a contract, and explicitly addressed to tax officials rather than to the individual on whose behalf the documents were issued.

The people of Egypt are granted security on condition that they deliver their assessed tax. And whoever of my executives meets him must show him only goodness.

These documents, originally characterized as "passports," reflect the same "commercial" purpose as a safe conduct. They enabled the bearer to move outside the village in which he was registered for purposes of tax payment, in order to conduct commerce, i.e., to sell one’s labor in some other location in order to realize the wherewithal to pay one's taxes. These early work permits allowed the bearer to work outside his place of residence, where he was liable for tax purposes, for a specified period of time in order "to seek his livelihood" and "to fulfill his tax." Stern hypothesized that the origin of the later commercial decree, the *manshūr*, "unsealed," is a public document used for passes carried by peasants to ensure that they had not fled their village to avoid their tax liability.

The clause in those work permits that resulted in their categorization as "safe conducts" is next attested thirty years later in 740 in three of the earliest individual tax receipts written in Arabic. Both the work permits and the tax receipts are construed as contracts, but addressed not to the individual on whose behalf they were issued, but to tax officials, as are the later decrees granting "safe conduct" to Frankish merchant guilds. And so, the safe conduct that established the terms of Muslim rule in Egypt, the work permit, and individual tax receipt are each constructed as a contract granting safe conduct in return for the assumption of tax liability. The work permit, individual tax receipt and the later commercial decree, however, were issued not to the individual or guild on whose behalf they were issued, but to Muslim officials who were responsible for honoring those contracts. The commercial decree granting safe conduct was a public document issued, upon request, on behalf of a specific professional community, a guild of

---


55 Stern, *op.cit.* (above, n. 52) 87; Wansbrough, *op. cit.* (above, n. 40) 137; Frantz-Murphy, *op.cit.* (above, n. 53) 106–109 for the documents in question.

56 Frantz-Murphy, *op.cit.* (above, n. 53), dated 168–206/784–821.

57 Frantz-Murphy, *op.cit.* (above, n. 53) 106–109, where they are characterized as "work permits."
merchants. It was issued on the explicit condition that the Consul of the guild assumed liability for that community’s adherence to the conditions enumerated in the contract, including specifically stated tax liability. And we have records of the incarceration of merchants when they failed to do so.58

Conclusions

Commercial decrees were for purposes of trade by European merchants in Muslim ruled territories. As such, the commercial decree of safe conduct granted foreign merchant communities, effectively guilds, legal identity and so security in their conduct of commerce in the Muslim-ruled Mediterranean world. The safe conduct was issued as a public decree addressed to the Muslim officials of the issuing ruling dynast. The decree informed those officials that the foreign merchant community or guild, not "nation," named in the decree, had been granted safe conduct for the purposes of commerce in the territories under his jurisdiction. Documentary evidence indicates that since antiquity the construction of the identity of "foreign" merchants in the commercial grant of safe conduct was legal, and not national. Documentary and narrative evidence also indicates that the grant of safe conduct had both pre-Islamic and Islamic precedents.