

Maria Pia Pedani, *La dimora della pace. Considerazioni sulle capitolazioni tra i paesi islamici e l'Europa*, Venezia, Cafoscarina, 1996 (Quaderni di Studi Arabi. Studi e testi, 2)

summary

In the Middle Ages the Muslim and the Christian ideas of a world state were in a certain way the same: they both assumed mankind to constitute one world-wide community, bound by one law. Thus, to trade and live in peace Christian and Muslim rulers had to solve two problems: the first regarded the juridical nature of the agreements they could sign, without running the risk of being condemned by their own religious laws; the second regarded the possibility of forming an alliance.

The idea that it was possible to fight a war for the faith did not belong to the Christians of the origin, but since St. Augustin's time it began to make its appearance; many popes began to make reference to St. Paul's words «Nolite iugum ducere cum Infidelibus» (II *Corinthians*, 6:14) to condemn agreements and alliances with Infedels. For the first time the distinction between an *impium foedus* and a lawful agreement may be discovered in pope Gregory IX's behaviour. His successors stressed it more clearly, above all Innocent IV: only alliances between Christians and Muslims against a Christian enemy had to be completely condemned, even if the traditional interpretation of St. Paul's words condemned also this kind of alliances made against pagan and Muslim rulers; any other agreement which helped to maintain peace was accepted and even supported by the Church.

On the other hand the Islamic law invited Muslims to use not only peaceful but also violent means to achieve the conversion of their religious opponents: in the Middle Ages a Muslim ruler could sign only truces (*hudna*), and not treaties with Infedels; moreover he could give a general safe-conduct (*amān 'āmm*) to all the Christians who belonged to one group and wanted to live in his country for a certain period. For instance Ayyubid and Mamluk sultans issued documents of this kind for Venetian merchants. Both the truce documents and the safe-conduct ones were called capitulations by Europeans.

In the Medieval Europe two kinds of treaty existed. The oldest one was formed by two, or more, separate documents, each one issued in the name of one ruler. Since the 12th century another treaty made its appearance formed of two, or more, separate documents completely alike; this is the modern kind of treaty. To live and trade in peace Muslim and Christian states went on using the traditional one; they called it capitulations. The capitulations were bilateral agreements, formed of two documents (*instrumenta reciproca*) one of which was the translation of the other even if the *intitulatio* was different; each party had to swear to maintain what was written on the document issued in his name.

The word capitulations derives from the Latin verb *capitulare*, i.e. to make an agreement. In fact in the Middle Ages the promises sworn by popes, bishops or emperors at the moment of their election bore the same name: in this way these authorities bound themselves to those who had elected them. The oath was also the most important element of the *hudna* capitulations. The oath was not only written on the document but also uttered by the sovereign during a solemn ceremony which was usually attended also by an ambassador of the other ruler. Some scholars derive these sworn peace agreements from the byzantine *chrysobullos logos*. However, the complex formulas present in Ottoman sultans' oaths may derive also from ancient Turkish traditions.

According to the šāfi'īte school a truce between Muslims and Infedels could not exceed ten years, even if after this period the two parties might sign another truce. Other schools, for

instance the Mālikite one, did not establish so precise a chronological limit. In the Middle Ages the capitulations signed by North Africa rulers usually lasted ten years, but sometimes they lasted longer. For instance the agreement made in 1421 between the king of Tunis and some towns of Tuscany was a «*ṣulḥ mustamirr ‘alā al-dawām bi-dawām*».

Lastly, according to the Mālikite school a Muslim ruler could not look for Infedels' alliance in order to fight against other Muslims, but he could use their ships, have their logistic support and even accept a spontaneous offer of military help.

The Egyptian chancery clerk al-Qalqaṣandī, in his encyclopaedic compilation, *Ṣubḥ al-a‘šā fi ṣinā‘at al-inṣā‘* completed in 814/1412, discusses this subject. According to him *hudna* was the truce to which a strong ruler obliged a weaker one, while *muhādana* was a bilateral agreement which was made when both parties wanted *muzālaḥa*, i.e. the peace. Other synonyms for peace were *muwāda‘a*, *musālama*, *muqāḍāt* and *muwāṣafa*, while *sulḥ* was the peace with Infedels. Lastly the *Ṣubḥ* contains a chapter about *fash*, i.e. the rupture of a truce made by one party, and another chapter about *mufāsaha*, i.e. the breaking off of a truce which happened when both parties agreed in beginning a new war. Al-Qalqaṣandī describes also what the clerk had to write in the document if his lord was the weaker, or the stronger, or if he was at the same level of the other ruler; he speaks of dates, oaths, and the different *fash*s the clerk had to write in the text of the agreement.

The peace documents (*ahdnames*) produced by Ottoman sultans are very important to understand the development of the capitulations system. During Mehmed II's reign there were agreements (*intrumenta reciproca*) sworn by the Ottoman sultan and by the other sovereign. During the reign of Bayezid II the *ahdnames* began to contain the formulas of *niṣans* and *berats*. The draft of the French capitulations of 1536 seems to be that of a treaty concluded between two equal parties, but probably the sultan never ratified them, even if the Venetians received the confirmation from their agents in the Levant that before the 21 of February 1536 an agreement between France and the Ottoman Empire had been made: in fact other sources inform that it was made by the grand vizier Ibrahim pasha, who lost the sultan's favour and was killed a month later.

In the second half of the sixteenth century the written oath became more important than the ceremony. The war of Cyprus between the Republic and the Empire compelled the Ottomans to discuss about the validity of the ruler's oath. In the same period the sultan began to avoid swearing. The *ahdnames* given to France, England or Netherlands were real *berat*, derived from the notion of *amān*; however they were written on the basis of the Venetian capitulations, which were derived from the notion of *hudna*.

The diplomatic changes in the *ahdnames* introduce the problem of what Ottomans thought about the states that signed or accepted these documents. Some Muslim scholars maintained that, besides the land of Islam (*dār al-Islām*) and the land of war (*dār al-ḥarb*), there was also the land of agreement (*dār al-‘ahd*) or of truce (*dār al-ṣulḥ*) for which the state of war had been suspended. For al-Šāfi‘ī the *dār al-‘ahd* was a land inhabited by the Infedels who had accepted to pay *haraġ* to a Muslim ruler in order to have his protection. On the other hand the ḥanafite school, which was the school followed by Ottomans, did not accept this division of the world but included the countries which accepted a *ṣulḥ*-relationship in the *dār al-Islām*. The other party was of course free to have a different view of the character of the tribute he payed. This theory may explain why the tribute payed by Western states to the sultan was often called *haraġ* in Ottoman documents.

For the first time at Sztivatorok (1606) the Ottomans were obliged to discuss an agreement far from the sultan's seat. They were compelled to accept the European praxis of negotiations by plenipotentiaries, who signed a document which had to be subsequently ratified by the different rulers. The same happened at Karlowitz (1699) and Passarowitz (1718).

The peace documents issued by an Ottoman sultan usually lasted for the period he held power, then they had to be renewed. For the first time in 1720, making an agreement with Russia, an Ottoman ruler accepted a perpetual peace. In 1733 Venetians too obtained an *ahdname* of this kind: *Ve işbu musalaha... müebbeden karardade ola*.

The capitulations system put on the same level the foreigners living in the Ottoman Empire and the *ḍimmī* who had the same religion. It seems that the Ottomans considered they all belonging to the same *millet*.

In the eighteenth century the states of the Maghreb began to make peace agreements with Western states. Some of them were still under the high sovereignty of the Ottoman sultan who, probably, had ideally delegated them the *ḡihād* against Infedels. In this period the king of Morocco Sīdī Muḡammad (1757-1790) made agreements with Denmark, Great Britain, Sweden, the Republic of Venice, France, Spain, Portugal, Netherlands, Tuscany, Dubrovnik, the kingdom of the Due Sicilie, Austria and even the United States. This sovereign used to consider *ḡaraḡ* the money he received from Christian countries; for this reason some of them refused that the tribute they payed was declared in the peace agreement.

In the same century Russia compelled the Ottomans to sign the treaty of Küçük Kaynarca (1774). Scholars usually think that it gave origin to the identification of the Ottoman sultan with the Caliph. However this idea circulated already in the previous centuries, even if it was not codified; in 1727 this idea was used against Persia, supported by a *fetva* of the mufti of Constantinople.

The system of capitulations continued in the 19th century above all because the Western states desired it, since this kind of agreement granted special privileges to their subjects living in non-European countries. It remained as a relic of Medieval societies where non-dominant religious communities were permitted to preserve their laws, their customs and their autonomous administrations. Little by little the truce sworn parallelly by a Muslim ruler and a Christian one gave origin to a privilege granted by a Muslim ruler to a Christian state, based on the notion of *amān*. This led to the idea that the most important element in the capitulation system was the privileges granted by an Asian or African state to European subjects living in their countries. In this way the Medieval form of agreement, in which the two parties were equal, led to real unilateral concessions. Then these concessions, following the same formula, became a means for hiding the weakness of the concessionary in the face of growing Western colonialism. In the meantime in the Ottoman Empire many difficulties were created by the diffusion of *berats* distributed by the European diplomatic missions and conferring important commercial and fiscal privileges. After the fall of the Ottoman Empire the system of capitulations, considered as a relic of the past, was abandoned for new international treaties.