

Islamic Maritime Law in Its Mediterranean and Islamic Contexts

The evolution of Islamic maritime law in the Mediterranean Sea and the Indian Ocean is associated with military conquests, the growth of trade, and the establishment of schools of law. The expansion of Islam in the Mediterranean arena was essentially accompanied by military campaigns, while its spread in the Indian Ocean arose chiefly in the context



Image 1: Noah's Ark, from The Jami' al-Tawarikh of Rashid al-Din, Tabriz, Iran, 714 AH (1314–15 AD), MSS 727 Folio 45a. From the Nasser D. Khalili Collection of Islamic Art. Source: Used under the provisions of license at https://commons.wikimedia.org/wiki/File:Khalili_Collection_Islamic_Art_04.jpg.

of the development of commercial networks, occurring through trading contacts, peaceful preaching, and the activities of Sufis and missionaries.¹ However, in both regions the legal foundations of Islamic maritime principles and regulations were and remain largely rooted in customary practices. Whereas the legal principles of Islamic merchant law were laid down by merchants and their proxies, the regulations governing the carriage of goods by water, employment of crews, personal behavior during maritime ventures, and other nautical issues were generally derived from the legal traditions and customary practices of experienced shipowners, shipmasters, captains, seamen, merchants, and sea travellers.

Historical Background

On the eve of the European age of geographical discoveries in the fifteenth century, Muslims dominated more than half the known coastlines of Eurasia and Africa. The maritime frontiers of the Abode of Islam extended from the Indonesian archipelago in the east to the Atlantic coasts of North Africa and the Iberian Peninsula. They included the eastern, western, and southern shores of the Mediterranean Sea, the semi-enclosed bodies of water of the Red Sea and the Persian Gulf, and considerable parts of the Indian Ocean rim. Shipping and trade in the western Indian Ocean, Persian Gulf, Red Sea, and the Islamic Mediterranean littoral as a whole was dominated almost exclusively by Muslim maritime entrepreneurs.²

One of the most important features characterizing early Islamic military expansion was the maintenance of the existing administrative system and cultural norms in the newly occupied territories. For instance, late seventh- and early eighth-century Egyptian papyri indicate that the early governors of Islamic provinces along the shores of the Mediterranean conserved the former Byzantine naval installations and employed non-Arab craftsmen, seamen, and shipwrights. In addition to their contribution to the development of Islamic naval activity, native Christians of Syria, Egypt, and North Africa preserved the maritime laws instituted in the pre-Islamic Mediterranean, as well as the local customs of the provinces they conquered. From the eighth century onwards, after the establishment of the Sunni law schools, many canonical regulations and practices became “Islamicized,” as long as they did not contradict the sacred law of the Qur’ān and the Prophetic tradition. By the beginning of the ninth century, Muslim jurists had already developed a maritime legal system covering most, if not all, aspects of shipping, in addition to international laws pertaining to the legal status of the high seas and territorial waters in Islamic legal thought.

Maritime Laws Prior to the Rise of Islam

The origins of modern admiralty and maritime laws are traceable far back to ancient times. Historians have argued that the earliest shipping codes and regulations in the Mediterranean may be dated to the establishment of the Old Kingdom of Egypt (circa 3000 BCE),

although conclusive evidence for this has not yet been discovered. Their hypothesis is based on the burgeoning regional and overseas trade networks that the early pharaohs developed with principalities and kingdoms along the Mediterranean and Aegean littorals.³

When trade began to flourish in the Mediterranean during the third and early second millennia BCE, the Sumerians instituted the oldest maritime codification of laws in the Tigris-Euphrates river basin. These laws were afterwards incorporated by Hammurabi⁴ within his famous Code, one of the oldest in legal history. The Hammurabi Code consists of 282 sections, ten of which deal exclusively with the rights and duties of shipwrights, shipowners, and seamen; the hiring and payment of the crews; the liability of captains; and ship collisions.⁵ Evidently, Hammurabi was the first lawmaker in history to institute the “rules of the road” in his Code.

From the late second millennium BCE until the time of Alexander the Great (356–323 BCE), the Phoenicians were the world’s principal seafarers.⁶ As lords of the Mediterranean, they colonized most of its islands and strategic coastal positions including Cyprus and Rhodes. In time, they also established colonies in Spain and on the shores of North Africa, where the city of Carthage became the capital of their Punic Empire. By the 700s BCE, Phoenician trading colonies were appearing along the western coast of Morocco facing the Atlantic Ocean.⁷ For nearly a millennium, the Phoenicians were the world’s leading mariners and the undisputed masters of the seas, contributing to naval design, the art of navigation, and the expansion of overseas trade.⁸ Their extensive commerce and navigational skill gave them dominion over the sea, which they long retained, but their influence and role in the Mediterranean declined after Alexander captured their stronghold Tyre and massacred most of its residents in 332 BCE.⁹ Although only a few legal records are extant, historians contend that the Phoenicians were among the earliest seafarers to constitute and codify a universal sea law in the Mediterranean, which seemingly formed the basis of subsequent maritime laws.¹⁰

After the Hellenic League, mobilized by Athens, gained a resounding victory over the Persian navy in the Straits of Salamis on September 23, 480 BCE, the political map and naval strategy in the Aegean Sea and consequently in the entire Mediterranean world changed permanently. As the dominant naval power in the Aegean, Athens eliminated piracy from the Aegean and acquired recognition as the maritime policeman for other Greek states within its sphere of influence. By the time Alexander the Great died in 323 BCE, the Aegean coast, Syria, Egypt, Persia, some western parts of India, and even territories in central Asia had fallen under the regional hegemony of Greece and Hellenic culture.¹¹

As early as the second century BCE, naval supremacy in the Mediterranean shifted to Rome. The Romans came to call the Mediterranean *mare nostrum* (our sea).¹² Roman fleets were permanently stationed at the most important trading centers and outposts so that they could command strategic military and political positions, to preserve peace and security

along the coastal frontiers, and to protect maritime trade routes, mainly for the purpose of ensuring a steady supply of grain to Rome from North Africa, especially Egypt, Sicily, and Sardinia.¹³ To maintain their dominion over the sea, the Romans forbade other nations to build their own fleets, and gradually eliminated piracy in the Mediterranean basin except for the far western region, and trade routes became safe for two centuries—from the reign of Augustus (31–14 BCE) until that of Septimius Severus (193–211 CE).¹⁴ Absolute Roman dominion at sea clearly resulted from territorial management and a highly efficient military administrative system, with imperial troops and flotillas located at regular intervals along the shoreline serving to pre-empt any attempt at piracy.

When Emperor Theodosius I died in 395, the Roman Empire was split between his two heirs and divided into two distinct political units, one—subsequently known as the Byzantine Empire—governed from Constantinople, the other from Milan. The territorial integrity and administrative system of the western provinces survived until 476 CE, when the last Roman emperor in the west was deposed by Odoacer, who elected himself king of Italy. What had been the Western Roman Empire subsequently fell to Germanic tribes. The Vandals controlled a “sea empire” consisting of North Africa and perhaps the Balearics, Sardinia, and Corsica. The Visigoths ruled Spain and southern France, the Ostrogoths controlled Italy, and the Merovingian Franks ruled in France. It was only later, during the reign of Justinian I (527–565), that these kingdoms were subdued. Romano-Byzantine authority was re-established in the Mediterranean littorals, and control over the sea was regained, but its power lasted only until the emergence of Islam as the new dominant force in the Mediterranean world in the seventh century.¹⁵

Divided or Shared? The Islamic-Byzantine Mediterranean

Although the Romans, and later the Byzantines, had claimed maritime dominion over the Mediterranean basin and enforced control over it with their naval power, the political map underwent several changes in the first quarter of the seventh century. The Persians captured the Byzantines’ eastern territories between 602 and 621. By the time the Byzantine emperor Heraclius (r. 610–640) had reversed the conquests of Khosrow II (r. 591–628) and restored the status quo with Persia, a new religion and political entity had emerged in Mecca and flourished in Medina led by Muḥammad ibn ‘Abd Allāh, a Prophet and a statesman. By the time of his death in 632, the Prophet Muḥammad had asserted his authority over a vast region of the Arabian Peninsula, laying the foundations for a future Islamic empire. After his death he left behind the Qur’ān and his traditional teachings in the *ḥadīth* and *Sunnah* (Prophetic tradition) to guide his Muslim followers, although he never established an elaborate administration or army. His successors fought the Persians and the Byzantines on two fronts concurrently. Islamic victories against the Byzantines at Yarmūk (August 12, 636) and the Sassanids at the battle of al-Qādisiyya (November 19, 636) changed the course of Near

Eastern history. By the 650s, the Sassanid Empire had ceased to exist, while Byzantium lost Syria, Palestine, Egypt, and the eastern territories of North Africa to Muslim rule.¹⁶

Despite the subsequent Islamic military supremacy on land, Byzantium remained the dominant sea power in the Mediterranean. Except for an insignificant minority of Omani and Yemeni mariners who joined ‘Amr ibn al-‘Āṣ—the commander who led the Islamic conquest of Egypt—the overwhelming majority of Muslim soldiers were unfamiliar with naval affairs and warfare. In time, however, Mu‘āwiya ibn Abī Sufyān and ‘Amr ibn al-‘Āṣ, the first governors of Syria and Egypt, respectively, came to realize that their territories needed to look seaward. They noted how weakly they were able to control their coastal frontiers, while the Byzantines preserved their naval superiority offshore. Like their Roman predecessors,¹⁷ Muslim commanders moved quickly to establish a defense system known in Arabic as *ribāts* (fortresses and watchtowers) located within sight of one other, to protect the coastal frontiers against Byzantine maritime expeditions.¹⁸

Later, taking advantage of experienced Greek and Coptic seamen, shipwrights, and former Byzantine maritime installations in Syria, Palestine, and Egypt, Mu‘āwiya commanded the first Islamic maritime expedition against Cyprus in 648/9 followed by two attacks on Arwad (Arados), an island off the Syrian coast. Islamic fleets, the Syrian one in particular, intensified their activities against Byzantine targets in the eastern Mediterranean and Aegean and assaulted Crete, Cos, Cyprus, and Rhodes in 653/4, ultimately scoring their first naval victory against the Byzantines at Phoenix (Dhāt al-Ṣawārī) in 655.¹⁹

The Islamic naval triumph at Phoenix weakened the Byzantine maritime presence in the eastern Mediterranean. Taking advantage of the weakness of the Byzantine navy in the eastern Mediterranean, the Umayyads launched a series of naval attacks against the strategic Byzantine installations in the Aegean and Mediterranean Seas, including two prolonged sieges of Constantinople (672–680 and 717–718).²⁰ In spite of these intensive Islamic naval activities, the Mediterranean, continued to be shared by Christians and Muslims, and neither party could view it as their *mare nostrum*.

Historians view the Byzantine defeat at Phoenix as the first turning point in Islamic maritime history in the Mediterranean Sea, and consider the Islamic conquests of Sicily and Crete, which began in 827, as marking the beginning of a new era in Mediterranean maritime history.²¹ While the Aghlabid fleet, commanded by Asad ibn al-Furāt, an old Mālikī jurist of Khurasani origin, raided Sicily, an Andalusian flotilla led by Abū Ḥaṣṣ ‘Umar ibn ‘Īsā ibn Shu‘ayb al-Ballūṭī landed in and conquered Crete. Within a few decades Islamic fleets had captured the Balearic Islands, Pantelleria, Malta, Sardinia, and Cyprus.²² Their military expeditions extended to Christian coasts and their hinterlands. A series of more advanced and permanent military bases were established along the northern shores of the Mediterranean at Fraxinetum in Provence,²³ on the Garigliano River near Naples, and around Bari in Apulia.²⁴ Navigation in the Adriatic Sea was threatened by independent

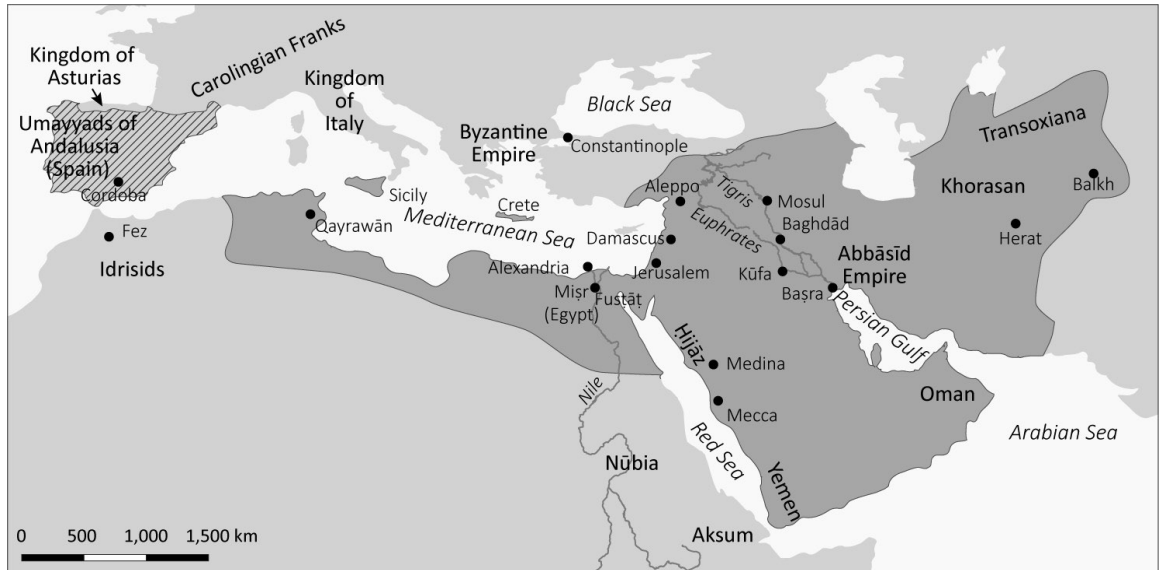


Image 2: The extent of Muslim territories in the ninth century. Map created by Noga Yoselevich, used with permission.

Islamic flotillas, while Syrian and Cretan Arabs, who sacked and captured Thessalonica in 904 and invaded several other strategic islands, threatened Byzantine navigation in the Aegean Sea.²⁵

Islamic ascendancy over vast expanses of Mediterranean shores, islands, and trade routes could not have been accomplished, as Ibn Khaldūn (1332–1406) states, without employing the maritime experience of the subject populations:

The royal and governmental authority of the Arabs became firmly established and powerful at that time. The non-Arab nations became servants of the Arabs and were under their control. Every craftsman offered them his best services. They employed seagoing nations for their maritime needs. Their own experience of the sea and of navigation grew, and they turned out to be very expert.²⁶

Arabic, Greek, and Coptic papyri from the seventh and eighth centuries authenticate Ibn Khaldūn's observations and furnish us with much historical data about the establishment and organization of early Islamic fleets in the Mediterranean and the Red Seas. A careful scrutiny of these official papyri reveals that the founders of the earliest Islamic military fleets in the Mediterranean not only captured Byzantine maritime installations, they also maintained the Byzantines' naval administrative system,²⁷ military tactics and strategies,²⁸ and maritime regulations and laws, including the Rhodian Sea Law and the *Corpus Juris Civilis* (Body of civil law) codified during the reign of Justinian I.²⁹ It is worth noting that Christian seamen of Islamic Syria, Palestine, and Egypt maintained and recognized

the disciplinary laws of the Rhodian Sea Law for centuries. Compiled and promulgated by Gabriel ibn Turaik—the Patriarch of the Church of Alexandria 1135–1145—the Arabic *Ecloga* (compilation of law) proves that *dhimmi*s (legally protected non-Muslims living in Islamic territory) managed their commercial and religious affairs unhampered by Islamic local and central authorities.³⁰

Origins of Early Islamic Commercial Maritime Law

The foundations of Islamic maritime regulations and practices are shrouded in obscurity. However, documentary evidence and historical accounts show that Islamic expansion into the former Byzantine territories was not destructive, and that the administrative systems and cultural norms existing in the territories taken over by Muslims were maintained. The early caliphate (632–661), and the Umayyad dynasty (661–750) that succeeded it, preserved the governmental system prevailing in the former Byzantine territories on the Mediterranean, and also the Persian administrative counterpart in the eastern provinces of the Islamic Empire. It may be surmised that without the retention of the existing legal, financial, and administrative institutions and practices of the conquered territories, Muslim dominion over a vast, diverse ethno-cultural and geographical space could not have survived for such a long time.³¹ The natural inclination of the peoples who came under Islamic authority or adopted the most recent divine monotheistic faith, was to maintain the status quo in their legal relationships, customary practices, and long-standing traditions, and this was merely confirmed and strengthened by the *Sharī‘ah* (sacred law) provisions.³²

Islamic maritime achievements in the Mediterranean Sea and other Near Eastern coastal regions did not change the culture of the occupied countries abruptly. Instead, in spite of the gradual process of Islamization and Arabization, there was cultural continuity in various aspects of life for centuries. Non-Muslim subject populations retained their traditional legal institutions, including ecclesiastical and rabbinical tribunals. Both Christian and Jewish *dhimmi*s were granted freedom of religion and authorized to continue abiding by their own laws,³³ although the jurisdiction of the *qāḍī* (judge) over Muslims also extended to civil cases involving both Muslims and non-Muslims. Until the turn of the eighth century, Umayyad *qāḍīs* gave judgments according to their own discretion, basing them on Qur’ānic regulations, Prophetic traditions, and customary practices that did not contradict Islamic principles.³⁴

Islamic expansion in the Mediterranean world and Asia from the seventh century CE onwards was accompanied by the gradual process of mutual acculturation in which Muslims absorbed and accommodated to themselves local customs as an inseparable part of social and legal norms.³⁵ Both Muslim legal and ruling authorities not only retained pre-Islamic customs and traditions, but also adapted and Islamicized laws and customs of the native populations subject to them so long as they were in conformity with the Qur’ān

and *Sunnah*.³⁶ This may explain why jurists and judges, in the course of resolving specific legal cases, often consulted general customs, or the specific customs of local jurists, artisans, merchants, mariners, and others.³⁷ In the absence of a written contract and explicit stipulations, local customs could replace and even supersede explicit legal stipulations.³⁸ However, when jurists encountered unprecedented maritime problems, they issued legal opinions on the basis of analogy. For instance, a seagoing vessel was compared to pack camel or other riding animal, and the carriage by sea was considered parallel to transportation on land.³⁹

Even with the establishment of the four famous *Sunni* schools of law—Ḥanafī, Mālikī, Shāfi‘ī, and Ḥanbalī—in the course of the eighth and ninth centuries CE, none of their jurisprudential collections has a special section to maritime shipping and commerce. Such cases were generally dispersed across various categories related to hiring, partnerships, sales, warfare, fixed punishments, religious traditions, and so on. An extraordinary exception is the early tenth-century work of Muḥammad ibn ‘Umar (d. 923) entitled *Kitāb Akriyat al-Sufun wa’l-Nizā‘ bayna Ahlihā* (*Treatise on the Leasing of Ships and the Claims between Their Parties*), which is devoted exclusively to legal aspects of commercial maritime cases and shipping-related issues in the Islamic Mediterranean. This treatise is not precisely a body of statutory maritime laws that treats the ownership and possession of ships, methods of acquisition, rights of co-owners, master-crew relations, and the like, but rather a collection of legal opinions by early Mālikī jurists that treats mercantile and shipping matters within defined geographical regions.⁴⁰

The Scope of Islamic Maritime Law

Islamic jurisprudence covers a broad range of legal issues related to the physical and legal significance of the ship, computation of capacity, and the importance of naming commercial vessels; ownership and possession of a vessel, the employment conditions of the crew, and the passengers’ status aboard ship; carriage of cargo by sea and the forms of contracts, lessor’s and lessee’s liability, shipping fees, and breach of contract; port taxes and tolls; jettison and general average loss and contribution; collision; salvage of jetsam and wrecks; maritime *qirād* (*commenda*); disciplinary laws—adjudication, testimony, victims of shipwreck, theft, adultery, and criminal law—and religious practices governing prayer, fasting, almsgiving, transport of illicit cargoes, burial at sea, and seafood.

For the first time in the history of maritime law, Muslim jurists introduced rules pertaining to the shipowners’ limitation of liability and the personification of the vessel, that is, holding ships liable *in rem* for their tort and contractual obligations. As for the international law of the sea, it is explicitly and implicitly addressed in the Qur’ān, the Prophetic tradition, *Siyar* (international law) literature, bilateral and multilateral diplomatic treaties

and truces, and jurisprudential sources. Among the major themes covered are, on the one hand, the rules of maritime warfare, division of spoils, and regulations pertaining to the trade of foreigners with the Abode of Islam, and on the other hand, freedom of navigation on the high seas, territorial sea jurisdiction, the legal status of inland waters—rivers and harbors—the right to exploit marine natural resources, and marine pollution. All of the abovementioned themes have been well-addressed in earlier publications.⁴¹ For that reason, the following brief overview aims to touch on topics rarely treated in Romano-Byzantine and early medieval European admiralty laws.

Personification of the Vessel

One of the dominant features of Islamic maritime law is the treatment of the vessel as a juristic entity, which is known in the common law system as an *actio in rem* (an action against property). Under Islamic personification theory, a plaintiff could sue a vessel in court and the judge could order the arrest, forfeiture, and auctioning of the vessel without referring to the actual owner. The conventional opinion among legal historians and lawyers casts doubt on the idea that personification of the vessel is derived from the Roman *actio hypothecaria* (right of mortgage).⁴² While some scholars trace its inception to the eleventh-century, the vast majority of them associate its origins with late medieval and early modern English admiralty practices, and all of them agree that it is not a civil law establishment.⁴³

However, documentary evidence of a Jewish merchant from the Cairo Geniza (depository) removes this obscurity and conclusively establishes that suing the vessel as an independent legal entity in courts was commonly recognized among shippers and merchants and well instituted in the Islamic legal system before the eleventh century. A fascinating case of an actual incident of a typical *actio in rem* proceeding is reported in a Geniza letter dated September 30, 1030. The letter is written by Khallūf ibn Zakariyyā al-Ashqar, an agent in the port-city of Alexandria, to his master-merchant Joseph ibn Jacob ibn ‘Awkal in Fustāṭ. In addition to commercial details on the arrival of ships and merchandise and their prices in Sicily, he reports on a payment dispute, which arose at the end of the voyage between the agent of the Tunisian ship proprietor (the agent of the debtor), and the shippers [lines 5–12]. The case was summoned before the judge in the port city of Alexandria, who was supposedly affiliated with the Shāfi‘ī law school. When the period of grace elapsed, the judge ordered the auctioning of the arrested vessel, which was sold for three-hundred dinars. A certain amount of the proceeds was distributed to the claimants, while the remainder went to the agent who transferred it to his master in Tunisia. The ship’s proprietor appealed to the Mālikī judge of Qayrawān, ‘Abd al-Raḥmān ibn Muḥammad ibn ‘Abd Allāh ibn Hāshim (in office 1006–1033), in the hope of repealing the judgment of the Alexandrian judge, but the latter, as established by other documents, affirmed the procedures and decision of the

Alexandrian court. The Geniza document [TS 13 J 17, f. 11, ll. 5–12] appears below this translation:

Know, my lord elder, that I arrived here [line 5] two days ago, after a six-day journey (from Fustāt/Old Cairo to Alexandria) and I asked for news about the agent of the debtor (shipowner) [line 6] and I learned that he collected three-hundred dinars from Ibn ‘Imrān for twelve bales of flax, including commission. [line 7] He sold the ship out from under him on the testimony of some Gentiles/non-Jews, who bore witness against him, among those who were [line 8] with me on the ship. The case was dealt with in court and it [=the merchandise] was gathered by the *qādī* and indeed my shipment was detained through his fault, [line 9] those same four loads of pepper, an account of which you are familiar with. Know then and rest assured. Afterwards [line 10] a ledger of the debtor [shipowner] was found and in it were details of your account with him, what he sent you, and what [line 11] you owed him, and a separate totaling up. His agent collected for you all your money you had with [line 12] the man. [As to] Ibn al-Basmalī’s (vessel), the value of her cargo was recorded and handed over to be (delivered) in Qayrawān, to the judge ‘Abd ibn Hāshim. [line 13] As yet, we do not know what will transpire. I pray to God that the outcome will be good for you and for me [line 14] and for all Israel.⁴⁴

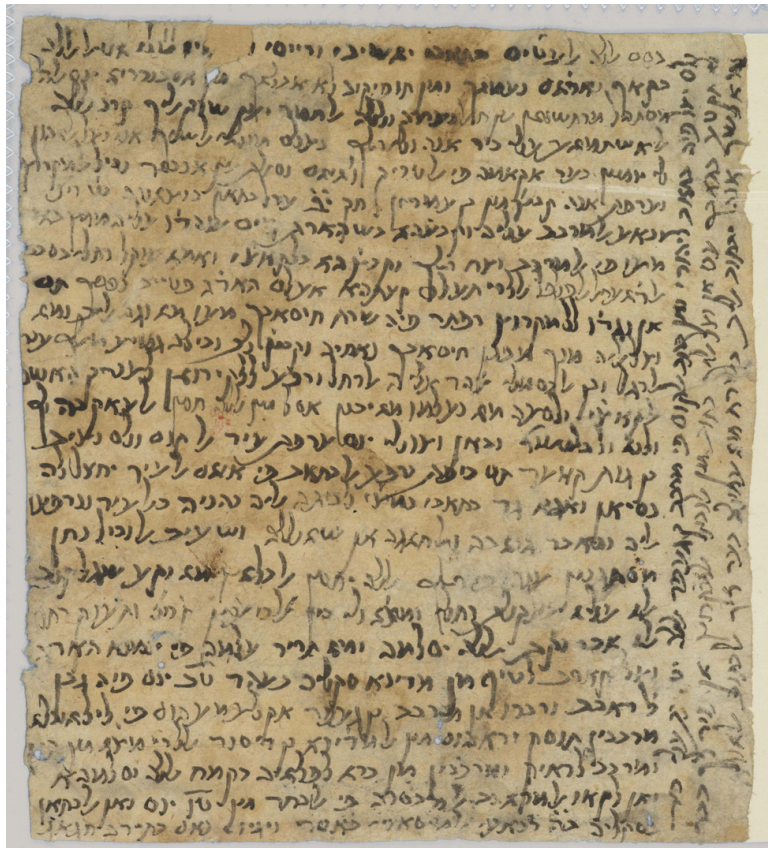


Image 3: Recto side of a letter from Khallūf ibn Zakariyyā al-Ashqar, an agent in the port-city of Alexandria, to merchant Joseph ibn Jacob ibn ‘Awkal in Fustāt, Egypt, dated September 30, 1030. Written in Judeo-Arabic, that is, Arabic written in the Hebrew script, the letter is one of hundreds of thousands of manuscripts found in the Cairo Geniza, an attic in the Ezra Synagogue in Cairo in 1896. Source: Genizah manuscript T-S 13J17.11, copyright held by the Syndics of Cambridge University Library, used with permission.

The above documentary evidence proves without the slightest doubt that a suit could be brought against a vessel to satisfy debts arising between the plaintiff and the defendant. The judge could order the arrest of a ship within his territorial jurisdiction, and it could be sold by judicial sale. It also indicates that the plaintiff's claim could not exceed the value of the arrested vessel. If the vessel was arrested and sold by judicial sale, the proceeds had to be distributed among the claimants, while the remaining sum had to be delivered to the owner or owners. This judgment was valid in all Islamic territories regardless of the sectarian affiliation of the court or of the judge. Claims against a vessel were enforced in actions concerning ownership and partnership/shares; loan contract/debt; negligence and transgression, pledge of security; wages of seamen; repairs done to the ship; cargo loss and damage; breach of the charter-party; insolvency of the vessel's owner; jettison and general average; salvage; and piracy.

As previously pointed out, associating the *actio in rem* with the Roman *actio hypothecaria* remains controversial among legal historians. However, while this legal principle, which first appears in European law in late medieval England, apparently originated in the Mediterranean world, it is not found in the codices of the Italian maritime states—the *Tabula Amalfitana* (1010), the *Ordinances of the Consuls of the Sea of Trani* (1063), and the *Constitutum Usus of Pisa* (1233)—or in the later *Consulate of the Sea of Barcelona* (1258), or the *Rôles d'Oléron*, which were drawn up around 1286.

The principal question that remains to be answered is how such a fundamental principle came into existence in late medieval and early modern England if such a dominant feature of admiralty practice did not exist in the medieval codices of European civil law states and principalities. Is it conceivable that it was brought from the Islamic Mediterranean to England via Norman Sicily, the Kingdom of Jerusalem, or late Islamic Spain, whose ports were frequented by Anglo-Saxon sailors. Answering this question may enable legal historians to trace the influence of Islamic law on Western legal practice generally, and English admiralty law in particular.

Qirād/Muḍāraba Partnership

Another significant contribution of Muslims to the evolution of the *lex mercatoria maritima* is the introduction of an unprecedented commercial and financial trade technique known as *qirād*, which is interchangeably referred to as *muḍāraba* (or in Latin *commenda*, or “trust”). It is one of the most advanced trade techniques, which came to Islam from pre-Islamic Arabia, was further developed and incorporated into Islamic commercial law, and became the dominant form of partnership in the *lex mercatoria Islamica*.

The rules set up by Muslim jurists can be summarized as follows. The capital-investor (*muqāriḍ*, or *commendator*) or group of investors entrusted capital or merchandise to a labor-investor/agent (*ʿāmil al-qirād*, or *tractator*). The latter used the capital to carry out

commercial transactions, following which he repaid the capital-investor(s) the principal and a previously agreed upon share of the profits. For his labor, the agent received the remaining share of the profits. Any loss from the exigencies of travel or from an unsuccessful business venture was borne exclusively by the capital-investor(s); the agent was in no way liable for such a loss. He lost only the time and effort he expended. However, dishonest manipulations or a flagrant breach of any legitimate stipulations of the *qirāḍ* by the agent would make him responsible for the full amount of the investment. This basic arrangement applied to transactions carried out on land as well as at sea. Its basic structural features, as well as the relationships between its principal parties, are similar in all Islamic schools of law due to its common origins.⁴⁵

The legal principles guiding maritime *qirāḍ* in the early period of Islamic domination in the Mediterranean basin are best addressed in the following *responsum*.

Ashhab (ibn Ibrāhīm al-Qaysī 762–819) was asked about a person who offered a sum of dinars and a vessel to a group and told them: ‘Whatever profit you make is two-thirds for me and one-third for you.’ *Response*: The contract is void if they have not yet commenced work. However, if they have, they would be owed a comparable freight for leasing the ship, while the dinars would be equally distributed between them in the form of *qirāḍ*. Ashhab was further asked about a man delivering a hundred dinars to another, along with a vessel, in the form of *qirāḍ* on condition that two-thirds of the profit be delivered to the investor, while a third goes to the debtor. [*Response*]: It is inappropriate; if the *qirāḍ* and leasing contracts are all lumped together in one deal, it will have no validity.⁴⁶

Based on this *responsum*, one may sum up the rules governing maritime *qirāḍ* as follows: The master and crew, as agents, collected the investment capital before they actually commenced transactions as trustees. They maintained it as a trust, and thus had to take care of it and return it when demanded by the *muqāriḍ*s. However, they would be absolved of liability if they lost the capital unintentionally. The master and crew were agents of the *muqāriḍ*s, legally responsible for the acts and contractual obligations they carried out within the bounds of their authority. They were also entitled to a fixed share in the profit, as profit-sharing was the purpose of this partnership, but they could be held liable if they did not respect the contract terms. If the contract became void, they would receive an equitable wage for their labor, while the capital-investor alone enjoyed the profit or bore the loss.

If the entire profit was earmarked for the investors, the crew would be entitled to a portion of goods in exchange for their labor, but not to remuneration. Conversely, if the entire profit was to go to the crew, then the transaction would be regarded as a loan and they would have the right to the entire profit, but would also bear any loss and would still have to repay the loan to the investor. The law also required the *muqāriḍ* to pay equity freight to his agents if they transported the goods aboard their own vessel, provided that the loss was borne solely by the investor; otherwise, the law categorized them as wage

earners. *Qirād* proceeds, then, were not divided in accordance with norms established by law. Rather, contract provisions were deemed legal so long as they did not contradict Islamic sacred law.⁴⁷

Qirād expenses consisted of freight costs, passage fees, custom duties and taxes, the salaries of hired helpers, and the agent's living expenses. The agent had the right to deduct all legitimate business expenses from the *qirād* fund, except when the transaction was carried out in his native town. Even if the agent completed a journey on behalf of the *qirād* without buying any goods or otherwise investing the capital, his travel and personal expenses would nonetheless be covered from the capital. The quality of his food, clothing and accommodations was determined by the agent's social status as compatible with the known custom and practice of the merchants, and should not be extravagant.⁴⁸

Western scholars have argued that the earliest form of Western *commenda* may likely have been based on the Islamic *qirād*. Robert S. Lopez posits that the Western *commenda* contract "developed first in the seaports of Byzantine Italy between the late eighth and the early tenth century under the direct influence of the oriental commercial contracts (Byzantine *chreokoinōnia* and Muslim *muḍāraba*)."⁴⁹ The *chreokoinōnia* is described as a quasi-partnership in which the silent partner provided the capital whereas the active partner contributed skills and labor. However, two of the fundamental legal differences between the *qirād* and the *chreokoinōnia* transactions rest upon the application of the principle of limited liability and share of losses. Unlike the *qirād*, in which the agent's loss was largely limited to his labor, both parties to the *chreokoinōnia* transaction shared the losses in accordance with the contract terms.⁵⁰

Human Jettison

Forcing human beings to abandon a ship when storms at sea threaten to wreck it is an ancient maritime practice, well-attested in biblical and other sources.⁵¹ Once the cargo and animals are cast overboard, the human element has to be considered. This problem is inadequately treated in either the Digest of Justinian or the Rhodian Sea Law, although when called upon to do so, many jurists viewed slaves as commodities.⁵² By contrast, Islamic jurisprudence is more explicit and elaborates on how the decision of jettisoning humans into the sea should be made, and who amongst those on board—whether crew, servants, free passengers, shippers, or slaves—should be first to be cast overboard when the ship is in imminent danger of shipwreck.

Jurists held different opinions on this controversial issue. One group prohibited throwing any human being into the sea under any circumstance, even if they were polytheist captives or slaves purchased for commercial purposes. Another group approved of sacrificing some lives irrespective of the ethnic, religious, and social allegiance of the individuals;

the ill-fated individuals would be chosen by lot. A third opinion determined that if human jettison was a necessary solution, pagans should be thrown overboard before Muslims, men before women, and war captives before slaves. When throwing slaves overboard, the shipmaster had to consider: (a) the ability of the slave to swim ashore; and (b) the distance of the ship from the coast. Strong swimmers amongst the slaves were to be thrown overboard if the coast was in sight. Once a slave was jettisoned, he or she was set free.⁵³

Commercial slaves were treated like all other commodities and articles on board. They were subject to general average⁵⁴ contribution, which meant that their owners had to share the losses with other merchants whose property was jettisoned, in proportion to their value. The assessment of the monetary value of a jettisoned slave depended on his or her place of origin, gender, age, appearance, physical condition, and abilities. The price of the slave was calculated at the moment he or she was taken on board.⁵⁵ Identical principles are well-documented in later European transatlantic slave trade lawsuits, maritime codes, and maritime insurance law relating to human cargoes.⁵⁶

Maritime Burial

In order to avoid the spread of disease and possible damage to cargo, jurists offered three methods for disposing of a corpse into the sea. After washing the deceased person and the performance of the ceremonial funeral prayer, the body should be bound to a heavy object of metal or stone allowing it to sink in the sea. Such a procedure was applicable if the ship was sailing across the high sea and at a distance of a few days journey from the nearest coast. The second method, in the case of coastwise trade, was to place the dead body in a coffin and throw it into the water, provided the ship was sailing off Islamic coastal territories. The waves would carry the coffin to the shore, and it was hoped that local Muslims would bury it after conducting the appropriate funeral rituals. The last method required the crew and passengers to keep the corpse in a tightly closed compartment in order to delay the process of decomposition before they reached their destination.⁵⁷

One question posed by classical Muslim jurists was whether it was lawful to eat a fish that had fed upon a corpse. How could one know whether the fish had consumed a corpse, or not? In principle, according to Islamic law, every marine creature, except amphibious ones, is edible. A statement attributed to the Prophet Muḥammad rules: “a [sea] whose waters are pure, its dead animals are lawful to eat.” Relevant and direct answers to the above questions are provided by al-Kindī (d. 1162), who states: “It is agreed upon unanimously [by all scholars] that it is lawful to eat a fish even if a dead or live fish is discovered in its digestive system. Conversely, it is forbidden to eat a fish if [human] flesh was discovered in its digestive system.”⁵⁸ The distinction between lawful and forbidden marine animals could thus be made only by the person who cleaned and cooked them.

On the Law of the Sea

In addition to the jurisprudential manuals, most of the issues relating to the international law of the sea are embodied in the Qur'ān, *Sunnah*, *Siyar* literature, safe-conduct passes (*amān*), and diplomatic treaties, truces, and correspondence. International diplomatic and commercial treaties are the most important and relevant sources for they shed a deep insight into the legal status of persons, merchant vessels, and property on the high seas and the state's sovereignty over its territorial seas, coastal frontiers, and inland waters: ports and harbors, rivers, natural and artificial canals, indentations, bays, gulfs, islands, and islets.

The high seas and associated assets are among the greatest bounties that God has bestowed on human beings. Individuals and nations have the right to use and benefit from them, but that right is not exclusive. Neither the high seas nor their natural resources are subject to dominion and appropriation by one nation or another. For instance, Qur'ān 16:14, states: "It is He Who has made the sea subject, that ye may eat thereof flesh that is fresh and tender, and that ye may extract therefrom ornaments to wear; and thou seest the ships therein that plough the waves, that ye may seek (thus) of the bounty of God and that ye may be grateful." Clearly, the Qur'ān views the boundless oceans and seas to be, in the language of the United Nations Convention of the Law of the Sea, the "common heritage of mankind"; they are unifying elements rather than dividing ones.⁵⁹ Nations and individuals are entitled to exploit the oceans' and seas' natural resources, and to freely navigate them for the sake of acquiring knowledge, facilitating socio-cultural and religious interactions, and engaging in overseas trade. This view is well-expressed by the Makassarese Sultan 'Alāuddīn Tumenanga ri Gaukanna (1593–1639), who asked the Dutch East India Company not to interfere with the ships of the Makassarese Kingdom of Gowa on the high seas. The sultan declared: "God made the earth and the sea, has divided the earth among mankind and given the sea in common. It is a thing unheard of that anyone should be forbidden to sail the seas."⁶⁰

Central and provincial authorities asserted territorial jurisdiction over a limited offshore zone to protect the fishing and economic rights and interests of the locals, and to defend the coastal frontiers from external raids. Officially and administratively, coastal and offshore jurisdiction was vested in the *Amīr al-Baḥr* (admiral, or emir of the sea), whose authority also extended to all people—Muslim subjects, *dhimmi*s, and foreigners, including properties at sea—traveling along the coast or sailing through the territorial sea. He asserted jurisdiction over these spaces and was authorized to intervene in disputes involving local residents and foreigners, provided that he took a rigorous stance against suspicious individuals.⁶¹

Bilateral and multilateral diplomatic treaties concluded between Christian European States and principalities, on the one hand, and Muslim central administration and provincial governments, on the other, recognized each other's sovereign rights over a belt of water

adjacent to the shoreline of the respective state, although the outer boundaries remained unspecified. These treaties also recognized the territorial integrity and sovereignty over internal and inland waters and allowed states to deny access by alien citizens and ships to any of their sovereign waters.⁶² However, although coastal states enjoyed absolute sovereignty over their territorial sea, international treaties entitled the flag state to exercise diplomatic protection and apply its laws to wrecked vessels, jetsam, and flotsam found in the territorial waters of the states party to the treaty.⁶³

Conclusion

Muslims have left an indelible imprint not only on the transmission of nautical science to the Western world, but also on the development and formation of maritime law and law of the sea as well. Long before the establishment of the European *Consulate of the Sea* and the codification of the ordinances of the Italian commercial empires, Muslim merchants and legal authorities had introduced unprecedented commercial techniques, rules, and *responsa* not found in Roman and Byzantine legal codices.⁶⁴ The introduction of the maritime *qirād/muḍāraba*, which laid the legal and practical foundations for the medieval Italian *commenda*, is an extraordinary example. However, this does not necessarily signify that Muslim jurists, seamen, and merchants disregarded legal principles that had existed in the Mediterranean on the eve of the Islamic military expansion along its littoral. On the contrary, a close examination of early and classical jurisprudential literature reveals that jurists could hold controversial opinions over the same issue: opinions that matched the Rhodian Sea Law, others that correspond with the Justinianic *Corpus Juris Civilis*, and opinions and reasoning that differed from both. Differences in opinions within the same law school were attributed to differences in customary local practices, individual legal reasoning of Muslim jurists, and migration of Muslim scholars from the East to the West, which led to the transformation of legal elements of eastern origins to the Mediterranean arena.⁶⁵

With the exception of the fifteenth-century *Undang-undang Laut Melaka*, the first codification of Islamic maritime laws,⁶⁶ the legal foundations of Islamic maritime principles and regulations are chiefly based on customary practices. Whereas the legal principles of Islamic merchant law were laid down by merchants and their proxies, the regulations governing the carriage of goods by water, employment of crews, personal behavior during maritime ventures, and other nautical issues were generally derived from the long legal traditions and common customary practices of experienced shipowners, shipmasters, captains, seamen, merchants, and sea travellers. Jurists frequently took into consideration prescriptive customs, which in certain cases overcome written contracts. In addition to the primary sources of Islamic law—the Qur’ān and *Sunnah*—Muslim jurists and judicial authorities referred to *aḥkām* (judgments), *nawāzil* (court records/precedents), *fatāwā* (*responsa*), and

masā'il (legal questions) when making judicial decisions or expressing legal opinions on maritime related issues.

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NOTES

¹ These endeavours paved the way not only for the voluntary acceptance and adoption of Islamic doctrine but created the context for maritime law in the Indian Ocean. There, the propagation of this religion was more closely associated with Diasporic (local) mercantile communities who participated actively in the gradual religious conversion to Islam of indigenous coastal populations over the course of a few centuries, beginning in the second half of the seventh century CE. See Kenneth McPherson, "Processes of Cultural Interchange in the Indian Ocean Region: An Historical Perspective," *The Great Circle*, 6 (1984), 82; McPherson, "Cultural Exchange in the Indian Ocean Region," *Westerly* 4 (1984): 10; Philip D. Curtin, *Cross-Cultural Trade in World History* (Cambridge: Cambridge University Press, 1984), 107; Michael N. Pearson, *The Indian Ocean* (London: Routledge, 2003), 62.

² Hassan S. Khalilieh, *Islamic Law of the Sea: Freedom of Navigation and Passage Rights in Islamic Thought* (Cambridge: Cambridge University Press, 2019), 78–79.

³ Lionel Casson, *The Ancient Mariners: Seafarers and Sea Fighters of the Mediterranean in Ancient Times* (Princeton: Princeton University Press, 1991), 7–15; Jonathan Ziskind, "The International Legal Status of the Sea in Antiquity," *Acta Orientalia* 35 (1973): 35–40; John H. Wigmore, *A Panorama of the World's Legal System* (Saint Paul: West, 1928), 3:875–876.

⁴ The period during which Hammurabi ruled Sumer is controversial. Four views are held by biblical archaeologists and historians: I. 1848–1806, II. 1792–1750, III. 1711–1669, and IV. 1720–1678. It is most likely that Hammurabi reigned between 1711–1669.

⁵ Godfrey R. Driver and John C. Miles, *The Babylonian Laws*, vol. 1, *The Legal Commentary* (Oxford: Clarendon Press, 1952–55), 427–435, 463–464, 473–475; William W. Davies, "The Code of Hammurabi," in *Sources of Ancient and Primitive Law*, edited by Albert Kocourek and John Wigmore (Littleton: Fred B. Rothman, 1979), 434–435, 441.

⁶ Domenico A. Azuni, *The Maritime Law of Europe* (New York: 1806), 1:25.

⁷ Maria E. Aubet, *The Phoenicians and the West: Politics, Colonies and Trade* (New York: Cambridge University Press, 1996), 187–189.

⁸ Donald Harden, *The Phoenicians* (New York: Praeger, 1962), 157–161, 168–170; Dimitri Baramki, *Phoenicia and the Phoenicians* (Beirut: Khayats, 1961), 36–47, 58–62; Raymond Weill, *Phoenicia and Western Asia to the Macedonian Conquest* (London: George G. Harrap, 1940), 179–180.

⁹ Azuni, *Maritime Law of Europe*, 1:28–29.

¹⁰ J. Dauvillier, “Le droit maritime phénicien,” *Revue internationale des droits de l’antiquité*, 3rd ser., 6 (1959): 33–63; Jean M. Pardessus, *Collection de lois maritimes* (Paris: 1828), 1:18–20; Alexander Justice, *A General Treatise of the Dominion of the Sea* (London: 1724), 18; Pitman Potter, *The Freedom of the Seas in History, Law, and Politics* (New York: Green, 1924), 11; Azuni, *Maritime Law of Europe*, 1:276; Wigmore, *Panorama of the World’s Legal System*, 3:880.

¹¹ Justice, *General Treatise*, 20–22; Albert Devine, “Alexander the Great,” in *Warfare in the Ancient World*, edited by John Hackett (New York: Facts on File, 1989), 104–128; Fik Meijer, *A History of Seafaring in the Classical World* (London: Croom Helm, 1986), 47–85; Nicholas G. Hammond, *Alexander the Great: King, Commander, and Statesman* (Park Ridge: Noyes Press, 1980), 91–121; Henry A. Ormerod, *Piracy in the Ancient World* (Liverpool: Liverpool University Press, 1924), 108–116; Potter, *Freedom of the Seas*, 16–33; Casson, *Ancient Mariners*, 97–115; Coleman Phillipson, *The International Law and Custom of Ancient Greece and Rome* (London: MacMillan, 1911), 2:367–378; G. Chowdhary-Best, “Ancient Maritime Law,” *The Mariner’s Mirror* 62 (1976): 81–82, 85; Edward E. Cohen, *Ancient Athenian Maritime Courts* (Princeton: Princeton University Press, 1973); Julie Vélissaropoulos, *Les Naoclères Grecs: Recherches sur les institutions maritimes en Grèce et dans l’Orient hellénisé* (Paris: Librairie Minard, 1980), especially 235–341; Pardessus, *Lois maritimes*, 1:35–52; Richard T. Robol, “Maritime Law in Classical Greek and Roman Literature,” *Journal of Maritime Law and Commerce* 31 (2000): 520–524.

¹² Potter, *Freedom of the Seas*, 25–35; Archibald Lewis, *Naval Power and Trade in the Mediterranean A.D. 500–1100* (Princeton: Princeton University Press, 1951), 21–32; Casson, *Ancient Mariners*, 198–212.

¹³ This topic is meticulously addressed by Boudewijn Sirks, *Food for Rome: The Legal Structure of the Transportation and Processing of Supplies for the Imperial Distribution in Rome and Constantinople* (Amsterdam: J.C. Publishers, 1991).

¹⁴ Chester G. Starr, “Coastal Defense in the Roman World,” *American Journal of Philology* 64 (1943): 56–70; Starr, *The Roman Imperial Navy 31 B.C.–A.D. 324* (Chicago: Ares Publishers, 1993), 1–8; Ormerod, *Piracy in the Ancient World*, 248–259; Justice, *General Treatise*, 24–25; Ziskind, “International Legal Status of the Sea,” 48–49.

¹⁵ Percy T. Fenn, “Justinian and the Freedom of the Sea,” *The American Journal of International Law* 19 (1925): 716–727; George Ostrogorsky, *History of the Byzantine State* (New Brunswick Rutgers University Press, 1991), 69–75; Averil Cameron, *The Mediterranean World in Late Antiquity* (London: Routledge, 1994), 1–4, 33–42; Lewis, *Naval Power and Trade*, 21–33.

¹⁶ Islamic military expansions in the Mediterranean have been exhaustively studied by contemporary historians, namely recommended: Fred M. Donner, *The Early Islamic Conquests* (Princeton: Princeton University Press, 1981); Walter E. Kaegi, *Byzantium and the Early Islamic Conquests* (Cambridge: Cambridge University Press, 1993).

¹⁷ Starr, “Coastal Defense in the Roman World,” 56–70.

¹⁸ Hassan S. Khalilieh, “The *Ribāt* System and Its Role in Coastal Navigation,” *Journal of the Economic and Social History of the Orient* 42 (1999): 212–225.

¹⁹ Aly M. Fahmy, *Muslim Sea-Power in the Eastern Mediterranean from the Seventh to the Tenth Century A.D.* (Cairo: National Publication and Printing House, 1966), 80–148; Lawrence I. Conrad, “The Conquest of Arwād: A Source Critical Study in the Historiography of Early Medieval Near East,” in *The Byzantine and Early Islamic Near East; Problems in the Literary Source Material*, edited by Averil Cameron and Lawrence Conrad (Princeton: The Darwin Press, 1992), 317–401; Romilly J. Jenkins, “Cyprus between Byzantium and Islam, A.D. 688–965,” in *Studies Presented to David Moore Robinson*,

edited by G.E. Mylonas and D. Raymond (Saint Louis: Washington University, 1953), 2:1006–1014; Costas Kyrris, “The Nature of the Arab-Byzantine Relations in Cyprus from the Middle of the 7th to the Middle of the 10th Century A.D.,” *Graeco-Arabica* 3 (1984): 149–175; Cecil Torr, *Rhodes under the Byzantines* (Cambridge: 1886). Clifford E. Bosworth, “Arab Attacks on Rhodes in the Pre-Ottoman Period,” *Journal of the Royal Asiatic Society* 6 (1996): 157–164; Lawrence I. Conrad, “The Arabs and the Colossus,” *Journal of the Royal Asiatic Society* 6 (1996): 165–187; Herbert Maryon, “The Colossus of Rhodes,” *The Journal of Hellenic Studies* 76 (1956): 68–86; Andreas Stratos, “The Naval Engagement at Phoenix,” in *Essays in Honor of Peter Charanis*, edited by Ageliki E. Laiou-Thomadakis (New Brunswick: Rutgers University Press, 1980), 229–247; Vassilios Christides, “The Naval Engagement of Dhāt Aṣ-Ṣawārī A.H. 34/A.D. 655–656: A Classical Example of Naval Warfare Incompetence,” *Byzantina* 13 (1985): 1331–1345.

²⁰ Fahmy, *Muslim Sea-Power*, 96–101; Abdul Zahoor Khan et al., “Historiography of the Arab Muslim’s Barricade of Constantinople: A Critical Appraisal,” *Journal of the Research Society of Pakistan* 57 (2020): 8–12; Ernest W. Brooks, “The Campaign of 716–718, from Arabic Sources,” *The Journal of Hellenic Studies* 19 (1899): 19–31; Theodora Zampaki, “The Mediterranean Muslim Navy and Expeditions Dispatched against Constantinople,” *Proceeding of the 2nd International Conference on Human and Social Sciences*, edited by A. Biagini et al., (Rome: MCSER, 2012), 12–13; David Woods, “Maslama and the Alleged Construction of the First Mosque in Constantinople c. 718,” in *Negotiating Co-Existence: Communities, Cultures and ‘Convoivencia’ in Byzantine Society*, edited by Barbara Cros-tini and Sergio La Porta (Trier: Wissenschaftlicher Verlag Trier, 2013), 18–22; Salvatore Cosentino, “Naval Warfare: Military, Institutional and Economic Aspects,” in *A Companion to the Byzantine Culture of War, ca. 300–1204*, edited by Yannis Stouraitis (Leiden: E.J. Brill, 2018), 312–314; Vassilios Christides, “The Second Arab Siege of Constantinople (717–718?): Logistics and Naval Power,” in *Bibel, Byzanz und Christlicher Orient: Festschrift für Stephen Gerö*, edited by Dmitrij Bumazhnov et al., (Paris: Leuven, 2011), 511–533; Robert J. Olsen, “The Last Arab Siege of Constantinople (717–718): A Neglected Source,” *Greek, Roman, and Byzantine Studies* 60 (2020): 425–443; Christophe Picard, *Sea of the Caliphs: The Mediterranean in the Medieval Islamic World*, trans. Nicholas Elliot (Cambridge MA: Harvard University Press, 2018), 37–64.

²¹ Vassilios Christides, “Raid and Trade in the Eastern Mediterranean: A Treatise by Muḥammad bn. ‘Umar, the *Faqīh* from Occupied Moslem Crete, and the *Rhodian Sea Law*, Two Parallel Texts,” *Graeco-Arabica* 5 (1993): 65–67; Christides, *The Conquest of Crete by the Arabs (CA. 824): A Turning Point in the Struggle between Byzantium and Islam* (Athens, 1984), 133–136; Jorge L. Delgado, *El poder naval de Al-Andalus en la época del Califato Omeya* (Granada: Universidad de Granada, 1993), 352–354; Abraham L. Udovitch, “An Eleventh Century Islamic Treatise on the Law of the Sea,” *Annales Islam-ologiques*, 27 (1993): 38–39, f. 4.

²² ‘Abd al-Raḥmān ibn Khaldūn, *Tārīkh Ibn Khaldūn al-Musammā Kitāb al-‘Ibar wa-Dīwān al-Mubtada’ wa’l-Khabar fī Ayyām al-‘Arab wa’l-‘Ajām wa’l-Barbar wa-man ‘Āsarahum min Dhawī al-Sulṭān al-Akbar/Muqaddimah* (Beirut: Dār al-Kutub al-‘Ilmiyya, 1413/1992), 1:266–270. It is worth mentioning that the Islamic control over Sardinia and Cyprus was ephemeral.

²³ Mohammad Ballan, “Fraxinetum: An Islamic Frontier State in Tenth-Century Provence,” *Comitatus: A Journal of Medieval and Renaissance Studies* 41 (2010): 23–76.

²⁴ Tommi P. Lankila, “The Saracen Raid of Rome in 846: An Example of Maritime *Ghazw*,” *Studia Orientalia* 114 (2013): 93–120; Barbara M. Kreutz, *Before the Normans: Southern Italy in the Ninth and Tenth Centuries* (Philadelphia: University of Pennsylvania Press, 1991), 1–35; Julie A. Taylor,

Muslims in Medieval Italy: The Colony at Lucera (Lanham, MD: Lexington Books, 2003); Alex Metcalfe, *The Muslims of Medieval Italy* (Edinburgh: Edinburgh University Press, 2009).

²⁵ Aziz Ahmad, *A History of Islamic Sicily* (Edinburgh: Edinburgh University Press, 1975); Archibald Lewis and Timothy Runyan, *European Naval and Maritime History, 300–1500* (Bloomington: Indiana University Press, 1990), 41–47; Barbara M. Kreutz, *Before the Normans: Southern Italy in the Ninth and Tenth Centuries* (Philadelphia: University of Pennsylvania Press, 1991), 1–35; John B. Bury, “The Naval Policy of the Roman Empire in Relation to the Western Provinces from the 7th to the 9th Century,” *Centenario della Nascita di Michele Amari* (Palermo, 1910), 2:21–34; Kenneth M. Setton, “On the Raids of the Moslems in the Aegean in the Ninth and Tenth Centuries,” *American Journal of Archaeology* 58 (1954): 311–319; Alexander Kazhdan, “Some Questions Addressed to the Scholars Who Believe in the Authenticity of Kaminiates’ ‘Capture of Thessalonica’,” *Byzantinische Zeitschrift* 71 (1978): 301–314; John H. Pryor, “Byzantium and the Sea: Byzantine Fleets and the History of the Empire in the Age of the Empire in the Age of the Macedonian Emperors, C. 900–1025 C.E.,” *War at Sea in the Middle Ages and the Renaissance*, John B. Hattendorf and Richard W. Unger, eds. (New York: The Boydell Press, 2003), 83–104; Vassilios Christides, “The Raids of the Moslems of Crete in the Aegean Sea: Piracy and Conquest,” *Byzantion* 51 (1981): 76–111; Christides, *Conquest of Crete*, 67–96; George C. Miles, “Byzantium and the Arabs: Relations in Crete and the Aegean Area,” *Dumbarton Oaks Papers*, 18 (1964), 1–32; Ernest W. Brooks, “The Arab Occupation of Crete,” *English Historical Review* 28 (1913): 431–443; S.M. Imamuddin, “Cordovan Muslim Rule in Iqritish (Crete),” *Journal of the Pakistan Historical Society* 8 (1960): 297–312; Delgado, *El poder naval de Al-Andalus*, 99–110; John H. Pryor, *Geography, Technology, and War: Studies in the Maritime History of the Mediterranean 649–1571* (Cambridge: Cambridge University Press, 1992), 102–111.

²⁶ Ibn Khaldūn, *Muqaddimah*, 1:266.

²⁷ Aly Mohamed Fahmy, *Muslim Naval Organisation in the Eastern Mediterranean from the Seventh to the Tenth Century A.D.* 2nd ed. (Cairo: National Publication & Print House, 1966), 1–9; Jaser Abu Safiyya, *Baradiyyāt Qurra ibn Sharīk al-‘Absī* (Riyadh: Markaz al-Malik Fayṣal li’l-Buhūth wa’l-Dirāsāt al-Islāmiyya, 1425/2004), 72–76, 100–107, 253–269; Tarek M. Muhammad, “The Role of the Copts in the Islamic Navigation in the 7th and 8th Centuries: The Papyrological Evidence,” *Journal of Coptic Studies* 10 (2008): 1–32; Myriam Wissa, “The Conscription of Egyptian Christian Sailors in Medieval Muslim Naval Warfare: Taking the Long View,” *The Journal of the Middle East and Africa* 8 no. 4 (2017): 397–406; Ghaidaa Khazna-Kātībī, *Al-Uṣṭūl al-Umawī fi’l-Maṣādir wa’l-Wathā’iq al-Bardiyya* (Beirut: Al-Mu’assasa al-‘Arabiyya li’l-Dirāsāt wa’l-Nashr, 2018); Walter E. Crum, *Catalogue of the Coptic Manuscripts in the Collection of the John Rylands Library, Manchester* (Manchester: Manchester University Press, 1909), 158–159, 164; Frederic G. Kenyon, *Greek Papyri in the British Museum: The Aphrodito Papyri* (Oxford: Oxford University Press, 1910), 4:6–7, 19–28, 59–67, 435–449; Arthur Hunt and C.C. Edgar, *Select Papyri* (London: William Heinemann, 1932–1934), 2:593–601. The Aphrodito papyri shed light on (a) the construction, repair, and maintenance of ships; (b) disposition of the arsenals, fleets, and admiralty headquarters; and (c) recruitment of fighting men and seamen, their wages and allowances.

²⁸ Muḥammad ibn Mankalī, *Al-Adilla al-Rasmiyya fi’l-Ta’ābī al-Ḥarbiyya*, edited by Maḥmūd Sh. Khaṭṭāb (Baghdad: Al-Majma’ al-‘Ilmī al-‘Irāqī, 1988), 241–254; Vassilios Christides, “Two Parallel Naval Guides of the Tenth Century—Qudama’s Document and Leo VI’s Naumachica: A Study on Byzantine and Moslem Naval Preparedness,” *Graeco-Arabica* 1 (1982): 51–103; John F. Pryor and Elizabeth M. Jeffreys, *The Age of the Dromon: The Byzantine Navy* (Leiden: E.J. Brill, 2006), especially 645–666.

²⁹ Samuel P. Scott, *The Civil Law*, 17 vols. (Cincinnati: Central Trust, 1932); Walter Ashburner, *The Rhodian Sea Law* (Oxford: Clarendon Press, 1909).

³⁰ Dimitrios G. Letsios, "Sea Trade as Illustrated in the 'Rhodian Sea Law' with Special Reference to the Reception of Its Norms in the Arabic Ecloga," *Graeco-Arabica* 6 (1995): 218–225; Stefan Leder, *Die arabische Ecloga* (Frankfurt: Forschungen zur byzantinischen Rechtsgeschichte, 1985), 114–119, Articles 28:1–7.

³¹ Khalilieh, *Admiralty and Maritime Laws in the Mediterranean*, 18–19.

³² Wael B. Hallaq, *An Introduction to Islamic Law* (Cambridge: Cambridge University Press, 2009), 8, 11, 61–62; Hallaq, *The Origins and Evolution of Islamic Law* (Cambridge: Cambridge University Press, 2005), 4, 24–25, 32–33; Noel J. Coulson, "Muslim Custom and Case-Law," *Die Welt des Islams* 16 (1959): 16–17.

³³ Antoine Fattal, "How *Dhimmīs* were Judged in the Islamic World," in *Muslims and Others in Early Islamic Society*, edited by Robert Hoyland (Burlington: Ashgate, 2002), 86–87; Arthur S. Tritton, *The Caliphs and Their Non-Muslim Subjects: A Critical Study of the Covenant of 'Umar* (London: F. Cass, 1970), 38–39, 100–101; Aibek S. Ahmedov, "Origins of Law of Religious Minorities in Islam: Evolution of Concept of *Dhimmī* as Portrayed in Early Sources," *Journal of Islamic State Practices in International Law* 3 (2007): 33–46; Mahmood H. Denawy, "A Reappraisal of Attitudes to the 'People of the Book' in the Qur'ān and *Hadīth*, with Particular Reference to Muslim Fiscal Policy and Covenant of 'Umar" (PhD diss., University of Durham, 2007), 116–118, 155, 171, 205, 228.

³⁴ Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1964), 22–30; Hallaq, *Origins and Evolution of Islamic Law*, 44–45, 53–54, 56; Robert S. Lopez, "Byzantine Law in the Seventh Century and Its Reception by the Germans and the Arabs," *Byzantion* 16 (1942–1943): 451; Shameem Akhtar, "An Inquiry into the Nature, Origin, and Source of Islamic Law of Nations," *Islamic Studies* 10 (1971): 32–33.

³⁵ Ibn Khaldūn, *Muqaddimah*, 1:29–30. On the acculturation process he states: "The condition of the world and of nations, their customs and sects, do not persist in the same form or in a constant manner. There are differences according to days and periods, and changes from one condition to another. Such is the case with individuals, times, and cities, and it likewise happens in connection with regions and districts, periods and dynasties. . . . The new power, in turn, is taken over by another dynasty, and customs are further mixed with those of the new dynasty. More discrepancies come in, so that the contrast between the new dynasty and the first one is much greater than that between the second and the first one. Gradual increase in the degree of discrepancy continues. The eventual result is an altogether distinct (set of customs and institutions). As long as there is this continued succession of different races to royal authority and government, changes in customs and institutions will not cease to occur." The English translation, which is compatible with the Arabic text, is quoted from Franz Rosenthal, *The Muqaddimah: An Introduction to History* (Princeton: Princeton University Press, 1967), 25–26.

³⁶ Qur'ān 7:199; Ayman Shabana, *Custom in Islamic Law and Legal Theory* (New York: Palgrave MacMillan, 2010), 50–58; Wael B. Hallaq, *Authority, Continuity and Change in Islamic Law* (Cambridge: Cambridge University Press, 2004), 215–235; Mohammad Kamali, *Principles of Islamic Jurisprudence* (Cambridge: Islamic Texts Society, 1997), 256; Majid Khadduri, "Nature and Sources of Islamic Law," *The George Washington Law Review* 22 (1953): 3–4; Taiwo M. Salisu, "'Urf/ʿAdah (Custom): An Ancillary Mechanism in *Shari'ah*," *Ilorin Journal of Religious Studies* 3 (2013): 137–142; ʿAbdullāh ʿA. Ḥajī-Ḥassan, "Sales and Contracts in Early Islamic Commercial Law," (PhD diss., University of

Edinburgh, 1986), 18–20; Gideon Libson, “On the Development of Custom as a Source of Law in Islamic Law,” *Islamic Law and Society* 4 (1997): 131–155.

³⁷ Shabana, *Custom in Islamic Law*, 156–157; Salisu, “‘Urf/‘Adah (Custom),” 135–137.

³⁸ Muṣṭafā A. Ṭāher, ed., “*Kitāb Akriyat al-Sufun wa’l-Nizā’ bayna Ahlihā*,” *Cahiers de Tunisie* 31 (1983): 14–15.

³⁹ Khalilieh, *Admiralty and Maritime Laws in the Mediterranean*, 252, 278–279.

⁴⁰ Manuscript n^o 1.155 (2) of la Biblioteca del Real Monasterio de San Lorenzo de El Escorial, folios 41v. to 55r.; Muṣṭafā A. Ṭāher “*Kitāb Akriyat al-Sufun wa’l-Nizā’ bayna Ahlihā*,” *Cahiers de Tunisie* 31 (1983): 13–53; for the English translation of the treatise, consult Khalilieh, *Admiralty and Maritime Laws in the Mediterranean*, 273–330; Udovitch, “An Eleventh Century Islamic Treatise on the Law of the Sea,” 38–39. The nine topics covered in Ibn ‘Umar’s treatise are: (1) hiring of seamen; (2) leasing of ships and freight charges; (3) problems between the contracting parties; (4) freight charges and arrangements between the contracting parties; (5) Jettison, salvage and contribution for losses; (6) limited liability of shipowners; (7) procedures of loading and unloading cargo; (8) partnership in a vessel; and (9) maritime *commenda* and payment arrangements.

⁴¹ See Khalilieh *Admiralty and Maritime Laws in the Mediterranean*; Khalilieh, *Islamic Law of the Sea: Freedom of Navigation and Passage Rights in Islamic Thought* (Cambridge: Cambridge University Press, 2019); Khalilieh, *Islamic Maritime Law*, 23–115; Deborah R. Noble, “The Principles of Islamic Maritime Law,” (PhD diss., Department of Law, School of Oriental and African Studies, The University of London, 1988); Muhammad M. El-Ghirani, “The Law of Charterparty with Particular Reference to Islamic Law,” (PhD diss., Glasgow College, 1990); Jamal al-Sumaiti, “The Contribution of Islamic Law to the Maritime Law,” (PhD diss., University of Wales, 2004); Muṣṭafā M. Rajab, *Al-Qānūn al-Baḥrī al-Islāmī ka-Maṣḍar li-Qawā’id al-Qānūn al-Baḥrī al-Mu’āṣir* (Alexandria: Al-Maktab al-‘Arabī al-Ḥadīth, 1990); ‘Abd al-Rahmān ibn Fāyī’, *Aḥkām al-Baḥr fī al-Fiqh al-Islāmī* (Jeddah: Dār Ibn Ḥazm, 1421/2000); Olivia R. Constable, “The Problem of Jettison in Medieval Mediterranean Maritime Law,” *Journal of Medieval History* 20 (1994): 207–220; Dimitrios G. Letsios, “Sea Trade as Illustrated in the ‘Rhodian Sea Law’ with Special Reference to the Reception of Its Norms in the Arabic Ecloga,” *Graeco-Arabica* 6 (1995): 209–225. As regards medieval European maritime laws, consult the following selective sources: Sir Travers Twiss, *Monumenta juridica: The Black Book of the Admiralty* (Wiesbaden: Kraus Reprint, 1965); Domenico A. Azuni, *The Maritime Law of Europe* (New York, 1806); James Reddie, *An Historical View of the Law of Maritime Commerce* (Edinburgh: William Blackwood and Sons, 2005, first published 1841); Robin Ward, *The World of the Medieval Shipmaster: Law, Business and the Sea, c. 1350–1450* (Woodbridge: The Boydell Press, 2009); Stanley S. Jados, *Consulate of the Sea and Related Documents* (Tuscaloosa: The University of Alabama Press, 1975); Jennifer L. Green, “The Development of Maritime Law in Medieval Spain: The Case of Castile and the Siete Partidas,” *The Historian* 58 no. 3 (1996): 575–587; Richard P. Jackson, “‘*Ma misi me per l’alto mare aperto*’: Mediterranean Seamen during the Medieval Commercial Revolution,” (PhD diss., Yale University, 1992); Edda Frankot, *Of Laws of Ships and Shipmen: Medieval Maritime Law and Its Practice in Urban Northern Europe* (Edinburgh: Edinburgh University Press, 2012); Frankot, “Medieval Maritime Law from Oléron to Wisby: Jurisdictions in the Law of the Sea,” in *Communities in European History: Representations, Jurisdictions, Conflicts*, edited by J. Pan-Montojo and F. Pedersen (Pisa: Pisa University Press, 2007), 151–172; Charles P. Sherman, “The Indebtedness of Modern Jurisprudence to Medieval Italian Law,” *The Canadian Law Times* 33 (1913): 869–877.

⁴² Paul M. Hebert, “The Origin and Nature of Maritime Liens,” *Tulane Law Review* 4 (1930): 383.

⁴³ William Tetley, “Arrest, Attachment and Related Maritime Law Procedures,” *Tulane Law Review* 73 (1999): 1900–1905; Neill Hutton, “The Origin, Development, and Future of Maritime Liens and the Action In Rem,” *Tulane Maritime Law Journal* 28 (2003–2004): 86; Griffith Price, “Statutory Rights In Rem in English Admiralty Law,” *Journal of Comparative Legislation and International Law*, 3rd ser., 27 (1945): 21–23; George Steckley, “Instance Cases at Admiralty in 1657: A Court ‘Packed up with Sutors,” *The Journal of Legal History* 7 (1986): 72–73; Hebert, “Origin and Nature of Maritime Liens,” 382–384.

⁴⁴ The translation is by the author. The document is addressed further at S.D. Goitein, “Jewish Trade in the Mediterranean at the Beginning of the Eleventh Century,” *Tarbiz* 36 no. 4 (1967): 387–389, doc. TS 13 J 17, f. 11; Hassan S. Khalilieh, “Goitein, the Geniza, and Aspects of Islamic Maritime Laws and Practices,” *Jewish History* 32 (2019): 531–533.

⁴⁵ Abraham L. Udovitch, *Partnership and Profit in Medieval Islam* (Princeton: Princeton University Press, 1970), 176; Benedikt Koehler, *Islam and the Birth of Capitalism* (Lanham: Lexington Books, 2014), 123–128; Hassan Khalilieh, “The *Lex Mercatoria Maritima*: An Abridgement of the Jurisprudential Principles of the Early Islamic Maritime *Qirād*,” *Comparative Studies of South Asia, Africa and the Middle East* 40 no. 2 (2020): 267–268.

⁴⁶ Khalilieh, “The *Lex Mercatoria Maritima*,” 269.

⁴⁷ Khalilieh, “The *Lex Mercatoria Maritima*,” 269–270.

⁴⁸ Khalilieh, “The *Lex Mercatoria Maritima*,” 269–270.

⁴⁹ Robert S. Lopez, “Les méthodes commerciales des marchands occidentaux en Asie du XI^e au XIV^e siècle,” in *Sociétés et compagnies de commerce en Orient et dans l’Océan indien: Actes du huitième colloque international d’histoire maritime*, edited by M. Mollat (Paris: S.E.V.P.E.N., 1970), 345; Lopez, “The Trade of Medieval Europe: The South,” in *The Cambridge Economic History of Europe*, vol. 6, pt. 2, *The Industrial Revolutions and After: Incomes, Population and Technological Change*, edited by M. Postan and H. Habakkuk (Cambridge: Cambridge University Press, 1966), 267; Abraham Udovitch, “At the Origins of Western *Commenda*: Islam, Israel, Byzantium?” *Speculum* 37 (1962): 198–207; Jairus Banaji, “Islam, the Mediterranean and the Rise of Capitalism,” *Historical Materialism* 15 (2007): 57–58.

⁵⁰ Robert W. Hillman, “Limited Liability in Historical Perspective,” *Washington and Lee Law Review* 54 no. 2 (1997): 619–621.

⁵¹ Jonah 1:5–7; Qur’ān 37:139–147.

⁵² Scott, *The Civil Law*, 4.208, 211; 9.23; and 11.288–89; Ashburner, *The Rhodian Sea Law*, 87, 90.

⁵³ Hassan Khalilieh, “Human Jettison, Contribution for Lives, and Life Salvage in Byzantine and Early Islamic Maritime Laws in the Mediterranean,” *Byzantion* 75 (2005): 227–229.

⁵⁴ The English word “average” derives from the Latin *avaria* (French *Avaria*, Spanish *averî*, Italian *avariata*), which in turn came from the Arabic ‘*awār* or ‘*awāriya*, signifying damaged merchandise or object. See Muḥammad Murtaḍā al-Ḥusaynī al-Zabīdī, *Tāj al-‘Arūs*, edited by Ḥussein Naṣṣār (Kuwait: 1974), 13:157–158; Edward W. Lane, *Arabic-English Lexicon* (Beirut: 1980), 5:2195, “‘*awār* or ‘*uwār*: a defect or an imperfection in an article of merchandise and in a garment, or piece of cloth, and in a slave, and in a beast, and so in the like, and in a house or tent”; Noble, “The Principles of Islamic Maritime Law,” 220.

⁵⁵ Khalilieh, “Human Jettison, Contribution for Lives, and Life Salvage,” 229–231.

⁵⁶ John Weskett, *A Complete Digest of the Theory, Laws, and Practice of Insurance* (London: 1781), 105, 525; Jane Webster, “The *Zong* in the Context of the Eighteenth-Century Slave Trade,” *The Journal of Legal History* 28 no. 3 (2007): 285–298, especially 291–293; Robin Pearson and David Richardson,

“Insuring the Transatlantic Slave Trade,” *The Journal of Economic History* 79 no. 2 (2019): 423–425, 438–439.

⁵⁷ Khalilieh, *Islamic Maritime Law*, 168–169.

⁵⁸ Abū Bakr Aḥmad ibn ‘Abd Allāh ibn Mūsā al-Kindī, *Al-Muṣannaf* (Masqaṭ: Wizārat al-Turāth al-Qawmī wa’l-Thaqāfa, 1983), 9:207.

⁵⁹ United Nations Convention of the Law of the Sea, art. 136, https://www.un.org/depts/los/convention_agreements/texts/unclos/part11-2.htm.

⁶⁰ Gertrudes J. Resink, *Indonesia’s History between the Myths: Essays in Legal and Historical Theory* (Amsterdam: The Royal Tropical Institute, 1968): 45; Ram P. Anand, “Maritime Practice in South-East Asia until 1600 A.D. and the Modern Law of the Sea,” *The International and Comparative Law Quarterly* 30 (1981): 446.

⁶¹ Qudāma ibn Ja‘far ibn Ziyād al-Baghdādī, *Al-Kharāj wa-Ṣinā‘at al-Kitāba* (Baghdad: Dār al-Rashīd li’l-Nashr, 1981), 47–51; Saif Sh. al-Murikhi, “Imārat al-Baḥr fī ‘Aṣr al-Khulafā’ al-Rāshidīn wa’l-Umawīyyīn (11–131/632–748),” *Majallat Kullīyyat al-Insāniyyāt wa’l-‘Ulūm al-Ijtīmā‘iyya* 23 (2000), 22–26; Picard, *Sea of the Caliphs*, 81–82.

⁶² Khalilieh, *Islamic Law of the Sea*, 135.

⁶³ Khalilieh, *Islamic Law of the Sea*, 132.

⁶⁴ Marcel A. Boisard, “On the Probable Influence of Islam on Western Public and International Law,” *International Journal of Middle East Studies* 11 (1980): 433–435; R. Charles Weller, “The Historical Relation of Islamic and Western Law,” in *Reason, Revelation and Law in Islamic and Western Theory and History*, edited by R. Charles Weller and Anver Emon (Singapore: Palgrave MacMillan, 2021): 32–35; Khalilieh, *Islamic Law of the Sea*, 223.

⁶⁵ Khalilieh, *Admiralty and Maritime Laws in the Mediterranean*, 252.

⁶⁶ Liaw Y. Fang, *Undang-undang Melaka (The Laws of Melaka)*, (The Hague: Martinus Nijhoff, 1976); Stamford Raffles, “The Maritime Code of the Malays,” *Journal of the Straits Branch of the Royal Asiatic Society* 3 (1879): 62–84; Richard Winstedt and Patrick E. de Josselin de Jong, “The Maritime Laws of Malacca,” *Journal of the Malayan Branch of the Royal Asiatic Society—Singapore* 29 (1956), 22–59; Mardiana Nordin, “Undang-undang Laut Melaka: A Note on Malay Maritime Law in the 15th Century,” in *Memory and Knowledge of the Sea in Southeast Asia* (Kuala Lumpur: Institute of Ocean and Earth Sciences, 2008), 15–21.