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## Piracy and reprisal in Byzantine waters: resolving a maritime conflict between Byzantines and Genoese at the end of the twelfth century

Daphne Penna\*

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In 1192, Genoese and Pisan pirates under the command of a Genoese corsair pillaged Venetian ships carrying merchandise and valuable gifts for the Byzantine emperor from the Sultan of Egypt. This paper examines the escalation and resolution of this maritime conflict between the Byzantines and the Genoese. Following Genoa's failure to resolve the incident as requested, the emperor implemented measures against the Genoese residents of Constantinople. The solution chosen by the Byzantine emperor bears striking resemblance to the practice of *ius represaliarum*, a practice familiar in Western Europe that would later evolve and influence international law in medieval and early modern Europe. The case in focus demonstrates how a merchants' custom linked to Western Europe was first 'introduced' into Byzantine practice.

**Keywords:** Byzantine law; reprisal; piracy; maritime law; Byzantium and the west; medieval international law

### I. The piracy incident and the emperor's solution

In November 1192, the Byzantine emperor Isaac II Angelos sent a furious letter to the consuls, senators and citizens of Genoa complaining about an act of piracy that had occurred within the Byzantine Empire.<sup>1</sup> The attack involved both Genoese and Pisan pirates. Sailing alongside a Pisan vessel, a Genoese ship commanded by Gulielmo Grasso<sup>2</sup> attacked and stole the property of

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<sup>1</sup>The original letter, written in Greek, is preserved in good condition and is kept, together with its Latin translation, in the state archives of the city of Genoa. For information and a summary of this document, see Franz, *Regesten der Kaiserurkunden des oströmischen Reiches von 565–1453, 2 Teil* (revised by Peter Wirth, CH Beck 1995) 312–13, document no 1612. This incident is also discussed, amongst others, by Angeliki Laiou, 'Byzantine Trade with Christians and Muslims and the Crusades' in Angeliki Laiou and Roy Parviz Mottahedeh (eds), *The Crusades from the Perspective of Byzantium and the Muslim World* (Dumbarton Oaks, 2001) 157–59.

<sup>2</sup>Gulielmo (or Guglielmo) Grasso was later appointed admiral of the Sicilian fleet by the German emperor Henry VI, following the latter's succession as king of Sicily (1194–

Byzantine subjects at the harbour of Rhodes. The pirates then pillaged Venetian ships that were returning from Palestine and Egypt carrying Byzantine and foreign envoys and merchants. The ships carried merchandise and many gifts from Saladin, the sultan of Egypt, for the Byzantine emperor, including horses, mules, wild and tame animals, balsam, aloeswood and 27 golden saddles decorated with pearls and other precious stones. It was common practice for ambassadors in the Near East to travel with valuable presents, presumably as a display of wealth and power and as a feature of the negotiating procedure.<sup>3</sup> The emperor describes how the pirates first approached the Venetian ships under the pretence of peace, acting ‘as friends’ before cunningly boarding the Venetian ships, killing many people, including Byzantine and foreign merchants and envoys, and stealing all the goods on board.<sup>4</sup> The emperor values the damage against his empire, his brother Alexios, an imperial officer and against the Byzantine merchants and he demands compensation for losses and punishment for the wrongdoers:<sup>5</sup>

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1197); see David Abulafia, *The Two Italies, Economic Relations between the Norman Kingdom of Sicily and the Northern Communities* (Cambridge University Press, 1977) 212–13. On the use of pirates as admirals and general questions on the role of piracy in international law in the Middle Ages, see Louis Sicking, *De piraat en de admiraal* (Brill, 2014). On medieval piracy, see also Emily Sohmer Tai, ‘The Legal Status of Piracy in Medieval Europe’ (2012) 10/11 *History Compass* 838.

<sup>3</sup>In two former embassies in 1187 and 1188, Saladin sent many gifts to the Byzantine emperor, including, but not limited to, elephants, leopards, spices and jewels. For a detailed account, see Charles M Brand, ‘The Byzantines and Saladin, 1185–1192: Opponents of the Third Crusade’ (1962) 37(2) *Speculum* 167. See also Anthony Cutler, ‘Gifts and Gift Exchange as Aspects of the Byzantine, Arab, and Related Economies’ (2001) 55 *Dumbar-ton Oaks Papers* 247; Arnoud-Jan Bijsterveld, ‘The Medieval Gift as Agent of Social Bonding and Political Power: A Comparative Approach’ in Esther Cohen and Mayke B De Jong (eds), *Medieval Transformations: Texts, Power and Gifts in Context* (Brill, 2001) 123–56.

<sup>4</sup>According to some sources, Saladin’s envoys were apparently also carrying a part of the True Cross: see Brand (n 3) 178.

<sup>5</sup>The Greek abstract that follows is from Franz Miklosich and Josef Müller, *Acta et diplomata graeca medii aevi – sacra et profana*, 6 vols (Vienna 1860–90; repr Aalen 1968) vol 3, doc no VI, 39/25–40/5; and the Latin translation in Cesare Imperiale di Sant’ Angelo, *Codice diplomatico della Repubblica di Genova dal MCLXIII al MCLXXX*, 3 vols (Istituto Storico Italiano per il Medio Evo, 1942) vol 3, doc no 25, 81/9–21: ‘Edocet igitur haec vos maiestas mea et reposcit a vobis iuxta foedus nostrum de interfectis ultionem et rerum omnium satisfactionem, quod si non compensabuntur haec omnia ab iis qui Constantinopoli inveniuntur Genuensibus, quos in libertate usque adhuc et in omni securitate tuetur maiestas mea in possessione immobilium Genuae donatorum intra Constantinopolim existentes observat solas merces ipsorum in securo ponens ut ab ipsis vendantur, sicut ipsi et ad quos velint, et pretium eorum deponatur, ut si cura vestrae regioni non fuerit vindictae tali debitae facinori et rerum omnium satisfactionis, compensetur ex iis maiestas mea et qui fuerunt in istis navigiis mercatores et exinde rursus sit erga vos maiestatis meae benevolentia, si vultis, salva et secunda.’

... αναδιδάσκει γοῦν ταῦτα ὑμᾶς ἢ βασιλεία μου, καὶ ἐπιζητεῖ ἐξ ὑμῶν κατὰ τὴν συμφωνίαν ὑμῶν τὴν τε ἐπὶ τοῖς ἀποκταίνουσιν ἐκδίκησιν καὶ τὴν τῶν πραγμάτων πάντων ἰκανώσιν· εἰ δὲ μὴ ἰκανωθῆσεται ταῦτα πάντα ἀπὸ τῶν ἐν τῇ Μεγαλοπόλει παρευρεθέντων Γεννοῦιτῶν, οὓς ἐν ἐλευθερίᾳ μέχρι καὶ νῦν καὶ ἐν πάσῃ ἀδείᾳ διαφυλάττει ἡ βασιλεία μου καὶ ἐν κατασχέσει τῶν δεδωρημένων τῇ Γεννοῦᾷ ἀκινητῶν ἐντὸς τῆς Μεγαλοπόλεως οὕτως, διατηρεῖ μόνως τὰς πραγματείας αὐτῶν ἐν ἀσφαλεῖ θεμένῃ, ὥστε παρ' αὐτῶν διαπωλεῖσθαι, καθὼς ἂν αὐτοὶ καὶ πρὸς οὓς βούλωνται, καὶ τὸ τίμημα τούτων ἐναποτίθεσθαι, ὡς ἂν εἰ μὴ φροντῖς τῇ ὑμετέρᾳ χώρᾳ γένοιτο τῆς ὀφειλομένης ἐπὶ τῷ τοιοῦτῳ ἀτοπήματι ἐκδικήσεως καὶ τῆς τῶν πραγμάτων πάντων ἰκανώσεως, ἰκανωθῆναι ταῦτα ἐξ αὐτῶν τὴν τε βασιλείαν μου καὶ τοὺς ἐν τοῖς τοιοῦτοις πλοίοις οὕτως πραγματευτάς καὶ ἔκτοτε πάλιν εἶναι τὴν πρὸς ὑμᾶς τῆς βασιλείας μου εὐμένειαν, εἰ βούλεσθε, σῶαν καὶ ἀσφαλεῆ.

... therefore my Majesty informs you of this and requests from you according to your agreement<sup>6</sup> the punishment for the killed persons and the compensation for all the goods; and if all these [the amounts that the emperor asks] will not be satisfied by the Genoese that are in Constantinople, whom until now my Majesty keeps in freedom and complete liberty in possession of the immovable properties granted to Genoa while they are in Constantinople, [then my Majesty] will preserve only their merchandises in security, in such a way that they can sell them in the way and to whom they want and have the price deposited, so that if your land does not care for restoring what is claimed because of this outrage and compensate for all the things, [then] compensation will be made from these to my Majesty and to the merchants who were on board on these ships; and from that moment my imperial good will towards you will, if you want, be safe and secure again.

This is clearly an initial warning on the part of the emperor to the Genoese. He cautions that if the Genoese do not compensate for the damage caused by the pirates, then Genoese residents of Constantinople will have to pay the price for this piracy incident. There must have been a substantial Genoese community in the Byzantine capital by this time; emperor Manuel I Komnenos had granted immovable property in Constantinople to Genoese by a privilege act, a so-called chrysobull, in 1169 and extended these privileges the following year.<sup>7</sup>

<sup>6</sup>The emperor most likely refers here to earlier agreements between Byzantium and Genoa, where it was stipulated that if a Genoese harms a Byzantine subject, this should be reported to Genoa by the emperor so that Genoa would administer justice. See Dafni Penna, *The Byzantine Imperial Acts to Venice, Pisa and Genoa, 10th–12th Centuries: A Comparative Legal Study* (PhD dissertation, University of Groningen, Eleven International Publishing, 2012) 171–72.

<sup>7</sup>See Dölger, 2 (n 1) 255–56, docs 1488, 258–59; also docs 1497, 1498. The word chrysobull (χρυσόβουλλον) derives from the Greek words ‘χρυσός’ (= gold) and ‘βούλλα’ (= seal) and was used for documents bearing the Emperor’s gold bulla. On the use of the chrysobull as an act of foreign policy, see Franz Dölger and Johannes Karayannopoulos, *Byzantinische Urkundenlehre. Erster Abschnitt: Die Kaiserurkunden* (CH Beck, 1968) 25, 94ff. Especially for the Byzantine documents concerning the Italian cities, see

The practice of granting immovable properties to foreigners in the Byzantine capital was born out of the need to provide foreign merchants with lodgings and landing areas to securely store their merchandise and conduct business transactions.<sup>8</sup> Venice, Pisa, Amalfi and Genoa had received such grants by the Byzantine emperor and gradually, all three cities established their own quarters in strategic areas of Constantinople along the Golden Horn.<sup>9</sup>

Emperor Isaac II Angelos had extended the Genoese property in Constantinople with a chrysobull only several months prior to issuing the letter of complaint about piracy to Genoa in 1192.<sup>10</sup> In the aforementioned abstract, the emperor refers to these grants of property and emphasises that he has until now allowed the Genoese to live freely and fully enjoy their property in the Byzantine capital. The emperor warns that the Genoese's favoured position in Constantinople would change if their city did not provide compensation for the damage caused by the pirates. The emperor also planned to withhold the merchandise of Genoese residents in Constantinople as security. While the Genoese could sell their merchandise to whomever they chose, their revenues would be deposited so that if Genoa did compensate for the damages, the emperor and the Byzantine victims could make use of those revenues to satisfy their losses.

The emperor was also concerned with ensuring the actual punishment for the pirates. The start of the excerpt draws a clear distinction between the criminal aspect of the incident, wherein the emperor petitions for the pirates' punishment ('τῆν τε ἐπὶ τοῖς ἀποκταίνουσιν ἐκδίκησιν'), and the civil aspect, in which the emperor demands payment of compensation for the stolen goods ('ικάλωσιν τῶν πραγμάτων'). Surviving documents reveal that the letter initiated further negotiations between Byzantium and Genoa. Unfortunately, the preserved material does not provide sufficient information about the resulting negotiations or resolution of this issue between Pisa and Byzantium. In a Byzantine Imperial letter to the city of Pisa from 1194, the emperor briefly refers to this piracy incident and names two Pisan pirates. However, he fails to mention the actual damage from these attacks, the compensation that Pisans should pay or any measure taken against the Pisans by the emperor.<sup>11</sup>

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also Walter Heinemeyer, 'Die Verträge zwischen dem Oströmischen Reiche und den italienischen Städten Genua, Pisa und Venedig vom 10. bis 12. Jahrhundert' (1957) 3 *Archiv für Diplomatik, Schriftgeschichte Siegel- und Wappenkunde* 79.

<sup>8</sup>See Olivia Remie Constable, *Housing the Stranger in the Mediterranean World* (Cambridge University Press, 2003).

<sup>9</sup>See Paul Magdalino, 'The Maritime Neighbourhoods of Constantinople: Commercial and Residential Functions, Sixth to Twelfth Centuries' (2001) 54 *Dumbarton Oaks Papers* 209, reprinted in Paul Magdalino, *Studies on the History and Topography of Byzantine Constantinople* (Variorum Ashgate, 2007) III.

<sup>10</sup>See Dölger, 2 (n 1) 308–10, doc 1609.

<sup>11</sup>See Dölger, 2 (n 1) 315, doc 1618.

The emperor's warning apparently had little effect on the Genoese for, as a chrysobull directed to Genoa from 1193 reveals, the emperor took action against Genoa soon after.<sup>12</sup> At the beginning of this document, the emperor refers once more to the piracy incident.<sup>13</sup> He adds that because the Byzantine merchants in Constantinople were increasingly angered and demanding of compensation, the emperor had ordered the Genoese living in Constantinople to pay a sum of 20,000 *hyperpyra*<sup>14</sup> as a deposit ('παρακαταθήκη', as it is referred to in the act) for damages suffered by Byzantines as a result of this piracy incident. The abstract of the chrysobull of 1193 reads as follows:

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<p>(ἡ βασιλεία μου) ... καὶ δὴ τοὺς Γενοῦϊτας ἐγκρατεῖς εἶναι ἀφεῖσα τῶν λοιπῶν πραγμάτων αὐτῶν, ἀπόμοιραν ἐξ αὐτῶν λαμβάνει ὑπὸ ἐγγυηταῖς τοῖς παρ' αὐτῶν δοθεῖσι καὶ ὡς παρακαταθήκην τὴν τοιαύτην ἀπόμοιραν κατέχειν παρ' αὐτῆς ἐκλεγείσιν, εἰς χιλιάδας ὑπερπύρους εἴκοσι ποσομένην, ἐπὶ αἰρέσει τοιαύτη, ὡς εἰ μὲν εἶδησιν λαβόντες τοῦ συμβάντος οἱ ἔποικοι τοῦ κάστρου Γενοῦας εἰς ἐκδίκησιν διεγερθεῖεν τοῦ πράγματος, ἀποδοθήσεται τούτοις ἡ κατασχεθεῖσα ἀπόμοιρα, εἰ δὲ ἀμελῶς περὶ αὐτὴν διατεθεῖεν, ἔσονται αἱ τοιαῦτα εἴκοσι χιλιάδες ὑπερπυροὶ παρὰ τοῖς Ῥωμαῖοις εἰς ἰκάνωσιν τῶν πραγμάτων αὐτῶν.<sup>15</sup></p>	<p>[and my Majesty] ... allowing the Genoese to keep the rest of their things, it receives part of them in the care of guarantors who have been given [by the Genoese] and have been chosen by my Majesty to hold this part as a deposit, which counts twenty thousand <i>hyperpyra</i>, under this condition that, if the inhabitants of the city of Genoa, when informed about the event, are roused into vindicating the matter, the portion held [by the guarantors] will be returned to them [to the Genoese]; if however they neglect to take care of this, these twenty thousand <i>hyperpyra</i> will be the property of the Byzantines as compensation for their goods.</p>
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Several questions arise from this abstract. Who were the guarantors? Why is the word 'deposit' ('παρακαταθήκη' in Greek and 'depositum' in the Latin translation)

<sup>12</sup>The original document in Greek has been preserved and is kept together with its Latin translation in the state archives of Genoa. For a summary and information on this document, see Dölger, 2 (n 1) 314–15, doc 1616.

<sup>13</sup>Here the emperor refers to a single Venetian ship that was carrying presents from the Sultan as well merchandise and Byzantine and foreign envoys. In the earlier letter (see n 1) he refers to more Venetian ships.

<sup>14</sup>The *hyperpyron* was a gold coin introduced by Alexios I Komnenos in 1092: see Alexander Kazhdan et al, *The Oxford Dictionary of Byzantium* (Oxford University Press, 1991) vol 2, 964–65 with basic bibliography.

<sup>15</sup>Miklosich and Müller (n 5) doc VII, 42/6–15. See also the Latin translation in Cesare Imperiale di Sant'Angelo (n 5) doc 35, 103/17, 21–29: '(maiestas mea) ... et sinens quidem Genuenses reliquas res suas servare, partem ex ipsis sumit sub vadibus ab iisdem datis et ab ipsa designatis ad detinendam tamquam depositum huiusmodi partem in *hyperpyrorum* viginti millia computatam. ea conditione ut si incolae civitatis Genuae eventus notitiam nacti ad facinoris vindictam excitarentur, reddenda esset iis deposita pars. si vero negligenter circa eam vindictam se se habuerint, erunt huiusmodi viginti millia *hyperpyrorum* apud Romanos in suarum rerum compensationem.'

used here together with the word ‘guarantors’ (‘ἐγγυηταί’ in Greek and ‘vades’ in the Latin translation)? Is it then a special kind of deposit? Further, what were the exact procedures for collecting the money from the Genoese living in Constantinople? For example, did the Genoese community decide on its own which of its members were to pay and the amount they were to render? No Genoese names or representatives of the Genoese community are mentioned at this point.

## II. The solution of the ‘deposit’ and the *ius represaliarum*

The aim of this paper is not to investigate all of the aforementioned questions.<sup>16</sup> Rather, I would like to focus on one interesting point in the abstract relating to the emperor’s strategy in resolving the maritime conflict with the Genoese. The emperor’s order for the Genoese living in Constantinople demanded payment of money to certain Byzantines as deposit under the following condition: if Genoa did not resolve the matter, the money would be given to those Byzantine merchants suffering damages of the Genoese pirates. In other words, the Genoese living in Constantinople were held liable for something with which they had nothing to do. Their own property was at risk and they were held liable for the unlawful acts of their countrymen. Logically, the Genoese community in Constantinople would have been displeased with this measure, as would other foreign merchants living in the Byzantine capital. If the emperor could order such a measure against the Genoese, he could also extend it to other foreigners in similar situations. No Italian merchant living in the Byzantine capital would have been thrilled by this measure. For the emperor, who surely strove for good relations with Italians residing in the capital, the order must have been an ultimate measure. That emperors sought to preserve good relations with the Italians is, for example, evident in the commercial and financial privileges that the Italians received in the eleventh and twelfth centuries.<sup>17</sup>

This emperor’s measure bears a striking resemblance to the so-called *ius represaliarum*, a practice applied in twelfth-century Europe that stipulated that when an individual’s claims against a foreign debtor could not be paid, then the claimant could request payment from a compatriot of the debtor. The compatriot who paid the debt could then request repayment from the original debtor. This practice, as described above, was the first stage of development in the notion of reprisal, that being ‘the period of unlimited private self-help in the Middle Ages’<sup>18</sup> initiated

<sup>16</sup>For an analysis of this ‘deposit’ and further legal questions arising from this chrysobull, see Penna, *The Byzantine Imperial Acts* (n 6) 175–94.

<sup>17</sup>For the commercial privileges, see for example, Ralph-Johannes Lilie, *Handel und Politik zwischen dem byzantinischen Reich und den italienischen Kommunen Venedig, Pisa und Genua in der Epoche der Komnenen und der Angeloi: 1081–1204* (AM Hakkert, 1984); David Jacoby, ‘Italian Privileges and Trade in Byzantium before the Fourth Crusade: A Reconsideration’ (1994) 24 *Annuario de estudios Medievales* 349.

<sup>18</sup>From Matthias Ruffert, ‘Reprisals’ in *Max Planck Encyclopedia of Public International Law*, *Oxford Public International Law* (Oxford University Press, 2015) <http://opil>.

because ‘states did not intervene in the exercise of such action’.<sup>19</sup> Travelling merchants applied this practice frequently and often in an uncontrolled way.<sup>20</sup> In a later stage, the state and the political authorities played a role in the development of reprisals. The *ius represaliarum* corresponded to a form of collective liability as it applied to obligations for the payment of debts and damages made by persons of the same nation. There were some exceptions from this practice. The best-known exception in the twelfth century was that granted to the students of Bologna by Frederick I Barbarossa by his constitution *Authentica Habita* in 1158.<sup>21</sup> In order to promote the study of law in Bologna, Frederick I Barbarossa facilitated the students’ residency by excluding them from this practice. Other exceptions to the *ius represaliarum* principle included pilgrims and merchants at fairs.

The chosen resolution in our case does not correspond exactly to the *ius represaliarum* because, as is described in the document, the Byzantine emperor was the one ordering payment of money as a deposit. It was not those who suffered damage from the Genoese (namely the Byzantine merchants) who asked for compensation directly from the Genoese living in the Byzantine capital, but rather the emperor who ordered the Genoese in Constantinople to pay the deposit in favour of his merchants.<sup>22</sup> The emperor had also suffered damage as the pirates had also stolen valuable gifts from the sultan of Egypt, but in this case – according to the preserved fragment – the emperor sought a solution, not for himself, but for the compensation of Byzantine merchants. As is mentioned in the chrysobull to Genoa from 1193, the emperor took action due to the growing anger and demand of Byzantine merchants to receive compensation for their losses;<sup>23</sup> the emperor had to do something to calm his subjects. Despite these differences, the *ratio* in our case was the same as that encountered in the *ius represaliarum*: the Genoese in Constantinople were ordered to pay a deposit as security for damages inflicted by their countrymen upon Byzantine subjects. Their liability was rooted in their nationality, which they shared with the pirates.

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[ouplaw.com](http://ouplaw.com), under *A. Historical Evolution of the Concept of Reprisals*. The author gives a basic historical outline and the current situation of the concept of reprisals with further bibliographical references.

<sup>19</sup>*ibid.*

<sup>20</sup>Wilhelm Grewe, *Epochen der Völkerrechtsgeschichte* (Nomos Verlagsgesellschaft, 1984) 237.

<sup>21</sup>See H Koeppler, ‘Frederick Barbarossa and the Schools of Bologna: Some Remarks on the *Authentica Habita*’ (1939) 54 *The English Historical Review* 577.

<sup>22</sup>See Section III below, however, for a more thorough discussion of the initiation of the chosen solution and the role of the Byzantine merchants.

<sup>23</sup>Miklosich and Müller (n 5) doc VII, 41/33–35: ‘ἀγριωτέρωσ αὐτοῖσ ὁ τῶν Κοωνσταντινουπολιτῶν ἐπηγείρετο δῆμοσ, καὶ θερμότερωσ ἐδεῖτο τῆ βασιλείασ μου ἐξ αὐτῶν ἰκνωθῆναι τὰ ἀπὸ του τοιοῦτου πλοίου ἀφαιρεθέντα αὐτῶν ...’; and the Latin translation in Cesare Imperiale di Sant’Angelo (n 5) document no 35, 103/14–17: ‘tum rursus acerbius in ipsos Constantinopolitanus incitabatur populus et ferventius precabatur maiestatem meam ut ab iis resarcirentur ea quae ex eo navigio fuerant ablata ...’



A final and, in my view, important point of interest in this case concerns the initiatives for employing such a legal structure. Was it an initiative of the emperor (more accurately, the imperial court), or was it the Byzantine merchants who pitched the solution as a means of obtaining security for their losses? Alternatively, is it possible that the Genoese community in Constantinople pitched the idea as an act of goodwill aimed at facilitating their residency and businesses in the Byzantine capital? This point is interesting since, as noted above, the resolution closely resembles the *ius represaliarum* practice applied in other parts of Europe. This implies that those proposing the solution were familiar with this practice. In order to better understand the whole incident and the legal frameworks employed, let us examine the fate of this ‘deposit’, as the emperor calls it. Did the Byzantine merchants actually receive compensation from the Genoese?

In the same chrysobull from 1193, the emperor mentions the resumption of negotiations with Genoa following his issuance of the order. Genoese envoys assured the emperor that Genoa would do its very best to find these pirates and punish them. Having received this assurance, the emperor returned the deposited money to the Genoese community in Constantinople, thereby restoring relations between the Byzantine and the Genoese sides. The Genoese envoys confirmed in an oath that they had, among other things, received the money from the Byzantine guarantors and relayed it back to the Genoese merchants. The corresponding passage, recounting the envoys’ oath, reads as follows:

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... πρὸ πολλοῦ οἱ τοιοῦτοι τοῦ κάστρου  
Γενούας ἀπεδιώχθησαν διὰ τὸν  
ἐκδεδιητημένον αὐτῶν βίον καὶ τὴν ἐν  
οὐκ ἀγαθοῖς ἀναστροφῇ, καὶ ἐλάβομεν  
ἡμεῖς τὰ τοιαῦτα νομίσματα εἰς εἴκοσι  
χιλιάδας ὑπέρπυρα ποσοῦμενα ἀπὸ  
χειρῶν τοῦ Ὁξεοβαφεοπούλου Ἰωάννου  
εἰς τὰς ἡμετέρας χεῖρας καὶ δι’ ἡμῶν οἱ  
ταῦτα τοῖς ἐγγυηταῖς παραθέμενοι  
Γενουῖται πραγματευταὶ οἱ καὶ τῇ  
Μεγαλοπόλει κατὰ τὸν νοέμβριον μῆνα  
τῆς διελευσῆς ἐνδεκάτης ἰνδικτιῶνος  
κατ’ ἐμπορίαν προσοκεῖλαντες μετὰ  
τοῦ πλοίου τοῦ Γενουῖτου Ἐρρίκου τοῦ  
Νεβιτέλα ...<sup>24</sup>

... these [the Genoese who pillaged the  
ship and stole the goods] have been  
‘chased away’ a long time ago from  
Genoa because of their degenerate way  
of life and their conversion towards evil,  
and we have received these coins, to the  
amount of 20,000 *hyperpyra* from the  
hands of Oxebapheopoulos John into  
our hands and through us the money was  
handed to the Genoese merchants, who  
have deposited this [money] to the  
guarantors, who came ashore in  
Constantinople in the month of  
November of the past eleventh *indiction*,  
to trade with the ship of the Genoese  
Henricus Nebitella ...

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<sup>24</sup>Miklosich and Müller (n 5) doc VII, 44/11–19; and the Latin translation in Cesare Imperiale di Sant’Angelo (n 5) document no 35, 105/17–24: ‘sicut a multo tempore illi a civitate Genuae abacti fuerant propter degenerem ipsorum vitam et non ad bonam conversionem, et accepimus nos talem pecuniam in viginti mille hyperpyra numeratam a manibus Oxebapheopuli Ioannis in nostras manus et per nos illi qui sponsoribus deposuerant genuenses mercatores, quique Constantinopolim mense novembri praeteritae indictionis undecimae causa mercaturae appulerant cum navigio genuensi Henrici Nevitellae ...’

John Oxeobapheopoulos must have been one of the ‘guarantors’ who kept the deposited money. He was likely a respected and wealthy individual, for the care of such a large amount would have demanded a person of high standing.<sup>25</sup> The emperor must have also trusted him, although I do not believe that Oxeobapheopoulos had direct links to the imperial milieu or served as a Byzantine official as no title or function is mentioned in connection with his name. It is also unlikely that Oxeobapheopoulos was one of the Byzantine merchants victimised by Genoese pirates, for someone in such a position would have likely resisted relinquishing the sum prior to receiving actual compensation. The document gives the overall impression that the Genoese envoys wished to reassure the emperor that the city of Genoa would do its utmost to locate the Genoese pirates and deliver them to the Byzantine capital. The envoys ensured the emperor that Genoa would continue to hunt the Genoese wrongdoers and bring them before the emperor, promising further to respect all agreements made with the empire. The emperor recounts that the Genoese envoys beseeched him to forego punishing the entire city of Genoa for the evil acts of two or three Genoese. The emperor added that he was ultimately convinced and thus decided to grant a new chrysobull for Genoa.

It is highly doubtful that the Genoese truly intended to proceed in arresting and delivering the pirates before Byzantine justice. The pirates were known to the Genoese and, in fact, their names were even mentioned in the chrysobull. Remarkably, the chrysobull even recounts that one of these Genoese pirates, Vaca Buba, was the nephew of an official Genoese envoy, Balduino Guercio, commissioned to negotiate with the emperor.<sup>26</sup> As mentioned previously, the emperor had ordered the Genoese in Constantinople to deliver payment in the form of a security ‘deposit’ following the complaints of Byzantine merchants. This pressure essentially compelled the emperor to act. While the emperor had also suffered due to the loss of valuable gifts from the sultan of Egypt and the murder of Byzantine ambassadors, his references to the ‘deposit’ are directed solely at the Byzantine merchants and make no mention of his own losses.<sup>27</sup> According to the preserved documents, the Genoese envoys who negotiated with the emperor on behalf of

<sup>25</sup>Laiou (n 1) 177 notes that the meaning of John Oxeobapheopoulos’ name (‘red purple dyer’) clearly connects him to the marketplace, but adds that ‘it is impossible to determine whether he was a silk manufacturer or a silk merchant or whether this was a family name’.

<sup>26</sup>Miklosich and Müller (n 5) doc VII, 44/11–19; and the Latin translation in *Cesare Imperiale di Sant’Angelo* (n 5) doc 35, 105/14–15.

<sup>27</sup>See Miklosich and Müller (n 5) doc VII, 41/20–23. The envoys state that the Genoese living in Constantinople deposited the money in relation to damage caused to the empire and to the Byzantine merchants, the murder of the Byzantine envoys on the ship, and the loss of gifts that were addressed to the emperor by the Sultan of Egypt: ‘*παρατεθέντα αἰτία τῆς γεγωνίας ζημίας τῆ ἀγία αὐτοῦ βασιλεία καὶ τοῖς Ῥωμαίοις πραγματευταῖς καὶ τοῦ φόνου τῶν ἀποκρισαρίων ... καὶ τῆς ἀφαιρέσεως τῶν φαρίων καὶ ἄλλων αἰγυπτιακῶν ζώων ...*’: Miklosich and Müller (n 5) doc VII, 43/30–35. The emperor, however, does not mention that the deposit was given for the loss that his empire suffered (the murder

Genoa promised that their city would turn against their compatriots who pillaged the ship, yet there is no mention of any real compensation paid out to the Byzantine merchants. Ultimately, Byzantine imperial documents suggest that neither the Byzantine merchants nor the emperor ever received real compensation.

Viewed together, the information suggests that the emperor's position was weak when negotiating with Genoa. My suspicion is that the emperor's order that Genoese residents of Constantinople surrender payments as a 'deposit' served only to calm the angry and threatening voices of the Byzantines and thus postpone the controversy until the piracy incident was ultimately forgotten. Indeed, this is what happened. The emperor was in a disadvantageous position to negotiate, for he remained dependent on Italian help. This is evident in imperial acts directed to the Venetians, who gradually received important commercial privileges as well as significant legal privileges in 1198.<sup>28</sup> We must remember that this was a period of Crusades, when armies and navies travelled through Byzantium on their way to the Holy Land. This was certainly not the right time for an emperor to make enemies.

### III. A 'Western influence' in the emperor's solution?

The conclusion of this incident is disappointing in respect to Byzantine interests, but is valuable in unravelling information on the resolution of maritime conflicts. To my knowledge, the resolution proposed by the emperor in the aforementioned case and the influence of *ius represaliarum* is unique. Because the practice of *ius represaliarum* was used across Europe throughout the Middle Ages, it is in my view highly plausible that this emperor's decision reflects some degree of 'Western influence'. It seems that we are dealing with an iteration of *ius represaliarum* as it was introduced into Byzantine practice under a slightly different form.<sup>29</sup> In trying to understand the use of a legal structure with clear resemblances to the *ius represaliarum* practised in other areas of Europe, we must also address the source or sources of initiation. In other words, we must question which individual or individuals first proposed it as a means of resolving the conflict.

There are three possibilities. The first is that Byzantine merchants proposed this measure. There is some evidence for such a hypothesis. The emperor opens the chrysobull of 1193 by recounting how Byzantine merchants had complained about their losses on a daily basis, petitioning the emperor to grant them

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of the envoys and the loss of the gifts) but that it was made because of the damage suffered by the Byzantine merchants.

<sup>28</sup>See on this Penna, *The Byzantine Imperial Acts* (n 6) 62–99, 282–83.

<sup>29</sup>I have not encountered pre-existing Byzantine practices related to the *ius represaliarum*. Justinian by *Novel 52* forbids the seizure of someone's property as a pledge for the debt of someone else. See Nico van der Wal, 'Pignoratium' in Renée IA Nip and others (eds), *Media Latinitatis: A Collection of Essays to Mark the Occasion of the Retirement of Lodewijk Jozel Engels* (Brepols Publishers, 1996) 355–58 with references.

compensation derived from the estates of Genoese residents of Constantinople.<sup>30</sup> The emperor relayed these complaints to an assembly of Genoese residents and asked them to attend of the matter. According to the emperor, the Genoese living in the Byzantine capital first procrastinated, denying any connection to the pirates and claiming that their city had long ago expelled such criminals.<sup>31</sup> As the Byzantine merchants grew increasingly discontent, the emperor ordered the solution of the 'deposit'. While it is unknown whether the Byzantine merchants proposed the actual solution, this Byzantine document reveals that these merchants first made the link between the payment of compensation owed to them and the Genoese community in Constantinople. Perhaps Byzantine merchants had encountered the practice of *ius represaliarum* in their travels and, borrowing from it, proposed the idea of a 'deposit' to the imperial court. Because this practice was familiar in the West, the Genoese may have been more willing to accept it. The Genoese would not have otherwise agreed to the payment of a deposit in the first place. The Byzantine documents do not identify the Byzantine merchants who had suffered loss from the Genoese and Pisan pirates by name; rather, they are always referred to as a group, as 'the merchants' ('πραγματευταί' in Greek and 'mercatores' in Latin).

A second possibility is that the Genoese residents of Constantinople proposed the measure due to increasing fear of the Byzantine merchants. After all, the Genoese conducted businesses in the Byzantine capital and would thus seek to avoid initiating bad relations with the Byzantine emperor and the locals. Latins were not always welcomed in Constantinople and the years before had witnessed several flares of hostility between Italians and Byzantines in Constantinople. Many Latins had been slaughtered in the Byzantine capital following the overthrow of Maria of Antioch, mother and regent of Alexios II Komnenos, by the anti-Latin Andronikos I Komnenos in 1182. The Genoese and Pisan merchant quarters in Constantinople suffered the most during these attacks.<sup>32</sup> Bitter

<sup>30</sup>... και τὴν ἐκδίκησιν λιπαρῶς ἐξαιτουμένων καὶ τῆς βασιλείας μου ὁσημέραι δεομένων, ἐκχωρῆσαι αὐτοῖς ἰκανωθῆναι τὰ πράγματα αὐτῶν ἐκ τῶν ἐνταῦθα εὕρισκομένων Γενοῦϊτῶν ...': Miklosich and Müller (n 5) doc VII, 41/20–21. See also the Latin translation in Cesare Imperiale di Sant'Angelo (n 5) doc 35, 103/4–6: 'et vindictam enixe depositibus et maiestatem meam tota die deprecantibus ut compensari permitteret res eorum a Genuensibus qui hic inveniuntur ...'

<sup>31</sup>... ὡς δὲ οὗτοι τὴν τοῦ τηλικούτου πράγματος ἀνεβάλλοντο φροντίδα καὶ ἐαυτῶν ταύτην ἀποτινάσσεσθαι ἐπέφρωντο, τὴν τῶν τολμησάντων τοῦτο κακίαν προβαλλόμενοι καὶ τὴν διὰ ταύτην ἀπὸ τῆς χώρας αὐτῶν πρὸ χρόνων ἤδη πολλῶν ἀποσόβησιν ...': Miklosich and Müller (n 5) doc VII, 41/29–32. See also the Latin translation in Cesare Imperiale di Sant'Angelo (n 5) doc 35, 103/11–14: '... at cum hi talis facinoris reicerent curam eamque a se removere tentarent, obiiicientes malitiam eorum qui id patrauerant, eorumque a multis annis a propria regione expulsionem ...'

<sup>32</sup>See for example, Michel Balard, *La Romanie Génoise, XIIe – Début du XVIe Siècle*, 2 vols (École Française de Rome, 1978) vol 1, 31–33; David Nicole, *Byzantium and Venice: A Study in Diplomatic and Cultural Relations* (Cambridge University Press, 1992) 106–108.

memories of the massacre were still fresh in the minds of the Genoese living there and the community would not have risked facing another catastrophe within such a short time. The incident with the Genoese pirates surely challenged efforts to restore good relations with the locals, and the idea of temporarily sacrificing part of their property may have been a smart move for the long-term prosperity of the Genoese community of the Byzantine capital.

A third possibility is that the solution was initiated by members of the emperor's court, namely by officials working at the Imperial chancery. To explore this possibility, we must examine a particular category of Byzantine officials who orchestrated treaties with Italian cities and may have played a role in engineering the emperor's proposed resolution. These officers were necessary for conducting negotiations with Italian envoys and for producing official Latin translations of Greek documents.<sup>33</sup> An official in this position was called an 'interpreter' (ἑρμηνευτής or διερμηνευτής) and belonged to the staff of the *logothetes tou dromou*, the office charged with the administration of foreign affairs.<sup>34</sup> Until this point, I have referred to Byzantine documents, including chrysobulls and other letters addressed to Genoa by the emperor. While the emperor first issued these acts in Greek, all documents were translated into Latin by Byzantine officers so that the Italians – in this case the Genoese – could understand the contents of the document. A copy of the original Greek act and its Latin translation were kept in Byzantine archives while another copy of the original Greek and its Latin translation was given to the Genoese to take home. Both documents served also as proof of the agreement between the Byzantine emperor and the Italians – here the Genoese – and the privileges that it afforded the latter. This information explains why some of these documents have survived in Italian archives in both Greek and Latin.<sup>35</sup> We know the names of several Byzantine interpreters, and it is apparent, based on those names, that some were either foreign or of foreign

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<sup>33</sup>On the problems of translating Latin into Greek by Byzantine authorities, see Christian Gastgeber, 'Die Lateinische "Übersetzungsabteilung" der byzantinischen Kaiserkanzlei unter den Komnenen und Angeloi', 3 vols (PhD dissertation, Vienna 2001); 'Die Lateinische "Übersetzungsabteilung" der byzantinischen Kaiserkanzlei unter den Komnenen und Angeloi, Neue Ergebnisse zur Arbeit in der byzantinischen Kaiserkanzlei' in Michel Balard, Élisabeth Malamut and Jean-Michel Spieser (eds), *Byzance et le monde extérieur: Contacts, relations, échanges* (Publications de la Sorbonne, 2005) 105–22.

<sup>34</sup>On the Byzantine interpreter, see *The Oxford Dictionary of Byzantium* (n 14) vol 2, 1004 with bibliographical references.

<sup>35</sup>Unfortunately, not all Byzantine imperial documents addressed to Italian cities have survived in both Greek and Latin. For example, all Byzantine imperial acts to Venice of this period (tenth to twelfth centuries) have been preserved only in Latin versions, all copies of the original Latin translation. Some documents have not been preserved at all, and we only have indirect references to them in other sources. The Byzantine imperial acts directed to the city of Genoa are kept today in the state archives of Genoa. The *sigillion* for the Genoese Guglielmo is kept in the Archivio della Società Ligure di Storia Patria, see Dölger, 2 (n 1) 333, doc 1660.

origins. This prompts questions as to the role of foreign interpreters in negotiations and the formulation of the treaties with the Italians. It is obvious that they were there to translate, but the questions is whether these officers could exert influence during the negotiations, whether they could interfere and shape the phrasing of the final texts and, generally speaking, whether they could serve the interests of their cities on different occasions. We know of one incident in which a foreign interpreter openly acted in favour of his city.

In 1166, the Byzantine state intended to confiscate the estate of Signoretto, a wealthy Pisan who had died in Constantinople. However, the confiscation did not take place and Signoretto's estate ended up in Pisan hands following intervention by the Pisan Leo Tuscus (from Tuscany), an imperial interpreter and with close ties to the imperial milieu. We know of this incident from a letter, sent to the consuls of Pisa by Hugo Etheriano, a Pisan living in Constantinople.<sup>36</sup> Hugo Etheriano recounted the matter to the Pisan consuls, adding that Leo Tuscus was a 'distinguished interpreter' ('*egregius interpret*'). This suggests that it was also possible that Italian interpreters exerted their influence in our case, proposing to the emperor in order to quiet the angry voices of Byzantine merchants.

Much later, when the Latin Empire was nearing expiration, the Byzantine emperor Michael VIII Palaiologos issued a chrysobull for Genoa known as the treaty of Nymphaion.<sup>37</sup> In that document from 1261, the emperor confirmed earlier privileges granted to the Genoese and described the obligations of both Byzantium and Genoa. One of the Byzantine obligations was to protect the Genoese against piracy. It elaborates that pirates who acted against the Genoese were to be expelled from the empire and prosecuted according to the law. Seeking to restore relations with Genoa, the emperor assured the Genoese that none of their compatriots would be held liable for the crimes or debts of other Genoese.<sup>38</sup> Did this clause echo the measures that emperor Isaac II Angelos

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<sup>36</sup>The letter is published in Giuseppe Müller, *Documenti sulle Relazioni delle città Toscane coll'Oriente Cristiano e coi Turchi fino all'anno MDXXXI* (Firenze Cellini, 1879; repr Societa multigrafica editrice, 1966) 11–13, doc X. The case of the Pisan Signoretto was rather complicated because he is mentioned as a 'burgensis' of the emperor Manuel. See Peter Classen, *Burgundio von Pisa, Richter-Gesander-Übersetzer* (Sitzungsberichte der Heidelberger Akademie der Wissenschaften, Philos-hist Klasse 4, 1974) 24; Bernard Hamilton, Janet Hamilton and Sarah Hamilton, *Hugh Eteriano, Contra Patarenos* (Brill, 2004) 135–41; Penna, *The Byzantine Imperial Acts* (n 6) 199–203.

<sup>37</sup>For information and a summary of this document, see Franz Dölger, *Regesten der Kaiserurkunden des oströmischen Reiches von 565–1453, 3 Teil* (revised by Peter Wirth, CH Beck 1977) 73–75, doc 1890. The document has been preserved only as a Latin copy.

<sup>38</sup>*ibid.*, 73. See Ioannes and Panagiotes Zepos, *Jus Graecoromanum*, 8 vols (Georgios Fexes & Son, 1931; repr Aalen 1962) vol 1, 489–90: 'Item promisit et convenit, quod non impediēt vel impediēdi faciēt nec permittēt in toto nostro Imperio, quod habet et Dei Misericordia adquisierit, aliquem Januensem vel de districtu vel dictum Januensem pro facto vel delicto alterius occasione aliqua in personis vel rebus, sed poena suos teneat auctores, ita quod caeteri nullum damnum vel laesionem patiantur pro delicto alterius, debito vel rapina.'

took against the Genoese residents of Constantinople in 1192? As we have seen, those residents had been held liable for the wrongful acts of their countrymen, and perhaps later residents of Constantinople (and throughout the empire) sought assurance that the emperor would not pursue measures against them for the wrongdoings of other Genoese in the future. Piracy was, after all, a common phenomenon in the Mediterranean in the thirteenth century.<sup>39</sup> An agreement between Byzantium and Genoa in 1272, which was ratified as a treaty in 1275, holds that the Genoese *podesta* was competent to punish Genoese pirates who caused damage to subjects of the empire.<sup>40</sup> If these pirates were not caught, the victim was to be compensated from the wrongdoer's property after the city of Genoa had investigated the matter. While it is true that these provisions were aimed as a response to frequent incidents of piracy around this time,<sup>41</sup> it should be added that they were not completely new. Similar provisions were regulated, for example, in the first preserved chrysobull directed to Genoa by emperor Manuel I Komnenos in 1169.<sup>42</sup> Hence, the treaties of the Byzantine emperors with the Italian city-states during the Palaiologan period were rooted in earlier Byzantine documents from before 1204.

#### IV. Conclusions

The incidents described in this paper, as well as the proposed solution by the Byzantine emperor, show that Byzantium was not at all isolated from the rest of the world. I emphasise this because there is still some tendency to present Byzantium as something exotic and oriental, a state that existed in a remote and autonomous corner of South-Eastern Europe. But that is certainly not the case.<sup>43</sup> The persisting prejudice toward Byzantium is manifest in the common use of the word 'byzantine' to describe something bureaucratic, difficult to understand or

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<sup>39</sup>Peter Charanis, 'Piracy in the Aegean during the Reign of Michael VIII Palaeologus' (1950) X *Annuaire de l'Institut de Philologie et d'Histoire Orientales et Slaves* 127, repr in Peter Charanis, *Social, Economic and Political Life in the Byzantine Empire, Collected Studies* (Variorum Ashgate, 1973) XII.

<sup>40</sup>For a summary and information on this treaty, see Dölger, 3 (n 37) 124–25, doc 2019. See also Balard (n 32) 52–53 who refers to the negotiations and the conclusion of this treaty with bibliographical references.

<sup>41</sup>Charanis (n 39) 134.

<sup>42</sup>Dölger, 2 (n 1) 255–56, doc 1488. See in detail Penna, *The Byzantine Imperial Acts* (n 6) 138ff.

<sup>43</sup>Averil Cameron and Judith Herrin have drawn considerable attention to this problematic approach to Byzantium and the Byzantines. In many of her writings, Cameron discusses the continuous absence of Byzantium in works dealing with the history of Europe and the Mediterranean. See for example, Averil Cameron, *The Byzantines* (Blackwell Publishing, 2006) esp VIII–XII, 1–19; *Byzantine Matters* (Princeton University Press, 2014). See also Judith Herrin, *Byzantium: The Surprising Life of a Medieval Empire* (Allen Lane Penguin Books, 2007); *Unrivalled Influence: Women and Empire in Byzantium* (Princeton University Press, 2013) 10–11.

corrupt.<sup>44</sup> Byzantium was always in contact with other regions; indeed, one cannot imagine the opposite for an empire. Particularly in this period, that is to say the period of Crusades and the rise of commerce, foreign interactions increased and intensified. Byzantines were not cut off from others. We should remember that Byzantine Constantinople was at this time a cosmopolitan city *par excellence*, a mosaic of different nations and peoples. The Latin community in Constantinople was estimated at roughly 60,000 in the 1180s.<sup>45</sup> As mentioned above, Italians had their own districts in the Byzantine capital and in fact occupied important commercial areas. These foreigners lived there for quite some time, and it is inevitable that Byzantines grew familiar with their practices, customs and laws and engaged in mutual influence.

In terms of legal interaction between Byzantium and the West, it is worth mentioning that Italian merchants certainly contributed in creating a homogenous maritime law within the medieval Mediterranean. By comparing, for example, maritime legal provisions in the Byzantine imperial documents for Italians with similar provisions encountered in the Crusader charters for the same Italian cities, one observes a mutual influence between Byzantine documents, on the one hand, and the Crusader charters, on the other hand.<sup>46</sup> In reflecting on the developments of reprisal laws in the medieval Mediterranean, and the degree to which real contact between Byzantium and the West influenced these changes, we can note at least one clause derived from a Crusader charter that was promulgated in Pisa by the count of Tripoli Bohemund IV in 1199. With that document, that Crusader leader assured the Pisans that he would not hold Pisans resident of Tripoli liable for damages made by their fellow-countrymen.<sup>47</sup> It is very tempting, and fairly possible, to conclude that the clause was inserted in this Crusader charter to the benefit of Pisans due to the hardships faced by the Genoese in Constantinople when they were held liable by the Byzantine emperor for the wrongful acts of Genoese pirates.

The structure of our documents corresponds somewhat to the practice of *ius represaliarium* as it was applied throughout medieval Western Europe.<sup>48</sup> In 1192, when the piracy incident took place and emperor Isaac II Angelos

<sup>44</sup>Cameron, *The Byzantines* (n 43) 3–5.

<sup>45</sup>See Peter Schreiner, 'Untersuchungen zu den Niederlassungen Westlichen Kaufleute im Byzantinischen Reich des 11 und 12 Jahrhunderts' (1979) 7 *Byzantinische Forschungen* 175.

<sup>46</sup>See here Laiou (n 1) 179–87. See also Daphne Penna, 'Similar Problems, Similar Solutions? Byzantine Chrysobulls and Crusader Charters on Legal Issues Regarding the Italian Maritime Republics' (paper presented at International Conference 'Byzantine Studies Alive!', Radboud University Nijmegen, 16–17 June 2016; forthcoming 2017 in the proceedings of this conference).

<sup>47</sup>See JL La Monte, *Feudal Monarchy in the Latin Kingdom of Jerusalem, 1100 to 1291* (Cambridge MA, 1932, repr New York 1970) 271. The charter is published in Müller, *Documenti* (n 36) 79–80, no XLIX.

<sup>48</sup>I say 'somewhat' because, as mentioned above, the chosen solution by the emperor is not identical to the practice of reprisals in that time.



responded, the concept of reprisal was still in its earliest stages of development.<sup>49</sup> In the centuries to follow, the notion of reprisals developed further, evolving from a primitive self-help tool to a concrete mechanism for enforcing justice for victims with the necessary approval of political authorities. From the thirteenth century onward, this ‘public endorsement’ could be witnessed in the ‘letters of marque or reprisals’ issued by feudal rulers, such as kings, counts, princes etc.<sup>50</sup> The victim first sought legal redress before an instance competent to judge the wrongdoer. If no legal redress was given, the victim could then address his own sovereign and ask for justice by bringing forth evidence in support of his claim. If the sovereign was convinced that the victim had been wrongfully denied justice, the former then issued letters of reprisals which empowered the victim to recover losses from the fellow countrymen of the wrongdoer.

In 1354, Bartolus de Saxoferrato, one of the most prominent medieval jurists, wrote the first treatise on reprisals, the *Tractatus Represaliarum*, and justified their use in contemporary Italy. According to Bartolus, reprisal was an extreme measure requiring the use of force and should only be applied when truly needed and only under the condition that all other options for awarding justice had been exhausted.<sup>51</sup> Scholars have discussed the relation between Bartolus’ theory on reprisals and the law of war (*ius belli*),<sup>52</sup> and some scholars have traced influences of Roman law in the creation of Bartolus’ doctrine on reprisals.<sup>53</sup> In 1360, the Bolognian canonist Giovanni da Legnano (John of Legnano) built his *Tractatus de bello, de represaliis et de duello* upon Bartolus’ ideas on reprisals. In the centuries that followed, the concept of reprisal acquired new forms, and today the term continues to be used in international law to describe countermeasures in times of war.<sup>54</sup>

The preceding discussion has referred to a specific legal structure used in the resolution of a maritime conflict between the Byzantines and the Genoese in the late-twelfth century. The chosen structure represents an interesting juncture

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<sup>49</sup>On the development of the notion of reprisals, see Ruffert (n 18).

<sup>50</sup>For these letters and the evolution of the *ius represaliarum*, see Grewe (n 20) esp 144–47, 237–40, 428ff, 616ff. See also Ruffert (n 18); Michael Hurst Keen, *The Laws of War in the Late Middle Ages* (Routledge & Kegan Paul and University of Toronto Press, 1965) 218–38.

<sup>51</sup>See in detail Cecil N Sidney Woolf, *Bartolus of Sassoferrato: His Position in the History of Medieval Political Thought* (Cambridge University Press, 1913) 203–207; Keen (n 50) 219–21.

<sup>52</sup>See for example, Grewe (n 20) 145–46; Keen (n 50) 219–21. See also Karl-Heinz Ziegler, *Völkerrechtsgeschichte: Ein Studienbuch* (CH Beck, 2nd edn 2007) 109–10.

<sup>53</sup>See Laurens Winkel, ‘Fransisco de Vitoria on Just War on Both Sides and on the Legal Position of Burgundy’ (2007) 75(3) *Tijdschrift voor Rechtsgeschiedenis* 355–62, 358; Jacob Giltaij, ‘Roman Law and the *causa legitima* for Reprisal in Bartolus’ (2014) 20(1) *Fundamina special issue, Meditationes de iure et historia: Essays in honour of Laurens Winkel* 349.

<sup>54</sup>For a brief description of the current situation of reprisals and the historical development, see Ruffert (n 18) with an additional, basic bibliography.

between the Eastern and the Western legal traditions. It bore notable resemblance to the practice of *ius represaliarum* applied in Western Europe at that time, even if the practice was not fully executed and failed to provide Byzantine merchants with their desired compensation, at least based on the evidence available from Byzantine imperial documents. An interesting element is that the Byzantine merchants first entreated the emperor for permission in seeking compensation from the Genoese community in the Byzantine capital. They considered the emperor's permission necessary as such an approval would have legitimised their actions against the Genoese. Thus, the case examined represents a distant forerunner of the 'letters of marque or reprisals' that appeared in later centuries, when the concept of reprisals fully developed. It seems that we are in a very early and primitive stage in the development of that concept. The emperor did not allow the Byzantine merchants to directly address and ask for compensation from the Genoese community, but rather create the solution of the 'deposit' which, as described above, resembles the contemporary practice of *ius represaliarum*.

In addition, the legal structure described in these Byzantine documents proves, I believe, just how practical the custom of the *ius represaliarum* truly was. This is witnessed by further developments to the notion of reprisals in international law in the following centuries, as well as its role in resolving disputes and conflicts.<sup>55</sup> It is interesting to see how a custom 'born' from the needs of travelling merchants became so practical and, gradually, developed to take on different forms and greatly influence the field of international law in medieval and early modern Europe. Once again, the link between customs, merchants and maritime laws in the Middle Ages is evident. The case discussed in this paper illustrates how Byzantine practice appropriated a merchants' custom linked to Western Europe, a custom that later influenced the field of international law in medieval and early modern Europe.

### **Disclosure statement**

No potential conflict of interest was reported by the author.

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<sup>55</sup>For a recent comprehensive survey on the history of international law see Dominique Gaurier, *Histoire du droit international – De l'Antiquité à la création de l'ONU* (Presses Universitaires de Rennes, 2014).