Valencian parliamentary assemblies for voting the *servicios* to the rescue of slaves. Duties and tax incomes in the eighteenth century

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SUMMARY

The *Nueva Planta* decrees caused an important change of the institutional and legislative map, not only in the Crown of Aragon but also in the Crown of Castile. The call for only one parliament within a ‘new institution’ –the General Courts of the Monarchy– was one of the consequences of this process of abolition undertaken by the representative institutions of each kingdom. This process deserves special attention because of the significant changes in its functions. The functions and duties of this ‘new parliament’ mainly revolved around the interests of the absolute monarchy, and the calls made during the eighteenth century –only in 1713 and in 1789– were thus intended for the oath of the heir to the throne. Among the various functions given to the parliament, the voting of *servicios* (a subsidy or petition) –usually a donation request– certainly stood out from time immemorial. The funds from petitions were used for different purposes, but they usually served to cover the expenses of the king and his kingdom.

INTRODUCTION¹

One of the most serious problems faced by the Spanish Monarchy was the rescue of prisoners of war –a *mission* (matter) which absorbed a wide range of human and material resources throughout the Middle and Modern Ages.² Spanish officials even regarded it as a venture that endangered the budgets allocated to economic, social and political development. The constant changing of boundary lines as a result of the *Reconquista* (Reconquest) had legal effects with territorial and maritime consequences. The measures or policies adopted by the sovereigns from both sides of the border were aimed at the resolution of disputes on land and at sea. The Castilian and Aragonese Kings were also involved in the management of these redemptive ‘missions’, due to the frequent captures made by Muslims. The Muslims became equally involved in the redemption of their co-religionist captives in Christian lands. But the redemption policy did not only occur in this way. On the contrary, both Muslim and Christian sovereigns

¹ The research for this article was carried out within the framework of the Research Project *Rupturas y pervivencias de la tradición jurídica y financiera de la Corona de Aragón en la crisis del Antiguo Régimen* [Breaks and survivals of the legal and financial tradition of the Crown of Aragon in the crisis of the Ancien Régime] (2013-2015). DER 2012 37970 Lead researcher: Remedios Ferrero Micó. It also relied on the support of the Research Groups *Instituciones Jurídicas valencianas* [Valencian Legal Institutions] and *Estudios Árabes e Islámicos Sharq Al-Andalus (SAA)* [Arab and Islamic Studies Sharq Al-Andalus (SAA)], financed by the Vice-Rectorate for Research, Development and Innovation of the University of Alicante.

² M. Peset, V. Graullera, & M^a F. Mancebo, ‘La Nueva Planta y las instituciones borbónicas’ *Nuestra Historia*, 5 (1980), p. 136.

created a common front against the continuous Berber and Turk incursions into their territories. They certainly represented a threat to Christians as well as to Muslims; a menace located in Algiers but it also stretched to other Mediterranean and Atlantic harbours.

Legislation about ransoms, captures, and seizures of enemies and properties were common ever since the 13th century. Modifications, adaptations and reorientations of measures related to the living conditions of those imprisoned, forms of redemption and fund-raising for ransoms occurred uninterruptedly until the 19th century. But these measures were not exclusive of the royal legal authority and jurisdiction. Religious orders, along with municipalities and other representative institutions also played an important role in the defence of economic and personal interests. Parliamentary meetings were the forum to look for solutions in the short-term, at least until the 18th century. There was constant voting of *servicios* within the parliaments of the Crown of Aragon to provide sufficient funds to the royal treasury (the Spanish box of public funds) to pay the ransoms and the exchange of prisoners too. This was stated in the final call for a Valencian Parliament in 1645. As in Aragon, this was also a common practice in Castile.³ If they were accepted by the representative estates, petitions should meet the kingdom's needs and make ransoms and redemptions possible. Since the configuration of the *Cortes Generales* (parliament assembly), only 20 Castilian cities and 17 Aragonese ones -as members- had the possibility to ask for ransoms or bail outs in this new institution. The *Cortes Generales* resulted in the abolition of representative bodies existing in the different kingdoms, but not of them all, because the *Generalitat* and the *Junta de Estamentos* (Board of Estates) in Valencia kept their representative functions after the suppression of the *Cortes*, albeit to a lesser extent.

According to the law, the different ways for the resolution of these conflicts adhere to the rules of the sea from the *Llibre del Consolat del Mar* [Book of the Sea Consulate]. This regulation was applied on the coast of the Levantine region in Spain in its earliest customary version for centuries. So were the *Ordenanzas* [Ordinances] *de Burgos*⁴ and the *Ordenanzas* [Ordinances] *del Consulado de Bilbao*⁵ inside Castile. However, the issue of the provision of funds required specific measures for each moment and the socio-economic situation.⁶ This article focuses on the changes

³ Castile imposed an explicit prohibition upon the newly converted to rescue Muslim slaves from Castile since, once their freedom had been bought, without any conversion whatsoever to Christianity, they were sent to North Africa using various cunning arguments and, that meant losing possible 'economic resources' for future swaps or exchanges. The sentence for those who failed to comply with such provisions was three months of public imprisonment with irons and chains or shackles See *Recopilación de las Leyes de España*, (hereinafter *Recop.*) 6,4,13.

⁴ On maritime legislation and the *Llibre del consolat del mar*, see T. de Montagut i Estragués, 'El Llibre del Consolat del Mar y el ordenamiento jurídico del mar' *Anuario de Historia del Derecho Español* (hereinafter *AHDE*), 77 (1997), pp. 201-17; see pp. 210-214. The creation of the Consulate of Sea and Land or the Consulate of Commerce in different places under Castilian rule has its starting point in the *Real Pragmática de los Reyes Católicos* of 21 July 1494.

⁵ The Burgos Consulate was created by a *Real Pragmática* of 22 June 1511. It is worth highlighting the creation of the Consulate in Seville too. A. García i Sanz, 'La influencia de los consulados del mar de Barcelona y Valencia en la erección del consulado de Burgos (1494)', *Boletín de la Sociedad Castellonense de Cultura* 45 (1969), pp. 225-44.

⁶ Montagut i Estragués, 'El Llibre del Consolat del Mar', p. 211.

experienced by fund-raising, just before the abolition of slavery in the eighteenth century), due to the distribution of international political weight between new powers and the shaping of a new economic model imbued with liberal trade practices in Spain.⁷

After the examination and analysis of unpublished documents, this article focuses on key events occurred since the visit of the Spanish Ambassador to Morocco in 1767. The documents in question deal with the suitability of the individuals who were going to negotiate the release of prisoners; and the new proposals for the redemption of slaves, as well as the unequal reach of the legal measures enacted and adopted by Carlos III on this matter.

The starting point for this analysis is the diplomatic relations between Spain and Morocco in 1765, while Mawlay Muḥammad ibn 'Abd' Allāh was the sultan (1757-80). This diplomatic link was designed to endure the passing of time, which had important effects and consequences: they both have become milestones in international politics, Maghrib-European and Maghrib-Spanish relations. The policy developed was part of a series of negotiations and exchanges, the object and purpose of which were going to last over centuries. In fact, and according to the breaking news published last August (2013), on the occasion of the *Feast of the Throne* -the most important Moroccan political celebration- and due to the commemoration of King Muḥammad VI's coronation, he accepted and ordered the release of 48 prisoners at the 'request' of the King of Spain, Juan Carlos I who, according to several sources, 'became interested' in this matter. The royal interest came five days before another feast: the *Lailat al-Qadr* during the month of Ramadan. It commemorates the Night of Revelation in which the Prophet started to receive the transmission from the Holy Quran and which, according to Muslims' beliefs, 'forgives and removes the faults of believers, who are granted the duas⁸ to ask in their prayers, and extends from sunset until dawn, when they begin a new day of total fasting until the evening.'⁹ Consequently, there are several political-religious circumstances which now surround the benevolent decision of the monarch, in any way unpredictable or capricious, but extraordinary and meritorious because of the person who adopts it, with consequences that have become evident in recent events – both commercial and human ones– at the international scene.

In relation to the events of 1767, Arribas Palau analysed the offer that Mawlay Muḥammad made to Carlos III of two religious prisoners in exchange for the release of slaves¹⁰: this was the currency between Spain and Morocco in matters of higher-level

⁷In 1688, the publication of *Oroonoko* or *The Royal Slave* by Aphra Behn advocates the abolitionist movement followed by other politicians, the corollary of which is found in Spain in the early nineteenth century during the Cadiz constitutional process; vid. *Discursos de Argüelles*.

⁸ The meaning of *dua* is 'invocation' and it is an act of supplication supported by Quran, 40,60.

⁹ See <http://www.webislam.com/articulos/90149- musulmanes de todo el mundo conmemoran lailat al qadr.html>

¹⁰ M. Arribas Palau, 'Rescate de cautivos catalanes por Jorge Juan', Offprint from: *Boletín de la Real Academia de Buenas Letras de Barcelona*, 24 (1951), pp. 233-8.

politics from the thirteenth to the nineteenth centuries.¹¹ According to the historian Arribas, the exchange of prisoners was a demonstration of mutual friendship. An attitude respected for centuries. The fact that Arribas points out ‘to all the captives’ poses other issues: the personality, criminality or culpability that led the Spaniards to be under arrest of Moroccans and the causes that led to their confinement in Maghrib territory. And it is also essential to not forget the relevant issue of the circumstances in which they obtained their pardon and release, despite the faults and offences for which they had been arrested and detained previously. A situation which, according to the current criminal law, is not as simplistic as it once was, as it will be explained later on in this article. However, the circumstances and the legal guarantees converge in the graceful and meritorious decision adopted by Muḥammad VI.

The last reason leading to the negotiation between monarchs during the second half of the eighteenth century –in the opinion of Arribas- was to achieve peace. This peace would guarantee trade relations, shipping and fishing in the vicinity of the Mediterranean Sea and the Atlantic Ocean. The traditional coastal fishing under Muslim sovereignty included several guarantees, hence the licensing provisions contained in the municipal ordinances referred to the protection of the peninsular coast.¹² According to the diplomatic principles of the time, it was very important to pay special attention to the formalities and types of relation on international politics, seeking to prioritise the protection of economic interests related to trade.¹³ In fact, the signing of peace that Jorge Juan himself took in his embassy to Morocco in 1767 not only claimed for ‘permanent’ peace but cherished other hopes and wishes.

To commemorate the three-hundredth anniversary of the birth of Jorge Juan, the Spanish navy officer and scholar, this article contributes to an increased awareness of several aspects of his career, his role in diplomacy and the effects of his work over time. The first aspect dealt with in this article concerns the personality of Juan the first Spanish ambassador to Morocco during the reign of Carlos III. Juan’s personality was a significant element for the adoption of decisions involving the Spanish monarchy, the Moroccan sultanate, the French monarchy -also present in these negotiations- the British monarchy –aware of these diplomatic processes at the Moroccan royal city despite being ‘sidelined’ or left out of contacts *in personam*- as well as the Venetian

¹¹ The attention that historians and Arabists have paid to the issue of slaves between Muslims and Christians is reflected in a large bibliography. However, our attention will focus on those studies dedicated to the analysis of the transitory and pending situation between captivity and the achievement of freedom in return for a price or a favour, and the asylum of individuals subject to this time *iter*; see A. Echevarria Arsuaga, ‘Esclavos musulmanes en los hospitales de cautivos de la Orden militar de Santiago (siglos XII y XIII)’ *Al-Qanṭara* (AQ) 28-2(2007), pp. 465-88.

¹² An example can be found in the provisions made through the Municipal Ordinances of Palos de la Frontera; A. González Gómez, ‘Ordenanzas Municipales de Palos de la Frontera (1484-1521)’, *Historia, Instituciones y Documentos* 3 (1976), pp.247-80.

¹³ E. Martín Corrales, ‘Les conséquences de la course espagnole sur l’économie marocaine’, *Revue Maroc-Europe* 11, (1997-8), pp. 227-48.

Republic and the Turkish sultanate.¹⁴ The second aspect examined in this article is concerned with religion-based captivity during the late eighteenth century. Spain still breathed the air of Counter-Reformation intransigence, but it had to face the new movements of the Enlightenment and Liberalism. Despite the coercive and restrictive criminal laws for the profession of faith in other religions, the Peninsula enjoyed a confessional diversity. The presence of *moros cortados* (Muslims who bought their freedom and became emancipated) and freemen was a fact on the east coast of Spain and in the mainland too, a situation which provoked negative consequences for peace as well as for the agreements with Maghreb countries. Captivity, redemption and rescues were subject to extensive maritime regulations, the validity of which was not drastically subject to institutional and legislative changes in the *Nueva Planta* decrees.

In relation to the previous problem, it is necessary to reflect on the purely economic issue, since the liberation of slaves and prisoners –due to political and religious reasons– had depended from time immemorial on the exchange of people with different territorial origins.¹⁵ The introduction of price changes beyond the actual value of traded people would mean the inclusion of a random element determined by the will of negotiators – who were in turn ambitious and eager to achieve riches and fortune. This circumstance concerned the royal treasury, the institution that was supposed to assume the responsibility for the liberation of slaves. In the late eighteenth century, the responsibility was not exclusive of parliaments –as it had been ever since the Middle Ages in Castile and Aragon.¹⁶ At that moment, humanitarian factors and commercial interests led secular individuals, as well as public and religious institutions, to assume a leadership in the negotiations for the release of slaves, and also to assume the economic leadership lost by other institutions, such as the *Cortes* (Valencian Parliament meetings) arguing a ‘cause of force majeure’.

And finally, the third aspect under study is that of effectiveness. Certainly the sources from the Law explain the consequences of the legal measures taken in 1767, especially one of them related to those Moors who lived in Spain in ‘special conditions.’ The data supplied by an expedition to Algiers carried out by three religious orders in 1768 laid the foundations for an alternative way to the traditional practice in the collection and provision of *servicios* to rescue captives. Consequently, the relationship between the redeemed and his rescuers –to whom they were indebted– offers a new vision about debts and the way to pay them off.¹⁷ The decisions on the maximum

¹⁴ R. Lourido Díaz, ‘Relaciones del alawi Sidi Muhammad B. Abd Allah con el Imperio turco en la primera mitad de su sultanato (1757-1775)’, *Cuadernos de la Biblioteca Española de Tetuán* 23-24 (1981), pp. 311-55.

¹⁵ R. Pike, *Penal Servitude in Early Modern Spain* (Wisconsin, 1983).

¹⁶ On the regulation of ransoms by Castilian parliamentary assemblies during the late Middle Ages, see J.M. Calderón Ortega & F.J. Díaz González, ‘El rescate de prisioneros y cautivos durante la Edad Media hispánica. Aproximación a su estudio’, in *Historia, Instituciones y Documentos* 38, (2011) pp. 9-66; in particular, pp. 28-30. See also F.J. Díaz González, ‘La normativa sobre los prisioneros y los cautivos en la España medieval’, in *Revista de Estudios Histórico-Jurídicos* 32, (2010), pp. 281-308.

¹⁷ J.E. Blasco Leante, I. Guzmán Raja & J.L. Montolla Chinchilla, ‘La administración de la Armada Española en el siglo XVIII: El caso de la expedición a Argel de 1768 para el canje de cautivos’, *Revista*

amounts that were allowed for freeing slaves, the way to make them effective and the measures which made possible a successful rescue, confirm different reforms and counter-reforms with variations –not without controversial and unforeseeable consequences.¹⁸ The same thing happens at present.

Diplomacy and rescue: new arts to achieve freedom

Among the numerous changes observed in relation to the rules for ransoms in institutional and legislative policies during the second half of the eighteenth century, it is worth reflecting on the role played by diplomacy: an art that had been held amongst the sovereigns of Spanish kingdoms (Castile-León, Aragon and Navarra) for many centuries, but also by the North African authorities and especially in the Kingdom of Morocco¹⁹. Nevertheless, the relations aimed at the release of prisoners and captives between Spain and Morocco took a new dimension in the eighteenth century.

A new mediator appears for the first time within the context of negotiations that surrounded slavery, at least in Spain, namely: the *ambassador*. From then on, this ‘mediator’ was considered a person of dignity and –as far as the king was concerned– the best one to express the royal will. The documentation kept on the appointment of Jorge Juan as the first Ambassador in 1767 proves this statement. The file contained the

Española de Historia de la Contabilidad 15, (December 2011), pp. 1-72; on the consumption of the three orders in this service, see pp. 52/3. In relation to the dependence relationship derived from the ransom paid by religious order for the release, see J.E., Coca Castañer, ‘La liberación de cautivos en la frontera de Granada (siglos XIII-XV)’, *En la España Medieval* 36, (2013), pp.79-114; see pp. 102-3.

¹⁸ The present article does not have as its aim to analyze the data at an accountancy level to carry out the exchange. Instead, it tries to justify –from a legislative point of view– the origin of the sums which could be collected to proceed with the redemption, and the change of their origins following the *Nueva Planta* decrees, the unification of civil law, the observance of traditional maritime legislation, and its peaceful coexistence with the *Ordenanzas e Instrucciones Generales* of 1725, enacted during the reign of Fernando VI and the subsequent legislation until 1748, las *Ordenanzas para el gobierno militar, político y económico de la Armada* drawn up by the Ship Captain Aguirre Oquendo by mandate of the Marques de la Ensenada. The issues relating to the method for the charging and dating of exchanges have been studied through the analysis ‘Relacion del Caudal suplido por la Real Hacienda en gastos pertenecientes al canje y redempcion de cautivos hecha en el año próximo pasado de mil setecientos sesenta y ocho en Argel por la Religiones de Instituto Redemptoras de Mercenarios Descalzos, Trinitarios Calzados y Descalzos, y abonos que a cuenta de ellos se les hacen’, a document written by D. Manuel de la Riva, Chief Accountant of the Cartagena Department. That document contains the expenses incurred by the expedition as well as the amounts received by the religious orders that acted as intermediaries and all the other accounting entries which, as a ‘settlement document’, explain the settlement of the royal treasury with the redeeming orders. Blasco, Guzman & Montolla, ‘La administración de la Armada Española en el siglo XVIII’, pp. 14-15.

¹⁹ The first Spanish diplomatic mission which arrived in Morocco during the aforementioned century was the one led by Miguel de Lazcano, sent in April 1555 by the Conde de Alcaudete, Spanish governor of Oran in the times of Carlos V, with the aim of speaking to Sultan Mohammad Al-Chaij in Fez about a Spanish-Moroccan alliance against the Turks of Algiers (AGS) –and those visits were repeated between 1556 and 1557. The embassy to Morocco in 1578 by Pedro Venegas de Córdoba at the end of the same century stands out from the rest. H. Mohammad Ibn Azzuz, ‘La embajada de Pedro Venegas en Marruecos (1579-1581)’, in *Cuadernos de Historia de Tetuán* 6, (1972), pp.8-39.

record of his merits, along with the requirements to successfully fulfil this commission.²⁰

From the late Middle Ages onwards, ‘mediators’ –known as *exeas* or *alfaques*– undertook the negotiations on border areas intended for this purpose.²¹ By the time when the *Tratado de Paz y Comercio* (Treaty of Peace and Trade) between Sīdī Muḥammad, Emperor of Morocco, and Carlos III was going to be signed in 1767, the serious problem still to be solved was the imprisonment of some Franciscans while they were negotiating the freeing of Christian captives in the Maghreb. At that time, the members of Franciscan religious orders –or Mercy Trinidadians– had assumed the main role in these actions, even jeopardising the funds raised through charity in the parishes for the purpose of having cash with which they could pay ransoms for the captives. This was additionally a source of money for the rescue of Muslims arrested by Christians or even to buy their own freedom. An arrangement that would turn them into *moros cortados* after their expulsion from Spain in 1609.

Although nothing prevented the mediation on both sides of the coastal border, an ambassador or commissioner (as he was also known) was sent to Spain to propose a peace and perpetual friendship agreement in 1766 –thanks to the initiative of the Emperor of Morocco. This was considered a new tactic for diplomacy. Furthermore, the benefit of exchanging slaves as a proof of friendship and good intentions was established at that very moment, due to the reciprocal treatment in the negotiations between the Moroccan Emperor and the Spanish King.²² The exchange of captives was the action that needed the most care and attention by the ambassador, because the purpose of the exchange was not simply to obtain money. The rescue also had a humanitarian purpose because prisoners, who belonged to different faiths, were forced to live in extreme, inhuman conditions –it was even worse in the case of enemy countries. And here lies a highly relevant change in the policies on captives and slavery that later extolled the international law position.²³

²⁰ AHN. Estado, leg. 3418, exp. 8.

²¹ *Partidas*, VII, 25,11.

²² An action which was meticulously planned during a relatively long period of time –judging by the information kept. On 6 December 1766, the Ambassador of Morocco in Spain headed for Cartagena and Cádiz, where he arrived on 7 January 1767. He immediately gave al-Gazzal the letter addressed to the squadron commander Jorge Juan, who in turn sent a letter to the Marquis of Grimaldi about three men from Tetouan imprisoned in Spain; in the letter he proposed to release those people as an expression of mutual friendship and good intentions –and an inspection about the condition and provenance of these captives was performed at once. Arribas Palau, ‘Tres tetuaníes en Ibiza, liberados en 1767’, p. 316. The same practice –concerning the protocol and presents– was recently developed by the Ministry of Spanish Foreign Affairs and Cooperation because for its effectiveness in the context of diplomacy:

<http://www.exteriores.gob.es/Portal/es/SalaDePrensa/ElMinisterio>

²³ In my opinion, the adoption of definitive measures regarding the eradication of captivity for reasons of prison or war was carried out ever since the eighteenth century and the changes, in this respect, introduced in the first treaty of perpetual peace with Morocco offer data and elements which should be taken into account. On this same topic, different points of view can be compared in the paper written by J.W. Brodman, ‘[Captives or prisoners: Society an obligation in medieval Iberia](#)’, *Anuario de Historia de la Iglesia* 20, (2011), pp. 201-19; see p. 203. See. Art.2 on 1926 *Slavery Convention*, amended by the Protocol of 7 September 1953 and ratified by Decree No. 63-340 of 11 September 1963.

From then on, the ambassador became the best exponent of the royal will and the person who had the monarch's highest consideration as well as his esteem: Jorge Juan - as is explained in the documents on his appointment as the first ambassador in 1767. This report contains the list of his merits and also the requirements to fulfil this commission with the expected success.

The circumstances forced the monarch to choose an individual who owned the appropriate skills and abilities for the effective release of Christian slaves. Don Jorge Juan was chosen because he was the *Comendador de Aliaga* (Knight Commander) of San Juan Religion,²⁴ *Jefe de Escuadra* (Squadron Commander), officer of the Royal Navy and Captain of the Guards Company. Moreover, he was the *Minister* of the Board of Trade since -at least so concerned- 21 June 1754.²⁵ Nevertheless, his appointment was based on other merits which the King pointed out: discretion, loyalty and responsibility²⁶

The mission of freeing slaves required other skills as he told the ambassador in a *letter of summons*, highlighting 'the zeal that he had developed in other commissions to the monarchy.' And it seems to have been the most important value taken into account by the king in his election.²⁷ This makes it clear that Jorge Juan would act as the King's *alter ego* in his journey to Morocco.

The liberation of slaves was supported by a new circumstance: the mutual friendship expressed by the Sultan of Morocco to the Spanish king through his ambassador, al-Gazzal. And that same mutual relationship was going to be reflected in the terms of the treaty of peace and trade. As a result, the methods to negotiate the release of slaves and captives should also involve guarantees regarding the treatment of prisoners and the conditions to find the most effective solution to the problem. With this aim in mind, a selection of the slaves to be exchanged was made by the ambassador

²⁴ The same file includes a final note which highlights the impossibility to verify that he was the Comendador de Aliaga (Knight Commander), because he had no documents accrediting it, which is why a petition was made for him to appear only as: 'Comendador de la religión de San Juan'. *AHN*, Estado, leg. 3418, exp. 8, fols. 37/8.

²⁵ Only one month before, Don Ricardo Wall -whom Jorge Juan had replaced in the delicate espionage mission carried out in London, because in the opinion of the former, his actions might raise suspicion- had arrived at the Spanish court. His presence not only meant a personal change in the position of Office Secretary but also the starting point for a period of institutional reforms in which Juan played a significant role. On his status as a minister in the *Junta de Comercio* [Trade Board], see the letter addressed to his sister, in which he told her that he had been appointed by a Royal Decree for a position in the *Junta de Comercio, Moneda y Minas* [Trade, Currency and Mines Board], along with Ulloa, 21 June 1754, Aranjuez, in 'El Legado de Jorge Juan', *Fondos de la Casa Museo modernista*. 2.34.22. On Juan's activity in the aforesaid *Junta de Comercio, Moneda, Minas y dependencias de Extranjeros* [Board of Trade, Currency, Mines and Foreigners' Offices] see M^a M. Martínez Almira, 'Comercio y moneda a través de los informes y memoriales (1760-1773). La actividad de Jorge Juan en la Junta de Comercio y Moneda', in A. Alberola and R. Die (eds) *Jorge Juan Santacilia (1713-1773) en la España de la Ilustración. Memoria y presente*, (Alicante, 2015), pp. 325-352.

²⁶ 'Carta de Carlos III dada en Madrid a 31 de Diciembre de 1766', *AHN*, Estado, leg. 3418, exp. 8.

²⁷ *AHN*, Estado, leg. 3418, exp. 8, fol. 66.

when he came into the presence of the Sultan of Morocco –together with a selection of valuable gifts from the Spanish royal factory- just to be polite.²⁸ The Instructions²⁹ contained a description of the negotiation of the deal for the swap of Christian slaves and every paper was sent to Jorge Juan for his knowledge.³⁰ And for all that, he was granted a credential that made him worthy of the royal trust to undertake whatever actions that might be required.

Furthermore, the commission had to be surrounded by certain guarantees in order to be successful, which is why Jorge Juan was entrusted with the organisation of the journey. It was necessary to appoint people who could serve his country in this mission: the friars Girón and Francisco Pacheco -as a translator, to make up for Jorge Juan's ignorance of the Arabic language, and to engage in fluent and effective conversations- reminded him of the advisability of being accompanied by some officials, musicians and surgeons, both for a greater brilliance of the parade through the Moroccan Court and to provide assistance in case of illness, because Morocco was a country -in the words of Jorge Juan-, where Sciences and Arts were forbidden.³¹ Thus, and following the advice and knowledge of his assistants, Jorge Juan was accompanied by a secretary - Thomas Bremond, then consul in Mogador- and Guards of navy officers -to take notes and draw maps of the places visited- and took the aforementioned gifts not only to honour the Alawite sovereign but also to express gratitude for all the gifts brought to the Spanish Court by the Ambassador al-Gazel.³²

After the appointment, the acceptance of the mission and the preparation of the Instructions, the next step was actually to accomplish the mission in order to release the Spanish prisoners, one of the main aims of the treaty, apart from peace and safe trade. The freeing of captives was designed in a plan based on new points of view that contained request policies too.

THE EXCHANGE OF MUSLIMS AND CHRISTIANS IN THE MEDITERRANEAN SEE. A FAILING ECONOMIC MODEL

Maritime law on ransom until the first half of the eighteenth century

Ever since the Middle Ages, the *Derecho foral* (territorial/regional Law) set the price which had to be paid for spies and guides working for Muslims. The value of their

²⁸ See the list in *AHN*, Estado, leg. 3418, exp. 8.

²⁹ Madrid a 27 de diciembre der 1766 A Don Jorge Juan in *AHN*, Estado, leg. 3418, exp. 8.

³⁰ Through a letter dated 20 December 1766, *AHN*, Estado, Leg. 3418, exp. 8.

³¹ Letter from Jorge Juan to the Marques de Grimaldi, in Cadiz, on 12 December 1766. *AHN*, Estado, leg. 3418, exp. 8.

³² The Marques de Grimaldi was warned about the need to rightly repay the politeness that the Ambassador or Morocco in Spain had offered to Carlos III. About the salary assigned and the goods given as presents, see the letter to the Head of the Treasury Department, Don Miguel Múzquiz, on 28 December 1766, *AHN*, Estado, leg. 3418, exp. 8. In the same file, 'Lista de los regalos que llevo Don Jorge Juan para el Emperador de Marruecos', 'Lista de los regalos que llevó Don Jorge Juan a Muley Driss' and "Lista de los regalos que llevó don Jorge Juan al Príncipe heredero".

heads was an incentive for their arrest and confinement³³ -as this was required by Andalusian authorities.³⁴ The capture of Christians and their enslavement aroused some reluctance based on the Quran, and scholars were against subduing Christians to the status of slaves, with only two exceptions: firstly by birth, and secondly because of war. The same *criterion* was applied, also according to Islamic law, to *ahl al-kit...b* (People of the Book) –i.e. both Jews and Christians.³⁵ The practice of slavery for commercial purposes on both sides of the land and maritime coastline was consequently carried out because of religion –this being the difference between piracy and *carte blanche*. The varied situations of slavery experienced along the border forced Andalusian authorities to adopt accurate measures to avoid piracy which were prolonged over time.³⁶ Current Arabic thinking suggests that this widespread practice was facilitated on both sides of the Mediterranean Sea thanks to the alliance between the rulers of both communities, seeking alternatives to slavery, not only for economic reasons but also for others related to crime.³⁷ It was certainly due to the punishments applied to captives, especially decapitation. New options intended to humanise criminal law were emerging at the time with the aim of achieving more guarantees for prisoners, and capital punishment (hanging) was considered an exception halfway through the eighteenth century.³⁸ From then on, the common way to achieve a release was the payment of ransoms, in cash or through an exchange of prisoners. Hence the practice among mediators to set the price and value that varied depending on the specific territories where the rescue took place.

³³ M^a I. Fierro, 'Decapitation of Christians and Muslims in the Iberian Peninsula: narratives, images, contemporary perceptions', in *Comparative Literature Studies*, 45-2, (2008), pp.137-64; see p.145.

³⁴ An approximate study in F. Vidal Castro, 'Los cautivos en al-Andalus durante el califato de Córdoba. Aspectos jurídicos, sociales y económicos', *BIBLID* 57, (2008), pp. 359-98.

³⁵ Cases of slavery are still reported, however. See in this respect A. Peñafiel, *Amos y esclavos en la Murcia del Setecientos* (Murcia, 1992); A. Ben Driss, *La esclavitud en las relaciones diplomáticas del sultán Sidi Muhammed b. Abd Alllah*, (Rome, 2000). An interesting study is offered by O. Elwan, 'L'Islam et les systèmes de conflits de lois,' in Carlier J. and Verwilghen M. (ed.), *Le statut personnel des musulmans: droit comparé et droit international privé* (Brussels, 1992), pp. 313-41.

³⁶ On territorial/regional and municipal legislation concerning ransoms, see J. W. Brodman, 'Municipal Ransoming Law on the Medieval Spanish Frontier' *Speculum* 60/2, (1985), pp. 318-30. Coca Castañer offers a list of measures –described as 'official aid'– of the councils in Murcia, Seville or Jaen adopted in the 15th century, which prove the concern and interest in the release of their neighbours; Coca 'La liberación de cautivos en la frontera de Granada (siglos XIII-XV)', pp. 89-90.

³⁷ The Quran includes a reference to prisoner ransoms. Cor. 47, 5 orders to attack infidels until they were defeated and sign agreements with them, but a clarification is made at once: 'Luego, devolvedles la libertad, de gracia o mediante rescate, para que cese la guerra', Cortes, J., *El Corán*. (Barcelona, 1995), p. 583.

³⁸ As for Valencian historical Law, this criterion is in keeping with the provisions agreed at the *Corts de 1329*, 'De salvaconducto y de las treguas'; in the Castilian context, the *Fuero de Cuenca* and similar ones regulate the economic conditions for the release of Muslim and Christian slaves; vid. Cap. I, XXV 'De eo qui maurum comparaverit [si captivum xristianum pro eo dare voluerit, quid emptor habeat accipere], *Fuero de Cuenca*', A. Valmaña Vicente (ed.), (Cuenca, 1978). Capital punishment for security reasons and in cases of insufficient control over prisoners, according to Saḥnūn in *Al-Mudawwana*, vol. II, tomo III, p. 9; al-M...wardī. *Les statuts gouvernementaux ou règles de droit public et administratif*. Transl. E. Fagnan. (Beirut, 1982), p. 278. The death penalty is currently maintained for the crime of piracy in some criminal codes on an international scale; within the world under Islamic influence, the *Criminal Code* of Omán (16/II/1974), art. 285; and that of Singapore (1874), arts. 130B and 130C; or, in Sub-Saharan Africa, the *Code de la Marine Marchande National* of Togo (Ordinance No. 129 of 12 August 1971), chap. IX.

Although the current price was on par³⁹ in North Africa, it is known that the Algerian Dey⁴⁰ established the delivery of one Christian slave for two Muslim sailors in Algiers.⁴¹

Piracy and *carte blanche* (letter of marque), with their effects -arrests, seizure of assets and ransoms- are aspects of a legal problem connected to political, economic and social interests, both in the Andalusian Muslim community and in Christian kingdoms. Islamic law, in particular the rules of the *madhab* (legal Islamic trend or school) of Malik, was applied to the seizure of assets by pirates and their subsequent return into the territories of *al-Andalus*. The properties -both personal and material- seized by Christians were later recovered, taken over by the first owner prior to any distribution as spoils of war.⁴² As for the sharing of the *ganiba* (bounty), it could only be returned to the rightful owner ransom via mediation.⁴³

Castilian and Aragonese Law evolved in the same direction, with regard to the redemption of prisoners. The law enacted by Alfonso X in Castile⁴⁴ as well as the

³⁹ M. Marín & R. El Hour, 'Captives, Children and Conversion: A case from late Nasrid Granada', *Journal of Economic and Social History of the Orient* 41, (1998), pp. 455-73. Captivity was a widespread practice justified in the Mediterranean world and along the Atlantic Coast under Muslim influence due to the Corsican; an activity with rules and parameters that affected the economy both in North Africa and in Spain. About the multiple examples of captivity and the uneven economic value depending on the sex and age of slaves, see the generalist study of M. Belhamissi, 'Captifs musulmans and chrétiens aux XVI-XVIII: le cas des femmes et des enfants', *Chrétiens et musulmans à l'époque de la renaissance. Études réunies et préfacées par Prof. Abdeljelil Temimi*, (Zaghouan, 1997), pp. 53-64. The Spanish fight against the Corsica in the late eighteenth century is analyzed by T. García Figueras, 'El corso de Marruecos y el intento de su inutilización por España a finales del siglo XVIII', offprint from the journal *Tamuda*, (Tetouan, 1956), pp. 42-59.

⁴⁰ This was the title for the Ottoman governors given to the rulers of the regency of Algiers from 1671 onwards. See G. Ágostini and B. Masters, *The Encyclopedia of Otoman Empire*, (New York, 2009).

⁴¹ Note that Algiers was politically dependent on the Turkish Empire at the time, a situation which justifies the implementation of actions at different levels by Christian maritime powers, and more precisely by Spain. In relation to the value of exchanges, this was carried out pursuant to the provisions contained in the 2nd condition of the Treaty on the adjustment and redemption of captives in Algiers, 1768, Gozález, 'La expedición a Argel y el rescate', p. 260.

⁴² García 'El corso de Marruecos y el intento de su inutilización por España a finales del siglo XVIII', p.48.

⁴³ M...lik b. Anas *Kitāb al-Muwatta' al-imām Mālik (riwāyat al-Šaybānī)*. 'Abd al-Wahhāb 'Abd al-Lai'f. (ed), (Beirut, 1984), pp. 363-4, No. 21; English transl. 200, No. 17; Sahnūn, *Mudawwana*, I, part 3 (*Kitāb al-ŷihād*), 14. And about the purchase and price of Christians and Muslims in the Middle Ages, see F. Vidal Castro, 'Sobre la compraventa de hombres libres en los dominios de Ibn Hafsun', *Homenaje al Prof. Jacinto Bosch Vila*, (Granada, 1991), vol. I, pp. 417-428.

⁴⁴ The *Partidas* highlight the obligation for Christians to rescue their captives in Muslim lands and define the figure of those who committed themselves to that mission, known as '*alfaqques*'. *Partidas*, II, tit. 29, law 1-3, and tit. 30, law 1; and, in the Crown of Aragon, in the Local Law of Belchite, (1196) which mentions the words '*exea*' and '*almotalafe*'; J. Castañe, *El Fuero de Teruel. Edición crítica con introducción y traducción*, (Teruel, 1989), ch. 507. However, it was during the reign of Alfonso XI that measures were dictated for the rescue of Christians in Moors' lands, fixing as the exchange value heads of cattle that would be exempted from the payment of the tithe or any other right inherent to their commercial traffic by the almojarifes; *Recop.* 1, 11, 1. Neither did Christians have to pay for the rescue of their people in Moorish lands, despite the redemption amounts paid, in accordance with the provisions foreseen in *Recop.* 1, 11, 2; nevertheless, in 1462, Enrique IV accepted a petition at the *Cortes de Toledo* regarding the maximum amount which had to be paid as a ransom and redemption for captive Moors, establishing a minimum from which an additional third part of the value would be paid if the person had been kept for one year and twice that amount in longer periods, amongst other possible cases (*Recop.* 1,

privileges and laws of the consulate of the sea or the law ordered since the reign of Jaime I in Aragon had the same objective. All the laws related to redemption of prisoners -whether they were arrested at sea or on land- in exchange for enemies was regulated from time immemorial at the *Cortes* of both Castile and Aragon. The *Cortes* held at Valencia in 1329 laid the foundations for unconditional redemption, forcing the court to immediately release the prisoners and acquit them of the condition of servitude even when the liberated prisoner rejected the return of the paid price.⁴⁵ The responsibility for the recovery of places and properties -taken by Saracens- was not an exclusive competence of whoever decided the rescue, but of the original owners; they were the ones who had to assume the costs associated with the restitution of properties and personal belongings. Another point of interest was the status of individuals, as in the case of children of maidservants unlawfully detained, since the laws for redemption had special features. The release of servants unconditionally included that of their children, and there was no reason to retain children under servitude for the price paid.

Once the *Nueva Planta* decrees had been enacted, and after the abolition of Parliaments as representative institutions entrusted with the discussion of petitions and the 'building up' of laws via negotiations between the estates and the king, the law prevailed over the King's will and the interpretation of supplementary law, supported on common law (*ius commune*) -particularly in the Crown of Aragon. The result of this development had effects not only in the *Ordenanzas del Mar* (Ordinances/Bylaws of the sea) and in the measures later provided by the *Ordenanzas Generales de Marina* (1751), These *Ordenanzas* recognized the competence of the Spanish Marine Minister to open a criminal investigation against captured pirates; after having received the evidences of crimes the prisoners were submitted to the maritime prefect for the purpose of punishments.⁴⁶

But the punishment of pirates and *levantadores* (robbers) was approached -as it had been done from time immemorial- from the principle of reciprocity in the eighteenth century, with the signing of the first *Tratado de paz perpetua* (treaty of perpetual peace) with an Islamic territory (1767). From then onwards, respect for the personal integrity and properties of those who stayed in Moroccan territory would be guaranteed on the basis of permanent treaties of peace, goodwill and the desire to avoid causing either moral or economic damages to both countries. Indeed, the holding up, imprisonment, detention and setting up of the amount of the ransoms had negative consequences for international relations -and indirectly for trade.⁴⁷ Hence the Spanish monarchy's

11,3); *Cortes de los antiguos reinos de León y Castilla*, Real Academia de la Historia (ed), (Madrid, 1866), III, Cortes de Toledo (1462), ch. 54, pp. 742-3.

⁴⁵ *Corts de 1329*, 'De aquéllos que fueren redimidos del poder de los enemigos'.

⁴⁶ *Ordenanzas Generales de la Armada*, treaty 10, tit. 3, law 109. This provision was subjected to a reform in 1802 by Carlos IV, who decided that the maritime jurisdiction would be competent in matters of fishing, navigation, prisoners, arrivals and shipwrecks, thus putting an end to a situation characterised by the conflict of competences between the aforesaid jurisdiction and the ordinary one, which stemmed from the provisions in the ordinances of 1751; *Nov. Recop.* 6, 7 and 9.

⁴⁷ This was an aspect which was additionally influenced in the Andalusian context by explicit legislation which favoured the manumission of Muslim slaves and the prohibitions to retain Muslims under that same conditions, and even Christians because their release was regarded as meritorious. C. Puente, de la, 'Entre la esclavitud y la libertad: consecuencias legales de la manumisión según el derecho māliki', *AQ* 21-2(2000), pp. 339-60.

decision to pay special attention to the conditions of people arrested in Spanish territories and their provisioning for two reasons. The first one was to ensure that they were living in ‘good’ conditions until their exchange; and the second one, to guarantee a reciprocal treatment in the negotiations for rescues.⁴⁸

At that time piracy was justified by the imprecisely defined limits of territorial waters; people arrested in those waters formed part of a criminal network for political purposes.⁴⁹ However, the etymology of the term ‘piracy’ used in historical law differs from the current etymology in a number of specific aspects, since the violent acts of appropriation made at sea or on foreign-flagged vessels were performed by individuals who, in most cases, were subject to political authority. Therefore, it was actually a *carte blanche* practice, though the sources and historical documents used both criteria interchangeably when also referring to the rescue and redemption of captives and prisoners by Muslims or Christians.

The captures and various forms of piracy and *carte blanche* forced the rulers to adopt new measures within their reach with the aim of ensuring legal safety in navigation and thus peace between nations.⁵⁰ However, current thinking suggests that the main rules for the protection of human beings and material properties within Spanish vessels were settled in the reign of Carlos IV, in 1801. However, a long tradition was observed in the *Llibre del Consolat del Mar*, the book that contains the main rules concerning navigation; a tradition which continued to be kept in force until the *Código de Comercio* (Commercial Code) of 1829 was issued, despite the abolition of the consulates in the Crown of Aragon –with the exceptions of Barcelona and Mallorca– after the enactment of the *Nueva Planta* decrees.⁵¹

During the reign of Carlos III, the *Real Junta Particular* and the *Consulado de Comercio* recovered the functions and powers of the former *Consolat del Mar* of

⁴⁸ On the conditions in prisons, the allocation of resources and payment of salaries to guards, see the provisions adopted at the *Cortes* of 1585, chaps. CCIII and CCXXXVI, pp. 132-141.

⁴⁹ C. Espaliu Berdud, ‘The Crime of Maritime Piracy in the 2010 Reform of the Spanish penal Code’, *The Spanish Yearbook of International Law* 16, (2010), pp. 55-94.

⁵⁰ Similarly, the criminal measures contained in the current Spanish Criminal Code through articles 616, 3 and 616, 4 seek to punish attitudes that go against personal and material safety as a result of pirates’ actions, although a loophole exists when it comes to the definition of the crime of piracy (*BOE* [Spanish Official Gazette] No. 152 of 23 June 2010). On this issue, see Espaliu, ‘The Crime of Maritime Piracy in the 2010 Reform of the Spanish penal Code’, pp. 63-5.

⁵¹ The text justified the abolition of institutions and the repeal of laws, uses and customs, thereby justifying the assumption of new measures regarding the matters examined here that were in keeping with Castilian law. Nevertheless, the fact that Mallorca and Catalonia kept their civil, criminal and business legislation allows us to assert the validity of maritime and consular law consolidated in the *Llibre del Consolat del Mar*. Instead, Aragon only recovered its civil law, and Valencia had no subsequent recognition whatsoever, neither from an institutional point of view nor from a legislative one, despite the memorial issued by Luis Blanquer and José Ortí in August 1707 and the new petition sent after Felipe V’s visit to Valencia in 1719. The monarch’s decisive attitude was justified on his desire of submit under control the Spanish territories, with an unique Court of trial; ‘Decreto de Nueva Planta para Aragón y Valencia’, *El Buen Retiro* 29 June 1707, *Nov. Recop.* J.J. Chiner Gimeno & J.P. Galiana Chacón, ‘Del Consolat del Mar’ al ‘Libro llamado del Consolat del Mar: aproximación histórica’, *Libro llamado del Consulado del Mar* (1539), Edición y estudio de Jaime J. Chiner Gimeno & J. P. Galiana Chacón, Cámara de Comercio, Industria y navegación, (Valencia, 2003), pp. 7-42.

Valencia,⁵² although this time these were according to Barcelona's model of consulate – and so did Zaragoza later on. Despite the repeal of *Derecho foral* (Territorial/Regional Law) in the Crown of Aragon, and more specifically in the Kingdom of Valencia, the *Llibre del Consolat del Mar* from its first draft in 1343⁵³ and the *Ordenanzas de Marina* (1758) remained in force. Therefore, the general rules about piracy and *carte blanche*, even slavery, were supported in the *Llibre*. This fact confirms the application of customary sea law, even in the negotiations for the treaty of peace and trade between Spain and Morocco. Therefore, it regulated maritime relations and contacts between the Levantine coast and the land of Saracens. The presence of vessels in Muslim and Berber lands caused moments of uncertainty when peace between the coastal kingdoms was not guaranteed. That is why it became so important to surround each contact with legal guarantees in order to provide safety to merchants, especially at sea.⁵⁴ The *patrón* (captain) assumed responsibility and he was obliged to provide food and refuge to those sailors who were on board when the galley was captured and sold by pirates; and he was also compelled to make their return easier. The ransoms were only provided in the event of capture by enemy ships fortuitously (*por ventura y llegados a un paraje determinarían entregar la nave, el leño o las mercancías*). However, if the legal owner wanted to recover his property, the rescuers would be obliged to return the money paid, preserving his right to be restored in the amounts given for the rescue. Donation by enemies to third parties was considered illegal, except if made to the proper owners, without any possibility of retrieving money, goods or other merchandise. In the same way, the rescue of goods by merchants forced the shipmaster to contribute with a *sueldo a libra or besante* (salary) in proportion to the value of the vessel without any claims on the part of merchants.⁵⁵

The decision about the amount of the ransom fell upon the captain and involved all the individuals who, giving their prior explicit consent, decided to contribute to it. The partnership in rescuing vessels or logbooks seized by enemies was solved through *avenencia* (compromise), agreement or covenant. In this kind of solution, partners enjoyed priority for the payment of ransoms, and if they refused to pay, it was possible to deliver the amount of the ransom to the best bidder. These circumstances had great significance from the economic point of view considering the nature of material goods as well as their human value. In particular, the protection of ships arriving in Valencia was guaranteed because of reciprocity between Muslim allies and Spain. This treatment was settled in the *Cortes* of 1329, with a special focus on the protection of any ship that arrived in Valencia –and being under the jurisdiction of the *Cort* (Royal jurisdiction). The only condition was that ships in this situation had to respect the citizens of the kingdom. After those *Cortes*, legal action was subject to reciprocity of treatment in

⁵² This took place in 1762. The original actions under Christian rule are dated from 1283 according to the analyses carried out by A. García i Sanz, 'La primera época del Consolat del Mar de Valencia (1283-1362)', *I Congreso de Historia del País Valenciano*, (Valencia 1980), vol. II, pp. 501-12.

⁵³ *Furs*, IX, 17, 9, Colón, G., & A. García (Barcelona, 1980-99). Notice that a *Fur* is the rule voted by the three estates represented within the *Cortes*, whereas the rule voted only by one or two estates is known as *Acta de Cort* (n.a.).

⁵⁴ *Llibre del Consolat del mar*, (Arxiu Municipal de València, Any 1407), Introduction, transcript and Spanish translation by A. Ferrando Francés; tit. XCI 'De nau qui.s vendrà en terra de sarrahins'.

⁵⁵ *Llibre del Consolat del mar*, CCXLVIII 'De nau o leny qui será per enemichs pres'.

agreements between Saracens and Christians, on both sides of the Mediterranean Sea; and it continued to be observed until the nineteenth century. The violation of these peace agreements entailed the payment and restitution for damages in double proportion, as well as a civil punishment.⁵⁶

Spanish maritime law concerning ransoms not only referred to ship contents but also to the coastal places threatened by Berbers and Saracens –as a result of the reciprocity treatment that Muslims gave to Christians.⁵⁷ The continuous threat of pirates raised the attention of some experts who offered advice to the king on how to solve this long-lasting problem. However, no significant measures were taken until the coding of the law for the prosecution and prevention of piracy which was enacted in 1822 – without special regard to ransoms, but through matters such as offences against people's rights, against the external security of the state or against private property.⁵⁸ Once again, the matter of ransoms was regulated in the articles of the criminal code but any action devoted to finish with slavery or illegal arrest was left outside the code. This fact actually explains the lack of sources about ransoms in Spanish legal history even on the nineteenth century.

The new legislative proposals on ransoms

Regarding the law applied, the *Tratado de Paz y Comercio*⁵⁹ (1767) is the example which suggests the circumstances to be taken into consideration when prosecuting and punishing piracy. The good relations between Morocco and Spain, or at least their good willingness- influenced the severity of the penalties applied to those who were accused of such crimes. Spanish experts paid special attention to determining the maritime spaces and boundaries in which they were supposed to pursue these actions and to apply sanctions or punishments. The experts' opinion about the consequences -suffered for centuries- from piracy and *carte blanche* as well as the effects on trade within the Spanish maritime space was finally taken into account; at least with regard to the North African coast and the Strait of Gibraltar.⁶⁰

During the second half of the eighteenth century, the fishing activities of Spanish sailors had to abide by and respect the provisions contained in the Moroccan and Spanish legislations. These rules referred to health and fishing. In relation to fishing, coral and fauna were the most valuable goods for sailors and merchants on both sides of the Strait of Gibraltar. But the most important problem was the menace of pirates on

⁵⁶ *Cortes de 1329*, "De salvaconducto y de las treguas".

⁵⁷ A vision of slavery in medieval times and its evolution until The Modern Age is offered in J.W. Brodman, *Ransoming Captives in Crusader Spain: The Order of Merced on the Christian-Islamic Frontier*, (Philadelphia, 1986). On the singularity of seizures at seas as opposed to those made on land, see Brodman, 'Captives or prisoners', p. 209.

⁵⁸ *Recop.*, 6,4, law 21; 7, 10, law 12 and *Nov. Recop.* 6,8,3.

⁵⁹ In other sources *Tratado de paz perpetua* (treaty of perpetual peace).

⁶⁰ J.L. Gozalvez Escobar, 'La piratería y la redención de cautivos en las costas de Huelva siglos XVI-XVIII', in *Huelva en su historia* 2, (1988), pp. 359-86.

both coasts. One important measure to avoid seizures was the use of passports. From time immemorial, licenses had been used to navigate these waters safely. In addition to this document, the Treaty of Peace and Trade introduced a passport, designed by Jorge Juan, in order to close the circle on pirates and corsairs. According to all these legal provisions, the transgression of rules regarding the subject of fishing and navigation waters and the lacks of those compulsory documents was penalized with slavery –a fact supported by the royal decree of 1726 about the slavery of Moors and Turks.⁶¹ By way of example for this sort of action, historiography provides interesting facts relating to the embassy of the Spanish officer, Jorge Juan, and the negotiations to release nine Catalanian sailors accused of sailing under the British flag –a suspicious mistake in the Sultan of Morocco’s opinion, which was denied by the ambassador of Ceuta who interceded for them on 1 September 1766.⁶²

As explained above, the Spanish legislation barely paid attention to ransoms or piracy, but it did focus on the rescue of Christian slaves arrested near the coast. It was actually a political problem with economic and social consequences, as the *levantamientos* (robberies) were always committed by pirates and corsairs –all of them Muslims, who knew how important these actions were in order to obtain resources. This could cause a real drain in the boxes of the Spanish treasury, which is why an attempt was made to avoid such a situation by acting in the same way as it was done with those caught in Spanish waters –and thus proceeding to favour exchanges over the payment of ransoms. This interdependence between slavery and piracy or *carte blanche* when it comes to getting slaves or prisoners justifies the lack of specific criminal laws intended to punish crimes related to these offences and felonies.⁶³

Spanish scholars involved in improving Spain’s good governance made important proposals. Among the most significant reports is the *Proyecto* [Project] *de Mejora de hacienda, comercio y navegación* of Pedro Moreno de Villena y Chaves, *caballero hijodalgo* (knight). He was a gentleman born in the town of Sabiote (Jaen) in 1703, and provided military services as lieutenant of the regiment under the orders of his uncle, captain Sebastian Jalon de Tejada during the War of Succession. Pedro Moreno took part in the management of the *Consejo de Hacienda* (Treasury Council)–which justifies his authorship of the report found at the *Archivo Histórico Nacional* [Spanish Historical Archive; the *Proyecto* [Project] was drafted in the second half of the eighteenth century, probably around 1762, a few years before the mission of Jorge Juan to Morocco.⁶⁴

⁶¹ *Real Cédula de corso contra moros y turcos* given on 18 March 1726, *Archivo Histórico Nacional* [AHN] (Madrid). Estado, Almirantazgo, Marina, leg. 3489.

⁶² Arribas Palau, ‘Rescate de cautivos catalanes por Jorge Juan’, p. 236.

⁶³ The crimes of slavery and piracy are integrated in the same article –as if they were the same offenses typologically speaking– already during the early stages of development of the criminal code. See *Código penal* 1822, art. 273.

⁶⁴ AHN, Estado, Leg. 2927 No. 306, 1 doc. *Mejora de Hacienda, comercio y navegación*, no date, 16 two-sided sheets and it is the ‘Proyecto de D. Pedro Moreno sobre Hacienda, Comercio y fabricas’, s.l., s.a.,

For the author of the *Memorial* it was necessary to issue basic rules to avoid the cost of rescues, and he advertised the king among the people surrounding him. Nevertheless, the bad influences over him together with lack of knowledge kept the king divorced from reality.

Estas son las reglas cuya practica considera mi zelo por el servicio del rey y el bien de mi Nacion, necesaria para el remedio de ella, pero como son en materia, en que concurren infinitas circunstancias no las puede conocer por si mismo un primer ministro por mas sabio, experimentado y zeloso que sea, y siendo precios que se vale de muchas personas que le informes, esta expuesto a que llegue a sus oídos desfigurada la verdad, porque ay pocos que se despeguen de su interés particular, por atender al beneficio común y assi nada de lo que he apuntado podrá tener un éxito feliz, no haciendo primero elección de personas de conocida integridad que concurren con igual zelo a una obra tan grande y no teniendo en las dos manos el premio y el castigo para que con el uno se repriman y se escarmiente los malos con el otro se anime a servir los buenos.⁶⁵

The reference to the ‘choice’ and appointment of the person or persons qualified for this kind of negotiation –a role assumed from time immemorial by *alfaques*, *exeas* or translators– and the benefit of a *forceful* action against ransoms was going to be reflected on a detailed plan some years later. It was the *Tratado del ajuste de canje y redención*⁶⁶ and led to the appointment of Jorge Juan as ambassador –as he was the most suitable person according to his merits and the services to the Crown delivered for such a long time.

Furthermore, it became essential for the prevention of these abuses against the interests of the Spanish monarchy to define the spaces and criminal actions as a legal disclosure instrument on the one hand; and on the other hand, to publish the royal decisions about piracy and *carte blanche* too –despite the suitability of this legislation, proved by its survival over in.⁶⁷ As a matter of fact, territorial boundaries -established at

fol. 1-16; vid. fol. 15. On this figure, see M^a L. Álvarez Cañas (ed.), *Corregidores y alcaldes mayores: la administración territorial andaluza en el siglo XVIII*, (Alicante, 2012) pp. 176-7.

⁶⁵ AHN, Estado, Leg. 2927 No. 306, 1 doc.

⁶⁶ *Tratado del Ajuste de canje y redención* [Treaty for the adjustment of exchange and redemption] that the Honourable Amet Elgacel, minister of the Emperor of Morocco and the Reverend Father Main Preacher Manuel Rozalen, administrator of the royal hospital of the *Padres Trinitarios calzados* of the province of Castile in Spain did following the order and decree of his Catholic Majesty with the regency of Algiers, among Algerian and Spanish captives, with the following conditions. This document was transcribed and analysed by G. Arpide, ‘La expedición a Argel y el rescate’, pp. 260-261. The aforesaid exchange is examined on the basis of the accounting method applied to the ships of the Spanish Royal Navy by Blasco, Guanmán & Montolla, ‘La administración de la Armada Española en el siglo XVIII’, pp. 45-53.

⁶⁷ It was determined in 1502 that all those Berber slaves who, after being rescued, were found in the fifteen leagues comprised between the coast and the inland, would be arrested and punished with one hundred whips the first time –and becoming galley slaves if they reoffended. A limitation of transit which became aggravated over time with the fixation of a six-month period during which they could move freely; the measures described would be applied when this term was exceeded; Law VI ‘*Que ningún esclavo berberisco rescatado pueda entrar dentro de quinze leguas de la costa de la mar*’, given by the Emperor Carlos and the Queen Doña Juana in Valladolid in 1530; and Law VII ‘*Que lo contenido en la*

the moment of the expulsion of Muslims from Castile (1502) for the transit of rescued Berbers- turned out to be inadequate because Muslims were ‘out of control’ throughout the coastline. The continuing threat could be avoided expanding the space forbidden to Muslims, Turks or Berbers, as suggested below:

3. Se publicara vando para que todos turco o moro que fuere cogido dentro de España a distancia de 20 leguas de una costa, sea ahorcado inmediatamente en aquellos parages donde suele desembarcar y que los que fueren cogidos en mayor distancia sean puestos en Galeras o en las minas de azogue; pero que sus oficiales sean ahorcados en presencia de sus equipage, lo qual se entiende siendo corsarios: porque si fueren mercaderes quedarán esclavos del rey como al presente.⁶⁸

The prevention of crime not only concerned individuals but also the talent and goods devoted to it; the aim of these new measures consisted in achieving maritime safety. For that purpose, vessels and ships were entrusted with control over the new spaces, despite various attempts and petitions sent to the monarch to achieve peace with Algiers. Nevertheless, Berber and Algerian people carried on with their felonies.⁶⁹

4. Para que el terror que ocasionara este vando vaya acompañado con el daño que causara la fuerza, se pondrán en las costas de Africa ocho navios⁷⁰ de 60 a 80 cañones algún parache de 24 (¿) balandras y dos galeones Cuya esquadra saldría por mayo iria en derechura a Argel y después de aver bordeando dicha ciudad hara el corso junta o dividida el resto de la campaña lo qual infundirá tal espanto en los moros que sin duda alguna al segundo año, pedirán treguas y restituirán los españoles esclavos que tuvieran.⁷¹

And, for this purpose, it was necessary to place galleys in the right harbours as a way to avoid the landing of Berbers:

6 Las galeras se dividirán en dos desde la Vaya de Portugal hasta la de Francia, velando la costa donde cada dos deberán hacer el corso, y invernán en uno de aquellos puertos, que luego que eso se practique bolverán a poblarse las costas y a cultivarse tantas tierras que tiene y abandonadas el señor da los Moros que con sus continuos desembarcos se llevan a los pescadores y gente de ellas, con grande daño y mayor deshonor de toda la Nacion.⁷²

It was equally important to take full advantage of the infrastructures that, from time immemorial, had provided the alert and warning service for the presence of pirates and buccaneers and, with the same aim, it became necessary to define the responsibilities

ley antes desta, se extienda a todo el reyno de Granada, y también modifica el tiempo’, given by King Felipe II in Madrid on 19 November 1566.

⁶⁸ AHN, Estado, Leg. 2927 No. 306, 1 doc, fol.2.

⁶⁹ So it was expressed at the *Cortes* of 1585 held in Valencia, chap. LXIII, pp. 98-9.

⁷⁰ As opposed to the four galleys authorised by the *Cortes* of 1604 for the kingdom of Valencia, the freight and organisation of which were entrusted to the *Junta de cinquenta y quarto* (Board of Fifty-four). The name of the board is because of the total number of members.

⁷¹ AHN, Estado, Leg. 2927 No. 306, 1 doc, fol. 3

⁷² AHN, Estado, Leg. 2927 No. 306, 1 doc, fol. 3

corresponding to *alcaldes* (governors) of watch towers. Not surprisingly, Algiers had benefited from the continued practice of *carte blanche* actions consisting in the capture of Christians, which make them earn huge profits thanks to which they were able to repair their infrastructures.⁷³

5 Para resguardo de nuestras costas y de la gente que las cultiva pescadores y demás embarcaciones pequeñas que transportan nuestros generos de un pueblo a otro se pondran tantas galeotas como torres havian en la costa y luego que desde alguna torre se descubriese embarcación de moros, valdria la galeota y hara señal para que acudan las dos de sus costados, con cuya providencia seria imposible que los moros puedan escaparse en las que se arriman a las costas, ahora desembarcar en ellas , no pudiendo practicar este genero de piratería con las grandes que serán una providencia poco costossa, porque los mismos pescadores servirán en las galeotas por poco que se les de dependiendo de ellas su conservación y seguridad, que cada una estará al cuidado y orden del alcaide de cada torre.⁷⁴

Finally, and for the first time after the reform of the political structure after 1754, the experts noticed the benefit of saving a consignment for the payment of ransoms, a legal way to seek the redemption of captives.⁷⁵ Since the Middle Ages, the spoils of war and extra revenues were the main resources to seek the release of Christian captives by Muslims.⁷⁶ The institutional reforms undertaken by the central government and, particularly by the Ministry of Finance, made it necessary to think about the achievement of funds for the rescue of captives, and how to manage those funds -in accordance with Pedro Moreno's project.

Moreno's worries refer to the whole mainland coastline, but he took the coast of Malaga coast as a reference point, as he was the *corregidor* (mayor) there. It is worth highlighting the importance, not only of improving the governance of marine space but also of providing safety strategies to prevent the use of maritime spaces for illegal captures of Christians. The reforms of maritime spaces in three departments also influenced the distribution of funds, in relation to the areas that suffered the greatest pressures: the Andalusian and Levantine coasts. Taking into consideration the significant pressure on the coast of Cartagena waterfront district –which stretched from Cape of Palos to Cape of Creus– the securing of funds for such a large geographical area required new changes that could enhance government operation for the purpose of saving money:

Se pondrá en Madrid una Caxa con título: Para rescate de cautivos y guerra contra Infieles, en la qual entraran todos los fondos de la redención porque esta es el dia de oy la que ocasiona el mayor perjuicio, pues aunque en su institucion no solo fue santissima

⁷³ L.A. Anaya Hernández, '[El corso berberisco y sus consecuencias: cautivos y renegados canarios](#)', *Anuario de Estudios Atlánticos*, 1-47 (2001), pp.19-42. On this topic, see pp. 21-2.

⁷⁴ AHN, Estado, Leg. 2927 No. 306, 1 doc, fol. 3.

⁷⁵ These reforms took place after the arrival of Ricardo Wall in Spain in May 1754, with his appointment as secretary of state after the demise of Carvajal on 8 April. On these reforms, see D. Tellez Alarcia, *Absolutismo e Ilustración en la España del siglo XVIII. El despotismo ilustrado de D. Ricardo Wall*, (Madrid, 2010), pp. 187-98.

⁷⁶ Echevarria, 'Esclavos musulmanes en los hospitales de cautivos de la Orden militar de Santiago (siglos XII y XIII)', p. 469.

(la qual siempre lo es) estimo muy conveniente y a un necesaria; con el curso del tiempo y diferencia del sistema, en que están las cosas se ha hecho sumamente dañosa, porque esperanzados los Moros de que llegarla la redencion se aplican a la caza de cautivos españoles, como a cosa que les produce tanto útil, estimando mas uno dellos que a uno de qualquiera otra Nacion, porque no logran con esos igual conveniencia, de que se infiere que faltandoles la esperanza de esta segura utilidad, que seavian ni avia tantos piratas, como ahora, ni podrían tan fácilmente hazer sus armamentos, por no tener ya el dinero que la redención les subministra.⁷⁷

With regard to the origin of funds, Moreno reflected on the importance of the collection of taxes such as the *Bula de Cruzada* or the *derecho de portazgo*, incomes, donations, *mandas* (vows or promises for death) or alms -in this case, thanks to *indulgence bulls*- for the redemption of captives, throughout Spanish history, with the Church's support too.⁷⁸ Added to all these items -at least until the Golden Age- was the money attained through the exchange of Christians for Muslim captives, whose value had been appraised beforehand. The amounts obtained were shared out between the king and the *hospitals* or *albergues* (hostels)⁷⁹ -having reached a previous consensus. These resources also included funds obtained in the context of trade by people who negotiated ransoms as 'extra-activity.' The negotiators were usually priests involved in those activities thanks to the licenses that they were awarded to this effect.

Raising funds for the rescue of Christian prisoners in Islamic territory was much more difficult, though. The possibility of requesting services in parliaments -as had been done from time immemorial in Castile and Aragon- did not exist any longer due to the lack of functions of a new parliament which was mainly focused on ceremonial purposes. The rescue of prisoners during the Bourbon monarchy was a complex mission indeed, especially after the enactment of the *Nueva Planta* decrees. From a political point of view, the king or his officials in the maritime department were directly involved in the decisions about rescues and ransoms. Achieving this aim required some deliberation in order to consider the risks associated with the mission. But they were not the only ones, because the references show that other people were involved as well. Not surprisingly, Pedro Moreno offered his own proposal taking into account both his experience and the knowledge of the Malaga coast and his service as a member of the Royal Treasury. Hence, he made a suggestion to the king, focusing on the aforementioned *Caxa para rescate de cautivos y guerra contra infieles* with the aim of obtaining enough money to pay ransoms when it was necessary:

⁷⁷ ANH, Estado, leg.2927, fols. 15-17.

⁷⁸ J. González, *El reino de Castilla en la época de Alfonso VIII*, (Madrid, 1960), vol. I., pp. 619-20. An interesting article about the *mandas testamentarias* [last will donations] allocated to the rescue of captives during the sixteenth and seventeenth centuries is J.L., Núñez-Varela Lendoiro, 'Cautivos de Doñinos en Argel... redimidos por una marquesa se hallaron en tierras toledanas', *Temas Toledanos and various studies*, XXXIII Congreso de la Asociación española de cronistas oficiales, pp. 67-80; more precisely, see p. 70.

⁷⁹ Echevarria, 'Esclavos musulmanes' p. 474.

2 Se aplicara a la referida Caxa al todo o parte de los fondos que tienen las ordenes militares, la Bula de la Santa Cruzada, el subsidio, el escusado, las rentas de algunos estudios inutiles, muchos beneficios simples y todas las pensiones que pagar los obispos; no debiendo dudar que su santidad hara gracia de Mar y de mucho mas que se le da, para un fin tan santo como el de libertar los cautivos y oprimidos a los enemigos y del nombre Christiano Considere pues que armada tan poderosa podrá formarse que mantenerse con estos arbitrios y serán infundia en los Moros y turcos.⁸⁰

But after the Nueva Planta decrees, another serious problem arose in relation to the origin of the money used for redemptions. This was also a recurrent problem during the Habsburg monarchy because of the huge impact that it caused upon the coffers of the royal property⁸¹; and also by the reluctance of parliaments to enact new tax measures to that end.⁸² From the late Middle Ages Muslims enslaved in Spain tended to be confined in hospitals; the slaves were seen as part of the *Real Tesoro* (royal treasury) from the very moment of their admission and later delivered as part of it when the said property was sold. Consequently, these funds –coming from bulls, incomes or alms– could sometimes be considered to suffice for rescues. However, the actual problem arose when slaves were sold apart from the real property, causing a serious damage on the economic value of the property. This situation explains, for instance, a petition made in 1523 to *Don Carlos and Doña Juana* in favour of treasurers, preventing slaves living in hospitals from receiving any mercy or deliverance. The reason behind this petition is simple: this was the only way to avoid an increase of incomes due to the devaluation of royal treasury. The petition was finally confirmed in a *Pragmatica* [Royal measure] given by Felipe II in 1569.⁸³

And finally, in the Crown of Aragon and more specifically in the kingdom of Valencia, Moreno's proposal focuses on coastal defence and rescues. Despite the problems, fund-raising to defend and save the coast was discussed at parliamentary meetings held in the kingdom of Valencia. The last parliamentary assembly held in Valencia (1645) revolved around this issue and, therefore, it specified the powers of the *Junta de electos* (Board of the Elect). Its main task consisted in controlling collectors' tax incomes and the 'leasing' of numerous taxes; taxes collected for the defence of the coast and to pay ransoms in cases of arrest –this whole procedure was carried out in accordance with the rules of maritime law, more precisely the provisions contained in the *LLibre of the Consulate of the Sea*.⁸⁴ From the parliamentary meeting of 1604, the

⁸⁰ In fact, during the last third of the eighteenth century, the threat posed by Muslims, and especially the Turkish empire, with its 'satellite states' on the Maghreb coasts made it necessary not only to develop diplomatic relations but also to suggest other types of defensive and intimidating tactics, as Moreno had warned; this issue is dealt with in R. Lourido Díaz, 'Relaciones del alawi Sidi Muhammad B. Abd Allah con el Imperio turco en la primera mitad de su sultanato (1757-1775)', pp. 325-32.

⁸¹ The topic is treated in a unitary way in 'De las Bulas y breves; su presentación y redención ante el Consejo' *Nov. Recop.*, 2,3,4.

⁸² D. Díaz Hierro, *Historia de la Merced de Huelva, hoy Catedral de sus diócesis*, (Huelva 1975), pp. 458-61.

⁸³ *Recop.* 1,10, 12 and *Nov. Recop.* 2,3,5.

⁸⁴ *Furs, capitols, provisions e actes de corts fets y atorgats per la S.C.R. M. Del Rey Don Phelip,....., en lo any MDLXIII*, Cap. Cap. CLVI-CLVIII y CLXI fol.24 Chap. CLII-CLIII, fol. 23, E. Salvador, pp. 53-4; *Furs, capitols, provisions e actes de corts fets y atorgats per la S.C.R.M. del Rey Don Don Phelip...en*

responsibility for both activities fell upon an institution designed to that effect at the request of the three estates represented in parliament: the *Junta de los Cinquanta Quatre*.⁸⁵ The Junta was created after the *Cortes* of 1604, in a *Fur* [foral right] that regulated to select fifty-four people for the new board. This was done on the basis of provisions developed by parliamentary assemblies held in 1585, during which the discussions focused on the protection of the kingdom against Moorish pirates –enemies of the Catholic faith. The aim sought with this institution was to provide accurate economic remedies to prevent the menaces of pirates who continuously arrested Christians:

cautivant molt gran numero de persones de tots estaments y edtas, portant aquelles a Berberia y altres pobles, hon pateixen miserable servitut.⁸⁶

The defensive galleys on the coast of Valencia had to comply with the rules of maritime Law enacted for those territories from time immemorial –a law which appeared in the chapters and titles of the *Llibre of the Consulate of the Sea*, together with all the other matters related to slaves and their redemption.

After the *Nueva Planta* decrees, it became clear that a new tax income was badly needed due to the inequality existing between Castile and Aragon. The Crown of Aragon was charged with more taxes; hence the *Instrucción* (rule of order) issued on 1 December 1711, to avoid this situation. Another *Instruction* was enacted some years later –on 18 March 1714; it linked the navy with the distribution of income for the defence against piracy. However, the responsibility for the management of budgets fell upon the *Generalitat* of Valencia and the royal treasury. These were the ancient institutions responsible for the distribution and application of funds. They granted the king a *servicio* of up to 110.00 Spanish pounds. The *Generalitat* took into account the basic needs, payment of salaries, expenses for parliamentary meetings and the salary of church priests and rectors for the instruction of Muslims, and kept an amount for coastal defence⁸⁷ and the exchange of prisoners.⁸⁸ Since the seventeenth century, parliaments considered –in addition to taxes– the convenience of giving grants or prizes to citizens who collaborated in the arrest of Turks, Moors or Berbers (enemies of the monarchy). This price justified the arrest of individuals of high value, at least to exchange Muslims for Christians. The co-operation of citizens in these arrests made it possible to save

lo any MDLCCCV, Cap. CCV-CCVI, fol. 29, p. 133. L. Guía Marín, *Cortes del reinado de Felipe IV II. Cortes valencianas de 1645* (Valencia, 1984).

⁸⁵ E. Ciscar Pallarés, *Las Cortes valencianas de Felipe III*, (Valencia, 1973), see Introduction.

⁸⁶ ‘De la nominacio y electio de les cinquanta y quatre persones y del poder de aquelles y de la erectio de quatre Galeres y imposicio de drets per la compara y conservació de aquelles’, ff. 48-51, pp. 109-16.

⁸⁷ So it appears specifically in numerous chapters of *Cortes* held in the sixteenth century; for instance, chapters XXXIII-L contain the proposal made by the three arms to the king about the provision of new funds coming from the tax on silk for such purposes; E.. Salvador, *Cortes valencianas del reinado de Felipe II* (Valencia, 1974), chaps. XXXIII-L, pp.244-9. This was equally the case in the chapter of the *Cortes* held in 1585, whereby the monarch was asked to return the 3,000 pounds which had been taken by the viceroy to defend the kingdom to the *Diputación*, *Cortes de 1585*, Ssalvador, *Cortes valencianas*., Chap. CLI, 118 and CXCVI-CCXXXVI, pp. 130-41.

⁸⁸ On the situation of Moorish people and their instruction, see Salvador, *Cortes valencianas*, chap. CLXXVIII, p. 124, *Cortes de 1563-64*, chap. XIV, p. 13.

money for ransoms –and, therefore, to save money of the royal treasury.⁸⁹ All these issues were put on hold with the abolition of civil and public Valencian Law, not explicitly addressed until the reign of Carlos III as a result of the reforms undertaken in the field of finance and the new international map.

Nevertheless, the common practice among mendicant orders of redeeming captives continued, despite Jorge Juan's mediation mission after his embassy to Morocco. Since 1771 the licence for the redemption of captives was provided to the Holy Trinity, also the Mercy Trinidadians⁹⁰ and, since 1781, to the *Congregación del Santo Cristo de Burgos*⁹¹ and to the Barefoot Holy Trinity –the latter maintained its purpose for over ten years. Redemption could be performed in every territory –except for the Crown of Aragon. The request for alms was under the control of religious orders. Additionally, the petitioners could be neither *questores* nor *lessors* because this function was assumed by *Padres Procuradores*. Redemption could only be performed with a license and the bishop's consent. The only exception was the collection coming from *caudales de propios* (wealth) or *arbitrios* (taxes). Boxes and boots were placed at churches for the collection of these alms.⁹² Despite this complex collection system, money did not flow easily. Some priests and friars were aware of the difficulty involved in rescues from Islamic territories and used to denounce the failure of the system in Algiers.⁹³ This attitude confirms the dishonesty of those who expressed such opinions in public; on the contrary, the documentation kept about the activity and organisation of hospitals for Christian captives in North Africa, and particularly in Algiers, indicates how important prisoner rescues were for religious orders.⁹⁴

All these economic problems were put on hold after the abolition of civil law and public law in Valencia. During the reign of Carlos III, the problems of piracy, coastal defence and rescues could be addressed thanks to the new reforms in public finance, as well as to the changes occurred on an international scale. The weak condition of the economy also affected ransoms and forced Carlos III to adopt drastic measures. The king was aware of the decline in charity and the reluctance of priests to look for money –an attitude caused by the harassment and bad treatment that they frequently suffered.⁹⁵

The permanent corsair threat in the Levant area and the institutional reforms in the second half of the eighteenth century inevitably led to rethink the protection of the coast and the search for new ways to raise funds with two goals: defence and rescues.

⁸⁹ For instance, in 1585, the Parliament decided to exempt collaborationists in this task from the payment of one fifth and other taxes. Cortes de 1585, chap. CLXXXIII, pp. 125-6.

⁹⁰ Brodman *Ransoming Captives in Crusader Spain*, pp. 15-40.

⁹¹ Gozávez, 'La piratería y la redención de cautivos en las costas de Huelva siglos XVI-XVIII', p. 378.

⁹² *Real provision* de 20 November 1780; Cf. *Nov. Recop.* 1, 29, 4, note 1.

⁹³ The treatment of non-Muslims in Islamic territories was strictly regulated by Koranic legislation, despite the agreements and diplomatic relations established since the late Middle Ages to achieve a favourable treatment in keeping with the reciprocity agreed by kings or caliphs or with the different sultanates; see A. Fatall, *Le statut legal de non-musulman en pays d'Islam*, (Beirut, 1958).

⁸⁹ Anaya, 'El corso berberisco', p. 28.

⁹⁵ 'Don Carlos III, por Real Orden de 13 de Abril y provisión del Consejo de 18 de Junio de 1789'. Cf. *Nov. Recop.* 1, 29, 4 and 5.

The first change consisted in a new distribution of the maritime space into three departments. According to the budget for rescues, Spain underwent a process of deal-signing and international agreements with other Mediterranean states and also with the Islamic world during the eighteenth century –which caused a reduction of the incomes known as ‘alms for redemption.’ In fact, the visit of the Moroccan ambassador, Al-Gazzal, to Spain had also been intended to pay alms.⁹⁶ The visit actually had a twofold aim: firstly, to see how many of those prisoners were Moroccan, in order to ask for their exchange for Spaniards; and secondly, to secure the funding needed to sustain and facilitate their redemption.⁹⁷ Surely, al-Gazzal travelled to Cartagena and gave alms to the Muslims who suffered captivity, in compliance with his sovereign’s orders.

This reciprocity attitude was also extended to vessels captured by *Berberiscos* (berbers) from that moment on. Galleys were usually carried to Moroccan ports, proceeding to an immediate release (art. 20); and they were compelled to restore the dams that they had taken around two miles from the coast or from its sight (art. 21). Finally, this treaty gave Morocco an effective role of ally, granting it the power to examine and control all vessels, in order to avoid the flight of capitals from Spanish ports.⁹⁸

Some years later, Spain was involved –once again- in a war with Morocco. Carlos IV ordered to continue tax and alms collections in order to provide money for rescues. The monarch would avoid the payment of ransoms with his own ‘properties’, as it had been done with two hundred thousand *reales* (old Spanish coins) from the ‘royal treasury’ –this measure was considered exceptional.⁹⁹ The first article in the new Treaty (*Tratado de paz, comercio, navegación, etc.*, signed in Mequinez on 1 March, 1799) ratified the content of the *Tratado de paz perpetua* –negotiated by Jorge Juan in 1767-, the *Convenio de amistad y comercio* signed in 1780¹⁰⁰ and the *Orden dada por el sultán Sidi Mohamed en 1785* as well.¹⁰¹ The aforementioned Treaty of Peace (1 March 1799 (22 Ramadan 1213H) included a paragraph with a special mention to the aversion that the Sultan of Morocco felt towards slavery. It was the reason for a new attitude and

⁹⁶ Copied: Ahmad al-Gazzal’s mission in Spain must have been well known in the light of the numerous references in the *Gazeta de Madrid* (Issue No. 25 of Tuesday, 24 June 1766, pp. 202-3, where information was given about the appointment of the Moroccan ambassador and his stay in Ceuta, Tarifa, Medina Sidonia and Jerez; Issue No. 26, pp. 212-3; Issue No. 27 informed about his stay in Ecija, Córdoba, el Carpio and Andujar; Issue No. 28 of Tuesday, 15 July, p. 231; Issue No. 34 of 26 August, p. 279; Issue No. 41, of 14 October, p. 335 about his farewell after the audience held on Saturday, 4th November. M. Arribas Palau, ‘Tres tetuaníes en Ibiza, liberados en 1767’ *CBET* 21-22, (1980), pp. 315-28; vid. p. 319.

⁹⁷ Funding which demanded from time immemorial the specification of items (sums) allocated for such purposes; See A. García, ‘Frontera, jihād y legados piadosos en al-Andalus (siglos xy xv), Martínez Molino, J., and Toro Ceballos, F.,(eds), *III Estudios de Frontera. Convivencia, defensa y comunicación en la frontera. En memoria de don Juan de Mata Carriazo y Arroquia*, (Jaén, 2000), pp. 317-30.

⁹⁸ *Tratado de Paz*, art. 34, p. 26.

⁹⁹ Royal order of February 1792, given to the council by the state ministry, *Nov. Recop.*, 1,29,6.

¹⁰⁰ M. Arribas Palau., ‘El texto árabe del Convenio de Aranjuez de 1780’, *Tamuda* 6, (1958), pp. 327-35.

¹⁰¹ This was the last legal measure given as a result of the embassy made by Francisco Salinas and Moñino I. Cagigas, de las *Tratados y convenios referentes a Marruecos* (Madrid, 1952), pp. 19-27. The edition of the text in Arabic: M. Arribas Palau, ‘El texto árabe del tratado de 1799 entre España y Marruecos’, *Tamuda* 7, (1959), pp. 9-51.

new changes in relation to arrest and prison for piracy or *carte blanche*. Thus, the treaty advocated the *canje* (swap) as the best way for getting freedom:

sin distinción de personas, clases ni graduaciones lo más pronto que sea posible, sin pasar por ningún caso el tiempo de un año en el que fueron capturados, recogiendo un recibo de estos al tiempo de su entrega para el arreglo del canje sucesivo; no considerado como tales prisioneros de guerra a los jóvenes que no tengan doce años cumplidos, las mujeres de cualquiera edad que fueren, ni los ancianos de sesenta años arriba, respecto a que no pudiéndose esperar ofensa alguna de estas tres clases de personas, no deben sufrir el menor quebranto ni vejación, y así desde luego que sean apresados se pondrán en libertad, y por medio de embarcaciones parlamentarias o neutrales se transportarán, a su país, siendo los gastos de estas conducciones de cuenta de la nación a quien correspondan dichos prisioneros (.)¹⁰²

Carlos IV responded with the same commitment, although there were a great number of prisoners and they committed many different types of crimes.¹⁰³

THE 'MOROS CORTADOS' LIVING IN A CONFESSIONAL SOCIETY

If it were necessary to sum up the consequences of the Treaty of Peace and Trade signed in 1767 in three words, they would be: change of attitude. The changes were evident in the behaviours and some attitudes as well as in the actions undertaken by the ambassadors of Spain and Morocco. References have already been made to Jorge Juan's intercession for the freedom of some Catalanian slaves, and also to al-Gazzal's interest in another three slaves from Ibiza, to which can be added the well-known rescue of *tabarquinos* slaves -coming from different nations- located in Algiers, and how they were exchanged for some Algerians detained in Spain.¹⁰⁴

However, the agreement signed in 1767 did not seem to produce the expected effects –as they were intended to be perpetual or definitive– in spite of the best intentions expressed in terms of trade and peace. Among religious orders and institutions, there were more who committed themselves to the pursuit of false converts and to implementation of Counter-Reformation measures, annoyed by the presence of new Christians who lived in Spanish territories. They were seen as a great problem despite their suspicious 'conversion': for this reason, the *Consejo de la Inquisición* (Holy Office) tried to end those abuses that caused so much damage to Christianity.

¹⁰² *Tratado de Paz*, art. 14, pp. 22-3.

¹⁰³ This treaty remained in force until 1844 without being denounced, although it was actually revised following the claims made by the 'Nación española que presenta ante la Corte de Marruecos según manifiesta Drummond Hay, Agente y Cónsul general de Gran Bretaña' in Cagigas, *Tratados y Convenios*, 'Acuerdo satisfaciendo varias reclamaciones, firmado en Tánger el 25 de agosto de 1844', pp. 29-32. The evolution of slavery throughout the eighteenth century has been studied from the perspective of its abolition and the way in which this process developed, as shown in R. Lourido Díaz, 'Hacia la desaparición de la esclavitud cristiano-musulmana entre Marruecos y España', *Cuadernos de la Biblioteca Española de Tetuán* 5, (1972), pp. 48-80; Cagigas, 'El rescate de varios centenares de cautivos ingleses y el tratado de paz anglo-marroquí de 1760', in *Cuadernos de la Biblioteca Española de Tetuán*, 13-14, (1976), pp. 99-140; 'La plaza portuguesa de Mazapán (Al-Yadida) y su reconquista en 1769', *Cuadernos de la Biblioteca Española de Tetuán* 17-18, (1978), pp. 99-116.

¹⁰⁴ Expeditions which developed between October 1768 and March 1769 in two trips, narrated and known through the documentation of ship accountants; González Arpide, 'La expedición de Argel y el rescate de los tabarquinos', pp. 262-67.

An example of the uneven application of this Treaty is provided by a report drawn up by the Holy Office sent to Carlos III (28 September 1769). The Inquisition made the Monarch aware of the situation caused by some Muslims living in Cartagena and their decision to leave Spain –their country– on a vessel docked at the port of Cartagena. These ‘*moros cortados*’ took advantage of the circumstances to hide in the galley and travel to Muslim territories; this action came to the knowledge of the governor’s department, with Don Miguel de Irumberri Balanza in charge, warning him to avoid the flight as soon as possible.

Although the ship was closely watched, it left the port. At that moment, the governor was informed by members of the Holy Office and he had enough time to give the commander instructions to make them return. The fact that they stayed on board and did not return to the port raises two questions. The first one is whether or not these *moros cortados* knew the content of the treaty. Perhaps they did. That could be the reason why they decided to stay on board despite the request made by the governor, who had full responsibility for the Board; another reason was the decision to return only children –who, being minors, had no responsibility whatsoever.¹⁰⁵ The situation caused the anger of the Inquisition Council and showed that commanders did observe and respect the treaty.

The presence of Muslims in Cartagena does not seem to be the only factor triggering their identification, prosecution and complaint to the Holy Office. The Muslim community, either *moros cortados* or still slaves, did not disappear after the expulsion.¹⁰⁶ Despite the ‘Expulsion Provision’ issued by Felipe V in 1712, Moors still lived among Catholic Spaniards. The *moros cortados* were actually free people, thanks to the salary received for work; and thanks to the alms that provided the ransom to achieve releases. Although they were baptised and adopted the customs of their neighbours, they did not achieve their credit and trust. The reasons for this lack of credibility are supported on sources that describe two facts: the first one, that they still attended the mosque to celebrate their rites, trying to mislead their neighbours telling them that they went to ‘chantar Mass’ (sing Mass). Furthermore, the Muslim community living in Cartagena in 1769 asked the mayor of that city, Don Juan Domingo de Medina, to keep the clothes of their dead. With the sale of those clothes and another two quarters that they produced each month, they would pay for the funerals, an Islamic ceremony. The second fact is the decision to leave Spain and go to

¹⁰⁵ Note that the condition as slave was transmitted by the mother in Islamic Law, which justifies the interest and concern shown by those women to ensure that their daughters went on board the frigate, as that would allow them to achieve freedom as soon as they reached the land, thus freeing themselves of the slavery condition to which they would be submitted throughout their lives in the Spanish territory; about this issue, see C. de la Puente, ‘Mujeres cautivas en “la tierra del Islam”’, *Al-Andalus-Magreb*, 14, (2007), pp. 19-37.

¹⁰⁶ By way of example, the *Cédula Real* [royal charter] of incorporation of the assets seized from the Moriscos of Granada was enacted on 28 February 1707. This practice had been repeated since the enactment of a *Cédula Real* in Valladolid in 1555 for the assets of Moors who had fled to Berber land to be dedicated to pay the salaries of inquisitors and officials, the rest being left to the wishes of High Majesty; in this state of affairs, on 31 May 1572 from San Lorenzo del Escorial, Felipe II decided also through a *Cédula Real* that the same assets should be incorporated into the Crown and the royal estate. On these provisions, see M^a A. Moreno Olmedo, *Catálogo del Archivo Histórico de la Alhambra* (Granada, 1994).

Algiers on the sly, which was regarded as an unequivocal sign that they felt uncomfortable in the peninsula.

Without a doubt, the suspicious flight was the reason and the excuse for the persecution. It is true that until that moment, nothing had caused anger between authorities or neighbours; but the situation of tolerance changed drastically from that moment onwards. The attitude towards them was arguably ‘condescending’ and ‘tolerant,’ despite knowing their Muslim condition before their redemption, as Muslims were allowed to congregate and celebrate in community their family rituals in strict privacy, as explained above. The discovery of the flight raises three significant issues regarding the subject of this paper. The first one is the governor’s authority over the Cartagena navy department; the second one is the strength of ecclesiastical authorities in the application of the rules, agreements and international treaties on the release of slaves, as well as the rules applicable to the rescue and release of Muslim captives in Levantine coasts; and the third one is related to the term ‘rescue’ as a tool for the exchange of prisoners to the detriment of the exclusive value of slaves and clashed with the practice of freedom self-purchase because it limited the swapping option.

In relation to the first issue, it should be highlighted that Cartagena was the place to pass health checks, from its new maritime departmental restructuring. This justifies the presence of North African vessels, which encouraged Muslims still living in the mainland –provided that they were being *moros cortados*– to embark stealthily, avoiding all controls for a final passage to Algeria or Morocco. Furthermore, this structural change conferred the authority upon the governor of the district in maritime affairs –Miguel de Itumberri. A second question arose in relation to this aspect was the authority of the Holy Office and the council of the bishop of Cartagena in conflict with the civil law applied by the governor? Surely this effective authority came into collision with the members of the Holy Office, who had been explicitly allowed to *estorvase la huida de los moros*¹⁰⁷ –that is, to forbid the exit and departure of Moors.

On the other hand, the governor had to agree to the boarding of *moros cortados* travelling to Morocco on the vessel. It was justified pursuant to the provisions contained in Article 19 of the deal for Peace and Commerce through the embassy of Jorge Juan,

todo christiano o renegado que se refugie en los presidios, como a bordo de los navios o embarcaciones de Guerra de S.M.C. que se hallen en los *Puertos de S.M.I. quedará libre: assi como todo Mahometano, o renegado que en los Puertos de España se refugie en las embarcaciones de Guerra de S.M.Y.*¹⁰⁸

The orders of the Holy Office refuted departure without compensation. The negotiations held by civil authorities resulted in the return of the four girls embarked by their mothers. From then on Moors living in Spain in the eighteenth century were considered *vecinos* (citizens) from a legal point of view, and in no way could be treated as slaves because they had ‘bought their freedom.’ But *moros cortados* were accused in the request to King Carlos III of ‘publicly doing their abominable rites’, although they were allowed to perform their rites privately without being bothered. A controversial that the authorities could not solve; it was the insistence on practicing their rites and religion the

¹⁰⁷ AGS, Secretaria de Marina, leg. 709.

¹⁰⁸ AGS, Secretaria de Marina, leg. 709.

trigger for their condition of Moors. This explains the Moors of Cartagena made a formal request to the bishop of the city to intercede for them –without a doubt, taking into consideration that the imams, as delegates of the sultan, emir or caliph, were the ones who had the power to give permission to Christians for their rituals and ceremonials in Islamic territories.¹⁰⁹ Likewise, Muslims considered that the bishop was the right person to deal with their requests, as well as the guarantor of security and the guarantees required, because in case of redemption, it could not be performed without his licence and consent (as explained above). The fact that there is no hierarchy in Islam justifies the fact they were unaware –or if they were aware, they pretended not to be– of the greater authority and competence of the Inquisition Council. And this ecclesiastical authority also found it difficult to pursue fugitives since, once they had embarked on the frigate under Moroccan flag, its competence was in conflict with the authority of the Naval Department of Cartagena: the military governor.

And thirdly, the importance that ransoms had for the achievement of ultimate freedom deserves to be highlighted. The *moros cortados* of Cartagena lived in this city. In 1733 they bought a house for Juana Navarrete –something which was recorded in the public deed. The *parcela* (plot of land) was purchased with the '*fondo comunal que los moros de galeras tenían en aquel puerto*' –that is, the savings fund of the Muslim community for rescues at this port. At that moment, like centuries before, the community of Muslim Spaniards was a legal entity –according to Islamic law– and under the principles of solidarity and *waqf* sought sustenance for those in need¹¹⁰. It was a community with contacts all over the Mediterranean and Atlantic facade as well, which stretched from the Canary Islands to Ferrol, even in the eighteenth century.¹¹¹ Hence, the Muslims who lived in Cartagena organised their lives around the Mosque, placed nearby Saint Ginés square, which was a refuge to Muslims in compromising situations, but also a Charity Hospital for the city of Cartagena. The latter was the institution which sought shelter and Moors exchange between Algiers and Spain, confirming its welfare activities.¹¹²

Apart from the request to expel the Muslims settled in Cartagena, the mayor of Cartagena naval department found difficulties in relation to the economic demands of the Holy Office to the *moros cortados*. It was demonstrated and stated that they had no case open or pending before the Holy Office. The license required by the Holy Office obliged them to pay a license which was burdensome for those who wished to leave the territory. This might be the reason why the Moors of Cartagena decided to flee furtively. However, another important aspect was added to the economic issue. The

¹⁰⁹ For the knowledge of the situation of prisoners in Spanish territories under Muslim sovereignty, see F. Vidal Castro, 'Los cautivos en al-Andalus' p. 363. And see too Ibn Rušd al-Yadd. *Al-Muqaddimat al-mumahhidat*. 3 vols. M. H. Ayy (ed), (Beirut, 1408/1988), vol. I, p. 366, Jalil. *Mujtasar*, I, pp. 104, 207. The list of events in AGS. Secretaria de Marina, leg. 709.

¹¹⁰ On the concept of community, see L.F. Bernabé: 'Notas para la cohesión de la comunidad morisca más allá de su expulsión de España', *AQ* 29-2, (2008), pp. 307-32.

¹¹¹ Romeu Armas, A., *Canarias y el Atlántico. Piraterías y ataques navales*, 2 t., (Madrid, 1991). Anaya Hernández, L.A., 'Nuevas aportaciones a la historia de la piratería norteafricana en las Canarias Orientales', *I Jornadas de Historia de Fuerteventura y Lanzarote*, Cabildo Insular de Fuerteventura, (Puerto del Rosario), 1984, pp. 121-37.

¹¹² Echevarria, 'Esclavos y musulmanes', p. 484. Additionally, the study about the Royal Navy and the exchange of captives in Algiers offers a figure of 1,350 individuals swapped between 1768 and 1769 –being classified as the 'largest captive release operation in the whole 18th century', according to Blasco, Guzmán, Montolla, 'La administración de la Armada Española en el siglo XVIII', p. 6.

Inquisition Council stated that obtaining a licence was not compulsory, but the Moors themselves requested it. Still unable to substantiate this statement, the fact is that Muslims who fled to the Maghreb had to 'prove' before their co-religionists in North-Africa that they professed Islam in order to maintain their status as "true Muslims" for the full 'integration' inside their community. Any cases before the Holy Office would suggest that they had -forcibly or voluntarily- renounced Islam. And in that event, integration became impossible because virtue was associated with martyrdom for faith, even in inhospitable territories. Therefore, two reasons can be suggested in favour of this furtive flight. The first one was the legal effects of the Holy Office licence on the Muslim community; and the second, the refusal to accept the bribery or tax that they had to pay to the Inquisition Council.

Finally, people persecuted due to religion later reconciled with the foreign policy aimed at demanding reciprocity, as laid down by Article 12 of the Treaty of Peace signed in 1799. This article guaranteed the religious practice of Catholics in Moroccan territories, holding religious services at the home hospices of friars in the missions established across those territories, guaranteeing their *seguridad, distinción y privilegios* (safety, distinction and privileges) granted by the previous Moroccan sovereign. As an honest response, the Spanish king undertook to ensure that the Moroccan people living in Spain were able to *practise their religion privately, as they practised from time ago*¹¹³. This statement provided a distorted point of view about the legislative measures taken after the decrees of expulsion (1609) and confirmed by Felipe V in 1712.

CONCLUSION

In summary, according to the new political situation in Spain after the *Decretos de Nueva Planta* the lack of activity of the Valencian Parliamentary assemblies caused a serious problem in accordance with the slave trade in the Mediterranean sea. The efforts of the religious orders resulted in securing founding for the rescue of Moorish and Christian people; the reason of this mediation was due to the lack of political will of the *Cortes Generales de Aragón* the conflict of competences and interest of the representatives. Although the activity of the *Generalitat* and the *Junta de Estamentos* controlling the administration of Valencian funds, the way to solve the inactivity of the Parliament for the problem of ransoms for the rescue was a policy of reciprocity, settle down through the *Tratado de Paz Perpetua*. The treaty guaranteed the friendship and the first movements against slavery between 'friendly countries', Spain and Morocco.

¹¹³ *Tratado de Paz*, art.12, p. 21.