Pepper, cinnamon, Pernambuco wood, indigo, oud and camphor from India, porcelain from China, copper, tin, mercury and corals from Spain. Ambergris washed to the shore from the depth of the sea. Race horses and destriers from Arabia and Persia for export to India for the kings’ stables. – Aden was blessed. Blessed by its location at the meeting point of the Red Sea and the Indian Ocean; blessed by its accessible natural harbour; blessed by the winds which made it an ideal hub for the trade from Egypt and for the trade from India, as well as the trade from Africa. The “capital of Arabia Felix” – as an Italian adventurer called it in 1503. Al-Muqaddasi (945/946 – 991), a geographer and author, hailed Aden as “the anteroom of China, entrepôt of Yemen, treasury of the West, and mother lode of trade wares”, a city “of many castles, and offering blessings to those who visit it, and excitement to those who inhabit it.”

Muslim and Jewish traders from Spain, Sicily, the Middle East, North Africa and the Arabian Peninsula travelled to the borders of the known world, down south along the African coast, east as far as Burma and Sumatra, and north up to Kiev. Government intervention (apart from customs and taxes) seems to have been sparse. Goitein characterizes the Mediterranean area during this period as a “free-trade community.”

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1 The Case-Study is intended to bring to life the story of the India trade in the 12th and 13th century. I am particularly grateful to Christopher Jedrey, partner in McDermott’s Boston office, for telling me about the Cairo Geniza and for pointing me to the works of Goitein. Lisa Richman and I are – as always – depended heavily on the support of our excellent team in Frankfurt and Washington. All errors are my own.

To enable students interested in the history of this fascinating period, which has so little in common with our mainly European (mis)perception of the “dark middle ages”, we have included references to a number of scholarly works by historians for further reading. However, for the purposes of participating in the Moot, no such further reading is required: all the facts of the case are included in this Case-Study with its Annexes and the documents published on www.investmentmoot.org.

For ease of reference, all dates are given in accordance with the Gregorian calendar.


3 A description of the seasons for navigation and the sailing conditions is in Roxani E. Margariti, *Aden and the Indian Ocean Trade: 150 Years in the Life of a Medieval Arabian Port*, p. 38 et seq. (North Carolina Press, 2007). She also has a description of the harbor.


6 S.D. Goitein, *A Mediterranean Society: The Jewish Communities of the World as Portrayed in the Documents of the Cairo Geniza*, vol. 2, p. 404 (University of California Press, 1999): “In our days, most inhabitants of the globe live either under totalitarian systems or in welfare states. In one way or the other, the personal fortunes of the individual citizen are affected by the state day in and day out. Things being so we are hardly able to envisage a state entirely different from what we are accustomed to. The Muslim state, like most others in the past, was concerned mainly with supplying two precious commodities: security and justice. Not more. … The far-reaching degree of autonomy enjoyed by the Jews (and, of course, the Christians) during their rule has a very simple explanation: their Muslim subjects, too, were left mostly to their own devices.”

The adventures of those travellers found their way into folk and fairy tales, poems, books; and from there into the collective memory of all of us.

There are, however, more sober sources of information: business letters, testaments, court records, marriage contracts, inventory lists, calendars penned on tiny scraps of paper and cloth: 350,000 fragments of documents; a gigantic “waste-paper basket” of discarded papers—a treasure trove for historians.

This case-study is based principally on two letters from that priceless “mess”: the first written in late August/ early September 1199, the second on 9 July 1202.

The first letter was sent by an unnamed Jewish merchant (who was a non-resident in Aden) to a businessman in India. The Geniza does not give us the names of the two. We only know that the sender of the letter had a brother called Abu Nasr.

Abraham ben Yiju and his Indian born wife Ashu had three children. A daughter, named Sitt al-Dar, a son named Perahya and another son who was born around 1133 and died in childhood. We do not know his name. For the purposes of the Moot, this son of Abraham ben Yiju reached adulthood, became an India trader (like his father) and was the recipient of the letter of 1199. We named him Samuel ben Abraham (like his paternal cousin Samuel ben Joseph). Samuel ben Abraham paid poll-tax as a resident in Fustat, Egypt.

The third person we will encounter in the case-study is Ayyit ibn Abu l’Khayr ibn al Minqar, the (fictional) son of Abu l-Khayr Ibn al Minqar. Abraham ben Yiju did have a cousin called Abu l-Khayr Ibn al Minqar. He was the son of a maternal aunt of Abraham ben Yiju. Abu l’Khayr took care of Abraham ben Yiju’s business in Aden (while Abraham ben Yiju did the same for Abu l’Khayr in India). For the purposes of the Moot, students will assume that like his father did for Abraham ben Yiju, Ayyit ibn Abu l’Khayr ibn al Minqar took care of Samuel ben Abraham’s business.

The Treaty on Succession, Friendship and Commerce as well as the arbitration are, of course, our invention.

10 A non-exhaustive list of Arabistic, Islamicistic, general medieval studies as well studies on the history of the Indian Ocean region based on the Geniza documents can be found in Margariti, *Aden & the Indian Ocean Trade*, op cit., p. 15.
11 Other details of the story are based on original documents from the Geniza of 1063, 1100, 1132 and 1145. They are referenced in the footnotes.
12 For the purposes of the Moot, students will assume this for a fact. (For the question of where the writer was sailing and where the letter was supposed to be sent, see Goitein/Friedman, *India Traders of the Middle Ages*, op cit., p. 511 fn. 37 and p. 512 fn. 39).
13 The sons of Abraham’s brother Joseph were called Samuel, Moses and Perahya. It is therefore not unlikely that the third child of Abraham and Ashu was either called Moses or Samuel.
14 Abu l-Khayr Ibn al Minqar means: “Father of Good, Son of the Bird’s beak”. Presumably, Abu l-Khayr’s father had a significant nose.
15 Goitein/Friedman, *India Traders of the Middle Ages*, op. cit., p. 69.
16 Goitein/Friedman, *India Traders of the Middle Ages*, op. cit., p. 69.
Although the facts of the case and the proceedings take place in the 12th and 13th century, treaties, customary public international law and case law are those of the 21st century.

**Books are Holy**

The Jews of the Middle Ages considered Hebrew the language of God. Not only religious writings, anything written in Hebrew script had to be treated with dignity. Discarded papers were not thrown away but stored in a geniza, normally in the attic or basement of a synagogue, until the geniza would be cleaned out and then buried in a cemetery. This practice of preservation and ritual disposal of documents was not unique to the Jewish community of the time either: the attic of the Great Mosque in Sanaa also served a similar purpose. Other examples can be found throughout the Muslim world.

This practice, however, did not stop people making the best use of paper (which was expensive). The backside of a document might be re-used for a different document, margins were scribbled on and address lines were torn off and used for a different purpose. The latter practice, combined with the fact that people often did not sign letters with their names, does not make a historian’s task of identifying the sender easier.

**The Cairo Geniza – 1000 Years of Everyday Life**

While genizot were normally cleaned out regularly, this – for some reason – did not happen in the Ben Ezra synagogue in Fustat (Old Cairo). The corpus of the Cairo Geniza includes documents from a period of nearly 1000 years.

The Egyptian desert climate and local superstition protected the documents. “The Genizah can be described as one of the greatest Jewish treasures ever found.”

A treasure that not only tells us about the everyday life and commerce of the Jewish people of Fustat, but about the economy in the Mediterranean world in the Middle Ages, the (mostly) peaceful interaction of the three large monotheist religions, the people of the pact (ahl al-dhimma).

And still, the Cairo Geniza only shows us a small window into the past. – Much more was lost than has been preserved.

**The Port of Aden – the Gateway to India**

When the center of Islamic power shifted from Iraq to Egypt, the major trade routes to India also shifted from the Persian Gulf to the Red Sea, to Aydhab (north of today’s Sawakin) and Aden.

Ships set out from Aden to Broach and Tana in Northern India as well as Mangalore and Malabar. - Indeed it appears that ship-owners specialised in certain routes: while some plied

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18 Margariti, *Aden and the Indian Ocean Trade*, op. cit., p. 216 fn. 27 with further references.
23 Margariti, *Aden and the Indian Ocean Trade*, op. cit., p. 27.
the India route, others serviced the Red Sea. The trade with Africa, China and the further East was plied by others again. All routes converged in Aden. Buying and selling on the markets of Aden was one reason to call on the port of Aden, perhaps the most important one. However, it was not the only one. Sea voyages are intimately associated with moisture in many forms: saltwater, freshwater as well as humidity in the air itself. Many of the wares transported (such as spices or textiles) do not respond well to humidity. Aden was the place to open and air goods, before they were sold on the markets of Aden, or stored, or repackaged for re-export. Repackaging was also a method of risk-management: dividing up a shipment between several ships reduced the chances of a total loss.26

It may surprise us today, but despite the fact that the distances were much shorter, travellers found the trip from Alexandria or Cairo to Aden much more daunting than the journey from Aden to India.27

Seafaring was by no means safe. We have multiple reports of ships taken by pirates or sunk in bad weather. Indeed, it was well known that a ship which “sinks in the environs of Aden, between the Masabb and Aden, never surfaces, nor does anyone who was in it survive at all, because of the turbulence of the sea and the force of the waves at the beach and the abundance of fish”, i.e. sharks.29

**Tax Regime in Aden**

Aden owed its riches to trade as well as taxes and customs connected with trade. Taxes were levied on imports (ushur) as well as exports (khuruj min al-furda). There was no “general” taxation on every good: dues were levied on individual categories of goods (while others remained tax free). Similarly, tariffs varied in amount and whether they had to be paid in cash or in kind. It appears that the import taxes were only due once the sale had been performed (and hence when cash was available).32

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24 See Margariti, *Aden and the Indian Ocean Trade*, op. cit., p. 150 et seq.
26 Margariti, *Aden and the Indian Ocean Trade*, op. cit., p. 190. The fact that a certain commodity (probably iron) was called “eggs” has its own charm in this context. See Goitein/Friedman, *India Traders of the Middle Ages*, op. cit., vol. I, p. 370. Metals continue to be sold in the form of ingots. In case of iron, a certain (rough) quality, is dubbed “pig iron”, which evokes a similar mental image.
30 Margariti, *Aden and the Indian Ocean Trade*, op. cit., p. 110, has figures for the period ca. 25 – 30 years after the events described in our case: ca. 600,000 dinars per year were sent as tribute money from Aden to the seat of the Ayyubid administration in Ta’izz.
31 The “cash” taxes were, however, not calculated on a strict “ad valorem”. The differences in the tax burden in percentage can only be explained if the tax were fixed at a nominal value and not on the price obtained in a transaction. A nominal tax rate may have discouraged tax fraud, but could lead to excessive taxation if it did not reflect the prevailing market conditions correctly. Margariti is undecided. See Margariti, *Aden and the Indian Ocean Trade*, op. cit. p. 133 as opposed to p. 114; the examples she quotes on p. 133, esp. the intervention of Madmun, see p. 121. In an ad valorem world, the tax would have been calculated on the lower sales price (both to the detriment of the state and the merchants).
32 Margariti seems to extend this also to the export dues (Margariti, *Aden and the Indian Ocean Trade*, op. cit., p. 113). However, for exports this makes no sense as the sale would not occur in the same port.
There were also a number of explicit tax exemptions. For example, according to G. Rex Smith, goods arriving in Aden from India and destined for export were not subject to import tax.33

During the reign of al-Aziz Tughtegin b. Ayyub an additional tax was implemented. His advisers had suggested this tax arguing “it would make him the object of gratitude among the people”.34 Indeed, this one did. – Tughtegin’s advisers had noted that his warships had been lying idle on the beach after the conquest of Aden for ca. ten years costing maintenance, but not doing anything useful. Piracy being a threat to commerce, they suggested that the galleys be deployed in the Indian Ocean protecting the trade between Aden and India. The relatively small additional charge (which applied only to certain goods) was called “galley tax” (al-sawani).35

While under Muslim law, non-Muslims should pay twice as much customs as Muslims, this was not the practice.36 Economic wisdom prevailed: a discriminatory treatment of Christian or Jewish traders would have been bad for business.37 Indeed, it appears that import and export taxes were the same irrespective of religious adherence.

While there was no difference as to the customs regime, there was an additional tax which the non-Muslims (dhimmis) paid, the so-called poll tax (jizya or jaliya). Upon conversion to

33 G. R. Smith, Have You Anything to Declare?, Maritime Trade and Commerce in Ayyubid Aden, Practices and Taxes, Proceedings of the Seminar for Arabian Studies, 25, p. 133 (Archaeopress, 1995). Margariti (Aden and the Indian Ocean Trade, op. cit., p. 131, fn. 136) argues that the tax exemption for goods in transit relates to export tolls instead of import. For the purposes of the case-study, we follow Smith’s reading (exemption from import tax). Margariti, Aden and the Indian Ocean Trade, op. cit., p. 131, fn. 136. This is also consistent with the use of the words “kharj” and “maks” in Bodl. MS Heb. B11, f. 21/IB.20/I.33, lines 2, 8. Id. at Table 3, p. 130). These terms according to Margariti usually describe exit tolls. – From a modern trade perspective, this reading is more convincing (cf. modern concept of free ports). Economically, it makes the port of Aden more attractive as a transit port: transit shippers used the port infrastructure of Aden but were not dependent on Aden as a market. Competition for transit goods may have been greater. Cf. Margariti, Aden and the Indian Ocean Trade, op. cit., p. 136, who questions the reasons for the different treatment of goods in transit, but see p. 77 on the competition with Kis. Our reading is also consistent with the fact that the customs house was placed just inside the waterfront walls, next to a city gate which controlled the influx and outflow of merchandise. Margariti, Aden and the Indian Ocean Trade, op. cit., pp. 114-115, see also id. at p. 87 et seq.).

34 Smith, Have you anything to declare?, op. cit., p. 131.

35 See also Smith, Have you anything to declare?, op. cit., pp. 131-132; Margariti, Aden and the Indian Ocean Trade, op. cit., p. 138 et seq. – As often with taxes, they remain in place after their original purpose has disappeared. In 1216, the last Ayyubid sultan of Yemen, al-Mas’idu Yusuf decreed that the merchants should pay directly for the maintenance of the fleet and introduced a new tax (an amount of 50,000 to 60,000 dinars). In 1228, he abolished the fleet and the tax, only to increase the asur to cover the amounts previously charged through al-sawani. Smith, Have you anything to declare?, op. cit., pp. 131-132.

36 For the budget of the EU’s mission Operation Atalanta, see http://eunavfor.eu/about-us/mission/.

37 Margariti, Aden and the Indian Ocean Trade, op. cit., p. 113 (“A second important point is that despite the injunction of normative Muslim law that non-Muslims pay twice as much as Muslims at customs, customs rates do not appear to distinguish between native subjects on the basis of their religion.”)

38 Apparently, there was a short period at the beginning of the reign of Saladin when a double tariff was applied. Saladin, however, repealed this double-tariff immediately when he realized that it was impacting on trade. Margariti, Aden and the Indian Ocean Trade, op. cit., p. 113, p. 265/266 fn. 13; S.D. Goitein, From the Mediterranean to India: Documents on the Trade to India, South Arabia and East Africa from the Eleventh and Twelfth Centuries, Speculum: A Journal of Mediaeval Studies, p. 196 (1954); Goitein, A Mediterranean Society, op. cit., vol. I, pp. 61-62, 345 (describing a letter from Alexandria, in which the writer describes an edict by Saladin to the effect that Jews and Christians, both local and foreign “pay only one half of the customs”, that is, were again made equal to Muslims in this respect). See also Goitein, From the Mediterranean to India, op. cit., p. 196. The letter described by Goitein is archived at T-S 13 J 26, f.22, II 14-20.
Islam, the poll tax was no longer owed. Typically, the poll tax was not opposed by non-Muslims in the territories of Islam. For instance, legend even has it that a prominent Jewish banker was afraid that if an Abbasid caliph exempted the Jews from the jizya (which the caliph considered), the Jews would run the risk of losing the religious freedom they enjoyed. According to this legend, he dissuaded the caliph by explaining that the jizya ensured security.

While not strictly income-dependent, there were supposed to be income thresholds which allocated to the poor one rate, to the middle class a slightly higher rate and to the “rich” the highest rate, and also provided for certain exemptions.

The jizya was to be paid at the place of residence by permanent residents (qatin), and not by newcomers (tari). The conditions for qualification as qatin or tari are not to be found. Each town implemented its own tariffs, and the rates between the richer, more important cities and the provincial towns apparently differed substantially. The weight could sometimes be heavy to bear, particularly as the members of a family were jointly and severally responsible for each other’s poll tax obligations.

In a land of merchants and of travel, the greatest difficulty was experienced by individuals who traveled within the territories of Islam. They had to carry a certificate or receipt demonstrating payment of the tax for the year (bara’a). This was a condition for uninterrupted travel within those lands, also ensuring that the dhimmi only paid the tax once. If the merchant travelling did not have the certificate or even simply forgot it, he would have to pay the tax again or, worse still, have to return home: “It was a common occurrence that Nile boats were not allowed to depart or were even turned back by the police because one of the passengers was unable to produce his jaliya receipt.”

Fear of double taxation still existed: the Geniza contains the example of a Tunisian merchant who extended his stay in Palestine to avoid the famine in Egypt. This extended stay caused him to become a permanent resident (qatin) of Palestine, although he was still registered as a permanent resident in Egypt, and thus also was responsible for paying the poll tax there.

The validity of a bara’a was generally recognized, even though sometimes a local tax-collector would value his own financial interest higher than the law. S. D. Goitein refers to a letter explaining that the merchant (discussed above) paid poll tax in Palestine and received the proper bara’a, however, when he returned to his home town of Damira, “the authorities did not honor the receipt and asked him to pay a second time”. In order to overcome this issue, he needed to seek review by the caliph.

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38 Goitein explains that, following the forced conversions to Islam by the self-proclaimed caliph al-Mu’izz (see below), “[t]he payment of the poll tax retroactively for the period, during which they had feigned to accept Islam, was intended to reinstate the Jews to an uninterrupted status of protected minority, so that they could not be accused of apostasy from Islam, for which one was liable for the death penalty.” S.D. Goitein/Friedman, India Traders of the Middle Ages, op. cit., vol. I, p. 516, fn. 15.
The Short Reign of al-Malik al-Mu’izz Isma’il –

Great fathers are often burdened with less than great sons. Tughtegin was not too happy with his son al-Malik al-Mu’izz Isma’il. After a falling out, Tughtegin excluded his son from power. Al-Muizz went to Baghdad.

However, when Tughtegin died in 1197, al-Mu’izz returned and succeeded his father in Yemen. Goitein/Friedman describe him as Saladin’s “eccentric nephew”. – Muslim writers were less polite: Abu Makhrama speaks of al-Mu’izz’s “disturbed mental state” (hulita aqluhu).

Al-Mu’izz styled himself as caliph, which may not have met with real enthusiasm in Bagdad where the real caliph on the throne of the Abbasids resided.

An Audience to Remember

In August 1199, al-Mu’izz summoned the Jewish merchants (residents and non-residents). The events of that audience are described in a letter found in the Cairo Geniza.

Letter from a brother of abu Nasr to [Samuel ben Abraham]:

Aden, (late August or early September) 1199

[A. Forceful conversion of the local Jews]

[...] to Aden. Immediately after his arrival in Aden, Madmun ben David was summoned to the caliph, who said to him: “Become a Muslim, or you will cause the death of your brethren [...].” Madmun cried bitterly, but there was no other way for him [...] to escape except to embrace Islam. Before his arrival in Aden, all those who were with him on the mountains had apostatized, the physician (known as) the Efficient, and everyone on the mountains; only the Jews of Aden remained. Sheikh Madmun accepted Islam on Wednesday, the first of Dhu ‘l-Qa’dah. On Friday, the third, the bell (of the market crier) was rung: “Community of Jews, all of you, anyone who will refrain from appearing in the audience hall after tomorrow noon, will be

45 See Saba Fakes v. Republic of Turkey, ICSID Case No. ARB/07/20, Award of 14 July 2010, ¶ 110.
46 Margariti, Aden and the Indian Ocean Trade, op. cit., pp. 269, fn. 53.
48 Margariti, Aden and the Indian Ocean Trade, op. cit., pp. 269, fn. 53.
49 Goitein/Friedman, India Traders of the Middle Ages, op. cit., p. 506.
50 Abi Makhramah, Tarikh thaghr Adan wa tarajim oulama’aha, 2:19 – 20, p. 51-52; see also Margariti, Aden and the Indian Ocean Trade, op. cit., p. 22. Very little information has survived about the life of Al Mu’izz.
51 Goitein/Friedman, India Traders of the Middle Ages, op. cit., p. 506.
52 We follow the translation provided in Goitein/Friedman, India Traders of the Middle Ages, op. cit., pp. 506–512. Where Friedman provides alternative translations, we have opted for one alternative. Changes have been made to make the text easier accessible. For the purposes of the Moot, students must use the version included in the case-study.
53 Islamic law regards forced conversion as illegal and invalid. Goitein/Friedman, India Traders of the Middle Ages, op. cit., p. 506.
54 25 August 1199.
killed.” None of the Jews remained, all went up to the audience hall. Moreover, the caliph ordered that anyone refusing to accept Islam would be killed. Thus all apostatized. Some of the very religious, who refused to accept Islam, were beheaded.

[B. The foreign Jews]

As to us, do not ask me how much our hearts were pained. We have never seen a worse day. But God, the Exalted, wrought with us a miracle and saved us, not through our might and by the strength of our merit, but through His grace and favour. For when we went up with them to the audience hall, the foreigners assembled separately and the caliph was consulted about them. God put these words into his mouth: “No foreigner should be molested.” He ordered that everyone should pay a third of [alt. tr.: triple] the poll tax. We disbursed this, and he dismissed us graciously, thank God. This is the upshot of all that happened. But, by the great God, I am really not able to convey to you even part of what happened, for witnessing an event is one thing and hearing about it – quite another.

[C. New impositions on visitors to Aden]

The merchants were outraged by the taxes promulgated. Finally, however, God, the Exalted, helped. The caliph had ordered that 15 out of 100 dinars should be taken from everyone both at arrival and departure, but God helped, and the caliph ordered that this Karim⁵⁵ should remain unchanged with no rise in tariff. But everyone coming later would have to pay 15 out of 100 dinars from all goods, and also from gold and silver, from wheat and flour, in short, from everything. Such will be the earnings of anyone coming here next year.

[D. Prices in Aden]⁵⁶

Pepper, a sack – sold for 52, later went down to 45
Cinnamon, a sack – 45
Pernambuco wood obtained different prices:
- Good Amiri, a sack – 18
- Middle quality – 16
- End pieces – a sack – 16
- The long variety, a sack – 18
Indian Indigo, a piece – 70 din.
Clove – not to be had; the mediocre – 45; the good - 65, 10 (manns)⁵⁷
Celandine – not to be had
New camphor – 8 1/2 a mann
The aromatic woods are of middle quality and expensive.

⁵⁵ Goitein/Friedman believe that in this context, karim refers to all India travellers during that season. Goitein/Friedman, India Traders of the Middle Ages, op. cit., p. 509 fn. 21. Margariti explains that late August/early September was a good time to leave Aden for India and that sailing west (i.e. up the Red Sea towards Egypt) was good from October to April. Margariti, Aden and the Indian Ocean Trade, op. cit., p. 40. - We therefore conclude that the delayed implementation of the new regime benefited both out-bound fleets and exempted them from the 15% exit toll. – Coming back from India and Egypt, they would be subject to the new regime. (The month mentioned in the document, Dhu ‘l-Qa‘da, is the eleventh month of the Islamic year. I.e. “next year” in the last line of the paragraph was less than eight weeks away.)
⁵⁶ There is no mention whether these prices had been affected by the new regime.
⁵⁷ Goitein/Friedman, India Traders of the Middle Ages op. cit., p. 510 fn. 26, have doubts regarding this item. – It is irrelevant for the case-study.
The price of copper was –
Copper in fragments, First – 72, later it reached – 85;
in bars – 70; later it reached 90
Tin – 70
Corals – 11
Antimony of Shalwadh, a sack – 17
of Maghrebi, a sack - 25
The ‘gray’ perfume, a sack – [missing]
Cinnabar – 10 manns 18
Mercury – 10 manns 17

Please take notice of this, my lord.

[E. Conclusion]

I asked God for guidance and am traveling home\(^{58}\) in the boat of Ibn Salmun, the same in which I made the passage out. May God bestow safety upon it in His mercy! My brother Abu Nasr will be traveling with me. I am kissing your hands and feet.\(^{59}\)

This meant that for the first time, customs were levied on all goods, including on gold and silver (i.e. money). Import and export tax were fixed at 15%.\(^{60}\)

**Customs change**

Al-Mu’izz also reformed the port services, implementing a hitherto unknown modern customs clearance service.\(^{61}\) At the same audience described in our letter, the caliph held a speech emphasising the need “to secure our borders, transportation sector, ports, and critical infrastructure, while simultaneously ensuring the speedy flow of legitimate traffic.”

Indeed, the border controls in Aden were well organised and thorough:\(^{62}\)

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\(^{58}\) For the question of where the writer was sailing and where the letter was supposed to be sent, see Goitein/Friedman, *India Traders of the Middle Ages* op. cit., p. 511 fn. 37 and p. 512 fn. 39. - Considering the shipping seasons (see fn. 61), it appears plausible that the writer sent this letter to India to inform the recipient on the taxes expected to be levied on the return journey, while himself waiting to set out for Egypt in October.

\(^{59}\) Goitein/Friedman, *India Traders of the Middle Ages*, op. cit. p. 512 fn. 40 mentions a much effaced postscript of four lines, referring to several of the goods mentioned before and possibly a letter to a Sheik Hasan. – Hasan is a name which appears in the genealogy of the Madmun family.

\(^{60}\) Margariti, *Aden and the Indian Ocean Trade*, op. cit., p. 124, argues that the 15% were in addition to the existing taxes. However, we believe that an additional burden was created only (i) by levying it on all goods (also goods which before were not taxable) and on money, and (ii) by also imposing a general 15% export tax as opposed to the very low export tax on a limited number of goods.

\(^{61}\) The following description follows the account which Ibn al-Mujawir wrote about 30 years after the facts of our case study. Margariti, *Aden and the Indian Ocean Trade*, op. cit., pp. 118-119, notes that this system must have been introduced in the Ayyubid period as no reports/complaints are found in the Geniza. Even if the system had been introduced by Al-Mu’izz, it is doubtful that it would have reached the level of perfection described by Ibn al-Mujawir in the short term of his office. – However, for the purposes of the Moot, students will assume that Al-Mu’izz introduced the system and that it was fully operational by the time the ships returned from Egypt and India.

\(^{62}\) The following account is lifted from the translation of Ibn Al-Mujawir’s *Tarikh Al-Mustabsir (A Traveller in Thirteenth-Century Arabia)*, Translated from Oscar Löfgren’s Arabic text and edited with revisions and annotations by G. Rex Smith (The Hakluyt Society, 2008), p. 154 - 156. Footnotes omitted. See also Margariti, *Aden and the Indian Ocean Trade*, op. cit., p. 115 et seq.
“When a ship arrives in Aden and those looking on and the look-out on a mountain spot it, he shouts at the top of his voice, ‘Hiriya!’ This is [from] the top of Jabal al-Akhdar on which was built al-Husn al-Akhdar. It was originally called Sirsiyah. The look-out can only look out at sunrise and sunset, since then the sun’s rays are on the surface of the sea, so whatever there is can be seen even at great distance. Now the look-out will have in front of him a piece of wood and when something appears to him on the sea, he aims at this particular thing with the stick. If it is a bird or some such thing, it moves to the right or the left, or it rises or descends, so he knows that it is nothing [important]. But if the image is straight along the stick, he is sure that it is a ship. He makes a sign to his colleague, as he shouts out ‘Hiriya!’ His colleague in turn makes a sign to his companion who informs a courier that there is a ship. Then the courier takes news of ships to the governor of the town. When he has left the governor, he informs the officials in the customs house. After them, he shouts as loud as he can from the mountain top, ‘Hiriya, hiriya, hiriya!’ When the general public hear the voice, everyone climbs a mountain, or goes up to a roof to look out right and left. If what the look-out has said is accurate, he is given a malaki dinar for every ship and this [comes] from [the budget] of the customs house. If, however, he is not accurate, he is given ten strokes of the cane.

When the ship draws near, messengers embark in sanbugs to meet the ship. When they come alongside the ship, they embark and greet the nakhudhah. They ask him where he has come from and the nakhudhah asks them about the town, who the governor is and about the price of goods. All those on board with family in the town or acquaintances send through him either their congratulations or their condolences. A messenger comes forward and writes down the name of the nakhudhah and those of the merchants. The ship’s clerk will have already written down everything in the hold of the ship, goods and cloths, and hands a chitty to the messengers. They all disembark into sanbugs to return to town, straight to see the governor. They give him the clerk's chitty along with the name of the merchants listed and they chat with him about the ship, where she has come from and what goods are on board. The messengers leave him and tour the town to give news to the families of those who have arrived to be reunited with them. Each one then takes his payment.

When the ship arrives at anchorage and drops anchor, the deputy sultan arrives and the inspector embarks to search them all one by one; the search covers the turban, hair, sleeves and trouser belt and under the arms and he taps the man's pocket with his hand, inserts his hand between his buttocks and goes to great pains to smell him. In the same way an old woman searches the women, passing her hand over their buttocks and private parts. The merchants disembark into town and bring down their baggage the next day. After three days, the cloths and goods are off-loaded into the customs house and unbound piece by piece and counted cloth by cloth. If spices are part of the merchandise, they are weighed on a steelyard. An estimation is made of everything the weight of which is doubtful, so that nothing is left. They have already sworn an oath by God before the officials that they will

63 Note by authors: captain or ship-owner.
do all in their power [to act honestly]. Ibn al-Mujawir remarked as follows. Then misfortune overcomes the merchant, sadness overwhelms him and he remains in the wadi of evil fate because of what they do to him to drive away good luck and happiness!65

THE DISPUTE

Samuel ben Abraham received the letter in Mangalore and cried out in dismay: “I might as well take the arsenic, not sell it. - O God! God! How weary, stale, flat and unprofitable, seem to me all the uses of this world!”66

Samuel had bought 60 bahars of small measure of pepper, 206 eggs of iron, 2 bahars of cardamom, and many other wares, which he intended to ship with the following Karim.67

Samuel also had a number of copper products which had been ordered by Adenese and been produced in his copper factory ready for shipment.68 – Customers would order good and supply raw materials from Aden. These would be worked into the item ordered and the finished good would be shipped back to Aden.

However, Samuel also remembered the wisdom of his mother, who having had her honour – and that of her children challenged had developed a healthy relationship with the legal profession and consults a local lawyer in Mangalore.

Samuel is in two minds: should he send his merchandise to Aden to be handled by his agent Ayyit – and risk paying the new taxes? Or should he try his luck and send the wares to a different port, where he does not have an agent. Samuel is even unsure whether there are captains that would take their ships (and Samuel’s merchandise) on a different route bypassing Aden. “One thing is sure, I will not risk the route through Kis!”

His local lawyer (who otherwise does mostly maritime salvage work) tells him “The risk of a wrong decision is preferable to the terror of indecision.” He recommends that Samuel sends his wares (as planned) to Aden, but marking everything as “for re-export to Aydhab”.

66 A previous letter from Joseph ben Abraham to Abraham ben Yiju dealing with a consignment of arsenic to be sold in Ceylon can be found among the Geniza documents. See, e.g., Goitein/Friedman, India Traders of the Middle Ages, op. cit., pp. 575-577 (“(7) Moreover, I had here a bag of yellow arsenic. I heard that arsenic in your place (8) is in demand, and in particular the people of Ceylon search for it a great deal. I have sent [it], my lord, (9) to you, its weight exactly 160 pounds. And it is fine arsenic. Please make an effort, [III, 5, line 1] my lord, to sell it all, as you are graciously accustomed to do, for whatever price God apportions (2) as livelihood….On the bag of arsenic there is written ‘Abraham Yiju, (19) sent by Joseph b. Abraham.’ It is wrapped in hides.”).
67 This shipment is modeled after shipment sent to Aden by Samuel’s father Abraham ben Yiju.
68 Abraham ben Yiju had what has been described variously as a bronze or brass factory in India. See Goitein/Friedman, India Trader of the Middle Ages, op. cit. pp. 13, 58; Gotein, Letters of Medieval Jewish Traders, op. cit., pp. 192-197. As Gotein explains, the inquiries to Abraham ben Yiju requested various wares called for sufr and nahas, both of which mean “copper”. However, Gotein suggests that they were referring actually to bronze or brass. See Gotein/Friedman, India Traders of the Middle Ages, op. cit., p. 645. For purposes of the case study, we assume that Abraham ben Yiju’s factory was a copper factory and that all relevant requests he received were for copper wares. The case-study also assumes that Samuel continued to operate the copper factory.
The lawyer also drafts two documents: the first, a letter, to be handed over to the port authority on arrival of the ship. The lawyer explained that this letter was a so-called “cooling-off letter”, which accepted arbitration under the Treaty of 12 September 1192 A.D./588 A.H. on Succession, Friendship and Commerce between the Realms and territories Ruled by the Ayyubids, namely, Egypt, Muslim Syria-Palestine, Upper Mesopotamia, and Yemen (“Treaty”) and invited negotiations. The second one a Power of Attorney for Ayyit instructing him to commence arbitration.

**Clearing Customs in Aden**

Being a cautious merchant (and well aware of the dangers of maritime travel), Samuel split the merchandise between five ships of the Karim, which carried them to Aden. – Indeed, fortune smiled and all ships arrived. – Each of them carrying a copy of the letter and of the Power of Attorney for Ayyit.

Each time, when the deputy sultan boarded the ship. The karani handed over the letter. By the time the fifth ship arrived, the deputy sultan was positively angry and threw the letter into the water. “The caliph will not receive such insult”, he shouted and advised the inspectors to be very thorough when doing the body searches.

Eventually, all merchandise cleared customs and Ayyit received payment requests. He was advised by the customs officials that the 15% import tax had to be paid on everything. Moreover, 15% would have to be paid in case of any (re)export, or any “export” of gold or silver (or merchandise) obtained in payment. Ayyit handed over his Power of Attorney to legitimize himself for the purposes of negotiations as well as a cooling-off letter on his own behalf which he modeled on the letter by the Indian lawyer to an official. That well-meaning official warned him that going to the palace and negotiating would not be a good idea.

Six months lapsed. Fearing the export tax, Ayyit had only shipped half of the merchandise to Aydhab and sold the rest in Aden. Contrary to his normal practice, he kept the gold and silver instead of re-investing it in merchandise. After six months, the new regime was still in place and no improvement was in sight. Ayyit went to Madmun ben David, the Nagid of the Jewish community in Aden, who advised him that while to his knowledge, the Maimonides and others were working tirelessly to mobilize the Cairene Ayyubids against Al-Mu’izz, nothing was expected to happen any time soon.

Ayyit therefore decided to embark on a legal journey and – with the help of an Adenese lawyer – filed for arbitration.

In his Request for Arbitration under Article 408 of the Treaty, Samuel ben Abraham, represented by Ayyit ibn Abu l’Khayr ibn al Minqar as well as Ayyit ibn Abu l’Khayr ibn al Minqar raise the following claims:

May it please the arbitrators to hold and adjudge to Samuel ben Abraham and Ayyit ibn Abu l’Khayr ibn al Minqar damages in an amount to be determined by the honorable Arbitrators for the breaches of the Treaty of Friendship and Commerce, namely

First, the illegal and improper imposition of poll-tax on Ayyit ibn Abu l’Khayr ibn al Minqar, partner in Samuel ben Abraham’s business and resident of Fustat, on behalf
of whom payment was made by his brother-in-law, the learned Perahya Abu l’Surur, proof of which had been furnished to the Adenese authorities;

Second, the unfair and expropriatory imposition of outrageous export and import taxes on merchandise of Samuel ben Abraham destined for re-export, which hitherto had been subject only to minimal export tolls if any;

Third, the degrading, unfair and insulting treatment of the persons accompanying the merchandise at the behest of Samuel ben Abraham, namely his Indian servant Bama;

Fourthly, the violation of the transfer provisions regarding the 15% confiscatory toll imposed on gold and silver both for incoming and outgoing payments;

Fifthly, the de facto expropriation and unfair treatment of Samuel ben Abraham’s copper factory in Mangalore, which depends on Aden both for its raw materials and its customers.

Ayyit appoints Jacob ben Abba Mari ben Simson Anatoli as arbitrator on behalf of the Claimants.

Al-Mu’izz’s Response

Al-Mu’izz is not happy, obviously. He instructs his muftis to litigate the case, but gives them instructions to challenge take any steps necessary to protect the sovereignty of the nation.

Eventually, Ayyit’s and Samuel’s lawyers receive a response from “The Caliph al-Malik al-Mu’izz Isma’il, Ruler of Yemen, objects to the jurisdiction of any arbitral tribunal and to the admissibility of any claims for the following reasons:

1. Samuel ben Ashu is the son of an Indian slave. He is not a national of Egypt. Egyptian law allows religious minorities to be governed by their own laws. Jewish law does not recognize Samuel ben Ashu as son of Abraham ben Yiju. It is not uncommon for state laws to be sensitive to religious rules, such as marriage impediments for adulterers or – in some countries – divorcees.

2. There is no investment in Aden. The Treaty requires assets invested “in the territory”. Samuel ben Ashu has a factory in India and solely sends merchandise to Aden. Such trade related disputes do not fall under the Investment Chapter of the Treaty. – There is no “partnership” as understood by most international lawyers as the Islamic commenda does not create an entity of its own. At best it is similar to an unincorporated consortium, at worst Ayyit ibn Abu l’Khayr ibn al Minqar is just a free-lance agent.

3. Customs and taxes are matters of sovereignty. Their imposition is within the sole discretion of the Sovereign. The reform of the hitherto unnecessarily complicated system by replacing the different taxation of goods by a uniform system is actually conducive to stimulating trade. In addition, customs are trade-related measures. Moreover, the new impositions were introduced with utmost circumspection in that they did not apply to shipments in the year of the introduction of the measures, but only affected future karim. Samuel ben Ashu voluntarily sent his wares to Aden and thereby has accepted the new taxes and has waived any claims. The import and export tax on gold and silver is a tax. It does not affect the transfer provision of the Treaty as payments by promissory notes or other monetary instruments is not affected. The border regime is necessary to protect the security of Yemen,
in particular in the light of the piracy threat and the evermore creative attempts by merchants to avoid paying taxes. The system is state of the art and an example for the whole region. It is applied across the board without any discrimination. Moreover, neither Ayyit ibn Abu l’Khayr ibn al Minqar nor Samuel ben Ashu, the Claimants, have been affected by the controls as neither of them travelled. So how could it affect their investment, unless their business model included smuggling?

4. As to the imposition of the poll-tax, this is covered by the public policy and the culture exceptions in the Treaty. Poll-tax is a time-honoured privilege which protects people of the pact (ahl al-dhimma) granting them religious freedom. As evidenced by the letter of August/September 1199 (Exhibit R-1), the foreign Jews of Aden judged themselves privileged that they could pay the modest poll-tax and did not have to convert. – Moreover, as Ayyit ibn Abu l’Khayr ibn al Minqar himself states, the duty to pay poll-tax also exists in Egypt. If the home State of the alleged investor requires the payment of poll-tax, poll-tax must be permissible under the Treaty.

5. To the extent that Ayyit ibn Abu l’Khayr ibn al Minqar complains about an alleged double-taxation, it suffices to say that there is no treaty concerning the avoidance of double-taxation between Egypt and Yemen. To the extent that Ayyit is trying to rely on the “MFN” clause, it bears spelling out the “n” in MFN. It reads “nation”, not “religion.”

6. The claims are also barred. It has come to our attention that Maimonides as well as other Cairene notables are attempting to influence our royal brother in Cairo to intercede on behalf of the Adenese Jewish merchants. This attempt to obtain diplomatic protection makes any claims in an investor-state arbitration inadmissible.

The Caliph of Yemen hereby appoints Saif ad-Dīn Alī ibn Abī Alī ibn Muhammad at-Taghlabī al-Āmidī as arbitrator.

The Constitution of the Tribunal

The two party appointed arbitrators fail to agree on a president of the Tribunal within the period specified in Article 408 (2) (a). Claimants invite the President of the Court of Arbitration of the International Chamber of Commerce in Paris to make the necessary appointment in accordance with Article 408 (2) (b).

The ICC appoints King Ganapati of King of the Telugu speaking Lands as President of the Tribunal.

The Tribunal then orders the Claimants to submit a Reply.

The Claimants’ Reply

1. Samuel ben Abraham is the son of Abraham Ben Yiju and Ashu Berakha. While it is true that Ashu was an Indian handmaiden. She was manumitted and became a Jewess before the marriage with Abraham ben Yiju. 69 It is true that certain narrow-minded Jewish sectarians

69 Abraham ben Yiju bought, freed, and married an Indian slave girl named Ashu, who he refers to in his documents as “Ashu the slave girl, the proselyte, of Tuluva.” The deed of manumission is dated 17 October 1132 (which must have been shortly after his arrival in Mangalore). The deed tells us that Ashu was renamed ‘Berakha, daughter of Abraham.’ Berakha means “blessing or good fortune”. Abraham in this context refers to
challenged the validity of Abraham Ben Yiju and Ashu Berakha’s marriage. However, Abraham Ben Yiju had extensive legal opinions made to disprove those ludicrous allegations.70 Indeed, the ruler of Yemen, Bilal ben Jarir, issued a guarantee in 1145 for Abraham ben Yiju and his family.71 In any event, those challenges of Samuel’s ancestry are matters of Jewish law and have no bearing on his Egyptian citizenship, which is governed by state law. There is a difference between matters of Jewish family law (which maybe religious law) and administrative law, which is state law. Indeed, this is evidenced by the fact that

the Patriarch Abraham, the father of all converts to Judaism (not Abraham ben Yiju). See Goitein/Friedman, Indian Traders of the Middle Ages, op. cit., pp.55-57 and p. 632 et seq.

70 Copies of four legal opinions were found in the Geniza documents that relate to Ashu Berakha. All of them are described in Goitein/Friedman, Indian Traders of the Middle Ages, op. cit., pp. 690 – 692. For the purposes of the Moot, students will rely on the summary provided in this footnote.

The first opinion states that a betrothal conditioned on the manumission of the bride is valid. The legal opinion discloses, however, that Mishna Qiddushin 3:5 on its face states the opposite: a betrothal conditioned on the manumission is invalid as the freed woman acquires “a mind of her own”. (The same chapter of the Mishna states that a betrothal of a daughter as fetus, i.e. during the pregnancy of the mother, is valid, as it is only conditioned on birth.) The first opinion then goes on to interpret this chapter as well as other Talmudic texts.

The second legal opinion refers to the hypothetical case of a slave-owner who had a sexual relationship with his slave before the manumission. Although such relations would be illegal and – as any extra- or pre-marital affair – would bar a marriage between the “adulterers,” he rejects the opinion that a marriage which has already been concluded would have to be divorced. In support of his opinion, the expert refers to Talmudic writings. (Maimonides, Responsa, 2:373-375, no. 211, supports this: he even advocates manumission and marriage to legitimize relationships between master and slave.)

The third opinion deals with the validity of the marriage of a leviratic (i.e. childless) widow in the absence of a release by the late husband’s brother in the light of Deuteronomy 25:5 (“If brothers are living together and one of them dies without a son, his widow must not marry outside the family. Her husband’s brother shall take her and marry her and fulfill the duty of a brother-in-law to her. The first son she bears shall carry on the name of the dead brother so that his name will not be blotted out from Israel.) and 25:7-10 (describing the release). The expert refers to Yehudai Gaon (second half of the 8th century) who had rejected the view that in such a case, the widow must divorce the new husband and is barred from marrying either of the two men. Yehudai decided that no such divorce was necessary if she had surviving children from the second husband (i.e., she could stay married to the new husband) and that the children were legitimate children of this new husband. The legal expert then draws an analogy between the situation of the widow and other marriages concluded inspite of impediments.

The fourth legal opinion concludes that the children of an emancipated slave are legitimate Jews and that the sons inherit the estate after the father:

“Furthermore, we conclude that the son of an emancipated slave girl inherits his father’s estate and is considered a Jew for all purposes, from the words of the ages, peace be on them: Whoever has a son anywhere /Goitein/Friedman: even a bastard/ exempts his sister-in-law from the levirate [note by the author: the marriage is not considered childless and the woman is therefore not affected by Deuteronomy 25:5] and he is considered his son for all purposes, except for one who has a son from a slave girl or a Gentile.

From this we surmise and deduce that where she an emancipated slave girl or a proselytized Gentile, the matter would be decided contrariwise; and the child would be his son for all purposes and inherit his father’s estate and would be considered a Jew for all purposes. We have verified through valid witnesses that this son and this daughter are the children of an emancipated slave girl. This discussion lacks nothing whatsoever.”

71 Goitein/Friedman, India Traders of the Middle Ages, op. cit. p. 71 and pp. 359 – 365. The fact that a guarantee had been issued by Bilal ben Jarir is reported in a letter by Madmun ben Hasan to Abraham Ben Yiju: “I (your servant) spoke with the ‘auspicious lord’ concerning you, and I took from him a pledge of protection” (Goitein/Friedman, op. cit., p. 362). The guarantee itself has not been preserved in the Geniza.
Samuel ben Abraham pays poll tax in Egypt. Lastly, it would be a gross violation of international law for a state to accept a religious law’s alleged discrimination against children born from a marriage that allegedly violates some religious marriage impediment.

2. There is an investment in Aden. Samuel ben Abraham’s factory in India cannot be seen in isolation. Ayyit ibn Abu l’Khayr ibn al Minqar is his partner handling matters from Aden. It is true that there is no incorporated entity or legal personality for their partnership. This is because the Islamic form of partnership commenda does not create such an “entity”. However, the lack of a legal entity has no bearing on the definition of investment which is an economic rather than legal exercise. Moreover, there is nothing in the Treaty to suggest that the investment (rather than the investor) has to have legal personality. – The factory and the import and export of goods from and to India (and Egypt) are parts of the same investment, which has been harmed by Yemen in Yemen.

3. Customs and taxes are matters of sovereignty – as are many things, such as the administration of criminal justice, the appropriation of private land for public purposes. While there are investment disputes about “contractual misconduct” of the state, most investment claims deal with the state acting in exercise of puissance public. There is no exclusion clause for tax or custom matters in the Treaty. Respondent seeks to obfuscate the issues by arguing that the new taxes are trade-related measures: these measures harm the investment. Whether or not they also violate trade agreements is of no issue as the Claimants do not invoke breaches of trade agreements. A second attempt to obfuscate is the State’s argument that the new taxes only apply to the following karim. While this may have protected “one-of traders”, it does not alleviate the burden on investors, who have no choice to divert their streams of merchandise elsewhere. – As to the application of the transfer provision, the Claimants disagree. The transfer provisions apply and are violated.

4. To invoke *tu quoque* as well as the public policy and culture exemption clause in the Treaty for the defence of the discriminatory poll-tax flies in the face of international law. It shows the risk of treaty making parties including public policy or cultural exception clauses in treaties. Offending state parties will always try to couch discriminating measures under “public policy” or “culture.” Such clauses are no self-judging and must always be read under the control of customary international law and *ius cogens*.

5. The mutual acknowledgement of the payment of poll-tax is a recognized custom in all states of the Muslim world. Whether there is a treaty or not. This is not a question of MFN (which relates to the illegality of the poll-tax per se), but a question of mutual recognition. The concept of mutual recognition is emphasised by Article 401 (c) of the Treaty.

6. This arbitration is not under the ICSID Convention. There is also no clause pertaining to the impermissibility of diplomatic protection. Moreover, there has been no formal intercession.

7. Respondent has submitted a copy of the letter of August/September 1198 (Exhibit R-1). There is no lawful way in which the Respondent should have obtained possession of this private letter. The Claimants have conducted further research and have learned the following disturbing facts: several recipients of letters in Aden have reported that messages for them either were suppressed or reviewed before they were being handed to them.\(^{72}\) The

\(^{72}\) These allegations are based on Goitein, *A Mediterranean Society*, op. cit., vol. I, p. 271. The three incidents reported in Goitein occurred in 1063 and 1100 in Syria, Egypt and Tunisia: “In a letter written around 1100, the
Respondent misuses its already abusive border control system to gain access to private and confidential post. Claimants have to assume that their communication is also under surveillance. This is in violation of the Treaty.

**The Mail Supervision Claims**

In response to the new allegation pertaining to the alleged control of postal services, Al-Mu’izz’s lawyers make a separate submission.

Ad 7: Respondent will refrain from responding in substance to the ludicrous allegation regarding communications. It is obvious that even the Claimants themselves do not allege that THEIR post as been searched. They have therefore not even raised a claim.

A request for production of documents pertaining to the surveillance of communications by the Claimants was granted by the Tribunal. – Respondent replied that “as a matter of principle, Respondent does not disclose information regarding matters of national security. It makes no comment on whether or not any surveillance system is in place as even information on the absence of such a system could jeopardize the security of our nation.” No documents are disclosed. Respondent does not make any statement how it obtained the letter it exhibited with its submissions.

The Claimants’ lawyers also sought (and obtained) leave to submit on this point:

Ad 7: It is in the nature of clandestine measures that the victim does not know whether it is affected. This means that when communicating, everyone at all times has to operate on the assumption that communication is under surveillance. This not only interferes with personal liberty but also affects investments. Investments, foreign investments in particular, depend on communicating about business, including exchanging business secrets. – Moreover, given its refusal to bright light into this matters, Respondent should bear the full burden of proof.

**In This World Nothing can be Said to be Certain, Except Death and Taxes**

The arbitration runs its course. Both parties having agreed on generous deadlines, it resembles more a cruise on the Nile rather than the brisk step of an army.

Indeed, Al-Mu’izz’s reign came to a premature end when his own troops killed the self-styled caliph in front of a mosque ca. three years later.73

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Again, we have a contemporaneous document from the Geniza which tells the story.\(^{74}\)

Letter from Madmun ben David to a Jewish notable in Egypt\(^{75}\)

Aden, 9 July 1202

Translation

[A. Introductory greetings to the addressee]

*In the name of the Merciful.* \(<<\) On the margin: The servant Madmun ben David – *may the spirit of God grant him rest.* \(>>\) greets his high and lofty excellency …

[B. Losses on consignment of pepper]

I received your distinguished letter in which you report the trouble you encountered with the pepper carried with you. God, the Exalted, knows that my intention in this matter was only to be useful to you. May God, the Exalted, support you and grant you success! *Amen, Amen.*

[C. Murder of the ‘caliph’ and return of Jewish life]

What the servant has to share with you includes the following: The troops killed al –Malik al-Mu’izz, who had claimed to be caliph. He is succeeded by al-Malik al-Nasir Ayyub, the son of the Sultan Sayf al-Islam, and his Atabeg is the Sultan Sayf al-Din Sunqur. After his government had been settled, your servants submitted their case to him. He related to them with equitable justice. Your servants openly proclaimed their acceptance of the religion.\(^{76}\)

All this happened in the month of Sivan, one day before the eve of Pentecost.\(^{77}\) We celebrated the feast in the proper way, in *happiness and joy.* Some Jew-baiters formed menacing groups, but could not do a thing, thank God, the Exalted. All that happened to us has come through the blessings of our lord, the *Rayyis Moses*\(^{78}\) – *may memory of the righteous be for a blessing!* – and the blessings of our lord, the *pious man, our master Isaac,* and through your blessings. May God, the Exalted, grant you good reward for your munificence!

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\(^{74}\) We follow the translation provided in Goitein/Friedman, *India Traders of the Middle Ages,* op. cit., p. 514 et seq. Where Friedman provides alternative translations, we have opted for one alternative. Changes have been made to make the text more easily accessible. For the purposes of the Moot, students must use the version included in the case-study.

\(^{75}\) The identity of the recipient of the letter is irrelevant for the purposes of the Moot. Goitein/Friedman, *India Traders of the Middle Ages,* op. cit., p. 513 fn. 2 and p. 519, identify the recipient as Hibat Allah ibn Jumay, known as Shayk al-Muwaqqaf, a famous physician. Indeed, Section D. of the letter is consistent with the recipient being a physician. However, ibn Jumay had died in 1198. A potential candidate could therefore be ibn Jumay’s son, Abu Tahir Isma‘il, who completed his father’s book “Guidance to the Welfare of Souls and Bodies”, see [http://www.nlm.nih.gov/hmd/arabic/E17_E21.html](http://www.nlm.nih.gov/hmd/arabic/E17_E21.html).

\(^{76}\) I.e. Judaism. The word used here for religion is Sharia, which according to Goitein/Friedman, *India Traders of the Middle Ages,* op. cit., p. 5151 fn. 13, was often used for the Jewish religion in Judeo-Arabic texts.

\(^{77}\) Those interested in an explanation should refer to Goitein/Friedman, *India Traders of the Middle Ages,* op. cit., p. 516 fn. 16. For the purposes of the Moot, the use of the word pentecost is irrelevant.

\(^{78}\) Moses Maimonides. For the use of the blessing, see Goitein/Friedman, *India Traders of the Middle Ages,* op. cit., p. 516 fn. 20. Again, this is irrelevant for purposes of the Moot.
D. Mutual orders, including copies of Maimonides’ writings.

Your distinguished letter, containing several orders has arrived. Your servant hopes to be able to carry them out. I do not doubt that you – may God make your honoured position eternal! love me and are concerned with my well-being. May God, the Exalted, help me to satisfy your wishes, as is my duty, God willing!

I renew my reliance on you for having the two items sent with you collated and please have a third copy made in good script and on fine paper. And have copied for me the medical writings of my lord the Rayyis. << On the margin: And buy for me any fine copies of useful books you can lay your hands on and kindly send them to me. May God make your honoured position eternal! May I never be deprived of you and never miss you!>>

E. Postscript by a bystander on the deliverance from the forced conversion.

The servant Madmun ben Jacob – may the spirit of God grant him rest! – present at the writing of this letter, sends his best regards to his excellency, my master. Thanks to God, the affair ended happily. May all Israel be blessed with the sudden appearance of salvation! We were not worthy of this, but the Holy One – may He be blessed! – did what He is worthy of, for the sake of His great name, and brought relief to the Jews in the entire country of Yemen. Relief was brought first, slightly before us, to the people of the mountains. Finally the Sultan came to us, and the relief became complete, by the help of the Creator and through your success. Let them praise the Lord for His steadfast love.

Kind regards to his excellency my lord (= to you) and to all under his care the kindest regards, and to all connected with him and subordinated to him a million greetings of peace.

Written Tammuz 17 1513 E.D. Salvation is near! Two copies were made and sent by way of the Hijaz.79

A New Ruler for Yemen – A New Legal Team

Al-Malik al-Nasir Ayyub, Al-Mu’izz’s brother, became the new ruler of Yemen. As described in the letter of 9 July 1202, he allowed the resident Jewish population to revert to Judaism (and to pay the poll-tax for the intervening years). He also abolished the additional poll-tax for non-residents.80

Regarding the customs system, he reverts to the status quo ante set out in the Tables in Annex II. It also allows merchants that claim to have been affected by the Al-Mu’izz tax regime to apply for reimbursement.81

Ayyit ibn Abu l’Khayr ibn al Minqar requested such a reimbursement on the basis that all goods had been intended for re-export (and therefore should have been import tax free). The Adenese authorities disagreed: Ayyit ibn Abu l’Khayr ibn al Minqar chose to sell half of the goods in Aden, which means that the tax exemption from import tax does not apply. Moreover, the labeling of all goods as “for re-export” was fraudulent in the first place. This

79 I.e. by land. See Goitein/Friedman, India Traders of the Middle Ages, op. cit., p. 518, fn. 35.
80 Goitein/Friedman, India Traders of the Middle Ages, op. cit., p. 514-518; see also Margariti, Aden and the Indian Ocean Trade, op. cit., p. 124.
81 It is confirmed by Roxani Margariti that the tax system introduced by Al-Mu’izz was abolished. Margariti, Aden and the Indian Ocean Trade, op. cit., p. 124. The reimbursement of taxes paid is our invention for the Moot.
is very obvious as the shipment included copper goods which had been manufactured in India from Adenese copper for Adenese customers. The Adenese authorities therefore granted only a reimbursement on the wares that had actually been re-exported. The Adenese authorities also imposed a fine equivalent to the amount of reimbursement for the attempted import tax fraud on the copper items ordered by Adenese customers. The imposition of the fine and its amount were in line with the applicable law which had been in place since before the Al Mu’izz tax regime and continues to be in force unchanged.

The border controls remain in place. No further information transpires as to the alleged postal controls.

Al-Malik al-Nasir Ayyub replaced also the legal team of the case. New counsel is pleasantly surprised: “We actually have a decent arbitrator! I would never have thought they would appoint him. Too bad that this case is not going to the merits.” New counsel is less enthusiastic about the (lack of) research done by the former team on the president of the tribunal (“Well, actually, now I am no longer surprised that they appointed al-Amidi….”).

Respondent takes the liberty of informing the Tribunal on the recent events in Yemen and makes the following statement:

8. The Case has settled. The intervention of Maimonides etc. has not only removed the grounds for complaints, but also led to a change of government. Moreover, the settlement was obviously brought about by bribes. The letter of 9 July 1202 (Exhibit 2) refers explicitly to Maimonides’s “munificence”. Such misconduct by someone intervening in the interest of the Claimants is an obstacle to arbitration. The case must be dismissed.

9. Respondent has discovered 10 days before the filing of this submission that there are grounds which call into question the impartiality of the President of the Tribunal:

King Ganapati is planning to introduce a new customs and taxation system. The draft exhibited in Annex III shows that King Ganapati has preconceived views on the question of customs and taxation which bear directly on this matter. King Ganapati did not disclose this. Respondent is mindful that opinions expressed in scholarly writings do not constitute a ground for challenge. However, a draft bill by a sovereign king is on a different level altogether!

Rejoinder by Claimants

8. This case has not settled. Instead of being reimbursed for the import and export tax Samuel ben Abraham paid under the Al- Mu'izz regime, the new Ruler imposed a fine for alleged tax fraud. If anything, this is a new violation of Samuel's treaty rights. Also, there was no reimbursement of the additional poll-tax for Ayyit ibn Abu l'Khayr ibn al Minqar. Further, Respondent’s reading of the 9 July Letter is fanciful. How, a reference to munificence can be equated to corruption is beyond reasons. We remind the Tribunal of the international standards and the burden of proof finding corruption! - It may be true that Moses Maimonides offered presents to his Highness al-Malik al-Adil Sayf al-Din Abu-Bakr ibn Ayyub. However, not only are such gifts customary in dealing with persons of authorities throughout the region, even more importantly, it is none of the Respondent’s business. If anything, those were gifts given by residents of the Home State to the authorities of the Home State.
9. Respondent’s new counsel are even more creative than the previous. There is a marked difference between a policy which King Ganapati might see fit to adopt as a ruler for his territory having regard to the specific needs of his people and his region and what he judges to be in line with international law as arbitrator. For these reasons and the legal arguments to be discussed in the oral hearing, the challenge must be dismissed.

**Procedural Order**

Whereas the Parties have submitted their arguments on jurisdiction and admissibility, the Tribunal decides to bifurcate the proceedings and to hold a hearing on the challenge of the President of the Arbitral Tribunal as well as jurisdiction and admissibility from 11 to 14 March 2014.

The Tribunal asks the Parties to submit skeleton arguments by 15 February 2014.

The Tribunal further requests the parties to reserve 15 March 2014 for an evidentiary hearing, should the need arise.

The Tribunal intends to focus the oral hearing on the nine issues, set out in the numbered items in Parties’ submissions at pp. 13 – 17 and 20 – 21. It expects the Parties to address these in their skeleton arguments in preparation for the hearing.

His Royal and Divine Highness Ganapati, King of the Telugu speaking Lands
Jacob ben Abba Mari ben Simson Anatoli
Saif ad-Dīn Alī ibn Abī Alī ibn Muhammad at-Taghlabī al-Āmidī
ANNEX I – Goods subject to tax82

<table>
<thead>
<tr>
<th>Merchandise</th>
<th>Quantity</th>
<th>‘Ushur (Import taxes)</th>
<th>Shawani (Galley tax)</th>
<th>Maks / Kharj / Khajr Al-Furda (Export Tax)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pepper</td>
<td>1 b.</td>
<td>8 d.</td>
<td>1 d.</td>
<td>2 d.</td>
</tr>
<tr>
<td>Indigo</td>
<td>1 piece</td>
<td></td>
<td>4 d. (?)</td>
<td>.25 d.</td>
</tr>
<tr>
<td>Assa gum</td>
<td>1 b.</td>
<td>8 d.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Perfumed cherry bark</td>
<td>1 b.</td>
<td>3.5 d.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bamboo sugar</td>
<td>1 b.</td>
<td>20.66 d.</td>
<td>1 d.</td>
<td></td>
</tr>
<tr>
<td>Dafwa’ wood</td>
<td>1 stick</td>
<td>“half” of total</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Camphor</td>
<td>1 far.</td>
<td>25.6 d.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cardamom</td>
<td>1 b.</td>
<td>7 d.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cloves</td>
<td>1 far.</td>
<td>10 d.</td>
<td>1 d.</td>
<td></td>
</tr>
<tr>
<td>Saffron</td>
<td>1 far.</td>
<td>3.66 d.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pernambuco (6 b., worth 100 d.), cinnamon (2 b., worth 29 d.), rhubarb (5 m., worth 15 d.), total value 144 d. (plus lac?)</td>
<td></td>
<td></td>
<td></td>
<td>16 d.</td>
</tr>
<tr>
<td>Musk</td>
<td>4 khm. + 10 m., worth ca. 23.25 d.</td>
<td>2.33 d.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Flax / Linen</td>
<td>1 b.</td>
<td>7.5 d.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sale of a ship</td>
<td></td>
<td>10% of sale value (payable by seller)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Iron</td>
<td></td>
<td>“half” of total</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lead</td>
<td>260 r., worth 17.33 d.</td>
<td></td>
<td>.33 d.</td>
<td></td>
</tr>
<tr>
<td>Copper</td>
<td>5 b., cost 415 d.</td>
<td></td>
<td>4.125 d.</td>
<td></td>
</tr>
<tr>
<td>Lac-dye</td>
<td></td>
<td>“one-third” or “one-quarter” of total + 2 d.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lac</td>
<td>2 bales, 1000 r., worth 113 d.</td>
<td></td>
<td>13 d. (probably includes both taxes and transport)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Item</th>
<th>Quantity</th>
<th>Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>Madder</td>
<td>1 b.</td>
<td>12 d.</td>
</tr>
<tr>
<td>Tamarind</td>
<td>1 b.</td>
<td>3 j.</td>
</tr>
<tr>
<td>Maqati' cloths</td>
<td>10 pieces</td>
<td>2.5 d.</td>
</tr>
<tr>
<td>'Uqudat cloths</td>
<td>10 pieces</td>
<td>.75 j.</td>
</tr>
<tr>
<td>Sheep</td>
<td>1 head</td>
<td>.25 j.</td>
</tr>
<tr>
<td>Slave</td>
<td>1</td>
<td>2 d.</td>
</tr>
<tr>
<td>Sindaburi slave</td>
<td>1</td>
<td>8 d.</td>
</tr>
<tr>
<td>Silk cloth of Zabid</td>
<td>( ? ) pieces</td>
<td>1 j. + .5 d.</td>
</tr>
<tr>
<td>Robe of Zafar</td>
<td>1</td>
<td>1 j. + .25 d.</td>
</tr>
<tr>
<td>White cloth</td>
<td>1</td>
<td>.125 d.</td>
</tr>
<tr>
<td>Sousse linen</td>
<td></td>
<td>4 q.</td>
</tr>
<tr>
<td>Sousse waist-wraper</td>
<td>( ? )</td>
<td>1 j. + .25 d.</td>
</tr>
<tr>
<td>Bedcovers</td>
<td>1 khw</td>
<td>4 d.</td>
</tr>
<tr>
<td>Handwoven fabrics</td>
<td>1 khw</td>
<td>2.5 d.</td>
</tr>
<tr>
<td>Loincloths</td>
<td>1 khw</td>
<td>2.5 d.</td>
</tr>
<tr>
<td>Calico</td>
<td>1 khw</td>
<td>2.5 d.</td>
</tr>
<tr>
<td>Sousse linen (large)</td>
<td>( ? )</td>
<td>2 j. + 1 q.</td>
</tr>
<tr>
<td>Sousse linen (small)</td>
<td>( ? )</td>
<td>2 j. + 1 f.</td>
</tr>
<tr>
<td>Sorghum, 1 basket</td>
<td></td>
<td>.125 j. or .125 d.</td>
</tr>
</tbody>
</table>

**Note:**

b. = *bahar* or *buhar* (a measure of weight, about 300 *ratl* [pounds], or 150 kilograms)
d. = *dinar* (gold coin, dinar)
f. = *fals* (copper coin)
far. = *farasila* (a weight of about 20-35 *ratl* [pounds])
j. = *ja'iz* (eight fals, or half a dinar)
khw. = *khawraja* (score, or eight pieces, an Indian term)
q. = *qirat* (1/24 dinar, a carat)
r. = *ratl* (pound, about 450 grams)
ANNEX II – Tax-exempted goods

<table>
<thead>
<tr>
<th>Goods imported from Egypt</th>
<th>Goods imported from India</th>
<th>Goods entering via al-Sihr</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wheat</td>
<td>Everything for re-exportation</td>
<td>Stoned dates</td>
</tr>
<tr>
<td>Flour</td>
<td>Preserved (?) myrobolan</td>
<td>Headless salted fish</td>
</tr>
<tr>
<td>Sugar</td>
<td>Prayer mats / turban linen</td>
<td>Thongless Indian sandal</td>
</tr>
<tr>
<td>Rice</td>
<td>Cushions</td>
<td>He-goats</td>
</tr>
<tr>
<td>Soap from al-Raqqah</td>
<td>Grape baskets</td>
<td>She-goats</td>
</tr>
<tr>
<td>Saltwort</td>
<td>Circular leathers</td>
<td>Beads imported from Daybul</td>
</tr>
<tr>
<td>Syrup</td>
<td>Rice</td>
<td>Indian slave boys</td>
</tr>
<tr>
<td>Olive oil</td>
<td>Kedgeree</td>
<td></td>
</tr>
<tr>
<td>Flax oil</td>
<td>Sesame</td>
<td></td>
</tr>
<tr>
<td>Salted olives</td>
<td>Soap</td>
<td></td>
</tr>
<tr>
<td>Everything connected with</td>
<td>Frankincense from Kalah</td>
<td></td>
</tr>
<tr>
<td>sweetmeats / dried fruits</td>
<td></td>
<td></td>
</tr>
<tr>
<td>nuts (in small quantities)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Honey (in small quantity)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

ANNEX III – Ganapatideva’s Draft Royal Chart of Security (Abhayasasana) 84

The Draft Abhayasana provided as follows:

By this glorious Maharaja Ganapatideva the following edict (assuring) safety has been granted to traders by sea starting for and arriving from all continents, islands, foreign countries, and cities.

Formerly kings used to take away by force the whole cargo, viz. gold, elephants, horses, gems, etc., carried by ships and vessels which, after they had started from one country for another, were attacked by storms, wrecked and thrown on shore.

But We, out of mercy, for the sake of glory and merit, are granting everything besides the fixed duty to those who have incurred the great risk of a sea-voyage with the thought that wealth is more valuable than even life.

The rate of this duty (is) one in thirty on (all) exports and imports.
On one tola of sandal, 1 pagoda ¼ fanam.
On 1 pagoda’s value of (country) camphor, Chinese camphor, and pearls, ⅓ and 2/3 fanam.
On 1 pagoda’s value of rose-water, ivory, civet, camphor-oil, copper, zinc, riseya (?), lead, silk-threads, corals, and perfumes, 1 ¼ and 1/8 fanam.
On 1 pagoda’s value of pepper, ¾ and 1/8 fanam.
On all silks, 5 ½ fanams per bale (?).
On every lakh of arcca-nuts, 1 pagoda 3 ¼ fanams.

84 Kakatiya Ganapatideva was a remarkable figure in the history of India. We add this information by way of background and to encourage further reading. None of the facts described in this footnote are to be used in the competition:

Ganapati became king in 1199 and ruled for more than 60 years; his daughter Rudramadevi (renamed Rudradeva) for 27 years (Dr. P. Sivunnaidu, Kakati Ganapatideva and His Times (1199-1262), p. 152 (Kalpaz Publications, 2004). Ganapati affirmed his rule over a wide territory in Southern India through both diplomatic means (notably planned, strategic weddings) and war. Ganapatideva not only gained power and recognition by means of the sword and the spear, he also governed his country with a will to see it prosper. His administration, as such, was aimed at securing, protecting and enriching his kingdom. Id. at pp. 33, 107-123.

King Ganapati had both of his daughters, Rudrama and Ganapamba, instructed in the administration and warfare, making them able rulers. During the end of his life, he made Rudramadevi his co-regent in order to secure her position as his successor (despite this she had to fight to establish her power). Also the younger sister, Ganapamba, as a widow administered the lands left to her husband Kota Beta for 40 years. Id. at p. 99.

According to a stele found in Motupalli, King Ganapati enacted a royal edict in 1244-1245. The Draft Edict of the Case-Study mirrors the text found on that stele as translated by E. Hultzsch (“Motupalli Pillar-inscription of Ganapatideva; A.D. 1244-45”, Epigraphia Indica 12, pp. 196-197 (1913-14), available at http://jambudveep.files.wordpress.com/2011/12/epigraphia-indica-vol-xii.pdf). See also Dr. P. Sivunnaidu, Kakati Ganapatideva and His Times (1199-1262), op. cit., p. 121; Goitein/Friedman, India Traders of the Middle Ages, op. cit., vol. I, p. 162.

According to C. Talbot, “Motupalli must have been the chief port in Kakatiya Andhra, to judge by this inscription and by the fact that it is the one place in Andhra which the Venetian traveler Marco Polo claims to have visited, just decades after King Ganapati’s edict was inscribed” (C. Talbot, Precolonial India in Practice – Society, Region and Identity in Medieval Andhra, p. 73 (Oxford University Press, 2001).
In the Saka year [left blank], named [left blank], at the great Desuyakkondapattana (also) named Mottuppalli, Ganapatideva set up for the sake of glory (this) edict-pillar, which resembles a staff for the support of the eternal (law of) justice (dharma) which is stumbling in the mire of the Kali age.