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► **To cite this version:**

Franck Latty. Christine de Pizan.: The Law of War as Seen by a Medieval Woman. Immi Tallgren. Portraits of Women in International Law.: New Names and Forgotten Faces?, 1, Oxford University PressOxford, pp.47-55, 2023, 978-0-19-886846-0. 10.1093/oso/9780198868453.003.0002 . halshs-04646951

HAL Id: halshs-04646951

<https://shs.hal.science/halshs-04646951>

Submitted on 12 Jul 2024

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Christine de Pizan

The Law of Warfare as Seen by a Medieval Woman

Franck LATTY

Professor, Université Paris Nanterre
Member and former Director of the Centre de droit international de Nanterre (CEDIN)
President of the French Branch of the International Law Association

Christine de Pizan (c1365 - around 1430) remains largely unknown to legal scholarship. The daughter of a Bologna astrologist physicist, Christine de Pizan was born in Venice, Italy. Her father having been invited to the court by Charles V, she joined the Kingdom of France at the age of five where she was educated. Married at fifteen, she was widowed ten years later. She began writing to support herself and her family, including her three children. Her manuscripts (the printing press was invented some twenty years after her death) were distributed with great success to the princes and patrons of the time, many of whom were her protectors. A person of great erudition, Pizan is likely the first woman to have lived by her pen.

Her work in (old) French, abundant and varied, “contains charming poems as well as austere philosophical and historical treatises”.¹ A contemporary of Joan of Arc, she dedicated a poem to her in 1429. She is also a renowned letter writer. Among her best-known works, *Le Livre de la Cité des dames* (*The Book of the City of Ladies*, 1405) is an allegorical treatise of a city inhabited exclusively by great women, which itself is sometimes presented as one of the first feminist works of literature.² In her writings, more generally, Pizan celebrates the moral qualities of women, refutes misogynistic clichés, and fights against those that make women inferior to men.³ The question of women’s rights was not discussed at that time, but Pizan’s defence of women⁴ is particularly inspiring in this perspective.

Even though Pizan never produced a full legal survey, the law is not absent from her work. One particularly noteworthy work is *The Book of Deeds of Arms and of Chivalry*⁵ (which earns Pizan her place in the portrait gallery of people who have left a mark on the history of international law.

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¹ (Tr) Suzanne Solente, ‘Christine de Pisan’ [1969] *Histoire littéraire de la France* 40, 14.

² On the feminist interpretation of Pizan’s work, see eg Rosalind Brown-Grant, *Christine de Pizan and the Moral Defence of Women: Reading beyond Gender* (Cambridge University Press 1999).

³ Andrea Valentini, Edition of Ch. de Pizan, *Le livre des epistres du debat sus le Rommant de la Rose* (Classiques Garnier, 2014) 136.

⁴ Isle Paakkinen, *Gender and Defence of Women in Christine de Pizan’s Thought*, PhD dissertation (University of Helsinki, 2016) 243 s.

⁵ I relied on the translation into modern English of the Book by Sumner Willard (transl.) and Charity Cannon Willard (ed.), *The Book of Deeds of Arms and of Chivalry* (The Pennsylvania State UP, 1999) and on the *édition critique* of L. Dugaz (*Le Livre des fais d’armes et de chevalerie de Christine de Pizan. Edition critique* (Classiques Garnier, 2011).



Christine de Pizan *Livre des faits d'armes et de chevalerie, Mutation de Fortune*, c.1410-1411, Paris Bnf, fr 603, fol. 127v. Christine de Pizan-narrator in front of a mural painting. The picture is taken from one of her manuscripts offered to a patron.

Source: Bibliothèque nationale de France. Département des manuscrits, France.
<https://gallica.bnf.fr/ark:/12148/btv1b6000099t/f264.item.r=%22français%20603%22>

The Significance of *The Book of Deeds of Arms and of Chivalry* in the history of international law

In 1410, Pizan finished *Le Livre des faits d'armes et de chevalerie* (*The Book of Deeds of Arms and of Chivalry*) which is a manual of warfare, intended primarily for those who are called upon to make war. It combines the art of warfare (strategic advice, qualities required of combatants, techniques of warfare, etc.) with (a) the law of at the time. Nevertheless, care must be taken not to fall into anachronism: in 1410, international law does not exist yet; *The Book of Deeds of Arms* refers to (b) rules permeated by religion.

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(a) The Law of War in *The Book of Deeds of Arms*

The first part of *The Book* opens with comments on “just war”, a concept already well-known at the time, since Plato and Aristotle, then Cicero and Saint Augustine and its “successor”⁶ Thomas Aquinas who laid the foundations for the concept. In this vein, Pizan writes that just wars are allowed: “it seems manifest that wars undertaken for a just cause are permitted by God”.⁷

She then identifies five “grounds” at the origin of wars, three of which “rest on law”: supporting for law and justice (for example to defend the Church, or to help an ally or vassal); responding to attacks “on the land and the people”; and launching military action to recover land usurped by others. In addition to these, there are two grounds “of will”: revenge for losses suffered; and conquering foreign lands or lordships.⁸

This is followed by guidelines of all kinds concerning the practice of warfare inspired by the writings of the Romans Vegetius,⁹ and also Valerius Maximus and Sextus Julius Frontinus whose military narratives are presented in Part II of *The Book*, supplemented by oral sources collected by Pizan.¹⁰

More interestingly from an international law point of view, Parts III and IV of the *Book* address the “laws governing deeds of arms”¹¹, the legal elements of which are largely taken directly from Honoré Bovet’s *Battle Tree (L’arbre des batailles)*.¹² In these parts of *The Book*, Pizan presents herself in an allegorical dream dialogue between a master (Bovet) and his pupil (Pizan). Some issues concerning the right or the obligation to wage war are again addressed (“whether the Emperor has the right to make war on the Pope”;¹³ “whether the vassal is by right obliged to go to war for his overlord at his own expense”)¹⁴. Apart from the important question of who should bear the costs of the war, these two parts are mainly devoted to the regulation of the conduct of hostilities.

Concerning tricks, for example, Pizan states that “one should conquer one’s enemy by ruse, wiles, or tricks without doing wrong in arms” but that “there are certain kinds of tricks that are unacceptable and forbidden” such as making an appointment for talks and taking the opportunity to capture the person and attack him, or feigning a truce or peace to kill another when his guard is released and he feels safe.¹⁵ On the protection of prisoners of war, Pizan

⁶ Martin Kintzinger, ‘From the late Middle Ages to the Peace of Westphalia’ in Bardo Fassbender and Anne Peters (ed.), *The Oxford Handbook of the History of International Law* (Oxford UP 2012) 619.

⁷ Part. I, II, Willard, *Deeds of Arms* (n 5) 14.

⁸ Part I, IV, *ibid.* 16.

⁹ Eg: Part I, XVIII, *ibid.* 53: “the action a commander must take when it appears that battle is imminent”; Part II, XIV, *ibid.* 104: “the way to fight in castles and towns”.

¹⁰ Eg: Part II, XVI, *ibid.* 110: “Particular needs for stocking a fortress with food supplies as well as weapons”; Dugaz (n 5) 31.

¹¹ Part. III, I, *ibid.* 143.

¹² Dugaz (n 5) 31. Note that the name of this author knows several spellings (Honoré/Honorat Bovet/Bouvet/Bonet).

¹³ Part. III, II, Willard (n 5) 145.

¹⁴ Part. III, V, *ibid.* 148.

¹⁵ Part III, XIII, *ibid.* 163. Cf. First Protocol Additional to the Geneva Conventions relating to the Protection of Victims of International Armed Conflicts (1977), which permits “ruses of war”, but prohibits “perfidy” (art. 37).

writes that “it is against right and gentility to slay the one ***50*** who gives himself up”.¹⁶ In the same vein, on the protection of civilian populations, she makes Bovet say in a very clear manner: “those who engage in warfare may be hurt, but the humble and peaceful should be shielded from their force”.¹⁷

Several chapter in Part III and Part IV of *The Book* are also devoted to salient legal issues at that time, such as capture of individuals, ransom, inviolability of ambassadors, safe-conducts, truces, letters of marques (reprisals against individual), judicial combat, and coats of arms.

Although the law of war (*jus ad bellum*, *jus in bello*) is now materially part of international law, this was not the case in the late Middle Ages, when international law was at best “a phenomenon *avant la lettre*”.¹⁸ As shown in the *Book of deeds of arms and of chivalry*, the law of warfare derives from a legal background inextricably linked to religion.

(b) Legal Background of the Law of Warfare in *The Book of Deeds of Arms and of Chivalry*

In 1410, the idea of a legal system governing international relations (including bellicose ones) between states had not yet taken shape. In France (the country that adopted Pizan), the state, as a form of territorial organisation of political power, had even not yet completely succeeded the feudal system when Christine de Pizan wrote her work, although the establishment of the monarchical state is particularly indebted to the reigns of Charles V and Charles VII, which respectively saw the birth and death of Pizan. However, at the risk of oversimplifying a complex process, it can be considered that the state, in the contemporary sense of the term, took shape during the reign of Louis XI (1461-1483), which marked the consolidation of royal authority over a unified population and territory. Many other European countries experienced, more or less belatedly, a similar process of assertion of the nation-state vis-à-vis the Pope and the Emperor, at the end of which sovereignty was assimilated to the king and the state.

The Book gives an edifying testimony to the lack of identity at that time between sovereignty and the authority, still contested, attached to the person of the king. Dealing with the right to wage wars, Pizan reserves this privilege for “sovereign princes”, to the exclusion of barons “or any other person, however great he may be” if he has not “the express permission and will of his sovereign lord”.¹⁹ However, the “sovereign prince” is understood in a broad way in so far as it includes “emperors, kings, dukes, and other landed lords who are duly and rightfully heads of temporal jurisdictions”.²⁰ The sovereign presented here is indeed the one who has no superior but, as feudalism begins only to come to an end, the quality of head of temporal jurisdiction is not yet the prerogative of the sole king. The inclusion of dukes in this category served the interests of John ***51*** the Fearless, who may have commissioned *The Book* with a view to the military education of the Dauphin Louis of Guyenne.²¹ It nonetheless reflects the vague contours of “sovereignty” in these proto-state times.

¹⁶ Part III, XVII (ibid. 169). Cf. Geneva Convention (III) relative to the Treatment of Prisoners of War, Art. 13.

¹⁷ Part III, XVIII, ibid. 172. Cf. Geneva Convention (IV) on Civilians (1949).

¹⁸ Kintzinger (n 6) 608: “international law in medieval Western Europe is to be described as a historical reality before its formal existence, that is, in the classical sense of a phenomenon *avant la lettre*”.

¹⁹ Part I, III, Willard n 5 15.

²⁰ Id.

²¹ Dugaz (n 5) 19.

Pizan's conception of law has been analysed as "similar to the Thomistic and the Dantean conceptions of law", and it has been shown that in her works Pizan "utilizes the standard division of law into natural, human and divine law, with the emphasis on law as right reason and law as justice".²²

In *The Book of Deeds of Arms*, the right to have recourse to war seems to emerge first and foremost from "divine law",²³ while the conduct of hostilities seems to be more governed by "written law".²⁴ However, the sources are not so clearly distributed. In any case, religion occupies a prominent place in the regulation of war, whether it is "divine law",²⁵ the "Holy Writ",²⁶ even morality²⁷, and their less metaphysical declination through "canon law",²⁸ a body of written law produced by a very human institution: the Church. This is not surprising as at that time the Church controlled the whole of society and provided a framework for war, especially in order to limit conflicts between Christians. Among various sources, Gratian's decree (mid-twelfth century) is a masterful compilation of canon law, which includes a *Cause 23* which deals with the legitimacy and justice of war.

"Laws drawn up by people" are occasionally referred to alongside canon law, as limits "in the exercise of arms";²⁹ to clarify the vassal's obligations to his lord,³⁰ or from a penal perspective (cases in which people-at-arms deserve the death penalty),³¹ or a civil one (eg to establish that the war booty should go to the sovereign who paid the men-at-arms).³² Finally, precedents,³³ the "law of nature",³⁴ battlefield customs,³⁵ even scholarship,³⁶ have an important place in *The Book of Deeds of Arms and of Chivalry*. "[D]ivine law" prevails in any event over what is "customary in arms".³⁷ The text navigates between one source and the other, without being bothered by "precise references to legal texts, retaining only the references to the Scripture and sometimes to the *****52*** Decree (*Decretum Gratiani*)".³⁸ In most cases, solutions seem to be guided by an exegesis of the surrounding legal context rather than by a reference to a precise text. Thus, the *Book of Deeds of Arms and of Chivalry* not only offers a comprehensive account of the law of war in the earlyfifteenth century, it also reflects its religious sources, the**

²² Paakkinen (n 4) 244.

²³ Part. I, II, Willard (n 5) 13. Cf. the quotation above concerning "wars undertaken for a just cause" that "are permitted by God".

²⁴ Part III, I, *ibid.* 143 : "les loys et le droit escript" in the original version).

²⁵ Part I, IV, *ibid.* 17.

²⁶ Part I, II, *ibid.* 14, concerning just war.

²⁷ Eg. Part III, XVII, *ibid.* 170 concerning the ransom amount.

²⁸ Part. I, II *ibid.* 14.

²⁹ *Ibid.*

³⁰ Part III, V, *ibid.* 148: "six principal covenants according to civil law" concerning the obligation of the vassal to go to war for his overlord at his own expense.

³¹ Part III, IV, *ibid.* 147, "for what offenses men-at-arms may incur capital punishment").

³² Part III, XV, *ibid.* 166-167.

³³ Part III, III, *ibid.* 146 about Pope Alexander III who, persecuted by the Emperor, found refuge with the King of France "who restored him to his place".

³⁴ Part III, XXIII, *ibid.* 180: right to liberty of every person, concerning the right of prisoners of war to escape.

³⁵ Part IV, III, *ibid.* 189, concerning safe-conducts. See also about "military custom": Part III, XX *ibid.* 175.

³⁶ Regarding the various opinions of the "doctors" (no name appears) on the right of clerics to "go into battle", see Part IV, XIV, *ibid.* 214.

³⁷ Part IV, VII, *ibid.* 198, about judicial duel.

³⁸ Trs. of Dugaz (n 5) 32.

importance of the law of nature, but also the role of others sources. Even if international law did not exist at that time, this certainly places Christine de Pizan in the genealogy its thinkers.

Christine de Pizan's Place in the History of International Law

Pizan has disappeared from the “radars” of international law scholars. At the end of the nineteenth century, the Belgian jurist Ernest Nys, “the first professional historian of international law”,³⁹ had nevertheless devoted several studies to her.⁴⁰ Alphonse Rivier echoed them,⁴¹ as well as Dioniso Anzilotti who, in his famous *Corso di diritto internazionale*, briefly mentioned Pizan among the authors of “special books [on war] in which the juridical aspect of the question is almost always mixed and confused with theological and moral considerations”.⁴² Since then, Pizan – apart from very occasional mentions in certain surveys on the history of international law⁴³ – has fallen into oblivion, even though the rediscovery of her work is the subject of extensive studies in other areas of humanities (literature, linguistics, gender studies, etc).

The disappearance of Pizan from the family tree of international law authors, when the contributions of *The Book of Deeds of Arms and of Chivalry* to the history of international law of war are evident, may come as a surprise. It is a question of (a) identifying the causes, before considering (b) the rehabilitation of Pizan among the thinkers who have their place in the pantheon, haunted by men, of international law.

(a) Causes of disappearance

From the outset, the issue of gender is inevitable. Pizan's *Book* is the work of a woman who tackles a subject traditionally considered “masculine”: war.⁴⁴ Pizan does not evade ***53*** the issue since, not without irony, she pretends to leave aside “cattails, spinning and household duties”, before invoking Minerva “goddess of arms and of chivalry” to better justify a “simple little woman” (“*simple femmelette*”) coming to “speak of such an elevated office as that of arms”.⁴⁵

³⁹ M. Koskenniemi, ‘A History of International Law Histories’ in Bardo Fassbender and Anne Peters (ed.), *The Oxford Handbook of the History of International Law* (Oxford UP 2012) 943.

⁴⁰ Ernest Nys, ‘Honoré Bonet et Christine de Pizan’ [1882] *Revue de droit international et de législation comparée*, XIV, 451; *Les origines du droit international*, (A. Castaigne/Thorin & Fils, 1894); *Christine de Pizan et ses principales œuvres* (Martinus Nijhoff, 1914).

⁴¹ Alphonse Rivier, *Note sur la littérature du droit des gens avant la publication du Jus belli ac pacis de Grotius (1625)* (Académie royale de Belgique, 1883). He begins the chapter on the fifteenth century by writing (tr): “Among the authors, we note an illustrious woman, the graceful [sic], learned and valiant Christine de Pizan”, *ibid* 27.

⁴² Dionisio Anzilotti (tr. in French Gilbert. Gidel), *Cours de droit international* (Sirey, 1929) 5 (tr).

⁴³ Eg in French legal literature Dominique Gaurier, *Histoire du droit international* (PUR, 2014) 120.

⁴⁴ Françoise Le Saux, ‘War and Knighthood in Christine de Pizan's *Livre des faits d'armes et de chevalerie*’, in Corinne Saunders, Françoise Le Saux, and Neil Thomas (ed.), *Writing War : Medieval Literary Responses to Warfare* (Brewer 2004) 194.

⁴⁵ Part I, I, Willard (n 5) 13.

The supposed lack of legitimacy of a woman to “treat such exalted matter”⁴⁶ no doubt explains that, subsequently, *The Book of Deeds of Arms and of Chivalry* was presented as the work of a man.⁴⁷ Similarly, it cannot be excluded that a gender bias has led international law scholars to judge of little interest a woman’s thoughts on war and its law, all the more so as this scholarship remained almost exclusively male until the last quarter of the twentieth century. Among the great names who have been called the “founders of international law”,⁴⁸ there is no woman.

While Pizan’s status as a woman may not be completely unrelated to the oblivion into which she has sunk, other explanations can be put forth, such as the fact that she has never been identified as a lawyer but rather as an intellectual all-rounder⁴⁹ or that the legal developments *The Book* contains lack fundamental originality in relation to earlier and later writings on the subject.⁵⁰ But in truth, the blacklisting of Pizan concerns more generally medieval legal thought.

The famous book *Les fondateurs du droit international*, for example, does not include any men of the Middle Ages among the founders of the discipline. Yet, medieval thought “is far from being as sterile as is commonly thought”.⁵¹ Indeed, many canonists and other “learned men”⁵² have dealt with various subjects interesting international law: war, peace, relations between sovereigns, embassies, etc.⁵³ Medieval writings on the law of war, in particular, have nourished the knowledge and reflection of later scholars (that of the famous “founders” that followed the appearance of States and the birth of the law governing relations between these entities), whose approach based on natural law hardly marks a break from that followed by Pizan. “Just war” in the works of Francisco de Vitoria (ca. 1483-1546), Francisco Suárez (1548-1617), Alberico Gentili (1552-1608), and above all Hugo Grotius (1583-1645), great figures of the school of the law of nature supposed to have laid down the foundations of international law, is a continuation of the writings of the Middle Ages, including *The Book of Deeds of Arms and of Chivalry*, on the subject. Should Pizan therefore be rehabilitated? ***54***

(b) Grounds for rehabilitation

What is the real contribution of Pizan and her *Book of Deeds of Arms and of Chivalry* to the history of international law? First of all, it is established that Pizan does not innovate much when it comes to the law of war. Like many of her predecessors, contemporaries or successors (Grotius himself for instance),⁵⁴ she has taken up a lot of what others had already written. As previously noted, most of the developments relevant to the law of war are taken directly from Honoré Bovey’s *Battle Tree*, who himself had largely “plagiarized” the *Tractatus de insignis et armis* of Bartole of Sassoferrato, the *Tractatus de bello* of the Bolognese jurist Legnano, as

⁴⁶ Part I, I (ibid. 11).

⁴⁷ See Everett L. Wheeler, ‘Christine de Pizan’s *Livre des fais d’armes et de chevalerie*: Gender and the Prefaces’ [2002] *Nottingham Medieval Studies*, XLVI, 119-161.

⁴⁸ See the book *Les fondateurs du droit international* (Giard & Brière, 1904, rev edn Panthéon-Assas, 2014). See also Part IV (People in portrait) in Bardo Fassbender and Anne Peters (ed.), *The Oxford Handbook of the History of International Law* (Oxford UP 2012), where only one woman (with a minor role in international law) is portrayed: the Austrian writer and peace activist Bertha von Suttner (1843-1914).

⁴⁹ See (n 1).

⁵⁰ See (n 55).

⁵¹ Ernest Nys (tr), Introduction in *L’arbre des batailles d’Honoré Bonet* (Muquardt, 1883) vi.

⁵² Kintzinger (n 6) 608.

⁵³ Rivier (n 41) 5.

⁵⁴ Jules Basdevant, ‘Hugo Grotius’, in *Les fondateurs du droit international* (n 43) 205 notes that Grotius owes much to his forerunners, especially Victoria, Vasquez and Gentili.

well as, for canon law, the Decree of Gratian.⁵⁵ At least Pizan has the elegance to acknowledge that she has “gathered together facts and subject matter from various books”⁵⁶ and even to stage, at her own side, her main source (Bovet) in the last two parts of *The Book*⁵⁷.

But apart from the fact that Pizan proves to be a much better pedagogue than her teacher,⁵⁸ even if it means reducing the legal dimension of her prose (by selecting passages from *The Battle Tree* or by omitting references to textual sources),⁵⁹ the contribution of *The Book* lies in the ambition to cover the theme of war in its double technical and legal dimension. Pizan thus “fills an intellectual and practical void and signs the first French full survey on military matters”.⁶⁰

From the point of view of the history of international law, Pizan belongs to a lineage: that of the thinkers not only of just war,⁶¹ but more generally of warfare and its framework by law. She is thus the first known woman to have written on these issues, long before the famous “founding fathers” of international law.

In the footsteps of the historian of law Maria Teresa Guerra Medici, should Pizan thus be called the “mother of international law”?⁶² The formula, which sounds almost like a slogan, is seductive. It is unfortunately misleading, if not completely wrong. First of all, one can criticize the movement that leads to the birth of a branch of law being based on a single person: international law was born first and foremost from the legal practice of states, which some authors have been able to systematize successfully, not without relying on the writings of their predecessors. The absurdity of making Grotius the “father of international law” is no longer to be established;⁶³ it would be *****55***** inappropriate to reproduce the same shortcomings by making Pizan the progenitor of the discipline. Her writings have, moreover, objectively left less of a mark on the history of international law than those of the Dutch jurisconsult.

If Pizan fits in well with a line of thought on war and its law, *The Book of Deeds of Arms and of Chivalry* is not such as to bring to the baptismal font a new legal system which, moreover, will not appear until several decades after her death. In other words, her “Book”, which merely presents in a very pragmatic manner the material rules applicable to various war-related cases, does not propose any “paradigmatic model of international law”⁶⁴ that could attribute to Pizan the origin of the discipline or even its theorization.

⁵⁵ Nys, Introduction (n 51) XVI.

⁵⁶ Part I, I, Willard (n 5) 12.

⁵⁷ See (n 12).

⁵⁸ Bernard Ribémont, ‘Le “*Livre des faits d’armes et de chevalerie*”: droit et didactique’ in Dominique Demartini et al. (ed.), *Une femme et la guerre à la fin du Moyen Age. Le ‘Livre des faits d’armes et de chevalerie’ de Christine de Pizan* (Champion, 2016) 139 ff.

⁵⁹ H. Biu, ‘*Et la gist la maistrise : de l’Arbre des batailles au Livre des faits d’armes et de chevalerie*’, *ibid.* 152 ff.

⁶⁰ *Ibid.* 150.

⁶¹ Cian O’Driscoll, ‘Christine de Pizan (c. 1364-c. 1430)’ in Daniel. R. Brunstetter and Cian O’Driscoll (ed.), *Just War Thinkers. From Cicero to the 21st Century* (Oxon Routledge, 2018) 64 ff.

⁶² Maria Teresa Guerra Medici, ‘The Mother of International Law: Christine de Pisan’ [1999] *Parliaments, Estates and Representation*, 19, 1, 15-22.

⁶³ Recently, see Charles Leben, ‘Grotius : serait le père du droit international’, in Hervé Ascensio and others. (ed.), *Dictionnaire des idées reçues en droit international* (Pedone, 2017) 279 ff.

⁶⁴ Trs. of Emmanuelle Jouannet, *Le droit international libéral-providence. Une histoire du droit international* (Bruylant, 2011) 21.

In short, Pizan deserves her place in the history of international law because she contributed substantially, with others, to the knowledge and reflection on the law of war, which is at the heart of the law of nations. She is one of the scouts who paved the way for the constitution of a discipline that will wait a few more centuries before being systematized by others and emancipated from natural law.

It is modest, but sufficient: in the male genealogical tree of international law thinkers, it is high time to recognize Christine de Pizan's rightful place, no matter if her legal thought on war was very classical and if she is not the ultimate author to refer to when addressing international law '*avant la lettre*' in the Middle Ages. Maybe Pizan's gender contributes to bring her now to the front of attention but this is a fair return after decades of collective amnesia.