CHAPTER 1

Islamic Tradition and the Ottoman Law of War and Peace

Students of Romanian history often decry the dearth of sources at their disposal, although these are in fact extraordinarily abundant and varied. This apparent discrepancy stems from the fact that, within the corpus, sources of Ottoman origin vastly outnumber those produced in Moldavia, Wallachia, Transylvania, or Western Europe. However, many scholarly studies ignore Ottoman documents and chronicles in discussing the topic. Thus, the issue is not the number of sources available, but rather engaging the extant ones in a meaningful manner, even if the sheer amount of evidence forces one to rely on published editions.

Thus, approaching tributary states necessitates, first and foremost, grasping the character of the extant sources and asking the correct questions. In this respect, Islamic juridical and religious sources provide us with a theoretical model concerning warfare, peace-making and defining the juridical status of non-Muslim subjects and foreigners.

However, examining the Ottoman stance on the ideology of holy war, "international" law and the political status of tributary states, provinces, rulers and subjects, forces us to go beyond juridical theory and address the administrative and diplomatic documents produced by the sultanic chancellery. By casting our net wider, we are able to construct a more comprehensive picture of the political, military and diplomatic practice in "Ottoman–Romanian relations" in the early modern period. These documents, which involve a variety of different genres, such as imperial charters, orders, diplomas and petitions, bridge the gap between theory and practice. However, the information contained within official documents is insufficient for the topic at hand and must be complemented by Ottoman chronicles, which form the backbone of our knowledge regarding Ottoman policy in Southeastern Europe in the fourteenth and fifteenth centuries.

Thus, the scope of this chapter is to map out the sources that are most relevant for investigating Ottoman "international" law, the place of tributary provinces within this framework and to distinguish between questions they may answer, and those that they cannot.

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1 Juridical and Diplomatic Sources

To talk about juridical sources of Ottoman "international" law, one must identify and define juridical "instruments" that established, confirmed and fine-tuned rules and notions concerning war, peace, tributary status and the legal status of foreigners.

Ottoman law of war and peace derived from a variety of sources, including sacred Islamic traditions (*şeriʿat*), secular law (*kanun*), peace agreements (*ʿahdname*) and international customs. As a result, the development of a systematic approach towards provincial governance and its rules developed only gradually and over time.

Islamic juridical and religious sources provided the basic theoretical grid for matters of war-making, peace-making and defining the legal status of non-Muslim subjects and foreigners. This tradition originated primarily in the *Kur'an*, Traditions (*hadis*), treatises on Islamic law (*kitab al-siyar*, *kitab al-cihad*) and juridical opinions (*fetva*).

Ottomans, who adopted a pragmatic approach in their relations with non-Muslims, made few original and notable contributions to the development of Islamic law.[1] Since the prohibition of religious "innovations" in the ninth century,[2] treatises on Islamic law written by Ottomans were mostly summaries, compilations, annotations, commentaries or Turkish–Ottoman translations of earlier juridical works.[3] Nonetheless, Ottoman scholars sought to reassert the juridical tradition and harness it for political purposes, even if this legitimacy was deployed post-factum and in a derivative form.

Islamic tradition was thus one of the cornerstones of Ottoman law of war and peace. The imperial authorities, in their relations with non-Muslims, had to obey the stipulations of *şeriʿat*, the "path" dictated by Allah, and proclaimed by Prophet Muhammad, in his capacity as God's envoy– a "code of behavior" binding all Muslims.[4] This divine will was mediated through religious law

1 There is a recent attempt to revisit this traditional claim by Guy Burak, *The Second Foundation of Islamic Law. The Hanafi School in the Early Modern Ottoman Empire*, Cambridge: Cambridge University Press, 2015, which argues that the Ottomans did make contributions of note.

2 E. Tyan, "Méthodologie et sources de droit en Islam," *SI*, X, 1959, 79–111.

3 Ya'kov Meron, "The Development of Legal Thought in Hanefi Texts," *SI,* XXX, 1969, 73–119; Halil Inalcık, *The Ottoman Empire. The Classical Age. 1300–1600*, translated by Norman Itzkowitz and Colin Imber, New York, Washington, 1973, 173.

4 S.G. Vesey-Fitzgerald, "Nature and Sources of the Shari'a," in *Law in the Middle East*, ed. Majid Khadduri and Herbert J. Liebesny, vol. I. *Origin and Development of Islamic Law*, Washington D.C.: The Middle East Institute, 1955, 85–112; Ebül'ula Mardin, "Development of the Shari'a under the Ottoman Empire," in *Law in the Middle East*, I, 279–291; Savvas-Pacha, *Étude sur la théorie du droit musulman*, Paris: Marchal et Billard, 1892, 96–291; J.