

Customary Practices

Until this point, one can argue that both historians and jurists have dealt only with supposed long-term “covenants” and completely ignored the problem of custom in the relations between the Ottoman Empire and the principalities of Wallachia and Moldavia. This stands in stark contrast to the large number of extant sources originating from the Ottoman chancery. Thus, in the present chapter, my goal is to address this complex and ambiguous topic, investigating the role of custom in shaping the Porte’s relations with Moldavia and Wallachia.

In 1656, Köprülü Mehmed paşa addressed the boyars of Wallachia in the following manner:

You are tributary *re’aya* of the sultan; as long as you show obedience and allegiance, no viziers nor *beys* will be permitted to treat you as rebels and they are not allowed to ask you anything contrary to custom.¹

This way, the grand vizier reminded the elite of Wallachia, including Voivode Constantin Şerban (1654–1658), of the necessity of paying homage to the sultan. What immediately draws our attention is the fact that the grand vizier cited no “pledge” (*ahd*), “charter” (*ahdname*) nor “diploma” (*berat*) but rather the “custom” established between Wallachian rulers and Ottoman sultans. This is not the only document to appeal to custom as the cornerstone framing tributary voivodes’ rights and duties vis-à-vis the Ottoman authorities. Accordingly, the question arises as to whether custom, which constituted one of the formal sources of international law,² featured as the point of reference in Moldavian and Wallachian relations with the Porte. This is important given that twentieth-century criteria usually applied by scholars did not correspond to the realities on the ground in the early modern period. Thus, we should move away from looking at the topic through a modernist lens, and rather address it on its

1 Gökbilgin, “Relations turco-roumaines,” 772.

2 On custom, see G. Gianni, *La coutume en droit international*, Paris: Editions A. Pedone, 1931; Ch. Rousseau, *Principes généraux du Droit international public, Tome I: Introduction, Sources*, Paris: Editions A. Pedone, 1944, 824–862; J. L. Brierly, *The Law of Nations. An Introduction to the International Law of Peace*, sixth edition, Oxford: Oxford University Press, 1963, 59–62; M. Virally, “The Sources of International Law,” in *Manual of Public International Law*, edited by Max Sorensen, London, Melbourne, Toronto, New York: Macmillan, 1968, 116–175.

own terms. Applying such an anachronistic framework would distort the picture. We should steer away from abstract juridical concepts and instead examine the evidence regarding the role of custom in early modern Moldavian, Wallachian and Transylvanian relations with the Porte, the prominence of customary norms and their limitations in the eyes of Ottoman authorities. In other words, it is crucial to examine whether the alleged custom meant a practice accepted as a law.

1 Customary Practices in Historical Sources

Early modern sources are of particular interest because they provide a large number of cases – vastly outnumbering those of the previous period – that refer to custom. They can be boiled down to three distinct categories: information regarding ceremonial practice that shaped the relationship between voivodes and the Porte; recognition of the political, military and financial duties of tributary voivodes; reinforcement of specific rules pertaining to the autonomy of Wallachia, Moldavia and Transylvania.

First, Ottoman authorities and tributary voivodes resorted to custom in connection with a number of ceremonial practices and norms regarding payments between the two. For instance, when Simion Movilă (1601–1602) was confirmed on the Wallachia throne, Mehmed III (1595–1603) bestowed upon him the insignia of investiture: banner, cap and other objects, sent “according to the old habit.”³ In a similar manner, the imperial charter of July 1614, granted to the Transylvanian nobility on the occasion of Gabriel Bethlen’s confirmation as the ruler of the principality, mentioned:

and as it has been used from old times (*ve kadimden verilegelen*) to give those who became rulers of Transylvania banner and standard and sceptre and mantle on the part of my Porte of Felicity, shall henceforward give, too.⁴

Issuing a diploma of investiture⁵ became a lavish ceremony in its own right. Wallachian voivode Ștefan Cantacuzino (1714–1716) was keenly aware of the custom when on 25 April 1714 he wrote to Patriarch Hrisant Nottara that an

³ Mehmet, *Documente turcești*, I, doc. 152.

⁴ Gemil, *Documente turcești*, doc. 61.

⁵ On *berat*, see: Sertoğlu, *ROTA*, 42; L. Fekete, “Berat,” *EL-2*, I, 1205–1206; Matei, “Domination ottomane,” 77.