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AN OVERVIEW OF THE FORMATION AND
FUNCTIONING OF THE INSTITUTE OF
CAPITULATIONS IN THE OTTOMAN EMPIRE
AND THE 1604 DUBROVNIK CAPITULATION

Key words: capitulations, Ottoman Empire, the Republic of Dubrovnik, Croatian History, *darü'l-'ahd*, Islamic law.

1. INTRODUCTION

Principles of the World Division in Islamic Law, Ottoman
Capitulations in the Legal and Ideological Context

As noted by Majid Khadduri, Islamic international law (ar. *as-siyâr*) is, from the temporal aspect, to be short-lived since it would become useless after the Islamization of the whole world. However, because it was impossible to establish a universal Islamic rule, the Sharia had to divide the world into the world of Islam (ar. *darü'l-islam*) and the world of war (ar. *darü'l-harb*). For practical use, as long as it was part of the Islamic community's interest, it had to at least anticipate a coexistence with the *world of war*.¹ The nature and the time frame of those relations were subject to various interpretations of the Islamic legal theory.

Four Islamic schools of law agree that the Islamic community can develop relations with the world of war (ar. *harbî*) with a minimum prerequisite of reaching a temporary peace settlement (ar. *hudna*). The temporary peace settlement, thus, implies a new definition for the country of the *world of war*, which enters the settlement. Namely, during the

¹ Majid Khadduri, *War and Peace in the Law of Islam*, The Johns Hopkins Press, Baltimore 1955, p. 143-144.

period of temporary peace, it receives the status of a *country of peace* (ar. *darü's-sulh*), and its citizens on Islamic territory gain the status of temporarily protected individuals. (ar. *must'amin*). The temporary agreement obligates the Islamic community to guarantee free residence, business interactions, autonomous jurisdiction and exemption from paying the Sharia capitation (ar. *ciziye*). In fact, the foreigner receives an extraterritorial status, however only temporarily until it carries out its business projects or until the peace settlement expires.

While the four schools of law agree on the interpretation of conditions and obligations derived from temporary agreements with the *world of war*, they do not agree on the interpretation of conditions and consequences of long-term deals with foreigners.

For instance, the Hanafi and the Shafi'i schools of law note that those countries that reach a long-term peace agreement with the Islamic community have to *a priori* anticipate the submission to Islam.² While the foreign community recognizes Islamic political sovereignty and accepts the Sharia *ciziye*, the Islamic leader (the Ottoman Sultan) declares (ar. *'ahd*) the right of existence, institutional autonomy (ar. *amân*) and outer protection to such a community. In practical sense, the foreign community has to coordinate and subordinate its political goals to the goals of the Islamic community. Since the permanent agreement implies an asymmetrical relationship between the foreign community, which becomes an Islamic protégé (ar. *zimmî*), and the Islamic community, the Islamic leader retains the right to arbitrary changes in the elements

² The Hanafi school of law explains that the countries that enter a temporary bilateral peace settlement belong to the framework of *countries of an agreement* (ar. *darü'l-muvâdea*, *darü'l-emân*, *darü's-sulh*). On the other hand, foreign communities that enter permanent peace, accepting the protégé status, and thus pay a certain compensation (referred to as *a tribute* in the practice of western countries), are *ipso facto* placed under the supreme sovereignty of the Islamic country.

A more detailed account from the perspective of the Shafi'i school of law was given by Ebü'l-Hasen el-Mâverdi in the 11th century. He claimed that the countries that entered a permanent and tributary relation with the Islamic community retained property rights (ar. *mülkiyet*) over the territory they resided in. Therefore, those countries did not belong to Islam but the countries of agreement (ar. *darü'l-'ahd*), and their communities were not expected to pay the Sharia *ciziye*, but land tax instead (ar. *haraç*). However, those communities took on the protégé status (ar. *zimmi*) and still belonged to the world of Islam, in terms of supreme sovereignty.

Mâverdi, therefore, focuses on property rights in his discussion while the Hanafi school of law refers to political sovereignty. These two interpretations don't differ that much. See: Ahmet Özel, "Dârüssulh", *Türkiye Diyanet Vakfı İslam Ansiklopedisi*, cilt. 9, Türkiye Diyanet Vakfı, İstanbul 1994, p. 5-6, (hereinafter: *DIA*);

of the agreement³, whereas those actions of the *zimmi* contrary to the agreement cause the renewal of the state of war.⁴

The Hanafi and the Shafi‘i schools of law equally stress the fact that entering a permanent agreement implies the submission of the foreign country to Islamic supreme sovereignty. To paraphrase their interpretation, it should be pointed out that the two schools believe that such a country should be considered as Islamic territory in a wider sense. However, the significance of that territory lies in the fact that, by entering the agreement⁵ on its own will, it doesn’t fall under the control of the classic Sharia administration, but is left with its own internal political autonomy. The territory then, in its legal and political sense, falls into the category of the *country of agreement* (ar. *darü’l-‘ahd*). The inhabitants of *darü’l-‘ahd* become Islamic protégés bearing all obligations in accordance with the Islamic law. However, the difference between the *zimmi* from *darü’l-‘ahd* and the *zimmi* from *darü’l-islam* was that the *zimmi* from *darü’l-‘ahd* indirectly paid the *haraç* collected by their autonomous administration, while the *zimmi* from *darü’l-islam* paid all classic Islamic taxes.

Agreements reached between the Ottoman Empire and foreign countries were referred to as ‘*ahd-nâme* in Ottoman administrative practice, while the West used its Latin equivalent- *capitulation*.⁶ According to the Islamic theory on international relations, agreements with non-Islamic countries had to have the tendency of being unilateral and asymmetrical. However, the fact remains that the real political life brought about something completely different and that the Ottoman capitulation, as a legal-political act, mostly derived from the diplomatic tradition of Turkmen Anatolian principalities and the Seljuk State.⁷

³ This mostly refers to the changes in amount of the obligatory tribute or certain guarantee elements of the agreement. For a reference on the *imam*’s right to change the tribute amount see: A. Ben Shemesh (trans.), *Taxation in Islam vol III, Abû Yûsuf’s Kitâb Al-Kharâj*, Leiden, London 1969, p. 103-104.

⁴ Özel “Dârüssulh”, *DIA*, vol. 9, p. 5-6; Halil Inalcik, “Dâr Al-Ahd”, *Encyclopaedia of Islam*, vol. 2, Brill, Leiden 1983, p. 116, (hereinafter: *EI*); D. B. Macdonald, “Dâr Al-Sulh”, *EI*, vol. 2, Brill, Leiden 1983, p. 131.

⁵ According to Sharia, a peace offer by the other side is not to be refused by the leader of the Islamic community. See: *Kur’ân*, “Al-Anfâl”, sure 8.

⁶ The Latin term *capitulatio* was used because of the document’s appearance. Namely, its subsections were enumerated under thematical headings (Latin: *capitus* = Arabic: ‘*uhûd, şurût*). See: Linda T. Darling, “Capitulations”, *The Oxford Encyclopedia of the Modern Islamic World*, Vol. 1, Oxford University Press, NY 1995, p. 257-60.

⁷ Melek Delilbaşı, “Ortaçağ’da Türk Hükümdarları Tarafından Batılılara Ahidname-lerle Verilen İmtiyazlara Genel Bir Bakış”, *Belleten*, 185, c. XLVII, TTK, Ankara,

The political circumstances outside the country, geostrategic conflicts, changes in the Ottoman Empire's true military power between 15th and 17th c, changes in domestic politics, and the economic recession inside the Empire from mid 16th c onward, without a doubt reflected in the contents of the Ottoman capitulations. The Sublime Porte used capitulations as legal documents in two cases: 1) capitulations corresponding to agreements with foreign *countries of peace* (Venice, France, etc.) as *darü's-sulh* with emphasized symmetrical, reciprocal and bilateral elements, 2) capitulations corresponding to permanent agreements with countries which, in principle, belonged to the *darü'l-'ahd* category, with emphasized elements of unilateral and asymmetrical relationship (Dubrovnik, Erdel, Moldavia).

Ottoman capitulations, therefore, reflected objective possibilities, and political and economic motives of the Porte's relations with a foreign country, where the advantage was given to common law and interests and not Islamic law.

In the context of *real-politik*, the Empire's political elite made it a custom to derive new interpretations within the framework of classical principles, especially those of the Hanafi school of law. This ensured their contribution to the historical development of legal theory in the history of Islamic civilization. On the domestic level, for instance, the Ottoman state never hesitated to include local and provincial customs into the Empire's code (tur. *qânûnnâme*) if those laws were considered to be useful for the government's organization to be more efficient.⁸

Capitulations are a kind of legal acts that existed in different forms since the earliest times of political institutions. They implicitly included the recognition of a foreigner's right to partial extritoriality or extraterritoriality⁹ in a territory formally belonging to an enemy.¹⁰ As is

1983, p. 95-103; A general outline of the Middle Eastern trade, and the geostrategic changes since the 10th c Crusades until the development of the Ottoman Empire into a world power, as well as a detailed account on the formation and the development of Ottoman capitulations as an institution, is given by Inalcik. See: Halil Inalcik, "Osmanlının Avrupa ile Barışıklığı: Kapitülasyonlar ve Ticaret", *Doğu-Batı Makaleler I*, Doğu-Batı, Ankara 2005, p. 259-290.

⁸ For a detailed account of the formation and functioning of Ottoman law see: Yunus Koç, "Early Ottoman Customary Law: the Genesis and the Development of Ottoman Codification", *Shattering Tradition: Custom, Law and the Individual in the Muslim Mediterranean* Palgrave Macmillan, New York, 2005, p. 75-121.

⁹ The concepts of extritoriality and extraterritoriality, within the context of the Ottoman Empire's history see: Nasim Sousa, *The Capitulatory Regime of Turkey*, The Johns Hopkins Press, Baltimore 1933, p. 4-5.

¹⁰ In pre-Ottoman times, these agreements were referred to as: *muvâdea*, *muhâdene*, *hüdne*, *müsâleme*, *musâlaha*, *muâhede*, *sulh* and *silm*. See: Ahmet Özel,

the practice in contemporary international law, Ottoman capitulations, as international acts, were superior to local laws. Capitulations were, therefore, the basic source from which all solutions in litigations between citizens of foreign countries with the Ottomans were derived, and relations between foreigners and the *world of Islam* formalized.¹¹ In those cases it was the Islamic law's duty to ensure guidelines in the articulation of these relations. However, sometimes the Ottoman side gave the Islamic law secondary importance as opposed to objective possibilities and pragmatic interests. Paradoxical though it may seem, the Ottoman Empire was a lot more pragmatic in international politics than it was stressed so far in historiography. The Republic of Dubrovnik was the best example of the Empire's pragmatic politics.

The procedure of obtaining a capitulation and its diplomatic characteristics very much reflected the tendency towards their legal and political unilaterality. Issuing a capitulation was started on an initiative of a foreign country, after which the Sultan's answer would ensue. Articulating the attitudes and problems of both sides, the Sultan would stress his one-sided oath (ar. *ahd*) and guarantee (ar. *aman*), and proclaim his intention to cultivate the friendship. Since capitulations were a diplomatic form of Ottoman *berat* in their wider sense (ar. *nişan*), they had to be renewed by each new Sultan upon his succession to the throne.¹² That way, capitulations could have been changed and updated to secure the continuity of political relations.

Beside the already mentioned, the unilateral character of capitulations also appeared in the following principle: The Ottoman Government used capitulations to acknowledge the legal status of foreigners on its territory in form of an official community (tur. *taife*, ar. *millet*, *cem'at*)

"Dârüssulh", *DIA* vol. 9, p. 5; In the Ottoman Empire the name used most widely was '*ahd-nâme*'. The Ottomans didn't have a consistent practice in classifying documents. Moreover, some documents sometimes had several names even within the same text ('*ahd-nâme-i şerîf*, *nişân-i şerîf*, *nişân-i hümayûn*, *mü'ahede-i hümayûn*, *hatt-i hümayûn*, *fermân-i alişân*). See: Hans Theunissen, *Ottoman-Venetian Diplomats: The 'Ahd-Names*, *EJOS* (<http://www2.let.uu.nl/Solis/anpt/ejos/EJOS-I.2.html>) 1998, p. 187-188.

¹¹ As expected, an array of special privileges to citizens of foreign countries caused frequent conflicts with local Ottoman officials, and marred the functioning of the state as an institution. The most recurrent complaints of foreigners against local Ottoman officials were directed to their imposing taxes, which foreigners were exempt from paying (e.g. *refiye*, *kasabiye*), collecting taxes for unsold or unpaid goods, imposing alleged debts, arguing about money value, or giving false testimonies to extort money.

¹² Even though there was a formal need, when the succession of a new ruler in the foreign (non Islamic) country took place, capitulations weren't always issued.

with a representative officially appointed by the Porte. Therefore, when there is talk of diplomatic and consular representatives of foreign states in Istanbul, it should be noted that these representatives were considered to be community (*taife*) leaders by the Porte and not official representatives of foreign governments.¹³

The first Ottoman capitulations issued to Italian maritime states in the 14th c contained customs and trade privileges, defined rights and obligations related to the safety of maritime traffic¹⁴ and the protection from coercive debt collections, and guaranteed a just court process. However, after the Mediterranean became a place of multipolar geostrategic politics in the 16th c, the Ottoman Empire started issuing capitulations to the new maritime forces from the Atlantic as well. But then, these capitulations had completely different motives. Chronologically speaking, from the end of the 16th c onward, there is a correlation between extending privileges to foreign citizens in the Ottoman Empire and the gradual decline in the political and economic precedence of both the Mediterranean and the Ottoman Empire.¹⁵ In that context, beside the above-mentioned rights, foreign citizens additionally started to receive rights incongruent to Islamic law (unlimited travel in Islamic countries¹⁶, privileged rates of duty, tax and duty exemptions, extraterritorial

¹³ For their needs and revenues, the resident foreign diplomatic representatives had the right to a specific tax on goods (ita. *cottimo*) which the Porte considered to be its concession to the community representatives. The resident foreign diplomatic representatives could, therefore, be identified with the esnaf representatives (tur. *esnaf kethüdasi*). See: Bülent Arı, "Osmanlı Kapitülasyonların Tarihçesi ve Mahiyeti", *Yeni Türkiye 701 Osmanlı Özel Sayısı*, 200/32, Ankara 2000, p. 242-251.

¹⁴ In the 16th c a special subject matter in capitulations would be the obligation to protect foreign ships from the robberies of Algerian pirates at seas considered to be Islamic territorial seas (the Aegean Sea, the Red and the Black Sea, Bosphorus and Dardanelles, and Otranto). See: Inalcik, "Osmanlının Avrupa ile Barışıklığı..." p. 270.

¹⁵ The fact is that despite the constant spread of extraterritorial rights of foreigners, the Ottomans never let foreigners form autonomous colonies or enclose them into special cities surrounded by walls. See: Halil Inalcik, "İmtiyazat", *EI*, Leiden, Brill, 1971, vol. 3, p. 1180.

¹⁶ In accordance with the Islamic law, safety guarantees for a *muste'min* foreigner were basically the same on all territories of the Islamic world. However, since the number of foreign citizens was big, and there was only one capitulation with perhaps an additional copy, foreign merchants traveling outside large trading centers carried with them the Porte's written guarantee (tur. *izn-i hümâyûn*) or the one issued by a local kadı (tur. *yol tezkiresi*). Namely, local Ottoman officials very often didn't acknowledge the Porte's written guarantees. This is why Dubrovnik always requested several certified copies of the capitulation from the Porte. There existed a practice by which the government's office in Dubrovnik temporarily borrowed the

rial protection from processing and confiscation, permission to wear Muslim clothing¹⁷ and purchase alcohol for personal needs). Moreover, when it is stressed that some of the Ottoman capitulations implied reciprocity and symmetry, what should also be stressed is that these two were best seen in capitulations' emphasizing the need to the equally treatment toward the citizens of both sides.¹⁸

While an Ottoman capitulation was a diplomatic and legal agreement framework for temporary agreements with foreign countries, and for permanent agreements with dependent- tribute-paying states, it should be noted that the true character of relations is to be evaluated through content-analysis of each capitulation.

2. OTTOMAN CAPITULATIONS AT THE END OF 16TH C / BEGINNING OF 17TH C IN *REAL-POLITIK*

The 15th and 16th c would generate many interesting examples of the Ottoman Empire's pragmatic international politics. However, lacking a reference point, i.e. a principle in international relations, the comparative method seemed to be the only applicable one in an attempt to completely and unambiguously understand the status of the Republic of Dubrovnik according to the capitulations of the Ottoman Empire at the beginning of the 17th c.

We, therefore, wanted to create a short outline of the gist of the relations between the Ottoman Empire and its tribute-paying (vassal) states of Walachia, Moldavia and Erdel, as well as the relations with the Republic of Venice, all interesting spots in the Ottoman network of multipolar international relations. Historians agree that the Porte's relationship with Venice was based on a clear bilateral and optional relationship between two politically independent entities that were, how-

Porte's certified capitulation copies to merchants who would then, upon their return to Dubrovnik, give them back. See A.DVN.DVE.d 13/1: (1/1)/s.5-6 (fi 20 şehr-i Cemâziu'l-ula sene salase 'aşere ve elf) (14 October 1604); 822/p.180 (fi evâhir-i şehr-i Cemâziu'l-ula sene sab'a ve 'işreyn ve elf) (May 1618).

¹⁷ Among other things, non-Muslims were forbidden to carry weapons, wear a specific type of clothing, or ride a horse. See Abû Yûsuf's interpretation in: Shemesh, p. 93.

¹⁸ This principle particularly suited the non-Muslim Ottoman subordinates (Jews, Armenians, Greeks and Slavs) who were actively involved in business relations with European foreigners. This made the Levantine trade gradually fall almost completely under the control of *zimmis* and *muste'mins*. Beside that, certain Christian Ottoman subordinates were assigned by foreign ambassadors as interpreters or consular agents rendering them financially so powerful that they became serious competition to foreign merchants. See: Inalcik, "Imtiyazat", p. 1180.

ever, intertwined in terms of common interests. On the other hand, the Porte's relationship with Walachia, Moldavia and Erdel was an asymmetrical relationship, a permanent relation between, so to speak, a vassal and a senior. Within the context of this work, we will try to anticipate those relations in an irrelevant time frame, and try to compare them with the elements of the 1604 Dubrovnik capitulation which is in our interest.

2.1. *Walachia (tur. Eflak)*¹⁹ and *Moldavia (tur. Boğdan)*²⁰

As noted by Romanian historian Viorel Panaite, the first phase of the relations between the Porte and Walachia and Moldavia lasted from the end of the 14th c until 1538.²¹ With occasional breaks, Walachia had been paying tributes to the Porte since 1394 and Moldavia since 1455. However, since both countries belonged to the interest spheres of great powers (Hungary, Poland, and the Ottoman Empire), they alternated their vassal status between three sides either because of objective necessity or interests. The Porte intermittently fought constant wars for control over Walachia and Moldavia throughout the 15th c and the first quarter of the 16th c, after which the Porte established a stricter control over the two provinces.

Panaite warns that even though the two countries paid tribute to the Porte, the tribute needn't necessarily have been *haraç* in a classic sense, although it was referred to as one by the Ottomans. He believes that the tribute was, in fact, a ransom for peace which didn't prejudice the status of the two countries in terms of the Islamic law.²²

Unfortunately, an array of agreements reached between the *voyvodes* of the two provinces and the Porte, and covering this period, weren't kept, even though other sources tell of their existence. Panaite notes that after two great Ottoman expeditions in 1475 and 1476, the conflicts between the Porte and the Moldavian *voyvode* ended with the 1481 peace treaty when Moldavia received its only kept capitulation.²³ However, even after the treaty, from 1484 until the first half of the 16th c a series

¹⁹ Kemal Karpat, "Eflak", *DIA*, vol. 20, p. 466-469.

²⁰ Abdulkadir Özcan, "Boğdan", *DIA*, vol. 6, p. 269-271.

²¹ Viorel Panaite, *The Ottoman Law of War and Peace*, Columbia University Press, New York, 2000.

²² Panaite, *The Ottoman Law...*, p. 206.

²³ Romanian historian Mihai Maxim notes that at least eleven Ottoman documents and a series of narrative sources confirm the existence of capitulations for both Walachia and Moldavia. See: Mihai Maxim, "An Introduction to the Juridical-Legal Foundations of the Relations Between the Ottoman Empire and the Romanian Principalities", *Romano-Ottomanica Essays & Documents From the Turkish Archives*, Isis Press, Istanbul 2001, p. 15.

of Ottoman expeditions followed which undermined the true meaning of the 1481 capitulation.²⁴

Thus, as the only reference point for defining the legal status of the provinces in that times, Panaite points to the documents of the Ottoman provenance, in which until 1538 the provinces were defined as *countries of war* (ar. *darü'l-harb*). Therefore, since the legal character of peace agreements cannot be derived, based on Ottoman documents, Panaite believes that from the perspective of Islamic law two countries can be defined only as *countries of peace* (ar. *darü's-sulh*, *darü'l-muvâdea*).²⁵

However, when one looks at Walachia's obligations, defined by the 1417 peace treaty (Moldavia took on similar obligations in 1455)²⁶: 1. the *haraç* paying, 2. sending sons of voyvodes as hostages, 3. army logistics, 4. informing the Porte on the situations in foreign countries, 5. sending gifts to the Porte; one cannot help but point out that these obligations didn't reflect symmetry, or reciprocity, which, in accordance with the concept of Islamic theory, would be the least expected for the *countries of peace*.²⁷

Another Romanian historian Mihai Maxim believes that the Islamic formal and legal definition of a relationship between Walachia and the Porte, in terms of a *country of agreement* (ar. *darü'l-'ahd*), started forming itself in the 1430s. Maxim also notes that the relationship was stabilized after the death of Vlad Dracula III in 1476. He also asserts that the same happened in Moldavia, after the death of Duke Stephen the Great in 1504.²⁸

However, while Maxim focuses on the years of the *voyvodes*' recognition of the vassal state toward the Porte, which were followed by relatively long periods of peace, Panaite, on the other hand, considers the situation of crucial relationship changes, in the real and formal sense. Therefore for Panaite the key moments are when the Porte introduced stricter control in the two provinces.

Namely, Panaite stresses that the Porte would significantly limit the autonomy of the two countries, but only after the peace with Poland and the invasion in Moldavia in 1538. The Porte only then started to refer to

²⁴ Panaite notices the ambivalent character of the capitulations in Ottoman administrative tradition and points out that only by content analysis can the legal character of a relation be reached. See: Viorel Panaite, "Peace Agreements in Ottoman Legal and Diplomatic View 15-17 Century", *Pax Ottomana: Studies in Memoriam of Prof. Dr. Nejat Göyünç*, Yeni Türkiye, Ankara 2001, p. 284; Panaite does, however, acknowledge the possibility of unwritten agreements between the Porte and the provinces existing, See: Panaite, *The Ottoman Law...*, p. 384.

²⁵ Panaite, *The Ottoman Law...*, p. 238, 463.

²⁶ Ismail Hakkı Uzunçarşılı, *Osmanlı Tarihi II Cilt*, TTK, Ankara 1998, p. 431, 434.

²⁷ Panaite, *The Ottoman Law...*, p. 160, 164; Uzunçarşılı II, p. 430.

²⁸ See: Maxim, p. 20.

the two provinces as “*protected domains*” (tur. *memâlik-i mahrûse*) in its documents. Moreover, since then the Porte started directly recognizing and even appointing *voyvodes*, issuing them a beglerbeg type *berat*, and obliging them to loyalty and alliance.²⁹ The Porte would then forbid the *voyvodes* from making contacts in international politics, raise the *haraç* for the provinces, and set up Ottoman garrisons in them.³⁰

Therefore, when Panaite concludes that from 1538 the two countries undoubtedly entered the *Islamic territory* in wider sense, he notes that this conclusion wasn't made on principles of agreement obligations (written or not), but on real facts of the Ottoman control gaining strength, noticeable in Ottoman documents since that time.³¹

Comparing the above-mentioned accounts, it should be noted that one thing specifically draws attention. Namely, some of the prerequisites of establishing relations between the Porte and “the other side”, in terms of Islamic law, were in fact the stability and irreversibility of a relationship that started when the *voyvodes* recognized the Ottoman political influence by paying tribute, and ended in 1538 with a long period of settling conflicts.

2.2. Erdel (Transylvania)

Instability caused by conflicts between, so to speak, the pro-Habsburg and the pro-Ottoman party, the closeness of Vienna, and the Porte's objective weakness to occupy Erdel according to the classic 15th c Rumelian principle, required the Porte to conduct a more pragmatic politics toward the Erdel than it did toward Walachia and Moldavia just a century earlier. Moreover, in the 16th and 17th c. Erdel would become the Empire's European sore and hot spot. In an attempt to establish dominance of those Erdel forces that were *a priori* against Vienna, the Porte would be compelled to make additional political concessions towards the local elites. Beside regularly recognizing elected Erdel dukes, the Porte would even issue capitulations to some of them. However, it seems that those capitulations weren't a reflection of the Porte's intention to *a priori* define political relations between the tribute-paying province and the Empire, but an expression of a marked political support to the preferred political group.

²⁹ The principle: *dosta dost ve düşmana düşman olub*; Similar rights and obligations, related to adjusting international politics, were given to the rector of the Greek island Naxos in the 1565 *berat*. See: Uzunçarşılı III/2, p. 102.

³⁰ Panaite, *The Ottoman Law...*, p. 337-338, 377-396; Ismail Hakkı Uzunçarşılı, *Osmanlı Tarihi* III Cilt 2. Kısım, TTK, Ankara 1995, p. 91. (hereinafter Uzunçarşılı, III/2)

³¹ Panaite refutes the existence of a legal category of the *country of agreement* (ar. *darü'l-ahd*), wrongly so.

For instance, the 1571 Erdel capitulation states that it had been issued on request of Erdel aristocrats who had elected Iştván Bathory as their voyvode. The text contents stress that the voyvode, his aristocrats and people, paid the *haraç* to the Ottoman Sultan, and always expressed their loyalty and submissiveness to him (*sadakat ve ubûdiyette sabit kadem oldukları*) and could, therefore, elect as a voyvode one of themselves (sic!).³² Another capitulation issued to voyvode Betlen Gabor in 1614 stresses the Porte's ban on as a voyvode's foreign policy actions (meaning the relations to Vienna). By this resolution the Porte unambiguously expresses the main motive – preventing the formation of a possible alliance between the preferred political current and Austria.³³

As noted by Hungarian historian Geza David, despite the similarities in the Ottoman management over Walachia, Moldavia, and Erdel in the 16th c, there are five significant differences: 1) while Ottoman garrisons were set up in the capitals of the two provinces, Erdel never housed the Ottoman army; 2) the Porte never directly appointed the Erdel's voyvode; 3) Erdel's voyvode never sent their sons as hostages to the Porte; 4) despite the economy of the two provinces being less developed, Erdel had to pay a significantly smaller amount of the *haraç*; 5) beside the *haraç*, the two provinces had to send annual food gifts, which Erdel never had to. David concludes that there is no a single kept document expressing the cause to the differences in the obligations between the three provinces. However, he speculates that this was a part of a well-established practice.³⁴

2.3. Venice

Long before the Ottoman Empire even existed, Venice maintained developed trade relations with Byzantium, the Mamluks, and Turkish Anatolian principalities.³⁵ During an early phase of stabilization, the Ottoman Empire generally avoided straining relations with Venice. The first Ottoman capitulations, therefore, mostly followed Venice's established practice with Anatolian principalities, which was of a bilateral and reciprocal character.³⁶

³² Uzunçarşılı III/2, p. 91, p. 46.

³³ Ibid, p. 56.

³⁴ Geza David, "Administration in Ottoman Europe", *Süleyman the Magnificent and His Age*, Longman, London-New York, 1995, p. 71-90.

³⁵ On pre-Ottoman relations between Venice and Anatolian principalities see: Melek Delilbaşı, "Ortaçağ'da Türk Hükümdarları Tarafından Batılılara Ahidnamelerle Verilen İmtiyazlara Genel Bir Bakış", *Belleten*, 185, c. XLVII, TTK, Ankara 1983, p. 95-103.

³⁶ Elements of the 1403 Venice capitulation, issued by Menteşe bey, are particularly interesting. See: Ibid, p. 99.

The Ottoman Empire entered greater conflicts with Venice from the mid of 15th c when it started expanding toward Morea, Albania and Dalmatia.³⁷ However, even though in the 16th c Venice went to war with the Porte several times, generally speaking, both sides preferred to maintain peace. A gradual decline in power of mercantile city-states amid intense competition from the Atlantic would influence the military and political significance of Venice which slowly started losing its importance in international relations.

In his account on the Venice capitulations, Dutch historian Hans Theunissen noted that on the formal level, the bilateral and reciprocal characteristics of the Venice capitulations were manifested through a procedure in which both sides had to certify the document.³⁸ Theunissen does stress that this diplomatic procedure and the text of the capitulation started changing in mid 16th c, which resulted in the Venice capitulations to acquire the classic Ottoman form of *berat*. However, since Ottoman capitulations to Venice were still primarily considered to be political instruments, it should be noted that, as a maritime and mercantile power, Venice received capitulations in reality as equal entity with symmetric connotation. It was therefore assumed that, in practice, both sides reciprocally protected the rights of their citizens.³⁹

Venice never had to pay the *haraç* in form of *ciziye*'s alternative in the same sense that the 16th c tribute-paying provinces and Dubrovnik had to. It only had to pay the *haraç* in sense of property rights within the formally Islamic territory in Morea and the Aegean Islands⁴⁰, or occasionally it had to pay war reparations⁴¹.

³⁷ Especially significant for the 15th c was the fact that in international trade the Porte started preferring Venice's Mediterranean rivals: Genova, Florence and Dubrovnik. See: Halil Inalcik, *The Ottoman Empire, The Classical Age 1300-1600*, Phoenix Press, London 2000, p. 133-139.

³⁸ A document was certified with the Sultan's monogram (*tuğra*) and the Venetian government stamp. See: Theunissen, p. 225, 307.

³⁹ Ibid, p. 307-308; V.L. Menage, The English Capitulation of 1580: A Review Article, *International Journal of Middle East Studies*, Vol.: 12, No.:3 (Nov. 1980), p. 375.

⁴⁰ For instance, since 1430 Venice paid 236 golden coins to the Porte for holding Lepanto and several smaller properties in Albania. With the 1479 peace treaty, Venice paid 100,000 golden coins at one time as war reparations, and 10,000 golden coins annually for free trade. In 1482 Sultan Bayezid II canceled the annual fee for free trade. From 1517 to 1571 Venice would pay the Porte 8,000 coins annually for holding Cyprus. After losing Cyprus, in the 1573 capitulation Venice would make a commitment to pay the Porte 300,000 golden coins worth compensation in total for peace and free trade. See: Theunissen, p. 123, 133-4, 137.

⁴¹ For example: In 1540 when Venice signed a peace treaty with Sultan Süleyman Kanuni, it also agreed to pay 300,000 coins for peace contribution. See: Ibid, p. 168.

The 1604 Venice capitulation expresses the friendship between the two countries (tur. *dostluk*), and requires Venice to remain neutral in case of war between the Empire and the West. The Sultan mentions they would adhere to the agreement (ar. *mi'ahede*) if Venice did the same.⁴²

Other articles include mutual acknowledgment of debts, recognizing the validity of a Venetian testimony and the need of a *dragoman* (interpreter) in front of a kadi in case of mixed litigations. The capitulation doesn't mention a tribute, or customs duty and tax, but only the continuation of old traditions. The only restriction imposed on Venice is limited travels and sailing on Islamic territory, presumably because of the fear of spies and pirates.

From the perspective of Islamic theory on international relations, it seems that the relations between Venice and the Empire according to the 1604 capitulation completely fit into the frame of Islamic law. Venice was a *country of peace* (ar. *darü's-sulh*), and its subjects were temporarily protected individuals on Islamic territory.

3. GENERAL CONCLUSIONS ON THE CONCEPT OF CAPITULATIONS

The examples in the account so far have shown us that in international politics the Ottoman Empire was rather pragmatic and very often considered Islamic law to be of secondary significance, turning to objective possibilities and interests instead. We should emphasize the evident fact that the Porte in international relations manipulated with a certain spectrum of political mechanisms, far from the Islamic legal code and yet very much a part of *real-politik* (military force, political-diplomatic activities or pressures of material or fiscal character). We have, therefore, concluded the following:

1. The Ottoman administration never had a consistent politics in issuing capitulations. Practice has shown that capitulations were issued to foreign sovereign countries as compensation for political collaboration, alliance or peace (ar. *darü's-sulh*). Moreover, practice has also shown that tribute-paying countries (ar. *darü'l-'ahd*) received capitulations in cases when, from the Porte's perspective, it was opportune to support a political project, a group or program in a particular tributary country.

Ottoman capitulations should, for that reason, be considered as political instruments of the highest imperial significance. Even though Islamic theory on international relations anticipated the

⁴² Ibid, p. 579-591.

capitulations as political instruments, as well as there was always a tendency toward keeping them within the frame of Islamic law, issuing the capitulations was not an ideologically, but politically and pragmatically motivated case. Therefore, while the possession of an Ottoman capitulation added to the importance of the relationship between the Porte and “the other side”, that relationship never needed to be strictly consistent with Islamic law.

2. When defining the rights and obligations in the relationship with “the other side”, it seems that in practice the Porte used the terminology of Islamic law, even though those obligations didn’t necessarily have an Islamic character. If we are to focus only on the *haraç*, it would appear that the Porte used the term *mutatis-mutandis* in two ways: 1) consistent to its meaning in Islamic law, and 2) in the sense of an ordinary peace ransom, devoid of any ideological meaning. Therefore, if a country submitted itself to those obligations, it didn’t necessarily mean that it was politically classified according to the Islamic law.
3. Since it can expose the principal character of a relationship between the Porte and “the other side” (*darü’s-sulh* vs. *darü’l-‘ahd*), analysis of the text of each capitulation is needed. This, however, doesn’t mean that text analysis alone can create full and precise insight in relations between two sides. Full perspective is possible only through an analysis of all subsequent legal and political acts issued by the Porte to particular country.
4. Practice has shown that in order for a certain territory to be classified according to Islamic law, the Ottoman state had to either establish relatively stable relationship with it, have constant political influence or control over it, or fully occupy it. Consequently, principal obligations and rights according to Islamic law are derived after the aforementioned classification. Only then can the *haraç* can receive Islamic legal character.

Within the conclusions drawn above, we should pose the following questions in relation to Dubrovnik:

1. The Republic of Dubrovnik regularly received capitulations from 1442 onward. What was the true motive of the relationship between Dubrovnik and the Porte throughout history until the 17th c?
2. Since the Republic of Dubrovnik had been paying the *haraç* to the Porte from mid 15th c, what were its true sense, motive and legal aspect?

Analysis of the 1604 Dubrovnik capitulation should provide us with the basic political idea of the relationship between the two sides.

4. THE 1604 DUBROVNIK CAPITULATION

Since the Republic of Dubrovnik was the only one to maintain the trade and communication network alive between the central Balkans and the Mediterranean during the establishment of the Ottoman rule in the Balkans, it seems that the Sublime Porte, on the initiative of local Ottoman officials, believed that it was opportune to allow Dubrovnik's merchants to continue doing their business in countries under its control.⁴³ However, the Porte gradually began insisting on formalizing of direct relations.⁴⁴ When in 1442 Sultan Murad II issued the first capitulation to Dubrovnik, a year marked as the turning point in the political relations between the two sides.⁴⁵

From the first Ottoman capitulation in 1442 until Sultan Ahmed I's 1604 capitulation, nine Sultans succeeded to the throne. However, the present collection of the Dubrovnik capitulations for the mentioned period (1442-1604) consists of two originals (Murad III's capitulations and Mehmed III's capitulations)⁴⁶, while all other capitulations were

⁴³ The mentioned is suggested by the analysis of the correspondence between Dubrovnik and the 1) kadi of Gluhavica (a town in *Sancak* – a three-border region between Kosovo, Serbia and Montenegro) in 1396, 2) the Turkish subaşı from Albanian Kroia in 1415 and 3) Valona in 1417. Dubrovnik reached bilateral and reciprocal (sic!) agreements on free trade with all of them. See: Ivan Božić, *Dubrovnik i Turska u XIV. i XV veku (Dubrovnik and Turkey in the 14th and 15th century)*, Srpska akademija nauka, Beograd 1952, p. 16, 39.

⁴⁴ This fact implies us the aspect from which we should understand the 1430 firman from Sultan Murad II which contained explicit trading privileges. It should be noted that the firman from 1430 had been issued as a legal instrument in the hands of Dubrovnik's government in the relations with local Ottoman begs. This, therefore, explains the explicit elements of trading and other privileges. However, the firman consolidated the factual state established in Dubrovnik's pre-Ottoman trading practice in the Balkans. See: Ćiro Truhelka, *Tursko-slovijski spomenici Dubrovačke arhive (Turkish-Slovenian Documents of Dubrovnik's Archives)*, Zemaljska štamparija, Sarajevo 1911, p. 5-6.

⁴⁵ The legal-political status of the 1442 Murad II document still raises controversies among historians. Whether the 1442 document should be considered as the first capitulation or not is still the object of polemics. While the original version of the document in Ottoman-Turkish is still not found, and while we use the transcription in Bosnian type Cyril script from a later period, these polemics will continue. Therefore, my assertion on the capitulatory character of 1442 document should not be taken as definite. Nevertheless, the importance of THE year 1442 in the legal and political aspects still remains incontestable.

⁴⁶ The capitulations are kept under call numbers of DA: Murad III's (volume 7, No.:301) and Mehmed III's (volume 9, No.:431). See: Miović, *Fermani (Firmans)*, p. 177, 194; The transcript of Murad III's capitulation is given by N. Biegman. See: Nicolaas Hendrik Biegman, *The Turco-Ragusan Relationship According to the Fir-*

kept in transcripts (those of Selim I⁴⁷, Süleyman II⁴⁸, and Ahmed I's firman with a capitulation transcript⁴⁹). The capitulations of Murad II from 1442, Mehmed II from 1458, and Bayezid II from 1481 are kept in Bosnian type Cyrillic script and Croatian language in transcripts of the government's office in Dubrovnik.⁵⁰

A.DVN.DVE.d 13/1 register on pages 1-2 contain a transcript of a Dubrovnik capitulation dated 19 Rebi'ü'l-âhir 1013 A.H. (15 August 1604), issued less than nine months after Ahmed I's succession to the throne. Pages 179-180 of the same register contain a transcript of Osman II's capitulation, issued in the second decade of Cemâziye'l-evvel 1027 A.H. (06-15 May 1618), less than three months after Osman II's succession to the throne.⁵¹

From a diplomatic perspective, it should be noted that it was expected that the order of paragraphs in the two mentioned capitulation transcripts was altered. The diplomatic *protocol* and *eschatocol* weren't included in transcripts, and the text moved straight to the context after the introductory formula. The date of the 1604 capitulation is at the beginning of the text.⁵²

The *dispositio* seems to be copied from original in full. The text ends with a sanction (tur. *te'kid*) and a final confirmation (it. *lânet*). Since there are only slight differences in the *expositio* of the text between the two mentioned capitulation transcripts from the register, we provided a text from 1604, with notes on the differences.

mans of Murad III (1575-1595) Extant in the State Archives of Dubrovnik, Mouton, The Hague 1967, p. 56-57.

⁴⁷ Selim I's 1513 capitulation is the oldest capitulation kept in Ottoman Turkish, however, in the transcript of a Rumelian kazasker. See: Gliša Elezović, *Turski spomenici, knjiga I, sveska I (1348-1520)*, (*Turkish Documents, Book I, volume I (1348-1520)*), Srpska kraljevska akademija, Beograd 1940, p. 572-579.

⁴⁸ The transcript was made in Ottoman Turkish in 1556, kept under call number of DA: volume 5, No.:207. See: Vesna Miović, *Dubrovačka Republika u spisima osmanskih Sultana (The Republic of Dubrovnik in the Documents of Ottoman Sultans)*, Državni arhiv u Dubrovniku, Dubrovnik 2005, p. 165. (hereinafter: Miović, *Fermani (Firmans)*),

⁴⁹ The transcript was made in Ottoman Turkish in 1604, kept under call number of DA: volume 11, No.:532. See: Miović, *Fermani (Firmans)*, p. 209.

⁵⁰ The capitulations are given by: Boško Bojović, *Raguse et L'Empire Ottoman (1430-1520)*, Paris 1998. I also consulted Ćiro Truhelka's book, *Tursko-slovijski spomenici Dubrovačke arhive (Turkish-Slovenian documents in Dubrovnik's archives)*, Sarajevo 1911.

⁵¹ According to the contents of the register, it seems that in the three-month interregnum Mustafa I didn't issue a capitulation to the Republic of Dubrovnik.

⁵² The 1618 version ended with a date and a location: *Tahriren fi evâsit-i şehri Cemâziu'l-ula sene sab'a ve 'aşreyn ve elf. Be-makam-i Kostantiniyye el-mahruse;*

THE TEXT

(datatio – tarih)

Yevmü'l-isneyn

Fî 19 şehr-i Rebi'ü'l-âhir sene selâse 'aşere ve elf

1. Protocol was shortened in form of an introductory formula:1.1 *Nişân-i hümayûn oldur ki:***2. Context****(expositio/narratio – nakl)**

- 1.1 *Bundan akdem Dubrovnik begleri ve knezleri merhumûn ecdadım zamanlarında sadâkat ve istikâmet ile ita'at ve inkiyâd gösterdikleri ecilden ellerine ahd-nâme-i hümayûn verilüb*
- 1.2 *Ba'dehu merhum babam Sultan Mehmed han zamanında dahî elçileri gelüb ahdnâmeleri tecdîd olunmak rica eylediklerinde:*⁵³

(dispositio – ahidname maddeleri)

- 1.3 *Kadîmden edâ edegeldikleri on iki bin beş yüz sikke filurilerin sâl-be-sâl âdet-i kadîm üzere elçileri ile âsitâne-i sa'âdetime getüreler.*⁵⁴
- 1.4 *Zikr olunan on iki bin beş yüz sikke filuriden ziyâde haraç taleb olunmaya.*
- 1.5 *Ve mezburların vilâyet[lerin]e ve memleketlerine ve hisarlarına ve kendülerine sancakbeglerinden ve subaşılardan ve erbâb-i timardan ve bi'l-cümle sâye-i sa'âdetimde olan kimesnelerden bi-vech-i mine'l-vucûh zarar ve ziyân yetişmeye.*
- 1.6 *Ve bundan evvel kal'aları ve vilâyetleri ne vechle emn ü eman içinde olgelmışler ise girü ol vechle emn ü emân içinde olalar.*⁵⁵
- 1.7 *Ve bunların cevânibinde olan illerden yağı ve illeri olsun kurudan ve yaşdan olsun, mezburların kala'larına geleler ve gideler hiç ahad mani' olmayub, dahl u ta'arruz kılmaya.*⁵⁶

⁵³ The 1618 version had the following introduction: "Bundan akdem Dubrovnik begleri ve knezleri merhumûn ecdâd-i izâmum enârallahu te'âla berahinehum zamanlarında sadâkat ve istikâmetle ita'at ve inkiyâd getirüb, ol zaman ellerine 'ahd-nâme verilüb, ba'dehû merhum babam Sultan Ahmed han tâbe serâhu zamanında 'ahdnâmeleri tecdîd olunmak ricâ eylediklerinde ..."

⁵⁴ The final amount of the haraç to 12,500 golden coins was set in the 1481 capitulation.

⁵⁵ Articles 2.5 i 2.6 appear in similar form in the 1442 capitulation for the first time.

⁵⁶ Article 2.7. refers to free travel for merchants from neighboring Ottoman and Venetian territories to Dubrovnik.

- 1.8 *Ve bâzırganları memâlik-i mahrûsemde ticaret edeler gelüb gide-ler; rızklarına ve davarlarına ve sair esbâblarına kimesne dahl edüb zahmet vermeye.*
- 1.9 *Ve yollarda bac dahi taleb etmeyeler.*
- 1.10 *Ve zıkr olunan Dubrovnik tâcirleri memâlik-i mahrûseme meta'ların getirüb satduklarında evvelden yüzde iki akça gümrük alınugelüb sonradan mezburların satdukları meta'larından yüzde beşi akça gümrükleri alınmak emrim olmuşdu. Dubrovnik elçileri gelüb "Edirne ve Brusa ve İstanbul'dan gayrı Rumili vilâyetlerinde tâcirlerimizin satdukları meta'larından gümrüklerin berkarâr-i sâbık yüzde ikişer akça alınub bu üç yerden gayrı yerde satılan meta'ımızın gümrüğün üç yıl üç yüz bin akça mukata'a ile 'âmîl bulalım. Ve 'âmîle yarar kefil-i bi'l-mâl bulalım, nesne zayı' olmasun. Ve altı ayda bir elli bin akçayı hazine-i âmireye teslim idelim, zira emin dahl etmesün ve üzerimize havâle gelmesün" deyu iltizâm eyledikleri ecilden mezburların bâzırganları zıkr olunan üç yerden gayrı Rumili vilâyetlerinde karadan ve denizden getirüb satdukları meta'larından berkarâr-i sâbık yüzde iki akça alınmak emr olunub.*
- 1.11 *Bâzırganları meta'larını satdukları yerlerde yüzde iki akça gümrüklerin gümrük 'âmîli olana vireler.*
- 1.12 *Ve her altı ayda bir elli bin akça iltizâmları üzere hazîne-i 'âmireye getirüb teslim ideler.*
- 1.13 *Ve elçileri şöyle şart eyledi ki: "Zıkr olunan gümrük 'ummâl el-ân üç yıla olmaya. Bu üç yıl tamâm olduktan sonra girü yarar 'âmîller ve mâla yarar kefiller bulvirelüm" deyu iltizâm etdiler.*
- 1.14 *Ve emin olan girü Dubrovnik kapusunda oturub.*
- 1.15 *Bunlardan gayrı sâir Frenklerin yüzde beş akça hesabı üzere cem' eyleye.*
- 1.16 *Ve bu vechile şart eyledikler ki, hîle ve telbîs edüb sâir Frenklerin meta'ın gümrük virmemek için kendimüzündür deyu suret-i _____ şöyle ki hîleleri sâbit ve zâhir ola, ol meta' girift ola.*
- 1.17 *Karadan ve denizden İstanbul'a meta' getirüb satduklarında yüzde beş akça hesabı üzere ve Edirne'ye ve Brusa'ya meta' il-edüb satduklarında yüzde üçer akça gümrüklerin vireler.*
- 1.18 *Ve zıkr olunan üç şehrin gümrüğü bu mukata'ada dâhil değildir. Ve hazine-i 'âmireye zabt ü kabz oluna.*
- 1.19 *Ve mezburların tâcirleri meta'ların satmayacak olurlarsa alub istedikleri yere iledeleler kimesne mani' olmaya.⁵⁷*

⁵⁷ Article 2.19 appears in the 1442 capitulation for the first time.

- 1.20 *Ve iltimasları olan yerlerden eğer Şer‘le sâbit ve zâhir olursa alalar.*
- 1.21 *Ve şâhidleri Dubrovnik‘den olan kimesnelerin şahâdetleri mezburların iltimasları hakkında mesmu‘ ola. Eğer iltiması Müslümanlarda ise kadıya varub Şer‘le sabit olursa alalar.*
- 1.22 *Ve âharın borcu için Dubrovnik‘den geleni tutmayalar. Belki borçlu kim ise bi-hakkın mahsus ânı tutalar. "Sen ol yerdensin" deyu rencide etmeyeler.⁵⁸*
- 1.23 *Memâlik-i mahrûsemden bir kimesnenin rızkın alub Dubrovnik‘e kaçsa mezkurun âdet üzere anda dahî teftiş oluna, tâ kimesnenin rızkı zayı‘ olmaya.*
- 1.24 *Dubrovnik‘den beri gelüb memâlik-i mahrûsemde mürd olsa rızkına beytülmâlcı dahl itdikleri andan vârisi gelüb rızkın taleb eyleye.⁵⁹*
- 1.25 *Ve adâvet üzere olan küffar vilâyetlerinden bâzirganlar mezburların illerine ticârete gelürlerse hiç ahad mâni‘ olmaya.⁶⁰*
- 1.26 *Ve kendülere memâlik-i mahrûsemden bir kimesne ziyân etdirse bana ‘arz oluna. Gereği gibi hakkından gelinüb rızıkları tazmîn etdürile deyu ahd-nâme-i hümayun verilüb.*
- 1.27 *Ve zikr olunan hususlardan gayrı Dubrovnik bâzirganları memâlik-i mahrûsemde aldıkları meta‘ı İstanbul‘da ve Tuna‘da ve Rumilinde vâki‘ olan iskelelerde gemilere tahmîl eylediklerinde kimesne mâni‘ olmaya.*
- 1.28 *Ve âdet-i kadîme üzere yüzde iki akça gümrüklerin edâ eylediklerinden sonra olugelene muhâlif refîti(ye) ve masdariye nâmına akça alınmaya.*
- 1.29 *Ve şimden sonra sâir ber-mu‘tad ihdâs olunmağla cümle Rumili vilâyetlerinde Dubrovnik bâzirganlarından nesne taleb olunmaya.*
- 1.30 *Ve bâzirganları meta‘ların satmayacak olurlarsa istedikleri yere alub gidüb kimesne mâni‘ olmaya deyu ahd-nâmelerinde derc olunmak ricâ etdiklerinde pâye-i serîr-i a‘lâlarına arz olundukda mâ-takaddemden olageldüğü kânun üzere ola deyu bu hatt-i hümayun ile ferman olunub.*

(sanctio – te‘kid)

- 1.31 *Hâlâ ‘avn-i inâyet-i rabbânî ile serîr-i saltanat ve bargâh-i hilâfet-celâlet ile müyesser olmağıla ol ahd-nâmeyi mezbûrûn begler Marko Bazeli ve Yako Babali nam elçileri ile gönderüb,*

⁵⁸ Article 2.22 is from 1442, but was updated by the last article on false testimonies.

⁵⁹ Article 2.24 appears in the 1442 capitulation for the first time.

⁶⁰ Article 2.25 was preceded by a similar article in the 1481 capitulation, written in Croatian and stating that *people of every language, whether on land or sea, can travel to it (Dubrovnik), stay in it and visit it like any free city and its rule (lands).*

- tecdîd olunmak rica etdikleri ecilden ben dahî mukarrer tutub müceddeden işbu ahd-nâme-i hümayun izzet-makrûnum verdim.*
- 1.32 *Buyurdum ki: zikr olunan Dubrovnik beyleri mâdam ki cadde-i 'ubûdiyetde sâbit-kadem ve râsih-dem olub, vech-i meşrûh üzere sadâkat ve istikâmetle hizmetlerin ve haraçların bî-kusûr edâ edeler. Merhûmun ve mağfûr(un) lehüm ecdâdım ve babam ruhları için ve dînüm için ve âtiye-hakk için bu şartlardan 'udul ve inhirâf gösterilmeye.⁶¹*

(corroboratio – lânet)

- 1.1 *Ve işbu ahd-nâme-i hümayunuma muhâlif emr-i şerif ihrâc olunursa dahî amel olunmayub, re'y-i ahd-nâme-i hümayunun mazmûnuyla 'amel oluna.⁶²*

4.1 1604 Dubrovnik Capitulation's Elaboration

Articles 2.1-2.7, 2.25, 2.31 and 3.1 describe the political character of the relations between Dubrovnik and the Ottoman Empire. The beginning and the end of the capitulation note that their relationship was based on Dubrovnik's constant and continuous loyalty and submissiveness, as well as the Sultan's consent and promise to reward that loyalty with the highest of imperial oaths.

The main prerequisite for a capitulation was Dubrovnik's haraç worth 12,500 golden coins. In practice, the *haraç* replaced the letter of good will establishing peace and collaboration, sent by foreign rulers to the Sultan before a capitulation was issued. After the the *haraç* had been paid, the Sultan would issue a capitulation as a guarantee of the inviolability of the autonomy of Dubrovnik's territory, its institutions and citizens, in accordance with Islamic law and customs as well. He promised to defend Dubrovnik from attacks of its subjects, and granted the people of Dubrovnik to run business freely on Ottoman territories.

⁶¹ The 1618 version has the following *sanctio*: *Zikr olunan Dubrovnik begleri mâdam ki cadde-i 'ubûdiyetde sâbit-kadem olub vech-i meşrûh üzere sadâkat ve istikâmet ile hizmetlerin ve haraçların bî-kusûr edâ eyleyeler. Ben dahi 'ahd u yemin iderim ki: yerleri ve gökleri halk iden hudâyi mu'in celle celâluhu ve 'amme nevâluhu hakkı için ve dînüm için ve ecdâd-i 'izâmım ve babam enârallahu berahinehüm, ervâh-i şerifeleri için bunlara mahallerden 'udul ve inhirâf gösterilmeye. Ve bu 'ahd-nâme-i hümayuna muhâlif emr-i şerif ihrâc olunursa dahi 'amel olunmayub dâima bu 'ahd-nâme-i hümayunum mücebince 'amel oluna. Min ba'd hilâfına cevaz gösterilmeye.*

⁶² The 1618 version has the following *corroboratio*: *Ve bu 'ahd-name-i hümayuna muhâlif emr-i şerif ihrac olunursa dahi 'amel olunmayub. Da'ima bu 'ahd-name-i hümayunum mucebince 'amel oluna. Min-ba'd hilâfına cevaz gösterilmeye.*

However, the Sultan would also stress the right of foreigners from all over the world to freely arrive and trade in Dubrovnik, whether they were at war or peace with the Porte.

Articles 2.8-2.24, and 2.26-2.30 elaborate the legal and mercantile elements of the agreement. The Sultan guarantees all of Dubrovnik's merchants the freedom to travel and conduct business in the entire Ottoman Empire and exempts them from all local taxes (*bac*, *reftiye*, *masdariye*). He makes emphasis on the case of any damage caused by his subjects, to be reported directly to him in order to indemnify the people of Dubrovnik for it.

A large part of the capitulation is given to articles that define the formation and the function of the lease on Dubrovnik's customs duty, granted to Dubrovnik during Sultan Süleyman Kanuni's rule. Namely, in case of 1604 after Sultan Ahmed I intended to raise Dubrovnik's duty from 2 to 5%, the capitulation claims that Dubrovnik's envoys referred to the tradition of taking the customs duty on lease.

It is to be reminded that the duty lease referred to collecting 2% duty on sold goods, exclusively from Dubrovnik's merchants, and only in places of its purchase. If the goods weren't sold, the merchants of Dubrovnik could transport them to other places without customs duty. At Dubrovnik's request, the Porte appointed a lease holder who had to be a citizen of Dubrovnik. The Government of Dubrovnik then elected a guarantor to the lease holder whose mandate lasted for up to 3 years. Duty lease referred only to land trade in the Rumelian part of the Empire, not including the three cities in which Dubrovnik had to pay local duty: 3% for Edirne and Bursa, and 5% for Istanbul. The duty lease was set to be paid in six-month installments of 50,000 *akçe*.

While merchants from Dubrovnik had to pay a 2% duty, Dubrovnik was also home to an Ottoman customs officer (*emin*) who collected a 5% duty from third-country merchants. The Ottoman customs officer wasn't allowed to interfere with Dubrovnik's trade and its duty lease. The capitulation mentions that the people of Dubrovnik had a habit of breaking the rules and smuggling foreign goods, presenting them as their own, so foreigners could pay a lower duty.⁶³

Among those articles of legal and mercantile character are also articles that discuss settling debt litigations: A compulsory collection of debts by a third person was prohibited. An emphasis was put on ac-

⁶³ Foreign merchants in Anatolia made it their habit to introduce themselves as citizens of Dubrovnik so as to obtain wheat from the Ottoman government, or avoid paying duty. See: Yıldırım, Hacı Osman ve ark. ed., *5 Numaralı Mühimme Defteri (973 /1565-1566) – Özet ve Transkripsiyon*, T.C. Başbakanlık Devlet Arşivleri Genel Müdürlüğü, Ankara 1994, No: 533, p. 97 (27 Rebi'ü'l-âhir 973 / 21 November 1565).

knowledging Dubrovnik's legal institutions and recognizing the equality of testimonies of a citizen of Dubrovnik and a Muslim in a kadı's court. State confiscation of a deceased citizen's possessions was strictly prohibited.

5. CONCLUSIONS ON DUBROVNIK CAPITULATION

Even though the main idea of the Dubrovnik's capitulation was mostly drawn up according to the rules of Islamic law, partially it does consist of certain elements that surpass the theoretical concept of relations toward tribute-paying countries, and serve as evidence of pragmatism in relations.

From a legal perspective which emanate from the theory of asymmetrical relationships in Islamic law, as long as Dubrovnik paid its *haraç* it was subject to the Porte's military and political protection. The *haraç*, of course, wasn't the only obligation. Dubrovnik was expected to adapt its domestic and foreign politics to the Porte's politics. However, Dubrovnik's *haraç* of 12 000 golden peaces was symbolic, since it didn't really amount to much for the Porte. Therefore, it seems that Dubrovnik's political role was much more significant to the Porte than *haraç*. Namely, Dubrovnik was a lot more important to the Porte than one could tell from its *haraç*-paying duty, especially on the international political scene in the Mediterranean, end of 15th/beginning of 16th c.

We are absolutely convinced that, in an attempt realize it's interests as better as possible, for centuries the Porte was emphasizing its benevolence toward Dubrovnik, giving to it free hands in international political actions. The capitulation doesn't mention the Porte's need to recognize or control any of institutions of the Republic of Dubrovnik. While some historians believe that Dubrovnik's factual independence of the institutions of the Republic was a product of the Porte's objective inability to constantly control the incessant reelections of Dubrovnik's state officials, it should be pointed that those conclusions are as banal as is the level of their trivializing of Ottoman institutions.

Dubrovnik's significance to the Porte is best seen in the capitulation article which specifically points to the fact that foreigners from the whole *harbi* world could freely enter Dubrovnik and conduct business with it. The Porte intended to give Dubrovnik the "role" of a neutral territory in international relations. As is the case in contemporary international relations where belligerent countries maintain open as many communication channels as possible, the Republic of Dubrovnik was one of the communication channels between the Ottoman Empire

and the West. These conclusions may seem too bold at first, however, throughout the 16th c practice has shown that Dubrovnik used to be the main intersection for international spies, diplomats, envoys of various rulers, soldiers and merchants of that time.

Aware of its geostrategic position and the powerful Empire which served both as a danger and as the source of its privileged position, Dubrovnik never served as an oasis of any kind of a serious anti-Ottoman movement, despite the fact that later romantic historiography of the 19th and 20th c put an emphasis on the existence of such tendencies. It can be concluded, with good reason, that the success of Dubrovnik's politics was in narrow correlation with the political and ideological unity of Dubrovnik's nobility in achieving constant consensus in *real-politik*. Dubrovnik never really harbored any kind of real *pro et contra* politics, no matter what the question, pro-Venetian or anti-Venetian, pro-Ottoman or anti-Ottoman. This in no way suggests that Dubrovnik never experienced internal power fights between nobility clans. Moreover, very often these fights would surpass the Republic's borders. Even when at the end of the 16th c one nobility clan wanted to take hold of another clan's power, it asked Spain for help and, therefore, contributed to the idea of real anti-Ottoman tendencies in historiography. In general, fights motives were more banal. In the end, both clans were aware of the fact that straining relations with the Ottomans would jeopardize the whole Republic. Therefore, the fact that Dubrovnik survived as, so to speak, an independent state, is argument enough not to doubt the real caution of Dubrovnik's nobility.⁶⁴

It is, thus, possible that, unlike other tribute-paying countries that belonged to the *darü'l-'ahd* category, the people of Dubrovnik were entitled to a particularly high level of privileges in both the private and business sense. For instance, despite the fact that they were a *zimmi* population, they were the only Christian merchants obliged to pay a 2% duty in the Ottoman Empire, a privilege stemming from old customs and the earliest times of bilateral relations, and not from Islamic law.

⁶⁴ For a better understanding of the clan fights phenomenon among Dubrovnik's nobility see two theories: 1) Zdenko Zlatar's theory is based on the concept of political division in Dubrovnik's nobility into the pro-Ottomans and anti-Ottomans. See: Zdenko Zlatar, *Between the Double Eagle and Crescent*, Columbia University Press, New York 1992; 2) A recent theory by Stjepan Ćosić and Nenad Vekarić is much more consistent and backed by a large amount of evidence. It does, however, mention completely banal motives of clan fights that have a purpose of simply taking over the power, devoid of any ideological concepts. See: Stjepan Ćosić and Nenad Vekarić, *Dubrovačka vlastela između roda i države (Dubrovnik's nobility between clan and state)*, Zavod za povijesne znanosti HAZU, Dubrovnik 2005.

Moreover, every following capitulation was successively updated with new articles giving accounts on situations and problems in real life. Beside the fact that these problems were solved principally, the mentioned articles give an account of certain exterritorial rights of the people of Dubrovnik in the politics, judiciary and trade, which surpassed the frame of obligations and rights of the *zimmi* population.

Therefore, if we are to sublime the status of the Republic of Dubrovnik within the context of the above-mentioned interpretations, we could conclude that principally Dubrovnik belonged to *darü'l-'ahd*. However, it is obvious from the capitulations that the Republic of Dubrovnik retained the high degree of political integrity which, contrary to expectations and the Islamic law, sometimes resembled the elements of independence, all in the conformity with the Porte's pragmatic interests.

AN OVERVIEW OF THE FORMATION AND FUNCTIONING OF THE INSTITUTE OF CAPITULATIONS IN THE OTTOMAN EMPIRE AND THE 1604 DUBROVNIK CAPITULATION

Summary

In the international politics arena the Ottoman Empire was rather pragmatic and very often considered Islamic law to be of secondary significance, turning to objective possibilities and interests instead. It is evident that the Porte in international relations manipulated with a certain spectrum of political mechanisms, far from the Islamic legal code and yet very much a part of *real-politik* (military force, political-diplomatic activities or pressures of material or fiscal character).

The Ottoman administration never had a consistent politics in issuing capitulations. Capitulations were issued to foreign sovereign countries as compensation for political collaboration, alliance or peace. Practice has also shown that tribute-paying countries received capitulations in cases when, from the Porte's perspective, it was opportune to support a political project, a group or program in a particular tributary country. Ottoman capitulations should, for that reason, be considered as political instruments. Even though Islamic theory on international relations anticipated the capitulations as political instruments, as well as there was always a tendency toward keeping them within the frame of Islamic law, issuing the capitulations was not an ideologically, but politically and pragmatically motivated case.

Therefore, in the aim of defining the relations and obligations in relationship towards "the other side" the Porte used terminology which

stemmed from Islamic Law. However that relationship never needed to be strictly consistent with Islamic law.

Even though the main idea of the Dubrovnik's capitulation was mostly drawn up according to the rules of Islamic law, partially it does consist of certain elements that surpass the theoretical concept of relations toward tribute-paying countries. From a legal perspective which emanate from the theory of asymmetrical relationships in Islamic law, as long as Dubrovnik paid its *haraç* it was subject to the Porte's military and political protection. The *haraç*, of course, wasn't the only obligation. Dubrovnik was expected to adapt its domestic and foreign politics to the Porte's politics. However, Dubrovnik's *haraç* was symbolic, since it didn't really amount to much for the Porte, it seems that Dubrovnik's political role was much more significant to the Porte than *haraç*.

Therefore, if we are to sublime the status of the Republic of Dubrovnik within the context of the above-mentioned interpretations, we could conclude that principally Dubrovnik belonged to *darü'l-'ahd*. However, it is obvious from the capitulations that the Republic of Dubrovnik retained the high degree of political integrity which, contrary to expectations and the Islamic law, sometimes resembled the elements of independence, all in the conformity with the Porte's pragmatic interests.

PREGLED POSTANKA I FUNKCIONIRANJA INSTITUTA KAPITULACIJAU OSMANSKOM CARSTVU I DUBROVAČKA KAPITULACIJA IZ 1604. GODINE

Sažetak

Osmansko Carstvo u međunarodnoj politici bilo je pragmatično držeći često islamsko pravo od sekundarne važnosti naspram objektivnih mogućnosti i interesa. Porta je u međunarodnim odnosima manipulirala određenim spektrom političkih mehanizama koji su bili izvan islamskog pravnog kodeksa i koji su pripadali sferi real-politike (bilo da je riječ o vojnoj sili, političko-diplomatskim aktivnostima ili pritiscima materijalnog ili fiskalnog karaktera).

Glede kapitulacija valja istaknuti da Porta nije imala konzistentnu praksu glede izdavanja kapitulacija. Kapitulacije su dobivale strane suverene zemlje kao kompenzaciju za političku suradnju, savezništvo ili mir. No, praksa pokazuje da su tributarne zemlje dobivale kapitulacije u slučajevima kada se s Portinog motrišta u tim zemljama bilo oportuno zalagati za neku političku opciju ili program. Stoga, osmanske kapitu-

lacije treba razumjeti političkim instrumentima. Iako je islamska teorija međunarodnih odnosa anticipirala kapitulacije kao političke instrumente, te je postojala tendencija da se kapitulacije drže okvira islamskog prava, njihovo objavljivanje ipak nije bilo ideološki, već pragmatički motivirano.

Dakle, u namjeri definiranja prava i obveza u odnosima s “drugom stranom” Porta je u političkoj praksi koristila terminologiju islamskog prava, iako te obveze nisu uvijek imale islamski karakter.

Dubrovačka kapitulacija se u načelu kreće unutar okvira islamskog prava. No, ona posjeduje određene posebne elemente koje izlaze iz teorijskog koncepta odnosa prema tributarnim zemljama, i koji svjedoče o određenom dualizmu dubrovačko-osmanskog odnosa. S motrišta prava i obveza koje proizlaze iz uvjetno rečeno vazalско-seniorskog odnosa islamskog prava, Dubrovčani, dok god plaćaju harač, mogu računati na zaštitu Porte. Naravno da se u tom kontekstu podrazumijevalo da harač nije jedina obaveza, već se očekivalo da Dubrovnik ravna svoju unutarnju i vanjsku politiku u skladu s politikom Porte. Međutim, dok je dubrovački harač nosio simbolički značaj, budući da on za Portu i nije predstavljao neku značajnu sumu, politička uloga Dubrovnika je čini se bila puno važnija.

Ako u kontekstu gore navedenih tumačenja promatramo pravni položaj Dubrovačke Republike s osmanskog motrišta, može se zaključiti da je Dubrovnik načelno pripadao *darü'l-'ahdu*. Međutim, ono što je specifično za dubrovački slučaj, a što se može iščitati iz kapitulacije iz 1604., jest jedan izrazito visok stupanj dubrovačkog političkog integriteta, koji je suprotno svim očekivanjima, u praksi u puno elemenata nosio elemente samostalnosti.

Ključne riječi: kapitulacije, Osmansko carstvo, Dubrovačka republika, hrvatska povijest, *darü'l-'ahd*, islamsko pravo.

