



Refereed Biannual Journal Specialized in Waqf and Charitable activities

Chief Editor

Dr. Abdul Muhsin Al-Jarallah Al-Kharafi

Deputy Chief Editor

Eman Al-Hemaidan

Managing Editor

Mansour Khalid Al-Saqabi

Editing Advisor

Dr. Tarek Abdallah

Editorial Board

Dr. Issa Z. Shaqra
Dr. Mohammad M. Ramadan
Manal A. Al-Sager
Abdullah Z. Salem
Dr. Ibrahim M. Abdel-Baqi



AWQAF is based on a conviction that waqf – as concept and an experience – has a great developmental potential which entitles it to contribute effectively to the Muslim communities and cope with the challenges which confront the Umma .WAQF also reflects the history of Islamic world through its rich experience which embraces the various types of life and helps finding solutions for emerging problems. During the decline of the Umma, WAQF maintained a major part of the heritage of the Islamic civilization and caused it to continue and pass from one generation to another . Nowadays , the Islamic world is Witnessing a governmental and popular orientation towards mobilizing its materialistic capacity and investing its genuine cultural components in a spirit of innovative thinking leading to comprehensive developmental models conducive to the values of justice and right.

Based on this conviction, AWQAF comes up with a Keen interest to give waqf the actual prestige in terms of thinking at the Arab and Islamic levels. It centers on waqf as a specialty and attracts waqf interested people from all domains and adopts a scientific approach in dealing with waqf and relating it to comprehensive community development .waqf is originally known to be a voluntary activity which requires AWQAF journal to approach the social domains directly related to community life, along with other relevant social and economic behaviors. This might bring about a controversy resulting from the society – state interaction and a balanced participation aiming to reach a decision touching the future of the community life and the role of NGO's .

Objectives of AWQAF

- * Reviving the culture of waqf through familiarizing the reader with its history, developmental role, jurisprudence, and achievements which Islamic civilization had witnessed up to date.
- * Intensifying the discussions on the actual potential of waqf in modern societies through emphasis on its modern instruments.
- * Investing the current waqf projects and transforming them into an intellectual product in order to be exposed to specialists . This is hopefully expected to induce dynamism among research and establish a link between theory and practice .
- * Promoting reliance on the repertoire civilization in terms of civil potential resulting from a deep and inherent tendency towards charitable deeds at the individuals and nation's levels .
- * Strengthening ties between the waqf on the one hand, and voluntary work and NGO's on the other .
- * Linking waqf to the areas of other social activities within an integrated framework to create a well-balanced society.
- * Enriching the Arab library with articles and books on this newly approached topic, i.e. waqf and charitable activities.

Publication regulations

AWQAF journal publishes original waqf-related researches in Arabic, English and French.

It also accepts summaries of approved M.A's and Ph.D's and reports on conferences , and seminars dealing with the field of waqf.

Materials meant for publication in AWQAF Journal should abide by the following :

- * The material should not have been published or meant for publishing in any other magazine .
- * The material should abide by the academic ethics in connection with documenting the sources and references , together with the academic processing.
- * A research should fall between 4000- 10.000 words, to which a 150-word summary must be attached .
- * A research should be type on A4 paper and it is preferable to send an electronic copy on CD (word),
- * All researches and articles will undergo a confidential refereeing.
- * AWQAF Journal approves of all books' presentations , theses' summaries .
- * Seminars' and conferences' coverages which are compatible with the journal's publication regulations.
- * Material once sent for publication, whether published or not published, is unreturnable
- * The journal is entitled to re-publish or translate any material separately without checking with the relevant author.
- * Researches shall receive a remuneration for the publishable researches and studies as per the respective rules and regulations in this regard, in addition to 20 offprints of the research as per the relevant rules.
- * AWQAF journal shall not assume the least responsibility for the attitudes of the authors reflected in AWQAF journal .All Submissions should be sent to:

AWQAF, Editor in Chief,

P.O.BOX 482 Safat, 13005 Kuwait

Tel.965-1804777Ext:3142,Fax.965-2254-2526

E-mail:awqafjournal@awqaf.org

OPINIONS EXPRESSED IN AWQAF

**ARE THOSE OF THE AUTHORS AND DO NOT NECESSARILY REFLECT
THE VIEWS OF THE JOURNAL OR PUBLISHER.**



Contents

Editorial.....	7
-----------------------	----------

Researches

The Necessity to Establish “Harum” around the Scared Mash’ars Prof. Omar Sorag Abu Razeza.....	15
--	-----------

A study in the documents and transactions of Waqf in Jerusalem Ottoman legitimate court during the 11th AH and 17th AD Century Dr. Muhammad Al-Khateeb/Dr. Ibrahim Riba’h.....	52
--	-----------

The Effect of Waqf on the Waqf property based on Islamic Fiqh and Algerian law Khayr Aldeen Ibn Mash’arnan	97
--	-----------

Shahdar Waqf Wife Al Ghazi Hursev Beg in Sarajevo Professor / Mohamed Mowafeq Al Arna’ot.....	106
---	------------

Articles

The Role of Awqaf in Enhancing Entrepreneurship (Proposing a model for Waqf Entrepreneurial Incubators) By: Dr. F. Masdoor.....	124
---	------------

Thesis

**A Thesis ReviewAdministrative Reform of Waqf Institutions (Algeri-
an Case Study)**

By: Dr. Kamal Mansouri / Presented by: Attia Al Weishi.....141

News

News & Coverages.....148



Waqf: A Means of Dispute Settlement

It is the Ultimate Wisdom of God to cause conflicts and disputes to arise as a result of conflicting interests so that conflicting parties may resort to the means of restoring their rights by adopting different measures, some which are violent and others are peaceful.

Nowadays the international community is at the turn of the 21st century, is developing a steadily growing conviction that war is not the sole means for a settlement of dispute. There are other means advocated by the international community to which all communities must resort. If we have a look at the UN charter issued on 26/6/1945, we find that article 2, paragraph 3 calls upon all the UN members to resort to peaceful settlements in case they want to end their disputes⁽¹⁾.

The international community can no longer stand wars, violence and bloodshed. The voices calling for peace should overshadow those voices propagating wars and stirring up seditions everywhere. In order for the

(1) A research submitted by Dr. Juma Al Zrigi to the 6th Forum on Waqf Jurisprudential issues

peaceful calls to be effective, they must be based on solid foundations⁽¹⁾ .

Islamic shari'a has approached this question of peaceful dispute settlement between the Moslems and non-Moslems alike. Several means were advocated to this end, for example negotiations, arbitration and mediation. The whole world is striving to put an end to armed disputes in order to safeguard international peace and justice and to keep them away from danger⁽²⁾.

It goes without saying that the Islamic shari'a with its weighty and evenhanded fiqh (jurisprudence) embraces several means for the settlement of disputes of all types, private or public; domestic or international. Because disputes are often prevalent as far as international communities are concerned, we find the Islamic shari'a calling for giving up enmities and advocating peaceful settlements among Moslems in compliance with the Qur'anic verse, "If two parties among the believers fall into a fight, make ye peace between them: but if one of them transgresses beyond bounds against the other, then fight ye (all) against the one that transgresses until it complies with the command of Allah, but if it complies, then make peace between them with justice, and be fair: for Allah loves those who are fair and just ⁽³⁾".

Islamic shari'a likewise approves of settlement in case a dispute arises between Moslems and non-Moslems and other enemies or aggressors in compliance with the Qur'anic verse, "But if the enemy incline towards peace, do thou also incline towards peace and have trust in Allah: for He

(1) A research submitted by Dr. Abdul Razzaq Isbihi to the 6th Forum on Waqf Jurisprudential issues

(2) A research submitted by Dr. Juma Al Zrigi to the 6th Forum on Waqf Jurisprudential issues

(3) Al Hujurat, verse 9

is the One that heareth and knoweth all things ⁽¹⁾”. It is evident therefore that Islamic shari’a approves just and fair means be utilized in the settlement of international disputes⁽²⁾.

Consequently the importance of dealing with waqf pops up in the light of the role it plays in making peace and stability at an international level and to take it as platform to be reckoned with in diagnosing problems to which specific studies shall directed. This is expected to reach a fair vision which contributes to the satisfaction of the relevant parties, in addition to embracing the dimensions of the waqf system and how to make it acceptable for international law-makers in finding settlements for international disputes. Interest in waqf has shown a steady rise and countries are in dire need for such a system at a time international disputes are on the rise⁽³⁾.

The prospects of benefiting from the Islamic waqf are so ample and copious that they can cope with the needs of the Ummah. The amplitude of benefiting from waqf is not restricted to the multiplicity of the agencies benefiting from it but it extends beyond that due to the multiple jurisprudential viewpoints concerning the funds liable to be dedicated as waqf. Funds, once assessed in any way are liable to be invested or used repeatedly so that their proceeds can be directed to any channel. It should be noted in this regard that this amplitude in benefiting from waqf can be directed to preventing international disputes and removing the motives underlying such disputes. They can also be used for boosting the means conducive to settlements and the relevant studies meant for finding remedies and establishing institutions whose aim will be avoiding the circumstances which

(1) Al Anfal, verse 61

(2) Research of Dr. Mostafa Arjawi in the 6th forum on Waqf Jurisprudential Issues

(3) A research submitted by both Dr. Raafat Al Saeedi and Dr. Omar A. Musabbah in the 6th forum on Waqf Jurisprudential Issues

lead to disputes. Benefiting from waqf may take a direct initiative in settling international disputes by directing the proceeds of waqf. This is what can be termed as the special domain or⁽¹⁾ “waqf of International Disputes”.

In view of the Keenness of KAPF to assume the “ theoretical and practical institutional leadership of waqf as a tool for local comprehensive development and a model to be followed internationally”, it, in collaboration with the IBD Islamic Institute for Research and Training and the Qatari Ministry of Awqaf and Islamic Affairs , organized the 6th forum on Waqf Jurisprudential Issues in Doha, Qatar in May 2013. The second topic of this forum was “Benefiting from the Waqf Formulas in the Settlement of International Disputes”. Given the importance of such a topic, three sessions were dedicated to it.

Discussions about this topic centred on the possibility of applying the waqf formula to the settlement of disputes pertaining to natural resources, lands and other issues, taking into account that such formulas allow for a collective effort to benefit by the disputed corpus through withholding its corpus and releasing its proceeds irrespective of the legal political economic and shari’a unfair consequences. In this regard, the researchers embarked on defining ‘international disputes’ and means of solving them and the role of the waqf formula in this respect. Moreover, discussions extended to cover the legal obstacles which stand in the way of benefiting from the waqf formulas, the economic feasibility of dispute settlement through waqf and the shari’a regulations utilized in the settlement of international disputes via waqf and means of applying them now.

Researchers came to the conclusion that waqf system is characterized

(1) A research by Dr. Mohammad Naim Yassin in the sixth Waqf Forum on Waqf Jurisprudential issues.

by that flexibility which entitles it to address those problems likely to be raised by some people, claiming that waqf is not be the appropriate means for dispute settlement. The idea of benefiting from the waqf formula in the settlement of disputes came as a suggestion based on theoretical hypotheses and scientific data which allow it to act as a factual and reliable alternative.

There was an agreement on benefiting from the waqf formula in finding settlements for international disputes. This is a fact so far ignored by the international community in advocating settlements easily and according to rules, regulations and shari'a grounding which establish justice, evenhandedness and stability for all concerned parties.

Participants were also on agreement that such an approach is still immature and requires more effort to elaborate on it before putting it in practice. This is expected to validate the importance of waqf and discover the shortcomings in case of applying it and realizing the accumulation required to develop this means.

The recommendations came in favour of following the jurisprudential attitudes which allow for the waqf formula to advocated in finding settlements for international disputes, organizing meetings for Islamic specialists in international law, philanthropic work, management and economy, besides qualifying teams of Islamic thinkers who are specialized in dispute settlement via Islamic means. Moreover, relevant bodies, such as the Organization of Islamic Cooperation, Conference of the Ministers of Awqaf and Islamic Affairs and the Arab League, should be contacted to enforce these recommendations.

This important issue will be handled with more detail in the future

meetings (DV) where specialists in the relevant domains will discuss it in order to find practical and applicable solutions approved by the disputing countries, in addition to taking waqf as a means for settlement in the future.

Issue 25: Researches took three directions:

The first direction approached the theoretical side which was handled in two researches:

1. **“The Need for Identifying a Harem round the Holy Places to be Dedicated to them” by Dr. Omar Siraj Abu Reziza.** The research centred round expanding the capacity of the Holy Waymarks (Al Masahaer Al Muqadassa) through developing a ‘Harem round each Waymark to be dedicated to it.
2. The second research (translated from Arabic into English) was **“Waqf Experience within a Global Framework” by Dr. Yasser Abdul Karim Al Hourani.** The researcher aimed to highlight the major characteristics of the Islamic waqf and to pursue the historical and modern institutional experiences in this regard. The historical experience reflected that outstanding status of waqf for the ruler and ruled, whereas the modern experience has shown a limited activity at the international level. The researcher approached the experience of Kuwait Awqaf Public Foundation which he considered as a major attempt towards reviving waqf projects at a pan-Islamic level. He came to the conclusion that the prospects of waqf at an international level are encouraging and he also suggests several forms and programmes which are likely to pose a solid foundation for international cooperation in the area of waqf and how to revive its role anew through engaging in waqf projects

and utilizing waqf lands in agriculture, establishing waqf universities and establishing an international network.

Dr. Faris Masdoor, in his article entitled “**The Role of Awqaf in Promoting work**” - Waqf Incubators for promoting works which constitutes a creative idea which assists university graduates to embody their novel ideas. These incubators are institutions for supporting initiates who have creative ideas and sound economic studies to achieve their ambitions. This project provides them with the favourable atmosphere during the early stages of the project in order to ensure that success is within an ace through completing the administrative and technical aspects at a low cost. This will push the project owner to concentrate on the core of his work for a limited period after which he is converted into a new initiate.

Within this context came the presentation made by **Dr. Kamal Mansouri** on the book “**Culture of Charitable Work: How to Boost and Circulate it?** This book is authored by **Dr. Abdul Karim Bakkar** in which he deals with the means conducive to the dissemination of charitable work in the Moslem community where such a culture is poor. The aim is strengthen it through creating a generation whose interests go beyond its personal interests.

The second direction approaches the historical side of waqf through a research submitted by both **Dr. Mohammad Al Khatib** and **Dr. Ibrahim Rabay’a**. This study is entitled “**Studying waqf Documents and Deeds in Al Quds Ottoman Shari’a Court during the 11th Cent. AH, 17th Cent. AD**”. The study deals with important sides related to waqf operations in Al Quds during the Ottoman period, ahead of which come istibdal(replacement), claims, construction, Istidana (getting loans),and lease. The author came to identify these aspects through perusing the Ottoman

archives at the courts of Al Quds. He meant to understand the methods the Ottomans followed to keep waqf floating and achieve the purposes for which it was established.

Dr. Mohammad Muwaffaq Al Arnaut likewise made his research entitled “Waqfiat Shahed Dar, Wife of Al Ghazi Khesro Bey in Sarajevo”. This waqfia was established by Shahed Dar, the wife of Al Ghazi Khesro Bey who was appointed governor of Bosnia by the Ottoman Empire. This waqfia stands as an evidence of the architectural development of Sarajevo during the 10th Cen. AH /16th Cent. AD. It is also an early example of awqaf established by women in Bosnia. It was a mosque surrounded by a residence for the Imam, a school for children which taught Quran and arts to poor children, in addition to offering her house as a waqf and an amount of 100,000 Dirhams whose proceeds should go to her waqf.

The third direction handled the legal jurisprudential side of waqf through a research submitted by Khair **Eddin Bin Mesharnin** entitled by **“The Effect of Waqf on the property of waqf Funds from an Algerian Islamic Legal Fiqh Perspectives”**. He approached the idea of removing or forfeiting the waqf property not in favour of a definite owner but it will inure to Allah’s property. Therefore, a waqf, as seen by the researcher, is not the property of any body, natural or juridical, but it inures to another different body protected by the law.

The Necessity to Establish “Harum” around the Scared Mash’ars

Prof. Omar Sorag Abu Razeza

Abstract

Since the number of pilgrims has been increased, the capacity of the pilgrimage rite becomes more crowded which affects the rites of the Scared House, the pilgrims themselves and the significance behind performing such rite as well.

The researcher could estimate the available space for one pilgrim through calculating the entire area for the upcoming thirty years based on identifying the space for each mash’ar and the pilgrims’ number as well, and through observing the increasing number of the population in the Islamic world and their annual increase, in addition to observing those who come to perform the pilgrimage according to a specific proportion estimated by one-thousand, and it was clear that this area which is designed for each pilgrim has been decreasing from a year to another, the matter which affects the mash’ars negatively.

In order to alleviate the impact of the crowding, the study proposed an idea of establishing a Hareem around each mash'ar provided that these Hareems shall be devoted to the Sacred House so as there will be an available space for a pilgrims to perform the ceremonies of the pilgrimage on time and to make the pilgrim completely devoted to such ritual, and all services shall be transformed to these Hareems.

Preface

It includes the introduction, the objectives of the study, and its Methodology.

Introduction:

Praise be to Allah and may peace and mercy be upon our master Muhammad and his progeny as well as his believers. Our rich Fiqh heritage, may Allah bless whoever has delivered it to us, has told us about what is called the Hareem (the surrounding area) of wells and rivers and asked us to set and define a Hareem around mosques.

Based on this, the author is trying in this thesis to draw attention to the urgent need of setting a defined Hareem for each Mash'ar of the Sacred Masha'er (Mash'ars) to act as an obstacle and a protector from the quickly expanding urbanization, so they are merely used for the rituals of Hajj (pilgrimage).

Defining such Harum is based on the fact that their function should only back the Mash'ar, not replace it or its function, e.g. standing at Arafat is a mandatory pillar of Hajj and the pilgrim must be present at the Plain of Arafat after sunset, but the recommended Hareem of Arafat is used only to back the Mash'ar by allowing the pilgrims to wait in it before or after standing in Arafat and before heading to Muzdalifah. In this case, the pil-

grims can wait in such Hareem, then they enter the plain of Arafat even for just a minute or pass through while heading to Muzdalifah.

Also in Muzdalifah, we can use its Hareem for everything like constructing bus stops, train stations, and offices for security and health services. Also the pilgrims can wait in it before they enter the Mash'ar.

Mina (also known as the Tent City) is now surrounded by malls and buildings from all sides except the side of Muzdalifah. Therefore, the extension of Mina, situated to the north, west, and east of Mecca, has become the accommodation of pilgrims where we can see them in Eid. Due to the fact that the capacity of Mina does not exceed 1.7 million pilgrim ⁽¹⁾, Sheikh Ibn Baz, may Allah have mercy on him, issued a Fatwa that we can consider the extension of Mina as a part of it and for those who believe that its extension cannot be a part of it, we can say that the extension of Mina can be considered Harum of Mina where pilgrims can stay and go in and out of Mina on the basis that whoever enters Mina for stoning and stayed there even for little time is considered a resident of Mina.

Such Harum give an additional space to the pilgrims when the Masha'er are filled with them. Therefore, they can be used as accommodations for pilgrims, so that they can perform the rituals of Hajj. The numbers of pilgrims have significantly increased in the past three decades and that led the incapability of the holy Masha'er to fit them, except the area of Arafat. In 1432 AH the number of pilgrims was approximately 3 million, 1.828.195 of them were not from Saudi Arabia, and the rest, 1.099.522⁽²⁾ were Saudis and this regardless from one million unauthorized pilgrim. Therefore, the total number of the pilgrims is about 4 millions and it is

(1) Al rafadah Magazine Thul Hijjah 1432

(2) Department of Statistics website

impossible for Mina or Muzdalifah to cater for such numbers.

The aim of this study is to discuss such a problem and to draw attention to the urgent need for defining a Hareem for each Mash'ar of the holy Masha'er so that we can overcome the problem of the numbers of the pilgrims. Due to the particularity of each Mash'ar, I decided to discuss each one individually to illustrate the methodology I used to define the exact Hareem for each Mash'ar. Each Mash'ar or building should have its Hareem to meet its needs. The Mash'ar of Arafat contains tents, roads, bus stops, train stations, hospitals, police stations ...etc.

Objectives of the study:

1. Finding solutions for the increase in the capacity of the Holy Masha'er and create conditions for any future growth required due to the growing number of pilgrims.
2. Providing a lot of money we need to spend later when the areas around the Masha'er are crowded with pilgrims.
3. Keeping our Holy Masha'er which are considered an Islamic heritage safe and protect them from negative effects caused by the surrounding buildings.
4. Explaining the provisions of our Harum in Sharia.
5. Consider the proposed Harum around the Masha'er to be Awqaf (Islamic endowments).

Methodology

1. This study is based on the inductive approach in monitoring the information about the holy Masha'er and the number of pilgrims.

2. It is also based on the descriptive approach to clarify everything about holy Masha'er whether in the past or nowadays.
3. The study has benefited from Fiqh, Geography, Statistics, and Engineering science to draw a clear vision of the holy Masha'er based on facts.
4. The study has used exact numbers and maps to show the landmarks of the Masha'er.

Section I: Facts

1- The status of Arafat Mash'ar:

Till the early fifties of the fourteenth AH century, the number of pilgrims was between 50.000 to 100.000 and the total space of Arafat was 12.240.000 m². Therefore, every pilgrim enjoys about 135 to 270 m². By the fifth decade of the last century the number of pilgrims has begun to increase till it reached 500.000 in the early nineties and each pilgrim enjoyed only 27 m². Therefore, the space for each pilgrim has begun to decrease every year due to the expanding numbers of pilgrims as their number in 1432 AH reached three millions and this resulted in the fact that each pilgrim only enjoys 4.5 m². The number of pilgrims will continue to expand to reach in 1463 AH 5.24 million pilgrims based on a first perspective and from the second one it will reach 14.14 million pilgrims in 1463 AH the same year. Therefore, each pilgrim will enjoy just 1.87 m² from the first perspective and from the second one each pilgrim will enjoy only 0.69 m².

Table No. (1)

The number of Pilgrims from 1416 A.H to 1432 A.H

The Year	Pilgrims from Saudi Arabia	Pilgrims from Abroad	The Pilgrims' Total Number
AH 1416	784,769	1,080,465	1,865,234
AH 1417	774,260	1,168,591	1,942,851
AH 1418	699,770	1,132,344	1,832,114
AH 1419	775,268	1,056,730	1,831,998
AH 1420	571,599	1,267,555	1,839,154
AH 1421	549,271	1,363,992	1,913,263
AH 1422	590,576	1,354,184	1,944,760
AH 1423	610,117	1,431,012	2,041,129
AH 1424	592,368	1,419,706	2,012,074
AH 1425	629,710	1,534,769	2,164,479
AH 1426	700,603	1,557,447	2,258,050
AH 1427	724,229	1,654,407	2,378,636
AH 1428	746,511	1,707,814	2,454,325
AH 1429	679,008	1,729,841	2,408,849
AH 1430	699,313	1,613,965	2,313,278
AH 1431	989,798	1,799,601	2,789,399
AH 1432	1,099,522	195 ,1,828	2,927,717

Table no. (2)

The expected number of the pilgrims from both Saudi Arabia and abroad
for the coming thirty years in millions

The Year	The First Expectation	The Second Expectation
1433	2.98	3.08
1438	3.28	3.97
1443	3.60	5.12
1448	3.95	6.60
1453	4.34	8.51
1458	4.77	10.97
1463	5.24	14.14

2- The status of Muzdalifah Mash'ar:

Although the total space of Muzdalifah, 12.220.000 m², equals the space of Arafat, its plain land equals only 6.400.000 m². Our study based on the first perspective concluded that each pilgrim will enjoy only 2.15 m² to 1.22 m² from 1433 AH to 1463 AH and this space is not sufficient for each pilgrim to just stand. Based on the second perspective each pilgrim will enjoy just 2.08 m² in 1433 AH and 0.45 m² in 1463 AH. What we see in Muzdalifah at the night of Eid Al Adha supports our view as a large number of pilgrims cannot find a space in Muzdalifah, so they head to Mina without stopping at Muzdalifah and some others spend their night outside it.

3- The status of Mina Mash'ar:

Mina is the bottleneck because there is relatively long (4-5 days) Tar-wiya day, Eid day, and three days of Tashreeq. It also witnesses stoning for three or four days and this what makes it different from Arafat and Muzdalifah which do not have any rituals except observing some prayers. Also its space is relatively small as it is a valley of 8.2 km² and the space of its plain land is 4.4 km², on the other hand the project of Jamaraat Bridge took 0.076 km² of such space. Therefore, each pilgrim will enjoy based on the first perspective 1.47 m² in 1433 AH and 0.84 m² in 1463 AH, and based on the second perspective the pilgrims will enjoy 1.43 m² in 1433 AH and 0.31 m² in 1463 AH.

The results

Based on the above mentioned, we can see that the number of the pilgrims outnumber the capacity of the holy Masha'er, Arafat, Muzdalifah, and Mina respectively of about 1.35 million pilgrim, 1.92 million pilgrim, 2.25 million pilgrim, and in 1463 AH the number of pilgrims exceeds 3.6 million, 4.17 million, 4.5 million respectively and this is based on the first perspective. On the other hand, and based on the second perspective the number of pilgrims in 1433 AH exceeds 1.45 million, 2.01 million, 2.35 million respectively, and in 1463 AH the exceeding numbers will be 12.51 million, 13.08 million, 13.41 million.

Section II: Terms and Definitions

First: Hareem /hæri: m/ plural or Herum /herΛm/ or Harum /hΛrΛm/

General meaning of Hareem

It is the antonym of Halal “lawful”. The Hareem of any man is worth fighting for. Hareem also is the courtyard of the mosque. The Hareem of a house must be inside it but the outer part of it is called the yard. Ibn Mansur said that the meaning of Hareem is what is haram to be touched ⁽¹⁾.

The Meaning of Hareem within the study:

It is a piece of land surrounding a building and controlling this land is up to the building and its owner⁽²⁾. Also our Islamic heritage books told us about the Harum or wells and rivers ⁽³⁾.

Second: Al-Mash’ar

Definition of the Mash’ar

In Lisān al-‘Arab, Shaira / ʃæiræ/ means ritual or rite and the plural of it is Shaair / ʃææir/ like the rituals of Hajj, e.g.

Masha’er, the plural of Mash’ar, are the holy sites where we can perform our rituals ⁽⁴⁾ for worshipping Allah The Almighty.

Therefore, the Shaira is the ritual and usually it is combined with the word Hajj to become Shaair al Hajj or the rituals of hajj and most rituals of Muslims are performed during Hajj. Also the word Shaair was mentioned in the Holy Quran in some verses like “Behold! Safa and Marwa are among the Shaaer (Symbols) of Allah”⁽⁵⁾ and “O ye who believe! Violate not the sanctity of the Shaair (symbols) of Allah, nor of the sacred month, nor of

(1) The Lisān al-‘Arab “The Arab Tongue” page 94-97

(2) Ibn al-Athir, part 1 page 375

(3) Al-Ahkam al-Sultaniyya by Abu Al Hassan Al Basri Al-Mawardi page 182-184

(4) The Lisān al-‘Arab

(5) The Cow Surah, verse 158

the animals brought for sacrifice, nor the garlands that mark out such animals”⁽¹⁾. We can notice that the word Shaair is used instead of Masha’er cause in Arabic Masha’er has another meaning which is feelings and this could lead to ambiguity, but he used Mash’ar in this verse “celebrate the praises of Allah at the Sacred Mash’ar”⁽²⁾ because its meaning is clear-cut.

Section III: The Holy Masha’er - Sites and Workspaces

1- Arafatt:

Location & Area;

Arafatt is located in the south east of Mecca, almost about 21 Kilometers from there. It’s a wide extended plain area surrounded by a bow of mountains which represent the string of Arna valley; overlooking dark Bluff Mountain called Sa’d mountain from the north east, overlooking a meteor mountain chain from the east called KabKab Mountains that separate Arafatt from No’man valley, and from the south there is an overlooking dark mountain chain called Om Al-Rokhom extended till approaching No’man valley.

Concerning the west of Arafatt, There is Arna valley extended from the north to the south about 40 kilometers length. ⁽³⁾

The area of Arafatt is relatively wide and there are some plateaus and hills spreading over its east aspects. The studies have shown that it accommodates the pilgrims until the year 1431 AH. After that, the numbers

(1) The Table Surah, verse 2

(2) The Cow Surah, verse 198

(3) Book “Valley of Great Maka” by Ateq Ghaith Al-Blady, PP 23 – 24 – Maka Housing for Publication and Distribution – V1-1405 AH..

of Hajjij exceeded the capacity of this area. That has been observed in the pilgrim of the year 1432 AH. A lot of Hajjij has been seen standing outside Arafatt, to the extent that some of them left without stepping on Arafatt. That was also accompanied by an increase in the number of buses that goes into Arafatt. And then there has been a prominent need for increasing the energy of services and facilities such as bathrooms, Moadi, hospitals, restaurants, security points and even roads and bus stations ... etc. Also, all roads which connect Mena with Arafatt and between Mecca to Arafatt for the Escalation of pilgrims on perfusion day and Arafatt day, and the roads which connect Arafatt to Muzdalifah for the Nafrat of Hajjij after Maghreb prayers on Arafatt day, all the capacities of these roads need a review and a revision. What I want to show concerning this aspect is that the number of Hajjij does not need only Just for places for containing them, but in addition to that they need facilities, services and roads. The need calls for a general view which takes in its consideration all important elements in order to get and reach a whole, general and satisfying solution.

Arafat is a great Mash'ar and Hajj is not accepted without Arafat as our prophet, may peace and blessing be upon him and his progeny, said "Hajj is Arafat"⁽¹⁾ . Therefore scholars agreed that whoever has missed Arafat has missed Hajj. Due to the need for each pilgrim to stand in Arafat and due to the limited capacity of Arafat, we need to adopt and find non-traditional solutions to this problem.

I think one of the most important things that we need to think deeply about is define and set a hareem around Arafat. Therefore, the excessive number of pilgrims can stay in it after Arafat is full of pilgrims. Then they head to Muzdalifah through tunnels and bridges going through Ara-

(1) Sunan an-Nasa'i, Hadeeth 3019

fat. What is good is when the Messenger of Allah, may peace and blessing be upon him and his progeny, reached Arafat, he did not stay in it but he stayed outside in Arna Valley. It is narrated from Jabbar ibn Abdullah from the Messenger of Allah, may peace and blessing be upon him and his progeny “ The Messenger of Allah ⁽¹⁾, however, passed on till he came to ‘Arafat and he found that the tent had been pitched for him at Namira. There he got down till the sun had passed the meridian; he commanded that al-Qaswa should be brought and saddled for him. Then he came to the bottom of the valley, and addressed the people saying: (Bilal then) pronounced Adhan and later on Iqama and he (the Holy Prophet) led the noon prayer. He (Bilal) then uttered Iqama and he (the Holy Prophet) led the afternoon prayer and he observed no other prayer in between the two. The Messenger of Allah then mounted his camel and came to the place of stay”⁽²⁾. When we set a Hareem around Arafat and stay in it, we just follow the Sunna of the Messenger of Allah. Nawawi said “it is Mustahabb to stay in Namira because the Sunna is to enter Arafat after sunset”⁽³⁾

(1) Sahih Muslim, Hadeeth 1218

(2) Nawawi Sharah of Sahih Muslim

(3) Nawawi Sharah of Sahih Muslim, 8/108.

Notes on Arafat

Praise be to Allah that I know a lot about the holy Masha'er. When I read Fiqhi books and I take field tours in Arafat I face some difficulties to define its borders. We know that Arna Valley borders Arafat from the west and its width narrows and broadens due to the floods. The question here have you ever thought if the Arna Valley is a part of Arafat or not. The same thing with The valley of No'man, the mountains of KabaKba, and Sa'ad Mountain that border Arafat from the east. Therefore we do not know if the borders of Arafat begin from the foothills of such mountains and in this case the summit of such foothills are not stable due to floods.

2- Muzdalifah

Muzdalifah is an open, level area near Mecca in Saudi Arabia associated with the Hajj. It lies just southeast of Mina on the route between Mina and Arafat. It is also where Prophet Ibrahim and his son Isma'il threw stones at the evil spirit.

It is a small area that has a space of 12.2 km² and 5.8 km² of its space is mountainous that the pilgrims cannot spend the night at it. Therefore, the available space for spending the night at Muzdalifah is 6.4 km².

The researcher thinks that the land of Muzdalifah needs to be leveled and flattened because 50% of its land is not suitable for staying. If this process will cost a lot, then we can just demolish small mountains and hills. I think we need economic, geological, and engineering studies to flatten the land of Muzdalifah.

Borders of Muzdalifah:

When I was a student in the grand Mosque, I used to face some dif-

difficulties to define the borders of Muzdalifah. When I asked the scholars these questions, they told me that the borders of Muzdalifah were set by the old scholars, and I concluded that Muzdalifah is separated from Arafat by Arna Valley as Arna borders Arafat from west and Muzdalifah from the east, and I mentioned this opinion to some scholars but they did not prefer it. Then I met a Faqih from Azhar University who told me that once you leave Arafat, you are in Muzdalifah. I found a Hadith supports this view and it is narrated by Amr Ibn Maymoon he said “I asked Abdullah ibn Amr ibn Al’as about the Holy Mash’ar, he said follow us and I will tell you and I followed him, when he left Arafat he asked where is the one who asked me earlier about the Mash’ar? I said I am, He said this is it, you are now in it, I asked to where? He said, till you leave.”⁽¹⁾ This Hadith is a proof that the Holy Mash’ar begins at the exit of Arafat⁽²⁾. Dr. Abd El-Aziz Al-Hamidy, has pointed out that this evidence indicated that alharam starts from getting out from Arafat and entering Alharam area except from Arana Valley.

3- Mina

Mina (also known as the Tent City) is a neighborhood of Mecca in Makkah Province, in western Saudi Arabia. It is situated 5 kilometers to the east of the Holy city of Mecca, and stands on the road from Mecca’s city center to the Hill of Arafat. It covers an area of approximately 20 km².

Mina exists between Aqaba bordered from the west by Mecca and Mahsar Valley bordered from the east by Muzdalifah. There are two chains of mountains called Thabir and Sabeh on the both sides of the valley where it runs between them toward the west. Mahsar Valley borders Muzdalifah from the west side and it is a narrow west dividing Muzdalifah from Mina.

(1) sunan kubra or Sunan al-Bayhaqi, 5/123

(2) Dr. Abd El-Aziz Al-Hamidy, Provisions of Muzdalifah, p 17

Mina is the bottleneck because there is relatively long (4-5 days) Tar-wiya day, Eid day, and three days of Tashreeq. It also witnesses stoning for three or four days and this what makes it different from Arafat and Muzdalifah which do not have any rituals except observing some prayers. Also its space is relatively small as it is a valley of 8.2 km² and the space of its plain land is 4.4 km².

Staying in the day of Eid and after is one of the obligations of Hajj as most scholars said except the Hanbali scholars as they say it is just Sunna. Sheikh Sayed Sabiq mentioned “spending the night at Mina is obligatory during the three nights. Ibn Abbass said wherever you stone; spend your night at this place. Mijahid Said it is OK to spend the beginning part of the night at Mecca and the rest at Mina.

Al-Abbas has asked the prophet (PBUH) to spend the nights of Mena in Mecca for watering, and the prophet did give him the permission - (Narrated by Al-Bokhary). Also, Aasem Bin Oday informs us about the prophet PBUH permission saying; “Shepherds are permitted to leave spending in Mena”- (Narrated by Sunan holders, Corrected by Termizie). But they all agreed upon the mandatory of throwing.

Some of Hajjij hurry in two days; others wait for three days later. And then the indwelling may take from 4 to 5 days. The length of duration there requires more services than other Mashars, as Muzdalifah is a night or part of it, so as to Arafat.

As I have mentioned before, the total area of Mena is 8.2 Kilometers, the flat plain land is 4.4 Kilometers, and the rest is bumpy area.

0.076 kilometers have been decreased as a result for embers project, and what is left is 4.324 kilometers. At any case, it does not accommodate

or contain such great numbers of Hajjij that frighten when going up to Arafat and after the push from Mozdalifa. Huge numbers of Hajjij from outside and inside come down in the surrounding suburbs in Mena such as; Al-Azizia, Al-Shesha, Al-Ma'abeda and Al-Abtah ...etc.

The limits of Mena; (A stop point & Reflection)

The limits of Mena is completely clear, Mohsser valley from the east, the beginning of Major Akaba from the west because the major Akaba does not belong to Mena, and a chain of high mountains from north and south. The Jurists have included the aspects of mountains – which pour its water in Mena valley – in Mena. Here comes the difference between Mena and Arafat, as they didn't include the aspects of mountains dominant on Arafat (Sa'd & Kabkab) in Arafat. And I didn't find a trusted certain saying about this difference despite my long period research in various books of jurisprudence I've read.

Consequently, I hope - as I demanded in my studies - that research Institutions and Jurisprudential complexes do more studies and researches in order to make a clear vision for defining the limits of holy Mashars.

The limits of Mash'ars; Tawqeef or Ijtihad;

There is something ambiguous about the areas and dimensions of holy Mash'ars, and for that who seeks needed accuracy is to do his best and to do lots of researches. The mission is impossible for the researcher as it wouldn't provide him with needed details; the available information is totally general.

I said that because when I was preoccupied by such cases of crowdedness in holy Mash'ars, and it had been long time reading and searching,

but with no vain. I reached and get only the common information. It would be likely to find a legal study which had taken care of such important case, defining the capacity of Arafatt, the capacity of Muzdalifah and the capacity of Mena, describing the shape of what surrounds each of these and the length of its sides, showing whether the placements of landmarks fixed in its aspects and borders are touchier or discretionary, that enable us from making scientific studies by which we could reach a solution to deal with the growing numbers of Hajjij and pilgrims that we cannot stop it except by decisions which could be un satisfying neither for us nor for those Muslims who are able to perform Hajj.

The end points of what the researcher finds in old studies references when searching for the limits of Arafatt are just general points and conclusions. Among those references were the ones which are belonged to Al-Nawawi and Al-Shafi'ee. "Some of our companies said that Arafat has four limits; the first ends in the east rout of Gedda, the second ends in the edges of the mountain which is behind Arafat land, the third in the orchards found after Arafat village, the fourth ends in Arna Valley". Said by Al-Nawawi

At any case what is mentioned cannot be considered scientific limitations. That is because that didn't inform us whether these feet of mountains are included among the area of Mash'ar or not. These are wide areas and of course it will make difference if it is related to the area of Mash'ar. And if we related the landmarks to each other in reality, we will find another different shape and surroundings which may not lead an accurate description for what is included in the area of Mash'ar and what is not.

Because of this generality in the references concerning limits of Mash'ars we cannot do anything except presenting some possible percep-

tions about the reason why these landmarks are put.

1- (Tawqeef/ Ijtihad):

This is the Perception that the majority tends to which is that the faithful of revelation, Jibril, peace and be upon him and the prophet, has informed Ibrahim, The Khalil, by the limits of Mash'ars which means the placement of the signs of these borders, then people realized these and still educate this knowledge till now, even if the materials which indicate those signs are different, whether rocky or whatever, until it has been developed into these signs to which we are looking now. This visualization is accepted by the majority of scientists and scholars. But if it were so;

Why weren't the older Jurists and scholars so keen to prove it through delivered texts in the core of references till our modern time?

Do they ignore texts which cut off in such an important issue to that extent? - This is a possible visualization that none of texts accepts or rejects.

2 – (Discretionary/ Ejtihadya):

This perception means that scholars work hard, when they're in need for texts, and they have put signs in their places to prevent people from standing or sitting outside Mash'ar or another place. And I imagine that when the scientist have put these signs, they worked hard in some received texts including the general aspects, they asked experienced people in close regions near Mash'ars so that these people could lead them depending on their own experience. And it is not bad to diligent but we still miss a special clear text which declares and clarify the issue in a scientific way. This was also another visualization which I present as I tend to raise all

possibilities around it, despite I did not find a proof or deny about it neither in old nor in modern fiqh books.

3- (Public borders as a tawfiqia with the discretionary labeling):

We've read the Hadeith of Prophet Mohammed PBUH "Hajj is Arafat". And also we've read another Hadieth said by him, PBUH;

"All is to be standing on Arafat, and a way off Arna ...

All is to be standing on Muzdalifah, and a way off Mohasser...

And all is to Slaughter the sacrifice gapping Mena."

None of these two has shown us the boundaries for each Masher. But the first has only shown the place stand (Arafat) to make people know its boundaries and that Arna valley is not part of it. Also the second Hadieth didn't show something except that Mohasser valley is not a part of Muzdalifah.

So, we can say that the general limits are Toukefia. But the placements of signs are discretionary labeled by those who have been guided by experienced people and goers of the place from its inhabitants and their neighbors, following the fact that Arabs have experience about these places where they live as they are aware of its mountains, valleys and reefs. This is what the writer tends to in these lines.

Discussion & Reflection;

The researcher has noticed that the lenient religious law hadn't been defined by decisive texts, dimensions, and areas of holy Mash'ars. What is received from the old texts indicates general landmarks with different topography, parts and shapes. That, of course, leads to different opinions

if we want accurate definition. And that is what Ibn Hagar Al-Haithamy mentioned when he said; “what happened is that there was much difference concerning the defined limit of Arafatt from the aspect of Mecca”. If we say that the experienced people were able to define the general landmarks that will be definitely right. No way for saying: “Who said that humans are different in nature!!?”, and then they have different opinions and various visions.

We have to be alert that if scholars of modern age have had such case, we will find them trying to compromise between previous sayings, forming new opinion that can be added to the previous ones. What we can notice in modern sayings or what characteristics should be found in these sayings is that their necessary statements according to the data of modern sciences.

Scientists of now have more up-to-date useful information than scientists of yesterday. Measurement is no longer taken using figures, arms, fouts nor inches, then people differs in stating the real length of these measurements. But, right now, there are measurement tools which can measure lengths by millimeter without any possible fault.

Also, nowadays, there are satellites which orbit the earth night and day from which we can be provided by maximum accurate pictures. It displays and finds out any landmarks or coordinates that could come up to earth because its pictures are dated and shows the comparisons between now and then concerning the changes which happened on earth.

We find, in sayings of scientists concerning all Mash'ars of hajj\pilgrims (Arafatt, Muzdalifah, and Mena), what makes us make some reflection. Scientists have included the aspects of mountains in Mena, and

which divert the water of its rains and torrents to the valley of Mena. They mentioned Mena mountain aspects, but neglected and excluded aspects of mountains like Sa'd and Kabkab Arafatt. We don't know why they did that.

Section IV: Setting and defining the Harum of Holy Masha'er

At the beginning I would like to mention that I am not going to add any additional space to or extract any from the Mash'ar, since the Hareem is totally independent of the Mash'ar.

We know that the space of such Masha'er are defined, and through my readings and enquiries, I cannot tell whether the space of such Masha'er are previously defined by Gabriel, may peace be upon him, and in this case we cannot alter them or they are defined and based on the Ijtihads (diligence) of Islamic scholars. The reason for this confusion is that such spaces are defined generally, i.e. Saad Mountain and Kabakba Mountain border Arafat from the east. Therefore we do not know if the borders of Arafat begin from the foothills of such mountains and in this case the summit of such foothills are not stable due to floods. Likewise Arna Valley borders Arafat from the west and its width narrows and broadens due to the floods. That is why I could not know the borders of Arafat were defined from the east and why a part of Namera Mosque is considered a part of Arafat and the other part of the mosque is not considered a part of it. Are such borders based on the fact that floods used to spread there. And if the floods were the reason, why we considered the mountains overlooking Mina as parts of Mina and within its borders. As Ibn Abbas said "Arafat is bordered from the mountain overlooking the Arna Valley to its mountains to Al Maalik palace⁽¹⁾. The scholars deduced that from the notion "if the aim was a part of the meaning, it is considered a part of it, i.e. eat the whole loaf of bread this means you can eat till the last bite of it because it is part of the loaf, but

(1) Mu'jam al-Buldan by Yaqut al-Hamawi 4/104

if I told you clean your face from your chin to forehead, you cannot clean your head because it is not part of the face.

Also I have to define the word Tradition. Al-Jerjany said it is what the people agreed on and accepted⁽¹⁾.

Based on the above mentioned, I think we need to restudy and define the borders and spaces of Holy Masha'er From all sides by experts of different majors and I think that official Fiqhi Organizations are capable of that provided they involve and use the hands of experts of Remote Sensing, Water science and Geography.

The Scholars in the early Islamic ages and till the last Hijri century did not think and consider this problem as there was no need for doing that as the number of pilgrims was much less than the capacity of the Masha'er. But now and due to the expanding numbers of pilgrims, we need to think about solutions for such problem.

The researcher has found a way to solve this problem which is to set and define a Hareem for each Mash'ar where the additional excessive number pilgrims can stay, e.g. a pilgrim staying in the Hareem of Arafat heads to Muzdalifah through Arafat and stands there for a little time and this is sufficient for him to become a visitor of Arafat. If this happens his Hajj is acceptable according to Sharia. In the following points, I am going to discuss the Harim of each Mash'ar.

A- The Arafat Hareem

We talked earlier that Arna Valley borders Arafat from the west, No-man Valley borders it from the south, and it is bordered from the north

(1) Definitions of Al-Jerjany page 154

by the valley of Meghmis, Al-shara'ei, and Sadr and some other valleys which are empty lands except for few farms scattered there that extend to Al-Sail way which connects Mecca and Ta'if. During my last visit to Arafat in Sha'ban, 1433 AH, I noticed new buildings creeping bit by bit towards Arafat from its north side. This act of construction must be stopped immediately because Arafat area needs this land now and from the other side constructing building down the valley poses a threat to Arafat if a flood occurred.

The valley of No'man, the mountains of KabaKba, and Sa'ad Mountain border Arafat from the east. I mentioned before in another study done by me the phenomena of slums that can adversely affect Arafat, But I think constructing Harum from the west, east, and north sides of Arafat is going to be easier than the south side due to the existence of Umm Al Qura University and the Public Security Department. Therefore the width of the Hareem will not be the same because of the geographical traits of the area. Also the land of Arafat needs to be leveled as well as removing some hills spreading in its north and northeast parts of it, so that it becomes easier to construct tents and for the pilgrims to walk. Also there are some building built in Arafat itself near to Al-Rahma Mountain like the Charity Cemetery and other buildings. I suggest that we should totally prevent constructions in Arafat and demolish all what is built on its land at the earliest opportunity.

The space of Arafat Hareem

The current space of Arafat is 12.24 km² and it fits 2.040.000 pilgrims based on the fact that each one needs 6 m and if the number of pilgrims is expected to rise from 2.98 million in 1433 AH to 5.24 million in 1463 based on the first perspective and from 3.08 in 1433 AH to 14.14million in

1463 Ah based on the second perspective, then we have no solution except defining and setting a Hareem around each Mash'ar to fit all such numbers by making it surround the whole Mash'ar from all sides.

The Arafat Hareem

I am going to explain the outline of the Hareem from all sides and in the future I will present detailed studies about this matter.

Based on the above mentioned, I see that Arafat Mash'ar needs a Hareem about 8.11 km² in 1433 AH and 21.62 km² in 1463 AH and this is based on the first perspective whereas based on the second one it needs a Hareem about 8.69 km² in 1433 AH and 75.06 km² in 1463 AH.

To make the full advantage of the land of the Mash'ar, All bus stops must be moved to the Arafat Hareem and no car is allowed to enter the land of Arafat Mash'ar except emergency cars. The same thing applies to the public utilities like hospitals, fire stations, security, headquarter of Information Ministry and Interior Ministry. Therefore, Arafat Mash'ar is only for pilgrims. This act will contribute to increasing the capacity of Arafat as we will mention later in sha' Allah. Within the following ten years, we have to prepare the Arafat Hareem from all sides for the pilgrims and we should inform them that the Messenger of Allah stayed his night outside Arafat and did not enter it except after noon and we should translate this thing to all languages and print it and distribute it to all pilgrims.

The importance of the Hareem is that it lets the land of Arafat Mash'ar to be used exclusively by the pilgrims and in case that it did not fit all the pilgrims, they can stay in the Arafat Hareem especially in the side of Arna Valley and this is mustahabb "recommended" because our prophet Muhammad did the same and also by analogy they can stay in the Hareem

of other sides and this is at least mubah “neutral” in case that it was not mustahabb.

To complete the vision, I recommend connecting Arafat to the north and south Hareem of Muzdalifah to external ways which are north and south that reach Muzdalifah then they go through it by tunnels or bridges in the mountains surrounding Muzdalifah from the north and south sides. On building such roads the capacity of them must fit the number of pilgrims.

The area of Arafat and its Hareem were studied by the individual efforts of the researcher and it is seen that there are some efforts exerted by him to define the perfect Hareem for Arafat.

Table No. (3)
Holy Masha’er areas (flat, rugged) in km²

Arafatt			Muzdalifah			Mina		
flat	rug- ged	total	flat	rug- ged	total	flat	rug- ged	total
9.79	2.45	12.24	6.4	5.8	12.2	4.4	3.8	8.2

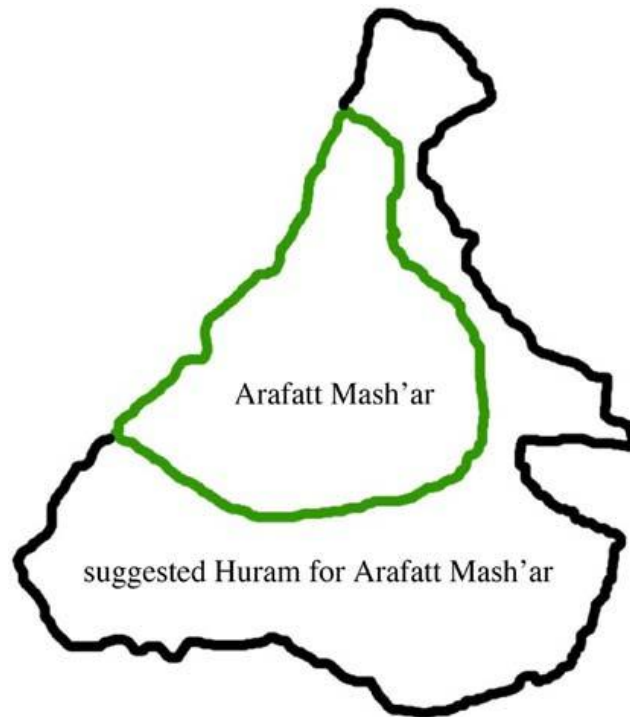
Table No. (4)
Harum areas needed for Holy Masha'ar in km²
(According to first expectation for Pilgrims)

Year	Pilgrims	Harum areas needed for Holy Masha'ar in km ²		
		Arafatt	Muzdalifah	Mina
1433	2.98	5.66	5.70	9.70
1438	3.28	7.42	7.46	11.46
1443	3.60	9.35	9.39	13.39
1448	3.95	11.47	11.51	15.51
1453	4.34	13.80	13.84	17.84
1458	4.77	16.36	16.40	20.40
1463	5.24	19.17	19.21	23.21

Table No. (5)
Harum areas needed for Holy Masha'ar in km²
(According to second expectation for Pilgrims)

Year	Pilgrims	Harum areas needed for Holy Masha'ar in km ²		
		Arafatt	Muzdalifah	Mina
1433	3.08	6.24	6.28	10.28
1438	3.97	11.59	11.63	15.63
1443	5.12	18.48	18.52	22.52
1448	6.60	27.36	27.40	31.40
1453	8.51	38.81	38.85	42.85
1458	10.97	53.58	53.62	57.62
1463	14.14	72.61	72.65	76.65

Figure (1-A): Holy Masha'er and the suggested Hurem



B- Muzdalifah Hareem

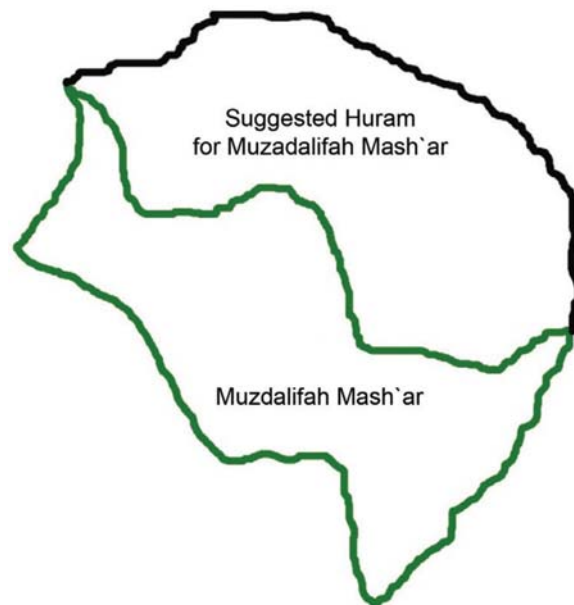
The methodology of defining a Hareem for Muzdalifah is different from choosing one for Arafat because Muzdalifah and its surroundings are part of the Harm “Grand Mosque in Mecca” unlike Arafat which is outside it. Also Mahsar Valley borders Muzdalifah from the west side and it is a narrow west dividing Muzdalifah from Mina. It is also said that the Messenger of Allah hurried while passing through the Valley and that is why we cannot construct a Hareem there. As for the north of Muzdalifah, there is a rough area that cannot be at this time a good place for staying. We can also see urbanization spreading around the borders of Muzdalifah from the south side and this should be banned now. As for the east side, its

lands are flat plains with few buildings, so it is suitable for being defined and taken as a Hareem for Muzdalifah from this side and be considered as a part of the Mash'ar.

The country did well when it joined these lands to the Masha'er and I hope it will succeed in joining the recommended Harum in this study to the Masha'er of Arafat, Mina, and Muzdalifah.

To calculate and determine the space of Muzdalifah Hareem, it used the same method used before to calculate the space of Arafat, and it turned out that Muzdalifah Mash'ar needs a Hareem of 11.50 km² in 1433 AH and 25.2 km² in 1463 and this is based on the first perspective, and based on the second perspective it needs 12.08 km² in 1433 AH and 78.45 km² in 1463 AH. The researcher defined such dimensions based on aerial and topographic photographs.

Figure (1-B): Holy Muzdalifah and the suggested Hurem



We cannot forget about the ways and roads, because the greater the number of pilgrims, the greater the needs busses, trains, bus stops, and train stations. Therefore, we have to broaden what is already built, so we should take this into consideration when building the roads that connect Muzdalifah to Arafat to Mina to Mecca

C- Mina Hareem

Mina exists between Aqaba bordered from the west by Mecca and Mahsar Valley bordered from the east by Muzdalifah. There are two chains of mountains called Thabir and Sabeh the both sides of the valley where it runs between them toward the west. Its total space is 8.2 km² and the space of its plain is 4.4 km² and the rest is a mountainous region. The space of bridges and utilities within it is 1.7 km² and such space has decreased because of the Jamarat Bridge which has a length of 950 m² and a width of 80 m² and contains 12 entrances and 12 exits.

The buildings surround Mina from its south side which is north of Aziziah which are the lands and canals of Ain Zobiada. Also a lot of buildings were built on such lands. Therefore, defining a Hareem in this side needs a lot of money to buy such properties but at least we can ban constructions. On the west side, there is about 0.5 km² of buildings and we have to ban constructions there. As for the east side, we mentioned earlier that we should not build a Hareem in Mahsar Valley as the Messenger of Allah hurried while passing through it. Therefore, we have only the north side where a lot of bridges were built to connect the south of Mina with the north and there are a lot of lands still untouched unlike the other areas of the other sides. Therefore, the study recommends banning construction in it and buy any property on it then join it to the Sacred Masha'er. By

using the same methodology used in other Masha'er, it turned out that Mina Mash'ar needs a Hareem of 13.50 km² in 1433 AH and 13.50 km² in 1463AH and this is based on the first perspective whereas based on the second one, it needs a Hareem of 14.08 km² in 1433AH and 80.45 km² in 1463.

Figure (1-C): Holy Mina and the suggested Huram



Section V: The Provisions of Harum

It is time now to discuss an important question which is whether defining a Hareem for each Holy Mash'ar is accepted according to Sharia or not, what the provision of defining one is, and if Sharia does not mind

such a thing, is it obligatory to define such a thing as the absence of it could lead to exposing people to harm because of the over crowdedness. It is well known that exposing life to destruction is haram as our religion required us to keep the self, money, children, religion, and honor safe. Also it could lead to missing standing in Arafat and consequently the invalidity of Hajj itself. Therefore, we have to find a solution for this problem and one of these solutions from the viewpoint of the study is to define a Hareem around each Mash'ar. The question here is whether finding a solution is considered mustahabb or mubah. The answer of this question needs a thorough study by experts and it should be pointed out that the majority of scholars said that spending the night at Muzdalifah is Wajib "obligatory" unless there is an excuse⁽¹⁾. On the other hand, they disagreed on the time and the length of the stay at Muzdalifah so that your spending the night there is accepted, e.g. According to Maaliki Scholars, you can stay at any time after sunset and before dawn for the period needed to pray Maghrib and Isha and make the camel kneel down and I think this could take just 15 minutes. As for Shafi'i and Hanbali Scholars, they required the pilgrim to leave Muzdalifah at any time after midnight⁽²⁾ and I do not know if they demanded a specific time for staying there. As for Hanafi Scholars they necessitated standing in Muzdalifah after Fajr on the day of Eid and as for spending the night there, they said it is Sunnah. Therefore we can say that the majority of scholars of the four schools agreed on the necessity of spending the night at Muzdalifah and disagreed on the length of the stay⁽³⁾.

To solve the problem, the researcher sees building a Hareem for

(1)Hashiyat Ibn Hajr p 311

(2)Hashiyat Ibn Hajr p 312

(3)Suggested solutions to alleviate crowding in Hajj, p 311

Muzdalifah where the excessive numbers of pilgrims can stay after the Mash'ar becomes full of pilgrims and where they can pray Maghrib and Isha as they do not have to pray them in the same Mash'ar.

As for Mina, the scholars differentiated between the provision of spending the night there and the provision of stoning. They all agreed that stoning is Wajib “obligatory” and disagreed on spending the night there. The reader can head to Book of Hajj for further information. Therefore we have to find a solution to facilitate the stoning and the government did well when they built the Jamarat Bridge to facilitate this process. Also we have to find solutions for spending the night in Mina and I recommend setting a Hareem for it where pilgrims can stay after stoning and by doing so they are considered to be residents of Mina. If some scholars see that it is haram to build in Mina, no one can say that it is haram to build in the Hareem of Mina, so that the Mina Mash'ar is free from buildings.

The bottom line is that we need to find some solutions to increase the capacity of the Holy Masha'er and I think setting and defining a Hareem around each Mash'ar is the best one. It is not acceptable to decrease the percentage of pilgrims of each country and it is not acceptable as well to put them in Masha'er that cannot fit their numbers as this leads to a large number of problems. I think if we cannot find a place to stand in the Masha'er and this led to many problems like losses of lives, then we are obliged to find a solution to solve this problem.

Section VI: The Waqf of the Harum of the Sacred Masha'er

A waqf “pl Awqaf”, also spelled wakf is, under the context of ‘sadaqah’, an inalienable religious endowment in Islamic law, typically donating a building or plot of land or even cash for Muslim religious or charitable purposes. The donated assets are held by a charitable trust. The grant is known as mushrut-ul-khidmat, while a person making such dedication is known as wakif.

Our call for defining and setting a Hareem around each Holy Mash’ar is resulted from the fact that the numbers of the pilgrims are increasing significantly year by year. Such increase is confronted by a stability in the spaces of the holy Masha’er. This led to the question “how we can protect each Hareem to make sure that it is only used for the benefits of the pilgrims”.

I think the best way to protect each Hareem is by considering each one as a Waqf. Therefore, we need to issue and pass an act conditionalized with fulfilling our objective which is making sure that the land of the Hareem will not be abused and to make sure that if someone has tried seize the land of the Hareem, he is put under the penalty of law.

The desire to own is a human instinct and there must be some actions to deter them from thoughtless behaviors that can harm the public interest of Muslims. Humans always desire to own valuable things and lands around Sacred Masha’er which are so valuable that each Muslim seeks to live near them. As for the material value we know the rental value of the places surrounding Mina especially in Hajj season.

When we browse history, we see a lot of encroachments on the lands

of Safa and Marwa and the buildings crept into its road till its width reached 8m. But the efforts of the government paid off when they removed such buildings and eventually built two walls that saved it.

The Sacred Mosque was also surrounded by the houses of the Mec-cans even the doors of many of them used to open in the doors of the mosque, but this was banned in the Saudi era that witnessed several expan-sions to the Mosque.

We can avoid such problems by banning people from building on the empty lands around the Holy Masha'er and this will solve the material problems as we do not have to buy such buildings with high prices and will solve also the moral problems because the residents of such houses are connected to them and asking those people to move from them will hurt them morally.

The bottom line is that we need to define a Hareem for each Mash'ar to solve the problem of the increasing numbers of the pilgrims and the in-capability of the Masha'er to fit the pilgrims. To do so, we need to consider each land of the Hareem as a Waqf and such Awqaf are supervised and managed by the Department of Hajj, the Ministry of the Affairs of the Two Holy Mosques, and the Ministry of Awqaf.

Recommendations

The researcher recommends the following:

1. Building Harum for each Mash'ar should be of prior importance to overcome the problem of the increasing numbers of the pilgrims.
2. Urge Fiqhi Organizations like the World Fiqh Council and other Islamic universities and institutions to discuss the notion of setting Harum around the Masha'er.
3. Study the spaces of the Holy Masha'er and rethink of the borders and spaces of Holy Masha'er From all sides.
4. The lands of the Holy Masha'er should be used only exclusively for performing the rituals and move everything else from the Mash'ar to the Hareem.
5. Dealing with the matter of pilgrims with far-sighted visions.
6. Make use of the new scientific facilities, Satellite pictures, and Geographic information systems to set the borders of each Mash'ar.
7. Connect Each Hareem with its Mash'ar. Therefore, a pilgrim must move through the Mash'ar while heading to another place.
8. Consider each Hareem as a Waqf. Therefore, we need to issue and pass an act conditionalized with fulfilling our objective
9. The expected expansion of Umm Al Qura University should be directed to the south to be far from Arafat Mash'ar and its Hareem.

References

1. The Holy Quran
2. Sahih Bukhari
3. Sahih Muslim
4. Hashiyat Ibn Hajr
5. Suggested solutions to alleviate crowding in Hajj
6. Mu'jam al-Buldan by Yaqut al-Hamawi 4/104
7. Definitions of Al-Jerjany page 154
8. Taj Al arous min Jawahir Al qamus, 1971
9. Biography of the Prophet by Ibn Hisham
10. Sealed Nectar in the biography of the Prophet
11. Fiqh al-Sunnah, al-Sayyid Sābiq
12. The Lisān al-'Arab "The Arab Tongue"
13. Ibn al-Athir,
14. Al-Ahkam al-Sultaniyya by Abu Al Hassan Al Basri Al-Mawardi
15. Kitab Al-Kharaj
16. Musnad Ahmad Ibn Hanbal
17. Al rafadah Magazine Thul Hijjah 1432
18. Department of Statistics website

A study in the documents and transactions of Waqf in Jerusalem Ottoman legitimate court during the 11th AH and 17th AD Century

Dr. Muhammad Al-Khateeb

Dr. Ibrahim Riba'h

Abstract

This study deals with some aspects of Waqf transactions during the Ottoman era in Jerusalem. The two researchers have worked on reading many archival resources like the records of Jerusalem Ottoman court which abounds in valuable information like the documents dated from the 11th AH and 17th AD Century. The purpose of this Study is to know the nature of Waqf Transactions used by the Ottoman Caliphate in dealing with the Islamic Waqf and the mechanisms used at that time to maintain the effect of such Waqf.

This study contains the most prominent issues dealing with Waqf transactions written by the Shari'a Court in Jerusalem like exchanges, claims, debts, and rent. The researchers preferred addressing such topics through presenting the documents found in the records of Jerusalem to guide us to ways of dealing with Waqf and preserve it.

Preface

This study aims at studying Islamic Waqf transactions in Jerusalem Awqaf during the Ottoman era, and in order to complete the study we had to fathom the records of Jerusalem Ottoman court. Such records are considered the oldest archival resources as they provide us with a wealth of information as it contained important information about Jerusalem in different fields like the waqf issues and waqf transactions. The importance of such records lies also in the fact that they are the closest resource dating the general conditions inside Jerusalem.

On the other hand, such records are considered the oldest archival resources in Levant as the first record dates back to the year 936 AH corresponding to 1530 AD.

As for The status of the records, we have a diversity in fonts and they were written in slang and the letter Yaa replaced the letter Hamza in many words like tayfa instead of ta'efa.

The major difficulties that face each researcher is that they are stored in microfilm tapes. The first stage of them was photographed in 1982 AD and the second in 1983 AD and each researcher has to seek them in their original place; that is why they were accessible for just few researchers.

One of the persons who had a major role in this field was Mr. Mahmoud Adnan who published some of these records. Also the researcher Ibrahim Riba'h has participated in analyzing and studying such records. After he started the project of electronic analytical indexing of the records and he was able to prepare 7 records which are (107, 119,149,150,152,155,156) which date back to the seventeenth century AD. Each record has been prepared as a complete book that includes a Text indexing, margins, resourc-

es, indexes, and glossary of terms. He published three of such records.

After reading such records thoughtfully, we found out that they are of different topics and titles like replacement, renting, borrowing, and claims. Due to the importance of such records, we are going to display models of each type.

The methodology used by the two researchers is based on the historical analytical method by stating the importance of the archival resources to reveal the content of old waqf documents. The information mentioned in such documents were analytically dealt with.

First: Replacement

It means to replace the waqf property with money or other properties. The scholars did not agree on the replacement of waqf properties. Most Maliki Scholars did not accept this and the Shafi'a scholars agreed to a limited extent. As for Hanbali scholars they agreed provided that the waqf is in ruin.

The reasons for replacing the waqf properties are the following:

1. The waqf properties are in ruin and it does not produce any profits at all.
2. Providing money needed for constructing new buildings on waqf lands or paying the debts resulted from reconstructing such Awqaf or due to buying new waqf stores.
3. An interest occurs that requires such replacement.

And a lot of reasons were mentioned in the documents talking about replacing a waqf with money after submitting the reasons to the judge.

When he agrees on such matter, the replacement occurs.

There are many types of replacement like replacing a real estate with a real estate and we know that Muhammad Al-Hindi, the responsible for the Awqaf of Galal Eldeen area, replaced 2 houses with a store in Bab Hetta.

The second type is to replace the real Estate with money provided that such money is spent on buying another real estate and such real estate is more useful. Muhammad ibn Abd-alqadir replaced 6 carats with 40 lion Piaster on condition that the official buys a new real estate with that money.

In some cases we can replace the real estate with money provided that the money is mortgaged and the profits of such mortgage are spent on the waqf. We know that Abi Al-nasrah Al-sokkary replaced three pieces of lands with 30 lion Piaster provided that he mortgaged them and got 6 lion Piaster each year, 4.5 are spent on the waqf and 1.5 are spent on the worker of the water pump.

Returning back to the topic of the documents and instruments which represent the topic of the study, it is enough to select two of the instruments of the legal courts records in Jerusalem concerning replacement because there is no time to discuss and show all the Instruments we have in this study. Such instruments are:

**Title of the first instrument (replacing a current house in the Waqf
“endowment” of Aqsa Mosque and Khalil Al Rahman (20th of Thul
Hijjah 1067 AH, 29/09/1957AD)**

Text of the legal instrument ⁽¹⁾

(1) The Jerusalem record , V 1 , 20th of Thul Hijjah 1067 AH , 29/09/1957AD), P 486-478, The copy of the Instrument can be reviewed in the attachment no. 1

“the reason of editing the letters that it is in the legal editing assembly honored by Allah With Maulana Sheikh / Abo Al Barakat Mohamed Bin Sharaf Al Din Al Khaldi attended the noble scholar Sheikh Ahmad Shehab El Din Al Hamdi Al Ansari ⁽¹⁾ Mufti Al Maaliki in the holy Jerusalem who is charged with the Waqf of the Noble\Rock and the Aqsa Mosque as well as the noble / Hawi Al Mahamed Ali Agha⁽²⁾, well – known by Samoum who is responsible for the Waqf of our sir Khalil Al Rahman They told Mawlana, the legal governor – the aforementioned – that the property in both Waqfs fifty – fifty all the ruined house which is now open area located in Al Risha Municipality⁽³⁾ in the holy Jerusalem bordered by Armenian Monastery ... That, many days and years ago, it was demolished and became ruined and house for the robbers. It is harmful for the neighbors and urban. It has no benefit for the two waqfs and the waqf has no way to furniture it. No one has desired to rent it. Replacing it with another house will be useful for both waqfs. Maulana, the legal governor – the aforementioned – has been asked to check the ruined house The legal governor has responded their request and appointed ,on his part , the noblest scholar clerk /Maulana Sheikh Mohamed Afif El Din Al Khaledi ⁽⁴⁾ to check that house and edit a report and everyone from Osta (Teach-

(1) Ahmad Al Hamdi , was a reader in the noble rock current in the waqf of Khaski Sultan , wife of the sultan /Sulaiman Al Qanoni , Jerusalem Record 152 , V1, P 577.

(2) Agha : a Turkish word meaning the president or the leader , it's used with the senior military men in the Ottoman state , Barakat Mustafa , Ottoman titles, Ghareeb House for Publication and Distribution , Cairo , 2000, V1, P 173

(3) Al Risha : kicated northwestern of Jerusalem city, Al Yaqoub , beside the holy Jerusalem , V2, P 435

(4) Mohamed Afif El Din Al Diri Al Khaledi , one of the legal clerks in Jerusalem and supervisor on the waqf of Ahmad Bin Marid, and he is charged by the waqf of Balqis Khatoon , Jerusalem record 149 , V4, P 21, Jerusalem record 149 , V1 , P 72, Jerusalem record 149, V3, p86

er)⁽¹⁾ Amero , Teacher Ali , Teacher Mahmoud , Teacher Fakher El Din , all of them are supervisors who supervise in the holy Jerusalem⁽²⁾. The ruined house, which is now open area, was checked. It was found ruined area. All of them and Al Moalem Sharaf, Al Moalem Ibrahim Al Qanawati, Abdullah and Al Moalem Ahmad told that this house has no benefit for both waqfs authority and all reasons for replacement has been fulfilled. Replacing this house with another property will be useful for both waqfs authority. Therefore the attorney replaced, on the part of his Emir of the Emirs, noble of the whole nobles, core of holy creed, honest of the state ... Hussain Basah⁽³⁾- May Allah bless him – the governor in Gaza city He is honored noble , Hawi Al Mahamed Ibrahim Agha⁽⁴⁾, The famous clerk his noble kin , the son of the late / Saad El Din the attorney of His Pasha , the aforementioned , regarding the replacement and the property of his Pasha - the aforementioned- not the other property of those who are charged by the two noble waqfs The property in both waqfs is fifty – fifty for the attorney of Pasha – the aforementioned – as well as the whole ruined house, which is described previously, a legal correct replacement.

(1) Osta : it is derived from the Persian word : Ostaz , meaning teacher , Jerusalem record 80, 3 Jummadah I 1008 AH /31 October 1599 AD, P 317 : ADASHIR , The Egyptian – Persian Words Book (D.T) . (D.T), (D.M), P 10.

(2) Supervisor : is the one who is charged by supervising all the building and renovation works in the city and check its rules and laws , Ebrahim , record of Jerusalem court (152) , ED 1, Al Shyamaa House , Ramallah , V 2011, P 332.

(3) Hussain Bin Hassan Bin Mohamed Bin Radwan, He ruled Gaza after his father Hassan Pasha in 1054 – 1073 AH / 1644-1662 , He was full knowledgeable of the political matters, He became the leader of Jerusalem and also Nablus for more than one period, beside the emirate of Hajj , Al Mohebi , Summary, V2, P88, Esam Naji Sisalem and Zakaria Ibrahim Al Senwar , Leader of Gaza in the Ottoman first ear 922-1101 AH /1517-169 , Study in the political Civilized History , Gaza , 1425 AH / 2004 AD.

(4) Ibrahim Agha was attorney for Hussain Pasha in Jerusalem, with regard to selling , purchasing , receiving the corps of his property in the Jerusalem and its areas , Jerusalem Record 152 , V1, P 57-58.

On behalf of that, all the shops in the property of Pasha - the aforementioned – located in the Jews municipality ⁽¹⁾ near to Al Seknag Monetary , the first is the Aslan housing to the direction of holy rock wakf and the second is north to the direction of waqf of Al Sayed Al Khalil , Peace be upon him , known by the housing of Dawood . They are bordered by Al Seknag monastery from the front and east, a shop in the property of Bash from the north and Al Salek road from the west, true and legal replacement. Maulana, the legal governor, has judged that the aforementioned replacement is legal and true. Therefore, the ruined house became property of Pasha, The aforementioned, and the waqf shops became legal, it was issued on 20th of Thul Hijjah, 1067 AH.⁽²⁾

Instrument Analysis

1- Date of Instrument: 20th Thul Hijjah 1067 AH / 29/09/1657

2- Description of the Instrument

The instrument falls in one page and half of the medium format. It is read. There is some damage on its bottom edge, however it can be dealt with easily. Writing is near to the colloquial language. The kind of font is Mashreqi (eastern). Number of lines is 51.

3- Content of the instrument

The writer of the instrument has started his instrument with the le-

(1) Jews Municipality, it is located in Jerusalem city, to the west of Al Sharf Suburb between both Al Sharaf and Al Risha suburbs. It was sometimes known for the middle municipality, Al Yaqoub, C2, P 436.

(2) The witnesses on this legal Instrument are: Al Sheikh Zakaria , Al Sheikh Mustafa Al Dagani , Al Shiekh Afif El Din , Al Sheikh Nour El Din Al Shafeai , Al Sheikh Moheb Allah Al Diri , Al Sheik Fatah Allah Aldiri , Omar Galbi , Al Sheikh Tag El Din Galbi Al Torjoman , Al Sheikh Ibrahim Al Degani , Jerusalem Record 152, V 1, 20TH Thul Hijjah 1067 AH/ 29/09/1957 AD, P 486-487.

gal governor of Jerusalem in that time , Abo Al Barakat Mohamed Bin Sharaf El Din Al Khaledi , Mufti of Jerusalem and those who are charged by the rock and Al Khalil waqfs and honoring them . The reasons behind holding the assembly were told. These reasons are represented in the request for replacing a ruined housing in the waqf of Aqsa mosque and Rock Dome with another house because there is no benefit return back to the waqf authority. The legal governor has made sure of that and assigned the concerned to check it. When the reasons behind replacing it were confirmed, he allowed them to replace it so that the authority of both waqfs can gain benefits.

After that, the house was legally and truly replaced by all the shops current in the property of Hussain Pasha, the governor in Gaza city, located in the Jews municipality near to Al Seknag monastery. This was issued and the date was fixed in the presence of the witnesses.

4- Importance of Instrument

At the beginning, It should pointed out that although the official doctrine for The Ottoman state was Hanafi , all the Islamic Sunni doctrines were represented in the Jerusalem city (Hanafi , Shafi'i, Maliki , Hanbali).(1), each school of thought has had its own Imam in the noble Aqsa Mosque , as well as a Mufti and judge to manage their social and religious situations alike . Therefore, as it is clear in the instrument, all Muslims according to their orders approached their relevant judges and Muftis.

The importance of the instrument lied in its accurate and valuable

(1) Jerusalem Record 92, Rajab, 1020 AH , 10 October 1611 AD , P 101

information about the administrative, economical, legal and social side. From the administrative side, it talked about the job of the legal governor in the Jerusalem city at that time, mentioning his name and the names of those who were charged with the waqf both Aqsa mosque and Khalil Al Rahman. It also mentioned some other jobs such as the job of the supervisor.

As for the legal side, the legal governor of Jerusalem has shown more interest in the waqf and not replacing it unless he sought help from those who are concerned and he was assured that the replacement will attract benefit for the waqf authority. This, in fact, indicates his full knowledge of the legal rules.

Additionally, the instrument has mentioned some suburbs and monasteries such as Al Risha Municipality, the Jews municipality, Armenian Monastery and Al Seknag Monastery.

Title of the Second Instrument: Replacing Ruined Land In At Tur ⁽¹⁾ **“Instrument Text”**

“With Maulana... Attended Abo Al Barakat Mohamed Afandi Al Diri⁽²⁾, one of the nobles, branch of the holy tree, model of the Hashemite class, Mualana Tag El Din Bin Al Sayed Abdul Qader Al Wafaei, Mufti of Jerusalem and member of the nobles, and he’s the supervisor on the waqf of his father / Al Sayed Abdul Qader. Maulana, the legal governor, stated

(1) Jerusalem Record 152, V3, 1ST Muharram 1068 AH – 11/10/1657 AD, P535, See copy of the instrument in the attachment no. 2.

(2) Mohamed Al Khaledi Al Diri, he was mentioned only the Jerusalem records as a Hanafi member for the Jerusalem Judge, see the Jerusalem Record 152.

that his father had waqf in a ruined land in At Tur⁽¹⁾ current in the waqf of Sheikh Ali and Sheikh Ahmed Al Hekari , located back of the holy Jerusalem including grapes and figs , bordered by Al Qoadah grape farm current in Al Asadia school⁽²⁾, East by Hamad grape farm owned by Maulana Sheikh Abdul Baki Al Almi, and Tamah Hakourah owned by Thabet Taha from At Tur, North by Al Darb Al Salek, west by Al Darb Al Salek , with all its rights , roads and borders. Due to the long past days, months and years, most of the trees were damaged and the land became empty of them. Only few trees, estimated at 100 grape trees, 15 fig trees, remained. The trees remained are very old and are about to decay and he has no other money for the waqf authority to spend on reconstructing the trees. The majority of the land became wild empty of the trees and what he obtained is not enough for the yields employed to the waqf of Sheikh Ali and Sheikh Ahmed Al Hekari. The landlord, every year, takes its yields from him. The crops of the trees existed now in the land are not enough to pay for him. This, in fact, has caused harm to the waqf status. It is afraid that if the land left without making use of it totally and the purpose of waqf. He doesn't find anyone to borrow money from them to spend on renewing cultivating the waqf in compensation for the trees which had decayed and reconstructing the roots of the grapes trees. Therefore, he desires to replace his share estimated at the quarter of the fig and grape trees remaining from the trees with a amount estimated at fifty Ghersh Asadi to be spent on renewing the cultivation of fig and grape trees and other trees equal to the

(1) At Tur, it is located east of Jerusalem city , It is 831 m higher than the earth surface , It contains the waqf of Salah El Din Ali , Al Sheikh Ahmad Al Hekari Al Dabagh, Our Country Palestine, V8, P127.

(2) Al Asadia School, endowed by Maulana Abo Al Saud Asaad Afandi, the great Mufti in Constantinople Sunni Sultanate (17th Muharram 1033 AH, 10/11/1623), see the instrument text in the Jerusalem Record 107, P 127.

value of the share which remains for the waqf after the replacement, it is three quarters , and if nay thing remains to purchase a real estate, grape farm or a house to be compensation for the replaced quarter in the status , money , ability , capability, dues, conditions, and result of the waqf condition in waqf letter and in the replacement there is an interest and apparent benefit for the wakf authority. Maulana, the legal governor, was asked to consider this case legally , check and issue a report in the considered style, if it is existed in the described way, he is permitted to replace the quarter with the aforementioned amount . Maulana, the legal governor, answered him concerning this matter and appointed, on his part, the original clerk⁽¹⁾ Sheikh Zakaria Al Khaledi, providing him with a group of Muslims. Thus, the land having the trees was checked. Some of it was found empty of the trees and the remaining trees were about to decay. They returned back and legally told that to Maulana, the legal governor. Everyone, including Khalaf Bin Salem, Alaa El Din Bin Saleh Al Shamaah, who are full knowledgeable and experienced, attended and told by testimony that replacing the quarter of trees represents interest and benefit for the waqf and that the fixed amount is more than equal at that date and more than the fair value. Maulana accepted their statement legally. While the reasons behind replacement were legally confirmed to Maulana, he has permitted to consider replacing that with what is owned by himself from Al Sayed Tag Al Arifeen, the supervisor of his father waqf. Thus, he replaced it with what is current in the waqf and he has the permission to replace it legally, including all the shares estimated at the quarter , 6 acres out of 24 acres out of all the fig and grape trees existed in the land of At Tur village located behind

(1) Original clerk , he is the writer of the instrument , the replacement contract, it's the first stage from writing down the instruments , since it followed by writing them in the legal record after case is fully considered and the judge stamped it.

the Jerusalem current in the waqf of Sheikh Ali Al Hekary⁽¹⁾ The partnership of the waqf of his father Al Sayed Abdul Qader , in the right of the aforementioned determined remaining three quarters , with all the rights of that , its roads, borders , facilities and benefits . The legal science indicate to replace 50 Ghersh Asadi paid immediately by the supervisor according to his legal admission, so that the supervisor can spend that amount on reconstructing the current share in the waqf of his father, which is estimated at three quarters in renovating the fig and grape trees, in addition to the other trees, and what they need including building the walls, plowing, cutting ...etc. . In return for his work, he shall have third of the share current in the waqf. Thus, it remains for Hassan half of the yields. Half of it by ownership and half of it by the commission and the remaining half in all the remaining fruitful trees for the waqf of Al Sayed Abdul Qader, after it is known that the replaced is good for the waqf of Al Hekari and accepted to pay each year for their owners . If anything remains from the replaced amount, the supervisor should purchase by it a real estate, grape farm or a share in compensation for the quarter of the trees ... accepted legal and true replacement ... issued on 3rd Muharram 1068 AH.”

Instrument Analysis

1- Date of Instrument: 3rd Muharram 1068 AH – 11/10/1657 AD.

2- Description of Instrument

The instrument is only one page, read easily, it has some damage

(1) Endowed by Sultan Salah El Din Al Ayoubi on the family of Sheikh Mohamed and Sheikh Ali Al Hekary , both are from the family of Sheikh, the owner of grape trees hidden in At Tur mountain , east of Jerusalem , see , Al Elimi , Al Ons Al Jalili , V 2, P 61, concerning the contract text “waqf”, see : Mohamed Ghosha , Islamic waqfs in holy Jerusalem , V2, Istanbul, 2009, C1, P 52.

in its edges, writing is near to the colloquial, number of lines is 37.

3- Content of Instrument

Mufti of the holy Jerusalem, Tag El Din Bin Al Sayed Abdul Qader Al Wefaei attended to the legal governor of the Jerusalem city, Abi Al Barakat Mohamed Afandi and told him that his father owned a ruined land located in At Tur, it is current in the waqf of Sheikh Ali and Sheikh Ahmad Al Hekari. Due to passing days, the majority of its trees decayed and the land became empty of them. He has no other money to reconstruct it and he hasn't found any one to borrow from them to renovate the waqf trees, the matter causing harm to the waqf. He desires to replace quarter of the trees remaining from the grape and fig without the amount of the share that remains from the waqf, which is three quarters to reclaim it and this will be in the interest of the waqf. After the land has been checked and the reasons of replacement have been confirmed, the judge permitted him to replace.

4- Importance of Instrument

This instrument has shed the light on the names of some of those who hold administrative jobs in the holy city as the legal governor of the Jerusalem city, the Mufti of the city. Additionally, the instrument has determined some of the other waqfs current in the waqf of Al Asaadia school.

In the instrument text, some ways which were used in the Jerusalem at that time were stated to keep the wakf. In addition to the replacement, the topic of this instrument, we find that the Mufti of Jerusalem has tried to resort to the replacement for the sake of

reconstructing the waqf and when he didn't find anyone to borrow money from him he resorted to the replacement.

Finally, when the responsible for the wakf gets the approval of the legal governor on the replacement, what has been agreed upon should be executed in the presence of the current witnesses so as to avoid the disorder.

Second: The Reconstruction and Renovation

The renovation of waqf in the Ottoman era had fallen on the shoulder of who is responsible for the waqf according to the conditions of the waqf owner. It was usually conditioned for the owners of waqf to renovate it to keep its premises. Therefore, the one who in charge of the waqf shall renovate the waqf without any need to take permission from any authority. In other cases, the renovation and construction are conducted by the request coming from the legal governor or the Muslims judge, if it is necessary as it was the case in the first instrument which will be shown in this field as following:

Title of the first Instrument ⁽¹⁾: Renovating Al Tankizia School ⁽²⁾

“Instrument Text”

“The reason behind editing the letters was that , in the legal assembly honored by Allah , with Maulana and our Master the great scholar , the editor of interpretation , first of Muslim judges , the mineral of science

(1) Jerusalem Record 156, 1St Thul Hijjah 1069 AH, 05/09/1659 AD, P 471, See the copy of the instrument in the attachment no. 3.

(2) Al Tankizia School , it is located in the line of Series Gate , It was endowed by Emir Abo Saeid Tankiz Bin Abdullah Al Malki Al Naseri for the Jurists of Hanafi doctrine, and Sofi preachers ... Al Yaqoub , beside the holy Jerusalem , V2, P311.

, patience and speech , the heir of the prophets science , reference of the great scholars , solver of the peoples' problems , servant of the doctrine of the prophet Mohamed "peace be upon him", Sheikh of Muslim sheikhs , the pious, complete , noble , worshiping scholar , the best judge differentiating between the legal and illegal , the legal governor Al Maulla Mustafa Afandi Bin Abdullah – when the building of Al Tankizia school ,located on above the Aqsa mosque in that their due to the much earthquakes⁽¹⁾, rains , the cracks of the pillars on which the houses are located and fell down and demolished . The architects told that if this remained in this condition, it will cause great harm to the waqf authority and if this is decreased and was returned to its old style and building, it will need much expenses and a lot of money and in building new baghalat "pillars"⁽²⁾ inside Aqsa mosque outside the pillars to stuck to Al written Baghalat Building. If it is returned back to the old style, all the other buildings with pillars will be demolished. The corridors under them will be demolished, which are current in the waqf of Holy Aqsa mosque and the strong damage will be caused to the waqfs of Tankizia and Holy Aqsa Mosque. Maulana and our sir , the aforementioned legal governor , has brought those who speak about the Tankizia school written: Sheikh Shehab El Din Tankiz⁽³⁾, the charger of the written waqf , his uncle Hajj Ismail , the supervisor of the written waqf , the noblest teacher, the best scholar , the solver of the

(1) earthquakes: the historical sources didn't refer to the occurrence of earthquakes in that year. However, it seems that the earthquakes here means that the heavy rains, leading to the demolition of the buildings. This word is used by the Palestinians to mean the heavy rains.

(2) Al Baghalat: means the pillars which support the building, this term is still used by the builders in the present.

(3) Shehab El Din Tankiz, from the waqf owner's family, who has conditioned that his family should be charged with the waqf. See Kamel Jamil Al Aseli, Science Institute, P 125.

religious problems, Maulana Sheikh Fakher El Din Al Maseri⁽¹⁾, the writer of written Wakf , the honored noble Sheikh Yaqoub Bin Qadi Al Solt⁽²⁾, Group of those who deserve written waqf and told them what has been told by the architects . Maulana has ordered those who speak about the written waqf , the nazir and supervisor of waqf have mentioned that they have no money from the waqf corps to spend in reconstructing that and asked Maulana , the legal governor, to allow them to borrow an amount of money to spend on that and repay that amount from the rent of the premise swimming pool⁽³⁾ which half is current in the written waqf , Thus Maulana , the aforementioned legal governor , has legally permitted them. Therefore, Sheikh Shehab El Din who is charged with the written waqf and his uncle Hajj Ismail, the supervisor of written waqf for written waqf authority from Maulana, sheikh Fakher El Din Al Maseri, the writer of The written waqf, he sold what he has and current in his property and movable to him by the legal selling from Sheikh Nour El Din Bin Sheikh Abdul Rahman Al Afifi pursuant to the legal instrument dated as following directly with the aforementioned legal governor. – in addition to all cases ⁽⁴⁾, the sold soap weighted 60 pounds , with price 47 Ghersh Asadi , the price of each pound, in addition to 23 Egyptian pieces ,and pay them 58Gherish

(1) I didn't find any profile for him

(2) Sheikh Yaqoub Al Solti, I didn't find profile for him, however, the Solti Family is one of the families well known by the religion and rightness in Jerusalem, Jerusalem Record 145, V1, 4TH Muharram 1061 Ah / 28th December 1650 , P 64

(3) Premise swimming pool: is one of two swimming pools endowed by the Emir Tankiz in the Jerusalem. This swimming pool is located in Al Qattanin gate, it is attributed to Al Aroub well which provides it with water by a channel , Khalil Bin Mohamed was assigned (937 AH/AD) to secure the water needed by this place from the holy Aqsa Majed Wells , if the water of the aforementioned channel is stopped for any reasons, Al Yaqoub , Holy Jerusalem , V, P .

(4) cases: the small cases , wheat case , barley case , soap case , it is equal to half of big case , record 152, P234,

Asadi , Each Gherh is equal to 30 Egyptian pieces. They delayed it by the decided price for Sheikh Yaqoub Jabi in return for the written waqf so as to pay that ever one complete year and one month, 8 Egyptian pieces each day, starting from the beginning of Thul Hijjah, and he permitted him to do that. This was permitted legally for the supervisor and the nazir to hand the written soap and sell it and spend its money in the reconstruction under the knowledge of the writer of waqf and those who deserve it because this will be in the interest of the waqf authority. A legal permission was issued to for Sheikh Yaqoub who is written to receive the first 8 Egyptian pieces⁽¹⁾each day from the premise swimming pool and who swims in the aforementioned period of year and one month and pay them to Sheikh Shehab El Din . The Supervisor and Nazir have cooperated together in collecting the written amount and Sheikh Shehab El Din and his Uncle Hajj Ismail have paid the written to Sheikh Fakher El Din one Gherh which more than what is specified to be received every day. Thus, this was received from them and they wrote that. The content of all this was confirmed by Maulana and our sir the aforementioned legal governor legally, it was issued on 16th Thul Qedah 1069’.

Analysis of First Instrument

1- Date of Instrument : 16th Thul Hijjah 1069 AH – 5/9/1659 AD

2- Instrument Description

The font of the instrument is very difficult to be read because there is some damage and haziness due to the humidity resulting from

(1) Egyptian Piece : It is a copper coins made in Egypt, Each 40 Egyptian pieces are equal to Gherh Asadi , Jerusalem Record 157, V 2, Early Rajab 1070 AH/ 1660 AD, P 338, Yamouk Shaokat , Financial History of the Ottoman state , Arabization : Abdullatif Al Hares , Islam Al Madar Housing, 2005 AD, P294-296.

the bad keeping. The instrument falls in one page. The font is Mashreqi (eastern). The number of lines is 26.

3- Content of Instrument

According to what's reported by the architectural specialists to the legal governor of Jerusalem city, assuring that the pillars of Al Tankizia school, current in the waqf of Holy Aqsa Mosque decayed because of the heavy rains and snows, the legal governor have brought those who speak in the waqf of this school and briefed them on the dangers posed to it and the school architecture must be taken into consideration due to the interest for the aforementioned waqf.

As those who are responsible for the waqf have no enough money to reconstruct it, they took permission from the legal governor to borrow from the fees of the swimmer and the premise swimming pool. Therefore, he permitted them to do so, with the legal governor assuring those who speak about the school wakf to document the mechanism of repaying this debt.

4- Importance of Instrument

One of the most important issues included in this instrument is the appearance of the term “ Legal Takaful “ which is based on borrowing from the money of other waqf for the purpose of reconstructing the waqf of Al Tankizia school . It seemed that hadn't it been for resorting to such way on the part of those who are responsible for the school waqf, the pillars of school could have been demolished and destroyed. On the other hand, we can take an idea about the little cash returns of the waqf of the school to the extent

that those in charge didn't find the money to reconstruct it.

Additionally, as the legal instruments used to be, it mentioned for us the name of the legal governor of Jerusalem city and the administrative body which supervises the waqf of Al Tankizia. Those are: Those responsible for the waqf, Waqf supervisor, waqf collector.

This instrument has also shed light on some sides of the economical life in Jerusalem city, as well as some kinds of industries such as soap industry and mentioning some names of the coins in circulation such Ghersh Al Asadi and the Egyptian piece.

Also we can make an idea about the ratios of the rains falling down in Jerusalem city which led to decaying and cracking its pillars.

Second Instrument

Title of Instrument: Reconstructing ⁽¹⁾ Coal Kahn ⁽²⁾

“Instrument Text”

“The reason of editing the letters is that, in the editing legal assembly, with Maulana and our Master Mohamed Sharaf Eldin Afandi - who is the aforementioned signatory may his blessings continue - attended the noble and the best preacher Sheikh Sleh Bin Fakher, The honor of the

(1) Khan: a Persian word in original and it means the place in which the passengers sleep. Khans are two types: the first is established on the travelling outside the city, the second is inside the cities and it is used for serving the merchants and passengers, Al Yaqoub, beside Jerusalem, V 2, P 450.

(2) Coal Khan : it is located in Dawood line west of Aqsa mosque, it has own market located between it and Al Gebili Qantra , it is one of the waqfs on the holy Qebli mosque and holy rock dome mosque , Al Elimi , Al Anas Al Jalil , V2, p52 , Al Yaqoub , beside Holy Jerusalem , V2 , P452.

nobles and most pious Sheikh Saleh Bin Abdul Jawad Al Asali, the most well known among the honored Ali Agha who is charged with the waqfs of the holy rock and the holy Aqsa mosque. It indicates that when the Coal Khan, current in the waqf of the holy rock and holy Aqsa mosque, broke down and it stopped benefiting the waqf authority and the transfers of the locals have stopped on the aforementioned shop, Sheikh Saleh was allowed to spend on the aforementioned shop what it needs, including the reconstruction, renovation, fixing stones and fees of conveying dusts ...etc. Sheikh Saleh, according to the legal permission, spent from his own money by his knowledge pursuant to the aforementioned payroll an amount estimated at 15 Ghersh Asadi. The amount became a debt on the aforementioned shop that can be repaid from its fees when he desires, the aforementioned ticket is dated at the beginning of Rabe I according to the following date. Maulana, the legal governor, was asked to register the ticket in the kept record and work pursuant to it. The legal governor has ordered to register the ticket in the record kept in the Holy Jerusalem court. Sheikh Saleh was allowed to take the debt that he has spent in reconstructing the aforementioned shop. This debt is estimated at 115 Ghersh Asai of the yield of the Khan whatever he desires and he can do that according to a legally accepted permission, it was issued in 7th Rabe I, 1069.”

Analysis of Second Instrument

1- Date of Second Instrument: 7th Rabe I 1069 AH /1659 AD.

2- Second Instrument Description

The font of the instrument is too difficult to read due to some damage and the humidity resulting from the bad keeping. The instrument is half page, Mashraqi font (eastern). The number of lines

is 12.

3- Instrument content

The instrument has tackled the measures of reconstructing Khan (shop). It started by showing the damage caused to the shop. This damage occurred due to the heavy rains and snows. What can be concluded is that the holy Jerusalem was famous for its Khans “shops” because of its religious status. The merchants and visitors continue to travel to it, especially in the feast seasons(1), including the coal khan, subject of the instrument which was used as a house for the coffee(2). It consisted of 18 Awdah (rooms) (3)

As for the subject of the legal instrument in which the completion of renovation and repair was mentioned, it was on the expenses of Sheikh Saleh(4) Bin the most honored(5) Abdul Jawad Al Asaly,

(1) Al Elimi , Mojir El Din Al Hanafi , Al Anas Al Jalil , V 2, P 52, Aref Al Aref , detailed in Jerusalem book , P 416.

(2) Aqsa Waqf Coffee : It is the coal khan in Dawood line , in which a coffee house was established , including two stories : one higher and the other is ground , housings , house for making coffee . The documents told us that these khans (shops) have a fame can do without its description, Jerusalem record 117, V2, 17Rabei I, 1040 AH, 27 September 1631, P 160.

(3) Awdah: is a colloquial word that means room, Ottoman legal Jerusalem court record, no. 152, its introduction was written and prepared by and its footnotes and indexes were put by Ibrahim Rabayah, Al Shimaa House for Publication and Distribution, Ramallah, 2011, P12.28.

(4) Sheikh Saleh, Responsible for the waqf of Coal Khan, It seemed that the Khan was named in the Mamluki period for coal trading and coal merchants from Jerusalem and the neighboring areas, Coal Khan is also known for this name in Gharnata city in Andalus country and Aleppo city, north Syria,

(5) The Most Honored: it is a title was used to be added to some words to form compound titles in Mamalik era such as noble family, the noble state, the noble religion , Basah , Hasan , the Islamic titles are mentioned in the history, documents, Egyptian Al Nahdah Library, 1957, P418.

responsible for the Khan after the transfers were broke down and stopped (1). The khan was reconstructed after taking legal permission issued to the responsible for Aqsa mosque waqf, Ali Agha. The instrument indicates that amount spent by Sheikh Saleh , according to the payroll, on the works of renovation of khan which walls or some roofs because of heavy rains seemed to be demolished and renewing the doors of Khan , is estimated at 115 Ghersh Asadi . The nazir of Aqsa mosque and holy rock waqfs agreed That Sheikh Saleh should get back what he has spent on the Khan when the money becomes available from the rent or the yields of Khan after reconstructing it whatever he desires(2)

4- Importance of this instrument

This instrument tells us about the amount of rains falling down on Jerusalem city which started to cause damage to the coal khan, the matter entails renovating and reconstructing it. This, in fact, assures the condition of some buildings which were damaged whether completely or partially.

This Instrument also sheds the light on the khans in the Jerusalem city which were fruitful at that time due to the presence of the some religious places, in addition to, the recovery of the trading movement, especially in the religious occasions period.

This instrument also shows us the principle of borrowing money as a debt to reconstruct the waqf (Khan). This is considered as another evidence of the nazirs' interest in continuing work. Finally,

(1) Transfers: Mean the employees in Aqsa mosque who received their salaries from the Khan rent after they took the transfers regarding that from the nazir of Aqsa mosque waqf.

(2) Jerusalem Record 156, V 4, p 115.

this instrument tells us about the phenomenon of café's spreading in the Jerusalem city through allocating part of it as a house for the coffee.

Third Instrument

Instrument Title: Reconstructing The Municipal School ⁽¹⁾

Text and Content of Instrument

“Sheikh Al Wefaei⁽²⁾, Sheikh of the Municipal School , attended and said: the aforementioned school has places that require reconstruction and renovation , including extending floor, renovating some walls , renewing some wood doors , installing glass on some energies , building some of the western and northern wall . Maulana, the governor, was asked to check and report that, and if the aforementioned places are found in the aforementioned description, he should allow to reconstruct them. Therefore, he has mandated letters writer on his part, namely, Maulana Sheikh Mohamed Bin Ahmad Al Gaaoni, Mr. Abdul Mohsen son of the late Mahmoud, Head of the architects in the holy Jerusalem. The aforementioned places have been checked and they were found in the aforementioned condition, including that the western wall needs to be renovated with building its north edge. It needs also to pave the ground. The south Ewan also needs a bleacher as well as the corridor⁽³⁾. The western wall needs renovation, building its north edge .The large western house parallel to the Qaitbey School⁽⁴⁾ toward the west,

(1) Municipal School , it is located beside the Ottoman school close to Al Sakina Gate and Al Nather Gate , It attributed to its waqf owner , governor of Aleppo and Tripoli, Mamloki Emir, Saif El Din Monkli Bagha , Bin Abdullah Al Ahmadi Al Baldi , Al Elimi , Al Anas Al Jalil , V2, p78, Al Yaqoub , Beside the holy Jerusalem , V 2, p325, the detailed , p 154.

(2) He is Sheikh Zakaria Bin Ibrahim Bin Abdul Azim Al Moqadasi , Hanafi Mufti in Jerusalem , one of Aqsa Mosque teachers , Al Mohabi , Mohamed Amin El Din , Summary of the trace in the eleventh century , Islamic Book Housing , Carior , V 2, p 172,

(3) Corridor is the pathway reaching to the homes from the house's door, share, The Egyptian Persian Words, P68.

(4) Qiatbey School, is located north the Series Gate, It was build in the era of The Sultan, Abo Al Anaser Qaitbey in 875 AH, 1470 AD.

direction needs to fix glass in its high window. The house, following it toward the north side, also needs a wood door. The cupboard doors need to be renewed⁽¹⁾; the eastern wall requires reconstruction and installation of glass. The house, in which the teaching process is conducted, needs a wood door, renovation and reconstruction. The school's corridor also requires reconstruction and renovation. The expenses needed by the aforementioned places were assessed. Therefore, the total was 3900 piece ⁽²⁾

1- Date of Instrument: Middle of Thul Qi'dah 1018 AH / 9 February 1610 AD.

2- Instrument Description

The instrument is one page and half. Its font can be read, excepting its bottom edges which were damaged. The font is Mashraqi (eastern). The number of its line is 12.

3- Importance of Instrument

Having studied this instrument, it is found to what extent this school was damaged and ruined due to the time factors and to what extent Sheikh of school is interested in reconstructing it to continue its scientific and legal message. It can be noticed, through this instrument, that the costs of renovation and reconstruction are very high, since the costs are estimated at 3900 piece and this amount of money was so high at that time. This indicates also how the school was very large.

Third: Not wasting Waqf Property

Instrument Title: Restoring Wasting Property

(1) Mean the cupboard prepared for keeping the books , Jerusalem Record 189, 10TH Thul Hijjah 1099 AH, 1688 , P 256.

(2) Jerusalem Record 90, V1, Thul Qi'dah 1018 AH / 9 February 1610 AD, P352.

Text of Legal Instrument ⁽¹⁾

“When Al Mawala Mohamed Afandi⁽²⁾, the holy Jerusalem Judge, knows that a sect of Jews illegally seized an area of land from the Al Maamour Mosque waqf, located in the Jews municipality in the holy Jerusalem. The case entails to issue this report. Thus, he ordered to bring those who tell about the Jews. Therefore, The Jew, called Benyamin Al Seknagi, and Maulana, the legal governor, asked about that. He answered that this case was previously checked and discussed in the age of Al Maulla Mohamed Amin Afandi Bin Tawfiq, the Judge in the holy Jerusalem previously, and wrote an instrument. This instrument was registered in the records of the holy Jerusalem court. He asked to check the record in which this letter is registered to check this case. Maulana, the legal governor, ordered to check it. The record was checked and in which an instrument was found signed by Maulana Mohamed Amin Afandi, dated in Shawal, 1038 AH, reading: from The noblest Emir Ahmad Pasha of Damascus, letter of the governor at that time in the Holy Jerusalem that he has informed him that the Jew sect has illegally taken an area of land of Al Mamaamour Mosque waqf, located in the Jew Municipality in the holy Jerusalem. Thus, they checked that and the area of land located in the Jew municipality was found near to the aforementioned mosque, located in the direction of the church’s ruined gate. On this area of land, walls were found built from the north, west and front direction. They were informed by those nobles who attended the assembly of Muslims that the aforementioned area of land was a place for rubbish. The south wall was newly built. However, the north

(1) Jerusalem Record 119, P111, See copy of the instrument in the attachment no. 5

(2) Mohamed Afandi Bin Ismail, known for Ashaqi Zadah, judge of Jerusalem 1042 AH/ 1622 ad, See the Jerusalem Record 119.

and western walls were renovated by the mud. Having checked, the south wall was found as being newly built, except three arms and half arm from the east direction, extending to the west direction with height estimated at three arms. According to the check conducted by Mr. Abdul Mohsen the supervisor in Jerusalem, It is an old building and the new building was found built on the old foundation extending toward the old building. Those who checked the land area asked those who speak on behalf of the Jews sect, they told that the church, near to which the land area is existed, was very old and built by the Jews. It was demolished and ruined 50 years ago. It is deserted. It was not mentioned at that time. However, Abdullah Afandi Bin Mahmoud, the judge of Jerusalem in 1035 AH, has built walls on such land area. These walls were renovated by his deputy Mohamed Afandi Al Maghrabi. He spent on this renovation from his own money. At that time, they told the Muslim Group and other neighbors about this land area. When the legal governor was briefed on that and read the instrument completely, he ordered to keep everything on their condition and work according to this instrument. It was issued on 15th Shaaban 1041.

Instrument Analysis

1- Date of this instrument : 15th Shaaban 1041 AH /1631 AD

2- Legal Instrument Description

This instrument is one page. The font is readable. It can be understood easily. The font is Mashreqi (eastern). The number of lines is 26.

3- Content of Legal Instrument

Legal Judge of Jerusalem has summoned Sheikh Mohamed Amin, the speaker on behalf of The Jews sect after the Jews have seized

the aforementioned land area current in the Mosque waqf, located in the Jews municipality. Having been questioned, he answered that a previous decree was issued concerning the aforementioned land area and it was registered in the legal record in the name of the Jews. Having checked the legal record, it was found that the area was a complex for the rubbish for 50 years and who renovated and built it was Mohamed Afandi Al Maghrabi. When the legal governor has been briefed on that, he has ordered to let everything as they were and work according to this instrument.

4- Importance of Instrument

This instrument shows us how the judge of the holy Jerusalem, Sheikh Mohamed Afandi was very interested in this waqf and not neglecting it and working on that to get it back to the waqf in the case of being wasted. It is also noticed of this instrument to what extent the judge has taken care of the Muslims waqfs in the suburbs of Jews because losing this waqf mean that the Jews are seizing the waqf properties and dominate Jerusalem city.

Fourth: Leasing the waqf

Leasing is considered as one of the main ways followed in managing the Muslim waqfs real estate to achieve financial revenues. Leasing can be applied on the waqf real estate resulting in good yields ⁽¹⁾. According to the Jurists terminology, leasing means selling the known benefit in return for known revenue ⁽²⁾. Leasing the waqf real estate in Jerusalem and Palestin-

(1) Al Mohtadi, Jerusalem Waqfs, P149, Al Saad, Ahmed, Al Omari, Mohamed, Current directions in developing the waqf investments, Waqf Public Foundation, Kuwait, Ed 1, Kuwait, 2000, P 63.

(2) Al Mohtadi, Jerusalem Waqf, P93.

ian was conducted as following ⁽¹⁾:

- 1- One leasing contract: this leasing was conducted between the waqf nazir, the lease, and sometimes by the legal judge. It was traditionally known that the land is leased for three years, however the buildings and shops are leased for two years.
- 2- Absolute Leasing contract: It is forever leasing contract for the ruined waqf in return for prompt fees equal to its real value and few annual fees according to which the contract is renewed everywhere.
- 3- Monopoly or estate Contract: Monopoly is the annual leasing which is based on the land and paid to the waqf authority of the beneficiary. However, the estate is a contract that gives its owner the right to keep the land so long as he pays equal rent.
- 4- Free contract: it is a contract, according to which, the waqf is leased in return for fixed fees paid to the waqf owner not less than the equal rent for unlimited period of time.

**Title of First Instrument: Leasing an Area Current in the South
Mosque and Holy Rock Dome**

Text of First Legal Instrument ⁽²⁾

“This is legal and true instrument and explicit document mentioning what has happened and issued. The legal assembly , honored by Allah, with Maulana and our Master, The legal governor, Al Sayed Burhan El Din , the aforementioned signatory , Mualana Sheikh Nour El Din Bin Mualana,

(1) Al Saad Al Omari , Contemporary Orientations , P68-69 , Afifi Mohamed , Waqfs and Economic Life in Egypt in the Ottoman age , Egypt Public Book Authority , 1991 , P 160, 167.

(2) Sayed Burhan El Din Bin Al Sayed Mohamed, deputy of Jerusalem judge, Mohamed Afandi Al Hussaini, see the Jerusalem record 107.

leader of the teachers and Maulana Shiekh Mohamed Al Ghaaoni⁽¹⁾ have leased with their own money from the noble Mualana Mohamed Agha the nazir of the waqf of the holy rock and Aqsa mosque a place . He has leased what is current in the waqf and he has the right to lease it and take the money legally, including all the area empty of the building and the trees located in Al Tebanah municipality in the holy Jerusalem, bordered in the front by Al Dorq corridor, in the east by the rock swimming pool, in the north by domes current in the aforementioned waqf, in the west by Al Dorg Al Salek with all its rights, roads, borders and facilities. So that the lease can benefit from the aforementioned leased premise and build all kinds of structures on it and cultivate all kinds of trees. The first is the beginning of Muharram 1033. The rent finished by the expiry of this period. This rent is estimated at 4.5 Gherish, 1.5 Ghresh per each year and half. The rent of each year is due at its end. The nazir was permitted to count with half Gersh each year. The leasing contract was issued between them legally and acceptably. This was confirmed for Mualana, the legal governor. Thus, it was issued on 18th Safar 1033 AH”.

Instrument Analysis

1- Date of Instrument: 18th Safar 1033 AH – 25/12/1623 AD.

2- Instrument Description

The font is very clear. It is readable. It is one page. The writing style is near to the colloquial style. Font is Mashreqi (eastern). Number of lines is 16.

(1) Sheikh Nour El Din Bin Mohamed Al Gaaoni , was the nazir of the waqf in Jerusalem , one of the holy Qur'an readers in Aqsa mosque, Jerusalem Record 107, P300, Jerusalem Record 107, P322.

3- Instrument Content: Leasing an Area Current in Waqf of the South Mosque and Holy Rock Dome.

Sheikh Mohamed Al Gaaoni has rent the area empty of trees and out of benefits located in Al Tebanah municipality in the holy Jerusalem city, current now in the waqf of the holy rock and Aqsa mosque from sheikh Mohamed Agha, the nazir of the waqf of the holy rock and Aqsa mosque to make use of it as he desires, including the building and cultivation.

4- Instrument Importance

We notice from this instrument several cases of waqf, including the areas, as shown in this instrument, and making use of them, even if they are out of benefit, the matter motivating the nazir of the waqf of the Aqsa mosque and rock dome to lease the ruined empty useless area to keep it and not to waste it and remain it within the waqf of Aqsa mosque and Rock Dome.

Title of Second Instrument: Leasing some Holy Aqsa Mosque Real Estate

Text of Second Legal Instrument ⁽¹⁾

“ The reason behind editing the letters is that, in the legal noble assembly – may Allah honored it – with Maulana, The legal governor, Al Maula Kheder Afandi Bin Ahmad⁽²⁾, the above- mentioned signatory, the attorney’s leasing with the three shops located in Ra’s Al Souk Al Ka-

(1) Jerusalem Record 107, V2, P15, See copy of the instrument in the attachment no7.

(2) Kheder Afandi Bin Ahmad, was a deputy in Jerusalem Court, Jerusalem Record No. 107.

beer was confirmed , pursuant to the ideal of nobles Mohamed Agha⁽¹⁾, the nazir of waqf of Aqsa mosque and holy rock , Ali Mohamed Bin Ali Al Zain for one complete year, starting from the beginning of Muharram 1033 and expired by this period, with a rent estimated at 477 Ghersh , with 20 Ghersh more than the rent of the last year . The third of the rent is paid every four months spent from the above – mentioned date. The leaser has agreed with the lease that if anyone increases the rent, he will lease to them without delay or decrease. They agreed willingly on 18th of Thul Hijjah 1032 AH).

Instrument Analysis

1- Date of Instrument: 18th Thul Hijjah 1032 AH / 13/10/1622 AD

2- Instrument Description

This instrument is less than half page. It is readable. The font is Persian. The lines are seven and half.

3- Instrument Content

Three shops current in the waqf of Aqsa mosque and Holy Rock Dome were leased in the presence of both the legal governor of Jerusalem Khader Afandi Bin Ahmad, the nazir of waqf of both Aqsa mosque and Rock Dome Mohamed Agha to Mr. Mohamed Bin Ali Al Zain for one complete year in return for a rent estimated at 477 Ghersh.

4- Instrument Importance

It seemed to us, through this instrument, that there was increased demand on leasing the shops mentioned in the above instrument.

(1) I didn't find profile for him

This, in turn, indicates the increased rent of the aforementioned shops with 20 Ghersh more than the previous year, due to the benefit achieved for the waqf. On the other hand, this indicates to what extent the commercial activity increased in the Jerusalem city.

Fifth: Filing a lawsuit against the violators the waqf property

We find, through the records of legal Jerusalem courts, that some cases of violation occurred against some waqf properties and its lands in different ways as conducting some changes, not paying the price of rent according to what is agreed upon, or using them to cultivate some plants without taking permission from the supervisor, the matter pushing the nazir of waqf property to file a lawsuit against the violators, for example:

Title of First Instrument: Lawsuit because of violating waqf of Al Khanqah Al Salahia

Text of First Legal Instrument ⁽¹⁾

“ Sheikh Abdul Rahman Bin Ahmad Al Fakhori ⁽²⁾, the attorney on the part of Maulana Sheikh Abdul Qader Al Almi , the supervisor of waqf of Al Khanqah Al Salahia , has filed a lawsuit against son of Salim , the Christian , claiming that he cultivated plants in the land area current in the waqf illegally . Thus, he was asked and admitted that. The legal governor, therefore, told him that so long as he has cultivated the plants illegally, the

(1) Jerusalem record 118, V2, P83, See copy of the instrument in the attachment 8.

(2) Abdul Rahman Al Fakhori, he was the nazir of the Al Fakhori waqf in Jerusalem, the instruments also indicated that he was one of dwellers of the Christian municipality in Jerusalem , Jerusalem Record 107, P 325, P 351.

supervisor shall be entitled to uproot them, if not causing harm to the land, and if uprooting the plants cause harm to the land, he shall be entitled to value them as decayed trees”.

1- Date of Instrument: 27th Ramadan 1040 AH , 29/04/1631 AD

2- Instrument Description

It is clearly readable. The font is Mashreqi (eastern). The number of lines is 4.

3- Instrument Content

A lawsuit was filed by Sheikh Abdul Rahman Bin Ahmad Al Fak-hori, the supervisor’s attorney of waqf of Al Khankah Al Salahia, Ali Saleh, son of Salim the Christian because of cultivating plants in the land area current in waqf of Al Khankah Al Salahia. After the defendant has admitted with what he has committed, the supervisor showed him that he is entitled to uproot the plants.

4- Instrument Importance

This instrument shows us how those in charge of the waqf were very interested in keeping it through following it up and saving it against the harm. This instrument also shows some cases which used to corrupt the relationships between the Muslims and Christians in the Jerusalem city. Muslims, in that period, are ranked first with regard to the number of population and the Christians are ranked the second. The relationship among them was based on the tolerance and good neighboring. The Ottoman state has also contributed to that. However, the relationship among them used to witness tension in some cases because of the political and social situations...etc., es-

pecially when the Christians violated the Muslims' properties as shown in this instrument, the following instrument and the other instruments included in the records of the legal courts.

Title of Second Instrument: Lawsuit because of violating waqf of Al Khanqah Al Salahia ⁽¹⁾

“Sheikh Abdul Rahman Bin Sheikh Ahmad Al Fakhori, the nazir of waqf of Al Khanqah Al Salahia, has claimed against Taha Bin Mansour Bin Zabida and Khalil Bin Abdul Qader Al Lolo. In a report , he said that they have to pay for half of the farm monopoly located in the land area current in waqf of the aforementioned waqf of Al Khankah in return for five years , with 26 Egyptian piece per year , well known for Al Lolo farm . They have asked their question. Thus , Taha answered that he owned nothing in this waqf , however he is guardian on his two brothers , Yasin and Fatemah and that they have the third of the aforementioned share, and he didn't put his hand on the yields of that share. However, Khalil Al Lolo has put his hand on it. Khalil was asked about that , Khalil answered that the daughter has four and half acres and he didn't put his hand on that and admitted that the monopoly of the aforementioned share is equal to 20 Egyptian piece . Therefore, the share of the daughter had to be four and half acres and the share of the son which under the hand of Khalil Al Lolo is seven and have acres, monopoly for five years in return for one hundred Egyptian piece on both shares”.

1- Date of Instrument: Shawal 1032 AH – 8/1623 AD

2- Instrument Description

(1) Jerusalem Record 107, V3, P9, See copy of the instrument in the attachment no. 9

It is clear with big font. It is less half page. The number of lines is 7.

3- Instrument content

The nazir of waqf of Al Khankah Al Salahia, Sheikh Abdul Rahman Bin Sheikh Ahmad Al Fakhori has filed a lawsuit against Ali Taha Bin Mansour Bin Zobida and Khalil Bin Abdul Qader Al Lolo for debt on them due to the monopoly of the farm located in the area current in the waqf of Al Khankah Al Salahia for a period of five years, with 16 Egyptian piece per year.

4- Instrument Importance

This instrument gives us a clear idea about how those in charge of the waqf were very interested in keeping it through following it up, protecting it against harm and getting the matters back to its suitable conditions. This instrument shows us some cases with regard to keeping the rights of women, guardianship...etc. Here, the light should be shed on the social issues mentioned in this instrument and other instruments from the records of the legal courts briefly. The woman has lived in the Jerusalem city in connection with the values, customs and traditions of the society, taking into account the social and classical differences. It should be noticed that the woman was a party in the most cases filed to the court, such as marriage, divorce, heir, trusteeships, etc. The records show us that some women have got a share of the property coming from the roman land ⁽¹⁾. The women of merchants and nobles have been noticed to possess wealth and manage that wealth. They were called

(1) Jerusalem Record 197, Rabei II 1108 AH – 15Th October 1696 AD, p180.

“Bent Al Pasha”, “Al Set Al Masoon” ⁽¹⁾. The records have mentioned what proves the woman’s management for her property ⁽²⁾. The woman also appeared in the cases of trusteeship and custody. The records have mentioned that : (Fatemah Bent Mahfouz , the legal custodian for her son Naser Al Salwani, the minor on the part of Maulana , the legal governor, has claimed against Khawaja Mohamed Bin Mousa and asked to get acres from the grape and fig in a good land in Juresalem) ⁽³⁾. out of the custody issues “ the legal governor has judged for Mona Bent Khalil Al Saabi with the custody of her daughter called Safia Bent Hussain Ben Shaqirah⁽⁴⁾, accordingly , the records have proven cases of violation and abuses for wives on the part of the husbands⁽⁵⁾, additionally, there is an instrument included that the merchants used to bring Muslim units to sell them in Jerusalem. ⁽⁶⁾

Sixth: Borrowing money as a debt

Borrowing money as a debt is considered one of the means used by the nazirs of the waqf when the proceeds of the properties and the waqf lands are postponed and become useless. Here, the supervisors of waqfs resort to the legal governor to permit them to take money as a debt with the purpose of reconstructing their waqfs.

(1) Jerusalem Record 145, V3, 3 Rajab 1061/ 22nd June 1651 AD, P 406.

(2) Jerusalem Record 125, V1, P9, Jummadah 1046 AH / 14 October 1626 AD, P561.

(3) Jerusalem Record 84, 13th Thul Hijjah 1012 AH – 20 October 1603 AD , P 149

(4) Jerusalem Record 90, v2, Rabei II 1019 AH – 24Th June 1610 AD , P469

(5) Jerusalem Record 96, V4, 3Rabei II 1024 AH - 2ND April 1615 AD , P 218

(6) Jerusalem Record 88, V1, 14TH Muharram 1017 AH – 1ST May 1608 AD, p 357.

**Title of the Instrument: Borrowing Money As A Debt To Continue
the Charitable Waqf**

“Text of The Legal Instrument”⁽¹⁾

“Mohamed Agha, nazir of waqf of Sultan Khaski’s ⁽²⁾ building, located in the holy Jerusalem, and told Maulan (Abdul Kareem Afandi) that he has nothing of the waqf money to spend in the price of what is occurring such as the bread and food of the building pursuant to the written accounting with him and the waqf has nothing of the yields. If the matter remains on that condition, the building has to be suspended and its food and bread will be postponed. Therefore, poor, orphans, widows will be exposed to the harm. He asked Maulana, the legal governor, to permit him to borrow money as a debt to spend on making bread and food for the poor and take this from the waqf money and yield. When Maulana, the legal governor, considered that matter and found that he has had no money from the waqf pursuant to the accounting book and had the opinion that suspending the building and delaying its bread and food completely will cause harm to the poor, orphans, widows which may cause damaging the purpose of waqf and have had the opinion that borrowing money as a debt will be in the interest of the work. Therefore, Maulana, the Legal Governor, has permitted Mohamed Agha to borrow money as a debt on the waqf property. It was issued on Shaaban 1042 AH.

(1) Jerusalem Record 124, V1, P254 , see copy of the instrument in the attachment no. 10

(2) The Populated building , located in Oqbat Al Sabet in the front of the door of the supervisor , west of Aqsa mosque , it was built by the wife of the Ottoman sultan Suliaman Al Kanoni , El Yaqoub , beside Holy Jerusalem , V1, P 249.

Instrument Analysis

1- Date of Instrument: 1ST Shaaban 1042 AH – 11/2/1633AD

2- Instrument Description

It is clear with big font. It is half page.

3- Instrument Content

The nazir of waqf of Khaski Sultan's building, located in the Jerusalem, Mohamed Agha, has attended to the legal governor of Jerusalem, Sheikh Abdul Kareem Afandi and told him that he had no money of the waqf property to spend on the price of the food and bread of the building. He added that of the matter remains on its condition, the building has to be suspended and its yields will be postponed. Additionally, the poor, orphans, widows will suffer damage. When his story was confirmed to the legal governor, he admitted him to borrow money as a debt to continue work by providing its services for the needy.

4- Instrument Importance

This instrument sheds the light on one of the most important structures in Jerusalem city, that is, the populated building which was established by Khaski Sultan, wife of Sulaiman Al Kanoni to feed the poor and the students. This structure is considered as one of the most important constructions which have been established by the Ottomans in Palestine state, in general and Jerusalem, in particular. Khaski Sultan has endowed on her property many real –estate in Palestine, to the extent that the yields of them were more than their needs. As for the extra yields were exported abroad, since this

extra yield represent a good income for the property and is spent on its needs. It was distinguished by the services provided to the needy which were represented in many jobs including the gate⁽¹⁾, Al Tabakha⁽²⁾, Al Qasabah⁽³⁾ Wheat⁽⁴⁾, clearing the corn and rice⁽⁵⁾, washing Al Qassa⁽⁶⁾, weighing the bread⁽⁷⁾ and distributing them. however the conditions in Jerusalem, in general, and this property, in particular make it unable to provide its liabilities to the poor and the needy, therefore it was ruined, the matter motivated the undertake of waqf to borrow money as a debt to re-perform its message.

(1) Jerusalem Record 31, V 7, 963 AH / 1555 AD, P157

(2) Jerusalem Record 31, V2, 962 AH, 1555 AD

(3) Jerusalem Record 31, V1, 963 AH, 1555 AD, P111.

(4) Jerusalem Record 31, V2, 963 AH, 1555 AD, P145.

(5) Jerusalem Record 33, V2, 1010 AH, 1601 AD, P11.

(6) Jerusalem Record 33, V3, 1010 AH, 1601 AD, P7.

(7) Jerusalem Record 46, V2, 972 AH, 1564 AD, P564.

Results of Study

After this brief presentation for the cases of Islam Waqf Transactions in the holy Jerusalem during the Ottoman age, the two researchers have concluded to some results as following:

- The aim of waqf is to find fixed and permanent financial sources to meet the needs of economic, social, educational and religious society, through which the social relationships are strengthened and the values of solidarity, Takaful, and love are deepened between two classes of the society.
- Waqf system is a fixed system different from the nature of transactions with the profitably economic institutions, since it requires bases and regulations according to which the work mechanism, through which the waqf contracts are issued, is determined as a kind of endowment properties. The property is determined by the way of not transferring it unless it is included in the conditions as the replacement; the legislation finds that as necessary.
- The documents of the waqf transactions provided in the records show that the process of investing the waqf properties aims at achieving the relative security for the waqf and ensuring the continuous yields, in a way that achieves the waqf interests. These documents also show the flexibility in dealing with the waqf, especially in the fields of investments.
- Having considered these documents, it's noticed that the old ways in the investment of waqf were confined to keeping the property of waqf to a financial extent that achieves the benefit for the waqf institutions, ignoring, to some extent, the growth of waqf by increasing the capital to achieve a development in the performance of the services of this

waqf later.

- It is noticed that there common legal conditions that must be performed and committed to its content, when considering the cases of reviving the waqf and protecting it against ruining, as well as looking for investing its properties . Thus, the nazir of waqf should abide by legality of the procedure that must be taken, such as considering the waqf owner conditions, not risking the waqf property, authenticating all the contracts of waqf and its transactions to ensure the transparency in the performance and seek to achieve the public benefit for which the waqf owner has endowed his properties without exposing the waqf and its owners to great risks.
- The deep and serious studies derived from the essence of “Archive archeology” reflects a real picture for the history of Muslim waqf and they add a scientific balance in harmony with the studies which tackled the waqf with regard to the topics which were discussed and they way of showing and analyzing them. To feed the intellectual and knowledgeable style, the professional researcher should deeply read this huge amount of waqf documents provided in the records of the Jerusalem legal court which covers more than 500 years, from objective and criticizing perspective; because the objective balance in studying the past is one of the factors that have close relationship with understanding the present and analyze it with its different dimensions.
- Finally, we have the opinion that the pioneering waqf institutions should take into their account the responsibility of constructing electronic index project for the waqf and its transactions in records of legal Jerusalem court – data bank - to be original material that improve the level of our researching projects and works.

List of Sources and References

First: Records of Jerusalem Legal Court

- Record of Jerusalem Legal Court No. (31)
- Record of Jerusalem Legal Court No. (46)
- Record of Jerusalem Legal Court No. (53)
- Record of Jerusalem Legal Court No. (80)
- Record of Jerusalem Legal Court No. (83)
- Record of Jerusalem Legal Court No. (90)
- Record of Jerusalem Legal Court No. (105)
- Record of Jerusalem Legal Court No. (107)
- Record of Jerusalem Legal Court No. (117)
- Record of Jerusalem Legal Court No. (118)
- Record of Jerusalem Legal Court No. (119)
- Record of Jerusalem Legal Court No. (121)
- Record of Jerusalem Legal Court No. (125)
- Record of Jerusalem Legal Court No. (129)
- Record of Jerusalem Legal Court No. (145)
- Record of Jerusalem Legal Court No. (152)
- Record of Jerusalem Legal Court No. (156)
- Record of Jerusalem Legal Court No. (157)
- Record of Jerusalem Legal Court No. (189)

Second: Sources

- Al Shirbini , Mohamed Al Khateb , Mogheni Al Mohtag For Knowing Words of Curriculum , According Al Talibain Curriculum. , Thought Housing.
- Ibin Abdeen, Mohamed Amin (1252 AH / 1836 AD), Hashiat

Al Mohetar Ala Al Dar Al Mokhtar, Thought Thinking, Beirut, 1992.

- Iben Kodama Al Maqdesi, Abo Mohamed Abdullah Bin Ahmad Bin Mohamed (620 AH / 1223 AD).

Al Moghni, Riyadh Modern Library, Riyadh, 1981.

- Mojir El Din Al Hanbali (927 AH / 1520 AD), Al Anas Al Jalil, The history of Jerusalem and Al Khalil, Al Mohtaseb Library, Amman 1973.
- Malek Bin Anas, Al Modawana Al Kobrah, V1, Khairia Printing Shop, 1324.
- Al Mohebi Mohamed Amin El Din, Summary of History of the Nobles of 11th Century, Islam Book Housing, Cairo.

Third: References

- Edi Shir , Egyptian –Persian Words Book
- Al Pasha, Hassan, Islamic Titles in The History, Documents and Trace, Al Nahdah Egyptian Library, 1957.
- Barakat, Mustafa, Ottoman Titles and Jobs, V3, Gharib Housing For Publication & Distribution, Cairo 2000.
- Al Dabagh, Mustafa Murad, Palestine Our Country, Kafer Qarea 2002.
- Serag, Mohamed, Waqf Rules in Jurisprudence and Law, Cairo, 1993.
- Al Saad , Ahmed , Al Omari , Mohamed , contemporary Directions in Developing Waqf Investment , Awqaf Public Foundation , Kuwait , V1, Kuwait 2000 AD.
- Shawkat Yamouk, Financial History for Ottoman State, Arabization, Abdullatif Al Hares, Al Madar Islam Housing, 2005

AD.

- Al Aref , Aref , Al Mofasel (detailed) in the History of Jerusalem , Al Maaref Printing Shop , Jerusalem 1961.
- Esam Naji Sisalem and Zakaria Ibrahim Al Senwar, Leader of Gaza in the First Ottoman Age 922-1101 AH /1517-1690 AD, Study in Civilized and Political History, Gaza, 1425 AH, 2004 AD.
- Afifi, Mohamed, Waqfs & Economic Life in Egypt in the Ottoman Age, Egyptian Public Authority For Book. , 1991.
- Kamel Jamil Al Asali, Science Institutes in Jerusalem, Society of Printing Shops Workers, Amman 1981 AD.
- Leader of Jerusalem, from detailed book, leader of Safed and Gaza and holy Jerusalem, from Tahrir book (T, D, 427).
- Analytical Study for The Ottoman Text and Its Translation to Arabic with the explanatory discussions, Mohamed Adnan Al Bekhit and Nofan Raja Al Sswariyah , Amman 1426 AH /2005 AD.
- Al Mohtadi , Ablah , Waqfs of Jerusalem during the time of British Mandate , Majdalawi Housing for Publication and Distribution , Amman 2005 AD.
- Al Yaqoub, Mohamed, Side of Jerusalem in 10th Century AH / 16TH Century, V1, Jordan National Bank. , Amman 1999.

Fourth: Research

- Ibrahim Robaiya, Date of Jerusalem in the light of the records of Jerusalem Legal Court, Magazine of Jerusalem Open University, Palestine, 2010 AD, Ed. 18.

- Al Mohtadi, Ablah (Al Zoriah Waqf in Jerusalem during British Mandate time), 7th International Conference for the history of Al Sham Country, Amman 2006.

The Effect of Waqf on the Waqf property based on Islamic Fiqh and Algerian law

Khayr Aldeen Ibn Mash'arnan⁽¹⁾

Introduction:

Money has been the main concern for a lot of people as it helps them to meet their needs, and the nature of money required it to be easily traded or circulated by ownership, use, or disposition. Such transaction was done through all types of ownership transfer whether they were by compensations or donations.

Muslims have known a new way of dealing with money in which it cannot be circulated whether by ownership transfer or disposition, so it just becomes somebody's right to make use of it without having the right to dispose of it and this case is called Waqf.

Waqf is an Islamic Sunna that Muslims have been careful to implement it from the era of the Messenger of Allah, may peace and blessing be

(1) Professor of Public Law, Abu Bakr Belcaid university

upon him and his progeny. It is the detention of specific thing in the ownership of waqf and the devoting of its proceeds or products “in charity of poor or other good objects”. It is a charitable deed meant to help specific people like the poor, orphans, students, travelers, or mosques and hospitals.

The Effect of Waqf on the Waqf property means the effect of the disposition upon which the waqf owner sets the waqf based on the Waqf property as this disposition is related to property.

The Hanafi jurist, however disagreed by saying that waqf in terms of legal value is merely a permissible venture (mubah) mainly because it can also be made by non-Muslims.

The scholars of the four schools disagreed about the effect on Waqf property as soon as the Waqf occurs.

Fiqhi Definitions of Waqf

It is known that the Waqf was not defined comprehensively due to the different understandings of it by the scholars of Sharia.

The meaning of Waqf according to Imam Abu Hanifa, is the detention of Al-ain “specific thing” in the ownership of waqf and the devoting of its proceeds or products “in charity for the poor or other good objects. This means the detention of Al-ain in the ownership of waqf, i.e. the deterred Al-ain remains within the ownership of the Waqf owner. Therefore, he has the right to dispose of Al-ain.

According to Abu Yusuf and Muhammad, Waqf signifies the extinction of the waqif’s ownership in the thing being dedicated and the detention of all the things in the implied ownership of God in such a manner

that its proceeds may revert to or be applied “for the benefit of Mankind.

According to Malik, Waqf is the detention of Al-ain in ownership actions but it remains the property of the Waqf owner who must devote its proceeds to charity institutions.

According to Ahmed ibn Hanbal, Waqf is the detention of money in disposition and devote its proceeds provided that the ownership transfer of the waqf property to waqf beneficiaries in condition they do not have the right to absolutely dispose of it and when they die, it does not pass to their progeny.

According to Imam Shafei, Waqf is the detention of Al-Ain in disposition and devote its proceeds to charitable institutions.

New definition by Imam Muhammad Abu Zahra, Waqf is the detention of Al-Ain in disposition and devote its proceeds to charitable institutions provided that it remains the property of the waqf owner.

Therefore, we can see that the earlier definitions center around the Property right and the disposition right.

The effect of Waqf on Waqf property based on the scholars of the four schools.

There are two opinions concerning the effect of Waqf on Waqf property based on the scholars of the four schools of Islamic thought:

The first opinion: the waqf property or Al-ain remains the property of the waqf giver (settlor or waqif).

Based on the above mentioned, we see that Abu Hanifa and Malik ibn Anas agreed that the waqf property remains the property of the waqf giver,

but they disagreed on the nature of this property.

A- Imam Abu Hanifa sees that the waqf property remains the property of the waqf giver and he has the right to dispose of it and when he dies he passes it on to his heirs because he sees that the waqf is a donation. Therefore, the Waqf giver donates the proceeds of the waqf property not the property itself. The right of the waqf giver to ultimately control his waqf property makes the waqf useless because it can be disposed of or its proceeds can be decreased because the waqf giver disposes of a part of the waqf property. On the other hand we have some cases that Abu Hanifa banned the waqf giver from disposing of or passing his waqf property to his heirs.

Imam Muhammad Sahib Abu Hanifa said that such donation includes use or disposition and waqf property conditionalized with detention.

B- Imam Malik: he sees that the waqf property remains the property of the waqf giver, but he is not entitled to dispose of it or transfer its ownership, but he is obliged to release its proceeds. Therefore, Waqf according to Maaliki scholars does not deter the right to own but deters you from disposing of it. There is no direct injunction of the Qur'an regarding Waqf, which is derived from a number of hadiths (traditions of Muhammad). One says, "Ibn Umar reported, Umer-Ibn-Al-Khitab got land in khyber, so he came to the prophet Muhammad (peace be upon him) and asked him to advise him about it. The Prophet said, "If you like, make the property inalienable and give the proceeds from it to charity." It goes on to say that Umar gave it away as alms, that the land itself would not be sold, inherited or donated. He gave it away for the poor, the relatives, the slaves, the dji-hād, the travelers and the guests. And it will not be held against him who administers it if he consumes some of its yield in an appropriate manner

or feeds a friend who does not enrich himself by means of it. In another hadith, Muhammad said, “When a man dies, only three deeds will survive him: continuing alms, profitable knowledge and a child praying for him.”

Based on the above, the waqf has an effect on keeping the property safe from losses.

The second opinion: the property transfer of Waqf property

The scholars who advocate this opinion see that the waqf property should be taken from the waqf giver as donation necessitates the property transfer from the giver but they disagreed on to whom it should be transferred. Hanbali scholars said it should be transferred to waqf beneficiaries, but Shaafa’i scholars said that it is transferred to Allah.

A- The transfer of the waqf property to the waqf recipients: Based on the above, we can say that Hanbali scholars necessitate the property transfer from the giver to waqf recipients because Waqf transfers the waqf property from the waqif to the beneficiary and this property transfer is not complete, i.e. they have the right in the proceeds of the waqf and they are not allowed to sell or dispose of it, but they have only the right of Usu-fruct, and if they died they cannot pass it on to their heirs because it is incomplete ownership. Imam Abu Zahra says “the whole property is not transferred to the waqf recipient but only its proceeds”.

B- The transfer of the waqf property to Allah:

Shaafa’i scholars and others like Abu Yusuf said that waqf property is transferred not to any person but to Allah. The scholars based their opinions on the fact that Omar ibn Alkhatib’s Sadaqa “charity” cannot be sold or donated or inherited. Giving charity means losing the ownership, it can-

not be transferred to anyone, except the waqf property, waqfs are meant to please Allah the Almighty and that is why waqf property is not transferred to any person but to Allah.

The scholars of this opinion were criticized because the waqf property remains the ownership of the waqf giver, but he cannot dispose of it. Therefore he owns the waqf property but he cannot sell it or dispose of it. The second thing is that everything is owned by Allah, so it is just a metaphorical saying.

Based on what is mentioned earlier, we can say that waqf property is not like general property that gives the owner all his rights to sell and be inherited but it is a special type of property whether it is owned by the waqf giver or the waqf recipient or Allah the Almighty. No one is entitled to dispose of any waqf unless he wants to replace it with another one to increase the proceeds.

The Attitude of the Algerian Legislator towards the Waqf property

The Algerian Legislator considered the waqf as a type of donation contracts issued by a freewill upon paragraph 1, article 4 of Awqaf law no 91/10 dated in Shawwal 12th 1411 AH Corresponding to 04/27/1991. Article 3 stated that waqf is the detention of Al-ain “specific thing” in the ownership of waqf and the releasing of its proceeds or products “in charity for poor or other good objects”. It is not exclusive for the proceeds but it includes waqf property. It is a full donation provided that the waqf property is inalienable.

To understand the opinion of the Algerian legislator, we need to go back to the legal texts. In law 84/11 dated in Ramadan 9th 1404 AH corresponding to 06/09/1984, we see that it does not state that the waqf property

is transferred to any person or remain in the ownership of the waqf giver. The sentence “waqf is the detention of property in the ownership of any person” is ambiguous because it can mean the ownership transfer of the waqf to nobody or to the waqf recipient.

Also in law 90/25 dated in Jumada al-awwal 1st 1411 AH corresponding to 11/18/1990, The Algerian Legislator did not specify if the ownership of the waqf property is transferred to Allah, or waqf recipient, or remain in the ownership of the waqf giver, but it just mentioned that charitable organizations are entitled to enjoy the Usufruct of the proceeds.

By going back to Awqaf Law 91/10, we see that it states in article 17 that the existence of waqf removes the right of the ownership of the waqf giver and Usufruct is transferred to the waqf recipients. This what article 18 of the same law confirmed that the right of the waqf recipients is a right of Usufruct not ownership. Based on the above, we can conclude that the Algerian Legislator aims at the Usufruct transfer of the waqf property from the waqf giver to the waqf recipient.

Therefore, the Algerian Legislator made his decision based on the views of the Shafi’as scholars, not Hanbali scholars.

The view of the Algerian Legislator about the role of Waqf to preserve the Private property is consistent with the view of “Monaz’e”.

As for the waqf giver, the only thing he gets after he has his properties made as waqf is the thawab “reward” he gets from Allah and is not entitled to anything else. Therefore, the only role of waqf in preserving the private property is to get the thawab in the afterlife. As for the waqf recipients, they are only entitled to make use of the proceeds of the waqf property and they do not have the ownership of such property.

Saqr confirms such point of view by saying “Waqf in this sense is a reason for the incomplete ownership, as the usufruct and ownership of a property are not given to the same person”.

Conclusion

The notion of transferring the property to no one is a product of the Islamic Fiqh and it is called Al-hakimiah, i.e. everything is owned by Allah. This was mentioned in article 5 of the Algerian Awqaf Law 91/10 that “Waqf is not owned by Juristic persons or natural ones, and the country respects the will of the waqf giver”. Therefore, the country also does not own the Awqaf but it manages them.

The notion of transferring the property to no one is now applied in many Arabian and Islamic countries as it complies with modern legal theories.

References

1. Mustaqbal Magazine, Ibraheem Bayomi
2. Waqf and its role in HR, Master thesis, by Ahmed Qassim
3. Hussain Ali, the third Awqaf Conference
4. Ramadan Qanfud, Waqf in Sharia
5. Zhudi Yakan, Waqf in civil law
6. Omar Hamdi: new provisions for ownership transfers.
7. Fathia Muhammad, The role of Waqf in development
8. Muhammad Abu Zahra, lectures on Waqf
9. Muhammad Tarfani, legal reading to divide your work.
10. Muhammad Shalabi, Provisions of Awqaf
11. Monzer Qahf, Islamic Waqf
12. Mustafa Al Zarqa, provisions of Waqf
13. Musa Sallem
14. Nadia Ibraheam, waqf and its relationship with money

Shahdar Waqf
Wife Al Ghazi Hursev Beg in Sarajevo

Professor / Mohamed Mowafeq Al Arna'ot⁽¹⁾

Introduction

We have a rare waqf in the Arabic language dated back to the middle of the 10th AH / 16th century AD which is published here for the first time. It is, with other waqfs, considered as a source to identify the quick reconstruction in Sarajevo in that time.

Sarajevo was established in the new bordered state which was found by the Ottomans at the edge of Herzegovina in the middle of the 15th century. It derived its name from "Sara" which was established in 1450 AD, by the first governor Issa Beg who is famous for the title "the founder of Sarajevo". However, the real core of the new city was structure of the new waqf established Issa Beg before 1462 AD., That is, before the Ottoman conquest of Herzegovina in 1463 AD. It includes swimming pool, market and small mosque beside the big mosque established by Sultan

(1) Professor of modern history in Al Al Bayet University / Jordan.

Mohamed Al Fateh ⁽¹⁾

After the founder of Sarajevo, came the well – known governor of Herzegovina, Kherso Beg, who played a big role in developing Sarajevo from his great waqf which was established in 1530-1541 AD. Kherso Beg was enjoying a considerable status , since his Father Farhad Beg was a governor of Serez (north of Greek now) and brother in law of Sultan Beyazaid the second (1481-1512AD). His son was known for his interest in the waqf as well as his mother Selgokah Daughter of Sultan Beyazaid Al Thani who established many waqfs that we will mention of them later. Therefore, in his turn, he was interested in the waqf when he was appointed as a governor for Herzegovina in 1519 AD. He continued holding this position with some little interruption until he died in June 1519 AD. During holding this position, Herzegovina was a bordered state facing the two aggressive states of the Ottoman state (Austria – Venice). Therefore, he was very busy leading the Ottoman campaigns that expanded the borders of the state toward the west. He was, for this reason, granted the title “Al Ghazi” (invader in 1537 AD) that sultan granted to the leaders who proved great heroes in the battles ⁽²⁾

During his long existence as a head of the Ottoman ruling in Herzegovina , Ghazi Hursev Beg had interested much more in Sarajevo city in which many waqfs were built in the years 1529- 1541 AD , since it included religious , social , and economical constructions which have played a great role in the growth of Sarajevo and kept it reach the golden

(1) For more information, see: Mohamed Mowafeq Al Arna'ot, role of waqf in establishing the new cities in Herzegovina, Sarajevo, model, Awqaf Magazine, Ed 8, Kuwait 2005. P 47-57.

(2) Behije Zlatar , Gazi hursev – beg , Sarajevo (Orijentali institute) , 2010, P56

era⁽¹⁾ which is considered a real witness in that time. This waqf includes a mosque, school, library, estate, and a small mosque for the Soffi, a housing for the hospitality, 200 shops nearly. This waqf lead to close connection to the name of Ghazi Hursev Beg in Sarajevo during the later centuries, especially because of the great constructions which name were linked to his name and are still existed up to now: Ghazi Hursev Beg mosque and the Ghazi Hursev Beg⁽²⁾

Because Ghazi Hursev Beg was grown in a family with specific traditions that interested in the waqf and established many waqfs. Normally, his wife was affected by this atmosphere and contributed in this regard.

Waqf owner

Although Husrev Beg enjoyed a great prestige as being the grandson of Sultan Beyazaid Al Thani, this waqf revealed in its end that his wife was a slave for his sister Nesli Shah and he has set her free to get married to her. Due to that, we didn't have more information about the waqf except its well – known name (Shahdar) whose revenues make it famous for centuries as “wife of Husrev Beg”.

Shahdar, after the death of her husband in 1541 AD, has built a house for education near to the waqf of her husband, particularly in Yahya Pasha municipality in which she was living with her husband. This municipality was established around the great mosque, which was built in 1482 AD by

(1) Behije Zlatar , “ Zlatni period Sarajeva” in prilozi histrojiji srajeva , Srajevo (Institute Za istoriju – Orijentalni institute) 1999, pp.31-33

(2) For more information about waqf of Ghazi Hursev Beg , see Mohamed Mowafeq Al Arnao'at , Waqf of Ghazi Hursev Beg school in Sarajevo , Awqaf Magazine, Ed 13, Kuwait 2007, P 109-124.

the governor of Herzegovina at that time. Therefore, came the new mosque built by Shahdar to be a core of a new municipality known in the Ottoman records in the name “Municipality of Husrev Beg’s wife”. However, it was well known for the people by the name “ Behind the Swimming Pool Municipality” Because it was established behind the swimming pool which was built in the frame of waqf of her husband Ghazi Husrev Beg⁽¹⁾.

It was noticed that Shahdar was connected to the waqf of House in Yahya Pasha Municipality which is though that it was the marital house after her death to be sold and it includes the capital of waqf to cover the expenses of its construction. At that time, she recommended to build a mausoleum for her near to the waqf until the great fire was set to Sarajevo in 1879 that damaged the mosque. After this fire, only the mausoleum that remained in its position until 1950 when it was destroyed⁽²⁾.

In fact, the waqf of Shadar came in the context of the women waqf which was common among the Ottoman Governing class, specifically among the wives of sultans and princesses , particularly among the family in which Shahdar was grown that is connected to the known role played by the Turkish woman in the policy , administration and war,⁽³⁾.

Sultan Bayazaid Al Thani, who was distinguished along his age 14881-1521 AD by his interest in the waqf and establishing more mosques in Herzegovina (Foca, Visegrad, and Travnik). He was given 12 girls, out of them 3 were got married to Herzegovina well known characters who

(1) Zlatar ,Gazi Husrev –Beg , pp , 190-191

(2) Ibid. p. 191

(3) For more information about the status of the Turkish woman in the society and the relation of that to the situation , see

Gaving r.g. Hambly, 1998, p 11.

were holding high positions at that time. (Farhad, Ahmad Pasha, Yahyah Pasha). Selgocah has got married to Farhad when he was an Emir for Serez. She has given birth to Husrev.

Serez, when being conquered by the Ottoman, was very modest. However, it starts to be changed to a city due to the waqfs built on them⁽¹⁾. In this context, Selgokah has contributed to the new architectural development of Serez due to the waqfs established there. In the waqf dated back to 1508 AD, it's found that it has built a mosque, a school and a building / estate in Serez in addition to the mosque in Borsah and another in Istanbul. As for Serez, the school, built there, was one of the great schools. It is composed of 12 rooms. The salary of the teacher in this school reached 20 Kajah per day, the matter indicating its level⁽²⁾.

With this tradition in the family (the waqf) , her daughter Nesily Shai, sister of Husrev Beg, established a waqf to complete what her mother has started⁽³⁾. On the other hand, sister of Slogocah and ant of Nesily (Kamer) has appeared in this field and established a waqf for her in Serez ⁽⁴⁾. Here, it was normal that the slave of Nesily Shah was affected by this interest in the waqf of the family and participate, in her turn, in this field after she became a wife of the governor of Herzegovina Ghazi Husrev Beg. In fact, Shadar has built a house from the waqf after the death of her husband

(1) Machiel Kiel "Observation On The History Of Northern Greece During the Turkish Rule "Balkan Studies 12.1971, pp 415-417.

Gaving r.g. Hambly, 1998, p 11.

(2) Zaltar, Gazi Husrev Beg, P. 13.

Gaving r.g. Hambly, 1998, p 11.

(3) Ibid. P.13

(4) Ibid. p. 13

(1541), that is, the established waqf is indicated by the title of the “late”

Al Waqfia

Al Waqfia is distinguished by its very big importance because it is what remains from the waqf that was built by the waqf owner after her waqf was destroyed during 18579 – 1950, therefore, it is one of the sources indicating the urban development of Sarajevo in the 10th AH / 16th AD. It is also one of the early models of women waqfs in Herzegovina. Al though Al Waqfia don't mention the name of the waqf owner explicitly, however its content indicate explicitly to its relationship with the Al Ghazi Husrev Beg and her sister Nesily Shah.

However , the Herzegovina researcher A, Begtic was the first one to indicate, in his book under the title “ the streets and cities Sarajevo” issued in 1973, that Shahdar , wife of Ghazi Husrev Beg has established a waqf of herself , that is , the mosque which was changed to the core of the new municipality bearing a new name “ Khaski Khatoon Municipality”, namely , the municipality of the great lady ,as the wife of the governor⁽¹⁾. However, the Herzegovina researcher, well known in this waqf, F. Spah, was the first one to assure attributing Al waqfia to Shahdar, wife of Ghazi Husrev in the occasion of publishing Al Waqfia translation in the Herzegovina language in 1985. Spah has found the detailed book of Herzegovina in the Ottoman achieve in 1604 which explains the municipalities of Sarajevo (Municipality of wife of Husrev Beg) with detailing the waqf that match the content of Al Waqfia ⁽²⁾

(1) Alija Bejtici, Ulice I trgovi srageva, Sarajevo (MGS) 1973, P415.

(2) Vakufname iz bosne I Hercegovine (XV –XVI vijek), Sarajevo (orijentalni institute), 1985, p 75.

It is clearly mentioned at the end of Al Waqfia available with us that we have a copy of the original Waqfia held by Shahdar in her life and after her death, Al Waqfia was passed to her sir Nesily Shah, sister of Ghazi Husrev Beg following the claims issued by her

This Waqfia is found in the waqfs record ⁽¹⁾ in the library of Ghazi Husrev Beg in Sarajevo, it is written in five pages (38-42) in good Arabic language with some mistakes. It is clear that the writer of Al Waqfia has used to write such Waqfia for the waqf owners. Therefore, we find some mistakes relating to the aforementioned female. With exception of the first page containing 16 lines because the familiar authentications are found, the other pages contain from 20 to 22 lines. On the other hand, it is noticed in the final page there is a kind of cutting, since the final page is not complete which was supposed to include the names of the witnesses and the date of writing Al Waqfia.

Because Al Waqfia is written in the Arabic language earlier, especially in the 10th century AH and 16th century after the Ottomans have conquered Herzegovina, Al Waqfia has included many names of the pervious places and persons which were written in Arabic. Due to the different pronunciation between what written in Al Waqfia is an earlier and important attempt to contain the previous letters in Arabic.

In such Waqfia, like the other waqfiat of Herzegovina written in Arabic, we find in its beginning the motivation to waqf based on the Qur'anic verses and the prophet's sayings. Also find in its end the male and female owner of waqf and waqfia pretended as if retreated the waqf because of

(1) Vakufname iz bosne I Hercegovine (XV –XVI vijek), Sarajevo (orijentalni institute), 1985, p 75.

what has been said by Imam Abo Hanifa and the rejection of the nazir. The matter was filed to the legal governor who judged finally that the waqf is true and it is mandatory. According to the Hanafi doctrine, Imam Abo Hanifa said the waqf is not mandatory in two cases: by a verdict issued by the judge indicating that the waqf is mandatory or considering it as a trusteeship. ⁽¹⁾

Waqf

This waqfia included the components of the waqf established by Shahdar, wife of Ghazi Husrev Beg in Sarajevo, particularly on the waqf constructions and its origins which cover its expenses.

Daughter of waqf owner has built in the municipality of Yahya Pasha a mosque and a house beside it for the housing of Imam and a school for the children or “education house “ to teach the literature and Qur’an for the children of the poor. The house in which she was living was endowed by her to include the origins of waqf to be rented and its revenues will be added to the public income of the waqf origins. The waqf owner also has recommended the nazir to purchase from the surplus in the income a property (Shop or mill) to included to its origin.

As for the origins of Waqf , the waqf owner has endowed the waqf owner an amount estimated at 1000 silver Derham or Ottoman Ogah⁽²⁾ to

(1) for more information about the opinion of Imam Abo Hanifa and the Hanafi Jurisprudence regarding that, see Omar Masqawi , system of waqf and its legal and lawful verdicts, presentation of Professor, Wahbah Al Zohili , Damascus (Thought Housing) 2010 AD, pp 83-84

(2) for more information about the Ottoman Ogah, which was made for the first time in 727 AH / 1326 AD and its equal from the previous drehams of the Islam of state, see Shawqet Pamouk

achieve profits and the returned income will be spent on the waqf constructions. In the other words , This waqf shall included in the money waqf which appeared first in Al Balqan in the 9th AH / 15TH AD and it was spread after it was authorized by Islam sheikhs in the Ottoman state⁽¹⁾ , which was considered later as “ revolution in the jurisprudence relating to the waqf) and “ one of the contribution of Ottoman civilization”⁽²⁾ “ waqf of money” is based on the cash waqf instead of the fixed assets (the land and houses, etc) and operate it in the form of loans with limited interest (10%-15%), or the merchants and professionals⁽³⁾. This waqf is considered for profits and this assures the necessity of keeping the interest of waqf.

It is noticed here that the waqf owner has decided for the nazir of waqf to make profits, that is lending from the waqf money, provided that it should be every 10 Derhams should be repaid 11 Derhams every year, namely the interest was 10% on the loans provided by the waqf . The waqf owner of waqf has asked the nazir to have a record in which he document (registering the money, sponsor, mortgage), the matter made these waqfs look like (waqf banks). On the other hand, she has assured the nazir to provide the loans only for the traders “who are honest and are well known among the people with the good dealing not by the lying, postponement and procrastination”

(1) Colin Imber , Ebu's –su “ud : The Islamic legal tradition , Edinburg (Einbur University press) 1997, pp143-146

(2) John E. Mandavile, (usriors piety: the cash waqf controversy in the Ottoman Empire “, international journal of middle east studies 10 (1979) p. 289.

(3) for more information about the money, see Mohamed M, editor of studies in the money waqf, the concept of Reba in the Ottoman society (Al Tamimi Institution) 2001 AD.

Although we don't the exact date in which the waqf owner died, it is clear that the first nazir of her waqf, after her death, has sold the house in which she was living by the amount she determined in the Waqfia (15 thousand Derhams) to be included to the endowed original money (100 thousand Derhams) to be 115 thousand Derhams. The detailed book of Sanjek Herzegovina in 1604 AD ⁽¹⁾ has shown that. In the other words, the revenue from operating the original money of waqf are estimated at 115 Derham annually spent on what has been determined by the waqf owner in her Waqfiya.

The waqf owner has decided, in Waqfia, the expense on the workers in the waqf as following:

- Four Derhams per day for the Imam in the great mosque built by her.
- Two Derhams per day for the caller to prayer (Muezzin).
- Three Derhams per day for the teacher in the education house.
- One Derham per day for the assistant teacher or the alternative.
- One Derham per day for each one the eight Qur'an readers.
- Half Derham per day for everyone who read Surat "chapter" (Yassin) or Surat "chapter" (Al Molek).
- One Derham per day for the wax and mats
- One Derham per day for the nazir.
- One Derham per day for the supervisor
- One Derham per day for the waqf collector

It is noticed that the waqf owner has set some conditions for the workers in this waqf. Thus, she has endowed the house next to the mosque for

(1) Vakufname iz Bosne, p. 76

housing of the Imam, however she conditioned in Waqfia that the Imam should renovate the house on his expense in the future, not on the expense of the waqf because he is paid a good salary in return for his work. Therefore, he should renovate the house from his salary so long as he uses it for his own living. On the other hand, the waqf owner has conditioned on the Qur'an readers to recite segments of the holy Qur'an on her spirit at her mausoleum neighboring the mosque ." except in the time of severe cold and heavy rain and snow falling from the heaven because the parts can't be opened , thus Qur'an can be recited in Al Monif mosque). It is well known that Sarajevo is famous for its severe winter and heavy rain and snows. Therefore, the waqf owner has considered these circumstances and let the Qur'an to be recited by the readers during the winter days in her mosque.

As for the managing the waqf, she has appointed, during her lifetime, nazir for the waqf, Sanan El Din Yousef to undertake managing the waqf. After his death, the waqf was undertaken by the late Husrev Beg, may Allah bless him. This, in its turn, indicated that her husband died during the time of issuing this Waqfia. However, she has assigned herself to supervise the Waqfia over her lifetime. She also supervised the waqf of her husband Ghazi Husrev Beg.

Conclusion

This Waqfia represents one of a rare group of Waqfiat in the Arabic Language existed in Bosnia and Herzegovina. It dates back to the 10th Century AH /16TH Century AD. This group, with others, represent a very important source to indentify the great role played by the waqf owner in the urban, economic and social development for Bosnia and Herzegovina

during the Ottoman era.

This Waqfia is distinguished as being a model for two prominent developments in Al Balqan during the Ottoman ruling: the waqf of money and the waqf of woman. Here, we find that the researcher recommends a quick initiative for all the rare waqfiat in the 10th Century AH, 16TH Century AD, written in the Arabic language and publish them in a special volume.

Form of Al Waqfia

Before me, according to what should be considered legally, I judged that it is true and mandatory in origin and branch, on the contrary of the difference existed among the former Imams.

....

Issued by Mohamed Bin Abdul Al Awal, the judge

In the house of Constantinople sultanate⁽¹⁾

Copy of Waqfia as per the original

With no increase or decrease issued by ⁽²⁾ the poor

Qasem Bin Mosa the nazir, Constantinople sultanate

In the name of the real worshiper to him the leaders subjected , nothing is harmful with his name in the heaven and land , who is worshiped in the mosques⁽³⁾, who reveals the Qur'an from the heavens ⁽⁴⁾, granting his blessing for those who work for his sake ⁽⁵⁾, they are getting the good deeds and rewards ⁽⁶⁾, and peace be upon the prophet , peace be upon him ⁽⁷⁾

(1) in the original , we have the humidity in the right angle of the first document make reading some words ,to which we indicated with dots, very difficult.

(2) in the original : issuing it

(3) in the original : In It

(4) the word existed has many possible readings

(5) in the original : acquiring

(6) in the original : authenticate it

(7) in the original : Code

This is a legal document , full of the words and meanings , shows that the noble idealism and guidance for all the scholars and people is what has been said by the leader of the prophet and Imam of the pious , Peace be upon him if the man died ,his good deeds stopped , except a useful learning, a good boy praying for him or ongoing charity.

Therefore, the owner of waqf, may Allah has accepted her gift, has conditioned that a teaching house should be built near to Al Masfour Mosque inside his Haram, estimated at 3 thousand Derhams of the amount written to teach the literature, Qur'an for the sons of the poor who are young.

She also conditioned that the nazir should achieve profits, under the knowledge of the supervisor, from the remaining endowed amount by the mortgage , so as to be equal the double due to paid by the debtor every year by registering the money , sponsor and mortgage , on the condition that every 10 Derhams should be paid 11 Derhams every year . This amount of money should only be paid for the merchants and businessmen who are well known among the people with honesty, not lying, postponement. The waqf owner has set a certain method on which they can depend so long as the revenues are enough for the expenses.

She conditioned that the nazir of waqf should be honest, seeking to get good income. He should also control the revenues, serious in the honesty, avoiding negligence and betrayal.

Good, religious and pious Imam, having full knowledge of the pillars of prayer, duties, dues, should be appointed in Al Masfour mosque to lead the worshippers in the imposed five prayers.

Caller for prayer, with good voice, having full knowledge of the calling times, should be appointed.

In the teaching house, a good, honest teacher should be appointed and teach the young and help them memorize the holy Qur'an. A good assistant teacher should also be employed.

Eight men of the holy Qur'an readers should be appointed in the aforementioned mosque, therefore each one of them should recite a segment of the holy Qur'an.

She also conditioned that the nazir of waqf money should purchase a property. Out of its value, he gets half Derham of each 10 Derhams such as the shops, mills, etc even if this is a slave.

She also conditioned that the nazir should start to disburse the costs resulted from the renovation of waqf.

The owner of waqf, may Allah bless her, has allocated 3 Derhams per day for the nazir of waqf, one Derham per day for the supervisor, 4 Derhams per day for the Imam, 2 Derhams per day for the caller to prayer, 3 Derhams per day for the teacher, one Derham per day for the assistant teacher and half Derham per day for everyone reciting Surat Yassin after the down prayer and half Derham per day for everyone reciting Surat Al Molk after the night prayer. She has also allotted one Derhim to renovate and restore the waqf. If anything remains after these expenses should be kept in the hands of the nazir.

She also conditioned that the noble Senan El Din Yousef should be employed as a nazir and followed by Ibrahim Al Tamimi so long as he is a live. If he dies, then the waqf should be undertaken by Huserv Beg.

She conditioned to assume nazara by herself so long as she a live

She also conditioned that Imam of the mosque should read a segment,

the second segment should be read by the caller to prayer and the other segments should be read by those she sees as suitable so long as in her life.

She also conditioned that the mosque Imam should be the teacher in the endowed teaching house. The caller to prayer should be the assistant teacher. This rule should be considered all over the time.

She also has endowed all what she has possessed , owned and under her management , including the house located in the written country , in the municipality of the mosque of the late Yahyah Pasha , bordered in the east by the property of Mohamed Bin Ali Al Serag and the property of Toti Bent Ali , in the west by the property by Hamzah Bin Abdullah Al Khafaf and property of Shah Bin Dawood, in the south and north by the public road , including all the borders , all its buildings and yards , whether mentioned or not mentioned.

She conditioned to live in the endowed house supervised by her, so long as she alive. If she died, this house should be sold at the amount estimated at 15 thousand Derhams and conditioned that 4 segments from the holy Qur'an should be recited every day.

She also conditioned to make use of these Derhams that are in the hand of nazir and achieve profits of these Derhams. Thus, the nazirs should be granted one Derham every day.

She conditioned that the segments should be read from the previous segments all over the times

The owner of waqf conditioned that if the time doesn't help selling the bordered house so that it will be sold by less than this price , it will be profitable and exploited until it reach the complete price , namely 15 thousand Derhams . Also, the four segments also need to be read.

The owner of waqf has also conditioned to appoint a collector for her waqf from those who were collectors on the waqf of the late Hursev Beg. She also allocated one Derham per day for the collector in return for the collection of the waqf revenues.

The aforementioned owner of waqf has also endowed what all she possessed and owned to be a waqf, including the house closing to the mosque with all its borders, due rights and its building.

She conditioned that this house should be occupied by the great Imam of the mosque. If this house demolished and destroyed, he should immediately be reconstructed and renovated by its dweller.

When the aforementioned owner of waqf has endowed the aforementioned waqf and handed it to the nazir and conditioned and conditioned all the revenues, she wanted to revoke her waqf and restore all what she has endowed according to opinion of those scholars who judged this waqf as illegal. Thus , she authorized the so called / Shogaa Bin Gelborin in this regard, thus his power of attorney was proven for that restoration and recalling with the testimony of Suliamn Bin Abdullah and Masih Bin Abdullah Al Harin . Thus, he resorted to the governor, the aforementioned signatory, to judge it is legal and true or not. Thus, he judged that this waqf is true and mandatory in the origin and its branches. Therefore, this waqf became legally true, permanent and registered so that it shouldn't be sold or bequeathed until Allah, the Almighty good, heirs the land, since He is the best Heir.

This is what she had endowed as a waqf during her lifetime and it was judged as legally true. Thus , when the owner of waqf died , the aforementioned waqf has passed to the noble woman / Nesily Shah Sultan daughter of Salgok Sultan following filing the claim issued by her with the power of attorney mentioning the aforementioned owner of waqf, her servant, her property and right, to the governor of Constantinople Sultanate House , therefore he judged her property after amending the aforementioned witnesses.



The Role of Awqaf in Enhancing Entrepreneurship (Proposing a model for Waqf Entrepreneurial Incubators)

By: Dr. F. Masdoor⁽¹⁾

Introduction:

Waqf institutions have contributed to the enhancement of the Muslim societies in the various aspects of life throughout the stages of the Islamic civilization. They showed an interest in human health and built hospitals, attended to culture, built schools and educational institutions and waqf libraries.

Moreover, history tells us that there were awqaf in favour of the afflicted merchants in order help them restore their activities and revive their trade.

Waqf institutions can also promote and support pioneering ideas through creating waqf institutions which push the wheel of development in the modern Islamic societies known for their multiple needs. Such societies often stand in need of charitable organizations to fulfill their needs ignored by the state.

(1) University of Saad Dahlab , Al Belaida , Algeria

The idea of waqf incubators for entrepreneurship could be a pioneering idea which is meant to extend assistance to university graduates to embody their pioneering ideas so that they benefit and cause the waqf institution to benefit too. The national economy will also benefit from the fruits of such incubators.

First: Contribution of Waqf to Human Development

1. Concept of development:

Development is a human process which aims to increase the options available to people, taking it for granted that such options, in principle, are limitless and changing with the passage of time. In terms of application, it was found that such options rest in three options: leading a long life free from ailments; acquisition of knowledge and getting the resources necessary for a decent life. Unless such options are available, other opportunities will remain inaccessible and out of reach...

Human development is not limited to this space because there are other supplemental options sought by a great number of people. This includes political, economic and social freedom, the opportunities to create and innovate, enjoying self-respect and securing human rights.

Human development is twofold. We have the formation of human potential such as improving health, knowledge and skills; the other side is benefiting by the acquired potentials either through enjoying the leisure time or in productive purposes, or being involved in cultural, social or political affairs. Unless the human development methods strike a balance between those sides, there will be a deep feeling of frustration which is

natural in this regard⁽¹⁾.

Amartya Sen believes that development is a process for expanding the human potential; it is something that exceeds the volume of items and services or just increasing the benefits or addressing the essential needs. It is a process which creates an economic expansion and changes through which people's potentials are expanded by virtue of being a target in itself and a tool for optimal welfare. He also believes that the real content of human development revolves round the process of expanding real freedom enjoyed by human beings as an objective for social welfare⁽²⁾.

Second: Waqf Contribution to Education and Maintaining Commerce and Crafts

In this regard, emphasis will be laid on the definition cited by Hamartia Seen of the human development which seeks to expand human potentials so that they become able to induce economic expansion which brings with it an optimal welfare.

It is undeniable that awqaf have created a convenient atmosphere throughout the stages of the Islamic civilization. This assisted in promoting knowledge, science and other aspects related to commercial activities and crafts, and provided the tools required for the activities which secure a reasonable standard of living. Here we concentrate on two things only

(1) UNDP report on human development 1990, NEW YORK, UN bulletin (1991) p21

(2) See site www.afkaronline.org/arabic/archives/sep-oct2004/zghl.htm - Mohammad Al Jaber and Mohammad M. Al Imam, Human Development in the Arab World: cultural and social Dimensions, Human Development studies series, Issue 2 (New York – UN Bulletins, 1996). -Ali A.Q Ali: Developments in Developmental thought and International objectives of Development, Kuwait, pp.4-5.

which serve our theme, i.e. education and transmission of knowledge, in addition to assisting merchants and craftsmen.

2. The role of awqaf in raising the educational standard.

Among the most reputable awqaf during the stages of the Islamic civilization are those concerned with supporting education at large. This is quite clear through the historical evidence when Muslims, (Caliphs, princes, kings and sultans) established awqaf on learning, on scholars and students. To validate this fact, we refer to what Ibn Khaldoun said in his Introduction that “the dissemination of learning and expanding the scope of education in the Turkish Empire is attributed to the multiplicity of awqaf⁽¹⁾”. The Turks built countless schools and dedicated to them proceeds-generating awqaf. Consequently, the number of Katateeb (plural of Kuttab) funded by waqf in one of the cities of Sicily reached about 300⁽²⁾. Ibn Hawqal in this regard says that one “Kuttab” catered for hundreds or thousands of pupils.

In Damascus, Ibn Jubair says, there were 400 waqf schools⁽³⁾. Among the learning which benefited from waqf was the medical learning which is one of the major pillars for a medical progress. The building of hospitals, medical schools and pharmacies was not restricted to caliphs and sultans. Rich people and men of medicine established waqf hospitals in which they taught the students of medicine, for example Sinan Ibn Thabit, Al Razi and others.

(1) Abdul Rahman Ibn Khaldoun ‘Introduction’, Dar el Qalam, Beirut, PP778,779

(2) Saleh Kamel: The Role of Waqf in Economic Growth, Kuwait: Towards a Developmental Role of Waqf, P46

(3) Abdullah Bin Sulaiman Al Bahoot: Waqf and Economic Development, Mecca, First Awqaf Conference, Um el Qura University, Shaaban 1422, P 154

Ibn Al Nafees⁽¹⁾, one of the most reputable doctors, served in Al Mansouri hospital and built a house adjacent to the hospital as waqf. He dedicated all his possessions to the house and to Al Mansouri hospital⁽²⁾.

The Islamic world witnessed the emergence of many reputable centres of learning which depended wholly on awqaf, which accounts for their sustainability without resorting to any other means for funding. Among the most famous schools in Baghdad was Al Madrasa Al Nizamiah known for its regular foundations and mature educational principles. It benefited from the proceeds of awqaf attached to it. Markets were built in the neighborhood, in addition to other facilities whose proceeds went to it⁽³⁾.

Al Azhar mosque in Egypt was also one of the reputable schools which was built in 361 AH and became a major center of learning. Its proceeds came also from awqaf dedicated to it by the Walis (governors) and charitable people⁽⁴⁾.

In Tunis, the leader Hassan Ibn Al Nu'man established a facility consisting of a mosque and a school in 79 AH during the Umayyad period. People studied Islamic culture and thought in "Madrassat Jamie Al Zaitouna" during the reign of Obaidallah All Habhab in 114 AH. It became later an academic institution with a rich library which contained the Quran, Tafseer and Hadith books which acted as a reference for the students of shari'a and principles of Arabic language. The students benefited also from the services extended there in the way of accommodation, meals and

(1) Ibn Al Nafees discovered the blood circulation.

(2) Abdul Malek Al Sayyed "The social Role of waqf", Jeddah: Investing Waqf Property Seminar, 1983.

(3) Abdul Sattar Al Heeti: "Waqf and its Role in Development" Qatar, Center of Research and Studies 1998, p. 132.

(4) The same reference, p.141.

cleaning of clothes which were covered by the awqaf of good-doing people. The mosque has become today a university which provides various academic specializations⁽¹⁾.

AWQAF used to attend to those merchants falling under economic crises by providing them financial resources which enabled them to revive their activities. Well off merchants, through their cash WAQF, used to resort to this process to support their brothers, the other merchants. During the Ottoman epoch, we find, for example, in the Balkans that cash WAQF was in vogue as validated by several documents. Big amounts of money were dedicated in the form of Mudharabah or Murabaha contracts in favour of the merchants, peasants and craftspeople. Such amounts should be returned to the waqf nazir, together with their interest. Researchers, including Dr. Murabaha contracts in favour of the merchants, peasants and craftspeople. Such amounts should be returned to the waqf nazir, together with their interest. Researchers, including Dr. Muwaffaq Al Arnaut, criticized this practice because the document provided that a borrower should return the waqf money, together with a specific percentage of approximately 10%. This is regarded as a sheer *riba* and misappropriation of waqf money, both of which are viewed as deadly sins due to the incompatibility with the *shari'a*. I think that this had stemmed from the failure of proper *shari'a* scruputization and the absence of supervision on the nazir at that time. This practice could have provided numerous solutions for the merchants and craftspeople in distress.

Dr. Mohammad Muwaffaq Al Arnaut studied this type of waqf which spread at the beginning of the Ottoman period. The first cash waqf, as maintained by Dr. Al Arnaut, was in Edirne in 1423. After the conquest

(1) The same reference, pp.150-151.

of Constantinople in 1453 and the transfer of the capital from Edirne to Istanbul, the first cash waqf was known in 1464 AD, following which it started to gain ground and expand until 1500. It surpassed the traditional waqf with all its forms and started to occupy a remarkable status in 1533⁽¹⁾.

Istanbul at that time occupied a unique position as it represented a major commercial center for the east Mediterranean. It influenced remarkably the flourishing of cash waqf. In this regard, Dr. Al Arnaut cites three types of cash waqf, as follows⁽²⁾:

- a- Small cash waqf (10.000- 50.000 Akçe⁽³⁾)
- b- Medium cash waqf (50.000 - 100.000 Akçe)
- c- Large cash waqf (100.000+ Akçe)

This reflects the fact that awqaf attended to education and showed an interest in assisting merchants and crafts men who underwent economic problems and crises. This, no doubt, presents an advanced model in human development. There are other services provided by awqaf so far ignored but essentially associated with human development.

Second: what are Incubators?

This idea dates back to 1959 when an American family transferred the headquarters of their decrepit company into a center for business. The unites of the center were leased to those who wish to initiate projects, together with and providing them with the required counselling. The idea was a great success and soon it spread and acquired the name “incubator”

(1) See M.Al Arnaut: “Cash waqf during the ottoman Epoch”, Kuwait, Awqaf Journal, Issue 9.

(2) The same reference, p.19.

(3) A silver coin prevalent during the Ottoman era.

which assisted in setting up thousands of small and medium companies. The center was known as “**Bativia Industrial Center**”.

It was only in 1984 that this model was developed when the American small Projects Authority established a number of incubators. At that time there were 20 incubators only, but this number soared after establishing NBIA in 1985 which aimed to activate the incubation industry through the support of American industrialists. In 1997, the number of incubators came up to 550.

The idea of incubation spread to other countries, for example Japan which was the first to establish an incubator in 1982, followed by China in 1987. It is evident that an incubator has a location dimension and a moral dimension. It is that place established for supporting small and medium projects, in addition to offering specialized counselling needed by the project. Furthermore, such incubators create a database for the relevant projects, mainly those related to economy at the local and international levels.

Some people defined business incubators as institutions for supporting initiatives with ambitious ideas and sound economic studies by giving some materials which create a favorable atmosphere for them during the early stages of the project. To boost the prospects of success, technical and administrative aspects are provided at a small cost and the project owner is encouraged to concentrate on the essence of work before this assistance moves on to another initiative⁽¹⁾.

1-Importance of Business Incubators

In view of the volatility of the small and medium projects, business incubators came to remove obstacles and pave the way in front of such

(1) Managing investment opportunities - Business Incubators - Jeddah, p.1.

projects. Thus the incubators are important for both the project owners and the national economy.

a) Importance for project owners:

- An incubator provides the location which hosts small and medium projects.
- An incubator offers all essential technical facilities required by the relevant projects.
- An incubator extends specialized counseling.

B) Importance of incubators for national economy:

- Multiplication of small and medium institutions, which Concentrate on productivity in lieu of import, in addition to the services they extend.
- Incubators provide a sound and favorable atmosphere which supports business activities inside the local market.
- Incubators assist in appreciating scientific research and provide an opportunity to push the wheel of development.
- Incubators assist in igniting local innovation and creativity and transform the output into marketable products and services locally and internationally.
- Incubators provide a favorable atmosphere to develop the business of stevedoring which gives impetus to major economic institutions and eases the burden of major institutions through concentrating on economic cooperation between small and medium projects.
- Incubators assist in fighting unemployment effectively.

- Incubators support family production and maintain traditional household industries.
- Incubators embody the twin approach of economic and social development. This is carried out through their general lay out and their influence on economy and society.

In the light of the aforementioned facts, we can maintain that incubators are considered a mini economic environment which allows for small and medium projects to grow and successfully approach the target markets. This causes failure rather unlikely if compared to those small and medium projects which enter the market without counseling or support from specialized agencies.

The important side in an incubator, especially a technological one, is its link with the scientific research and its relevant output. It constitutes the appropriate environment which receives technological innovation that needs a support to enter the market. This can better be carried out through incubators specialized in technological activities.

2-Types of Incubators:

Specialization, known to require accurate counselling with a specialized nature, is a prerequisite for incubators in order to secure effectiveness and happy economic results. There are three types of incubators:

a) Incubators of general projects:

They are those incubators which deal with the small projects with different specialties without setting a definite technological level. They also host light agricultural and industrial works meant for the local market only.

b) Technological Incubators:

These incubators are specialized in scientific and technological support. They are often seen at universities and research centres, mostly directed towards investing technological, scientific and innovative products in order to develop into remarkable economic projects. Here moral and materiel potentials provided by the relevant universities and research centres are utilized to bring out unique and innovative products.

c) International Business Incubators:

This sort of incubators concentrates on attracting international economic dealers and soliciting international moral and material financial support from specialized agencies. Such an incubator seek to develop small national institutions in order to orientate towards outside markets.

d) Open Incubators:

They are those incubators established to support and develop existing projects. They are usually found in the industrial areas, taking the form of integrated centers extending service to the adjacent projects.

e) Electronic Incubators or virtual Incubators:

These incubators react with the small and medium projects' owners through technological means. They put at their disposal the moral and material facilities for a better kick off for their projects, together with providing the continuous follow-up which allows for a natural growth in the market.

Third: Concept of entrepreneurship

An entrepreneur is an organized person or contractor⁽¹⁾. This term appeared for the first time in the French language at the turn of the 16th century. It means taking risks and bearing difficulties. It was ascribed to those who used to go on military exploration expeditions. It also applies to the activities of civil engineers who build bridges and fortifications⁽²⁾. Richard Cantillon takes credit for introducing this term because he believes that entrepreneurship is equivalent to risk taking⁽³⁾.

Shultz believes that an entrepreneur is a person who can act when a state of imbalance or instability prevails. He described demand and supply for entrepreneurial potentials as the organizational structure which orientates an institution towards market resources.

Hoselitz believes that an entrepreneur is the person who possesses the skill of management and the spirit of leadership; Friedrich Harrison, on the other hand, believes that an entrepreneur is the person who possesses the skills of organizational structure, in addition to innovative and administrative skills which assist him in organizing and managing an institution⁽⁴⁾.

Schumpeter, on the other hand, believes that an entrepreneur is the person with an unprecedented technological invention⁽⁵⁾

David Berg sought to highlight the importance of entrepreneurship as

(1) Eatw.J. The new plague, A dictionary of Economic, vol 2, London: McMillan Press Ltd, p.271.

(2) Gatewood, E. and Shaver, K. 2002. Entrepreneurial Expectancy, Task Effort, and Performance Entrepreneurship: Theory & practice. Winter 27 (2), p.187-207. & Hisrich, R. and Peters, M. 2002. Entrepreneurship. 5th Edition, McGraw, Irwin. P.330.

(3) Eisenhauer, J. 1995. The Entrepreneurial Decision: Economic Theory and Empirical Evidence Entrepreneurship Theory & practice. Summer 19 (4), p.69.

(4) Entrepreneurship theory & practice .Summer 19 (4), p.69

(5) Hisrich and Peters, 2002, p.7.

being the hub of economic growth⁽¹⁾.

Configuration of a waqf Incubator for Entrepreneurship

The model we are to develop is based on many principles, as follows:

- The development of the concept of waqf and expanding its domains in a way that secures quality services to society.
- The expansion in the concept of the ongoing charity.
- Adopting the idea of time waqf in the way of Allah.
- Developing the applications of a “al-qardh al-hasan”.

e) Definition of a waqf incubator:

It is a centre built on a waqf land through waqf funds, governmental funds or donations in a way that meshes with the category to be incubated. It targets small and medium projects for a specific period through which a sound kicks off is guaranteed for a happy market entry. This is carried out through specialized counselling and technical and material support. This allows the hosted institutions to perform their activities in a favorable atmosphere.

f) The structure of a waqf incubator:

An entrepreneurial waqf incubator consists of the following:

- 1- The piece of land and the property on it should be a waqf
- 2- Tools and equipment are also considered as waqf utilized by the entrepreneurship projects' owners in carrying out their projects.
- 3- Specialized counseling center supervised by a specialized admin-

(1) Hitt, M. and Ireland, R., C. S., D.2002. Strategic Entrepreneurship: Creating A New Mindset. 1st Edition Blackwell Publishers. p.20.

istrative cadres whose job is to extend counseling to the owners of the incubated projects. Some of the cadres are full timers and others are volunteers who dedicated part of their time to secure a smooth running of the incubator.

4- Base structures which means the shops, offices and workshops which embrace the various projects within an incubator.

5- Management of an incubator which indicates the specialists delegated by the Awqaf and those hired by the waqf to maintain a smooth running of the incubator.

6- The waqf fund for “al Qardh al Hasan”. This exists within each incubator through which entrepreneurial projects receive interest-free funding. Each beneficiary shall be committed to allocate part of his profits, when realized to the fund, so that others may benefit by such funds in the future.

g) Types of Incubators:

4- Waqf incubator for business which indicates those activities which bring forth economic benefits, for example media, promulgation, lawyers, medicine, real estate agencies, touristic offices ...etc.

5- Waqf incubators for crafts which indicate those workshops with numerous crafts, for example porcelain, embroidery, technical smithery and wood engraving.

6- Waqf incubators for formation and Training. This type represents activities connected with specialized education for the various levels and specializations, for example a school for electronic media, human development, accountancy techniques, infographia, remedial classes

...etc.

h) Running waqf entrepreneurial incubators:

1- The role of awqaf.

Waqf department (or waqifs) undertake the following tasks:

- Allocating lands suited to the establishment of incubators.
- Funding of incubators should be made through waqf proceeds, governmental funding, donations and private awqaf.
- Providing waqf funds with all requirements for engaging in an activity.
- Appointing a mini-administration to supervise each incubator.
- Forming a scrutinizing committee for picking the projects to be hosted by an incubator.

2- Beneficiary:

- A beneficiary should pay a small rent through helpful facilities which mesh with his financial standing.
- Tools, equipment and machinery should be shared in an incubator.
- A beneficiary remains in an incubator for a maximal period of two years until he becomes able to manage his own business individually.
- After success, a beneficiary should support the waqf fund for “Qardh al Hasan” with 1% of his profits for 2 years.

3- Incentivization

- Awqaf department must strive to get a tax-free status for each project within the incubator.

- Young men benefiting by al Qardh al Hasan may benefit by the incubator's advantages.
- An incubator should be in constant touch with the government agencies to maintain the continuity of facilities for making the incubated projects a success.

Conclusion and Recommendations

Waqf has played a prominent role in the various aspects of life, therefore it is our duty to develop its role to cope with the requirements of modern age, with all its needs that require "ijtihad" on the part of our scholars. The process of utilizing awqaf soundly contributes effectively to the economic development country.

The idea of utilizing waqf in the form of lands, funds and volunteering in promoting entrepreneurial activities has become more than a necessity. It is expected that waqf will become one of the basic foundations of development in a country. The idea of waqf incubators comes as an embodiment of a pioneering waqf idea which, if implemented, in conformance with the developments in the area of incubators and entrepreneurship would bring forth important results at following levels:

- 5- Combating unemployment in the various social milieus.
- 6- Benefiting by the pioneering ideas with profit-generating output which bolsters national economy.
- 7- Promoting competitiveness between small and medium institutions.
- 8- Connecting the universities and research centres with the economic life through entrepreneurship.
- 9- Alleviating poverty prevalent in Islamic societies.

10- Soliciting international markets to market the incubators' output.

11- Contributing to development in a country.

Therefore, our recommendations are as follows:

- Waqf incubator models should be adopted by waqf department, individuals and charitable organizations.
- Waqf should not be confined to real estate only but it should extend to cash waqf as a means for funding entrepreneurial projects within an incubator.
- Extending support by the civil society agencies to the waqf entrepreneurial projects, besides encouraging them in the remote areas.
- A state should grant tax-free status to those projects falling under the waqf entrepreneurial projects to secure a safe kick off those projects.
- The first entrepreneurial incubators should be at a university under specialized supervision, besides initiating successful communication with the accredited research centres at the university.



Thesis

A Thesis Review Administrative Reform of Waqf Institutions (Algerian Case Study)

By: Dr. Kamal Mansouri

Presented by: Attia Al Weishi⁽¹⁾



(1) A researcher at the International Centre for Moderation - Kuwait

Waqf institutions, as early as their existence, have never encountered a more serious problem than that of the Nazara. It is not strange therefore to see all the problems revolving round Nazara and issues resulting from it so much so that such problems have become the major concern of researchers and students interested in waqf and charitable work.

The current study comes within the context of the attempts to diagnose the shortcomings and failures inside a waqf institution in order to locate the points of weakness and prescribe the appropriate remedy. Those attempts are meant to remove those ailments to which waqf institutions were subject and to restore the civilizational role of waqf.

The study is a PhD thesis of 372 - medium page format bearing the title “Administrative Reform of the Awqaf Institutions Sector – A case Study of Algeria” published by Kuwait Awqaf Public Foundation in 1432 A / 2011 AD after being approved through the applicable measures set down by KAPF.

Under this title, the author exposed his reformative vision through four chapters, subdivided into twelve themes covering forty one requests, in addition to the recommendations and conclusion, the list of references, all of which reveal the outstanding investigative effort which copes with the major prerequisites of the study.

Chapter 1 includes the introductory parts covering the various definitions and purposeful divisions in which emphasis is laid on defining waqf nazara as a prelude to dealing with waqf management held as the major pillar in matters related to waqf continuity and far reaching influence. Nazara, as maintained by the author, is a ‘contract of authorization’ entrusted to a specific person nominated by the waqif.

Nazara is the essence of the waqf structure and one of the administrative pillars of a waqf institution with all its activities. That is why at this point problems pop up and defects and shortcomings surface, which cause waqf to deviate from the right objectives of waqf and the conditions of the waqifs.. At this point reform starts with developing programmes for administrative and functional qualification.. Here I think it is convenient to give a brief account of the types of nazara:

- A Nazara is divided into original nazara and subsidiary (or acquired) nazara. The original nazara is restricted to the waqif, the beneficiary (mawqoof alaihi) or the judge in person. A subsidiary nazara (or acquired nazara) is that which addresses specific conditions or authorization, proxy, bequest or a statement made by the person in whose hands lies the authority for granting this right.
- Nazara is divided into general nazara conferred upon the judge or the ruler on all awqaf and another nazara conferred upon part of such awqaf.
- A nazara in the sense of authorizing the nazir to carry out all tasks pertaining to nazara or part thereof is divided into absolute nazara and restricted nazara.
- A nazara based on the personality of the nazir is divided into ‘natural’ nazara and ‘juridical’ nazara.
- A nazara in case of having or non-having a supervisor is divided into s supervisory nazara in which case a nazir cannot act independently but he must check with the supervisor. The other nazara is the case in which a nazir can act independent of an any higher authority.

- A nazara through plurality and non-plurality. Here it is divided into individual nazara and collective nazara. The former is undertaken by more than one an individual whereas the latter is undertaken by one individual.

This functional division of nazara may underlie the author's invocation of the jurisprudential viewpoint in order to set down the basic foundations of a governmental and non-governmental management. In dealing with all this, the author did not forget setting down the fiqhi (jurisprudential) foundations which guarantee the autonomy of the waqf institution. In this regard, the following points were stressed:

1. The autonomous management of waqf in accordance with the basic principle purporting that the 'condition of a waqif is as valid as the condition of the law maker.
2. The judiciary has the jurisdiction over the awqaf.
3. Dealing with waqf as a juridical personality with all the merits of the natural person.

He also introduced a description of a nazir's job in terms of the conditions and standard parameters which a nazir must possess as an important component in the structural building of the awqaf, besides specifying the nazir's powers and assessment of his acts. This is referred to by the author as 'the organizational effectiveness in the performance of nazara, flexibility in the area of supervision and observing the system of 'material and moral incentivization in the waqf management', besides setting down the best procedures for the nazirs' accountability and the methodology of supervision inside a waqf institution. This will hopefully assist in promoting the performance and secure success as far as the waqifs' conditions

and shari'a purposes are concerned.

In chapter two, the author tried to monitor the process of the 'institutional development of the waqf sector', citing the stages of the waqf management which witnessed three stages, as follows:

The first stage witnessed the traditional management exemplified in the independent familial or Ahli management which is labeled by the author as 'the first administrative waqf management'. With the appearance of this traditional type of management came the governmental diwans supported by the judicial supervision on the awqaf. This state of affairs covered many historical epochs, starting with the Umayyad rule throughout Abbasids, Fatimids, Ayoubis and Mamlukis. Thereafter, the author deals with the attempts at reforming awqaf during the Ottoman era as a reformative model of the administrative arrangements to carry out the work inside the waqf institutions in general. The author also indicates with admiration the Ottoman model in another theme. He believes that what distinguishes this traditional type of management is its simplicity which accounts for the historical success of the Islamic waqf in several social domains, especially education, health, academic research and public services. Its autonomy, flexibility and simplicity of organization were the major characteristics of this Ahli' type of management, as maintained by the author.

The traditional type was replaced by the governmental direct management. Here the author deals with the circumstances which gave rise to this type, its development, political, economic and social conditions which imposed it in some Ottoman provinces during the modern period. That type started to gain ground and circulate through reasonable formal justifications, but in fact this led waqf to its miserable state which besmeared its original civilizational face which came as a result of mismanagement and

thereby brought waqf to its deplorable end.

The author then moves on to study the political, economic and administrative and legal motives towards organization and the direct governmental oversight on the awqaf, citing the characteristics of the governmental management of the awqaf and unveiling the major defects and shortcomings which brought about the recession of awqaf and the failure of their civilizational role.

The author dealt also with the major experiences which reflect the modern trends in managing awqaf as an untraditional alternative for restoring the civilizational role of waqf through those experiences in some Arab countries, for example the Sudanese experience exemplified in the Islamic Awqaf Authority, then Kuwait Awqaf Public Foundation as a pioneering experience. He expatiated on the experience of KAPF, then he moved on towards the western experience in managing the philanthropic and voluntary sectors, citing the experience of the USA and its major characteristics which embody a successful and fruitful management.

Chapter three deals with the importance of orientation towards 'an institutional framework for managing the waqf sector' as a new vision of management termed by the author as 'Joint Community Management' which views the waqf sector as a joint area shared by both the state and the society. Here all efforts concur to build and develop this joint area through a joint authority.

The joint management formula is based on the idea of a joint domain which combines the formula of 'if you wish' as an area for administrative movement within the stated conditions of the waqifs on the one hand and the community obligations as a 'joint domain'. Both are based on a host

of organizational principles and a package of real values with outstanding, stable and inclusive administrative arrangement.

The fourth chapter entitled ‘Managing Waqf Sector in Algeria: Development and Reform: An Assessment Vision’. Here the author sheds more light on the current Algerian experience in the area of waqf. He deals with its development and change starting from the Ottoman epoch throughout the imperialistic period, the independence and the post-independence period. He highlights the trends of that development and change and their characteristics and the challenges which ensued, together with the attempts at reform inside the waqf institution. It is an attempt to dissect and diagnose and assess that experience through the ups and downs, prosperity and recession and the factors affecting the rally of the administrative development of the waqf sector in Algeria. The author meant to elicit lessons for presenting developed waqf management model which keeps abreast with the requirements of the time for augmenting the social and economic return of awqaf in Algeria.

Finally, the author comes up with formulating a guide model for the community waqf management which expresses the ‘community identity, the development content and the sustainable nature’. It is a model, supported by audio-visual aids, analyses, conclusions and recommendations that realizes ‘the joint domain management shared by the state and the society’.

6th Forum on Waqf Jurisprudential Issues

The 6th forum was held in the State of Qatar during the period from 3-4 Rajab, 1434 H, corresponding to 13-14 May, 2013 under the motto ‘ Fresh Issues and Shari’a Grounding’ under the patronage of H.E. the Qatari Prime Minister Sheikh Hamad Bin Jasem Bin Jabr Al Thani. The forum was hosted by the Ministry of Awqaf and Islamic Affairs in the State of Qatar in collaboration with the IBD Islamic Institute for Research and Training

The forum was opened on Monday, Rajab 3, 1434, corresponding to May 13, 2013 with a recitation from the Holy Quran,

followed by the speech of Mr. Abdullah Bin Juaithin Al Dosari, the Director General of the Qatari Awqaf Department, followed by Dr. Khaled Al Mathkur, chairman of the Higher Committee for Completing the Application of the Islamic Shari’a in the State of Kuwait, who delivered the word of The Scientific Committee of the Forum on Waqf Jurisprudential Issues. Dr. Addul Mohsen Al Khorafi, KAPF secretary General. Delivered the speech of Kuwait Awqaf Public Foundation, followed by H.E. the Minister of the Tunisian Religious Affairs Dr. Nurreddin Mukhtar Al Khademi. Finally came the speech of H.E. Dr. Ghaith Bin Mubarak Al Kawari, the Qatari Minister of Awqaf and Islamic Affairs, fol-

lowing which the exhibition was opened

The first evening academic session was dedicated to the first topic ‘Dissolving the Khairy Waqf’. The participants gave a brief definition of the Khairy waqf and the reasons for the cancellation of the ‘timing’ in the temporary waqf which can be attributed to the collapse of the Khairy waqf, the obstacles to benefiting from it, the paucity of its proceeds and the legal suits filed against it. The discussions approached other issues, for example means of sustaining awqaf through merging more than waqf in one waqf, and loaning from other awqaf to restore waqf and changing the purpose in case this proves more profitable, getting loans from the governmental funds to restore waqf and istibdal (replacement), in addition to the legality of violating the waqif’s conditions for the sake of maintaining a waqf. There were also

modern applied cases submitted for study. The session was chaired by Dr. Thaqeel Bin Sayer Al Shamari during which two researches were submitted by Dr. Abdul Fattah Mahmoud Idris Mahmoud and Dr. Haitham Abdul Hameed Ali Khazna.

The second session, chaired by Mr. Abdullah Bin Juaithin Al Dosari, was dedicated to the second topic **‘Benefiting from the Waqf Formulas in the Settlement of International Disputes’**. Two researches were submitted by Dr. Mohammad Naim Yassin and Dr. Abdul Qader Bin Azzouz

On Tuesday Rajab 4, 1434 H, corresponding to May 14, 2013 the third session started by completing the discussions initiated on the second subject under the chairmanship of Mr. Abdullah Bin Juaithin Al Dosari during which two researches were submitted by Dr. Mostafa Mohammad Mostafa Arjawi and the second by both Dr.

Raafat Ali Al Saeedi and Dr. Omar Abdul Majeed Musbeh.

The fourth session, chaired by Dr. Thaqeel Bin Sayer Al Sham-mari, was dedicated to the completion of discussions on the second topic, during which two researches were submitted by Dr. Jumaa M. Al Zrigi and Dr. Abdul Razzaq Isbihi.

Thereafter researchers and moderators were recognized and the final recommendations were read out

This sort of biennial forum is of an international nature is organized by Kuwait Awqaf Public Foundation to study waqf-related issues and revive ijthihad to address current problems through the participation of illustrious thinkers and academicians from the Arab and Islamic world and to circulate waqf counseling worldwide, besides cooperating with research centres and academies in order to prepare a complete record of waqf rules and regulations and current problems.

This is meant to form an accredited reference for those interested in waqf affairs.

RECOMMENDATIONS ON THE FIRST TOPIC:

DISSOLVING KHAIRY WAQF

The ad hoc committee came to the following jurisprudential attitudes:

First:

1- Dissolution: Dissolving or rescinding awqaf through a law or decision and the consequences of forfeiting awqaf or disposing thereof.

2- Expiry which comes through the collapse of the waqf or the end of the period in case of a termed waqf

Second:

The essence of waqf is the principle of perpetuation and continuity as maintained by the majority

of jurists. It cannot be revoked for whatever reason unless this is made for a satisfactory compensation or replacement, in which case a waqf will not be terminated. Imam Abu Hanifa is of the opinion that a waqf is revocable in favour of the waqif or his heirs. This principle is observed by the Kuwaiti courts of law.

Third:

There are certain conditions in which a waqf may be terminated, for example:

- 1- The collapse of a waqf asset beyond repair
- 2- The termination of the term as maintained by jurists.

Fourth:

Waqf should be well-protected so that it remains sound and secure against any encroachment. This end can be achieved through the following measures:

- 1- Special rules and regulations should be integrated in

the waqf legislation to secure awqaf and to keep them secure against any transgression.

2- Allocating funds to reconstruct awqaf as set forth in the fourth item of second topic related to the decisions of the 5th Forum and item 4 of the third topic.

3- Taking into account item 5 of the first topic of the decisions of the First Forum, it is feasible to bring together small awqaf in one major waqf. Each minor waqf's share is commensurate to its portion. Proceeds should be distributed as per the conditions of the waqifs and on a pro-rata basis.

Recommendations

1- Confirming the decision of the International Islamic Waqf Academy # 140 which provides that all OIC countries and other Islamic organizations are urged to maintain

and keep awqaf and to keep them secure against any encroachment, to maintain their continuity as per the waqifs' conditions.

2- Urging judges of the Islamic world to give due attention to waqf lawsuits so that waqf may be immune against illegal seizure by claimants.

Recommendation on the Second Topic

Waqf and International Dispute Settlement

1- Advocating those jurisprudential issues which allow for waqf formula to assist in settling international disputes.

2- Drafting an international agreement to organize waqf and its institutions at a pan-Islamic level.

3- Organizing academic seminars which invite specialists in fiqh (jurisprudence) and international law, international

philanthropic work, management and economics.

4- Establishing awqaf for qualifying Islamic experts specialized in solving international disputes through Islamic measures.

5- Referring these recommendations to the relevant bodies, including Islamic Cooperation Organization and the conference of Islamic Ministers of Awqaf and Islamic Affairs.

SADA Educational Centre

This centre was established by Kuwait Awqaf Public Foundation in collaboration with the Child Education and Assessment Centre specialized in educating and rehabilitating cochlear implant children. It was officially opened on March 5, 2013. This center is one of the leading centers in the Gulf

and the Middle East. The achievement of the centre comes as a result of the scientific and applied cooperation with Clark Center in the USA known for its specialization in attending to children with hearing problems. The convenient period for rehabilitating a target cochlear implant child with a hearing disability is two-to-four years because this period is critical for acquiring a language which prepares a child for joining and integrating with normal children at the primary school at the age of six.

This centre provides the convenient specialized educational environment to this category of children, besides providing counseling to their families. The services provided by this centre are of a high quality at the regional and international levels. It also introduces the early intervention, language boosting and family counselling, in addition to raising the awareness in respect of the cochlear implant re-

cipients. To maintain the quality of services in the long run, employees undergo training courses for improving their performance.

The center includes employees from among the kindergartens' teachers who are specialized in special needs and cochlear implant children, in addition to specialists in the area of communication disabilities. The aim of such services is to introduce the rehabilitative services related to language. There are also psychiatrists who introduce their services to ease the stress on children and their families and to secure a balanced family environment. There is the social worker who poses a link between the center, the family and the child and urges the family to involve in the therapeutic efforts to get satisfactory results. The centre includes also class assistants to help teachers and specialists in extending services and following up the children.

In short, the centre strives to provide all the quality services needed by a child.

Al Ru'ya Center

The center came as a result of cooperation between Kuwait Awqaf Public Foundation and the Ministry of Justice. Its activities are based on attending families by virtue of being the major constituent of a society and to maintain family ties. It should be noticed here that the country is witnessing many family-related problems such as custody and seeing children. The center was opened on 21/5/2013 in al Zahra'a Area. Through this center many social and psychological objectives may be realized, ahead of which come family intercommunication and empathy and finding settlements away from police stations which are likely to leave a negative effect on the children.

The aim of the center is to reduce the passive effects divorce has on children and to handle the difference over the custody of children. The center attempts to facilitate the implantation of the judgments issued by the courts of law and advocates conciliation between the conflicting parties, in addition to consolidating religious and social values related to sons'-parents' relations.

The center also extends social and psychological consultations through cooperating with experienced counselors and social workers in respect of post-divorce matters. It also provides replies relevant to the personal law and the regulations of seeing children in case of divorce.

Kuwait International Contest on Waqf Researches

Registration for the eighth contest is expected to take place during the period from 1/9/2013

to 31/12/2013. The contest aims to encourage academic research and ignite the interest among researchers, individuals or institutions, in order to make up for the shortage in the Arab library in the waqf literature and to highlight the developmental side of waqf. The contest also guides KAPF in its attempt to develop and improve work at the waqf institution worldwide. It is expected that through such a contest innovation and excellence may be identified in the area of waqf-related research and study. Problems facing waqf may also be handled and means of promoting it be developed.

The contest includes two topics: **Restoring Lost and Usurped Awqaf in the Islamic World (Legal, Social and Administrative Mechanisms – A case Study)**. The second topic is **‘Waqf and Islamic Unity**. The process of Assessing researches will be conducted according to the rules and regulations set for this purpose.

Researchers (individuals or institutions) are entitled to present

their researches in Arabic, English or French, provided that an Arabic translation should be attached to it. Pages should fall between 90 – 105. There are certain parameters which should be observed while submitting the research, for example critical approach, academic authentication of the viewpoints, correctness of approach, Lucidity of ideas, clarity of presentation, linking results to introductions and the sound language. A research submitted to the contest should not have got a previous reward or credit. A winner in one of the previous contests is not entitled to participate in the contest which follows. Moreover, KAPF shall have the right to benefit by the researches in the way it deems suitable for its objectives. There are other rules and conditions which are well-known and available to respective participants before they embark on their work.

AWQAF DEED

In recognition of the waqf thought and philosophy in establishing the projects and extending social services in the framework of sustainable and self-supported system , KAPF established AWQF journal deed. ThereFore , this journal will not depend on pricing its issues , rather it seeks to realize the aims and objectives for which it was created . it seeks to provide the journal free of charge to all waqf-related researches, concerned people and research centers.

On The other hand , KAPF is on the lookout for financing AWQAF through soliciting contributions, whether in the form of subscriptions , fixing an issue price or otherwise in an attempt towards authenticating the journal and enabling it to approach waqf as a specialty. This is meant to quality waqf to take part in social development by bearing part of this responsibilities in extending vital developmental services.

Deed purposes:

The purposes can be put down as follows:

- * Contributing to upgrading waqf researches so that the journal might rank with the prestigious refereed journals .
- * Laying emphasis on the typical dimension of waqf , together with identifying its characteristics and the role entrusted to it.
- * Advocating methodology in approaching issues based on the link between present and future , and therefore boosting thought in practical models.
- * Linking its subjects to the waqf concerns in the entire Islamic world
- * Providing the greatest number of researches, universities and research centers with this journal free of charge .
- * Encouraging efficient people to specialize in waqf-related issues.
- * Establishing a network for all people interested in Islamic thought , particularly waqf thought , and facilitating communications and interaction between them.

AWQAF Nazir

- * KAPE is the Nazir of AWQAF DEED.
- * KAPE is Keen to develop AWQAF and solicit contributions thereto.
- * KAPE is Keen to provide all facilities for publishing the journal , attending to the staff in charge of carrying out this mission in conformance with the strategy of promoting the waqf sector advocated by academic refereed journals.