The Environmental Protection in the Islamic Waqf

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Introduction:

The environmental protection is a main issue of the new millennium especially that the degradation of the environment by human activities is remarkably increases and becomes one of the major problems nowadays. The national and international instruments are increasingly prohibiting environmental destruction. A number of Islamic countries classify Islam as the main, or one of the main source or legislation, and in the same time those countries present a dangerous source of environmental pollution around the world. It is considerably important to examine the Islamic role in environmental protection to control the behavior of those countries that do not accept to be bound only by Islamic rules, and in the same time to confirm the fact that Islam is the religion of all times and locations. However, number of studies examined the Islamic role in environmental protection in general. However, some of the Islamic environmental protection mechanisms need to be profound. This paper will spotlight over the Islamic Waqf which present historical and present system of environmental protection.

Natural environment always targeted by human activities and some of the environmental problems are getting worse. For example, the damage to the ozone layer, that causes the global warming, becomes much more serious, the Antarctic ozone hole has grown thinner and wider during Antarctica's winters for the past two decades.
Therefore, since the 1970s, the environmental law expanded its jurisdiction from national to international level\(^4\) to cover harmful activities and provide for greater environmental protection in order to secure the environment.\(^5\)

The failure to completely achieve this goal supports the idea of finding another source of obligation, such as Islamic rules that bind Islamic States which constitute major source of environmental pollution.

According to the Islamic law and Sharia the conservation of the environment is a religious duty demanded by God, “Do good, even as God has done you good, and do not pursue corruption in the earth. Verily God does not love corrupters.”\(^6\) God said also: “Eat and drink, but waste not by excess; Verily He loves not the excessive,”\(^7\) “do not cause corruption in the earth, when it has been set in order.”\(^8\)

Prophet Mohammed behavior and speech, sunnah, is considered another source of Islamic Law. All Muslims are bound to follow the sunnah. Prophet Mohammed ordered Muslims to protect their environment when he said in a prophetic speech “If any Muslim plants a tree or sows a field, and a human, bird or animal eats from it, it shall be reckoned as charity from him.”\(^9\) Moreover, he said: “if the day of resurrection comes upon any one of you while he has a seedling in hand, let him plant it.”\(^10\)

Though, destroying the environment, and not participating in its protection is considered as a violation of the orders of God and Prophet Mohammed, which will cause an otherworldly punishment. Prophet Mohammed warned that a person who starves an animal to die is punished by God in the fire of hell.\(^11\) A person sins God pardon for the act of giving water to a dog in desperate thirst.\(^12\)


\(^6\) Qur’an: Surat al-Qasas (28), ayah 77.

\(^7\) Qur’an: Surat al-A’raf (7), ayah 31.

\(^8\) Id., ayah 56.


\(^10\) Hadith of sound, related to the authority of Anas ibn Malik by the Imam Ahmed in the *Musnad*, and by al-Bukhari in *al-Adab al-Mufrad*, and by Abu Dawud at-Tayalisi in his *Musnad*.

\(^11\) Hadith of sound authority, related al-Bukhari and Muslim on the authority of ‘Abd-Allah ibn ‘Umar and Abu-Hurayrah.

\(^12\) Id.
In Islam, man does not own the earth, has been granted a stewardship to manage it in accordance with the purposes intended by the Creator (God), to utilize it for his own benefit and the benefit of other created beings. Consequently, Prophet Mohammed said in a speech that “the world is beautiful and verdant, and verily God, be He exalted, has made you his stewards in it, and he sees how you acquit yourselves.” Accordingly, the environment should remain healthy and safe by the present generations to be inherited by future generations, since the environmental destruction violates public interests especially when it causes air, soil, or water pollution.

In Islam, environmental destruction may go beyond destroying God's property, where environmental harm could be interpreted as a violation of private interests as well. For example, the destruction of an agricultural field, owned by a private person, by the wastes of a nearby plant considered a violation to both God's and individual properties.

The distinction between God's property which is considered as public property and private property reflects on the nature of the punishment that results from both destructions. Every act that interpreted as a violation of public interest is considered a crime against the society and requires the punishment of “Al-Ta’azeer,” which used to be deterrent punishment and does not accept any kind of reconciliation. Muslims’ Governor punishes such kind of crimes even if there is no plaintiff, where the Governor fulfills this role. On the other hand, whenever the environmental destruction is interpreted as a violation of private interest, the punishment of “Al-hodod and Al-gasas” will be applied, and the due punishment should be implemented, however reconciliation can always be made in such kind of crimes.

According to Islamic rules, individuals can bring environmental violations to justice only if they have interest from such case, otherwise only Muslim's Governor can

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13 Bagader et al., supra note (1) at 27.
14 Hadith of sound authority, related by Muslim on the authority of Abu Sa’id al-Khudri.
15 Mahmood Hassan, Upon Teaching the Environmental Law from Islamic Point of View (in Arabic) 34, a paper presented to the Conference of ENVIRONMENTAL LEGISLATION IN THE ARAB REGION (Sept. 30- Oct. 2, 2000) Kuwait University, Faculty of Law.
16 Id., at 34.
17 Id., at 34.
18 Id., at 34.
19 Id., at 34.
20 Id., at 34.
do so. Unfortunately, most Islamic legal systems, such as Kuwait, require direct interest in plaintiff’s claims, in view to allow justice to examine environmental case. Therefore, great number of environmental violations stays unexamined by justice only because Muslim’s Governor did not decide to bring perpetrators to justice for reason or another. This weakness does not reflect on all the Islamic protection of the environment. The Waqf presents one of the Islamic landmarks in environmental protection that should be examined and developed to follow up the daily environmental threats.

Waqf is one of the Islamic traditions that had rarely been raised as a mechanism for the environmental protection. Resurrection and using the rules of Islamic Waqf would assist in fighting and eliminating environmental threats. This paper will address the role of Waqf in the protection of the natural environment. Thus, this paper will be classified into four sections:

I. The Meaning and the History of Waqf,
II. The Divisions of Waqf,
III. The Function of Waqf, and
IV. The Environmental Protection in Waqf.

I. The Meaning and the History of Waqf

The idea of Waqf existed, in Arabic language, in different forms even before Islam. Waqf is a pure Arabic term, which means “habs” tying up. It can be said that the policeman “awqaf” the suspect, or he arrested him. According to the Hanafi

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22 In a previous study, Wakf was stated as an Islamic method of environmental protection. However, it was only stated in a small paragraph. See, BAGADER ET AL., supra note (1) at 27.
23 See Majid, Wakf as Family Settlement Among the Mohammedans, 9 J. Comp. Leg. 122, 125, 129 (1908).
school,\textsuperscript{26} Waqf is “the detention of the corpus from the ownership of any person and the gifts of its income or usufruct either presently or in the future, to some charitable purpose.”\textsuperscript{27}

The main idea of the Islamic Waqf based on the fact that certain properties should protected in peacetime and in times of armed conflict from all kind of destruction. In most of the religions, certain lands and building were sacred to the prayers. For example, “Pharaohs of Egypt devoted land properties for the benefit of monks and ancient Greeks.”\textsuperscript{28} The Romans also “dedicat[ed] properties exclusively for libraries and education.”\textsuperscript{29}

Similarly, Muslim jurists argue that the Ka’abah building, in Makkah, Saudi Arabia, was sacred as a first house of worship.\textsuperscript{30} However, according to them, the first Islamic Waqf was the mosque of Quba’, a city 400 Km north of Makkah, which was built upon the arrival of Prophet Mohammed to Madinah, Saudi Arabia, in 622.\textsuperscript{31} However, Islamic Waqf does not limited in buildings and lands sacred for specific purposes only, but, most of property can be subject of Waqf.\textsuperscript{32}

The Holly Quran does not directly define Waqf or make any reference to it.\textsuperscript{33} However, it encourages funding of charity, which includes Waqf.\textsuperscript{34} For example, it is provides that

They ask thee what they should spend (In charity). Say: Whatever ye spend that is good, is for parents and kindred and orphans and those in want and for wayfarers. And whatever ye do that is good, -Allah knoweth it well.\textsuperscript{35}

\textsuperscript{26} Islam jurists are devised into school, each school has its own difference of opinion with the other school, these difference do related to the matters of Muslims life and not the major five pearls of Islam. The most famous schools in Islam are the Hanafi, Shafey, Hanbaly, and Maliky.
\textsuperscript{27} Cattan, \textit{supra} note (25) at 203.
\textsuperscript{29} Id., at 2.
\textsuperscript{30} Qur’an: Surat Al Omran (3), ayah (96).
\textsuperscript{31} Kahf, \textit{Waqf and its Sociopolitical Aspects}, \textit{supra} note (28) at 2.
\textsuperscript{32} There are few kind of properties cannot be subject to Waqf, as will be explained in the next pages.
\textsuperscript{33} Cattan, \textit{supra} note (25) at 204.
\textsuperscript{34} Id., at 204.
\textsuperscript{35} Sorat Al-Bagarah No. 2, Ayah (215).
Those who establish regular prayers and give in regular charity, and also have (full) assurance of the hereafter.\textsuperscript{36} So give what is due to kindred, the needy, and the wayfarer. That is best for those who seek the Countenance, of Allah, and it is they who will prosper.\textsuperscript{37} Those who establish regular Prayer, and give regular Charity, and have (in their hearts) the assurance of the Hereafter.\textsuperscript{38} If ye loan to Allah, a beautiful loan, He will double it to your (credit), and He will grant you Forgiveness: for Allah is most Ready to appreciate (service), Most Forbearing.\textsuperscript{39}

Similarly, the Prophet Mohammed called Muslims to establish charities, when said that “When Adam’s son die, he will be disconnected except from three: continuos charity, useful science, or well-raised kids prays for him.”\textsuperscript{40} “A man called Mukhairiq made his will that his seven orchards in Madinah be given after his death to Prophet Mohammed. In year 626, the man died and the Prophet took hold of the orchards and made them a charitable Waqf for the benefit of the poor and the needy.”\textsuperscript{41} Moreover, when Prophet Mohammed passed away, he left only his white mule, weapon, and a charitable land.\textsuperscript{42} Furthermore, “[i]n the life of Mohammed [Omar ibno Al-Khattab, the second caliph,] made an alms of one of his properties called Tsamgh, which consist of palm grove. Omar said ‘O Messenger of God, I possess a property which is precocious to me, and I would make alms with it.’ The Prophet replied: ‘Give it in alms, but provide that it shall never be sold nor given away nor divided among heirs, but the fruits of it shall be used.’[…].”\textsuperscript{43} Some other sources provide that Prophet Mohammed told Omar “[t]ie up the property and devote the usufruct to human beings.”\textsuperscript{44}

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\footnote{36 Sorat Al'An'am (the Ants) No. 27, Ayah (3).}
\footnote{37 Sorat Al-Rum No. 30, Ayah (38).}
\footnote{38 Sorat Al-Baqarah (the Cow), Ayah (4).}
\footnote{39 Sorat Al-Imran (the Troops), Ayah (542).}
\footnote{40 Hadith cited in MANSOOR ABOEBEID, SUMMARY OF WAKF RULES 5 (Kuwait Awqaf Public Foundation, 1996) [hereinafter ABUEBEID]; ABO GODAH & SHEHATAH, supra note (24) at 47.}
\footnote{41 KAHF, Waqf and its Sociopolitical Aspects, supra note (28) at 2.}
\footnote{42 ABUEBEID, supra note (40) at 5.}
\footnote{43 WIGMORE, PANORAMA OF THE WORLD’S LEGAL SYSTEMS 835 (1936) [hereinafter WIGMORE], cited in Ann Van Wynen Thomas, Note on the Origin of Uses and Trusts-Waqfs, 3 SW. L. J. 162, 164-65 fn. 6 (1949) [hereinafter Wynen Thomas].}
\footnote{44 Jurist, Waqf, 4 MOSLEEM WORLD 173, 174-75 (1914), cited in William F. Fretcher, The Islamic Wakf, 36 Mo. L. Rev. 153, 155 fn. 8.}
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Waqf was firmly established in the second half of the first century of Islam (A.D. 670-750) as part of Muslim law.\textsuperscript{45} It was also adopted by some modern non-Muslim legal systems. For example, the English trust system was inspired from the Islamic Waqf.\textsuperscript{46} In England the trust system was used to give part of the income to persons who are not capable to share these properties. Similarly, the Holly Quran prescribes the minute detail the shares and portions in which property is to be distributed among heirs,\textsuperscript{47} and Muslims can overcome these restrictions by donating a portion of their properties to some of the relatives or to serve the needs of the society.

After the death of individuals, their properties will be distributed among their relatives according to the Islamic rules of heritage. However, during their lives there are no restrictions over their right to distribute their property. This liberty encourages the Waqif—the donor of Waqf—to imposing unpopular conditions for some relative as a condition to benefit from Waqf. Many Waqfs “were restricted to male descendants, or disentitled female descendants upon marriage, or disentitled any beneficiary on becoming indebted.”\textsuperscript{48} If this donation had place during the life of the Waqif, there will be no limits on the donation, where he can give up to all his properties, unless proven that he was mentally ill during the donation. Moreover, if the donation took place just before the death, or was written as a testamentary should not exceeding one third of his estates, and if it does the exceeding portion over the one third will be denounced, unless the heirs approve it.\textsuperscript{49}

According to the Waqif’s will, Waqf may be dedicated to serve relatives and the society. It can be dedicated to serve in helping those financially incapable to marry, feeding the infants and kids, assisting sick disable and the orphans, cover the expenses of “Jihad”, fight in the name of God.

\textsuperscript{45} Wynyen Thomas, \textit{supra} note (43) at 164.
\textsuperscript{46} \textit{Id.}, at 163; Cattan, \textit{supra} note (25) at 203.
\textsuperscript{47} “They ask thee for a legal decision. Say: Allah directs (thus) about those who leave no descendants or ascendants as heirs. If it is a man that dies, leaving a sister but no child, she shall have half the inheritance: If (such a deceased was) a woman, who left no child, Her brother takes her inheritance: If there are two sisters, they shall have two-thirds of the inheritance (between them): if there are brothers and sisters, (they share), the male having twice the share of the female. Thus doth Allah make clear to you (His law), lest ye err. And Allah hath knowledge of all things.” Sorat An’nissa’A (the Women) No. 4, Ayah No. 176.
\textsuperscript{48} Wynyen Thomas, \textit{supra} note (43) at 165.
\textsuperscript{49} Cattan, \textit{supra} note (25) at 206.
Since Waqf has no detailed rules in the Holly Quran or the speech of Prophet Mohammed it is considered as a tradition and subject to number of modifications during the development of the needs of Islamic States. Nowadays, Waqf, like all other daily matters, is subject to the control of the States authorities, where ministries and public authorities were established in Muslim countries to manage Waqf properties.

Waqf is a religious endowment of a property that giving revenues, and managed as regulated by Islamic law. The status of the property dedicated as Waqf was argued by Muslim jurists. According to some Islamic jurists, once the Waqf established, the corpus will be dedicated to Allah, God. However, some other jurists viewed that dedicating property as Waqf does not resulted in the loss of the ownership itself, but the usufruct will be devoted to charitable purposes.

II. The Divisions of Waqf

Most of the Waqfs are subject to the same rules and regulations. However, Muslim scholars argued about the details of Waqf, which may reflect on the way that Wakf functions.

There exist different kinds of Wakf. For example, Waqf Ahly, Waqf Khairi, permanent Waqf, and temporary Waqf. Accordingly, Waqf can be (1) Self Waqf, for the benefit of the Waqif; (2) “Waqf Ahly” for the benefit of the relatives; (3) “Waqf Khairy” for the benefit of the public or the society; or (4) “Waqf Moktalat,” which could be for the benefit of the public, self, and/or relatives. Moreover, Waqf can also be classified into “Waqf Daeym” permanent, which lasts as long as the property last productive; and “Waqf Moaakat” temporary, which exists for a limited period of time. In the same time, certain Waqf can be Ahly and temporary in the same time, or Khairi and permanent in the same time too.

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51 This is the opinion of Imam Abu Yusuf, who was Grand Kadi under Haroun-al-Raschid (Caliph of Bagdad 786-809 A.D.) A. QADRI, ISLAMIC JURISPRUDENCE IN THE MODERN WORLD 299 (1963) [hereinafter QADRI].
52 This is the point of view of Abu Hanifah. Id., at 228.
A) Waqfs According to the Beneficiary

According to the beneficiary, Waqf can be divided into family Waqf (Ahli or Dhurri), charitable Waqf (Khairi) and mixed Waqf (Moktalat).

1. Family Waqf (Waqf Ahly or Dhurri)

The family Waqf (Ahly or Dhurri) devotes the income and usufruct to the Waqif’s descendants. The Waqif may constitute himself the first beneficiary for life, where he can benefit from the income or usufruct of the Waqf. This kind of Waqf can occur only in the life of the Waqif, otherwise it would be interpreted as heritage. Devoting the Waqf to the Waqif’s benefits, self Waqf, is only admitted by the Hanafi school, and denied by all the others. According to other schools, the nature of charity, which found in the roots of Waqf, is absent until the Waqif’s death, especially that before his death there is no charity because he is the only beneficiary. The Waqif might constitute his descendant after him as beneficiaries from the Waqf.

The liberty of Waqif to introduce any kind of conditions regarding the beneficiaries and the way that shares should be distributed, was behind the appearance of unfamiliar conditions, such as the forfeiture of the right of beneficiary upon contracting debts, upon marriage, upon marriage into other than a designate family, the residency in a certain place the exclusion of female descendants. These unpopular conditions were behind the extermination and restriction of establishing Waqf Dhurri in certain counties. A number of national legal systems imposed restriction over the establishment of Waqf Dhurri, such as Lebanon, where it considers any conditions restricting the liberty of beneficiary in marriage, residence or contracting of debts deemed to be null and void. Some other countries, such as Egypt and Syria, were much more drastic vis-à-vis the

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53 Cattan, supra note (25) at 203.
54 Id., at 203.
55 Id., at 204.
56 Id., at 211, 219.
57 The Lebanese Law of March 12, 1947, regulating the Waqf Dhurri, art. 13 [hereinafter The Lebanese Law of Waqf Dhurri].
Waqf Dhurri, where they completely prohibited the establishment of such Waqf.\textsuperscript{58} These modifications introduced in the Waqf Dhurri were based on the views of the Hanbali and Maliki schools.\textsuperscript{59} These restrictions do not considered as a violation to Islamic rules, because Waqf is only an Islamic tradition that should be modified to avoid complication among the members of the society and to respond to the newly established needs of the society, such as the need for a healthy and clean environment.

2. Charitable Waqf (Waqf Khairi)

In Charitable Waqf the income and usufruct are devoted to charitable purposes.\textsuperscript{60} These purposes may be defined by the statement of Waqf and might not, where, in the latter the Qadi has the right to indicate these purposes according to the needs of the society.

In response to the Islamic calls- in the Holly Koran and the speech of the Prophet Mohammed- for the donation into charitable purposes, some people choose Waqf as a method of donation. “Omar made alms with the property, dedicating it to the use of the Holly War, the ransom of slaves, and the support of the poor, of guests, of travelers, and of kindred.”\textsuperscript{61} In most cases the donors- the Waqif- do not have in mind which charitable purpose should be satisfied at first. So they counsel the specialized centers and personnel to figure out the best charity and the most acceptable one by God. In Kuwait, the Ministry of Awqaf and Islamic Affairs fulfill in this role.

Based on the background of the consultants, the donor may decide to devote his Waqf for the needs of education, constructing or maintaining mosques, provide drinkable water in certain places or the service of elders. Moreover, if the consultant has environmental background and is capable of convincing the Waqif that protecting the environment is important and necessary to live in a safe and healthy environment, this would encourage the Waqif to devote his Waqf into the environmental protection. In a

\textsuperscript{58} Egyptian Law No. 180, Sept. 1952, Modifying the existing law of Waqf, art. 3[hereinafter Egyptian Law No. 180]; Syrian Leg. Decree No. 76 amended by Legislative Decree No. 97 of Nov. 26, 1949, published in the Syrian Official Gazette (1949) at 3379[hereinafter The Syrian Leg. Decree No. 76].

\textsuperscript{59} Cattan, \textit{supra} note (25) at 211, 219.

\textsuperscript{60} \textit{Id.}, at 204.

\textsuperscript{61} WIGMORE, \textit{supra} note (43) at 835.
remarkable step, in 1995, Kuwait Awkaf Public Foundation has established an Environmental Fund to fill in this mission.62

The charitable Waqf can result in three environmental scenarios:

1) Charitable Waqf with Specific Environmental Goal:

When environmental Waqf is devoted to satisfy a specific environmental goal, such as the maintenance of certain protected area, cleanup of the marine environment, support of the efforts of the environmental NGOs, or funding environmental research. When this specific goal is achieved, the administrator, under the supervision and approval of Qadi, the judge, has to satisfy new needs similar to the ones provided in the statement of the Waqif. In the previous examples the administrator should find another protected area to maintain it, another polluted marine area to clean, another NGO to support, and another educational and research establishment to support.

2) Charitable Waqf with General Environmental Goal:

When environmental Waqf is devoted to the protection of the environment in general, without specifying which area needs to be funded. The administrator has the power, under the supervision and approval of the Qadi to indicate which environmental problem should be treated as a priority, before satisfying the next. Accordingly, if the Waqf was devoted to cleanup the marine environment, the efforts of the administrator should focus on this part of the environment. However, in the occurrence of a nuclear explosion, the administrator can, by the approval of the Qadi, move all or part of the resources of Waqf to maintain new and urgent environmental problems, even if it may occur in another part of the environment, as long as it falls within the general environmental circuit stated by the Waqif.

3) Charitable Waqf with Non-Environmental Goal:

Charitable Waqf may be devoted to general non-environmental goals, such as the help of the needy. In this case, the liberty of the administrator should be limited within

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this goal. However, in cases of environmental emergencies, the administrator, under the supervision and approval of the Qadi, may direct part or all of the Waqf’s incomes to the protection of the environment.

Protecting and ameliorating the environmental situations in any part of the world should be interpreted as charitable purpose, serving the public needs and maintaining the properties of God on which humans have only stewardship. Therefore, the Waqifs must give the environmental protection high priority similar to the maintenance of the mosques.

3. Mixed Waqf (Waqf Moktalat)

The Waqf can be mixed, when it serves both the needs of the society and relatives. Also it can be mixed when directed to serve relatives in certain time and serve the charitable needs ulteriorment. For example, when the Waqif reserves the income of Waqf to his children and their descendants in perpetuity, with a provision that upon the extinction of his descendants, the income shall be used for charitable purposes, charitable and public needs will be satisfied when this condition be effective. Moreover, in the environmental Waqf the interests are mixed between the public and the relatives. For example, when a Waqf is directed to clean up hazardous wastes dumped into a stream within the property of relatives, the interest of the relatives was satisfied, and so do the public interest by assuring one of the cleanliness of the main river that meets with the stream.

B) Waqf According to the Period of Time

The duration of the Waqf was the subject of great discussion between Muslim scholars. Some of them approve the possibility of establishing a permanent Waqf as well as temporary one. Another part of Muslim jurists approves only the permanent status of Waqf, and the temporary one is illegal according to them.

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63 Cattan, supra note (25) at 203.
64 This point of view is stood by both the Maliki and Hanbali schools. See, Id., at 219.
65 This pot of view is defended by the Hanafi school. See, Id., at 219.
(1) Permanent Waqf

The permanent Waqf lasts as long as the corpus lasts, and it is connected to the existence of the Waqf’s corpus. Furthermore, it may last beyond the existence of the corpus itself, where Waqf, according to the Qadi approval, can be traded for another corpus much more productive.

The permanent Waqf is approved by all the Muslims schools, and had place in several parts of the Muslim world. However, some national legislations, such as in Egypt, Lebanon and Syria, modified this Islamic tradition by abolishing the Dhruri Permanent Waqf, and dissolving the existent ones.66 However, based on its importance in supporting the public services, the Khairi Permanent Waqf is still approved and encouraged.

In the environmental protection, it is highly recommended that Waqf established permanently. This recommendation based on the fact that protecting the environment in certain environmental areas for a period of time has no sense, and wastes the efforts and financial resources. The suspension of funding environmental protection in certain areas, such as marine environment may eliminate efforts in function to fight pollution and cleaning up, which may result in serious threat or extinction of certain species, and consequently, waste all the previous efforts and financial resources directed to protect the environment. For example, funding agricultural efforts in a desert area may abolish all the efforts done during the previous period of fund when fund is expired, where plants will die and sand storms will cover the area.

(2) Temporary Waqf

If Waqf is made to serve charitable purposes that are not perpetual, after their extermination Waqf will continue to serve other charitable purposes indicated by the Qadi.67

66 Egyptian Law No. 180, supra note (58); The Syrian Leg. Decree No. 76, supra note (58) art. 2.
67 Cattan, supra note (25) at 207.
Temporary environmental Waqf can be useful in environmental emergencies, such as natural or human catastrophes that affect the natural system. For example, the Chernobyl accident of 1986 required financial resources to evacuate and support victims and to rehabilitate the affected environment. Temporary Waqf’s may direct its income to assist efforts in such catastrophic situations, especially when its original purposes were satisfied. Temporary Waqf may be used to fund studies seeking to avoid future environmental catastrophes.

In the Temporary Waqf administrators’ powers are limited in spending the income in violation to the Waqif’s statement. He should direct the income to achieve similar goals, and the Qadi should approve any new purposes. However, once the temporary goal is achieved, whether it was environmental or non-environmental, the administrator will have, after the approval of the Qadi, more liberty to direct part of the incomes into environmental circuit. For example, it is high priority in Iraq to direct the incomes of the Waqf into cleaning up polluted areas from hazardous wastes and substances that dumped unsafely from Iraqi nuclear installations into streams and lands during the period of disorder followed Iraqi Freedom in 2003.

III. The Function of Waqf

Islamic Waqf involves four human elements; (1) dedicator (Waqif,) (2) Trustee (administrator,) (3) beneficiaries, (4) judge (Qadi,) and (5) the property.

Any person can be a Dedicator (Waqif) when dedicate the income or part of the income of his property or part of his property to the benefit of relatives, non-relatives, the public or the society. However, the Waqif must posses the capacity requisite to act. Most of the legal systems require that Waqif should be of certain age, sound mind and legally own the property devoted as Waqf. Kuwaiti civil law approves acts of minded persons of more than seventeen of age. There is no such requirement regarding the Islam, where Muslim and no Muslim can establish Waqf. For example, Egypt Waqf Law

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69 Cattan, supra note (25) at 205.
requires only that the income should not spend into prohibited domains in the Sharia and in his religion.\textsuperscript{71} However, in the Kuwaiti Project of Waqf Law,\textsuperscript{72} non-Muslim can establish Waqf, in two conditions: that he should be part of the holly religions (Christianity or Judaism) and that the income should not spent into non-Islamic direction.\textsuperscript{73}

The administrator or the trustees (Mutawalli or Nazir) is charged to administer the Waqf with care and protection and to distribute the incomes of the property according to the Waqf’s instrument,\textsuperscript{74} under the supervision and accountability of the Qadi.\textsuperscript{75} In another meaning he should preserve the property then to maximize the revenues of the beneficiaries.\textsuperscript{76} The Waqf instrument may name the original administrator, and provide for the manner of appointing his successors.\textsuperscript{77} In case of absence of such directions, the Qadi is charged to appoint the administrator, in preference for candidates from the Waqif descendants.\textsuperscript{78} If environmental Waqf is in question an environmentalist has the preference to fill in this position whether among the employers of the concerned governmental administration of Awqaf or among the Waqif descendants.

The Waqif has the right to direct the way of spending the incomes. The Waqif also has the right to impose restrictions over his dedication. In Islamic law, these restrictions over Waqf are valid and enforceable.\textsuperscript{79} Beneficiaries of the Waqf could be relatives, non-relatives and/or the public services. The Waqif has great latitude to indicate in his statement the beneficiaries of his Waqf. If he did not specify the beneficiaries, or there is no more beneficiary according to his statement, then the Qadi has the right to indicate the beneficiary of such Waqf.

Consequently, the existence of a Qadi is very important to fulfill two tasks, supervise the administrator job and replace the Waqif, whenever he is incapable.

\textsuperscript{71}Egypt Law No. 48/1946 concerning the Rules of Waqf, 1946, art. 7, [hereinafter The Egyptian Law No. 48/1946].
\textsuperscript{72} This project has not yet been adopted, but it is expected to be adopted in the near future.
\textsuperscript{73} AL-MOTAWA’ A IKBAL, PROJECT OF KUWAIT AWQAF LAW IN THE SCHEMA OF INVESTING AND DEVELOPING THE WAQFY INCOMES (In Arabic) 140(2001).
\textsuperscript{74} Cattan, supra note (25) at 204.
\textsuperscript{75} Wynen Thomas, supra note (43) at 165.
\textsuperscript{76} Kahf, \textit{Waqf and its Sociopolitical Aspects}, supra note (28) at 5.
\textsuperscript{77} Cattan, supra note (25) at 204.
\textsuperscript{78} Id., at 204.
\textsuperscript{79} Id., at 165.
physically or mentally, in all the matters that need his approval. The administrator is under the supervision of the Qadi. For example, in environmental Waqf the administrator cannot spend the incomes of the Waqf on greening the shore while it suffers from substantial environmental pollution. The income should be spent on cleaning up the shore before greening it. Both the Qadi and administrator should have a considerable level of environmental awareness to better fulfill their tasks. Otherwise, the administrator cannot decide which environmental value should be satisfied as priority. Similarly, the Qadi cannot supervise the work of the administrator, and examine complains from the beneficiaries, unless he obtains a satisfying level of environmental awareness. In view to increase environmental awareness among Kuwaiti judges, the Kuwait Ministry of Justice, in cooperation with the Kuwait Faculty of Law and the Arab Regional Centre for Environmental Law (ARCEL), organized, in October 2002, a conference examine the different environmental experiences in the Arab World.

The Waqif has no power to appoint the Qadi, who is already appointed or elected to decide in all the difference of the society, including the supervision of Waqf management. In the course of time, the power of the Qadi was subject to development. “In the early part of the eight century, a judge in Egypt established a special register and office to record and supervise Waqfs in his area. This culminated in the establishment of a Waqf office for registration and control which was linked to the supreme judge who used to be called the ‘judge of judges’.” 80 More development took place during the Ottoman Empire, where “a special ministry of [Waqf was established since the early nineteenth century, and number of laws were enacted such as the] Law of Awqaf of Nov. 29, 1863 (19/6/1280 of the hijrah calendar).” 81 Number of countries, such as Turkey, Syria, Iraq, Lebanon, Palestine, and Saudi Arabia are still dealing with Waqf according to theses laws, and most of Islamic countries have either Ministry or Department of Awqaf. Muslim foundations in non-Muslim countries administrate Waqf according to their foundation act rules and regulations. 82 For example, “In 1975, the North American Islamic Trust (NAIT) was registered in the State of Indiana,[in view] to own and promote the Awqaf of Muslims in North America.” After the events of September 11th 2001, a few

80 Kahf, Waqf and its Sociopolitical Aspects, supra note (28) at 5.
81 Id., at 5.
82 Id., at 6.
number of charitable organizations were involved in providing anti-American activities, and other were subject to restriction by the American Ministry of Budget.

In Kuwait, the Kuwait Awqaf Public Foundation (KAPF),\textsuperscript{83} preserve and maximize the incomes of beneficiaries, where the Council of Awqaf’s Affairs fill in Qadi position and court in Kuwait does not interfere only to resolve differences regarding the Waqf.

Finally, no Waqf can take place without the existence of a property. Muslim jurists agree that immovable property such as lands, lacks and beaches, which presents portion of the natural environment, can be donated as Waqf. However, a great opposition regarding the validity of movable property to be donated as Waqf, where, according to certain jurists, the movable property does not “possess the quality of permanency,” which – according to them- is necessary for the establishment of Waqf.\textsuperscript{84} The controversy regarding the validity of movable properties to establish Waqf was resolved by some national laws, such as the Lebanese law of Waqf Dhurri, of 1947, which approved movable property and shares to establish a Waqf. In the present time, it is accepted to devote machinery, cattle, shares, stocks, and cash money as Waqf.\textsuperscript{85} Similarly, under the Kuwaiti Waqf system, KAPF accept all kind of donation, whether movable or immovable, to establish Waqf.

Three customary exceptions validate the establishment of movable property: (1) Movable permanency attached to immovable property; (2) animals; and (3) books and furniture. All these exceptions are customary accepted and environmentally should be too, because the administrator needs some movable tools to assure the best protection and function of the Waqf, therefore, it would be better if these tools have the same status as the Waqf itself. Moreover, animals are considered one of the environmental elements, even if they are movable elements, they should be capable to obtain the status of Waqf, which will offer them much more protection and care that would necessarily reflect on the natural environment. For example, devoting protected areas, including species that

\textsuperscript{83} The Kuwait Awqaf Public Foundation (KAPF) is an independent governmental body established in 1993 to invest the Waqfs in Kuwait or abroad, and distribute the incomes according to the statement of Waqifs. Monzer Kahf, \textit{The Management of Awqaf Investments}, available at <http://www.kahf.net/Arabic/MONZER3.html> (last visit May 1, 2002) [hereinafter Kahf, \textit{The Management of Awqaf}.]

\textsuperscript{84} Cattan, \textit{supra} note (25) at 205.

\textsuperscript{85} Kahf, \textit{Waqf and its Sociopolitical Aspects}, \textit{supra} note (28).
live in it, as Waqf requires the extension of Waqf protection to the species as well. The administrator may impose rules to protect such species, such as imposing tariff for the entrance, print brochures and greeting cards and consume these incomes to the maintenance of the protected area and the species in it. Last but not least, books and furniture should also be admitted as a Waqf, because they will be environmentally necessary to spread the environmental awareness through establishing environmental centers using these books and furniture to host the public.

IV. The Environmental Protection in Waqf

The Waqf system is linked to the environmental protection. This link based on the fact that most of the environmental elements owned by privates can be donated for charity and subjecting them to environmentally friendly rules would increase the environmental protection. Practically, the role of Waqf in maintaining the environmental protection is insufficient, and there is much more to do to link between Waqf and the environment. Number of elements can present the legal link between environmental protection and Waqf. These elements will be discussed in the next few pages.

1) The Waqif’s explicit will to protect the environment

Waqf is established according to the statement of the Waqif, which in most cases define the directions and goals that his Waqf should serve. It is legal and encouraged, especially in the present time where the environment is under daily threats, that Waqifs direct all or part of their Waqf’s incomes in the service of the environmental protection. For example, the Waqif may require in his statement that all the income of his Waqf, or twenty percent, or so, of these incomes should be devoted to the protection of the marine life in certain body of water such as the Arabian Gulf or to the protection of the environment in general. In this case the administrator is bound by this statement and has to follow the Waqif’s statement by directing all or the previewed percentage of the incomes into serve the environment.
The Waqif would not give the environment any priority over his descendent or serving religious goals such as buildings or maintaining mosques, unless he is convinced of the importance of the environmental protection. Therefore, a lot should be done to convince future donors or Waqifs of the importance of the environmental protection, and that spending to serve the environment is as holly as serving descendants and religion buildings.

KAPF plays a major role in pulling the public attention to the importance of environmental Waqf. It established a strategy of encouraging the establishment of specialized Waqfy funds. Each fund is specialized in a certain area of interest, invite and convince individuals to donate their properties as Waqf in these funds and then use the incomes to achieve its goals. It is already indicated in the policy of KAFP that the environmental protection is one of the goals sought by the new funds. Among the established Waqfy funds, there is the Scientific and Social Development Fund, Health Development Fund, Sponsoring the Holly Koran and its Studies’ Fund, and Mosques Maintenance Fund. There used to be more specialized Waqfy funds including the Environmental one, which used to be devoted to the protection of the environment. It was charged to invite the public to give as charitable and to provide financial resources to the fund. These kinds of invitations take place through the brochures, during the Friday prayer, the media, or in the KAPF siege. Until the public contributes in financing the fund, KAPF provides the necessary resources for the establishment and function of these Funds. These resources come from the income of general Waqfs, where Waqifs did not indicate any specific purpose, or if the Waqif’s statement is unknown.

The Health Waqfy Fund is in charge to call for the establishment of environmental Waqfs. Including the environmental Waqf into the Health Waqf seeks to unify the efforts and resources of both fields beside the handicaps and the special needies,

87 Id., at 5.
89 Statute and Executive Rules of the Waqfy Funds, supra note (86) at 5.
90 The Statutes of the Waqfy Funds, supra note (86) art. 9.
to present a considerable financial power, able to execute effective environmental protection regarding the serious and expensive environmental threats.

Both national and international environmental organizations should support the efforts of the Health Fund by maintain the environmental awareness among the employees of the fund. In the national level, organizations such as the Kuwait Organization for Environmental Protection, and on the international level, organizations such as the “World Conservation Union” IUCN should fill in this mission. Moreover, these organizations should be listed as beneficiaries of the incomes of the Health Fund. The Kuwait Regional Organization established by the Kuwait Regional Convention of the Protection of the Marine Environment in the Gulf of 1978, is one of the beneficiaries that received a considerable financial aid from the Health Fund to support its environmental task, especially that most member states in the organization do not pay their financial dues.

A pure environmental Waqf case was witnessed in Syria and deserves to be mentioned here, based on the will of the Waqifs, and in response to the increased number of unwanted animals, two Waqfs on cats and unwanted riding animals were established in Damascus.  

2) The Powers of the Administrator and Qadi to Direct the Income into Environmental Protection

The administrator is bound by the Waqif’s statement. If the Waqif includes the environmental protection in the statement the administrator is obliged to follow such requirement and spend the incomes into the protection of the environment. Some times the Waqif states that temporary goals should be served by the Waqf, such as the completion of the education of certain person, or the extinction of his descendants. Once these goals were achieved and neither the Waqif nor his descendants are alive, the administrator, under the supervision and approval of the Qadi, will have to direct the income into similar goal to the one requested by the Waqif, unless there is an environmental emergency requiring the unification of the financial resources in the society. Some times the degradation of the environment may encourage the administrator
to direct the incomes into the protection of the environment. For example, when a nuclear pollution, marine pollution, or chemical pollution took place in a developing country, where the State refrain from funding the cleanup operations, such as the environmental situation in Iraq after Iraqi Freedom military operation, here it become imminent that the liberty of the administrator should be limited and the incomes should be directed to fund the cleanup operations and support the environmental rehabilitation.

Moreover, the environmentalist administrator would manage the Waqf in an environmentally friendly way. For example, to function the machineries of a Waqfy factory, the environmentalist will use unleaded fuel rather than leaded one. Similarly, to protect the factory, the environmentalist would plant trees rather than building a fence around it.

The role of the Qadi is to assure that the administrator is following the statement of the Waqif and that he is not ignoring such statement or the real needs of the society or the environment. However, the role of the Qadi is not that effective as long as the administrator fulfilling his task, and the Qadi is not managing or investing specialized. Therefore, in the Environmental Waqf, it is highly recommended that Environmental Courts be established to examine environmental matters from one hand, and to supervise the administration of the administrator in the environmental Waqfs from another hand. In environmental Waqf, the Qadi assures that the administrator fulfilling his mission of the environmental protection, and that his liberty is not misused. The Qadi should not allow the administrator to green a polluted area before cleaning it up, and assure that the clean up procedures taking place as they presumed, which can only be done be specialized, such as environmental judge.

In the environmental Waqf, both the administrator and the Qadi should obtain a minimum of environmental awareness, and should consult and cooperate with scientists and lawyers in the environmental field. Practically, in the Islamic World, the State is being charged with the administration of Waqfs. Different departments and administrations are in charge of the Waqfs. KAPF is charged to administrate all Waqf properties in Kuwait. According to the Administrative System of KAPF, the role of both

\[91\] *Id.*, at 8.

the administrator and Qadi were abolished. The administration of each Waqfy Fund proceeded by Administrative Council composed of number between five and nine members chosen by the Minister of Awqaf for a mandate of renewable two years.\textsuperscript{93} The Members of the Council choose one of them as president and another as vice-president.\textsuperscript{94} This new reform gives the possibility to pass over the absence of environmental court, by including at least one environmentalist among the members of the Administrative Council, which will fill in – to certain limits- the role of the environmental Qadi.

3) The perpetuity, irrevocability and inalienability of Waqf

Waqf is recognized by most of the Muslim jurists as perpetual irrevocable,\textsuperscript{95} and inalienable.\textsuperscript{96} The Perpetuity of the Waqf means that it lasts as long as the corpus itself, where the ownership of the corpus does not belong to the Waqif anymore, but to God instead.\textsuperscript{97} Irrevocability means that once Waqf is established there is no right for its denunciation. Irrevocability seeks the stability of the Islamic society, where beneficiaries cannot live threatened by being prevented any moment from the Waqf’s income only because he decided to denounce his Waqf. The inalienability prevents Waqf from being subject to any sale, disposition, mortgage, gift, inheritance, attachment, or any alienation whatsoever.\textsuperscript{98} However, Waqf corpus may only be exchanged for equivalent property, or it may be sold according to the Qadi grant, to achieve the Waqf goals.\textsuperscript{99} Perpetuity irrevocability and inalienability provides stable circumstances that allow the administrator to better protect the corpus, and assure an acceptable level of environmental protection to maintain the property's productivity. Accordingly, corpus should not be affected by the temporary circumstances of the administrator such as traveling, sickness,

\textsuperscript{93} The Statutes of the Waqfy Funds, \textit{supra} note (86) art. 3.
\textsuperscript{94} \textit{Id.}, art. 3.
\textsuperscript{95} Abu Hanifa, to whom the Hanafi school was named, held a Waqf to be revocable. Some of his disciples, Abu Yusuf and Shaybani, oppose to his opinion. Cattan, \textit{supra} note (25) at 206, 07.
\textsuperscript{96} \textit{Id.}, at 208.
\textsuperscript{97} \textit{Id.}, at 208.
\textsuperscript{98} \textit{Id.}, at 208.
\textsuperscript{99} \textit{Id.}, at 208.
accidents or handicap, and in case of his incapability, the Qadi will be charged to replace him by another capable administrator.

Once the Waqf achieved its purposes, it does not expire, however it becomes more flexible and the administrator would have more liberty of choice. For example, in the family Waqf (Dhurri or Ahli), after the extinction of the Waqif’s descendants, and in the charitable Waqf (khairi), after satisfying the charitable purpose, the administrator will have more liberty, under the supervision of the Qadi, to direct the Waqf’s income and to indicate the best new charitable purpose of the Waqf. Accordingly, the Waqf may be directed to serve the protection of the natural environment, especially when environmental catastrophes or other threats took place. Some scholars confirm this liberty in condition that the new purposes of the Waqf should be as close as possible to the original ones.\textsuperscript{100}

4) The duties of the administrator:

The administrator is not a new owner of the Waqf, but only vested the right to administrate it.\textsuperscript{101} He has to administrate under the conditions of the Waqif instrument.\textsuperscript{102} For example, if the Waqf is an agricultural land, the administrator should plant, care and harvest with diligence to assure the best productivity and permanency of Waqf. This care and protection of the land provide real environmental protection to the natural environment, where land under the care of the administrator should be environmentally saaver than lands under the protection of their owners, because the first is supervised by the Qadi, however, the latter is not, and when you work under supervision you have to do your best. Moreover, the beneficiaries of the income and usufruct may bring any loss to the Qadi's attention.

The administrators provide better care and protection to the Waqf because they are paid by the income of the Waqf, which should not exceed, in any case, more than ten percent of the Waqf’s income. The major factor of such extraordinary protection based on

\textsuperscript{100} ABDUR RAHIM, THE PRINCIPLES OF MUHAMMADAN JURISPRUDENCE 305 (Madras, 1911), cited in Id., at 207 fn. 3.
\textsuperscript{101} Id., at 208.
\textsuperscript{102} Id., at 204.
the fact that the administrator is caring, protecting and serving the property of God to whom the corpus belong. Consequently, Muslim administrators, as believers in God, should care, protect and serve Waqf to be productive, environmentally safer and suite God's highness. Therefore, it is inappropriate to see black smoke coming from tall chimney installed over a factory that is Waqf, built by the Waqf incomes or Waqf income present a percentage of the property. It is neither suitable to witness dead fishes in a lack entitled as properties of God. In view to assure that Waqf property should put environmental protection as a priority, in 1992, KAPF established Waqf company, Kuwaiti Company for the Environmental Services, mainly focus on the cleaning services. Moreover, the KAPF is preparing a project to treat mosques sewer in view to use it in watering the mosques plants. Finally, KAPF is charged, beside building and maintaining mosques, to green their yards as well.

The State is required in some properties, such as the historical and cultural heritage, to administrate the waqf directly, because it’s duty to assure the protection of such properties, which do not belong to certain individual or generation.

Administrators should fight over assuring that surrounding environment beyond the Waqf property is safe as well, to assure the safety of their Waqf. In Saudi Arabia, a court examined a case presented from an administrator against the Saudi Company of Electricity. In this case, the company installed high voltage electricity cables over a Waqf farm, which affected the value and productivity of the Waqf. The company was between the choice of compensating the administrator or removing the cables from their actual location.

It is always possible that some exceptional circumstances which “could not been anticipated by the Waqif may arise in course of time and necessitate the modification of

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103 Verbal interview between the author and Mr. Al-Motawa'A, the Chief of the Legal Department in KAPF, June 8, 2003, [hereinafter A-Motawa'A].
104 Id.
105 Id.
the original terms of the Waqf instrument.” These circumstances cannot be used as excuse to abrogate the original condition established by the Waqif unless they were qualified as fundamental and under them the beneficiaries cannot or will not be able to use their shares. For example, a presumed charitable or family Waqf experienced a catastrophic environmental disaster, such as the environmental destruction resulted from the atomic bombs in Hiroshima and Nagasaki, or the environmental threat resulted from Chernobyl accident, would the Waqf’s income still continue to be distributed to the beneficiaries, or should overpass the instrument guidance, and directed the income to offer the beneficiaries an environmental protection assuring their surveillance. The second choice will predominant, and will be supported by the beneficiaries themselves, the Qadi, and even by the Waqif himself if he is alive. Therefore, the Waqf should be adapted and adjusted to face the new situations, the changing circumstances, in view to help the beneficiaries to benefit from their future shares. It would be noted that once the exceptional threats were eliminated, the environment was rehabilitated, and the beneficiaries became capable to enjoy their shares in healthy environment, the income should be distributed to the original beneficiaries.

5) The judge’s supervision over the administrator:

108 Cattan, supra note (25) at 210.
109 The most flagrant environmental effect of the two bombs dropped over Hiroshima and Nagasaki during the World War II “the leukemia is the most radiogenic of the cancers following exposure to ionizing radiation. The leukemia excess is the first to appear [among civilians] (with a latency period of three to seven years), and it appears in the greatest excess among the cancer excesses 40 years after exposure. In other words, the Japanese studies show other cancer excesses occurring in smaller, yet observable, amounts.” See, ITSUZO SHIGEMATSU & ABRAHAM KAGEN eds., CANCER IN ATOMIC BOMB SURVIVORS 67 (Plenum Publishing Corporation, 1986). See also, Gerald Woodcock, M.B.A. & Michael R. Fox, Ph.D., Hanford and Public Health: No Cause for Alarm, 31 GONZ. L. REV. 69 (1995-96).
110 The most flagrant environmental effects of the Chernobyl accident are that tons of radioactive uranium and graphite were released into the atmosphere. Seventy percent of these emissions descended on the people, animals and crops of Belarus. Thirty-one people working at or in the immediate vicinity of the plant died, twenty-nine of them from radiation sickness. Levels of thyroid cancer among children in the vicinity of the Chernobyl nuclear reactor had risen to eighty times higher than the normal rate. More than 30,000 acres of farmland in Russia, Ukraine, and Belarus have been abandoned and 70,000 square kilometers are radioactive. See, Jeffrey L. Canfield, Soviet and Russian, Nuclear Waste Dumping in the Arctic Marine Environment: Legal, Historical, and Political Implications, 6 GEORGETOWN INT’L ENVTL. L. REV.353, 382 (1994); THOMAS, supra note (63) at 53; Chernobyl, The Soviet Report, Nuclear News (Special), Sept. 11, 1986, at 1, cited in Lakshman D. Guruswamy & Jason B. Aamodt, Nuclear Arms Control: The Environmental Dimension, 10 COLO. J. INT’L ENVTL. L. & POL’Y 267, 318 fn. 200 (1999); Gina Kolata, A Cancer Legacy From Chernobyl, N.Y. TIMES, Sept. 3, 1992, at A6.
111 Cattan, supra note (25) at 210.
The Qadi has supervision right over the administrator, in the appointing phase, during the care of the Waqf, and even during its extermination.

First, the Qadi has the right to appoint the administrator if the Waqf’s instrument neglected such procedure.\(^{112}\) To occupy a judiciary position, such as Qadi, requires special talent especially in solving the society differences. In examining cases, the Qadi may consult experts in each field including the environmental field. Appointing an administrator will base on the experience of each candidates in the necessary fields, business management, trade, or environment, in view to choose the most capable one to protect and care the Waqf. For example, an agricultural expert should be appointed as administrator for and agricultural land and architecture to care a building. Such advised choice will necessarily reflect on the job that the administrator will do, and finally will offer a safer environment. This step of supervision will not be available if the Waqif already appointed his administrator or indicated the procedures of appointing his successor.\(^{113}\) However, the Qadi will always maintain his right to supervise the job of the administrator, whether he was appointed by him or by the Waqif.

Second, the Qadi has the right to supervise the administrator after being selected. The judge has the right to take the necessary measures, including the right to replace the administrator, whenever the administrator proves to be unqualified to manage the Waqf. Some Islamic national legal systems declared that administrators not only could be replaced, but also accountable before the Qadi for their administration and liable for negligence.\(^{114}\)

Finally, when the administrator decided that the corpus is not any more productive, he can, under the supervision of the Qadi, exchange it with another productive corpus. Once the Waqf become unproductive, and do not cover the needs of the beneficiaries, the administrator should exchange it with another corpus, from the same value, and able to continue the Waqf goals. This transaction needs to be approved by the Qadi, who shall verify that the productivity of the original corpus does not cover

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\(^{112}\) *Id.*, at 204.

\(^{113}\) *Id.*, at 204.

\(^{114}\) The Lebanese Law of Waqf Dhurri, *supra* note (57) art. 14.
the needs of the beneficiaries, that the new corpus is the right choice, and that both corpuses are from the same value.

6) The goals of the Waqf:

The incomes of the Waqf are always directed to serve charitable objects, whether presently or ultimately. In the charitable Waqf the usufruct and the income are directed to serve the needs of the society as indicated by the Waqf’s instrument. Similarly, the family Waqf is directed in the long run, especially after the extinction of the Waqif’s descendants, to serve the same purposes. Fighting, maintaining and rehabilitating the natural environment in the course of the increasing number of pollution sources are one of the main services that charitable Waqf should render to our society. And since the Waqif “has full latitude regarding the conditions that he may prescribe for the operation of the Waqf,” it would be necessary to increase the awareness of the environmental protection and the role that may be played by the Waqf to achieve such protection.

Up to date no donor ever came to the KAPF asking to donate his property as environmental Waqf, because they donate their property seeking God’s acceptance, and that acceptance cannot take place only by building and maintaining mosques. KAPF representatives cannot convince the new donor of the importance of the environment because there exists two other competent fields beside the environment to market; health and handicaps and special needies. The most important lacuna in KAPF environmental mission is that they do not have environmental personnel capable to convince the new donors of the importance of the environmental Waqf. In KAPF they believe that donating the Waqf for specific cause, whether the environment or other fields, tie their hands, where only this cause should be served by the income of the Waqf. For example, according KAPF, serving the environment is not permanent cause, where all the environmental problems au course of the time, may be solved whether after one or two hundreds years from now. The achievement of the environmental cause will prevent them

115 Cattan, supra note (25) at 210.
116 Id., at 210.
118 A meeting with Mrs. Lina Al-Motawa’a, Director of the Health Fund in KAPF, Aug. 7, 2002.
from spending the income of this Waqf to any other present or future causes. Therefore, they prefer convincing donors to donate their properties for “Omom Al-Khairat” “general benefits” of the society, which include environmental protection as well.

7) The Development of the Waqf’s System:

As a tradition, Waqf was subject to number of modifications that seek adapting its function to the needs of the society. For example, the Waqif’s power to impose conditions and codify the rules and function of his Waqf, created unpopular conditions, and dissatisfaction climate within the society. Accordingly, some national legal systems faced such problem and limited Waqif’s power. In Egypt, a new law modified the traditional system of Waqf, where perpetuity and irrevocability were abolished from the Waqf Dhurri. Accordingly, only the charitable Waqf, based on the Waqif option, can be perpetual or temporary, and family Waqf must be established for a certain period of time, which not exceeding sixty years or for the benefit of no more than two generations. Moreover, the Waqif was given the right to revoke his Waqf, in wholly or partially, and to modify its conditions. Other modifications were introduced on the Waqf system of Egypt by summer of 1952, to completely abolish non-charitable Waqf.

Another reform to the tradition of Waqf took place in Lebanon. The characters of perpetuity and irrevocability were discarded by the law of March 12, 1947. According to Article 7 of the Lebanese law concerning the Waqf Dhurri Waqif was granted “[without abrogating to the present law, the right to revoke the whole or part of his Waqf Dhurri, change the beneficiaries, and its condition]”. Two generation was the maximum period of time for the duration of the Waqf.

119 Cattan, supra note (25) at 211.
120 The Egyptian Law No. 48/1946, supra note (71).
121 Id., art. 5.
122 Id., art. 5.
123 Id., art. 11.
124 See, Id.
125 The Lebanese Law of Waqf Dhurri, supra note (57).
126 Id., art. 7.
127 Id., art. 8.
Similarly, a Syrian Legislative Decree was issued in 1949, abolishing the Waqf Dhurri.\textsuperscript{128} Accordingly, the legislator eliminated unpopular conditions from the Waqf in Syria. However, the legislator introduced other unpopular conditions over the Waqf system. For instance, when dissolve the mixed Waqf (partly Dhurri and partly charitable), if it is undivided it should be sold in public auction and “in the case of Waqf Dhurri, where the right of charitable objects is contingent upon the extinction of the Waqif’s descendents, five percent of the proceeds shall be appropriated to such charitable objects, ten percent is allocated to national defense, and the remainder distributed among the beneficiaries.”\textsuperscript{129} It is remarkably that the national security has to do nothing with the Waqif’s statement and nothing with the beneficiaries. Therefore, it would be also accepted if a certain percent would be dedicated to the interest of the natural environment, which will indirectly serve the beneficiaries.

In 1993 KAPF was established as an independent public authority.\textsuperscript{130} One of the fruitful of this foundation is the establishment of Waqf funds, which are directed to serve the society needs. Recently, and after the environmental destruction caused to the region by the Iraqi invasion to Kuwait, an environmental fund was established to support the efforts environmental protection at Kuwait. However, the abstention of the donors to establish environmental Waqf supports the idea of unifying the health fund, special needies fund and the environmental fund. This unification did not affect the environmental activities of KAPF. For example, the Regional Organization for the Environmental Protection of the Gulf was one of the beneficiaries of this fund, caring and greening the mosque yards and Kuwait school,\textsuperscript{131} supporting the project of a tree for each student,\textsuperscript{132} funding local environmental organizations, such as the Kuwaiti Diving Team,\textsuperscript{133} and the publishing of environmental books. KAPF accept both movable and immovable donations for Waqf. It starts to buy companies stocks which allow KAPF to be partner in such companies, such as Dar Al-Istithmar "The Home of Investment".

\textsuperscript{128} The Syrian Leg. Decree No. 76, supra note (58) art. 5.
\textsuperscript{129} Cattan, supra note (25) at 221.
\textsuperscript{130} Marsoom Ensha’a Alamanah Ala’amah Lilawgaf Ragom (257) Lisanat 1993 [Decree Establishing the Secretariat General of the Awqaf No. 257/1993][hereinafter Decree Establishing the Secretariat General for the Awqaf].
\textsuperscript{131} Annual Report of 2001 of KAPF, supra note (88) at 30.
\textsuperscript{132} Id., at 30.
Partnership between KAPF and other company means partnership between God and individuals, which requires that KAPF enforce its policy, especially environmental policy, over the management of the company. Therefore, if the company used to cause environmental pollution or illegally dump hazardous wastes, such practices should cease starting from the date of the effective partnership.

The Waqf System can extend its capacity, by imposing a sort of international order over States’ relationship. Waqf can support international organizations in view to minimize their financial dependence over States which connect between financial support and the threat of their own interests. Assuring the independence of international organizations, such as the UN will assure the maintenance of the international public order.

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Conclusion

Muslims seek the acceptance of God and living in a society that focus on the idea that only building and maintaining mosques is the most assured way to God's acceptance, will increase donation for building and maintaining mosques. Therefore, mosques are located in each three four blocks, and they are mostly luxuries. Donors go beyond Islamic World, building mosques in other countries. There are no such need for building mosques, because the number of mosques in Islamic World exceeded the necessary number of Muslims, where in some times of the day prayers you can see the mosque semi-empty.

It would be necessary to market for environmental Waqf, especially that natural environment is under daily attacks in time of peace, where military maneuvers and industrial factories spread their threats in the air land and water bodies, and in times of armed conflicts, where Saddam Hussein, for two consecutive times, in 1991 and in 2003, used the crude oil and the explosion of oil wells as a weapon. Waqf resources should be directed into supporting the environmental efforts, extinguishing oil well fires, protecting coral-reefs and protecting areas, supporting scientific experiments in environmental fields and rehabilitating damaged water bodies.

The only way to benefit from such financial support is by increasing the environmental awareness of both the authorities of Waqf Administrations and the donors themselves. It is highly recommended to convince the donor that donating in favor to the environment is as holly as building a mosque. And to assure that employee in national establishments of Waqf do their homework by providing the actual environmental risks and threats and to deliver the real image of the importance of the environmental Waqf and the results of such donation.

Waqf establishments in Islamic World obtain a tremendous amount of financial resources that can even finance the countries. But there should be a legal and Islamic base for such support. Therefore, it would be environmentally useful is certain number of Muslim scholars focus in a study on the importance of environmental donation, and comparing between the favor of building a mosque and the favor of cleaning up the environment.
Unfortunately, foreign bodies cannot benefit from Waqf financial resources unless they are located in the same country where the Waqf is located. However, Kuwait Regional Organization for the Protection of the Marine Environment, which is located at Kuwait, was supported by the KAPF despite it presents all the countries of the Kuwait Regional Convention of the Marine Protection. Similarly, IUCN can benefit from such resources by using the Arab Region Centre for Environmental Law (ARCEL). ARCEL can benefit from financial support of KAPF in environmental law development only because it is located in Kuwait.

Hopefully, one day the dream come true and there will be no more environmental problems, so KAPF freeze all environmental support because the environmental needs were satisfied.
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