

Islamic Finance as a Strategic Mechanism for Bolstering Food Security in the Middle East¹

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Abstract

Middle Eastern states have an opportunity to promote sustainable food security, further Millennium Development Goals, and advance the objectives of *Shari'ah* (*maqāṣ id al-Shari'ah*) by adopting strategies employing Islamic financing and investment structures to build regional food production capacity. The global food supply is fragile, owing to increasing demand, unbalanced stock-to-use ratios, poor stock management, and other factors. Middle Eastern states have attempted to secure food supplies through overseas land acquisitions fraught with legal and political uncertainty, and by other means. But these states have yet to employ the full complement of mechanisms available to address food insecurity. Islamic Finance is a mechanism through which Muslim-majority countries generally, and Middle Eastern states specifically, can bolster food security through *Shari'ah*-derived domestic and cross-border strategies that facilitate investment and regional production capacity building. This paper discusses the compatibility of *maqāṣ id al-Shari'ah* with the principles of sustainable food security and proposes the utilization of Islamic principles and financing and investment mechanisms to bolster regional food security in the Middle East.

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Introduction

Food insecurity is a global threat. The nature of food and the means of food production make food insecurity a uniquely complex problem, with social, political, economic, and ethical dimensions. Any serious efforts to achieve long-term sustainable food security must reflect and respond to the complexities of the problem.

According to the Food and Agricultural Organization of the United Nations (FAO), “in order to feed a population of more than 9 billion [the projected world population in 2050] and free the world from hunger, global food production must nearly double by 2050.”³ Competition for food resources and the means of food production is increasing, without commensurate rises in supply. Owing to population growth, increased food purchasing power and demand in emerging economies, climate change, land degradation, price volatility, and other factors, the global food supply-demand imbalance is expected to widen over time. The world’s governments have taken note. Acting independently and multi-laterally, they have devoted significant resources to assess the food insecurity threat, and have taken steps to mitigate the risk. As yet, however, no comprehensive solutions are in sight.

The Middle East is particularly susceptible to food insecurity.⁴ While the region does not face any foreseeable near-term threat of famine or widespread malnutrition,⁵ the region

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³ See *The Global Food Equation, Food security in an environment of increasing scarcity*, DEUTSCHE BANK RESEARCH, September 21, 2009, 15 [hereinafter “DEUTSCHE BANK”].

⁴ In this paper, the Middle East includes the countries of the Middle East and North Africa and member states of the League of Arab States outside of that geography as commonly demarcated.

⁵ Notably, however, that the region’s malnutrition rates are strikingly high relative to its income levels. See, e.g., Ruslan Yemstov, *The Global Food Crisis: Global Perspectives and*

lacks the means to produce adequate food supplies due to water scarcity, insufficient arable land, and man-made hurdles such as agricultural land and crop misallocation, under- or sub-optimal utilization food production means, inadequate investment in agricultural production, poor stock management, and other factors.

By 2030, the combined population of Arab countries is expected to grow to 439,453,000 million.⁶ According to the World Bank, the Middle East imports fifty percent of its food.⁷ “High food prices and international market volatility mean domestic agriculture has taken on strategic importance in all the food producing countries in the region. Non-food producing countries, such as member states of the GCC, are looking at ways of securing land in third party countries to produce part of their food needs.”⁸

At the country level, Middle Eastern states have attempted to address food insecurity risks through food subsidies, export bans, price controls, and other policy measures, as well as by acquiring rights to farmland overseas. To temporarily bolster locally-sourced food supply, food exporting countries like Egypt, Yemen, and Djibouti have imposed export restrictions.⁹ In Egypt, Morocco, Tunisia, Djibouti, and Yemen, food affordability, in response to price shocks, has been addressed through subsidies or price controls.¹⁰ Other avenues, such as acquisitions of long-term agricultural land use rights overseas, have also been traveled by Arab governments, particularly GCC states, which lack the arable land and water resources necessary to produce food sustainably.¹¹

Impact on MENA, Fiscal and Poverty Impact, World Bank [hereinafter “YEMSTOV”] and *Economics of the Arab Awakening: From Revolution to Transformation and Food Security*, International Food Policy Research Institute (IFPRI) Policy Brief 18, May 2011.

⁶ *The Future of the Global Muslim Population*, PEW RESEARCH CENTER, FORUM ON RELIGION AND PUBLIC LIFE, January 2011.

⁷ *Agriculture & Rural Development in MENA, Sector Brief*, World Bank Group.

⁸ *Id.*

⁹ YEMSTOV, *supra* note 5

¹⁰ *Id.*

¹¹ Saudi Arabia embarked on an ambitious government- mandated and funded effort to achieve self-sufficiency in key food staples and succeeded, but at a high cost to government coffers and scare water resources. According to the Saudi Arabian government, the Kingdom built its first grains silos in 1978, and in 1984, became wheat self-sufficient. Following that, Saudi Arabia became a wheat exporter, and achieved self-sufficiency or exponential production increases in meat, dairy, and non-wheat grain (e.g., barley). *See Agricultural Achievements*, ROYAL EMBASSY OF SAUDI ARABIA, Washington, D.C. Saudi Arabia spent between SR60bn-70bn to subsidize wheat production over the “long term” and significantly depleted water resources. Recognizing the cost and resource expense of the self-sufficiency program, the government has announced that Saudi Arabia will phase out wheat production

Between 2006 and 2009, Arab governments, government-owned companies, and private entities (primarily in the GCC) were particularly active in acquiring agricultural land overseas. According to one compilation, 49 agricultural land deals and land-related investments were initiated or concluded between 2006 and 2009. Of those 49, 21 (45%) involved Arab countries (most by governments with a sprinkling of private companies) as investors.¹² The countries involved in these transactions were Saudi Arabia (five), the United Arab Emirates (four), Qatar (three), Bahrain (three), Kuwait (two), Libya (two), Jordan (one), and Egypt (one).¹³ The majority of these investments were made in Africa and Asia, and eleven of the 21 were made in majority Muslim countries.¹⁴ This data is illustrative, and reflects only a fraction of overseas agricultural land investments that are understood to have been made by Arab and non-Arab states and private parties in recent years.¹⁵

Acquisitions of overseas land and land-use rights by Arab and other parties have not been without controversy.¹⁶ They have been characterized as “land grabs”—modern scrambles for resources reminiscent of nineteenth-century colonization. The terms of these land acquisitions and their details are often, if not always, undisclosed. This opacity has fueled suspicion that the deals are opportunistic usurpations of scarce resources by relatively wealthy countries at the expense of relatively poor nations, their small farmers, and their populations generally. The controversy surrounding land acquisitions raises questions not only about their nature, but about their long-term viability as a means of securing food supply sources.

by 2016. As a result, the Kingdom will again become a major wheat importer. *See Saudis to phase out wheat production*, FINANCIAL TIMES, April 11, 2008.

¹² *Land Grabbing by Foreign Investors in Developing Countries: Risks and Opportunities*, IFPRI POLICY BRIEF 13, APRIL 2009, INTERNATIONAL FOOD POLICY RESEARCH INSTITUTE [hereinafter “IFPRI 13”]. This report was compiled using media reports and the publisher was able to confirm the accuracy of the media reports.

¹³ *Id.*

¹⁴ *Id.* The Sudan (seven), Egypt (one), Turkey (one), Mali (one), and Pakistan (one).

¹⁵ For example, it is known that Qatar has invested in farmland in Australia. *See, e.g., Qatar land grabs angers bush*, *infra* note 18.

¹⁶ Numerous reports scrutinizing “land grabs” have been critical of the practice. And land acquisitions have been received with hostility in various jurisdictions. For example, the acquisition by Qatar of farmland in Australia has sparked controversy. *See Qatar land grab angers bush*, THE AGE, June 19, 2011. In Madagascar, a proposed land acquisition by South Korea triggered political unrest, leading to the eventual ouster of Madagascar’s president and the cancellation of the transaction by his successor. *Madagascar’s new leader cancels Korean land deal*, THE TELEGRAPH, March 18, 2009.

At the practical level, acquisitions of land use rights to produce food exclusively for the benefit of acquirer countries pose significant legal and political risk. It is not difficult to envision scenarios in which crop or other yields generated by overseas agricultural lands would be wholly or partially expropriated, subjected to export bans, or otherwise frustrated, particularly in events of local or global food shortage and political or social unrest. Think tanks and other research and watch-dog organizations have called for the regulation of overseas investments in agricultural lands. The International Food Policy Research Institute, for example, has suggested that investors should refrain from exporting crop yields in the case of food shortage in the host country.¹⁷

The governments and companies that invest in agricultural lands overseas can, and likely have, put into place agreements to achieve optimal commercial terms and protect their legal rights. But under extraordinary circumstances, these agreements and the arrangements they memorialize will unlikely be sufficient to overcome the very real political and social tensions that surround food, agricultural land, and the reality or perception of exploitation associated with overseas agricultural land investments. In worst case scenarios, Arab governments and other investors in overseas agricultural land might find themselves with recourse only to damages, and without access to the crop yields that are the basis of their bargains with foreign governments.¹⁸ As a matter of high national policy priority, Arab governments must pursue food security solutions that are economically, politically, socially, and ethically sustainable.

None of the policy or other measures taken by Arab states effectively address food insecurity comprehensively or at its root. At the regional level, Arab governments have yet to take concrete coordinated steps to combat food insecurity. This comes as no surprise and is likely a symptom of a broader phenomenon in the Middle East, which is that Arab states trade more with countries outside of, rather than within, the region.

The Case for a Regional Food Security Strategy

As the food supply-demand imbalance widens over time, the difficulties and risks associated with food security likely will intensify in the Middle East, unless effective coordinated action is taken now. The World Bank has stated that “there is no way around the reality that MENA countries will need to buy a significant- and increasing- share of their food on international markets” and has suggested that “the key is to manage this exposure in new

¹⁷ DEUTSCHE BANK at 15.

¹⁸ Indeed, it is understood that in most cases, agreements for the outright purchase or long-term lease of agricultural land overseas are made with host nation governments without the participation or input of farmers or other segments of local populations that are dislocated or otherwise affected by land acquisitions. See, e.g., *From Land Grab to Win-Win Seizing the Opportunities of International Investments in Agriculture, Economic and Social Perspectives Policy Brief*, FOOD AND AGRICULTURAL ORGANIZATION OF THE UNITED NATIONS, June 2009.

and innovative ways to reduce the potential for food prices shocks without going bankrupt in the process.”¹⁹ These statements highlight the regional food insecurity problem. But the gravity of the long-term food insecurity threat to the Middle East requires much more than management of exposure to international markets. It requires bold coordinated action that addresses regional food security at its root by leveraging the collective resources of the region to lessen exposure to global market risk. It is in the best interest of Middle Eastern states to identify and pursue means of bolstering food security that not only are commercially and legally viable, but also are politically and socially acceptable and ethically sound.

The political, social, cultural, and historical ties that bind the Middle East favor the pursuit of a regional food security strategy, as do the geographic, demographic, and economic disparities that exist between the countries of the region. As recent political uprisings show, major events in even one Arab country have the potential, and in significant instances the likelihood, to produce similar or follow-on events in others. Food insecurity, if it intensifies in the region or any of its major countries without remedy, has the potential to impact the other countries of the region, whether in the form of migration for employment, social and political unrest, or the need for food and other aid from neighboring states.²⁰

Bolstering regional food production capacity and supply in a coordinated fashion also would serve as a defensive measure, to the extent that Middle Eastern states lessen the need to compete for food in the global marketplace. Beyond practical concerns, the Middle East, for the sake of its development, has a fundamental interest in creating conditions in which its inhabitants live in an environment that is conducive to productivity and progress in all spheres. No single issue is more essential to the creation and long-term maintenance of such conditions than is food security.

The nations of the GCC, while natural resource and cash rich, desperately lack the arable land, water resources, human resources, and agricultural experience and know-how necessary to produce food sustainably and at appreciable levels. By comparison, the relatively natural resource poor countries of the region, including Egypt, the Sudan, Algeria, Morocco, and the countries of the Levant, individually and together possess the agricultural land, climate conditions, human resources, and agricultural experience necessary to produce food in appreciable quantities, and in any case at higher output levels. But this latter group of

¹⁹ *Food Security in the Middle East and North Africa*, interview with Julian Lampietti, Lead Rural Development Sector, World Bank, April 2009.

²⁰ GCC member states, which rely heavily on expatriate labor, have a clear and immediate economic interest in ensuring food affordability and balance of overall cost-of-living to income ratios among expatriate residents, who, with the exception of Saudi Arabia, Oman, Bahrain, significantly outnumber, or in the case of Kuwait, are nearly equal in number to, native residents.

countries has yet to realize their agricultural production potential for a number of reasons.²¹ As a region, the Middle East has not pursued its potential to sustainably bolster regional food security by marshaling the region's collective monetary, natural, and human resources for the long-term benefit of its inhabitants.²²

The Role of Islamic Economics and Finance

Islamic Finance is a burgeoning financial services segment that is expected to continue to grow in volume and expand geographically. Current accepted estimates indicate that the

²¹ For example, in Egypt and Morocco, farmers account for 60% of the poor, but earn only 40% of their income through farming. YEMSTOV, *supra* note 5.

²² Indeed, in some cases, measures taken by some Arab states could very well have a direct detrimental impact on the food security of other Arab states. It is well known that Arab states, including Saudi Arabia, Qatar, Kuwait, and the United Arab Emirates, have acquired agricultural land or land use rights in the Sudan (prior to the establishment of South Sudan as an independent nation). *See, e.g.*, IFPRI 13, *supra* note 12. These acquisitions, and those by non-Arab states and private parties could very well threaten Egypt's "ability to put bread on the table because all of Egypt's grain is either imported or produced with water from the Nile River, which flows north through Ethiopia and Sudan before reaching Egypt." Lester R. Brown, Op-Ed., *When the Nile Runs Dry*, N.Y. Times, June 1, 2011, § A, at 29 (explaining that "[t]he Nile Waters Agreement, which Egypt and Sudan signed in 1959, gave Egypt 75 percent of the river's flow, 25 percent to Sudan and none to Ethiopia. This situation is changing abruptly as wealthy foreign governments and international agribusinesses snatch up large swaths of arable land along the Upper Nile. While these deals are typically described as land acquisitions, they are also, in effect, water acquisitions. Now, when competing for Nile water, Cairo must deal with several governments and commercial interests that were not party to the 1959 [Nile Waters] agreement."). It should be noted that Egypt itself has acquired agricultural land and/or land-use rights in the Sudan. However, the use of Nile water in the case of agricultural production in the Sudan for Egypt's benefit entails very clearly different variables and consequences, where the ultimate beneficiary nation is one and the same. Moreover, land, water, and other resource use issues implicated by agricultural production by Nile Water Agreement member countries are matters that can be addressed among those parties within the frameworks of existing and future agreements. As for the Sudan, there is no publicly available evidence to suggest that the state or Sudanese farmers have realized appreciable net monetary, know-how, or other gains from foreign acquisitions or use of Sudanese land. The adverse consequences to some Arab countries caused by investments by other Arab countries amply illustrate the need for a coordinated regional food security strategy.

size of the Islamic Finance industry is USD 1.4 trillion, with the potential to reach USD 4 trillion within five years, assuming the current growth rate. Regardless of the exact size, value, or projections for the Islamic Finance industry, it is undisputed that the industry has grown tremendously in the past 30 years, and that demand will support its continued rapid growth.

Middle Eastern jurisdictions, such as Bahrain, Dubai, and Qatar, have invested significantly to position themselves as centers of Islamic Finance. Saudi Arabia, which offers relatively vast domestic retail and commercial opportunities, through private efforts and more recently with government support, is the early process of building its Islamic Finance industry. Egypt, the most populous Arab nation, has only recently taken steps to promote Islamic Finance (*e.g.*, through the recent promulgation of a sukuk framework), even though the first Islamic bank was established in Egypt nearly 40 years ago.²³ Outside of the Middle East, non-majority Muslim jurisdictions, most notably London and Hong Kong, have invested political, economic, and regulatory capital to position themselves as global Islamic Finance hubs.

Notwithstanding the impressive growth of Islamic Finance, common perceptions of its essence and practice are limited and often framed in one-dimensional terms of what Islamic Finance prohibits—*e.g.*, Islamic law prohibits interest (often described as *riba*)—and not in terms of the objectives of Islamic finance and economics, which broadly is the creation and multiplication of wealth, its productive use, and its allocation and distribution in the interest of mankind. The Islamic Finance industry, its stakeholders and proponents (including governments) have an interest in showcasing the fundamental principles, objectives, and potential real economy impact of Islamic Finance, and this can best be done in the development and social finance spheres, the purposes of which are compatible with the objectives of Islamic economics.

Advancing *Maqāṣid al-Shari‘ah* Through Food Security Investment

The need for ethics in food security investment is glaring. Ethics, as much as monetary, land, and human resources, will be essential to the long-term success of food security strategies, particularly those that span multiple jurisdictions. The infusion of and adherence to *maqāṣid al-Shari‘ah* in the pursuit of food security is one effective way to fill the ethics deficit, particularly in the Middle East.

The preservation of material wealth is a primary objective of *Shari‘ah*. Indeed, the leading classical scholars of *Fiqh (fuqaha)* and *uṣūl al-Fiqh (uṣūlīyyīn)* enumerated five categories of “essentials” that are preserved by Islamic Law, and which are accorded the

²³ Mit Ghamr Savings Bank, established in Egypt in 1963, was the first modern Islamic financial institution. Notably, the Islamic Development Bank was born of an Egyptian study presented to the Organisation of the Islamic Conference (OIC). *See, e.g.*, NAZIH N. AYUBI, *POLITICAL ISLAM: RELIGION AND POLITICS IN THE ARAB WORLD* 136-37 (Routledge 1991).

highest weight among the objectives of Islamic Law (*maqāṣid al-Shari'ah*)²⁴ as follows (in the order of importance): (1) the preservation of the religion of Islam; (2) the preservation of human life; (3) the preservation of progeny; (4) the preservation of the faculty of reason; and, (5) the preservation of material wealth.²⁵ According to modern scholars, these five “essential” objectives of Islamic law were established by Imam al Ghazali of the *Shafi'ite* school, and later adopted by classical scholars of the Malki and Hanafi schools of Islamic law.²⁶

In contextualizing the five “essentials” of *maqāṣid al-Shari'ah*, classical scholar Izz al-Din ibn Abd al-Salam’s commentary is helpful. He is reported to have written that “all legal rulings in the areas of jurisprudence are contained within” the following Qur’anic verse: “Behold, God enjoins justice and the doing of good, and generosity towards [one’s] fellowmen, and He forbids all that is shameful and that runs counter to reason, as well as envy; [and] He exhorts you [repeatedly] so that you might bear [all this] in mind.” (QUR’AN 16:90).²⁷ The point, essentially, is that Islam, as enjoined by the Qur’an and illustrated by the *Hadith* and *Shari'ah* interpretations, requires Muslims to act in service of the benefit of humankind, consistently with Islamic law. In other words, it is fundamentally Islamic—an act of “preserving the religion”—to utilize and protect worldly resources, including human life, progeny, the faculty of reason, and wealth. As stated clearly by classical scholar Sayf al-Din al Amidi in his defense of giving the highest priority to the preservation of religion,

²⁴ In this paper, the following terms are defined as follows: *Fiqh* is the “study and application of Islamic legal rulings as based upon detailed evidence; the corpus of practical legal rulings in Islam”; *Faqīh* (pl. *fuqahā*) is “a scholar of Islamic jurisprudence who concerns himself with the details of Islamic legal rulings and their legal bases”; *Maqāṣid* or *Maqāṣid al-Shari'ah* is the “higher objectives of Islamic law in general”; *uṣūl al-Fiqh* is “the principles or fundamentals of Islamic jurisprudence”; and, *Uṣūlī* (pl. *uṣūlīyyīn*) is a “scholar who devotes himself to the study of the principles of Islamic Jurisprudence (*uṣūl al-Fiqh*).” See *Glossary of Terms*, AL-RAYSUNI.

²⁵ AHMAD AL-RAYSUNI, IMAM AL-SHATIBI’S THEORY OF THE HIGHER OBJECTIVES AND INTENTS OF ISLAMIC LAW 22-25 (Nancy Roberts trans., The International Institute of Islamic Thought 2005) [hereinafter “AL-RAYSUNI”].

²⁶ *Id.* at 22-23. It should be noted that, with respect to the importance of the five “essentials”, there was some disagreement amongst influential classical scholars as to the ordering of the third and fourth categories, specifically whether the preservation of the faculty of reason should trump the preservation of progeny. *Id.* at 26. It should be noted further that with respect to the preservation of “progeny”, Hanafi school thinkers used the often referred to the preservation of “family lineage” or *nasab*, rather than “progeny”, although the terms appear to have been used interchangeably. *Id.*

²⁷ *Id.* at 31 (discussing commentaries on a book written by Izz al-Din ibn Abd al-Salam and attributing to him the statement that all Islamic legal rulings are “contained within” the quoted Qur’anic verse (*aya*)).

[w]hatever is intended to preserve the root of religion should be given priority over all else, since [the Islamic] religion’s aim and ultimate outcome is the attainment of eternal happiness in the presence of the Lord of the worlds. All other objectives, including the preservation of human life, the faculty of reason, material wealth and anything else, are in the service of this overriding interest. As God Almighty declares, ‘I have not created the invisible beings and men to any end other than that they may [know and] worship Me.’” (Qur’an 51:56).²⁸

An equally potent summation of *maqāṣ id al-Shari’ah* is provided by classical scholar Ibn Abd al-Salam, who explained that Islamic law and Islamic legal rulings have one central purpose, which is to promote human well-being. Specifically, he said to have stated:

All divine commands and prohibitions are founded upon the [pursuit of] benefit for human beings both in this world and in the next. God Himself has no need of anyone’s worship. He is not benefited by the obedience of the obedient, nor is he harmed by the disobedience of the disobedient.²⁹

In other words, those acts that promote and protect the well-being of mankind, by means that are compliant with *Shari’ah*, are not only encouraged, but required. This includes the creation and protection of wealth and its allocation in the service of the well-being of individuals, families, and society at large. The use of financial or investment structures that are Islamic in form but are by nature or in effect exploitative or otherwise unfair—intended or unintended—are not consistent with the spirit of *Shari’ah* and its objectives. The objectives of *Shari’ah* are inherently compatible with the objectives of development finance, social investment, and Millennium Development Goals, which, in principle, are designed to advance the well-being of mankind.

Food Security Waqf

The promotion of food security is fundamentally compatible with *Shari’ah* objectives and historical practice in Islam, as a matter of law and policy. Reverence for agricultural endeavor and ethical practices in agricultural production and distribution are not unknown in Islam, and a few examples from *Hadith* are sufficient to make the point briefly. According to a narration of Anas bin Malik (ra), the Prophet Mohammed (pbuh) said: “There is none amongst the Muslims who plants a tree or sows seeds, and then a bird, or a person or an animal eats from it, but is regarded as a charitable gift from him.”³⁰ The Prophet Mohammed

²⁸ AL-RAYSUNI at 23 (discussing the contribution of *uṣūlī* Sayf al-Din al-Amidi to the development and refinement of the five “essentials” of *Maqāṣ id*).

²⁹ *Id.* at 32.

³⁰ SUMMARIZED SAHIH AL-BUKHARI (Arabic-English) 505 (Muhammad Muhsin Khan, Darussalam, 1st ed. 1996).

(pbuh) was equitable in contracting for food and the means of food production. Narrations of *Hadith* indicate also that while the Prophet (pbuh) was believed to have preferred the giving of land outright³¹, he agreed to share-cropping provided that crop yields were divided equitably.³² As narrated by Abdullah bin Omar (ra): The Prophet (pbuh) concluded a contract with the people of Khaibar to utilize the land on the condition that half the products of fruits or vegetation would be their share.”³³ These narrations of *Hadith* illustrate two important and well-known Islamic principles, which need no further elaboration here: first, the productive cultivation of land is revered and encouraged, and second, the equitable use and distribution of agricultural products and the means of their production are consistent with the teachings and practices of Islam.

This paper proposes the establishment of a multi-lateral food security *waqf* as a foundational mechanism for investment in the future food security of the Middle East.³⁴ As envisioned, the food security *waqf* would serve as a regional financing and investment mechanism for the mobilization resources in furtherance of the *waqf* objective of achieving food security for the region.³⁵

Basic Characteristics of Waqf Generally

The *waqf* is a kind of endowment through which assets are allocated and preserved for a designated period of time or in perpetuity in the service of specified beneficiaries for charitable, social welfare, development, or intra-family wealth distribution purposes.³⁶ Stated

³¹*Id.* at 508.

³² *Id.* at 507.

³³ *Id.*

³⁴ This paper discusses a food security *waqf* broadly. The author has developed tailored food security *waqf* and other equity-based financing and investment frameworks for governmental and multi-lateral application across jurisdictions within and outside of the Middle East. Information about these structures can be obtained from the author directly, subject to confidentiality limitations on disclosure.

³⁵ Importantly, the proposed multi-lateral food security *waqf*, to achieve its objectives, would be outside of the jurisdiction of any local *awqaf* authority.

³⁶ There is debate as to whether it is permissible to fix the lifetime of a *waqf*. Historically, *awqaf* have been perpetual (unless extinguished by circumstances, such as the demise of the *waqf* assets) and many scholars and commentators contend that *waqf* must be perpetual, as a matter of *Shari'ah*. Some scholars have stated that it is permissible to establish a temporary *waqf*, but only in the case of familial (*ahli*) *waqf*. Others, particularly in the Maliki school, have stated that it is permissible to fix the duration of *waqf*, if the duration is specified by the *waqif* in a valid *waqf* establishment declaration document. This sue encompasses legal interpretations ancillary to the *waqf* discussion in this paper, and will not be treated further herein.

more succinctly, *waqf* is the “bequesting of property and dedicating the fruit.”³⁷ The closest analogue to *waqf* in non-Islamic law is the trust in Anglo-American common law, which is considered by some to be “among the most important creations of the [common] law of equity. . . [and has] for hundreds of years. . . played a vital role in organizing transactions of both a personal and a commercial character.”³⁸

The essential legal requirements for the establishment of a valid *waqf* are straightforward and well-established. The donor of assets (*waqif*) must have legal and mental capacity. The *waqif* must have the right to legally transfer the assets and the nature of the assets must not be repugnant to *Shari‘ah*.³⁹ The pledge to transfer *waqf* assets must be outright, without condition or contingency. The permissible (*e.g.*, charitable or interfamily wealth transfer) purposes for which the *waqf* is established must be clearly stated. The primary beneficiaries of the *waqf* (which may include the *waqif*) must be identified.⁴⁰ A *waqf nazir* (trustee or administrator) must be appointed. And the terms of the *waqf* must be in writing.⁴¹

Historical Uses of *Waqf*

The historic and legal legitimacy and efficacy of the *waqf* structure is well-established. The *waqf* has been used as a vehicle of charity, the promotion of social welfare, the provision

³⁷ Ahmad Al-Raysuni, *Islamic Waqf Endowment Scope and Implications*, available at, www.isesco.org.ma [hereinafter “AL-RAYSUNI ON WAQF”] (quoting the definition of *waqf* by Hanbali scholar Muwaffiq Addin bin Qudama).

³⁸ Henry Hansmann and Ugo Mattei, *The Functions of Trust Law: A Comparative Legal and Economic Analysis*, 73 N.Y.U. L. Rev. 434, 435 (1998) [hereinafter “HANSMANN”].

³⁹ Some scholars and commentators have suggested that only immovable assets (real estate, buildings) are *waqf*-eligible, due to their long life and fixed nature. But it appears that a consensus, if not majority, of scholars and commentators are of the view that immovable assets are *waqf*-eligible. As explained by one contemporary scholar, “[T]he most comprehensive analysis in this matter is that of Ibn Qudama . . . [who] states [that] ‘in sum, what is permissible for *waqf* endowment is what can be sold and benefited from while its capital asset remains linked with its stock such as real estate, animals, arms, furniture and the like. This means what cannot be benefited from while its capital asset remains such as dinars, dirhams, food and drink, candles and the like, cannot be *waqf* endowed for most canonists and scholars.’” AL-RAYSUNI ON WAQF.

⁴⁰ Where the *waqf* declaration does not designate successor beneficiaries, the *waqf* proceeds will be distributed to appropriate beneficiaries, such as the poor or other classes of beneficiaries consistent with the purposes of the *waqf*.

⁴¹ The verbal declaration of *waqf* terms is acceptable according to some scholars and in some jurisdictions, so long as the declaration is made by a person having the requisite legal and mental capacity.

of public utilities, and the building of infrastructure during the life of the Prophet Mohammed (pbuh).⁴² In the earliest periods, and contemporaneously and conterminously with the spread of Islam, the *waqf* structure was employed to fund the provision of public utilities, building of infrastructure in urban and rural areas, to support education, build and maintain mosques, provide community medical services, and to support other endeavors having social value.

An early example of *waqf* is the endowment of the Ruma Well as a public utility. It is reported that, upon arriving in Madina, the Prophet (pbuh) realized that the Ruma Well was one of few sources of potable water for the city. “He asked: ‘Who will purchase . . . [the Ruma Well] equally share the water drawn therefrom with his fellow Muslims.’”⁴³ The Ruma Well was purchased and bequeathed as *waqf* property, to provide drinking water for the people of Madina.⁴⁴ The Prophet (pbuh) is said to have advised Omar Ibn al-Khattab (ra) to bequeath land in Khaibar as *waqf*, which he did.⁴⁵ These are just two of the many examples of *waqf* practice engaged in and encouraged by the Prophet Mohammed (pbuh). Consistent with the Prophet’s (pbuh) practice, the Companions (raa) continued to establish *waqf* in the public interest. “Since the Prophet (pbuh) instructed his Companions about bequest and its benefits, they never stopped attending to it and putting their money and property into it, so much so that . . . [a]ny of the Prophet’s (pbuh) Companions who could afford it made endowments.”⁴⁶

Waqf practice continued and expanded in scope, size and impact after the early period of Islam through the Ottoman period, with the volume and quality of activity diminishing after that point and through the present time. At times, *waqf* were used so pervasively that they “contributed towards shaping the economic, religious, political and social landscape of urban areas in the Islamic world.”⁴⁷ Thousands of *awqaf* were in operation in the Fatimid period.⁴⁸

Waqf practice was dynamic. As the needs of society and Islamic jurisdictions changed and evolved, so did *waqf* practice. “[T]he extent of endowment usages along with their legal framework and practices . . . varied significantly throughout the centuries in response to the fluctuating needs of society, taking on different and distinct forms around the Islamic world,

⁴² This paper is concerned with the social and developmental objectives of *waqf*. Therefore, the family (*ahli*) *waqf* will not be discussed herein.

⁴³ AL-RAYSUNI ON *WAQF*.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ RANDI DEGUILHEM, THE *WAQF* IN THE CITY 928 [hereinafter “DEGUILHEM”].

⁴⁸ *Id.* at 928.

often assimilating local customs which frequently preceded the advent of Islam or were contemporaneous with it.”⁴⁹

This is borne out by historical practice, where *waqf* included revenue-generating, mixed asset *awqaf*,⁵⁰ the endowment of revenue-generating agricultural land,⁵¹ the construction of large-scale commercial property developments over large areas of land to fund *waqf*,⁵² the bequest of property located in multiple cities for the benefit of a *waqf* beneficiary located in a different jurisdiction,⁵³ the stipulation of asset substitution (*istibdal*) by the *waqif* to ensure the continuation and flexibility of *awqaf*,⁵⁴ the establishment of *waqf* by two or more *waqif* by family members and by members of guilds to effect intra-family wealth transfers and to support guild members,⁵⁵ and the establishment of *waqf* by different parties for the benefit of a single *waqf*.⁵⁶

The above brief recitation of some of the historical uses and dynamism of the *waqf* structure illustrate its significance in the development of Islamic jurisdictions. The *waqf* was so successful in some jurisdictions that British colonial administrations “exerted huge efforts in the nineteenth and first half of the twentieth century in the attempt to bring these assets under state control.”⁵⁷

⁴⁹ *Id.* at 930.

⁵⁰ *Id.* at 932 (discussing a mid-17th century *waqf* established in Aleppo by its governor Ipshir pasha, which consisted of various types of revenue-generating commercial properties, the earnings from which were used to fund Islamic religious sites).

⁵¹ *Id.* at 933-34 (discussing the endowment of agricultural land in Central Asia and in Iran, where the endowment of agricultural land is “traditional” and also discussing the endowment of agricultural land in India).

⁵² *Id.* at 934-35 (discussing the construction in Aleppo of commercial buildings over five hectares of land with the rent proceeds going to *waqf* to fund the construction of the physically substantial al-Khusrawiyya mosque).

⁵³ *Id.* at 935 (discussing “the intertwined nature and large networks of *waqf* assets dispersed over large areas”).

⁵⁴ *Id.* at 939.

⁵⁵ *Id.* at 940-41 (discussing the establishment of *waqf* by a husband and wife for the benefit of themselves and their children and the establishment of “guild *waqf*” in the Ottoman empire for the benefit of needy guild members and their family members.).

⁵⁶ *Id.* at 942 (discussing various examples including, most notably, various *awqaf* established for the benefit of the Two Holy Mosques, al-Aqsa Mosque, Al-Azhar, and the Great Umayyad Mosque).

⁵⁷ *Id.* at 934.

Conclusion

The utilization of the *waqf* structure to bolster food security is legally, administratively, and politically compelling. Legally, the essential characteristics and purposes of the *waqf* are well-established. The legal rights and responsibilities associated with and attendant to *awqaf* are clear—from the requirements of establishment, to the relinquishment of legal title to *waqf* assets, to the role and duties of the *waqf nazir*, to the purposes of the *waqf* and the identity of its beneficiaries. Because the framework and mechanics of *waqf* are established and have been respected, the administrative and monetary costs of *waqf*, compared to alternative structures if used to achieve similar purposes, are relatively low.⁵⁸

The religious roots of the *waqf* and its treatment historically make it a uniquely safe harbor for assets, particularly in the context of multi-lateral investment and financing, in the context of which the fear or expropriation, other gross interference with *waqf* assets, or undue exercise of authority by a sovereign party would rightfully be of concern. Compared to other legal structures (*e.g.*, the corporation, partnership, etc.), the *waqf* is less susceptible to political or other interference that might frustrate the *waqf* purpose or diminish the value of *waqf* assets through misappropriation or mismanagement.⁵⁹ In other words, the legal and political risks associated with non-*waqf* structures are significantly diminished in the context of multi-party cooperation in which *waqf* assets and/or stakeholders are located in more than one jurisdiction.

The *waqf* structure is a proven and established structure in the Middle East, and is well-suited to garner the political will, monetary resources, and cooperation necessary to effectively advance food security on a multi-lateral basis and at the regional level. Middle Eastern states would serve the food security needs of their region, as well as Islamic Finance, by adopting a *waqf*-based strategy for regional food security.

⁵⁸ The same is true of the common law trust. *See, e.g.*, HANSMANN, *supra* note 37 at 446-66 (discussing the relatively low transaction costs associated with the trust structure).

⁵⁹ That said, there are historical incidences of the nationalization of public or general *awqaf* (*e.g.*, general purpose *waqf* for the poor), usually through the transfer of *waqf* administration from originally designated trustees to the state, through its ministries or departments of *awqaf*. It is also true that state-managed *awqaf* assets (*e.g.*, through ministries of *awqaf* and their equivalents) have been sub-optimally managed or mismanaged).