



# The Role of *Waqf* (Endowment) in Economic Development of Bosnia and Herzegovina: A Historical Overview and Future Prospects

## Waqf and Socio-Economic Development

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### I INTRODUCTION

Quran does not mention *waqf* (endowment) in specific terms. However, a number of verses encourage Muslims to do good deeds and promote charitable activities. This was also promoted by the Sunnah (sayings and actions) of the Prophet (p.b.u.h.). In fact, the institution of *waqf* was established by the Prophet (p.b.u.h.) by which a Muslim is seeking Allah's pleasure. In general, *waqf* is a form of charity (*sadaqah*) that is encouraged in Islam. The Prophet (p.b.u.h.) especially encouraged people to invest in what is called "perpetual charity" or "*sadaqah jariyyah*." Abu Hurayrah (r.a.) reported: The Messenger of Allah (ﷺ) said, "*When a man dies, his deeds come to an end except for three things:*

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*Sadaqah Jariyah (perpetual charity); a knowledge which is beneficial, or a virtuous descendant who prays for him (for the deceased)."*<sup>1</sup>

His *ashab* (companions) implemented this practice of *waqf* and passed it to next generations. According to some documents, there was no companion of the Prophet (p.b.u.h.) that did not form a *waqf* in one way or the other. This practice continued to live among Muslims ever since and until these days countless number of *awqāf* properties exist in the world.

The *waqf* institution was most central in financing socioreligious and public welfare systems during the early days of Islam. More importantly, the contribution of philanthropic *waqf* effectively sponsored and maintained the social welfare of the Muslim Ummah in general. Gradually, however, the creation of this type of *waqf* degenerated and today, by and large, the *waqf* consists of religious kind (Mahmud and Shah 2009).

When it comes to Bosnia and Herzegovina, the *waqf* institution was introduced to the local community with the arrival of the Ottomans in the fifteenth century. The local population accepted Islam as their religion and implemented its teachings in their everyday life. Consequently, the *waqf* properties became widely spread and used for the socio-economic development of the country. In this paper, we will try to briefly discuss the establishment and development of the *waqf* institution in Bosnia and Herzegovina and shortly elaborate different historical and sociopolitical phases that it went through up until now.

The paper consists of five sections including the introduction. Section 2 briefly defines the term *waqf* and provides its general classification. Section 3 discusses in more details the institution of *waqf* and its emergence in Islam. Section 4 is the main section of the paper as it focuses primarily on the *waqf* institution in Bosnia and Herzegovina. Finally, Sect. 5 is reserved for concluding remarks.

## 2 DEFINING *WAQF* (ENDOWMENT)

Literally, *waqf* (plural *awqāf*) means to stop, to hold, to restrain, to detain, or to prevent, such as saying “preventing from disposition” (al-Zuhayli 2007, p. 133). The term *habs* (plural *ahbas*) and its infinitive *tabbīs* is also used in the same sense, i.e., devoting in the way of Allah

<sup>1</sup>Reported in *Sahih Muslim*, see El-Munziri (2004, p. 951).

(fi sabil Allah). Hence, in Arabic a ministry of endowments would be called *vazīrah al-awkāf*. However, in Morocco, for example, this ministry is called *vazīrah al-abbās* (see Ibn Ābidīn, pp. 357–358; Tuhmaz 1424/2003, p. 413).

In Islamic law, *waqf* refers to an irrevocable confinement of a wealth or a property (movable or immovable) by a founder(s) and dedication of its usufruct in perpetuity to the public or to the family with the overriding objective of getting closer to Allah. In other words, the term *waqf* refers to assets that are donated, bequeathed, or purchased for the purpose of being held in perpetual trust as ongoing charity (*sadaqah jāriyah*) or for a general or specific cause that Islam regards as socially beneficial. This condition of perpetuity has led over the years to a considerable accumulation of societal wealth such that *awqāf* has become an important sector dedicated to the social and economic improvement of the Muslim society (Abdul Kader and Dahlan 2009; Dafterdar 2009).

Although there are several types of *waqf*, usually they can be classified into following three categories, namely:

- a. *waqf khayri* or public *waqf*;
- b. *al-waqf al-ahli* or family *waqf*; and
- c. *al-waqf al-mushtarak* or a combination of a public and a family *waqf* (Abdel Mohsin 2009).

### 3 THE INSTITUTION OF WAQF IN ISLAM

The institution of *waqf* was first founded and became known with the advent of Islam as it was not known to the Arabs of the *Jahiliyyah* period (period of ignorance and before Islam). It is considered as a *sunnah* of the Prophet (p.b.u.h.) by which a Muslim is seeking Allah's pleasure. In general, *waqf* is a form of charity (*sadaqah*) that is encouraged in Islam. The Prophet (p.b.u.h.) especially encouraged people to invest in what is called "perpetual charity" or "*sadaqah jariyyah*." Abu Hurayrah (r.a.) reported: The Messenger of Allah (ﷺ) said, "When a man dies, his deeds come to an end except for three things: *Sadaqah Jariyah* (perpetual charity); a knowledge which is beneficial, or a virtuous descendant who prays for him (for the deceased)."<sup>2</sup>

<sup>2</sup>Reported in *Sahih Muslim*, see El-Munziri (2004, p. 951).

Although the term *waqf* is not directly mentioned in the text of the Holy Quran, *waqf* derives its validity from the general directives of the Quran exhorting Muslims to be benevolent and charitable toward the social causes. For instance, the Quran says: “*What you can spare of your wealth as should benefit the parents, the relatives, the orphans, the needy, the wayfarers for Allah is not unaware of the good deeds that you do.*”<sup>3</sup> In another verse, it states: “*By no means shall you attain righteousness unless you give of that which you love; and whatever you give, of a truth God knows it well.*”<sup>4</sup> In addition, the following verse further encourages Muslims to give what of the good things they have when it says: “*O you who believe! Give of the good things which you have lawfully earned ...*”<sup>5</sup>

Furthermore, a proof of its Shariah validity can be found in the Sunnah (practice) and hadith (saying or tradition) of the Prophet (p.b.u.h.) who is considered as the best example (*uswatun hasanatum*) for the Ummah (Muslim community). Leading by example, he started building social infrastructure on the basis of *waqf*. For instance, he erected the first mosque (Quba’) in Madinah, on a parcel of land made *waqf* by two orphans. These two pioneers in making Islamic *waqf*, in spite of the Prophet’s insistence on paying them for their land, refused it and stated that that they would claim its reward from Allah in the next world. This mosque now stands on the same plot with a new and enlarged structure. In addition, in his last will the Prophet (p.b.u.h.) dedicated all his belongings to the Muslim Ummah and forbade his legal heirs from inheriting anything after his death. He only left small portions (sustenance) needed for their everyday life.

His *ashab* (companions) followed his example. As a result, a number of *waqf* properties have been established during the Prophet (p.b.u.h.) lifetime, and this practice continued even after his demise. Among the first *ashab* that created a *waqf* property was ‘Umar (r.a.). In a hadith reported in Sahih al-Bukhari and narrated by Ibn ‘Umar (r.a.) is stated: “When ‘Umar got a piece of land in *Khaibar*, he came to the Prophet (ﷺ) saying, “I have got a piece of land, better than which I have never got. So what do you advise me regarding it?” The Prophet (ﷺ) said,

<sup>3</sup> Al-Baqarah: 215.

<sup>4</sup> Al-i-‘Imran: 92.

<sup>5</sup> Al-Baqarah: 267.

*“If you wish you can keep it as an endowment to be used for charitable purposes.”* So, Umar gave the land in charity (i.e. as an endowments on the condition that the land would neither be sold nor given as a present, nor bequeathed (and its yield) would be used for the poor, the kinsmen, the emancipation of slaves, Jihad, and for guests and travelers; and its administrator could eat in a reasonable just manner, and he also could feed his friends without intending to be wealthy by its means.”<sup>6</sup>

Sahih al-Bukhari reported another hadith narrated by Enes (r.a.), which states: “Abu Talha had the greatest wealth of date-palms amongst the Ansar in Medina, and he prized above all his wealth (his garden) Bairuha, which was situated opposite the Mosque (of the Prophet (ﷺ))”. The Prophet used to enter it and drink from its fresh water. When the following Divine Verse came: *“By no means shall you attain piety until you spend of what you love,”* (3.92) Abu Talha got up saying. “O Allah’s Messenger (ﷺ)! Allah says, *‘You will not attain piety until you spend of what you love,’* and I prize above all my wealth, Bairuha’ which I want to give in charity for Allah’s Sake, hoping for its reward from Allah. So you can use it as Allah directs you.” On that the Prophet (ﷺ) said, *“Bravo! It is a profitable (or perishable) property. (Ibn Maslama is not sure as to which word is right, i.e. profitable or perishable.) I have heard what you have said, and I recommend that you distribute this amongst your relatives.”* On that Abu Talha said, “O Allah’s Messenger (ﷺ)! I will do (as you have suggested).” So, Abu Talha distributed that garden amongst his relatives and cousins.”<sup>7</sup> This was the first family *waqf* in the Muslim history.<sup>8</sup>

<sup>6</sup>See El-Buhari (2009), Sahih al-Bukhari, Hadith No. 2772 (p. 614).

<sup>7</sup>See El-Buhari (2009), Sahih al-Bukhari, Hadith No. 2769 (p. 612).

<sup>8</sup>Similar examples have been realized from the creation of the companions of the Prophet (p.b.u.h.) as has been documented by Al-Humaidi, *shaykh* of al-Bukhari, who gave the names of the companions, their endowments, and their beneficiaries. He stated that Caliph Abu Bakr endowed his house to his children, ‘Omar b. al-Khatib endowed his land at Thamgh to his children, Sa’d ibn Abu Waqqas his house in Madinah and Egypt for his children, and al-Zubair ibn al-‘Awwam his houses in Makkah and Egypt and his money in Madinah for his children, ‘Omar b. al-‘As his house in Makkah for his children, and Hakim b. Hizam his houses in Makkah and Madinah to his children. Moreover, most of the wives of the Prophet (p.b.u.h.) had created family *waqf*; for example, ‘Aisha, Umm Salamah, Umm Habibah, Safiah and Hafsa created their own *waqf* for the benefit of their kin (see Abdel Mohsin 2009).

The above *hadith*, as pointed out by Abdel Mohsin (2009), lists down a number of rules related to the *waqf*. First, once the property becomes a *waqf*, it must not be sold or inherited or given away as a gift. Second, it is up to the founder to specify beneficiary(ies), either person(s) or institution(s) he feels need it more, i.e., either to the public or to his family. In this case, Caliph ‘Umar devoted it to both public and family. Third, the administration of the *waqf* is also clarified since the founder, he himself administers his own *waqf* and at the same time he can benefit from it in a reasonable manner as long as he lives.

Hence, the institution of *waqf* is a *sunna* established by the Prophet (p.b.u.h) that played a remarkable role in the socio-economic development of Muslim societies: for centuries and in assisting them in providing all the essential services such as financing and supporting health and educational sectors; supplying basic infrastructures such as roads, water canals, and bridges; financing and sustaining mosques, schools, universities, hospitals, and other public utility charitable institutions; creating jobs; enhancing commercial and business activities; providing food for the hungry and shelter for the poor and the needy; and supporting agricultural and industrial sectors. On top of that, all these services by *waqf* properties and institutions were carried out without any cost to the government (Abdel Mohsin 2009; Čajlaković 2009; Esmaili 2009; Saleem 2009).

Historically speaking, the nonprofit institution of *waqf* soon became a model for socio-economic development of Muslim societies throughout the world wherever Islam was introduced and accepted by people. In fact, the *waqf* institution offered many services that the modern welfare state today strives to offer. However, over the years and especially since the end of the nineteenth century, the role of the *waqf* as an effective tool for socio-economic development had been deteriorated, neglected, and often forgotten. This can be attributed to a number of reasons including, but not limited to the legacy of colonization of Muslim countries, centralization, confiscation, and abolishment of *waqf* properties by both Muslim and non-Muslim governments, just to name a few. As a result, creation of new *waqf* properties is almost nonexistent as very few are donated nowadays. In addition, we can witness a dormant nature of many *waqf* assets. Over the years, “a large number of *awqāf* properties were expropriated, lost, or remained undeveloped or under-utilized and the latent wealth of *awqāf* remains largely untapped” (Abdel Mohsin 2009; Dafterdar 2009).

## 4 THE ROLE OF *WAQF* IN ECONOMIC DEVELOPMENT OF BOSNIA AND HERZEGOVINA

Historically speaking and as mentioned briefly above, the institution of *waqf* played a very important role in the socio-economic development of the Muslim world. The same is true when we consider Bosnia and Herzegovina. As the institution of *waqf* was introduced by the Prophet (p.b.u.h.), its spread over the world followed the conquests of Muslim state and dissemination of Islamic teachings. Bosnia and Herzegovina is but an example how Islam, with all its teachings and principles, contributed to the socio-economic development of the country. In the following pages, we will discuss the historical phases through which the institution of *waqf* went through (and still going through) and indicate its contributions to the socio-economic development of the country.<sup>9</sup>

### 4.1 *Phase I—The Ottoman Period*

The institution of *waqf* in Bosnia and Herzegovina was introduced in fifteenth century with the Ottoman's conquest of that region. Namely, in 1463 Maḥmūd Pasha, under the direction of Sultan Muḥammad II the Conqueror (r. 1444–1446 and 1451–1481), led the Ottoman armies to victory over hostile forces in Bosnia. The conquest started much earlier and by the year 1492, the rest of Herzegovina came under Ottoman rule as well.<sup>10</sup> During that period, the territory of B&H was occupied by local people who called themselves Bosniaks and were also known by the Roman Church as the *Bogomils*.<sup>11</sup> It is reported that the Bogomils,

<sup>9</sup>Please note that we will not discuss much about the history of Bosnia and Herzegovina as this is not the main focus of the study. Rather, we will focus directly on the institution of *waqf* and its relevance for the socio-economic development of Bosnia and Herzegovina.

<sup>10</sup>Bosnia and Herzegovina (B&H) was initially known as Kingdom of Bosnia. Later on, its name was changed to Bosnia and Herzegovina where “Bosnia” refers to northern and central parts of the modern territory of B&H and “Herzegovina” to south parts. Nowadays, when we refer to Bosnia we mean B&H as a whole.

<sup>11</sup>The Bogomils were a Gnostic religio-political sect founded in the First Bulgarian Empire by the priest Bogomil during the reign of Tsar Peter I in the tenth century. It most probably arose in what is today the region of Macedonia as a response to the social stratification that occurred as a result of the introduction of feudalism and as a form of political movement and opposition to the Bulgarian state and the church. The Bogomils called for a return to early Christianity, rejecting the ecclesiastical, and their primary political tendencies were resistance to the state and church authorities. This helped the movement

due to similarities between their beliefs and rituals with Islamic tradition, accepted Islam *en masse* and the Ottoman rule over the territory. This is contrary to overwhelming opinion that Islam was spread “by the sword” including the B&H territory and people (Abid 2017; Trakić 2012).

B&H was under the Ottoman Empire’s rule for 415 years, since 1463 until 1878 and during this period, all issues related to the *waqf* institutions were addressed according to Islamic teachings, namely according to the Holy Quran and the Sunnah of the Prophet (p.b.u.h.). These two, the Quran and the Sunnah, were the basic sources of Ottoman law since the fourteenth century until the beginning of the twentieth century. Legal gaps have been completed by passing a series of regulations that were largely contained in the laws (*kānūn*) and the imperial orders (*farmān*). During the nineteenth century, a number of laws were adopted. The Law on the *Waqf* administration was passed in 1863 and the Law on the Order of Succession of the *ijāratayn*<sup>12</sup> *waqf* in 1870. In other laws passed during this period, we can find regulations on *waqf* properties, especially in the Ottoman Land Law from 1858 and the Ottoman Civil Code, better known as *Majallah*, whose regulations were gradually passed from 1869 to 1876. At that time, a great deal of attention was given to the institution of *waqf* as it had a great and importance for the whole society. During that period, the state controlled the administration, the army, and the authorities in general while almost all other social activities were based on the *waqf* institution (Begović 1963, p. 5). It should be noted, however, that even during that period there were many issues related to the *waqf* institution and properties. Documents

spread quickly in the Balkans, gradually expanding throughout the Byzantine Empire and later reaching the Kievan Rus, Bosnia and Herzegovina, Dalmatia, Italy, France, and England. The Bogomils were dualists in that they believed the world was created not by the Abrahamic God, but by an evil demiurge—the Devil. They did not use the cross nor build churches, preferring to perform rituals outdoors (for details see Obolensky 2004; as mentioned in Trakić 2012).

<sup>12</sup> *Ijāratayn* means leasing waqf property under two leases (rentals). According to Shariah principles, when it is found that the *waqf* property has no money that can be used for renovation of its properties, for instance rebuilding a demolished house or a shop, and when there is no one willing to do so using his/her own resources, in that case Shariah allows this practice of *ijāratayn*. A person that is looking for a rent, *ijāratayn*, is required to pay two prices: (i) a price that is approximately equal to the value of the property; and (ii) a smaller price that would be payable at the end of every year and it was called *ijarah mujallah* (see Balagija 1933, pp. 19–21; as mentioned in Čajlaković 2009, p. 244).

show many mismanagements and abuses of *waqf* properties which indicate that it did not functioned completely well even then.

The first *waqf* in B&H was founded in the fifteenth century. In 1537, under the direction of the regional Ottoman governor, Gazi Husrev Beg (d. 1541), the first major *madrasa* was established in Sarajevo. The aim of this new *madrasa* was the complete integration of the latest sciences of the time, such as mathematics, literature, and natural sciences, plus the traditional religious sciences such as Islamic theology, *tafsīr* (Qurānic exegesis), *ḥadīth* (prophetic traditions), and *uṣūl al-fiqh* (principles of Islamic jurisprudence) (Trakić 2012). At that time, only what was fully owned (*mulk*) could have been a subject matter of a *waqf*. The *waqf* institution in B&H reached its pinnacle in the period from sixteenth century to eighteenth century when over two thousand *waqf* properties were founded. Numerous *vakufnama*<sup>13</sup> (*waqfnāmes* or *waqf* certificates), as living witnesses of the *waqf* institution and its history in B&H, remained attached to the *waqf* properties or were kept by founders themselves, which is why, in most cases, they were lost.

During the Ottoman period, the *waqf* institution was a powerful factor in promoting and maintaining the then state-political concepts, which was of particular importance for the then government. This was the reason why the state administration insisted on the early establishment of *awqāf* and the construction of *waqf* properties. The presence of *waqf* in the newly conquered territory meant the ideological and political strengthening of the regime, the guarantee of its stability, and thus the security of the defense of the Bosnian soil, whose strategic and political importance in the Ottoman Empire was great (Čajlaković 2009).

Living for hundreds of years with *waqf* and from the income generated out of *waqf* properties—an institution that provided conditions for undisturbed religious life, and which, during the Ottoman administration, was responsible for education and social care of the Muslim population as well as a founder of new urban and economic milieu and facilities<sup>14</sup>—Muslims

<sup>13</sup> *Vakufnama* or *waqfnāmes* simply represent a certificate of a *waqf* which list down all matters related to the administration and utilization of the particular *waqf* property.

<sup>14</sup>Up until October 8, 1966, there was no hospital in B&H. In that year, upon the incentive of then protector, Sharif Osman-Pasha, a *waqf* Hospital was build and opened at Kovači, in the street Halilbašića 16. The construction of this hospital was founded from the revenues generated out of the Gazi Husrev Beg's *waqf* properties. In the beginning, the hospital had: a manager, a doctor, a pharmacist, several servers, and thirty-two beds.

in B&H have accepted *waqf* as an integral part of their daily social life. Thus, *waqf* became a kind of national institution (Čajlaković 2009; Čaušević 1983).

*Mutawallīs* (managers) managed *awqāf*. Due to a process of a general decline of the power of the Ottoman Empire, this inevitably led to weakening and various misuse of the *waqf* management. Along with the weakening of the supervisory authority, consisting of a Shariah judge (*qādi*) and a supervisor (*nāzir*), the influence and the power of *mutawallīs* increased tremendously. As a result, *mutawallīs* increased their personal wealth unjustly and at the expense of *awqāf* (Durmišević 2002; Handžić 1983).

At the end of the nineteenth century, the Ottoman Empire began with reforms. A unique central authority, a ministry of *waqf* that was in charge of *awqāf* was established in Istanbul, with a sole objective of preventing selfishness and misuse of *mutawallīs*. The above ministry assumed the surveillance of *waqf* revenues. Unfortunately, nothing, in essence, has changed. However, this reform led to a creation of *awqāf* directory, which contributed to the preservation of the most important information about them (Čajlaković 2009).

In short, the establishment of *waqf* in B&H started with the official arrival of the Ottomans as shown briefly above. How much the *waqf* institution meant for the development of B&H and the emergence of urban, and therefore political, economic, cultural, and religious centers, the most illustrative is the fact that the names of some cities in B&H have in their names the word *waqf* (or its Bosnian equivalent “*vakuf*”) indicating that these cities and towns were founded upon a *waqf* property(ies). These cities are, for example, Kulen-Vakuf, Skender-Vakuf, Gornji Vakuf, Donji Vakuf and many others. In addition to these, for some cities it is known that they used to have the word “*vakuf*” in their own name. Thus, today’s Mrkonjić-Grad was once called Varcar-Vakuf, and today’s Sanski Most was only called Vakuf and the like.

Patients received treatments regardless of their religious denominations and they were treated, most often, for free. *Waqf* was covering the costs of the hospital.

At the beginning of 1882, the State Government took over this hospital. Over time, this hospital became too crowded that led to a construction of the State Hospital, which began in 1894. That year the *Waqf* Hospital was turned into an Institute for mental illness, which functioned until the construction of a modern hospital for mental illness within the complex of the National Hospital (Talić 1996).

Most of the old cities in B&H are somehow related to the establishment and/or development of a certain *waqf*, that is, to a person who founded that particular *waqf*. Thus, for example, the following cities are related to the establishment of a *waqf* and its *waqif* (benefactor), namely:

- a. Sarajevo—Isa-beg Ishaković and Gazi Husrev Beg<sup>15</sup>;
- b. Tuzla—Turali-beg;
- c. Mostar—Karađoz-beg and Koski Mehmed-pasha;
- d. Tešanj—Ferhad, son of Skenderov;
- e. Maglaj—Kalavun Yusuf-pasha;
- f. New Kasaba—Musa-pasha, a *vazir* from Budim;
- g. Banja Luka—Ferhad-pasha Sokolovic and Sophie Mehmed-pasha;
- h. Gradačac—Captain Gradašević: Osman, Murat and Husein;
- i. Foča—Mehmed-pasha Kukavica;
- j. Mrkonjić-Grad—Kizlar-aga Mustafa;
- k. Rogatica—Hussein-beg, son of Ilijaz-beg;
- l. Višegrad and Rudo—Kara Mustafa-pasha;
- m. Čajniče—Gazi Sinan-beg;
- n. Gračanica—Ahmed-pasha Budimlija.

From the list shown, it can be seen that the vast majority of the *wākifs* (benefactors) came from the domestic population who played significant political and military functions within the Ottoman state governing the territory of B&H. These are: *vazirs*, *pashas*, *bays*, *agas*, *gāzis*, captains, and others.<sup>16</sup> However, this does not mean that *vākifs* were only rich members of the Bosnian community. Rather, *vākifs* that *vākifs* came from all social classes as numerous data indicate. Thus, many traders, craftsmen, cadavers, *mufti*, *ulema* and *imams*, men and women contributed to the creation of various *awqāf* in B&H (Štulanović 2004; Vakufska direkcija 2010, 2011).

#### 4.2 Phase II—The Habsburg Monarchy

Bosnia and Herzegovina fell under Austro-Hungarian rule in 1878 when the Congress of Berlin approved the occupation of the Bosnia *Vilayet*,

<sup>15</sup> *Beg* or *Bay*—a title used on territories controlled by the Ottoman Empire.

<sup>16</sup> Different names and titles given to various roles played by administrative people within the Ottoman Empire.

which officially remained part of the Ottoman Empire. Knowing the significance of the *wagf* institution, Austro-Hungarian authorities took over the control of it. This has been a long-lasting issue and a dispute between the new government and Muslims in B&H. On one hand, Muslims demanded that Austro-Hungarian government leave the management and control over the *wagf* institutions in their hands referring to the convention of April 21, 1879 between the Ottomans and Austria-Hungary. On the other hand, Austro-Hungarian, made every step possible to keep the *wagf* institutions under its control.

The newly established government found the *wagf* institution in a very bad shape and immediately began with the state of affairs and the introduction of orders. The initial steps came from the Muslims themselves that resulted in issuance of the first order, three years after the occupation, in 1881. Consequently, the government passed several orders related to the organization *wagf* property.<sup>17</sup> The government agreed that the administration of the *wagf* would be entrusted upon a Muslim. Thus, on March 15, 1883, the *Provincial Wagf Commission* (*Zemaljsko Vakufska Komisija*) was established. This commission, among other things, was tasked with registering all *wagf* properties in the country, to control their expenditure, and to carry out new regulations regarding the *Wagf* administration. The PWQ was composed of the President, Inspector, Secretary, four members of the council of Muslim clerics (*majlis al-“ulamā”*), two High *Sharī‘ah* Court judges, and two prominent Muslims from each of Bosnia’s six districts (Trakić 2012). In this commission, the government was represented by a special official in the capacity of a government commissioner. Without his presence and consent, no significant *wagf* work could have been done. Thus, the government controlled all *wagf* jobs and directly interfered with their management (Čajlaković 2009).

In addition, the *Provincial Wagf Board* (*Zemaljsko Vakufsko Ravnateljstvo*) was established. It was an *executive* body whose main duty was to assist the PWQ with the fieldwork and gathering of any information in relation to *Wagf* administration in every district. The PWB was composed of the President, Inspector, and Secretary of the PWQ, with

<sup>17</sup>The first order issued in 1881 was followed by orders from 1883, 1884, 1885, and 1894. In general, all orders left the Austro-Hungarian government’s influence on the *Wagf* administration. These orders introduced a uniform and stable administration of *wagf* affairs (see Čajlaković 2009; Trakić 2012).

necessary clerical staff. In the districts, these *waqf* boards were headed by *Shari'ah* judges. Unfortunately, the members of those bodies were appointed by the Habsburg administration, a circumstance which left considerable space for the misuse of *waqāf* for purposes other than those which are permitted by Islamic law (Trakić 2012).

The Muslims in Bosnia were not happy with the existing situation. Already heated situation culminated with an incident that happened in Herzegovina. Namely, in 1899, an underage Muslim girl from the town of Mostar—Fata Omanović—was taken away by Catholic nuns, converted to Christianity, and secretly sent to Austria to marry an Austrian officer. This event caused outrage among the local Muslim community. Demonstrations were led by Ali Fehmi Dzabić (1853–1918),<sup>18</sup> the *mufī* of Mostar, who submitted demands to the Habsburg administration demanding the reorganization of Muslim religious affairs, in particular the *waqf* and educational sectors (Karcic 1999). All this resulted in the creation of a movement for *religious and waqf-educational autonomy* (*vjerska i vakufsko-mearifetska samouprava*). The movement demanded the reshaping of the *Waqf* administration in such a way that members of *waqf* bodies would be elected by the Muslims themselves. Dzabic was the leader of this movement until his visit to Ottoman Istanbul, when the Habsburg administration prohibited him from returning back to Bosnia and Herzegovina.

As a result of the constant pressure by Bosniaks, Vienna accepted most of the movements' demands pertaining to the administration of Islamic affairs. *The Statute for the Autonomous Administration of Islamic Religious and Waqf-Educational Affairs in Bosnia and Herzegovina* (*Statut za autonomnu upravu islamsko-vjerskih i vakufsko-mearifskih poslova u BiH*) was adopted on April 15, 1909. By virtue of this statute, the autonomy and election of an authority administering the *waqf* were granted. The said Statute has determined that all movable and immovable *waqf* property is the property of a *waqf* itself; to be governed by Shariah; to be governed by the bodies that Muslims chose; and that it serves exclusively for the religious and educational purposes of Muslims. The consequences of this struggle were multiply significant both internally and internationally,

<sup>18</sup>Ali Fehmi Dzabić was the *mufī* of the town of Mostar. He was also known under the name of 'Alī b. Shākir Fahmī Jābirzāde al-Mustarī and had an excellent knowledge of Arabic, literature, and geology. He wrote a number of works such as *Husn al-ṣiḥābah fi sharh al-ṣaḥābah* and *Ṭilbat al-ṭālib fi sharḥ Lāmiyyah Abī Ṭālib*.

because this statute was the basis of all subsequent resolutions about *waqf*, regardless of the change in the government in BiH, until 1945 (Begović 1963; Čajlaković 2009; Karčić 1983; Mulalić 2001; Trakić 2012).

### 4.3 Phase III—*The Kingdom of Serbs, Croats, and Slovenes (SHS)*

With the collapse of the Austro-Hungarian Monarchy, in 1918, there was internationalization of the *waqf* issue. Namely, with the creation of the Kingdom of SHS, the state of Muslims deteriorated further. However, the Kingdom of SHS was forced to sign Saint-Germain peace agreement on September 10, 1919. Article 10 of that agreement states: “*The state of Serbs, Croats and Slovenes is committed to ensuring the protection of mosques, cemeteries and other Muslim religious institutions. All necessary facilities and permits will be provided to Muslim endowments (awqāf) and religious charities; the government of the Serbs, Croats and Slovenes will not deprive any of the necessary reliefs for the establishment of new religious and charitable institutions*” (Bojić 2001, p. 163).

In 1929, the kingdom was renamed “Yugoslavia.” During the “Kingdom of Yugoslavia” period, the Muslims claimed an autonomous administration over the *waqf* properties which was disputed by the authorities. For the Muslims, the situation only worsened by the introduction of the Sixth January dictatorship that took place on January 6, 1929, by King Aleksandar I Karađorđević (r. 1918–1934). On January 31, 1930, the King abolished the *Statute for the Autonomous Administration of Islamic Religious, Waqf, and Educational Affairs* and subsequently in 1936 introduced the *Law on the Islamic Community*.<sup>19</sup> Accordingly, the *Waqf and Educational Affairs* did not fall under the jurisdiction of the Islamic Community but were placed under the direct authority of the Ministry of Justice of the Kingdom of Yugoslavia (Čajlaković 2009; Trakić 2012).

<sup>19</sup>In the middle of 1930, the government of the Kingdom of Yugoslavia removed *raisul-ʿulama* Džemaludin Čaušević and sent him into early retirement. The reason for early retirement was his advocacy for Muslim rights and the protection of their properties. At the time, there were about two million Muslims in the Kingdom of Yugoslavia. However, many did not see their future in that country, so they migrated in large numbers. Since the creation of the Kingdom of SHS until December 1931 about 45,000 Muslims moved to Turkey (see Bojić 2001, p. 175).

#### 4.4 Phase IV—*The Socialist Federal Republic of Yugoslavia (SFRY)*

The Constitution of the Federal National Republic of Yugoslavia (FNRY) was passed on January 31, 1946 and the Law on the Legal Position of Religious Communities was passed on July 13, 1953. New Yugoslavia maintained the principle of separation of religion from the state, so the state left the *Waqf* administration to the Islamic community of B&H. Furthermore, on May 16, 1959 the state is adopted a general law on the protection of cultural monuments. This law placed many *waqf* objects, such as mosques, *darwish* houses (“*tekije*”), *madradas*, and cemeteries, were placed under the state protection. The Constitution of the SFRY issued on April 7, 1963 gave the Islamic Community rights over the *waqf* property so that it can govern and use it in the spirit of Shariah and within the boundaries of State laws (Begović 1963, pp. 9–10). However, this time witnessed the nationalization of *waqf* and Muslim properties in general. Hence, this period is considered as the most difficult period for the *waqf* institution in B&H. The conditions of the *waqf* institution during this period are further explained by Trakić (2012) in the following lines:

The extraordinarily harsh attitude of communist regime toward the *waqf* at this particular time culminated in the year 1958 when the *Laws on Nationalisation of Leased Buildings and Land* was legislated. The purpose of this piece of legislation was to take the last breath of the *Islamic Community*. By this piece of legislation, the Islamic Community was left overnight without any immovable property – except the mosques.<sup>26</sup> The *waqf* land, the forests, and the buildings – the financial skeleton of the *Islamic Community* for its maintenance and very existence – were simply taken away.<sup>27</sup> Subsequently, on 13 July 1959, there was an emergency meeting of the *Islamic Community* in which a new constitution had been adopted which abolished the existence of the organs and administration of *waqf* because the new legislation on the nationalisation of *waqf* had caused it to slip out of its control. As a purely religious organisation, the *Islamic Community* remained secluded from any active participation in the lives of Muslims in Bosnia and Herzegovina. The mosques were maintained from the alms and financial contributions of Muslim families on a purely individual basis. (Trakić 2012, p. 344)<sup>20</sup>

<sup>20</sup>Only in Sarajevo, about 24 mosques were destroyed during the Socialist Yugoslavia. At the same time, 204,000m<sup>2</sup> of Muslim cemeteries were used for various purposes. A significant number of *waqf* shops were demolished with a useful surface of 2571m<sup>2</sup>.

Even though the *waqf* institution was nationalized after the World War II and during the period of the SFRY, its significance did not vanish. The *waqf* institution remained connected to mosques and other properties that remained under the ownership of the Islamic Community. Besides, a number of new *waqf* formations were recorded during this period that, although much more modest, were equally important for the economic development of B&H as the old ones (Dobrača 1976, p. 45).

#### 4.5 Phase V—Pre- and Post-Dayton Peace Accord

During the aggression on B&H that took place between 1992 and 1995, the *waqf* properties suffered massive losses and damages. Aggressors on both sides—the Serbs on east and north and the Croats on south and west of B&H—endangered, killed, and destroyed not only hundreds of thousands of lives of citizens of B&H, but destroyed a large number of Bosniaks' religious and cultural objects.<sup>21</sup>

During the aggression period, two important laws were legislated with an aim to protect and prevent the sale of *waqf* properties and other religious properties nationalized by previous regimes, namely:

Over 103,707 m<sup>2</sup> of waqf houses, courtyards and construction sites for houses were demolished. Expropriation and nationalization resulted in the seizure of more than 536,023 m<sup>2</sup> of waqf gardens, orchards, meadows, arable land, and other properties. This is only a brief overview of the suffering of the material and culture objects of Muslims in Sarajevo, as well as the properties that were used to sustain those facilities (see Begić 2000; Košćović 1995, p. 11).

<sup>21</sup>During the aggressor's march on B&H and the Bosniaks, the most important objects of Islamic architecture in BiH were not spared of their destructive and ill intentions. During the three-year aggression, more than 600 mosques were completely destroyed and more or less the same amount of mosques were partially demolished. Some of the examples are: the Gazi Husrev-beg mosque (1532); Careva mosque (1565); Bašaršijska (1529); Ali-pasha mosque (1561); Magribiya (1766) in Sarajevo; Aladža (1551) and Careva mosque (1483) in Foča; Sultan Esme Mosque (1745) in Jajce; Karađoz-beg mosque (1570) in Mostar; Ferhadija (1579) and Arnaudija (1595) in Banja Luka (destroyed on May 7, 1993); Emin Turhan-bey's mosque in Ustikolina (1449), which is the oldest mosque in BiH, as well as many others. Most of them were under the protection of UNESCO (see Čeman 2007, 2008; Omerdić 1999, p. 15).

- i. *Laws on the Prohibition of the Sale of Common Property on which the Right Was Established Through Lease*<sup>22</sup>; and
- ii. *Laws on the Special Protection of Sacred Objects and Places*.<sup>23</sup>

As of today, there are no specific laws and no particular ministry that govern the *waqf* institution in B&H. In fact, as pointed out by Trakić (2012) “there is not even any specific law which mentions the name *waqf*. The word which indicates *waqf* is the word ‘foundation’. In English the word ‘foundation’ can be defined as “an organisation that is established to provide money for a particular purpose, for example for scientific research or charity.”<sup>24</sup> Therefore, the protection of *waqf* in the legal documentations of Bosnia and Herzegovina is done through the word ‘foundation’ ... Since the ‘foundations’ enjoy constitutional recognition, parliament, as a legislative body, was pressured to pass laws to govern and protect them. As a result, in 2001 the Parliament of the Federation of Bosnia and Herzegovina passed a statute called the *Law on Associations and Foundations*.<sup>25</sup> This piece of legislation was of great importance to all non-governmental organisations in Bosnia and Herzegovina, including ‘foundations’. Thus, this law has legislated indirectly on the protection and legal recognition of *waqf*, since *waqf* has been regarded as a ‘foundation’” (Trakić 2012, p. 346).

He goes further by stating:

At present, *waqf* is mentioned and explained in the *Constitution of the Islamic Community* of 1998. There are a few articles explicitly explaining the matters relating to *waqf*. Article 28, for instance, says that “the property of the Islamic Community is comprised of *waqf*, as well as other things like monetary funds.” Article 31 states that “every person, individual, or company (legal personality) can in accordance with *shari’ah* laws leave his property as *waqf*.” The Presidency of the Islamic Community, based on constitutional jurisdiction dealing with the *waqf* affairs, has

<sup>22</sup> *Official Gazette of the Socialist Republic of Bosnia and Herzegovina*, No. 4 (17 February 1992), 100.

<sup>23</sup> *Official Gazette of the Socialist Republic of Bosnia and Herzegovina*, No. 13 (June 1993), 324-25.

<sup>24</sup> See *Oxford Advanced Learner’s Dictionary* (“Oxford,” 2007)

<sup>25</sup> *The Law on Associations and Foundations* was passed by the Parliament of the Federation of Bosnia and Herzegovina in both Houses in 2002 (No. 01-3-02-3-46/02). It was also passed by the Parliament of Bosnia and Herzegovina on 5 October 2001.

come out on 22 May 1999 with the *Statute of the Waqf Directorate* which observes that other organs that are entrusted with jurisdictional powers to deal with *waqf* affairs are the local Islamic community, special judicial *waqf* bodies, and *mutawallis*.<sup>26</sup> By virtue of Article 32 of the *Constitution of the Islamic Community in Bosnia and Herzegovina*, the *Waqf Directorate* manages the property of endowments. Therefore, the management of *waqf* in Bosnia and Herzegovina should be entrusted to the *Waqf Directorate* which would be assisted and consulted by three previously mentioned organs.<sup>27</sup> Furthermore, according to information provided by the former Director of the *Waqf Directorate* of Bosnia and Herzegovina, Nezim Halilović Muderris, by 24 October 2007 the *waqf* sector in Bosnia and Herzegovina consisted of 1,144 mosques, 570 *masjids*, 1,030 shopping lots, 3,027 graveyards, 1,570 houses and apartments, 886 buildings, and 4,829 parcels of land.<sup>28</sup> (Trakić 2012, p. 347)

Ever since the end of the aggression on B&H and the signing of the Dayton peace accord, attempts have been made by various groups from B&H (primarily by the representative of the Islamic Community) to restitute the *waqf* properties. An initial step was taken in December 1996 by the team of experts on matters pertaining to privatization in the Federation of Bosnia and Herzegovina whereby they drafted the *Bill on Restitution*. If the return of *waqf* property is not possible, then monetary compensation of equal value was to be paid. This battle for the restitution of the *waqf* properties is an ongoing challenge before the Government of B&H as the issue is yet to be settled.<sup>29</sup>

## 5 CONCLUSIONS

*Waqf* represents an Islamic financial institution that bases its foundation on the Quran and the Sunnah. *Awqāf* institutions played an invaluable role in the socio-economic, cultural, and religious development of Muslim societies and economies. The same is true for Bosnia and

<sup>26</sup>See Salikić (2001, p. 352).

<sup>27</sup>See Hrvaić (2000).

<sup>28</sup>See Ćeman (2007).

<sup>29</sup>For more details about the restitution of *waqf* properties in B&H.

Herzegovina. The emergence of *waqf* properties in B&H started with the arrival of the Ottomans and the introduction of Islam and its acceptance by the domicile people known as Bogomils.

Since the very adoption of Islam in the middle of the fifteenth century, the Muslims in B&H have acknowledged and promoted the institution of *waqf* by founding their own *waqf* properties for public and family uses. By doing so, the Muslims of B&H followed in the footsteps of the Prophet Muhammad (p.b.u.h.) and the first generations of Muslims who wanted to achieve Allah's pleasure by bequeathing what they dear the most in this world. Throughout the Balkans, and especially in B&H, an impressive number of *awqāf* properties were created. The exact number of *awqāf* properties is difficult to determine as it is difficult to clearly indicate their contributions to the economic development of any countries where they can be found, including B&H. It is suffice to say that they played a tremendous role in the socio-economic development and in most cases plays supplementary role to the government agencies in providing various social services that, otherwise, may not be available.

However, throughout the centuries and especially during the last hundred years B&H went through a number of different and something conflicting regimes. First, it migrated from the Oriental-Islamic to the Western-European civilization. Second, it passed through several state-legal frameworks, from monarchies to communist regimes witnessing a number of military conflicts including two World Wars and the aggression of 1990s. All these instances played a significant part in the *waqf* institution, and as pointed out briefly in the paper, a large number of *awqāf* properties were seized and/or destroyed.

Although attempts are made to restitute the *waqf* institution in B&H, remains to be seen whether the existing government in B&H will return the *awqāf* properties to the Islamic Community, as the only legal and legitimate owner.

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