

Committee on Jerusalem

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CONTROL OF RELIGIOUS PROPERTIES

(Working paper prepared by the Secretariat)

1. The delegations of the Arab States submitted on 18 May 1949 a nine-point memorandum listing urgent measures which, in their view, should be taken to protect the rights and property of Arab refugees\*. Point 8 of this memorandum demanded

"The freeing of Wakf property and the granting to the custodians of facilities for managing this property in conformity with its destination"

2. On 2 July the General Committee transmitted to the Arab delegations the views of the delegation of Israel concerning the nine-point memorandum. As regards point 8, the Committee stated that

"The Israeli delegation declares that intact Wakf property in Israel is administered by the State in accordance with its designation. Where the beneficiary institution is in existence, the monies are allocated to its maintenance in accordance with the terms of the Wakf. In practice, where such procedures are inadequate to ensure maintenance of the religious institution in question, supplementary grants are made for that purpose out of public revenues of the State. Where the institution is not in existence or exists outside Israel, the monies are paid into a frozen account, which is not appropriated for any other purpose. All these transactions are controlled by the State direct, which ensures that no Wakf funds are diverted to any other end. Conditions resulting from the war and present economic circumstances make it premature to give full powers to the custodians to manage Wakf property at will."\*\*

3. During a meeting held on 5 July between the General Committee and the delegations of the Arab States, the Arab delegations, in regard to the Israeli viewpoint expressed above, stated that they could see no possible justification for the

\* AR/8

\*\* Com. Gen./7

administration of Wakf property since the end of hostilities by the State of Israel. Such property in their view should come under the control of the Supreme Moslem Council in the same way that the control of property held by the Franciscan Order had been entrusted to the Father Custos of the Holy Land. It was out of the question for Wakf property to remain under the control of the Israeli Ministry of Religions or of any Jewish institution and it should immediately be made available for the purposes for which it was established.\*

4. The General Committee at its meeting on 6 July decided, in view of the special character of the question of control of religious properties, to request information regarding it from the Committee on Jerusalem. It was suggested that the situation in regard to the control of religious properties in Palestine under the British Mandate might have some relevance for the question now raised by the Arab delegations with the General Committee.

5. At the meeting between the Committee on Jerusalem and the Delegation of Israel on 30 June (Com. Jer./SR.36), the specific question of the control of religious properties was not discussed at length. As regards Wakf property, the delegate of Israel merely stressed that the matter was closely bound up with other problems. In respect to the control and administration of religious property belonging to Christian communities, the following points were made:

(a) the Government of Israel considered that administrative measures to assure the preservation of certain sites was its responsibility, although the delegation felt that the subject was open to discussion;

(b) in regard to repairs to property which became necessary through natural decay, the Israeli delegation thought that in the first instance the cost of such repairs should be borne by the occupants, or by the parent organisation abroad. In certain cases the Israeli Government might perhaps offer financial assistance itself; each case would be considered on its own merits;

(c) with respect to fiscal exemption, the Government of Israel had accepted the position which had existed under the British Mandate, and had signed certain undertakings, for example, with the French Government, confirming this position. Once it had been shown that the proceeds of sales of produce from property belonging to a religious institution were a source of income, taxes were waived; further, food, clothing and certain other articles for the use of religious bodies could be imported duty free.

6. The delegation of Israel has stated that it will furnish the Committee on Jerusalem with particulars of agreements reached by the Government of Israel with the Vatican and the French Government concerning immunity of Christian religious institutions in Israel. Once the Committee is in possession of these particulars it will be able to judge whether, in view of the General Committee's request for its views on the subject of the control of religious properties and for information thereon, it would be appropriate to approach the Government of Israel for further specific information as to the present position. It should be noted in particular that the reference of the Arab delegations to the control entrusted to the Father Custos of the Holy Land and the parallel drawn between the functions of the Supreme Moslem Council and those of the Custody of Terra Sancta are not clear, unless they refer to a recent agreement concluded by the Government of Israel.

7. For the information of the Committee, a summary of the position as it existed under the British Mandate is appended.

The Supreme Moslem Council and the Awqaf Commission:  
position under the Mandate

8. Under the Ottoman regime, the legislative authority of the Ottoman Empire promulgated all laws concerning the constitution, jurisdiction, procedure and internal organisation of Sharia Courts (Moslem religious courts) and concerning the administration of Awqaf\* (Moslem benevolent or religious endowments). The Administration of Awqaf entailed the maintenance of a large number of mosques and shrines throughout Palestine, including the Dome of the Rock in Jerusalem (Haram esh Sharif), and the upkeep of numerous charitable and educational institutions, for which

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\* Plural of "Wakf"

purpose a large number of preachers, officials and teachers was required. Since the Ottoman Empire was a Moslem State, the legislative authority was also Moslem.

9. When after the first World War, the Mandate of Palestine was granted to Great Britain and Palestine thus came under the rule of a non-Moslem Government, it was necessary to create new machinery for the Sharia Courts and the Awqafs. In December 1921 the High Commissioner issued an order setting up a Moslem council, to be known as the Supreme Sharia Moslem Council, for "the control and management of Moslem Awqaf and Sharia affairs in Palestine". The Council was to consist of a President and four Members. They were to receive salaries from the Government of Palestine in consideration of their services in connection with the affairs of the Sharia Courts, the revenue of which was paid to the Government of Palestine. They were also to receive allowances from Awqaf funds for their work in other Moslem affairs.

10. Among the functions of the Supreme Moslem Council as laid down by the Order of 1921, were :

- (a) the administration and control of Moslem Awqaf, the approval of the annual Awqaf budget and its transmission to the Government for information;
- (b) the nomination, for the approval of the Government, of functionaries of the Sharia Courts, including the members of the Sharia Court of Appeal;
- (c) the appointment of Muftis ( an exception was made in the case of the Muftis in the Beersheba District, who were always to be appointed by the Sheiks of the Tribes ).

11. The first elections to the Supreme Moslem Council took place in 1922, on which occasion Haj Amin Effendi al Husseini was elected President. In 1926 the term of office of the members expired and an election of new members was held. This election, however, was challenged by one of the parties and was subsequently declared void by the High Court. The Supreme Moslem Sharia Council Ordinance of 1926 was thereupon promulgated; it provided that, pending fresh elections, certain named persons, together with the President, should constitute the Council and exercise all its functions.

12. As a result of the Arab disturbances of 1936, Haj Amin Effendi al Husseini was deprived by the Government of his office

of President of the Supreme Moslem Council and of his membership of the General Wakf Committee. The Presidency of the Council remained vacant for the duration of the British Mandate. The Palestine Government considered that measures of reform were necessary in the administrative structure and organisation of Moslem religious affairs, and in October 1937 it promulgated the Defence ( Moslem Awqaf ) Regulations. They provided inter alia that :

- (a) The High Commissioner was empowered to appoint a Commission to administer the Awqaf; and that the Supreme Moslem Council was no longer to intervene in Awqaf affairs, unless expressly ordered to do so by the new Commission;
- (b) The Commission was to control all Awqaf funds, and that all funds vested in the Supreme Moslem Council or the general Awqaf Committee on behalf of the Awqaf were to be transferred to the Commission.

13. A Commission composed of two British officers and one Moslem Arab was duly appointed in October 1937. In 1946 the Commission became purely Moslem Arab in composition. Soon after the Commission's appointment, it became apparent that the Supreme Moslem Council had adopted a conciliatory and cooperative attitude, and the Commission accordingly decided to entrust the Council with a considerable share in the supervision and administration of the Awqaf, reserving to itself certain powers of financial control and of nominating and dismissing Awqaf officials. This system of responsibility divided between the Supreme Moslem Council and the Awqaf Commission lasted until the end of the British Mandate.

14. The functions of the Supreme Moslem Council concerning the Moslem religious (Sharia) courts were administratively quite distinct from its functions concerning the administration of Awqaf. The estimates of the Sharia Courts were included in the Palestine Government's budgetary estimates under the Judicial Department. The court fees and other receipts were accounted for in the same way as other court receipts. The Council, however, had power to nominate, and after approval of the Government to appoint , Qadis of the Moslem Sharia Courts, the President and Members of the Sharia Court of Appeal and the Inspector of Sharia Courts.

15. The administration of Awqaf was carried out under the Supreme Moslem Council by the Director-General of Awqaf and by an official in each District assisted by a clerical staff. The main source of revenue of the Awqaf administration was at one time a tithe (Government tax) due from the annual value of the produce of lands assigned to Moslem religious endowments. The collection of the tithe was credited to the Supreme Moslem Council, less collection charges fixed at 6 per cent. In 1927 the tithe was commuted for an annual payment from the Palestine Government to the Supreme Moslem Council, which was fixed at LP30,000. In view of the considerable increase in agricultural prices, this annual sum was increased, by an agreement concluded on 10 January 1948, to 80,000, with effect from 1942. The total revenue from all sources of the Awqaf administration in 1946 was LP134,000 and its expenditure LP133,999.

Present composition of Supreme Moslem Council

16. The Supreme Moslem Council as constituted at present under the authority of the Government of the Hashemite Jordan Kingdom consists of the following persons:

Sheikh Husam ed-Din Jarallah (President)  
Amin Bey Abdul Hadi  
Hassan Bey Abul Wata Dajani

The two latter members had been members of the Council up to the end of the Mandate; Sheikh Husam had been a member of the Awqaf Commission, but his appointment was terminated by the Government in 1946 owing to his advanced age.

Control of Christian religious property: position under the Mandate

17. The various branches of the Christian Church enjoyed full independence as to the administration of their internal affairs, and immunity from certain taxes.

Latin Church

The Custody of the Holy Land, an international body of religious men founded in 1217 and forming part of the Franciscan Order, is composed of 25 different nationalities with a local membership of over 400 Priests and Brothers. At its head is the Father Custos of the Holy Land, appointed by the Holy See. The Custody of the Holy Land was responsible under the Mandate, as in past centuries, for the maintenance and care of the Holy Places in Palestine under the jurisdiction of the Catholic Church. The Custody of the Holy Land also administered many charitable and educational institutions

throughout Palestine.

18: In addition, over 150 French Catholic religious, charitable, educational and medical institutions received annual financial grants from the French Government. These institutions enjoyed the same privileges under the Mandate as they had done under the Ottoman regime. The Mytilene Agreement of 1904 and the Franco-Turkish Agreement of 1913 had laid down that the French institutions\* should enjoy fiscal exemption and exemption from municipal taxes. As regards landed property, the exemption applied not only to principal buildings but to dependencies, with the exception of leased-out houses and land. Authorisations to open new institutions or to enlarge existing ones had to be required from the Government; schools had to comply with certain Government standards.

#### Greek Orthodox and Armenian Churches

19: The Greek Orthodox and Armenian Patriarchates enjoyed full independence as to the administration of their internal affairs, and were exempt from all taxes as well as from customs duties on all articles for their ecclesiastical, educational and charitable institutions.

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\* "French" meant "Catholic" under the Ottoman Regime, owing to the fact that all Catholics were under French protection.