THE EARLY ISLAMIC PUBLIC

REVENUES SYSTEM:

LESSONS AND IMPLICATIONS

BY DR. MONZER KAHF

* Research economist at the Islamic Research and Training Institute, Islamic Development Bank, Jeddah, Saudi Arabia. Views expressed in this paper are only the author's. Employer is not responsible for any of them.

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THE EARLY ISLAMIC PUBLIC REVENUES SYSTEM
SYNOPSIS

The objective of this paper is to study the types and forms of public revenues of the early Islamic state, with a view to discover the main features of the Islamic public system. The paper falls in four sections. Section One is devoted to study the public revenues at the time of the Prophet Muhammad. It should be noted that the Islamic state originated in a society of vaguely defined relationships and government institutions. It did not inherit systems and institutions of a preceding state. This has its impact on its public revenues. In this paper, the Prophet's era is divided into two phases; the first extending from the early days of establishing the Muslim state in Madinah until the battle of Badr. The second from the battle of Badr until the death of the Prophet. Both phases are characterized by two phenomenae: first, the extensive dependence on voluntary contributions by individuals for financing public expenditures; and second, the absence of taxation in all forms, with the single exception of *zakah*, which was ordained in the second year of *hijrah*. It is also noted that some social welfare services were undertaken, like paying the debt of a person who died without being able to repay. It is also noted, particularly in the second phase of the Prophet's era, that two other features were recorded; first, the availability of steady non-tax revenues in the form of income from state-owned fixed assets; and second, the incidents of both compulsory and voluntary of public borrowing.

Section Two deals with public revenues in the Four Caliphs' era. Here, an important feature is noticed: the expansion of non-tax revenues generated from public fixed assets under the management of the state. The economic base for a public sector was in the making, drawing on public property which, in an Islamic context, goes hand in hand with private property.

Another source of revenues was further introduced during this period. This is the *ushr*, meaning a tax of one tenth of the value of merchandise brought into the Muslim state by non-Muslim foreign traders. It was levied in application of reciprocity. We also notice the emergence of the exercise of transferring *zakah* proceeds from one part within the Muslim state of another, the disappearance, almost totally, of the two phenomenae of voluntary contributions to the Treasury (*bait al mal*) and public borrowing. Likewise, the state did not levy any taxes, mostly because they were not needed in view of the abundance of state resources.

Section Three deals with public revenues in the post-Four Caliphs' era, in which public expenditure was noticeably high and the Ummayad dynasty imposed taxes in a variety of forms and names. Ruling that all those taxes were unfair and against *shari'ah*, 'Umar bin 'Abd al 'Aziz later canceled all of them, and re-established the model of public revenues which had been applied during the Four Caliphs' era. In the post-Four Caliphs' era we also notice an expansion in the lands chosen to be under direct control of the government, as well as in other economic properties directly managed by the public sector. That expansion was indeed of such a large scale that during the Ummayad period the state had to establish a separate department for managing these enterprises.

Section Four discusses the lessons and implications of the public revenues system applied in the early Islamic eras. This Section discusses three major issues: (1) the role of public property and the economic public sector in generating non-tax public revenues, (2) the shari'ah permissibility to levy taxes and (3) the role of the private sector in financing public projects, either on the basis of making legal riba-free profit through such modes as *musharakah*, *mudarabah* or sale-contracts, or by participating in financing public expenditure through public loans or voluntary contributions.

Introduction

The Prophet's and his Four Caliphs' eras represent the best, the most basic and the most important source of examples of Islam in practical application. The tradition of the Prophet (*Sunnah*) evolved as the second source of Islamic legislation, next to the holy *Qur'an*. It is considered the first actual application of Islamic precepts and values. In the Four Caliphs' era, those who had received the message firsthand from the Prophet, exercised their own discretion in dealing with unprecedented developments and changes emerging as a result of the remarkable geographical expansion of the Muslim state which encompassed new nations, cultures and technologies.

It is therefore a justifiable endeavor for economists to formulate, on basis of that early Islamic model, Islamic interpretations and theories of present-day economic and financial issues. This kind of undertakings may contribute to correct some of the misgivings about the Islamic point of view on certain issues such as the size and strength of the public sector. Viewed from the vantage-point of early Islamic practices in economics and finance, the issue assumes a different posture emanating from the Islamic concept of ownership as a potential means of generating revenues for the public treasury. Thus the issue of expanding or curtailing the size of the public sector is linked to basic ingredients of the Islamic economic and financial system.

The purpose of this paper is to study the public revenues of the Muslim state in both eras of the Prophet and the Four Caliphs, the types and the relative importance of these revenues, together with deriving their implications regarding contemporary Islamic public finance.

This paper has four sections. The first three deal with public revenues in the Prophet's era, the Four Caliphs' era, and the early phase of the Islamic Kingdom after the Caliphs. Section Four will attempt to draw the lessons relevant to public revenues in a modern Islamic fiscal system. I have relied in my research on the authentic texts, intentionally avoiding to the extent possible, any such notions as may be preconceived outside the ambit of those texts. Historical incidents related to public revenues are examined with a view to identify the relevant underlying principles. In cases where certain points have been covered by other researchers, especially if these points are beyond the narrow limits of this paper, I refer to their works without going back to the original sources.

For the purpose of this paper, public revenues are defined as all the resources acquired by the state, whether in cash or in kind, regular or irregular, with exchange or without it. This definition encompasses all types of customs, taxes, income from state-owned property, income from government enterprises, and in-kind revenues acquired by the state. The definition provides for no differentiation between revenues voluntarily paid by individuals and those mandatorily collected by the state. *Zakah*, however, is not focussed upon in this study, having been covered by many others. Although *zakah* is in fact one of the state revenues, it does have distinctive characteristics that justify putting it outside the limits of this study. For example, the state is required to disburse *zakah* for specific purposes which are clearly spelt out by *shari'ah*. Furthermore, *zakah* involves an element of religious observance which renders it uniquely different from other state revenues and, hence, the obligatory nature of *zakah* emanates from the individual's sense of commitment more than from impositions by the state.

I choose this definition of public revenues because it suits the period under study, which long precedes the emergence of modern classifications of public revenues. In an expanded definition, public revenues may refer to the means used by the government to discharge of its functions. As such, the definition may include non-financial means such as voluntary services by citizens and compulsory enlistment of manpower, as in the case of military service. But stretching the definition to that extent will make it more diluted and less definitive. It may be useful, however, to note that there are instances where non-financial income is used for certain purposes, as in the case of war captives in the battle of Badr. The Prophet determined teaching ten Muslim reading and writing as a ransom of the literate captives.

Section One
Public Revenues in the Prophet's Era

It is not easy to identify the public revenues system of the Muslim state in Madinah at the time of the Prophet. Despite the marked enthusiasm of the Prophet's companions and early followers to record every single utterance, action or approval of an action by the Prophet, no records are known to be available on the nature, volume, types or uses of public revenues at the time. Obviously, there had to be public revenues, simply because there were public expenses to defray; such as the buying of the land on which the Prophet's mosque was built, the building of the mosque itself and the near-by housing facility for the head of the state, the Prophet; not to mention the cost of mobilizing and equipping Muslim armies, despatching Muslim emissaries and hosting the visiting delegations.

We need, therefore, to look thoroughly into the Prophet's traditions in order to trace the types and features of public revenues of the early Islamic state. For that purpose, we shall divide the Prophet's era into two periods which may be contrasted by the abundance of wealth and spoils of war resulting from the Muslim conquest in battles.

Financing Public Needs During the First Phase of the Prophet's Era in Madinah

To understand the nature of public revenues during that phase, we may need to cast a glimpse on how the early Muslim state was established in Madinah. The advent of Islam was signalled by the beginning of the divine revelation in Makkah. Those who embraced Islam ad initium were fully prepared to sacrifice everything for the sake of their new religion. With the rising number of new believers, new needs, hence expenses, began to appear. Initially, there was, of course, a need to have a meeting place, where the band of believers gathered to learn from the Prophet. Al Arqam Ibn Abu al Arqam donated his house to serve both as a propagation center and a meeting place. By the same token, the Prophet made use of his wife Khadijah's wealth, with her consent. Subsequently, the believers were subjected to besiegement and boycotting, an ordeal which led only to further economic solidarity between them. Naturally, Khadijah's wealth was subject to depletion, but not so was the believers's will to sacrifice.

The Prophet's trip to Ta'if had to be financed either by Khadijah's money or Abu Bakr's. There is no indication that the Prophet had yet received any other financing. Then came the *hijrah* (immigration) trip to Madinah which was fully financed by Abu Bakr, whose support to the Prophet was so pointedly acknowledged: "No one's wealth has ever availed me like that of Abu Bakr"[1]

[1] This saying is reported by Ibn Majah .*Sirah* (Prophet biography) books have recorded the epical incident of Abu Bakr taking his entire savings for the Prophet's immigration journey to Madinah, leaving nothing for the sustainance of his family back in Makkah.

Thus, the Prophet and his companions brought with them to Madinah an established "tradition" or "custom" of financing the requirements of the new religion from private contributions. There, the tradition was even more strengthened, as can be elicited from the texts of the *Qur'an* and *Sunnah* dealing with "*jihad* through the expending of one's wealth".

There are several references in the *Sunnah* to public revenues during that period. The following are the most relevant ones:

(1) The fraternalism established by the Prophet between the *muhajirin* (incoming immigrants) and the *ansar* (Madinah resident/supporters) had an obvious material aspect; that is: catering to the immigrants' needs until they became able to take economically productive work, rather than leaving them as a burden on the government.

(2) The Suffah people were a group of immigrants instructed by the Prophet, to stay near the mosque to learn from him, while also serving as his clerks and emissaries. In other words, they were full-time employees of the government. To provide for their livelihood, the Prophet called upon people to donate food and other items to them. Clusters of palm-dates were often hanged in the mosque for the Suffah people to eat from.

(3) Shortly after his arrival in Madinah, the Prophet enacted a constitutional "blueprint" for the Madinah people at large, be they believers, non believers, or jews. "The paper", as it is called, contained a number of provisions concerning the believers' joint responsibility to pay, collectively, such imperative requirements as indemnities and blood-money, ransoms for releasing Muslim prisoners of war, and also to assist insolvent debtors. Additionally, the document stipulated that in the case of confronting a common enemy, each of Muslims and jews - as two separate communities living in Madinah - would collectively undertake to cover their respective shares of expenditure for the benefit of the military effort.[2]

It should be pointed out that the joint responsibility of members of the same tribe to pay blood-money and ransoms had always been known as a common practice since the pre-Islamic Arabs. But to establish the same bond of solidarity among the state citizens at large, based only on the bond of the religion to which they subscribed - was something unknown before.

(4) In setting about to build his mosque, the Prophet, insisted on paying the price of the land which was selected for the site. Most likely, the payment was made from the money Abu Bakr had brought with him to Madinah.[3] Khadijah had already passed away some years before the *hijrah*, and

[2] The text of the document is in: Zafir al Qasimi ,Government system in *Shari'ah* and history (Arabic), Al-Naqqash Pub., Beirut, 1974, pp. 32-36.

[3] In Sahih Al-Bukhari, it is stated that the land was owned by two young orphan boys of Madinah. Their guardian offered to give it free for the mosque, but the Prophet insisted on making the payment.

it was unlikely that any of her wealth was still remaining.

Furthermore, we have no historical evidence indicating that the Prophet had brought any money with him to Madinah or received any contributions before building the mosque.

(5) There is no indication that the Prophet paid any salaries or compensations to public service employees at that time. He asked Abdullah Ibn Sai'ed Ibn Al-As[4], who mastered reading and writing, to teach children. Nothing is reported about the Prophet compensating him for his work. Nor did the Prophet establish a system for compensating the Suffah people who were full-time public servants. It may be concluded that most, if not all, public service tasks were performed by unpaid volunteers. In the event a volunteer had to quit his bread-earning work for the sake of his public service duties, other community members willingly undertook to cover his needs.[5]

(6) Nothing is reported about the Prophet imposing any taxes or custom duties on any one in Madinah, although at times he was known to have made some economic interventions. For example, he designated a market place for Muslims separate from that of the jews. But there were no charges or fees for entering the market or using it. In the *sirah* books we find no mention of any financial duty other than *zakah* which was ordained in the second year after *hijrah*.

(7) The point that no customs or taxes were imposed should be juxtaposed with the prevailing poverty and dire need for help. In a recorded saying, the Prophet, struck by fits of hunger during the night, had sometimes to affix a stone or two onto his stomach. The same thing is said of Abu Bakr, Omar and Ali. There were instances when the pinch of hunger was so acute that they could not sleep and would instead go out of the house in the midst of the night. Some companions of the Prophet fainted, others even fell to the ground under the grip of hunger.[6]

See Ibn Kathir, Sirah of the Prophet (Arabic), Dar Al Fikr Pub., Beirut, 1978, Vol. 2, p.303.

It is likely that the Prophet insisted on paying for the land because the owners were still new converts to Islam, unlike Abu Bakr whose strong faith and long standing made the Prophet feel comfortable in using his money.

[4] A prominent companion who immigrated to Madinah and was martyred in the battle of Badr. See: Ibn al Athir ,Usd al Ghabah, Al-Sha'b ed., Cairo, 1970, vol 3, p. 262.

[5] This does not mean that Islam does not permit payments in return of performing such public services.

[6] There are numerous stories reported in this connection.

(8) Despite the many texts in the *Qur'an* and the *Sunnah* enjoining the believers to give out of their money to the poor, the needy, and for *jihad* in support of Allah's message, there was not a single incident that the Prophet replaced voluntary with mandatory contributions, although this was the practice in the neighboring kingdoms where various types of taxes were imposed. There is no question that the Prophet was well aware of such practices. After all, he was the traveled merchant who had years earlier managed Khadijah's business on journeys taking him as far away as Syria.

(9) In the context of social welfare objectives, one saying, which was narrated by Abu Hurairah, is worth noting: "Whenever the body of a dead person was brought in for the funeral prayer, the Prophet would first ask whether the deceased had left enough to repay his debts, if any. If the answer was positive, the Prophet would go ahead and lead others in performing the funeral prayer; otherwise he would ask the people to perform the prayer themselves. However, with the abundance of riches brought in later as a result of the wars of conquest, the Prophet said: "The believers belong to me more than to themselves; whoever passes away with a debt unpaid, I stand liable to repay his debt"[7].

In another version, he was reported as saying: "Any wealth left by the deceased should go to his kins. But if the deceased leaves only unpaid debts or young orphans, then I stand liable to take care of both". In another case, the Prophet accepted to lead the funeral prayer only after one man had pledged to pay off the debt of the deceased. The government did not have sufficient revenues to assume liability for the payment of debts on which the deceased had defaulted or to serve as guardian of orphaned children. In other words, the Prophet did not permit collecting taxes in order to meet those responsibilities.

(10) It is also noted that the state did not levy taxes for the purpose of creating employment opportunities for those who needed them. Its policy was to assist in finding such opportunities by making use of the resources of the private sector itself, instead of giving out assistance to the needy. This policy is illustrated by a saying narrated by Anas that a man of the *ansar* came to the Prophet asking for charity. The Prophet asked: "Do you have anything in your house?". "Yes", said the man, "I have a piece of material, part of it we use for a cover and part we use for a mat; and I also have a water-pot which we use for drinking". The Prophet asked the man to go and bring these two items, which the man did. The Prophet, exhibiting the two items, invited people to make offers to buy them. One man said: "I buy them for one dirham". The Prophet called several times for a higher price. Another bidder offered two dirhams and won the sale. The Prophet, giving the two dirhams to the *ansar* man, instructed him saying: "Now, go and with one dirham buy food and despatch it to your family; and use the other dirham to buy an adze-blade and bring it to me". With his own hands, the Prophet wrought a handle, fixed the blade to it and handed it over to the man saying: "Go and use this adze for cutting firewood, sell whatever you gather and be sure that I do not want to see you for fifteen days". The man went away and did as told. Fifteen days later, he came to the Prophet reporting that he had made ten dirhams, out of which he bought food for his family

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[7] Reported by al Bukhari and Muslim.

and a substitute piece of material. The Prophet said to him: "This is better for you than coming on the day of judgement with a beggar's mark on your face"[8].

(11) The spoils and prisoners of war in the battle of Badr (in the second year after *hijrah* were the first revenues of significance to be acquired by the Muslim state. Four-fifths of the spoils were distributed to the fighters; the remaining one-fifth was left for the state to utilize it in the way it deemed appropriate for the Muslims' interests[9]. The Prophet made use of the literate prisoners of war in educating Madinah Muslims, making the performance of this task as ransom for release.

These examples and incidents are of obvious significance. From them we can draw several conclusions, foremost of which are the following:

(A) There was no public treasury (*bait al mal*) in the sense known to us nowadays or even in the sense known in the Caliphs' and post-Caliphs' eras. This may be attributed to the historical development of the Muslim state, particularly the way in which it evolved from the stage of voluntary action motivated by conviction and faith into an institutional political system.

It should not be concluded that the Prophet had no one, from among his companions, to serve as custodian of public funds and to whom the disbursing instructions were issued. Bilal, for example, is known to have assumed that role. But most probably the need for that role had emerged only in the second phase of the Prophet's era.

(B) Direct and on-the-spot covering of public needs was the pattern. For each project or item of expenditure, ad hoc voluntary contributions were invited. Quite often, contributions were made in labor or in kind, rather than in money. A visiting guest, for example, was normally taken by one of the Prophet's companions to be fed and accommodated. For the Suffah people, clusters of palm-dates were brought and hanged on the mosque pillars. The mosque itself was constructed by the collective effort of the Muslims, including the Prophet himself.

(C) No planning was made for future revenues, expenses or budgets, although the Qura'nic chapter 12 (revealed in Makkah) points out the importance of future planning, by saving aside

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[8] Reported by al Bukhari (No. 5 under *zakah*), and by Al-Tirmidhi, al Nasa'i and others.

[9] Ibn Zinjawaih (circa 251H ,(Kitab al Amwal (Arabic), vol.2, published by King Faisal Center for Islamic Research and Studies, Riyadh, 1986, pp.710-711 and 719, also: Abu Ubaid, Kitab al Amwal (Arabic), Al-Maktabah At-Tijariyyah Al-Kubra, Cairo, 1934, p. 306.
It should be remembered that the battle of Badr was preceded by some small expeditions. But the spoils gained from those were rather modest in quantity and might have been distributed entirely to the fighters without any share left for the state treasury. The *Qur'an's*, legislation concerning the distribution of the spoils of war was revealed only after the battle of Badr.

enough provisions from surplus years for possible future need in deficit years. In some sayings, the Prophet endorsed the saving of provisions and supplies enough for one year's subsistence. The reason for the absence of such planning with regard to public finance may lie in the fact that public needs at the time were rather modest, which could easily be met by depending on voluntary contributions. This point is of particular significance, in the sense that it indicates that the state was not in the business of collecting public revenues, simply because it did not anticipate a need for sizeable expenses.

(D) No attempt was made to establish a public revenues system with taxation, in particular, representing a major source, although taxes were known at the time of the Prophet as the people of Makkah were mostly in the trading business and must have been well-aware of the taxation practices in the neighboring kingdoms. Instead, the Prophet has dispraised the practice of tax-collection in more than one saying.

This phenomenon, i.e., the absence of a taxation-based public revenues system, cannot be attributed to historical reasons alone as there were numerous needs which could have justified the levy of taxes, or at least the devising of other means to generate financial resources for the government. For example, some areas of public land in Madinah might have been cultivated or leased to farmers with the income going to the state treasury.

(E) Because of the lack of public revenues, the government was not able - at the initial phase - to cater to some of the social welfare needs, such as the repayment of debts on behalf of defaulters. Nevertheless, the state never opted to levy taxes to meet those needs, although, in theory, it could have done so. We may note, particularly in this connection, that *zakah* may be disbursed to insolvent debtors. Furthermore, there were some other expenses which the state opted to suspend instead of financing them through taxation. An example of such expenses was the feeding of under-nutritioned citizens, a function which is known today as guaranteeing a subsistence level of living.

(F) Similarly, spending of development and education was made from private sector's resources (as in the case of selling the *ansar*'s piece of material and water-pot in order to buy the adze), and non-tax revenues (as in the case of prisoners of war providing basic education instead of money as ransom for their release). There are no clear indications from which to know exactly when the incident of advising the *ansar* man to gather firewood had taken place, but more likely, it was in the early phase of the Prophet's era in Madinah.

(G) One question, though hypothetical, still remains without a definite answer: Supposing that the Prophet could not pool voluntary contributions in amounts which were sufficient to cover public needs, what is it that he might have done? Would he have levied taxes? Would he have developed some other non-tax forms of revenues? Or would he have cut down public expenses, in the sense that some public needs would have been left uncovered?

Financing Public Needs during the Second Part of the Prophet's Era

This era was rich with events which were of particular significance for understanding public revenues in Islam. It was an era of numerous Islamic conquests and abundant spoils of war; an era in which the public revenues were of considerable diversity.

1. *Zakah* was ordained in the second year after *hijrah*. People are not left to spend *zakah* the way they like as the *Qur'an* mentions the categories of recipients of *zakah*. The Prophet also explained the main features of *zakah*: its conditions, ratios, exemptions, etc., with clear texts that leave little room for personal views or discretions.

For the purpose of this paper, *zakah* is viewed as a fiscal obligation - tax - whose proceeds are directed for the benefit of specific heads of expenditure. *Zakah* provides a system for self-financing its own managerial cost. When laying the ground for the *zakah* implementation, the Prophet started by appointing the *zakah* managers (collection and distribution personnel) and giving them detailed instructions, very often in writing. The *zakah* levy had brought with it the first nucleus of the fiscal system in the Muslim state.

2. Voluntary contributions continued to finance the greater part of public needs; as in the cases of the Tabuk campaign in the ninth year of *hijrah*, the feeding and accommodation of incoming visiting delegations, the building of mosques and providing them with lighting and water, the provision of social welfare facilities, such as free-water wells (bought and dug by 'Uthman). It should be noted that dependence on voluntary contributions had continued, despite the fact that people in general were becoming more and more able to pay taxes, especially after the conquest of Khaibar and the many other conquests which had brought in enormous riches that made people far better-off and provided them with sources of sustained income.

Furthermore, the Islamic state was progressively expanding and encompassing large numbers of population. For example, more than twelve thousand warriors were mobilized for the battle of Hunayn in the eighth year of *hijrah*, and more than fifty thousand Muslims joined in the farewell pilgrimage in the following year.

3. After the conquest of Khaibar, the Prophet allocated one-half of its land for the emerging public needs and interests of the Muslim community. Quoting some people of the *ansar*, Abu Dawud reported that the Prophet had "separated one-half of the land of Khaibar for financing the hosting of visiting delegations and for public affairs and needs"[10], whereas the other half was already divided into shares for the warriors. The Prophet concluded an agreement whereby the original peasants of Khaibar would continue their farming work in return for one half of the produce as reported by Ibn Kathir[11]. The same formula was also applied to the land of Fadk, whose people

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[10] Ibn Kathir ,The Sirah of the Prophet (Arabic), vol. 3, p.382.

agreed with the Prophet on the same terms and conditions as those concluded with the people of Khaibar.

In sum, the land of Fadk and one-half of the land of Khaibar belonged as a property to the Muslim state. The Prophet used to receive every year one half of the produce of both, from which he allocated one year's provision for his household, leaving the rest for covering public expenses and needs[12].

After the death of the Prophet, Abu Bakr continued to deal with the land of Fadk and half of the land of Khaibar as public property belonging to the state. He was reported as saying: "I will continue to support whomever the Prophet used to support"[13]. It may be noted that the Prophet appointed state employees for the management - i.e. estimation and collection - of that *kharaj* (the share of land-produce handed over to the government in return for using state-owned land).

There are indications that the Prophet had previously established a similar precedent, though smaller in scale, during the third year of *hijrah*. The land taken from Bani Al Nadir, who were evicted from Madinah without fighting, was not entirely distributed to the poor and needy migrants. Ibn Kathir, relying on Al-Bukhari and Muslim, quotes Omar Ibn Al Khattab as saying: "The property and fortunes of Bani Al Nadir were among the riches endowed by Allah, the exalted Almighty, to his messenger without any fighting by the Muslims. Therefore, those riches were purely at the disposal of the messenger of Allah. He separated one year's provision for his household, leaving the rest for covering public expenses and needs, especially those related to the military effort in the way of Allah, the exalted and the most glorified"[14].

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[11] Ibid., p.378. It is presumed that the beneficiaries (warriors) to whom the half of the land of Khaibar was distributed had agreed with the Prophet on the same terms and conditions concluded with the peasants of the land who were tilling the other half, in the sense that they were also required to surrender one half of the produce from their plots to the new land owners. Ibn Kathir reports that Muslim warriors used to receive regular shares of palm-dates produced on the one half of the Khaibar land (p.379). Ibn Kathir goes on to say that when Omar evicted the jews from Khaibar, he called upon the land owners to take charge of their land.

[12] Ibid., p.385. The saying is narrated by Al Bukhari and Muslim. See: "Alu'lu' wa al Marjan" (Arabic), saying No. 1145.
In citing this saying and the preceding one as reported by Abu Dawud, it is not our intention to discuss the utilizations of the lands managed according to the terms of conciliation pacts and to what extent those utilizations were in conformity with the injunctions contained in chapter 59 of the *Qur'an*. Rather, our intention is to explain that the financial revenues derived from that land were used by the Prophet to cover items normally considered as public expenses of the government.

[13] Ibid., p. 140.

[14] Ibid., p. 153. Probably Ibn Kathir is referring here to the one-fifth of the riches taken from Bani

It should yet be noted that most of the fields and palm-plantations of Bani Al Nadir was already destroyed or scorched during the siege which ended up by their expulsion from Madinah. Ibn Kathir reports that most of the remainder of their fortunes, i.e. "the farms and the palm-plantations, was specifically put at the disposal of the Prophet. He distributed those fortunes among the early immigrants to the exclusion of the ansars. However, when Sahl Ibn Hanif and Abu Dujanah petitioned that they were in need, the Prophet gave them a share"[15].

It should be underlined that the *kharaj* delivered from Khaibar and Fadk was in no way a form of tax. It was the right or the share due to the land owner from the produce of one's land. Ibn Kathir emphasizes that "...not all of the land of Khaibar, but only one-half thereof, was distributed among people. It was on this point that Malik and his students had founded their argument that the ruler, as far as the conquered land is concerned, has the choice to deal with it - wholly or partially - either by distribution among people or appropriation for public interests of the Muslim"[16].

Kharaj, it may be concluded, is the rent of land acquired by Muslim society in exchange of surrendering the usufruct of a publicly-owned land to a private party. Ibn Kathir relying on Al Baihaqi, quotes Ibn 'Umar as saying that "the Prophet engaged the people of Khaibar, forcing them to retreat into their dwellings, and overtook their lands, farms and palm-orchards. They agreed with the Prophet that they would abandon the territory and take with them whatever could be carried on their riding animals, leaving everything else for the Prophet. They, later on, offered to stay as land-tillers, which the Prophet accepted on the condition that they would surrender the land back to him whenever he so desired. In return the Prophet allowed them to take one-half of the produce"[17]. The land, hence, became an all-Muslims' property. The Prophet, in his capacity as head of the state, chose to appropriate one half of the land for the state and distribute the other half among his companion warriors. When the people of Khaibar offered to cultivate the land in return for one-half of the produce, he accepted on the condition that he could terminate the contract at any time.

4. During that era, public revenues of the state were beginning to increase. In addition to *zakah*

Al Nadir, knowing that one fifth of the riches won without fighting should go to Allah and the messenger; whereas the other four-fifths should go, respectively, to the near of kin, the orphans, the needy and the way-farers. Or probably Ibn Kathir means that the shares of these groups went to the treasury of the state, i.e., the Prophet, in order to be later distributed to them, as may be inferred from the afore-mentioned statement of Abu Bakr.

[15] Ibid, p. 148.

[16] Ibid, p. 381.

[17] Ibid., pp. 377-378.

and the revenues derived from the state-owned land, there was another item legislated by a revelation since the battle of Badr; i.e. one-fifth of the spoils of war. Together, those items constituted sources of public revenues so huge that the grants given out by the Prophet were becoming considerably big by the standards of the time. On one occasion, for example, the Prophet granted fourteen people a hundred camels each, all out of the spoils of war taken from the tribe of Hawazen alone following the battle of Hunayn[18]. On another occasion, he made a promise to Jabar Ibn Abdullah that when the revenues from Bahrain were delivered, he would give him "so much, plus so much, plus so much", pointing three times with his two hands. The Prophet, however, died before the dues came. In keeping the Prophet's promise, Abu Bakr gave Jaber one thousand and five hundred *dirhams*[19].

5. *Jizyah*, a poll-tax paid by non-Muslims living under the protection of the Muslim state was also enacted and thus constituted another source of public revenues. The Christians of Najran (in South West Arabian Peninsula) were the first to pay it. Levied upon them by the Prophet in the fifth year of *hijrah*, it was determined as an annual lump sum amounting to two thousand garments to be paid in two equal installments, in the second and seventh month every year. Later, *jizyah* was also imposed on the magians of hajar, and then on those of Bahrain.[20].

6. It is also noted that during that period, the practice of *waqf* (public endowments or estates in mortmain) developed into a social economic institution. For example, 'Umar Ibn Al Khattab, who owned a piece of land in Khaibar, was advised by the Prophet to put it in mortmain and allocate its production for purposes related to the cause of Allah. Similarly, 'Uthman was urged by the Prophet to purchase an animal-barn adjacent to the Prophet's mosque and dedicate it for expanding the mosque. The Prophet also asked 'Uthman to buy a water-well and dedicate it for public use by Muslims in return for reward from Allah[21]. *Waqf* was therefore not confined to places of worship but was rather developed and expanded into various forms of social and charitable action.

7. Public borrowing was exercised. The *sirah* books report several cases in which the Prophet has borrowed in order to meet certain public needs, i.e., his borrowing was done on behalf of the state treasury, there are also several other cases in which the Prophet made personal borrowings too. It is reported that the Prophet, when preparing for the battle of Hunayn, requested Safwan Ibn Umayyah to lend him a number of shields. Safwan, who was a non-believer asked: "Is it your intention, O Muhammad, to seize these shields from me by force?". The reply came from the

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[18] Ibid., p. 682.

[19] Ibid., pp. 135-136.

[20] Ibid., p. 104; and vol. 3, p. 416. See also Abu Ubaid, Al Amwal, sayings No. 76-85.

[21] Ibn Kathir., Al Bidayah Wa al Nihayah (Arabic), Ibn Kathir, Al-Maarif books, Beirut, 1974., vol 7, p. 177.

Prophet: "No, I want to borrow them as a guaranteed loan"[22]. It is also reported that the Prophet borrowed forty-thousand *dirhams* from Abu Rabi'ah. The Prophet paid that money back from the revenues of the state treasury, which means that the money was borrowed for the state and not for the Prophet's personal use[23].

On one occasion, the Prophet asked his uncle Al 'Abbas to pay his *zakah* for two years in advance. Abu 'Ubaid reports that the Prophet sent 'Umar to collect *zakah*. When 'Umar came to Al 'Abbas to collect *zakah* from him, Al Abbas said: "I have already paid to the Prophet my *zakah* for the coming two years". When 'Umar reported this, the Prophet said: "My uncle is right. I had asked him to pay his *zakah* for two years in advance"[24].

A few lessons may be derived from the shield-borrowing incident as follows: (a) Safwan Ibn Umayyah wrongly thought that the Prophet was planning to seize the shields from him by force. Safwan did not understand that the Prophet could not exercise or allow forced seizure of other people's property. Seizure, in this context, is equivalent to expropriation. Safwan's misunderstanding might have been attributed to his knowledge that the public loan, given the circumstances of the time, was mandatory. Consequently, it may be concluded, for the purposes of our discussion, that it is lawful for the state to take a mandatory loan from the wealthy. (b) Public borrowing is permissible from any citizen, whether Muslim or non-Muslim. (c) At the time of borrowing, the state was not in a condition of marked poverty. The army which the Prophet led in conquering Makkah was twelve-thousand man strong. The people of Makkah, with the exception of a handful individuals, immediately converted to Islam. It was quite possible for the Prophet to levy a nominal tax, almost negligible in amount, in order to buy those thirty or forty shields. But he imposed no taxes and opted instead to resort to public borrowing.

8. It is noteworthy that throughout that era, the Prophet did not levy any type of taxes, despite the presence of a clear God-ordained example in the form of *zakah*, and despite his full awareness of the taxation practices in the neighboring nations and kingdoms. Whenever the state was in need of funds, he either called for voluntary contributions or resorted to public borrowing When he died, his own shield was in pawn for some money which he had borrowed as a personal loan to the head of the state who had no salary allocated for him.

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[22] Ibn al Athir ,Jami' al Usul, Halwani Pub., Damascus, 1972., vol.8, p. 163.
This saying was narrated by Abu Dawud. In another saying, Abu Dawud reports that the shields borrowed from Safwan ranged in number between thirty and forty.

[23] This saying was narrated by Al Nasa'i, quoting Ibrahim Ibn Abdullah Ibn Rabi'ah to whom the report was passed by his father from the grandfather .Al Nasa'i's Sunan with commentary by Al Suyuti, Dar al Fikr, Beirut, vol. 7, p. 314, saying no. 7061.

[24] Al Amwal, Abu 'Ubaid, p. 589.

Not only did the Prophet avoid imposing taxes on people, but he had made several condemnations against taxes and tax-collectors[25]. In the pre-Islamic era, Arab and non-Arab rulers were in the habit of forcing tradesmen to surrender one-tenth of their wealth whenever they passed by[26]. By contrast, the Prophet made repeated public affirmations on the sanctity of private wealth and property and the individual's right to defend them against any act of aggression. In affirming that right, the Prophet went even to the extent of considering one's death in defense of one's wealth and property as martyrdom.

9. It is also noted that the Prophet began to appoint employees to manage - i.e. collect, keep and distribute - public funds. For example, he appointed Ibn Rawahah and others to assess the quantities of produce from Khaibar. He also appointed 'Umar Ibn Al Khattab and many others to collect *zakah*, appointed Abu Rafi' and Bilal to take custody of public funds and to effect disbursements for public expenses, and appointed a man from the tribe of ghifar to look after camels given as *zakah*[27].

10. It may also be noted that the state began to maintain public property as a means of satisfying some public needs. It is reported that the Prophet designated a tract not owned by any one as public-grazing area for Muslims' horses[28]. Abu 'Ubaid, commenting on the incident, described that land as a protected area allocated "for horses used in battles for the sake of the cause of Allah"[29]. Such areas were known as *hima*, i.e. protected public lands, which meant that in order to keep them for public uses and purposes, they were protected from private ownership.

11. Finally, it may be noted that the Prophet's policy during that era was not to adopt any long-term or even short-term planning in respect of public revenues. He used to distribute whatever revenues that came to him. Whenever a need emerged and there was not enough resources to satisfy that need, the Prophet either called upon people to make voluntary contributions, borrowed against future revenues, or deferred the fulfillment of that need pending the receipt of expected revenue. Al Bukhari, Muslim and others quoted the Prophet as saying: "Were the mountain of Uhud to be converted into gold and given to me, I would not let anything of it remain with me after three nights"[30].

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25 Ibid., pp. 526-528.

26 Ibid., p. 529.

27 Ibn Kathir ,The sirah, vol.3, p.286.

28 Imam Abu al Hasan Al-Mawardi ,Al Ahkam Al Sultaniyyah (Arabic), Al-Babi Al-Halabi Publishers, Third ed., Cairo, 1973, p. 185.

29 Abu 'Ubaid ,Al-Amwal, p. 185.

30 Al Bukhari (No. 104 under *zakah*, and No. 3 under borrowing), Muslim (No. 31 under *zakah* and

It should not be concluded, or rather misconcluded, here that the system was not in favor of planning, pre-estimation or advance-budgeting of revenues and expenses. Rather, the point to be highlighted is that the Islamic system - by virtue of the religious relationship between the government and the people - is of a unique nature; that the real treasury of the government lies in the pockets of its citizens. One should not, therefore, under-estimate the importance of voluntary contributions by the individuals in the public revenues system of the early Islamic state, whether for meeting current expenses or for development-oriented capital expenditure. The ruler and the ruled were bound together by the same faith on which the entire system is based. Consequently, the contributions of individuals for the achievement of the financial objectives of the state are made in a spirit of pure voluntariness. Perhaps the affirmation of this spirit was one of the most important goals sought by the Prophet in all matters of fiscal nature. Even when the resources of the state became abundant, he still used to emphasize always the role of voluntary contributions in serving the public interests of the society. He knew with certainty that for future needs there would be sufficient resources or voluntary contributions by individuals. Therefore, he always designed his fiscal policy, or rather a considerable part of it, on basis of funding from voluntary contributions; instead of saving the surpluses of the time for the future days of need.

Section Two
Public Revenues in the Four Caliphs' Era

The Four Caliphs' era was characterized by vast territorial expansions as a result of the wars of conquest. The Muslim state came to include regions which hitherto had had regular sources of public revenues, such as the various taxes and tithes imposed on merchandise, industries and other economic activities. The inhabitants of the conquered land were already accustomed to paying taxes and other financial obligations to their kings and rulers. The wars of conquest brought in a marked abundance of wealth in the form of gold, silver and items in kind, in addition to vast tracts of agricultural lands in Syria, Egypt, Iraq and Persia. The increase in the spoils of war was also accentuated by the fact that the native inhabitants of the conquered lands were not converting to Islam in large numbers, whether before or during the conquests.

The Muslim government - especially during the Caliphate of 'Umar Ibn Al Khattab - was not in favor of allowing the soldiers to become accustomed to a life of ease and leisure. Instead of distributing the land, the government decided to keep it as public property in order to generate revenue for the state. The small population of the Arabian Peninsula, in comparison to that of the neighboring regions, explains the substantial magnitude of the average share given to each individual as a result of distributing a considerable portion of the large financial revenues coming to the government's capital of Madinah. These factors were of particular significance in determining the public revenues during the Four Caliphs' era. The following are the most important points:

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others.

1. The enormous inflow of the spoils of war and other public revenues (which could be used for meeting any needs of the Muslim community as opposed to the specific utilizations of *zakah* proceeds) resulted in marked changes in the structure of public revenues and public expenditures; aside from its effects on the organizational structure of the public treasury (*bait al mal*).

With this inflow of revenues from the spoils of war, *jizyah* and *kharaj* continuing for several years, none of the caliphs found it necessary to resort to public borrowing or to call for voluntary contributions in order to meet the requirements of public expenditures. Thus funds were readily available each day, whenever needed from the revenues of the various regions and provinces, thereby relieving the government of having to ask for voluntary contributions or public loans. As a result, the role of both voluntary contributions and public loans was greatly reduced in financing government expenditures.

Side by side with the steady influx of public revenues, the Four Caliphs' policy was to avoid keeping large amounts of funds in the public treasury. This led to incurring enormous expenses for social welfare purposes; expenses which had not existed during the Prophet's era. In addition, there was an increase in the government welfare grants, gifts and salaries which were distributed amongst the Muslims without requiring any service in return. For example, 'Umar Ibn Al Khattab established a special grant for the nursing of Muslim babies[31].

Moreover, organizational changes were introduced in the public treasury, including the appointment of full-time employees and the creation of a schedule for distributions. As a result, the treasury had a regular supply of funds which could cover any contingency. During the Caliphate of 'Umar Ibn Al Khattab, there were many reports of indigence and poverty not previously noticed, to which 'Umar responded by commanding the public treasurer to give out money, sometimes to a poor person, a needy woman or an elderly *dhimmi* (a non-Muslim living under Muslim rule and protection).

2. *Kharaj* was another source of public revenues during this era. It was in such volume and stability which were of no lesser importance and effect than the uninterrupted flow of revenues. When Iraq was conquered, 'Umar Ibn Al Khattab ordered a special count to be taken of Iraq's lands and people. From that census, 'Umar concluded that were he to distribute the conquered land among the Muslim soldiers, the share of each individual soldier would be excessively high[32]. He consulted Ali Ibn Abu Talib who told him: "Let them (i.e. Iraq's lands remain as a material asset for Muslims at large[33]. 'Umar therefore decided to reserve these lands for the Muslim society and levied a rental

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[31] Mohammad Rawwas Qal'aji ,Jurisprudence Encyclopedia of 'Umar Ibn Al Khattab (Arabic), Maktabat Al Falah, Kuwait, 1948, p.539. The grant was 100 *dirhams* per child per year.

[32] Mohammad Rawwas Qal'aji ,Jurisprudence Encyclopedia of Ali Ibn Abu Talib (Arabic), Beirut, Dar al Fikr, 1983, p.75.

[33] Ibid.

which he called *kharaj*[34]. He was quoted as saying: "I swear by Allah who controls my soul, were it not for the fear of leaving future generations all in deprival, I would have distributed every land I conquer in the same manner as the Prophet did with the land of Khaibar. Instead, however, I leave such lands as a reserved public asset for Muslims at large"[35].

'Umar's intention was to maintain the land of Iraq as a source of annual revenue for the benefit of contemporary and future Muslim generations. In other words, it was a fixed asset owned by the state providing a periodic income[36]. Amount of *kharaj* was determined according to the productivity of each tract of land[37].

The right of public ownership of this type of land was reinforced by a number of *shari'ah's* rulings. One such ruling was the prohibition by the Caliph 'Umar against the selling of *kharaj* lands. On one occasion, 'Umar asked a man who had bought a *kharaj* land: "From whom did you buy it?" The man replied: "From its owners". But when the *muhajirin* and the *ansar* were gathered together, 'Umar said: "These are the owners. Did you buy anything from them?" The man replied: "No". 'Umar then commanded the man to return the land to whoever he bought it from and take back his money[38]. The Prophet's companions and Muslim scholars who allowed the sale of such lands were in reality talking about the sale of the right to benefit from the sharecropping contract with the state. This is what was termed by Abu Ubaid as "releasing *kharaj* lands"[39]. Other rulings pertaining to *kharaj* lands include the continuation of the payment of *kharaj*, even after the owner has converted to Islam or if the land is sold to a Muslim; because the *kharaj* holds the status of rent due to land owner[40]; the state - being the owner of the land - retains the right to alter the method of calculating the rent or its amount according to the prevailing economic circumstances; but on the condition that no injustice is done to the peasant. In application of this rule, the Caliph 'Umar was keen that the *kharaj* given to the government was never tainted with any measure of injustice to the peasant,

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34 Abu 'Ubaid ,op.cit., p.69.

35 Ibn Kathir ,the *Sirah*, vol.3, p.381. This saying has been transmitted by Al Bukhari.

36 These lands provided revenue for the Muslim society at large, with the state reserving exclusive administration rights. No Muslim individuals had the right to interfere in the management of such lands or their proceeds; unlike the case un-owned land which may be owned by individuals who reclaim it, or the case of ma'rib salt pits which were freely open for anyone to take from.

37 Jurisprudence Encyclopedia of 'Umar, pp. 297-298.

38 Ibid., p.65.

39 Abu Ubaid ,Al Amwal, p.78.

40 Ibid., p.91. See also pp. 87-91.

whether he/she was a Muslim or a non-Muslim governed by a pact with the Muslim state[41].

Finally, *kharaj* proceeds were not spent in the same way as the proceeds from the *ushr* which represented *zakah* on agricultural crops. The state had the right to spend *kharaj* proceeds the way it saw fit for Muslim community's interests, without being restricted to the eight categories prescribed for the spending of tithe and *zakah* (including *ushr*) revenues.

To argue that *kharaj* was a tax on land[42] and that it provides an Islamic basis for imposing land taxes is nothing but a failure to take into consideration the above mentioned points.

Aside from the *kharaj* provided for in the conciliation pact, no tax was imposed on lands which were subjected to the terms and conditions of such pacts[43]. The Muslim state was not even permitted to increase the *kharaj* amount agreed and specified in a pact of conciliation[44]. The only tax taken from Muslim land-owners in the Arabian Peninsula or elsewhere was the *ushr* on agricultural produce; which was only another name of *zakah* on the produce of land.

The majority of Muslim jurists are of the view that this tithe (*ushr*) was obligatory in addition to the *kharaj* if a Muslim owns and cultivate a *kharaj* land. Abu 'Ubaid said: "We are not aware that any of the companions held that the *ushr* and the *kharaj* combined could not be imposed on such lands. Only one follower of the companions, 'Ikrimah, had a view to the contrary; a view which was heard from him and reported by a man from Khurasan known as Abu al Munib. Abu 'Ubaid added: "The valid ruling, in my opinion, is what those (i.e. the majority of) jurists held"[45].

The attempt of imposing *kharaj* on Muslims' lands was not a new one. For instance, Mohammad Ibn Yusuf Al Thaqafi, governor during the Ummayad era, had imposed a *kharaj* on the people of Yemen. However, when 'Umar Ibn 'Abd al 'Aziz took office, he abolished that *kharaj* and decreed that only the *zakah* ordained on agricultural crops be collected, that is, 10% or 5%. He was reported to have said: "I swear by Allah, if only a handful of spices was delivered to me from

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41 Ibid., p.71.

42 As Abdin Ahmad Salamah argued in his article "Al-Mawarid Al-Maliyyah Fi al Islam (Financial Resources in Islam), which was presented to the seminar on Financial Resources of the Modern Islamic State, held in Cairo and organized by the Islamic Research and Training Institute (IRTI) 11-19 April 1986. This article was published as part of the seminar's paper and proceedings in 1990.

43 Abu 'Ubaid ,op.cit., pp. 100 and 155-156.

44 Ibid., p.55.

45 Ibid., p.90.

Yemen, it would be dearer to me than the continuation of this tax"[46].

3. During the Four Caliphs' era, there was an expansion in the selection of the tracts of land as a reserved land for the Muslim government. Usually, these were tracts of uncultivated land or *kharaj* lands unrented to individuals. Upon its conquest, 'Umar identified ten types of lands in Iraq for that purpose: the lands of those who died in war, the lands of those who had escaped, etc. Abu 'Ubaid said: "These were lands which had been abandoned by their owners or were not inhabited or cultivated by anyone. The utilization of such lands was therefore subject to the Caliph's jurisdiction"[47]. These reserved lands, commonly known as *sawafi* were cultivated for the benefit of the treasury. They were part of what is today known as the economic public sector. According to Abu 'Ubaid, the proceeds generated from these lands amounted to seven million *dirhams*[48].

Similar to these *sawafi* were *hima* lands, which were likewise greatly expanded during the era of the Four Caliphs. *Hima* were tracts of land which the state reserved for the benefit of the society. The First Caliph, Abu Bakr set aside a tract of such land at Ar-Rabdhah (north of Madinah) for people who were classified as deservers of charity. Likewise, 'Umar reserved other *hima* lands[49] for charity camels and for the poor.

Hima lands were uncultivated tracts, not owned by anyone. As such, they were not open for individual ownership through reclamation. As regards allocation for public uses, *hima* lands were in different categories. "For instance, if a tract was set aside for people at large, then all the people were equally entitled to use it for grazing, whether they were rich, poor, Muslims or non-Muslims. If it was reserved for Muslims only, then both rich and poor Muslims were equally entitled and to the exclusion of non-Muslims. But if it was reserved exclusively for the poor and the needy, then the wealthy were not entitled to benefit from it. As a rule, however, it is not permissible to set *hima* land aside for the benefit of the wealthy to the exclusion of the poor"[50].

Hima lands may be allocated for one specific purpose only, such as the grazing of charity camels or the horses of the fighters. For instance, in the instructions given to the agent who was supervising these lands, whose name was Hunay, 'Umar was quoted as saying: "Allow enfeebled and little sheep to graze freely in the *hima* land. But never give access therein to the camels

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46 Mohammad Diyauddin Al Rayyes ,*Kharaj* and the Financial Systems of the Muslim State, Cairo, Dar al Ansar, 4th ed., 1977; p. 229.

47 Ibid, p.283.

48 Ibid., p.283.

49 Al Mawardi ,op.cit., p.185.

50 Ibid., p.186.

belonging to either Ibn 'Affan or Ibn 'Awf who can always depend on their farms and palm orchards in case their livestock herds perish, unlike the poor shepherds of enfeebled and small sheep who would come to me dragging their dependents and contesting me by saying: 'how shall we support these dependents, O Ruler of the Believers', ... how can we just abandon them?'[51].

4. During the Caliphate of 'Umar Ibn Al-Khattab, external trade expanded greatly. A group of people with whom the Muslims had no pact of non-aggression, *ahl al harb*, wrote to 'Umar asking to be given access with their trading goods to the land of Arabia, and in return they offered to give him 10% of their merchandise. 'Umar consulted with the companions of the Prophet and they unanimously agreed to the request[52].

Abu Musa Al-Asha'ri wrote to 'Umar informing him that Muslim merchants were required to surrender one-tenth of their merchandise whenever they went for trading in non-Muslim territories. 'Umar replied back saying: "Take from their (foreign) merchants the same as they take from Muslim merchants"[53]. 'Umar also gave the same instructions to 'Uthman Ibn Hunaif and Anas Ibn Malik, who were serving as his representative governors[54]. On one occasion, 'Umar was reported to have inquired on how the Abyssinians dealt with Muslim merchants entering their country for trade. When he learned that the Abyssinians took one-tenth of the merchandize from Muslims, he instructed that the same treatment should be reciprocated[55].

It is thus clear that the tithe on trade was a tax imposed on foreign, non-Muslim merchants. Specifically, it was a tax imposed on the merchandise they had with them when they entered Muslim lands. This tax was based on the principle of reciprocity and was imposed not so much for economic reasons as it was for political ones.

When 'Umar became aware that other nations were taking one-tenth of the merchandise of Muslim merchants entering their lands, he had to choose one out of three alternatives: 1) To treat foreign merchants the same way as Muslim merchants were treated by foreign nations; (2) Not to impose any sort of tax on the merchandise of foreign merchants when they entered Muslim lands; or 3) To impose a smaller tax on them if this would serve the interests of the Muslims. 'Umar chose to apply the principle of reciprocal treatment because he believed that this would best serve the

51 Ibid., p.185.

52 Jurisprudence Encyclopedia of 'Umar, p. 506.

53 Abu Yusuf ,Kitab al *al Kharaj* (Arabic), Cairo, Al-Maktabah al Salafiyyah, 1933., p.135.

54 Jurisprudence Encyclopedia of 'Umar, p.510.

55 Ibid., p.506.

interests of the country. Hence, 'Umar was the first Muslim tithe-taker[56]. Later on, however, when 'Umar found that it would better serve the interests of the society to decrease this tax on food items, which the Muslim community was in need of and which were supplied by foreign non-Muslim merchants, he decreased this tax to 5% on wheat and oil brought to Madinah by Nabatean merchants, so as to "attract more supplies of these items"[57].

It cannot be argued that this tax was the same as today's customs duties on the ground that both taxes are levied on imports. This common factor does not make them similar in nature, because the tithe which 'Umar imposed was for political reasons reflected in the principle of reciprocity.

Ambiguity which surrounded this tax may have two reasons: (a) Its collection was often delegated to *zakah*-collectors[58]. Perhaps the reason for this was the novelty of the tax-collection system itself and the lack of a sophisticated bureaucracy at that time; not to mention the prevailing practice of assigning diverse responsibilities to public employees, especially when these responsibilities were similar to each other, as in the case of collecting *zakah*, *kharaj*, *jizyah* and the tithe. (b) Most of the historical texts which discuss the tithe on trade also discuss a 5% and 2.5% levies. The 5% tax was collected from *dhimmi* merchants and the 2.5% tax was collected from Muslim merchants. Because these three taxes are often discussed simultaneously in the same context, a misunderstanding arose that the 5% and the 2.5% taxes were of the same nature as the tithe on trade. Careful research, especially by early jurists, were not, however, confused about them. Abu Yusuf, for instance, stated that the amount taken from a merchant was 2.5% if he/she was a Muslim, adding: "this is to be considered *zakah*"[59]. Abu Ubaid stated that: "It was 'Umar's policy which he instituted that zakah be taken from the Muslims whereas the full tithe (10%) be taken from foreign non-Muslim merchants in reciprocity for the same amount taken from Muslim merchants by other countries when they went to their lands"[60].

Ziyad Ibn Hudayr, one of 'Umar Ibn al-Khattab's tax-collectors stated: "We did not take the tithe from Muslims or from those with whom we had a pact of conciliation". When asked: "From whom did you take the tithe?", he replied: "From foreign non-Muslim merchants (*ahl al harb*) who

[56] Kitab *al-Kharaj*, p.134. The tithe on trade was not the same as the 10% or the 5% share collected from agricultural crops, which represented the *zakah* ordained in the *Qur'an* and whose rates and conditions were explained by the Prophet.

[57] Jurisprudence Encyclopedia of 'Umar, p.510.

[58] Ibid.

[59] *Al Kharaj*, p.134.

[60] *Al Amwal*, p.531.

took one-tenth from us when we went to their lands"[61]. In confirmation of the *zakah* nature of the 2.5% taken from Muslim merchants, the conditions applying to *zakah*, i.e. the passing of one year, the minimum amount of savings subjected to *zakah* and the lack of indebtedness, also apply to the 2.5% tax[62]. As regards the *dhimmis*, the tax imposed on them was 5%, which was provided for in the conciliation pacts signed between them and 'Umar Ibn Al-Khattab, specifying that the *zakah* taken from them on account of their commerce would be 5%, i.e., they were liable for double the amount of *zakah* which the Muslims were required to pay. Abu 'Ubaid stated that "I first did not understand why the *dhimmi* had to pay that amount. But I found out later that it was in accordance with the conciliation pact signed with them[63].

Finally, it must be pointed out that there is no similarity between present-day customs duties, on the one hand, and the 2.5% zakah taken from Muslim merchants or the 5% tax taken from conciliation-pact merchants, on the other hand. The 2.5% and the 5% taxes were taken only once a year and were related to the merchandize owned by merchants, rather than to imports.

5. The effects of the grants distributed during the era of the Four Caliphs in improving economic and living conditions were manifest. Historians tell of the accumulation of vast fortunes in Madinah and in other Muslim cities. Revenues from *zakah* were transferred from one region to another for the first time. For instance, during the Caliphate of 'Umar Ibn al-Khattab, there were more revenues from *zakah* in Yeman than what could be locally used. The local governor of Yemen, Mu'adh Ibn Jabal, sent the excess amount to Madinah. But 'Umar reprimanded him for this saying: "I did not send you there as a tax-collector. You should take *zakah* from the wealthy and distribute it to the poor". Mu'adh replied: "I did not send you anything which could have been used here by anyone". The same thing happened in the following two years. Each time Mu'adh had to qualify his action by saying: "I could not find anyone to take it from me"[64].

There is no evidence that *zakah* had been transferred from one region to another before the Caliphate of 'Umar. Moreover, 'Umar had asked for help from Egypt, Yemen and Syria in the year of the famine. Caravans of food and clothing were sent to the aid of both the city dwellers and bedouins of Hijaz. It is possible that part or all of the aid despatched to Hijaz was from the proceeds of *zakah* granted that the famine was a sufficient reason for transferring *zakah*, even if it was not in excess of the needs of the original place of collection.

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[61] Ibid., p.529.

[62] Ibid., pp. 530-540, especially texts numbers 1644, 1649, 1676, 1682, 1685, 1688 and 1690, and Jurisprudence Encyclopedia of 'Umar, p.508.

[63] *Al-Amwal*, pp. 531-532, and Jurisprudence Encyclopedia of 'Umar, p.509.

[64] Jurisprudence Encyclopedia of 'Umar, p.365; and *Al-Amwal*, p.596.

6. 'Umar also established the precedent of delaying the collection of *zakah* because of hardships and calamities befalling the people. In the year of the famine and drought, 'Umar did not send his tax-collectors to collect the *zakah* in Madinah and the neighboring areas, but he instructed that *zakah* should be doubled the following year[65]. During the lifetime of the Prophet, we have already seen the possibility of collecting *zakah* in advance. In the Four Caliphs' era we see a practice of postponement of the collection due to the consideration of not burdening the Muslims with what might cause them hardship and difficulty.

7. During this period, the policy of not imposing taxes on Muslims, except for the obligatory payment of *zakah* became a firmly established practice of the Muslim government. This is particularly evident in the strong argument presented by Abu 'Ubaid (pages 528 to 537) in defending the policy of 'Umar with regard to the tithe. Abu 'Ubaid makes it clear that 'Umar levied the tithe on the merchandise of foreign non-Muslim merchants (*ahl al harb*) entering Muslim lands for trading in keeping with the principle of reciprocity. Moreover, Abu 'Ubaid rejects the argument of Ibn Shihab regarding the taking of tithe by 'Umar from the *dhimmi*. Ibn Shihab held that it "was taken from them before Islam and 'Umar simply continued the practice". Rather, Abu 'Ubaid makes it clear that the 5% was taken from them by 'Umar in keeping with the terms of the conciliation pacts signed with them. After all, that was more befitting to the personality of 'Umar and that is what Malik himself had maintained"[66], let alone the fact that Malik was the transmitter of reports from Ibn Shihab.

It is thus clear that no taxes were imposed on *dhimmi*, and it goes without saying that no taxes were imposed on Muslims. However, it must be kept in mind that the government was not in need of imposing taxes during that period because of the abundance of its non-tax revenues and, on the other hand, the government was not yet in the business of expanded government spending.

8. The final point about public revenues in the Four Caliphs' era relates to the care which these Caliphs took in ensuring that resources did not accumulate in the public treasury. Abu 'Ubaid stated that the Caliph Ali Ibn Abu Talib once entered the public treasury (*bait al mal*) and commented: "I will not allow a single *dirham* to remain by nightfall". Then he called upon a man from Bani Sa'd and instructed him to distribute whatever was in the treasury by the end of the day. It is also reported that Ali distributed grants three times in one year. Shortly later, further revenues were delivered from Isfahan. Ali ordered a fourth round of distribution to be made, saying: "I will not allow the storing of these fortunes". Abu 'Ubaid added that "he distributed even the ropes, which

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[65] Jurisprudence Encyclopedia of 'Umar, p.363; Al-Amwal, pp. 374 and 592; and Fiqh al zakah, V.2: p.829.

[66] Ibid., pp. 534-535.

some people took and others left"[67].

Section Three
Public Revenues in the Post-Caliphs' Era

A number of important developments occurred in the post-Caliphs' era which had an impact on public revenues. Foremost among these was the relative external stability of the state. Except for the conquests made under the Umayyad Caliph Walid Ibn 'Abd al Malik, the boundaries of the Muslim state were, on the whole, stable. In addition, a large portion of the spoils of war were not reaching the central government because of the vastness of the state and the large number of active soldiers; and also because the inhabitants of cities which were newly established, such as Basrah, Kufah, Fustat and Barqah, were themselves undertaking new conquests on behalf of the central army which had been doing the job during the Four Caliphs' era. It also appears that a noticeable improvement was witnessed in the economic growth during this period due to a number of reasons. Perhaps the most important one was the distribution of the enormous fortunes which had been accumulated in the hands of Byzantine and Persian authority-holders before the conquests. This distribution had begun during the era of the Four Caliphs. The prevalence of internal security and stability throughout the Muslim state also contributed to economic growth especially if compared with the preceding era when the new state was still being established and expanded. Priority was also given by the Umayyad and early Abbasid rulers to irrigation and agriculture. An added factor was the increasing conversion to Islam by the native inhabitants of the new lands in such a way that by the end of the first century of *hijrah* the majority of them had become Muslims. This was a major factor in resurrecting discussions about public revenues.

It should also be pointed out that demands for expanded public spending were rising as a consequence of the internal political conflicts towards the end of the Four Caliphs' era and the beginning of the Umayyad period[68], which led in turn to further pressures on public revenues. Moreover, the need for public revenues was affected by the changes in the government system, which became more and more monarchical in the post-Caliphs' era with more lavish spending coupled with increased dependence on nepotistic and cliquish alliances and the need to support them financially.

In the following points I will present the most important elements of public revenues in the early phase of the Islamic state after the Four Caliphs' era:

1. The revenues from *jizyah* were declining considerably due to the increasing conversion to Islam. It appears that the Umayyad Caliphs continued to collect the *jizyah* from those who had converted up to the time of 'Umar Ibn 'Abd al 'Aziz. When he took office, he abolished the *jizyah* for

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[67] Ibid., p.570.

[68] Al Kharaj and Financial Systems, pp. 193-196.

those who had converted and instructed the governors of Kufah, Egypt, Khurasan and other regions to cease its collection[69]. On one occasion, he wrote to governor of Kufah saying: "Allah, the most praised and the most glorified, sent Mohammad to call (mankind) to Islam and he did not send him as a tax-collector. Therefore, all of those people who convert to Islam are required to pay the prescribed *zakah* not the *jizyah*"[70].

2. New taxes were introduced which heretofore had not been known. It seems that these were instituted by the Umayyad rulers in order to cover their increasing needs for public spending. Some of these taxes were mere rehearsal of pre-Islamic taxes, such as the so-called *nairuz* and *mahrajan* "gifts" which the kings of Persia used to collect at the beginning and middle of the Persian calendar year[71].

Novel names were also coined for newly introduced taxes, such as the *fidyah* tax, minting fees, paper charges, caravan tariffs, housing charges and marriage *dirhams*. Some of these were probably names for fees paid in exchange for government services, rather than taxes as understood in the present-day sense. Nevertheless, it appears that 'Umar Ibn 'Abd al 'Aziz considered these unjust practices forced upon the people. He wrote the following instructions to one of his governors, 'Adiyy Ibn Arta'ah: "Relieve the people from the *fidyah* tax, the *emir*'s banquet's tax and the so-called duty tax which is nothing but a form of injustice and fraud to which Allah, the most exalted, referred in the *Qur'an* by saying: "... and do not defraud the people of the things which are their right, and do not commit evil in the land with intent to do mischief". But whoever gives you *zakah* accept it from him"[72]. He also wrote to 'Abd al Hamid, the governor of Kufah, saying "Only collect the minimum amount for the *kharaj*. But never collect the minting fees, the *nairuz* or the *mahrajan* presents, paper charges, caravan tariffs, housing charges or marriage *dirhams*"[73]. Abu 'Ubaid adds that 'Umar Ibn 'Abd al 'Aziz instructed one of his knights to: "Go the building in Rafah known as the *bait al maks* (the tax building) and demolish it"[74].

3. Government revenues generated from public property have increased and so was the role of

69 Ibid., pp. 230-231.

70 Abu Yusuf, p.131.

71 Al Kharaj and Financial Systems, pp. 188-189.

72 Abu Ubaid, p.527.

73 Mohammad Maher Hamada ,Political and Administrative Documents of the Umayyad Era (Arabic), Beirut, Muassassat Ar Risalah wa Dar al Nafa'is, 1394., p.431. In this copy of 'Umar Ibn 'Abd al 'Aziz's letter, the term *al nawbah* appears instead of *al fidyah*, see p.527.

74 Abu 'Ubaid, p.527.

the economic public sector. Public real estates were developing and expanding to the extent that a special government bureau to manage them was created during the reign of Walid Ibn 'Abd al Malik[75]. Contrary to the strict and upright practices which had characterized the Four Caliphs' era, there was no clear-cut separation between public property and that which was privately owned by the ruling Caliphs throughout most of the Umayyad era[76]. For example, the *sawafi* lands of Mu'awiyah Ibn Abu Sufian had noticeably increased throughout the Hijaz, Syria, Iraq and Palestine, especially after he reclaimed vast tracts of swampland in Iraq between Basrah and Kufah. It is reported that the proceeds accruing to him from these lands alone reached five million *dirhams*[77].

4. The public revenues system ceased to draw on voluntary contributions or public borrowing. Perhaps the most important reason was the abundance of revenues. There were, however, several *shari'ah* rulings issued with regard to public borrowing and taxation. Al-Mawardi, for instance, states that the public treasury may take loans in order to cover the types of expenses which are generally a responsibility of the public treasury, such as the cost of military personnel and equipment or any similar payment the delay of which may lead to corruption and bad effects[78].

Al Shafi'i is reported to hold that the ruler should not allow any funds to accumulate in the public treasury, "because taxes can - or rather should - be imposed whenever justified by any financial difficulties"[79]. Al-Mawardi adds that the public treasury stands responsible for meeting expenses related to certain public interests, if failure by the ruler to cater to such interests would lead to widespread harm. But if the treasury has no funds, then it becomes a community obligation (*fard kifayah*) on all the Muslims to meet the expenses of those public interests, as is the case with *jihad*[80]. This means that it is allowable to impose taxes for the fulfillment of such interests if the public treasury does not have enough funds.

5. Finally, revenues from the *kharaj* increased considerably as a result of the special attention paid to irrigation and agriculture[81]. Similarly, revenues from *zakah* grew to such an extent that they were reported to be in excess of public needs during the reign of 'Umar Ibn 'Abd al 'Aziz.

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75 *Kharaj* and Financial Systems, p.221, and Abdeen Ahmad Salamah, p.27.

76 Ibid., p.196.

77 Ibid., pp.186-188.

78 Al Mawardi, p.215.

79 Ibid.

80 Ibid.

81 *Kharaj* and Financial Systems, pp.195; 214-216; 237-238; and 246-247.

Section Four
Lessions and Implications of the
Early Islamic Public Revenues System

Any attempt to formulate a theory of public revenues in Islam or to conceive a structure for these revenues ought to depend on the understanding of the public revenues model of the early Islamic period. The discussion in the first three sections of this study provide the bottomile of this section. The main lessions of the previous sections related to the public sector's revenues, taxation and private sector's financing of the government.

Revenues from the Public Sector

The principle of ownership in Islam warrants the expansion of the state's non-tax revenues.

The ownership system legislated by Islam is based on the existence of private ownership that is protected and secured side by side with public ownership that is also protected and secured. The Islamic economic and financial systems are based on this inter-marriage between public and private ownerships. Islam has accorded the state with the ownership of an extensive portion of the country's economic wealth. Public property includes the land that is not utilized in economic production, mineral resources and the sources of energy such as cataracts and waterfalls[82]. Moreover, the responsibility of the state to provide public utilities such as roads, potable water, etc., and to invest its properties and the surplus of the economic public sector for the benefit of society warrant the expansion of the public sector and public ownership to an extent that may be larger than what is witnessed in many western countries today[83]. Establishing fixed assets that yield non-tax revenues to the state was a basic component of the financial policy during the Prophet's and Caliphs' periods. Today, building up public property as a permanent base of revenue for the public treasury is not confined to agricultural land as it becomes possible to extend it to other types of investment, including monetary investments in many cases. In the Islamic system, the sources of ownership of the economic public sector are: (1) allocation of resources by virtue of the system itself (2) Investment of the surplus of public property, (3) Utilization of the yield of the war booties, *jizyah*, tithe of trade with non-Muslim foreign countries and (4) Borrowing from the private sector.

Confiscation of private property is not one of the public sectors' sources as Islam has

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[82] Kahf, Monzer" ,*The Economic Public Sector and its Role in Generating Revenues for Development in an Islamic Economy*", paper presented in the seminar on "**Financial Resources of the State in Modern Society from an Islamic Perspective**", organized by the Islamic Research and Training Institute (IRTI) in Cairo, April 1986. Proceedings of this Seminar are edited by Monzer Kahf and published by IRTI, Jeddah 1990.

[83] Ibid., pp.37-38 and 49-50.

emphasized the sanctity and inviolability of private ownership. In addition, during the Prophet's and Caliphs' periods, public property was not established through imposing taxes on the people to transfer savings from the private to the public sector. That taxes and confiscation are not a source for mobilizing resources for the public sector does not mean a low profile of the economic public sector, since what is allocated for it in terms of public properties makes it occupy a significant part of the economic activities in any contemporary society.

The Islamic state can price its public sector's products according to what it deems appropriate, in order to achieve its aspired economic objectives[84]. The state can also use price discrimination between the public sector's products, categories of consumers or provinces and geographical regions, as a tool for realizing the objectives of its economic policy. In this regard, four points arise:

1. By analogy with the regulations related to *hima*, barren land and the common properties of the community, the state is not entitled to favor the rich with certain privileges and deny same for the poor, although the contrary is permissible. Consequently, the idea of encouraging investment through injecting savings of poor sectors (agriculture and animal husbandry) into a rich sector (industry) by means of taxation and pricing, etc. may raise a big question mark in Islamic economics.

2. Many of the services that are customarily considered as free of charge by socialist standards may not necessarily be so in the Islamic standards. Education and medical care may be provided by the Islamic government when sufficient revenues from the economic public sector are available. Otherwise, providing education to the youngsters is the parents' responsibility, so is health service which is part of the *shari'ah* dictated household expenses as detailed in Islamic jurisprudence. We should take into consideration that the poor are given *zakah* as due to them up to their sufficiency. If *zakah* is not sufficient, dues on the wealth of the rich will ensure the minimum required for the living of the poor. It is possible then that neither education nor health services may be offered free of charge to the rich in Islamic system. As for the poor, *zakah* fund may offer them what they need for spending on education and health.

3. Establishing and maintaining public services such as roads, public drinking places and mosques are the responsibility of the Islamic government if it has non-tax revenues from state properties and economic public sector[85]. If the government does not have sufficient

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[84] It may be noted that the government can use the size of production and employment in the economic public sector as a tool of economic policy as well. The state can also change the size of production of a certain commodity to attain the same objective.

[85] Al Ahkam Al Sultaniyah, p.245.

revenues, then it can impose fair fees on the utilization of some of these services[86].

4. Some public properties are considered in *shari'ah* as community property, especially those referred to in the Prophet's saying - pasture, water, fire and salt. It may be difficult to charge this type of public goods a price that is more than the production cost in case the technological and demographical development warrants that their utilization or procurement require big capital investment such as in the case of salt extracting, packaging and distribution. If the price exceeds the cost of production of these goods, this would be a constriction of people's right of finders keepers[87].

Finally, *kharaj* of the economic public sector is a financial revenue that is characterized with more flexibility than *zakah*. The Islamic government can increase or decrease *kharaj* according to its policy. Methods of levying and collection are flexible too. While 'Umar imposed *kharaj* as a specific amount to be levied on the area of land, Abou Yusuf proposed the modification of assessment to be a percentage of output, saying:"I have found nothing more trouble-saving for *bait al mal* and for *kharaj* people than reaching a compromise....a sharing formula that would satisfy the ruler and endow *kharaj* people with peace of mind and favor"[88].

The Islamic state can also use the proceeds of the economic public sector, *kharaj* for anything that would fulfill the public interest whereas in *zakah* we find that its proceeds are restricted to the eight heads of expenditure as mentioned in the *Qur'an*.

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86 Such as for using a road for which there is an alternative for people to use however difficult, and a drinking place that can be dispensed even with tolerable hardship. As for a road for which there is no substitute or a, as a place of worship mosque, it is not permissible to impose a fee for using either of them .Al Ahkam Al Sultaniyah, p.p. 245-246.

87 At the same time it is against shari'ah to permit some individuals to install investing equipment on these natural resources that would enable them to get more than any other individual can get out of them.

88 Abou Yousuf, p.p. 49-56.

Taxation

Zakah, the basic pillar of the Islamic financial system, is the only financial obligation in the Islamic economic system which a Muslim should pay because he owns wealth/income that exceeds a prescribed exemption limit called *nisab*. It is the sole obligation imposed on owing wealth and/or having income. This does not, however, mean that there are no other financial obligations. Spending on relatives, entertaining of guests, satisfying the needs of the poor and the needy, and tithe on the trade of those who are at war with Muslims as well as other financial obligations known in the Islamic system, but they are imposed on the ground of other reasons, namely, relations' needs, guests' entertainment, the needs of the poor and the needy and the introduction of merchandise of those who are at war with Muslims into Muslims' territory, etc. Similarly, the availability of means and the security of the journey are considered conditions for the performance of haj[89].

Contemporary economic and financial systems refer to various purposes of taxation, especially meeting public expenditure required for the production of public goods[90]. This represents the most important part of the allocative role of taxes which is related to allocating economic resources between the production of public goods and that of private goods. Taxes have another allocative role, i.e. between the different private goods themselves. As for the other objectives of taxation they include distribution, stability, equilibrium and development[91]. The question persistently asked in this respect is: what is the status of taxes in the Islamic financial system? Are there any constraints on imposing taxes or on their use to fulfil the said objectives?

To answer this question, opinions of classical Muslim scholars should be studies but there is no scope of doing so in this paper[92]. The following conclusions would emerge from the presentation made in this as well as other papers[93], and the review of the opinions of some classical scholars.

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[89] Fiqh al-Zakah, pp.988-992, especially the last four paragraphs.

[90] R.A. Musgrave and P.B. Musgrave ,Public Finance in Theory and Practice, 4th ed. (Mcgraw-Mill, New York, 1984), p.p. 48-54.

[91] Monzer Kahf" *Towards a Theory of Taxation in Islamic Economics*", paper presented in the seminar on **Financial Policy and Development Planning in Islam** held at the International Institute of Islamic Economics, the International Islamic University, Islamabad, July 1986 (pp. 3-7), see also papers by Fazlul Rahman Fandi, Abdin Salamah, Muhammed Mukhtar Mutwalli, and Musgrave and Musgrave.

[92] For details please refer to: Abdul Salam Abbadi Ownership in Islamic Shari'ah, Al-Aqssa Publishing, Amman, 1975, vol.2, pp.288-301, and Fiqh Al Zakah, pp. 990-992 and 1093-1105.

[93] See the papers mentioned in Note (91) and Monzer Kahf" *Taxation Policy in an Islamic Economy*" in Fiscal Policy and Resource Allocation, edited by Ziauddin Ahmad, Munawar Iqbal and

1. It is impermissible to impose tax on wealth/income only because it is owned/accrued, or on the rich because of their wealth and/or income. This would mean that the purpose of transferring private savings to the public sector does not, alone, allow the imposing of tax in the Islamic financing system.

   This may also imply that tax levy to reduce the income (or wealth) of the rich, on the claim that the present size of income (or wealth) increases demand which may lead to inflationary pressure is not acceptable in the Islamic financial system. For even if it is determined that such a harmful pressure on prices should be avoided, the size of damage does not justify the confiscation or seizure of private savings in the name of taxes to attain price stabilization for two reasons: i) There are other alternatives to reducing income which attain the same purpose, namely, reduction of government demand, absorbing part of individual income through public borrowing and using monetary instruments to reduce demand, etc. and ii)Such damage - if it is rationally proved - does not justify such a levy, rather it may call only for putting restraint thereon.

2. Those *fuqaha* who approve of taxation link this matter with necessity. They interpreted the non-existence of taxes in the early period of the Islamic state by lack of necessity, in view of the abundance of other sources. Such understanding of taxes implies two conclusions: a) Tax levy is the last resort in the Islamic Financial System. It must be preceded by many moves especially manipulation of the *kharaj* of the economic public sector, collection and spending of *zakah*, selling what can be sold of public goods and services to the buyers or users at a suitable price, financing what can be financed of public projects especially those of developmental nature through equity (participation) by the private sector on the basis of *musharakah* or *mudarabah* according to *shari'ah*, voluntary or compulsory public borrowing and donations to the public treasury, etc[94]. b) Expenditures for the sake of which taxes are imposed should be examined and what is unnecessary among them should be omitted. It is worthy of note that necessity is determined according to *shari'ah*'s criteria and tax should not

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Muhammad Fahim Khan, publisher: The International Center for Research in Islamic Economic, Jeddah 1983, pp. 131-153.

[94] Monzer Kahf "Towards a Theory of Taxation in Islamic Economics ,"pp.35-38.

be imposed to meet excessive expenditure or that which is not permitted by *shari'ah*. This requires that tax imposition should be closely linked with public spending, and with the duties the state assumes in the Islamic system. A differentiation should be, however, made between what a state has to do in all circumstances, and what it should do provided non-tax revenues mere available[95]. For example, in case *zakah* proceeds are insufficient to satisfy the minimum needs of the poor, and lack on non-tax revenues, it is permissible to impose taxes to meet those minimum needs (line of poverty).

3. The principle of solidarity among members of the Muslim society may constitute a strong base for tax imposition - when imposed.[96] We noticed how the Prophet (pbuh) applied this principle on blood money and prisoners' ransoms in the constitutional document he issued on his arrival in Madinah[97]. It should be noticed, however, that blood money and ransom are part of the indispensable and essential expenditure.

4. Finally, it is worthy of note that Muslim scholars emphasize that the tax burden should be divided among the "*able people*", i.e., the rich. Justice and social solidarity call for progressive tax imposition on the rich[98] and not on the poor. As such, it seems likely that some kinds of taxes may be objectionable from *shari'ah* point of view. For instance, indirect taxes intended to collect large revenue, which are imposed on goods or services consumed by a large sector of the people, may burden the poor and the rich alike. Besides, customs duties may sometimes be regressive in their incidence[99].

In addition, financing, through borrowing from the central bank as a kind of public revenue may raise an objection from *shari'ah* point of view since it does not comply with "making the rich assume in burden of taxes". Financing through new issuance of money, if it leads to inflation and currency devaluation is in fact some sort of tax on the wealth and income of people whose wealth and income are determined in money units. This also loads the poor with unfair burden in contradiction with Islamic principle.

Private Sector's Financing of Public Expenditures

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95 Ibid., pp. 8-14 and 33-35.

96 Ibid., p. 1083.

97 Systems of Government in *Shari'ah* and History, p.33.

98 A saying (tradition) that " a dirham has outdone a thousand dirhams" refers to the importance of alms burden in getting reward which indicates that in tax levying the tax burden should be taken into account.

" 99 Towards a Taxation Theory ... "p.39.

The private sector could participate in financing public expenditures in three ways: partnership, lending or donation. There are no instances of partnership financing in the early

period of the Islamic State although it might be preferred to lending because of its expected return.

1. Participation of the private sector in financing public expenditures may take several forms of which the most common is equity participation in profitable projects undertaken by the public economic sector. This participation may be on *musharakah* or *mudarabah* basis.

Mute public infrastructures can be financed by the private sector, where the private sector may construct and sell or lease such projects to the state or construct them on behalf of the state based on a contractual relationship which may realize a reasonable profit. The treasury may pay the installments from the normal revenues over a number of years.

The idea of private sector participation could be expanded further to include the financing of ordinary current expenses through identifying a number of public services' sectors, such as operating an airport or running the school system in a given year in a given city, where such services - once specified in details - can be contracted to the private sector.

Thus participation of the private sector - on the basis of profit provides a viable alternative to domestic interest-based public borrowing. Such participation may reduce the deficit in the ordinary or development budgets to an extend that might push the entire financial and economic system to a greater degree of democracy, where the government's economic power - whether in terms of its ownership of productive capacity, or in terms of its being the biggest employer - would be distributed and owned more and more by individuals.

Regarding the *shari'ah*-related problems that might result from the financing and ownership of companies contracting with the government, such as the problem of prohibiting bond's negotiability except in the nominal value of the debt. Such a problem could be solved by identifying components of the assets of such companies in such a way as to make debts not constitute the major ingredients and where the increase of debts on the government on the company's assets side will be considered a sign of weakness and inability to get new contracts. So the more debts appearing on the company's assets side, the closer it is to being liquidated and, therefore, the more restrictions should be imposed on transacting its shares. A ceiling could also be put to the number of shares that an individual may own in this type of companies in order to preclude concentration on such shares in a limited number of hands.

2. Interest-free public borrowing could also be resorted to sometimes, especially mandatory borrowing. An example of such borrowing could be taken from *Sunnah*, where money was borrowed from rich people and monetary obligations (such as *zakah* were collected before their due

date. Such obligatory borrowing is known nowadays in some systems[100]. However, the most important form of public borrowing is borrowing from the financial and banking sector (including the central bank).

3. Finally, donations cannot be overlooked as one of the sources of public revenues of contemporary Muslim countries. Such donations increase with the increase of solidarity and harmony between the government and its people. It is to be noted that one of the important forms of contemporary donations is that in which some of the services and constructions (such as street beautification and public parks) are left to the private sector to undertake on the basis of donations. Such works may be a form of advertising private sector's companies.

[100] For example the U.S. Government provides for payment of installments of income tax during the fiscal year to the treasury. But, normally, the total sum of installments withheld exceeds the amount of taxes due, a matter that necessitates the refunding the individuals of such excess amounts after the end of the year. The excess often amounts to tens of billions of U.S. dollars.

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