In 1988, the fledgling Islamic Resistance Movement in Palestine, Ḥamās, emerged with a new concept, manifested in article 11 of its Charter: “. . . The land of Palestine is an Islamic waqf land [endowed] for the benefit of Muslims throughout the generations and until the Day of Resurrection. It is forbidden to abandon it or part of it or to renounce it or part of it . . .” This idea was further elaborated in the following Ḥamās statement: “Palestine in its entirety is holy [emphasis added] Muslim waqf land.”¹ The Ḥamās view of Palestinian land thus incorporates two concepts: one, Palestine is waqf land; and two, as such, it is holy land. The popular Islamic concept of the holiness of Palestine was until then based on religious and historical factors, such as being regarded as ‘the territory blessed by God (Allāh)’—an interpretation of Qurʾān 17:1, which identified the blessed precincts of al-Aqṣā (alladhī bāraknā ḥawlahu) with Palestine (originally with al-Shām) (Jabr 1999, 191; Abū ‘Aliya 2000, 41), and as arḍ al-īsraʾ waʾl-miʿrāj—the territory of Muḥammad’s nocturnal journey and ascent to heaven (Jabr 1999, 200). With Article 11, Ḥamās added a legal justification to the holiness of Palestine. And once the land was pronounced waqf, two additional attributes were added to the public discourse (the religious and nationalist discourse in general, not only that of the Ḥamās activists)—it was now regarded as holy and inalienable.

¹ Quoted from a leaflet Ḥamās disseminated in Gaza on July 22, 2000.

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Even though the claim that Palestine is *waqf* land, and as such no part of it could be renounced, was commonly used in the public discourse in the context of the Palestinian-Israeli conflict over the last decade or two, its legal and historical roots have not yet been studied. One expert even wrongly claimed that this new assertion of Ḥamās was not accepted by other Islamic fundamentalist groups, and that “apparently Ḥamās itself was aware of the weaknesses of this claim” (Steinberg 2002, 148–49). As I will show below, the concept that Palestine is holy inalienable *waqf* land is not only a consistent assertion of Ḥamās, but was adopted by the official political and religious actors of the Palestinian Authority (PA) and became common knowledge amongst Palestinians and other Muslim constituencies.

My main argument in this chapter is that the Ḥamās concept is a novel politically-oriented myth, rooted neither in Islamic legal texts nor in historical practice. This myth aims to explain why Palestinians (or Muslims in general) should not cede a single inch of land to Israel or to the Zionist Jews. A myth is generally a political allegory related to events from the past or, alternatively, it is future-oriented. It is normally based on historical reality, but its original factual core is adapted, extended, interpreted and exaggerated. The purpose of a myth is basically twofold: to interpret the reality (mainly to place the present on a historical sequence) and to urge people to behave according to a particular pattern (Sivan 1990, Introduction).

The first section is an attempt to trace the legal grounding of the Ḥamās contention that Palestine is a *waqf* land and to follow the sources and authorities that Ḥamās uses to endorse its new interpretation. I compare the Ḥamās text both with earlier texts, those issued by Ḥājī Amīn al-Ḥusaynī, the Grand Muftī and President of the Supreme Muslim Council (SMC) in British Mandate Palestine during the 1930s, and with more recent texts, such as Jordanian and Palestinian *fatwās* from the 1990s and 2000. In the second section I demonstrate that, contrary to Ḥamās’ claims, lands conquered by Islam, including Palestine, were categorized as *fayṣ* lands rather than as *waqf* lands (I will also explain the differences between these two systems). The third section deals with the practice of land tenure during medieval and Ottoman times. I argue there that *fayṣ* or *kharāj* lands, known as *mirāなもの in the Ottoman period, were not considered holy and were transacted freely, including with non-Muslims.