



مركز دراسات التشريع  
الإسلامي والأخلاق  
Research Center for Islamic  
Legislation and Ethics  
عضو في جامعة حمد بن خليفة  
Member of Hamad Bin Khalifa University

ISLAM & APPLIED ETHICS

# THE HIGHER OBJECTIVES OF ISLAMIC FINANCE

ALI M. AL-QARADAGHI  
ABDELAZEEM ABOZAID

COMPILED AND EDITED BY: DR FETHI B JOMAA AHMED

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## Introduction

*In the name of God,  
the Most Gracious,  
the Most Merciful*

The Research Center for Islamic Legislation and Ethics (CILE) is pleased to place into the hands of readers this series of booklets, which contain a collection of research papers that have been presented at events organized by the Center. Through these booklets, we are seeking to build a methodological platform that will contribute to the CILE's key objective, namely promoting radical reform. The type of radical reform that we are calling for is based on a fundamental concept: transformational renovation. This concept transcends traditional renovation and *a posteriori* diligence, which tends to maintain reality and adapt to it, assessing and judging its components through the system of five categories of laws in Islam: *Wajib* (required, obligatory); *Mandoob* (recommended); *Mubah* (permitted but morally indifferent); *Makrooh* (discouraged or abominable); and *Haram* (forbidden or prohibited); in other words, it is rather an evaluative type of jurisprudence. Transformational renovation goes beyond this intellectual space to create a kind of renovation and jurisprudence that addresses facts critically and explores reality intellectually so as to reform it, or even reconstruct it if necessary. Moreover, this transformational renovation process puts forward alternative solutions for the shortcomings of the current reality, seeking to establish new means, models, and paradigms at all levels that would

achieve ethical objectives. Therefore, radical reform purports to go beyond superficial issues and directly into the crux of objectives and ethics, beyond minor details into theoretical foundations and frames of reference.

In order to implement radical reform by means of transformational renovation, religious scholars and scientists should share the responsibility. While religious scholars, in many cases, have been capable of judging reality based on specific facts provided by scientists, the task is different when it comes to diligence and transformational renovation. This is because an endeavor such as this requires an advanced and comprehensive understanding of both religion and reality. Being well versed in Islamic Shariah sciences and being formally and partially aware of reality alone will not help bring about transformational reform unless it is accompanied with similar knowledge of our reality, and with today's scientific advancement, this is only possible by involving those specialist scientists and practitioners. The process of building reality on the foundation of proper Islamic ethics and values should be based on a deep and comprehensive understanding that will help analyze the reasons behind malice, which drive people to engage in substandard activities. This understanding may lead to the introduction of alternative solutions and new practices, which are more deeply founded on scientific knowledge. Not dismissing the sound efforts and evaluative diligence of religious scholars, neither Islamic Shariah scholars nor scientists alone should monopolize knowledge or assume the sole responsibility for undertaking reforms in society.

CILE activities are noteworthy for bringing together both religious scholars, scientists and experts. We do not seek to address the evaluative process, which is limited to understanding reality through judgment and adaptation, drawing on

permissions or prohibitions. Rather, CILE activities facilitate an open dialogue between scholars and expert practitioners, who can collectively propose how best to undertake radical reforms and recommend solutions that are at once inspired by Islamic principles and supported by scientific knowledge. Although the combined work of religious scholars and scientists constitutes a fundamental methodological basis for transformational renovation, it should be coupled with many other elements pertaining to the methods, theories, and objectives of science. For instance, traditional Shariah scientific methods do not preclude the desired type of renovation. At the same time, modern science has failed to focus on ethics, as it has not addressed ethics as a fundamental issue. On the contrary, modern science relegates ethics to a secondary position. This raises the issue of the division of sciences into religious and secular sciences, and of their tendency to focus excessively on highly specialized topics without associating them with greater universal themes.

Undoubtedly, this undermines the communication between scholars from various disciplines and prevents their efforts to work together to develop an epistemological approach that combines their knowledge to serve the important purpose of promoting ethics. Therefore, the challenge set before us is not to persuade scientists belonging to various disciplines and backgrounds to work together. Rather, it is to shake them in their scientific safe havens and drive them to push through the epistemological paradigms governing their own knowledge in order to set up a new system and outline methods for the goal of achieving renovation.

Enhancing its specialized research activities aimed at facilitating and exploring the communication between religious scholars, scientists and experts, the CILE convened a three-day closed seminar from 10<sup>th</sup> to 12<sup>th</sup> June 2014 in Education City,

Doha, to consider the contemporary challenges of and the relationship between Islamic ethics and economics.

The seminar participants, scientists, and intellectuals with theological and practical experience from around the world included Sheikh Dr Ali Mohyi Al-Din Al-Qaradaghi, Sheikh Dr Abdullah Bin Yousuf Al-Judai, Dr Hatem El-Karanshawy, Dr Abdelazeem Abozaid, Dr Philip Molyneux, Dr Muhammad Umer Chapra, Dr Asad Zaman, Dr Tariq Ramadan, Dr Catherine Samary, Dr Mohammad Fadel, Kavilash Chawla, and Chauki Lazhar. The seminar was moderated by Dr Abderahman Yousri.

The CILE requested the participants to address the following topics:

- (A) What are the main objectives of financial institutions in the current neoliberal economic system in relation to the individual, society, state, and global economy?
- (B) What are the main objectives of “Islamic Finance” from an Islamic perspective in relation to the individual, society, state, and global economy?

This booklet includes some of the research papers presented in this seminar and is a part of CILE book series that we hope will contribute to our project of transformational renovation.

CHAUKI LAZHAR, *CILE Deputy Director*

## About the Authors

ALI MOHYI AL-DIN AL-QARADAGHI. Sheikh Prof. Dr Ali Mohyi Al-Din Al-Qaradaghi was born in Qaradagh in Kurdistan-Iraq, in 1949. He received his PhD with honors in Shariah and Law from Al Azhar University in the field contracts and financial transactions in 1980. He is currently a Professor of the Principles of Islamic Jurisprudence, Qatar University, and the Secretary General of the International Union of Muslim Scholars (IUMS). He holds several professional positions including the Vice President of the European Council for Fatwa and Research, the Chairman of the Board of Trustees of the University of Human Development in Iraqi Kurdistan, and the President and an Executive Member of the Fatwa and Shariah Supervisory Board for a number of Islamic banks and insurance companies in the Arabian Gulf and the world. He has published more than 30 books and 100 academic papers. He was awarded the State Incentive Award in Islamic Comparative Jurisprudence by the state of Qatar, and received the Medal of pride by the religious administration and the Council of Muftis in Russia.

ABDELAZEEM ABOZAID. Dr Abdelazeem holds a PhD and a Master's degree in Islamic Financial Law. He also holds three BA degrees in Islamic Law, Arabic Language, and English Literature and two higher studies' diplomas in Islamic Law and Human Sciences. He has extensive working experience as a Lecturer at Damascus University since 1998: at the International Islamic University in Malaysia specializing in Islamic Financial Law; as a Shariah expert and trainer at Emirates Islamic bank, and

a Shariah board member and consultant for Islamic financial institutions, including RHB Islamic bank in Malaysia, Mithaq Takaful Abu Dhabi, and Five Pillars Associates, Singapore. In 2012, he became the head of Shariah department at Oman Arab Bank in Muscat, Oman. Currently, he is holding the position of Associate Professor in the Islamic Finance Program at Qatar Faculty of Islamic Studies. He has conducted many workshops and training courses in many Islamic banks, financial institutions, and universities. Abdelazeem has contributed to the writing of new Shariah standards to be adopted by Islamic financial institutions. He also has published his work in many international refereed journals and newspapers, and he had presented papers at many international finance conferences. His expertise in Islamic Finance is demonstrated by his release of four authoritative books. *Fiqh Al-Riba*, published in 2005 with 632 pages, is his master work.

The Higher Objectives of Islamic Finance  
In Relation to the Individual, the Society,  
the State, and the Global Economy

Ali Mohyi Al-Din Al-Qaradaghi



In the Name of Allah, the All-Merciful, the Ever-Merciful

Praise be to Allah, the Lord of all worlds. May Peace and Blessings be upon Muhammad, the Prophet sent as mercy to the whole creation, and upon his family, companions, and those who followed his guidance until the Last Day!

To proceed,

Upon the request of dear brother Dr Tariq Ramadan, may Allah preserve him, the director of CILE, the following is an 8000- to 1000-word paper addressing the *maqasid* (i.e. higher objectives) of *tamweel* (i.e. finance) in connection with the individual, the community, the state, and the global economy, with the objective of answering the following questions:

1. How to evaluate the progress made by Islamic finance so far (e.g. the Islamic banks, Islamic Development Bank, and the Dow Jones Islamic Market Indices)?
2. To what extent has Islamic finance introduced an alternative paradigm? Conversely, is it possible to say that it (Islamic finance) continues to be restricted by the current neoliberal economy?

In response to this highly respected request, I write this paper beseeching the help of Allah to guide my way, and support us in order to achieve the higher desired aims and objectives of this paper and seminar.

In full submission, I make my earnest prayers to Allah to

purify our deeds and let them be wholly devoted to Him alone. He is my Protector, the Best to put Trust in, and the Best to grant success.

## **A Brief Introduction to the Meaning of *Maqasid* and *Tamweel***

### **First: The concept of *Maqasid***

*Maqasid* is the plural of *maqsid*. The term *maqsid* is a *masdar mimi*, that is, a verbal noun beginning with the Arabic letter “م” (corresponding to M in English alphabetic), derived from the verb *qasada* that conveys several meanings, including determination, direction, straightness of path, justice, and moderation.<sup>1</sup>

Technically, *maqasid* are defined, in consideration of the genitive case, namely *maqasid al-Shariah* (the objectives of Shariah), as the meanings and wisdom the legislator observes in all or most situations of legislation, and in which they are not confined to a certain area of Shariah injunctions.<sup>2</sup>

They may also signify the objectives laid down by the Shariah for the achievement of public interest.<sup>3</sup> In light of these definitions, *maqasid* may be defined as the meanings, wisdom, and objectives that the legislator considers in the legislation of contracts.

### ***Maqasid al-Mukallafeen***

*Maqasid al-Mukallafeen* is a term that refers to the intentions underlying the statements or actions of persons of legal competence. Defining the *niyyah* (i.e. intention) is imperative due to its relevance to the questions outlined in this paper.

### **Meaning of *Niyyah***

*Niyyah*, linguistically, means the intention and “the purpose

or the heart's determination." Al-Azhary said, "it is derived from the statement: '*nawaytu baldata katha*' i.e. 'I am heartedly resolved toward the city of such and such'. Niyyah thus signifies the heart's determination toward a certain action..."<sup>4</sup>

As far as the technical terminology of *usuli* scholars and jurists is concerned, much debate took place as to the definition of *niyyah*. Al-Ghazali<sup>5</sup> in *al-Waseet*, Izzudeen ibn Abdussalam<sup>6</sup>, al-Nawawi<sup>7</sup>, and others<sup>8</sup> defined it as the determined intention. It is thus applicable to all kinds of intention, whether good or bad. However, this definition is criticized for it is not exclusive as stated by Al Sihaili: "the determined intention is more general than *niyyah*, because even a person under duress to do an act of obedience may have some intention, whereas *niyyah* is the willing intention to act in compliance with a command, a case beyond imagination in the state of coercion."<sup>9</sup>

### **Classification of *Maqasid al-Shariah***

Early scholars reviewed the texts on the *maqasid* of Shariah and concluded that they are *daruriyyah* (essential), *hajjiyyah* (complementary), or *tahseeniyyah* (a refinement). Nevertheless, they disputed over their number. The majority held that they are five: religion, life, intellect, wealth, and lineage; others added personal honor to the list. Al-Ghazali stated, "the Legislator intends to bring about five objectives in man's life. These objectives consist of protecting the five 'essential values,' namely religion, life, intellect, lineage, and wealth. Any measure which secures these values falls within the scope of *maslahah* (interest), and anything which violates them is *mafsadah* (evil), and staving off the latter is a form of *maslahah*."<sup>10</sup>

There is no doubt that each of these values necessitates two sides: the positive one refers to the preservation, care, growth,

and development, whereas the negative side refers to warding off all evils and harms in defense of these values.

After study and survey, I found out that the general categories are eight, some belonging to the individual and others to the community and the state, which are as follows:

- (1) The essential, complementary, and refinement interests pertinent to an individual's religion, life, intellect, wealth, lineage, and honor (considering the two elements of existence and nonexistence contained in each of them).
- (2) The essential, complementary, and refinement interests pertinent to the public and social security, and the political, social, and economic security along with fending off evils of all kinds. On the positive side, all it takes to achieve is security of justice, equality, and freedom, and preservation of the environment; on the passive side, every corruption on earth such as injustice, aggression, repression, etc.
- (3) The essential, complementary, and refinement interests pertinent to national legitimate security and its development, as well as preventing evil and violation aggression.<sup>11</sup> This paper and other writings depend upon this methodology that I have adopted.

*Maqasid* are classified into three categories:

1. The general *maqasid* mentioned above.
2. The private *maqasid* that only address a certain topic, for example, the finance, which in turn encompasses a set of contracts or address a number of specific topics.
3. The partial *maqasid* pertaining to a certain injunction,<sup>12</sup> whether there is only one or more *maqasid* (objective) behind the injunction. For example, the command imposing the record of debts in writing has several

underlying purposes: the documentation of debts, the preservation of property, and the elimination of disputes and discrepancy.

### **The importance of identifying the *maqasid* of finance (and other contracts)**

It has been mentioned above that *maqasid* are divided into general, private, and partial. The general *maqasid* of Shariah are recognized as being five, six, or eight. Nevertheless, they are well known to consist of three levels: essential, complementary, and refinement. However, two fundamental issues should be observed here.

**First:** To activate the general *maqasid* by means of deliberate consideration of their role in *ijtihad* (independent reasoning) throughout all particulars and cases.

**Second:** It is necessary for *maqasid* to accompany all the phases of *ijtihad* from the initial perception and ratification of an issue, and throughout all the phases, times, and positions of the activity, including *tahqeeq al-manat* (i.e. the verification of effective cause), the *fiqh* of consequences (i.e. investigation of the final ends to follow a legal decision), and *saddal-dhara'i'* (i.e. blocking the means to evils), or permitting them. If the determination of general *maqasid* may appear unproblematic, the identification of the private *maqasid* of any topic or a number of topics is not necessarily unproblematic. Furthermore, defining them with deliberate exactness earns maximum importance and brings about the desired end. Meanwhile, failing or falling short in determining or unveiling them constitutes grave dangers with several errors to follow.

We have explained the types of *Maqasid* in more detail in the following section.

## **Private *Maqasid*: Their importance and impact on legal differences**

In his valuable research paper presented to (al-Baraka) seminar at its 28 session, Ramadan, 1428 A.H., the Revered Dr Hussain Hamid indicated the importance of defining the *maqsid* as he elaborated on the juristic differences on sales conducted outside markets when a person goes out to meet foreign merchants coming from other territories. Some maintained it is a valid sale but it is not binding; the merchants may terminate this sale if fraud is proven. This attitude is built on the fact that the legal interest the legislator intends in this text is the protection of foreign merchants from fraud. Thus, absolute invalidity is excluded. Other jurists believed that this sale is null and void (for them, the interest or the purpose of the legislator of the legislation is entrusted with the determination of the interpretation that can bring about the purpose or interest. Based on the different attitudes of interpretations, the injunction differs and so is the purpose intended by the texts to materialize).<sup>13</sup>

Similarly, Reverend Dr Ahmad al-Raysuni emphasized this fact stating:

“Some prophetic prohibitions may be cited here in connection with sales: it is forbidden to go outside the market to meet the riders (foreign merchants) for the sake of sale, or to conclude two sales in the same contract, or to sell things before actual holding takes place, or to make a transaction to sell or buy something that another person concluded a transaction regarding it.

Identifying the purpose of each case of prohibition or the purpose in common with them all is an integral part of understanding the meanings and injunctions of these prophetic statements and the legal results built on them. Misinterpretation of the purpose will eventually lead to erroneous

conclusions. Errors may also affect the identification of proper implementation and the effective cause. Extraneous considerations may falsely be introduced and essential ones may be wrongly excluded.

At last, defining the exact evil intended by the prohibition and the exact interest behind the command is an important step whose importance and effect are not less than the authorization or the denial of the authenticity of Hadith.”<sup>14</sup>

Making a mistake in identifying the legislator’s purpose of a command or prohibition may result in grave consequences. It may even lead to a huge catastrophe that may affect the civilization and the progress of nations. For example, the rise of the passive asceticism from the third century onward led to isolation from life and urged the abandonment of this world in false interpretation of some verses that dispraises and belittles the earthly world and joy. For instance, Allah (may He be Exalted) says “Your possessions and your children are but a test...”<sup>15</sup>

Allah also says, “The day when wealth and sons avail not (any man).”<sup>16</sup> Allah continues, “Indeed, man does transgress all bounds, as he sees himself as self-sufficient.”<sup>17</sup> Moreover, “Wealth and children are the embellishment of the worldly life, and the everlasting virtues are better with your Lord, both in rewards and in creating good hopes.”<sup>18</sup>

In His dispraise of wealth, Allah (may He be Exalted) says, “And you do love wealth, an excessive love.”<sup>19</sup> Allah also says, “Were it not that all people would become of a single creed, We would have caused, for those who disbelieve in the Rahman (the All-Merciful God), roofs of their houses to be made of silver, and the stairs as well, on which they would climb.”<sup>20</sup>

These verses and others as well as similar prophetic statements have been interpreted to mean that the legislator’s purpose is the absolute dispraise and rejection of this world and

wealth; it is enough to take the minimum without any attempt to construct, improve, and dominate the earth. Subsequently, this way of thinking led to the deterioration of Islamic civilization and the decline of creativeness. The people mistakenly misinterpreted the legislator's purpose of these texts, for He wanted them not to be deceived by this earthly world to fall into overbearing pride, arrogance, and indulgence, but He did not want them to ignore this world and stop reforming it. Simply, Allah appointed Adam as a successor on earth to assume the comprehensive mission of worship by construction and development. Other verses and authentic prophetic statements even speak highly of this world and exalt the wealth. The integration of these texts proves that the former verses referred to conceitedness, vain pride, and arrogance as a result of the distraction of possession of the worldly means and wealth, whereas the latter verses referred to the use of wealth in what is good and conducive to human welfare.<sup>21</sup>

Some of the Prophet Muhammad's (pbuh) companions had fallen into this false understanding when the verses apparently dispraising the world were revealed. They came to the Prophet who advised and forewarned them, making it clear that this withdrawing behavior is against Prophet's Sunnah and human nature. In the very words of the narrator of the relevant hadith (saying) Anas ibn Malik, he said, "Three men came to the houses of the wives of the Prophet to inquire about the worship of the Prophet (pbuh). When they were informed, they considered their worship insignificant and said: 'Where are we in comparison with the Prophet while Allah has forgiven his past sins and future sins.' One of them said: 'As for me, I shall offer Salah (prayers) all night long,' another said: 'I shall observe Sawm (fasting) continuously and shall not break it,' and the third said: 'I shall abstain from women and shall never marry.'



The Prophet (pbuh) came to them and said, 'Are you the people who said such and such things? I swear by Allah, I fear Allah more than you do, and I am most obedient and dutiful among you to Him, but I observe fast and break it; I perform Salah and sleep at night and I take wives. Thus, whoever turns away from my *Sunnah* does not belong to me.'" Conclusively, the Prophet decided that he who fails to follow his *Sunnah* is not following his example.

The *Sunnah* refers to the Prophet's way of life, as he considers both this world and the hereafter in all of his actions, that is, his acts of worship, custom, transactions, reform of the universe, dealing with people, and adhering to the middle moderate way that combines the best of this world for the best of the hereafter: "And of them (also) is he who says: Our Lord! Give unto us in the world that which is good and in the Hereafter that which is good, and guard us from the doom of Fire."<sup>22</sup>

Imam al-Shatibi said, "Upon the divine dispraise of the earthly world and its pleasures, a number of Prophet's (pbuh) companions (may Allah be pleased with them) intended to abandon marriage and women, withdraw themselves from the joys of this world and devote their whole life for worship. However, the Prophet (pbuh) denied their way and said 'Whoever turns away from my *Sunnah* does not belong to me.' He even offered prayers for the increase of wealth and children of some persons after Allah has revealed: 'Your possessions and your children are but a test...'"<sup>23</sup> Clearly, wealth and children are symbols of this world. He also indirectly approved that his Companions earn gains of life and enjoy what is lawful; he did not discourage them or command them to abandon it unless an apparent greed or denial of someone's right is proved.<sup>24</sup>

## Second: A brief definition of *Tamweel*

*Tamweel* is linguistically derived from *mawwala*, that is, to supply with money or capital.<sup>25</sup> Technically speaking, according to conventional laws, it is the supply of money by means of interest-based loans for those qualified clients who seek these loans for both economic and other enterprises.

In Islamic economics, *Tamweel* refers to the supply of someone with money, when legally qualified, by means of a legal monetary contract such as *murabaha* (i.e. a sale in which the seller expressly mentions the cost he has incurred on the commodities for sale and sells it to another person by adding some profit which is known to the buyer), *musawamah* (i.e. the selling of a commodity at an agreed upon price irrespective of the original purchase price), *salam* (i.e. the sale of a commodity that will be delivered at a future date for a specific price paid in advance), *istisna'* (i.e. a sale where a commodity is transacted before it comes into existence; it is an order to the manufacturer to manufacture a specific commodity for the purchaser (a rent to own arrangement) or *musharakah mutanaqisah* (i.e. a sale between a financier and a client who jointly own a property and the share of the financier is divided into a number of units and the client is expected to purchase those units periodically, so the share of the financier decreases and the share of the client increases until he owns all the units), and similar contracts.

As far as Islamic economy is concerned, *Tamweel* (Islamic finance) is more comprehensive than conventional finance, which is confined to interest-based finance, restricting investments to dealings that involve risks, whereas *Tamweel* in Islamic economics includes the supply of money for all legal monetary contracts<sup>26</sup> including investments.

In response to the main question regarding the higher objec-

tives of Islamic finance in connection with the individual, the community, the state, and the global economy, it is necessary to categorize the answer into four parts consistent with the four categories mentioned in the title of this study.

### **First: The Higher Objectives of Islamic Finance for Individuals**

- (1) Achieving the deed of worship and devotion to Allah within the context of wealth; in terms of earning possession, spending, distribution, redistribution, and assuring their compliance with the ruling and principles of Shariah, and linking them to the articles of Islamic faith and ethics; in this, Allah (may He be Exalted) says, “And give them from the wealth of Allah which He has given you.”<sup>27</sup>
- (2) Safeguarding and growing of wealth by means of Tamweel and investments, as well as protecting it from harm and warding off evils.
- (3) Ensuring the economic security for an individual by supplying him with necessary and supplementary commodities.
- (4) Collecting and managing individual savings by means of Tamweel and investments with the purpose of development and the accomplishment of human succession and control over earth, by means of improvement and settlement for the interest of humankind and the creation as a whole. In this regard, Allah says, “He has produced you from the earth and settled you in it.”<sup>28</sup> Allah also says, “And the earth He laid [out] for the creatures.”<sup>29</sup>
- (5) The actual exchange of objects, benefits, and usufruct rights in a definite manner and full transparency apart from formalities, dummy transactions, pro-forma sales, fraud, adulteration, and concealment.
- (6) Providing individuals with good things and helping them

achieve happiness by directing finance to enhance the interests of both parties.

- (7) Alleviating the effects of poverty, unemployment, and inflation, and contributing to handling these problems as well as addressing backwardness, illiteracy, and diseases.
- (8) Achieving the actual function of capital and wealth from the Islamic perspective, namely enhancing and supporting individuals and the community by virtue of successful finance and pioneering investments. To this end, Allah says, “And do not give the weak-minded your property, which Allah has made a means of sustenance for you, but let them have provision *in it* and clothe them and speak to them words of appropriate kindness.”<sup>30</sup>

In this verse, Allah makes it clear that wealth is the support of life and a basic cause of advancement for both individuals and communities. It is thus impermissible to be given to the weak-minded. It is the rightly guided person who should invest wealth in a successful manner to yield good profits, and in doing so, all the administrative costs and the private expenditures of the minors and others of the same like may be deducted.

The Qur’an expressly uses the preposition *fiha* (i.e. *in it*); the costs and expenditures should be from the profits and revenues of the wealth, not from the capital to keep it unreduced. Imam al-Razi said, “Know that Allah, in some contexts of His Book, commands the *mukallafeen* (the accountable; those who pubescent, sane, legally competent, and have received the message of Islam) to preserve the wealth... for a person who is not well composed will not be able to acquire the interests of this world and the hereafter and the person only becomes composed and free from anxieties by possession of enough means.”

He then added, “Allah said *‘fiha i.e. in it’*, not *‘minha i.e. from it’* lest it should be taken as a command to assign some of their wealth for them (the minors and the weak-minded), He rather commanded them to provide for them out of the profits yielded from trade and investment, not out of the capitals.”<sup>31</sup>

The Noble Prophet Muhammad (pbuh) also explains this fact in several reports, such as his statement “Trade with the property of orphans and then it will not be eaten away by Zakah (obligatory charity).”<sup>32</sup>

- (9) Contributing to the circulation of wealth among the people: “In order that it may not (merely) make a circuit between the wealthy among you”<sup>33</sup> in reliance on the monetary contracts that could achieve this purpose and to accomplish positive economic cycles.
- (10) Activating the supply-and-demand law under the control of ethics and virtues.

### **Second: The Higher Objectives of Islamic Finance for the Society – (Social Objectives) of Islamic Finance**

It is clear that an individual is a unit of a society and a nation, thus all the objectives mentioned in connection with the individual are included, primarily or eventually, in those of a society. The society, however, has its specificity in the following:

- (1) The establishment of a religious community that is committed to make all economic activities compliant with the ruling and principles of Shariah and with its moral ethics and values.
- (2) To achieve the economic development of the society through efficient finance that promotes universal development on all its social, cultural, and intellectual levels.
- (3) The contribution to the reformation and construction

of the earth to fulfill the human mission of succession on earth; Allah says, “spend out of that in which He has made you successors.”<sup>34</sup> Allah also says, “He has produced you from the earth and settled you in it.”<sup>35</sup> In their commentaries on this verse, the Qur’anic exegetes including al-Jassas interpreted it to communicate that reforming earth is a religious obligation.<sup>36</sup>

- (4) The achievement of economic justice specifically in the area of distribution and redistribution.
- (5) The accomplishment of economic and social solidarity.
- (6) The alleviation of consequences of poverty, unemployment, inflation, and backwardness as well as giving hand to the radical treatment of these problems.

### **Third: The National Objectives of the Islamic Finance**

- (1) To reinforce the state economically to the point of self-sufficiency in agriculture, industry, commerce, and tourism by invigorating the movement of finance and investment.
- (2) To achieve stability and enhance economic security, which is considered a complementary factor for political security indicated in God’s statement: “Let them worship the Lord of this House, Who has fed them, [saving them] from hunger and made them safe, [saving them] from fear.”<sup>37</sup>
- (3) To contribute to the increase in total demand and supply of products in a manner that leads to the invigoration of the whole economic activity.
- (4) To help the state undertake the role it owes to civilization. This includes establishing civilization’s institutions, assuming its social role in achieving social solidarity, health, and future security, and, finally, assuming its military role by deterring aggression and defending religion, sovereignty, national security, and dignity.

In return, the state is obliged to provide the opportunity and healthy environment for finance and investment by virtue of the relevant laws that can regulate them, protect the right of investors, and ensure balance and direct capitals toward universal development, civilization, advancement, welfare, and all similar objectives whose mention is beyond the scope of this paper. Hence, the state is required to adopt well-considered incentive policies in order to direct finance and investments toward the important aims that should be achieved in a sequence consistent with their importance.

#### **Fourth: The Global Objectives of Islamic Finance**

The last fiscal crisis in 2008, whose consequences are still in effect today, proved that the Islamic economic system in areas of Islamic banking and Islamic finance had escaped the crisis with only minor effects. Many experts attributed that to the safety of Islamic banking and finance and to the following reasons.

1. The reliance on the exchange of tangible items, benefits, and usufruct rights.
2. To avoid usury, debt securities, open options, uncertain future sales, bogus transactions, margin sales, and other defects with traditional banks that act in consistency with capitalism.

It was because of the success and stability of the Islamic banks as well as the negative effects left on the usurious banks that the Western world resorted to the Islamic banking system and founded several banks compliant with it, to the extent that David Cameron, the British Prime Minister, said, “And today our ambition is to go further still. Because I do not just want London to be a great capital of Islamic finance in the Western world, I want London to stand as one of the great capitals of

Islamic finance anywhere in the world.” He also added, “I asked the financial officers in charge of the London Stock Exchange to launch a new Islamic bond index in an effort to establish the City of London as one of the world’s leading centers of Islamic finance.”<sup>38</sup>

After this introductory statement, the higher objectives of Islamic finance in connection with the global economy are as follows:

- (1) Build an excellent image for the Islamic economy in general and for Islamic banking in particular, in the areas of finance and investments, conforming to the practical high objective behind the mission of Prophet Muhammad (pbuh), who was sent as a universal mercy to the whole of creation. In this regard, Allah says, “And We have not sent you, [O Muhammad], except as a mercy to the worlds.”<sup>39</sup>
- (2) Contributing to the foundation of a global economy characterized by justice and transparency, and controlled by values and ethics, and deals with tangibles, benefits, and usufruct rights. This economy depends on real contracts as opposed to dummy transactions; an economy that will not have a fake structure of contracts, which would produce stagnant written contracts, leaving no effect on the economic cycle or on the circulation of wealth among all people. Achieving the previous objective necessitates the following:
  - A. Reconsidering the structures of global banking, financial, and monetary economic systems to radically repair them according to a universal program of reform.
  - B. Arranging the effective policies, means, and measures for the achievement of this reform.
  - C. Reforming and developing international financial



organizations, such as the International Monetary Fund, the World Bank, the World Trade Organization, and the Islamic Development Bank.

- D. Introducing a monetary policy with effective mechanisms reliant on production, growth, and profits instead of usurious interest. Meanwhile, the functions of money should be corrected to become tools of exchange, not a sellable object.<sup>40</sup>
- E. Adopting strict financial policies accompanied by just laws that can control the market and monetary institutions and keep them in balance.
- F. Managing finance and investments toward the achievement of human succession over earth through universal development and construction.
- G. Controlling economic activities (ownership, production, consumption, exchange, distribution, and redistribution) and connecting them to the principles of justice, altruism, and transparency for the accomplishment of individual, social, and national happiness and welfare.
- H. Emphasizing on the social function of money for the achievement of Takaful (solidarity) among humankind through just distribution. Allah (may He be Exalted) says, “And the earth He laid [out] for the creatures,”<sup>41</sup> namely for all humankind and creatures. Therefore, it is impermissible to restrict the resources and produce of earth to a limited number of people as happens today.
- I. Refining the relationships between the parties of a contract to be based on the principle “gain-loss relationship, i.e. gains are conditional upon the responsibility for probable loss.” Similarly, own-

ership-transfer contracts must depend on actual possession, and charitable voluntary pledges must depend on donations without any abuse for the sake of profits and interests.

- J. Activating the moral ethics of dealings and the rules of Halal (lawful and permissible) and Haram (unlawful prohibited) transactions.<sup>42</sup>

### **The Effects of Connecting Islamic Finance with the Objectives of Shariah or Separating It from Them**

It is undoubtedly true that connecting Islamic finance, especially the Islamic monetary institutions, with the objectives of Shariah will bring about great prosperity and make it universally oriented in nature and attitude; in its decision number (167 (5/18), the International Islamic Fiqh Council listed a number of useful benefits. However, it is important to emphasize on the followings:

#### **First: The role of Shariah objectives in the economy in general**

It is well known that the Shariah objectives are based on the protection of “masalih” (interests) according to their three classifications: what is essential for the individual, community, and state; what is only complementary; and, finally, what is only refining and improving. In this regard, the objectives play the following roles:

- (1) To recognize an integrated theory about economic growth and development. There are many theories, as economically well known, such as the theory of balanced growth of all requirements of agriculture, industry, and commerce. Similarly, there is the theory of imbalanced growth that pays specific attention to a certain activity. Based on the rule

of *maqasid*, the Islamic theory of development is founded on two principles: it relies on supplying all the essentials in all economic fields and activities, starting with the needs, followed by the refinements, the complementary, and the luxuries. Accordingly, the Muslim Community should not be involved in the accumulation of luxuries before ensuring all necessary and complementary needs.

However, within the necessary and complementary circle, the Islamic theory of higher objectives gives the due and foremost concern for what is most important and prioritizes important matters in a sequence consistent with their priority. For example, a thing of general and universal utility takes precedence over a thing that is less useful. Similarly, the tripartite components, the individual, the community, and the state, are prioritized as follows: The interest of the community prevails over that of the individual, and the collective interests take precedence over partial interests, and so are the general interest over the private interests. Also, warding off evils is given preference over securing the interests when they are proved equal; otherwise, the consideration should focus on determining the degree of strength and dominance or generality and specialty to remove the conflict of interests and evils or the inherent conflict between interests themselves or evils themselves.

- (2) To protect all economic activities and theories from misuse and inefficiency, *maqasid* will connect all of that with the great achievements of certain ends and objectives, such as universal development and welfare, ensuring security and warding off evils from the individual, the community, and the environment. Hence, dummy and fake contracts will easily be exposed no matter how precise they seem.

- (3) Upon the exercise of *ijtihad* and juristic preferences, the economic expert should encourage whatever can help the Shariah objectives to be achieved, in relation to wealth, ownership, production, spending, exchange, and distribution.
- (4) The *maqasid* rule is built on the achievement of the individual, social, and national interests as well as averting all evils from each of them. The implementation of this two-side rule entails the following:
- A. All economic activities must help the achievement of interests and fend off evils away from individuals, the community, and the state, or they must achieve one of these two aims.
  - B. All financial contracts, productions, and tools must be real, not simulated or fake, and thus any financial contract or product that fails to meet the desired targeted purpose should be avoided.
  - C. The juristic *ijtihad* and preferences within the economic circle and laws of Islamic finance should be based on the premises of lawful interests, as ibn al-Qayyim said, “the Shariah is essentially and fundamentally based on the wisdom and attainment of public interests of life and the hereafter; it is an entire and pure justice, mercy and wisdom in all of its rulings. Any rule that departs from justice to injustice, from mercy to cruelty, from benefit to harm, and from wisdom to futility, does not belong to the Shariah even if it is incorporated to it by interpretation. The Shariah is the symbol of Divine Justice in the life of servants and the Divine Mercy among His creation. It is His shade on earth and His wisdom indicative of His existence and the Truth of His sent Prophet in the best

and most truthful manner. It is His light with which the insightful persons see; and His guidance with which the guided people are led; and His perfect cure for the sick and Right Path to which those who adhere have already stuck to the Best Way. It is the beauty of sights, the life of hearts and the joy of souls in which life, nourishment, healing and protection exist. All good things of the universe are originated from and dependent on it and any imperfection in the universe comes in violation of it. But for its traces, the world would have been destructed and ended up. It is the control of people and the backbone of the world with which Allah holds the heavens and the earth, lest their system should fail until He wills this world to perish and end when He removes the remaining traces. The Shariah with which Allah sent His Prophet (pbuh) is the balance of the universal system and the key to success and happiness in this world and in the hereafter.”<sup>43</sup>

- (5) The economic analysis under theories of *fiqh* of consequences and blocking the means to evil: the economic analysis technically means the study of cause-and-effect relationships among the economic phenomena, disaggregating the economic phenomenon into its basic simple elements that can be easily understood and thus formulating the illustrative hypothesis for it on the basis of the dependent or causal relationship. The economic analysis draws on a number of correlated theoretical premises reliant on studies and information to reach logical consistent conclusions.<sup>44</sup> The Western economists at first draw on description, but the economic analysis appeared in the classical school when its founding father Adam Smith (d.

1776) devoted his book on the wealth of nations to interpret the phenomenon of economic growth an increase in the productivity of labor.<sup>45</sup>

The economic analysis then received greater attention and developed through the mechanisms of mathematical statistics as a means to isolate factors from one another and to measure the effect each of them causes in order for a certain phenomenon to occur. It thus became a method to choose the best solutions in directing the future course of economic phenomena to raise rates and increase good living and welfare.

There are several kinds of economic analysis, such as the partial analysis that examines the economic behavior of individuals and companies, as well as the decision of independent-decision economic units on production, consumption, savings, markets, and other decisions. There is also retail segment analysis that focuses on analyzing the conditions of big industrial groups, such as the sectors of industry, agriculture, service, and other similar sectors; some publications have appeared to explore this area: the economy of industry.

There is also the collective economic analysis that addresses the overall national economic activity with focus on all financial groups involved in the key economic operations of production such as domestic production, consumption, savings, investments, export, etc. It also examines the way to set a balance between the variables and the effects of their imbalance on unemployment and inflation as well as the effect of foreign exchange rates on economic growth and the level of living. The state plays a key role in these issues, for it is the only economic player that has the means to benefit from the outcomes of the economic analysis. These include financial and monetary policies, intervention, and direction by means of planning, and

compulsory planning, especially at times of crises when, as Keynes believed, the state should play a key role in addressing crises. As for global economic analysis, it emerged under globalization with concentration on the global economy, but it is now called international political economy.<sup>46</sup>

The consideration of *maqasid* in *ijtihad* serves several functions, including:

1. The universal vision and consideration of the Shariah texts and ruling.
2. Enlisting the Shariah objectives as the preferable frame of reference in case of juristic differences.
3. Examining the expected consequences of the practices of the *Mukallafeen* for better enforcement of Shariah future ruling.
4. Observing the Shariah objectives in their various levels as the basic appropriate frame for human rights.
5. Giving due consideration to the Shariah objective during the process of *ijtihad* (independent reasoning).
6. Prissy application of Shariah objectives never hinders the connotations of Shariah texts and authentic cases of juristic unanimous consensus.
7. The importance of studying the different dimensions of Shariah objectives, among many, social, economic, educational, and political aspects.
8. The effect of Shariah objective guide to clearly comprehend the messages of the Legislator.
9. The application of the Shariah objectives upon the enforcement of legal ruling to real cases and incidents of modern financial transactions and others is highly important to help the Islamic formula and productions become distinct and evidently independent of traditional formula.<sup>47</sup>

For more elaboration on the importance and effects of connecting the Islamic finance with the Shariah objectives, the following elements serve this purpose.

### **Economic analysis and fiqh of consequences**

It is widespread misconception that Muslim jurists had not explored the area of economic analysis, and thus Islamic economics would be dependent on Western theories in this respect, which is unpalatable, particularly when serious studies of Muslim economists prove that Adam Smith (the Father of Economy and the Founder of Analytical Thought) had benefited from the Muslim sociologist Ibn Khaldun, and from a completed doctorate thesis on economics presented to Biskra University, Algeria, by Dr al-Tayyib Dawudi al-Draji. This proved that Ibn Khaldun (808 A.H.) had introduced two scientific economic analyses for the theories of value and production that constitute the essence of economics. He also explored the major issues of political economies, such as the division of labor, economic incentive, hidden hand, and economic freedom. In conclusion, the researcher states that Ibn Khaldun was the first to analyze and study many economic issues and to find the science of economics.<sup>48</sup>

I, however, adopt a different manner, that is, the (*fiqh* of consequences) principle and the general rules such as *sadd al-dhara'i'* and *tahqeeq al-manat*, which can bring about the desired purpose of economic analysis. As far as *usul-al-fiqh* (principles of Islamic jurisprudence) is concerned, the *fiqh* of consequences refers to the in-depth understanding of three areas:

- (1) Exact and in-depth understanding of the evidence, which some jurists call the *wajib* (obligation), from all possible



perspectives (its implications, conditions, and circumstances).

- (2) Accurate understanding of the legal matter or the subject in question from the following perspectives:
  - A. Thorough and comprehensive understanding of the reality of a case; its conception, definition, conditions, past, and present circumstances, as well as other surrounding physical, spiritual, psychological, and social conditions.
  - B. Predictability: the serious pursuit to predict the future expected consequences and effects of a case through the available information, effective means, effective mechanisms, and relevant sciences such as psychology, sociology, history, computer sciences, calculation, mathematics, and statistics. Our scientists have used since the first and the second century of Hejra, what is known in our modern day as brainstorming. This starts by their thinking about a future solution by saying “what do you think if.” Rabee‘ah Al Rai is one of the scientists who was known for doing this, and later Iraqi scientists led by Abu Hanifa (Allah have mercy on them) expanded it. Through the perception of these scientists for the future, we can view their great creative thought process that was put to work to serve the revelation.
  - C. Setting a balance between the positive results, and the negative and positive consequences expected through brainstorming, which may require workshops conducted in accordance with the method of Rabee‘ah and Abu Haneefah and their followers. It is a method that opens new horizons for thought and imagination based on the hypothetical question “What do you

think if such and such was the state?” The results of this brainstorming process are then accurately collected and the negative/positive results are carefully classified.

- (3) Applying the prevailing result to the issue in question.

This is an abstract of the *fiqh* of consequences as mentioned by the early Muslim jurists and scholars of *usul al-fiqh*. However, does the economic analysis depart from this circle? Simply, the Muslim jurists, such as al-Ghazali, al-Shatibi, ibn taymiyyah, ibn al-Qayyim, and others (may Allah be merciful with them), resorted to the *fiqh* of consequences within the realm of practical legal cases. However, the question still remains: is there any objection to use it in economics and economic analysis?

Formerly, I concluded, in an independent/separate research study, that *fiqh* of consequences is an effective tool in an analysis, insofar as it renews its mechanisms and instruments, adding the novel means of modern times, such as supportive sciences. This is particularly true when the principles of blocking or opening the means are also incorporated, as both the blocking and the opening will be based on the result of consequences. Additionally, it is necessary to invigorate the principle of *tahgeeg al manat* (achieving the objective), which was widely expanded by Al Ghazali.

## **Second: Connecting finance with the objectives – role and effects**

It is a prerequisite to connect economy and finance with the objectives, with the condition that the intention of the mukallaf (accountable) must not oppose or conflict with the purpose of the legislator (the objectives of Shariah). In this regard, imam

al-Shatibi explored this issue deeply and presented a detailed discussion.<sup>49</sup> At this juncture, we focus on the rule he concluded: the objective of al mukallaf should not conflict with the objective of the legislator regarding the authorization of such work. Therefore, a person who intends to manipulate any religious duties and use them beyond the scope of the legislation goes against the Shariah. Also, any act that the mukallaf undertakes in contrast to the objective of the legislator is invalid and void.

Al-Shatibi said, “Since it is proved that rulings have been enacted for the interests of people, the deeds also submit to the same rule because the purpose of the legislator is as clarified earlier. Therefore, if the matter is apparently and esoterically in line with the original permissibility, no problem will rise.” He then mentioned that “if the matter is only apparently consistent with the Shariah whereas the interest is inconsistent, the action then is not right and impermissible.” He then cited a number of examples of subterfuges to escape the zakah (obligatory charity) by means of donation pledges and similar arrangements.<sup>50</sup> In this chapter, we mention the objectives of *mukallafeen* as an essential element for the attainment of reward and their decision of validity and invalidity.

### **Third: The effect of *Maqasid Al Mukallafeen* (the objectives of the accountable) on the economy**

(1) We have mentioned above that *maqasid al mukallafeen* depicts their good or bad intentions. Thus, all economic activities subject to the intentions with respect to halal and haram, and reward and punishment. This universality of intentions is one of the characteristics of the religious nature of Islamic economics. However, the role of intentions with respect to deciding the nullity and invalidity only appears when the practices accompany the intentions or

when the intentions appear through some contextual indications, such as the case of *tahleel* marriage (a marriage contracted for the sole purpose of legalizing remarriage between an irrevocably divorced couple) and the *'inah* sale (sale with immediate cash repurchase for profit).

- (2) The greatest role of *maqasid al mukallafeen* (purposes and objectives of the accountable) lies in the prevention of unlawful subterfuges of all kinds and methods as well as staving off all bogus and formal financial activities, such as contracts, outputs and their mechanisms, instruments, and their tools. These purposes emphasize good intentions and encourage economic activities toward transparency, clarity, explicitness, and governance. Hence, we learn the reality of Islamic finance and its fundamentals, which are based on tangible objects, benefits, and usufruct rights. It is a factual economy built on realities, not on illusions, subterfuges, and formalism.
- (3) The aforementioned objectives also play a great role in warding off all forms of corruption, fraud, deception, monopoly, and exploitation.

### **The role of intentions and purposes in establishing values and ethics in economic activities**

The whole discussion we have stated is strongly connected with intentions and purposes; if the economic system can establish these values in minds, all that we mentioned may be excluded or greatly decreased. However, it is impossible to attain these results in the desired manner unless creed and religious education are deeply rooted. The relationship of purposes and intentions with the ethics is conversely and conditionally formed with positive and negative results; good purposes and intentions yield respectable values and ethics when perform-

ing any economic activity. The same is valid for good ethics that help intentions be good, and vice versa. Bad intentions result in immoralities, and bad ethics are indicatives and a consequence of bad intentions and purposes. It is therefore, due to the seriousness of this internal aspect that Islam provides the utmost care for the change of souls toward what is better, and fills hearts with faith and love of Allah and all His Creatures.

## **Answers to the Questions**

### **The first question:**

**How to assess the progress made by Islamic finance so far (e.g. Islamic banks, Islamic Development Bank, and the Dow Jones Index)?**

The answer to this question includes the following three basic elements: the Development Bank, the Dow Jones Index, and Islamic banks; however, in this research, I focus only on the evaluation of the journey of Islamic banks.

A fair evaluation of these banks should be based on accurate and comprehensive information as well as a thorough analysis of their activities, contracts, and products. This evaluation would require time and extensive effort not only on the individual level but also on the level of a group of teams of professionals specialized in various areas of banking, in addition to the provision of comprehensive, precise information and the required resources.

This accurate and comprehensive evaluation is necessary after nearly 40 years of the start of the Islamic banks in its institutional form, as Dubai Islamic Bank and the Islamic Development Bank in Jeddah started operating in 1975. Although I personally accompanied this blessed experience monitoring its foundation, establishment, and implementation stages, and

the Islamic legal supervision thereof, I do not claim that I am capable of performing this accurate assessment. Nonetheless, I will state what I perceive as relevant positive information in this regard and provide the remarks intended for improvement.

First, the strengths in brief can be seen along the following lines:

Undoubtedly, Islamic banks and other similar Islamic financial institutions have achieved great success since their inception, the chief elements of which are given below:

- (1) They were able to offer Islamic alternatives to all banking products offered by non-Shariah compliant conventional banks. The following are some of these products and activities:
  - (a) Offering *murabaha*-based (cost plus profit) and *istisna* (manufacturing finance) contracts as an alternative for usurious loans (*riba*-based loans) of various kinds.
  - (b) Provision of Letters of Guarantee and Letters of Credit and other services in a form that does not clash with the provisions of Shariah.
  - (c) They offered *mudarabah*-based (profit-and-loss sharing) savings accounts and time deposits as an alternative to interest-based savings accounts and time deposits.
  - (d) The issuance of Credit Cards and direct and monthly Debit Cards consistent with the provisions of Shariah away from prohibited interest.
  - (e) The collection and investment of savings in compliance with Shariah.
  - (f) Issuing lawful *sukuk* (Islamic bonds), which will represent the ownership of tangible goods, assets, and usufruct rights rather than all other types of prohibited *riba*-based bonds.

- (g) The provision of stocks and other equity portfolios, and investment funds in a legitimate manner as an alternative to portfolios and funds that do not comply with the provisions of the Shariah.
- (2) Islamic banks have alleviated Muslim hardships with regard to banking and banks, through the establishment of Shariah-based alternatives in all areas of banking.
- (3) They protected and preserved Muslims' wealth initially invested in Islamic banks, hence surviving the crash of conventional banks during the global financial crisis since 2008 until now.
- (4) They presented a decent image for the steadiness and stability of Islamic banks during the Financial Crisis.
- (5) They have provided commercial finance (*tamweel*) and investment companies, leasing companies, and others that are compliant with the principles of Shariah. These companies in most cases achieved economic successes.

These are the major noticeable strengths of Islamic banks.

Secondly, the remarks that are meant for improvement are numerous, the chief ones of which are given below:

- (1) Islamic financial institutions, particularly Islamic banks, with the exception of very few remained trapped with the available alternatives throughout the past four decades, and thus have not been able to innovate and achieve the actual effective cycle of Islamic finance, which contributes to the overall development, and the achievement of the objectives of Islamic finance mentioned in this research paper.
- (2) They have not been able to unite and integrate in a single influential and practical global framework while maintaining the privacy of each institution. Instead, these financial institutions remained fragmented in terms of outcomes

and results, in spite of being subsumed under one banner, such as the International Union of Islamic Banks, the General Council for Islamic Banks, and Financial Institutions (CIBAFI). Even within the same country, there has been no integration of these banks, as each bank was operating according to its own vision. If Islamic banks united under their higher objectives, or if they developed integration programs, they would be able to achieve much more than they have accomplished so far.

For example, if integration programs for managing liquidity among all or most Islamic banks were developed, these banks would not have suffered a liquidity problem, and they would achieve greater revenues, because while some of these banks are suffering from abundance of liquidity, others are suffering from scarcity, and so on. Similarly, if they are united and consulted among them, the problem of dealing in goods and international minerals through *murabaha* and *tawarruq* (reversed *murabaha*) would have been resolved, and so on.

- (3) They excessively dealt in suspicious international commodities and minerals through *murabaha* and *tawarruq*, particularly organized *tawarruq*.

From my personal point of view, most of the transactions that take place through metal and international commodity markets are pro-forma transactions, and they do not in fact exist in the markets. Even if we accepted the authenticity of these transactions, they will not ultimately achieve any goal or any of the objectives of the Islamic finance, for these transactions are merely shadow transactions where they are conducted through a middleman (broker), who would assemble two companies, one as a vendor and the second as a buyer. Transactions are concluded by the



parties without moving any metal or commodity from its place, and without these transactions having any role in invigorating the economy in the Islamic world or elsewhere.

- (4) A number of Islamic financial institutions have witnessed a decline in the quality of their products lately, because initially we accepted authentic *murabaha* transactions as a first stage of advancement, as a prelude to real contributions, constructive investments, and so on within a specific amount of time. However, we were surprised that these authentic *murabahas* turned in most cases into dummy and pro-forma *murabaha* transactions, organized *tawarruq*, and reversed *murabaha* with *tawarruq*. Consequently, this resulted in the advent of strange products that altered and tarnished the beauty of our real lawful contracts, and the introduction of tricks, pro-forma contracts, and combined contracts, which collectively led to what is contradictory to the provisions of the principles of *Shariah* and its objectives.

Also, most *sukuk* transactions were transformed into something close to resemble securities.

Similarly, the great efforts that have been exerted by the *International Islamic Fiqh Council* led to the approval of the mandatory enforcement of the concept of *wa'ad* (promise) in *murabaha* and other similar transactions. Unfortunately, however, this *wa'ad* was widely manipulated to be used to structure an array of organized products; one day I read a ruling by one of the legitimate bodies making it permissible to sell the *wa'ad*, which looks very much like the sale of "*khiyarat*" (Sale of Options).

- (5) Failure to establish binding laws for Islamic banks by the countries and the central banks before commencing their

activities in most countries of the Islamic world. When Islamic banks were initially established, they started their activities under the existing conventional financial laws and regulations. Therefore, they attempted to amend their situations within these laws, in addition to the provisions of Shariah law and principles. This eventually led to their constant quest to find acceptable alternatives.

This situation was initially acceptable, but ought not to continue. Instead, the development of laws regulating Islamic banking operations should take place. These laws should be consistent with the goals and objectives of these Islamic banks in light of Shariah the principles and provisions of Shariah, the new and contemporary interpretations and reasoning, and the accurate detailed regulations for all the activities undertaken by these banks.

- (6) The absence of binding laws for legal authorized bodies instructing these bodies and organizations not to overrule Shariah laws with regard to Islamic finance. The lack of such laws led to the emergence of poor and weak *fatawa*, where a fatwa based on an old jurisprudential ruling in a partial issue would be applied to major decisive crucial issues, without any regard to the objectives, and *fiqh al ma'alaat* (*fiqh* of consequence). Accordingly, we find *fatawa* permitting *organized tawaruq* and reversed *murabaha*, although they were explicitly prohibited by the *Fiqh Academies*. Oddly enough, some of the originators of these *fatawas* are members and experts in these academies themselves.

In other words, Islamic banks were competing for easy *fatawa* even if the latter were weak, and they have allied themselves with the initiators of these *fatawa*. Hence, we see those members being heads for more than 137 banks

and institutions; this ratifies Grisham's monetary theory, which states that "bad money drives out good." Therefore, we keep reminding them of this fact during seminars and lectures to fear Allah as to the future of Islamic banks, because they should be based on legitimacy, for people believe they deal according to the Shariah laws. If people's trust is shaken, these banks will not be able to compete with conventional banking services.

- (7) The absence of sophisticated research centers for the study of Islamic financial institutions, their products, contracts, tools and mechanisms, and transactions, in addition to all related comprehensive finalities-related scientific studies for the financial, social, psychological, and cultural aspects in light of the scientific progress and cultural heritage.

Long ago, I proposed what I repeatedly mention on every occasion: Islamic financial institutions should allocate a percentage of their profits, even less than 1%, to research centers, research chairs at prestigious universities, colleges, and universities, which are specialized in Islamic economics, banking, and all their related theoretical, foundational, innovative, and practical aspects.

The huge number of Islamic financial institutions with their large volume of investments and assets, and with the expectation for them to multiply, requires equally serious practical studies and analysis effort, to say the least.

### **How to remedy these observations**

These observations will not undermine the journey of Islamic banks, but I have mentioned them for the purpose of rectifying them through the following (briefly):

1. Develop well-studied and examined plans, programs, mechanisms, and tools, which will untimely lead to

achieving the purposes of Shariah laws and principles that I have mentioned regarding Islamic economics, in addition to the legitimate Shariah compliant alternatives.

2. Abandon the idea of pro-forma contracts and agreements, and subterfuge promises that are intended to circumvent, or simulate, contracts, because the current situation of some banks may call into question the legitimacy of such transactions, and hence the loss of credibility. To avoid these situations, the following two aspects should be considered:
  - (a) All contracts should be authentic ones and do not contain any legal violations.
  - (b) Contracts should be properly implemented.
3. More attention and care should be granted to the developmental, social, and investment role as previously mentioned.
4. Avoid exploitation and be empathetic while considering any contract; Islam is built on mercy and should not be converted by some people into constraints and barriers. For example, a person who needs to buy a car, or a house, for example, turns to an Islamic bank motivated by religion. This person should not be exploited by increasing *murabaha* profits, which might exceed the interest collected by a usury *riba*-based conventional bank. If this person did not fear Allah and the effects of usury, he would resort to a *riba*-based bank and could easily achieve his objectives. Therefore, Islamic banks must obey and fear Allah and avoid being the reason behind Muslims' misfortune.
5. Attach more attention to research centers, as previously discussed.

**The second question:**

**To what extent has Islamic finance introduced an alternative paradigm? Or is it possible to say that it (Islamic finance) continues to be restricted by the current neoliberal economy?**

To answer this fundamental question, it is worth mentioning that Islamic finance has achieved positive results as we previously mentioned, the most important of which is that it has offered the alternatives to the prohibited usury *riba*-based interest. However, it has not been able to offer an alternative to the capitalist economy, and, in my opinion, the most important reason for this is that the Islamic banking system was established and evolved in the shadow of conventional man-made laws and regulations. Meanwhile, Islamic governments did not help in the establishment of the laws and regulations that apply to these banks; therefore, they continued to be constrained by the conventional man-made laws and regulations and other additional factors that we cannot expose here due to time constraints.

Praise be to Allah the Lord of the worlds, and may the blessings and peace of Allah be upon Prophet Muhammad and his Family and Companions.

## Notes

- 1 See al-Qamoos al-Muheet, Lisan al-Arab and al-Mujam al-Waseet, entry: "قصد".
- 2 Ibn 'Ashur, *Maqasid al-Shari'ah al-Islamiyyah*, Ed. Muhammad al-Tahir al-Misawi, (Jordan: Dar al-Nafaes, 1421 A.H.), p. 251.
- 3 Dr Ahmad al-Raysuni, *Nazariyyat al-Maqasid 'Inda al-Shatibi*, (IIIT edition), p. 7.
- 4 Lisan al-Arab, 51:4588; *al-Qamoos al-Muheet*, 4:400; al-Nawawi, *al-Majmu'*, 1:309.
- 5 Al-Waseet, Ed. Al-Qaradaghi, (Dar al-I'tisam, 1983), 2:596.
- 6 *Qawa'id al-Ahkam fi Masalih al-Anam*, 1:185.
- 7 *Al-Majmu'*, 1:309.
- 8 See, e.g., ibn Nujaym, *al-Ashbah wan Nazaer*, p. 29; al-Qaeafi, *al-Furuq*, 1:178; ibn Rajab, *al-Qawa'id*, p. 123; ibn al-Qayyim, *I'lam al-Muwaqqi'een*, 3:111; ibn al-Subki, *al-Ashbah wan Nazaer*, manuscript, Alexandria National Library, Number: B1181/Shafi'i Jurisprudence, p.16.
- 9 Al-Qaradaghi, *al-Haqeebah al-Iqtisadiyyah*, 1:191-198.
- 10 *Al-Mustasfa*, p. 286.
- 11 Al-Zarkashi, *al-Bahr al-Muheet*, manuscript, (Dar al-Kutub, No. 101/Taymur Original Versions, 1:113).
- 12 Refer to the previous sources and references on *maqasid*, especially ibn 'Ashur, *maqasid al-Shari'ah*.
- 13 See his research: *Mura'at Maqasid al-Shari'ah wa Ma'alaat al-Af' al-fi al-Amal al-Masrifi al-Islami*,
- 14 See his research on the purposes of contracts.
- 15 The Qur'an, 8:28.
- 16 The Qur'an, 26:88-89.
- 17 The Qur'an, 96:6-7.
- 18 The Qur'an, 18:46.
- 19 The Qur'an, 89:20.
- 20 The Qur'an, 43:33.
- 21 See our book: *al-Muqadimah fi al-Mal wal Iqtisad wal Milkiyyah wal 'Aqd*, (Dar al-Bashaer al-Islamiyyah, 2<sup>nd</sup> ed., 2009), pp. 58-63.
- 22 The Qur'an, 2:201.
- 23 The Qur'an, 8:28.
- 24 Al-Shatibi, *al-Muwafaqat*.
- 25 *Al-Qamoos al-Muheet, Lisan al-'Arab and al-Mu'jam al-Waseet*, entry: *mawwala*.
- 26 Al-Qaradaghi, *al-Haqeebah al-Iqtisadiyyah*, (Beirut: Dar al-Bashaer), 8:143-144.
- 27 The Qur'an, 24:33.
- 28 The Qur'an, 11:61.
- 29 The Qur'an, 55:10.
- 30 The Qur'an, 4:5.
- 31 Al-Tafseer al-Kabeer, (Beirut: Dar Ihya al-Turath al-Arabi), 9:186.
- 32 Reported by al-Tabarani and others. Al-haythami quoted his sheikh al-'Iraqi saying, Its chain of transmission is authentic. See *Majma'al-Zawa'id*, (Cairo: Dar al-Rayyan, 1407), 3: 67; al-Qaradawi, *Fiqh al-Zakah*, (Cairo: Wahbah Bookshop), 1:130.
- 33 The Qur'an, 59:7.
- 34 The Qur'an, 57: 7.
- 35 The Qur'an, 11:61.
- 36 Al-Jassas, *Ahkam al-Qur'an*, Surat Hud, 11:61.
- 37 The Qur'an, 106: 3-4.
- 38 He announced this in his statement to the Seventh Annual Conference for the Islamic Financial Institutions in October 28, 2013.
- 39 The Qur'an, 21:107.
- 40 Prof. Dr 'Abdul-Hameed al-Ba'li, *Ma ba'd tafakkuk al-nizam al-Ra'smali*, p. 63.
- 41 The Qur'an, 55:10.
- 42 For more information, see *al-Azmah al-maliyyah al-'Alamiyyah: 'Ilajuha min Mnazur al-Iqtisad al-Islami*, (Beirut: Dar al-Bashaer al-Islamiyyah, 2009), pp. 117-118.
- 43 Ibn al-Qayyim, *I'lam al-Muwaqqi'een*, (al-Azhariyyah Edition), 3:3.
- 44 Gerard Funy-Fard, *An Introduction to Economic Analysis*, Trans. Muhammad Haytham al-Azawi, (The Center of Arab Unity Policies affiliated to the Arab Organization for Translation).

- 45 Muhammad 'Ali al-Laythi, *Muqaddimah fi al-Tahleel al-Iqtisadi*, (Beirut: Dar al-Nahdah al-'Arabiyyah, 1970), p. 70 ff.; Matanius Habeeb, *Ba'd Masael al-Iqtisad al-Lasiyasi*, (Damascus: Dar al-Reda, 1999), the Arabic Encyclopedia, entry: *al-Tahleel al-Iqtisadi* (economic analysis), and Wikipedia Encyclopedia.
- 46 Ibid.
- 47 Refer to the decisions and recommendations of the International Islamic Fiqh Council, pp. 547–548.
- 48 Refer to the Thesis cited, Chapter II on the characteristics of Ibn Khaldun's approach of economic analysis and Chapter III on the theory of division of labor, incentive, hidden hand, and economic freedom between Ibn Khaldun, Adam Smith, and Quesnay.
- 49 *Al-Muwafaqaat*, 2:337 ff.
- 50 Ibid., 2:385 ff.

Commentary on the Research:  
“The Higher Objectives of ‘Islamic Finance’  
in Relation to the Individual, Society, State,  
and Global Economy”

Abdelazeem Abozaid



## Introduction

Praise be to Allah, the Lord of all Worlds; may Allah's Peace and Blessings be upon His Prophet Muhammad and upon his family and Companions. I write this commentary in response to the request of the Research Center for Islamic Legislation and Ethics (CILE), Member of the Faculty of Islamic Studies, Qatar. This commentary also includes a request to answer to two questions concerning the following two issues:

- “How to assess the progress made by Islamic finance so far with the focus on Islamic banks and some stock market instruments, such as the financial indices, including the Dow Jones Islamic Index?”
- “To what extent has Islamic finance introduced an alternative paradigm for the current neoliberal economic system?”

My response to these two questions can be found in my comments on Dr Ali Mohyi Al-Din Al-Qaradaghi's paper and his answers to these questions. May Allah reward him the best for his excellent paper that highlights several significant issues on which I wrote my commentary and some additional points.

This paper discusses the topic of the Higher Objectives of Islamic Finance from various perspectives providing the definition, types, and significance of *maqasid* (Shariah Higher Objectives) and highlighting the facts that reforming the earth,

pursuit of good, and acquisition of wealth and progress are all essential *maqasid*, because Islam calls to reform this world, and to have the prosperity of the life to come. The paper went on to define Islamic finance and elaborate on its *maqasid* in relation to the individual, society, state, and global economy. The paper then presents the author's vision of *maqasid* with respect to these four issues. He excellently identified these *maqasid* among the other *maqasid* often mentioned by Islamic economists in this context.

### **Islamic Finance is Immunity from Crises**

In his discussion on the fourth subdivision of the Shariah *Maqasid* in relation to the global economy, he indicates that “The Islamic economic system in the area of banking and *tamweel* (Islamic finance) has escaped this crisis and only very little effects suffered” for, the writer argues, the following reasons:

1. It depends on exchange of real properties, benefits and rights.
2. It avoids *riba*-based transactions, debenture bonds, options, high-risk future deals, shadow banking contracts, margin, and other forms that are common in conventional banks of the capitalist system.

It is widely accepted that financial analysts and economists attributed the current crisis that stormed banks and stock markets to a few factors, which can be described as follows:

1. Excessive *riba*-based lending that made loan sharks unable to realize that their clients were clearly unable to repay the loans, especially those loans secured by a mortgage, which is mostly a real estate property financed by the same loan.

2. Excessive unaccounted for debt trading by means of purchase and sale of bonds where the size of debt trading was more than 1 trillion US dollars per day, although, the world annual total production of goods and services is less than one-third of this sum.<sup>1</sup>

Islamic finance institutions have some practices that are not essentially different from those of *riba*-based lending processes. For example, the '*enah* sale and *tawarruq* in which the Islamic bank offers money to clients in the form of a good, not essentially intended by sale, to be repaid later. The price of this good is now a debt and the client, who in this case is a seeker of finance, will repay more than the money he actually borrowed. Also, there are other similar practices such as the sale of bonds practiced by some Southeast Asian Institutions, where they convert the debt of '*enah* and *tawarruq* into bonds whereby they trade them in the secondary markets. Debt trading by means of bonds was also used as treasury investment tools, where many of these bonds are actually guaranteed bonds with no real goods or services. Given this fact, it is significant to highlight this reality when exploring the immunity of Islamic economy and finance, for these practices may lead, when excessively used, to some financial problems similar to those caused by conventional banks, since their economic essence is the same.

### **Islamic Finance Relation with Contractor's Purposes and Ends**

The researcher presented the positive effects of connecting Islamic finance with the Shariah *maqasid* citing the Islamic Fiqh Council resolution (no. 167 (5/18) and stressed the importance of connecting Islamic finance and Shariah *Maqasid* through a display of the role of *maqasid* in the economy in

general, and the role and the effects of connecting finance with *maqasid*. Finally, he explained the role and effect of the individuals' intentions and purposes on the economy.

It is significant here to praise the researcher's focus on what is called *ma'alaat* "the final ends" related to *sadd al-dharai* (blocking the means to what is unlawful). He referred to some scholars, such as al-Ghazali, al-Shatibi, ibn Taymiyah, and ibn al-Qayyim, who discussed this principle and explored its effects on actions. Furthermore, he encouraged the adoption of the same approach in economics and emphasized the importance of avoiding conflict between individual's actions and the legislator's purposes quoting, in support of this proposition, the arguments of al-Shatibi and concluding, on that basis, that illegal subterfuges should be banned and bogus and formal transactions should not be taken as the basis for authorizing contracts and transactions. Similarly, all practices of fraud, adulteration, and abuse should all be banned in order to stimulate the economy.

The researcher then talked about the issue of intentions and purposes in the area of contracts and indicated that "All economic activities, in terms of permissibility and impermissibility and reward and punishment are subject to intentions. This universal aspect of intentions is one of the unique characteristics of religious in nature Islamic finance. However, the effect of intentions on the legal decision of invalidity and nullity only appears when the intentions are simultaneously consistent with the actions or when intentions appear through manifest contexts as stated in cases of *nikah al-tahleel* and '*enah sale.*" For more clarification and elimination of uncertainty, I add that intention is, according to the agreement of jurists, the basic ground of legitimacy/illegitimacy of each certain action.

Unlike the Hanafi and Shafi'i scholars, some Maliki and

Hanbali jurists maintained that intention – as manifested by the indicative contexts such as the overwhelming intentions of people – is the foundation of legal decisions of validity or invalidity. That is why the Hanafi and Shafi'i scholars<sup>2</sup> validate the fiction-based sales such as *'enah*, although they are really impermissible, while the Maliki and Hanbali scholars declare it invalid and impermissible.<sup>3</sup>

I would have hoped that the researcher would have explored the non-forbidden purposes, in his discussion of final ends, which lend no support to a person when an action is leading to any evil result that goes against the Shariah-based *maqasid*. For example, a person who sells grapes, with the aim of profit, to someone who practices wine press, though the seller does not intend to help the production of wine. Another example is an arms trader who intends to make commercial transactions without having the least intention to empower the enemies through his sales of weapons.

Accordingly, the financial institution, which adopts some legal subterfuges to escape *riba* in support of clients to fulfill their financial needs, commits some impermissible acts and this intention is ineffective. In support of this argument, the evidence on the impermissibility to defile the false deities of polytheists – as the Glorious Qur'an declares – for the expected result is that the polytheists would in return defile Allah even if the intentions of those who defile the false deities never intended to get this result.

Another serious relevant issue in this regard is that the shady financial transactions of many Islamic financial institutions may serve to justify their practices in reliance on the overall *maqasid* of Islamic Shariah, such as claiming that Islamic financial institutions are very recent institutions in predominantly usurious banking and it is necessary to uphold

them with all means available in order to face their strong rival conventional banks. Otherwise, the Islamic financial institutions will untimely and definitely fail. Providing them with means of success necessitates, at the current period, the evasion or overlooking of Shariah ruling until these institutions grow strong and solidify their positions – then they may steer toward the purely Shariah-consistent activities.<sup>4</sup>

This justification is unacceptable, for there is no pressing need compelling these institutions to practice what is unlawful and equally to leave the lawful alternatives of real financial benefits behind. Moreover, the foundation of these institutions is not considered as a need that permits forbidden acts. If presumably committing a forbidden act was indispensable, it is then important to state in the relevant *fatwa* that this practice is exceptionally allowed for a temporary period, while the basic rule is prohibition. However, we find no indication to that, nonetheless the *fatawa* states that they are right and original Shariah-consistent ruling. Furthermore, committing any forbidden act out of necessity does not render it lawful or introduce it into the corpus of Shariah-based ruling. It is well known that a person allowed to drink wine as a necessity cannot claim the permissibility of wine-drinking and if he does so, his claim is a form of infidelity. Likewise, a person permitted to have a *riba*-based loan for his pressing need cannot claim the permissibility of *riba* and if he does so, his claim is a form of infidelity.

This principle is equally applicable to all things that are originally and unanimously impermissible and only allowed under urgent needs, such as *riba* and wine-drinking. Evidently, the *riba*-inherent sales and legal subterfuges to escape *riba* are not excluded from this principle under the claim that they are permissible for those who in fact intend to have access to *riba* through these sales.

Accordingly, all Jurists maintain that impermissibility is conditional upon the intentions of the contracting parties and they only differ as to the legal effects of these contracts. A further *maqasid*-related point may even undermine all assumed interests in this regard; this is the issue of permitting spurious practice consistent with formalities while changing its name only. This practice is unfortunately unperceived by regulators of these distorted transactions as a consistent and outright offense to Islam; it deprives Shariah of the logic and rationality of its ruling and falsely assumes it is based on formal and shadow bases that may risk driving Muslims and non-Muslims away from it, as it appears illogical and irrational.

Indeed, there is no logic in forbidding any interest-based loan while the same interest is admitted under contracts of *tawarruq* and *'enah*. It is not hidden that disconnection and conflict between reason and religion was the underlying reason for the abandonment of church authority in the West where so many lost trust in religion and became irreligious, which should not occur in our case as the Shariah is inherently based on logic and reason.

In this context, there should be no submission to the words of praise that may sometimes come from the West in recognition of Islamic finance practices replete with suspicious behavior. This kind of praise is articulated out of ignorance of these practices, under the assumption that current Islamic finance is entirely and essentially free from usurious practices, or purposefully expressed to participate in this industry and achieve profits by attracting Muslims.

In his wonderful elaboration on the false attribution of the practice of subterfuges to the Shariah, ibn al-Qayyim said, "And so are the subterfuges to practice *riba*, which caused many of the People of the Book (Christians and Jews) to abstain from

accepting Islam. They said, how could a Prophet of Allah bring forth these tricky means? They thus harbored wrong thoughts about the Prophet (pbuh) and the Religion and advised one another vehemently to adhere to their own religion. They falsely thought this is the Shariah brought by the Prophet and said how could any law enact this or any good come from it or even be divine? If it is a king who controls his subjects by this rule, his polity will be suspicious of his rule, and they would ask how could the All-Wise God legislate a thing for its benefit and forbid another for its evil and then permit undermining them by any trivial tricky means? We also see that whenever a religious debate is raised about the truth of Islam, they cite these subterfuges as occurring in their books and we hear that in verbal debates with them. Help is only besought with Allah!”<sup>5</sup>

### **The Correlation of Justification of *Maqasid*, Achieving *Maqasid*, and the Legitimate Authority**

Another relevant point is connecting the previous suspicious practices with the principles of the present legitimate authority who is responsible for the achievement of the higher objectives. The term “*al-siyasa al-shari‘iyyah*” (i.e. legitimate Shariah-based principles of authority) is frequently reiterated in juristic banking sessions in the context of seeking justification for some financial models on consideration that they may not be permitted in accordance with either the apparent proofs, the well-known juristic statements, or the views of *fiqh* academies. In return, these financial models are allowed by means of *al-siyasa al-shari‘iyyah*, which is based on the achievement of the *maqasid* that embody the *maqasid* of Shariah. This way of endorsement for these suspicious practices under the slogan of



*al-siyasa al-shari'iyah* forms a dangerous invalid development for many reasons:

- Acting upon *al-siyasa al-shari'iyah* is the responsibility of a Muslim ruler or Muslim government, and in accordance with the principles of public interests and *shura* (consultations on public affairs), for it is related to the administration of domestic and foreign affairs of a Muslim state. A proved deficiency of a Muslim government does not permit individuals to take charge of the role of government.
- *Al-siyasa al-shari'iyah* does not permit those acting on their behalf to authorize what is impermissible and call it lawful, such as naming an anti-Shariah financial product after Shariah on the basis of permitting Islamic financial institutions to introduce it. *Al-siyasa al-shari'iyah* only permits those authorized on its behalf to manage the public affairs in conformity with the principles of achieving the public interest in a manner that may not conflict with the fundamentals and the relevant authentic texts of Shariah. They may thus suspend some Shariah rules by relying on some legally considered demanding needs that may permit the forbidden, suspending an obligation, acting upon the discretionary penalties so much so that killing may be adopted in criminal felonies and national security crimes, or limiting the scope of permissible matters.
- Granting them this duty that originally falls outside their area of expertise, the current bodies of fatwa are not independent parties whose objective is warranted regarding the determination of these questions in accordance with the legitimate authority principles. That is because they have some personal benefits from the outcomes of the

*fatawa* they issue. Also, the promotion for some *fatawa* encourages financial institutions to avail much of their sources rendering much material benefits to the sources issuing these *fatawa*; in addition to the fact that special institutions of fatwa receive a fee for auditing a product with the intention of authorizing it, these institutions lose their independence, which creates a case of conflicting interests.

- The multiplicity of fatwa bodies in relation to the number of financial institutions leads the *fatawa* product to conflict with the principal necessities of *al-siyasa al-shari'iyah* even within the same country, which results in chaos and turmoil eliminating any benefit expected from the fatwa as *al-siyasa al-shari'iyah* dictates. Eventually, we have a case of chaos similar to the case where many rulers and policies conflict within the same country.

## **Comments on the Researcher's Answers to the Questions:**

### **First question**

With respect to the researcher's answer to the question "How to assess the progress made by Islamic finance so far with the focus on Islamic banks and some stock market instruments, such as the financial indicators, e.g. Dow Jones Islamic Index?," the researcher commended some achievements, such as commodity financial contracts, including *murabaha* and *istisna'*, provision of national and international letters of guarantee (letter of credit) on an interest-free basis, saving accounts, *mudaraba*-based investments, and others.

### **Credit cards**

In this regard, some of the issues mentioned by the researcher in this respect need more elaboration and explanation. For example, many credit cards issued in Islamic financial institutions do not comply with the principles of Shariah, since they involve the payment of some hidden interests in the form of monthly fees paid for these cards and practically based on the credit card limit, not on the services related to the card. The monthly fees of two cards may thus vary, although they offer the same services and only differ in the credit limit, which is basically a loan. Furthermore, the monthly fees for the offered services do not match the market value of these services, which indicates that the monthly fees are paid for the credit (loan), not for the services.

### ***Sukuk***

By the same token, issuing of *sukuk* to represent ownership of tangible goods, which can be lawfully converted to the ownership of the *sukuk* holder, is considered an essential aspect for the ruling on the legitimacy of *sukuk*. Consequently, when the *sukuk* held do not express a true and legal ownership of the tangible properties they represent, the *sukuk* are then invalid, which is the case of most *sukuk*-based issues, adding to that the frequently devised subterfuges in the frameworks of *sukuk* to offer a nominal value and fixed return to the *sukuk* holders, bringing *sukuk* very close to the *riba*-based bonds.

### **Stock transactions**

A more serious issue is stock investment portfolios, a case we cannot claim any achievement of a Shariah purpose in Islamizing it in light of the actual reality of stock markets. In support of this, we mention two arguments:

**First:** The existing Islamic indices, such as Dow Jones Islamic Index, tolerate a portion of *haram* (impermissible) transactions within the activities of some firms, which are represented by stocks when these activities are not essential to the firm, a procedure adopted by some Shariah standards issued on the subject of stocks. In fact, this is against the basic principles of Shariah and its objectives that fight and forbid evil and prevent from taking part in or developing it. The Shariah never accepts any portions of *haram*, minor or major, and it is only tolerated under pressing need. Basing arguments on the principle that when a *haram* is blended with *halal* (permissible), the little portion of *haram* is tolerated if the *halal* forms the major part – which is an unacceptable argument, as this only occurs when it is impossible to separate *haram* from *halal*, such as in the case of the flesh of a she-goat not slaughtered in compliance with the Shariah, when it is mixed with that of a legally slaughtered goat. However, this is not applicable if the mixture is intentionally made for this purpose, or if it was easy to separate both parts of meat; otherwise, it would have been permissible to mix wine with water for the sake of legitimacy.<sup>6</sup>

**Second:** What necessitates much elaboration on the issue of equity is the attempt at *Islamizing* its investment under claims of achieving major economic interests, namely achieving the *maqasid* of investing and growing wealth. It is undoubtedly true that the idea of equity achieves moderate interest, such as the increase in capitals of companies giving people opportunities to invest their money and earn fixed returns. However, the problem is that the issued legal standards on equity, such as Dow Jones standardization and others, do not consider the current reality of stock markets that are, by and large, similar to gambling markets and lead to highly harmful economic effects, some of which are highlighted below:

- Stock markets harmfully affect the actual market of investments and encourage shareholders to invest by selling equity and bidding prices, the fact that makes it rare to purchase a share in expectation of its regular returns.
- Stock markets are of very little benefit to the economy after the first issue or the secondary that may follow it, because the profits yielded from bidding for stock go to the pockets of bidders and the companies get nothing from that amount.
- Companies acquire nothing out of the increase in share values resulting from bidding in stock exchanges. However, they are negatively affected following the depreciation of their share value in bidding, which may in fact undermine their business reputation with low demand and mistrust of clients to follow.
- Enticed by its quick profit and tax-free returns, stock markets have driven many people away from constructing real economic businesses. They prefer to bid in stock exchange and some business owners may even liquidate their projects to participate in stock markets. It is indicative here to state that from 2008 until now, Qatar Exchange, for instance, has witnessed the subscription of only three new companies. In other words, only three new companies have been built with subscription rights, which reflects the trend of focusing capital toward the secondary market instead of real economy.
- Stock markets, in their actual practice, are a quick channel for the transfer of money from one pocket to another, without gaining any additional economic benefits, which is similar to gambling, that is, the profit of a person is the same as the loss of another.

- Stock markets drive shareholders to neglect the performance of companies and pay no attention to control or audit them, because the share they have is nothing but a title for price bidding and obtainment of quick profits. The reality of companies, for which the equity stands, means nothing to them even if they are actual partners in them. Consequently, these companies may sometimes suffer weak performance and low product due to weak control.
- Most of shareholders lack the necessary essential technical expertise for analyzing the equity and, in turn, they fall prey to a few experts who have the necessary knowledge and expertise and who are mostly foreign bidders. Some studies even indicate that only about 1% of Gulf Arab investors possess the necessary knowledge for technical analysis of shares.
- Outflow of wealth: Stock markets directly and largely contributed to the movement of wealth from countries with active stock markets where a huge number of foreigners work. Studies and statistics indicate that market movement, for the most part, follows the activity of the foreigners, individuals, or companies, so far so that local speculators are guided by the activities of foreigners in participation with regard to selling and purchase, because those foreigners are mostly experts in the essential technical analysis of shares, and have more expertise in stock speculation than many local speculators. They are very often representatives of giant speculation companies in their home countries and come to deal in stock speculation and make earnings, which they transfer to their home countries. This process, in turn, affects the

national foreign-exchange reserves, because the profits the foreign dealers make are transferred to their homes in foreign currency. In their emphasis on the effect of those foreigners on the market, studies link the local market movement to the foreign markets movement in some countries; the supply is locally strong when the foreign markets are negatively affected, so the foreign speculators sell their shares locally to cover their losses at home.

- Stock markets inculcate the gambling tendency of quick earnings in people, who will only pursue quick profits without work.
- Stock markets negatively affect the dealers' humanitarian inclination of patriotism, well-being, and hatred of harm so much so that they may wish crises to befall their country in anticipation of sudden increase of share prices to compensate some previous losses, or to make personal earnings. They may even take part in it if the crisis is based on political decisions when they are the decision-makers.
- Stock markets enable many officials and individuals in charge of local economy and plans who have actual knowledge of business realities and plans to achieve riches at the expense of all other investors and speculators dealing in stock markets.

As a result of these negative effects of stock markets, the claim of achieving some Shariah-led economic objectives by founding Islamic stock markets essentially typical of the conventional stock markets with the only difference of excluding some companies is an inaccurate claim. Islamic finance should not encourage dealings in equity by founding new Islamic financial indices before

having an organized market capable of escaping the previous risks and dangers, particularly when the Islamic index is originally foreign, adding more harmful effects through the flight of wealth from Islamic countries to foreign countries as is the case with the Dow Jones Islamic Index.

## **Islamic finance practices worthy of reconsideration and improvement**

### *Tawarruq*

Within the researcher's observations of some practices of Islamic financial institutions, which he deemed necessary to be subject to reconsideration and improvement, the reader may think that the researcher views nothing wrong with *tawarruq* when it is local or deals with local goods or by a different output, and that he only criticizes the organized *tawarruq* which is based mostly on international commodities. In fact, the problem with *tawarruq* is not to be local or international, to have the name of "organized" or not, to have real commodity or not, or to hold the commodity or not. However, the legal ruling in consideration of the purpose and final ends, as the researcher himself mentioned, may entail the forbidding of all forms of *tawarruq* conducted by Islamic financial institutions with the aim of providing clients with liquidity, whereby a greater sum becomes due. This is because there is no difference under the *maqasid*-based vision and the economic essence of a transaction between a form and another when the same transaction leads to the delivery of cash money to a client in return for more money to be repaid later. This is the essence of *riba*, which is prohibited by the Shariah and that must be stopped.

It is worth mentioning that this is the purport of the res-



olution of International Islamic Fiqh Council stating “The contemporary definition on organized *tawarruq* is: when a person (*mustawriq*) buys a commodity from a local or international market on deferred price basis. The financier arranges the sale agreement either himself or through his agent. Simultaneously, the *mustawriq* and the financier execute the transactions, usually at a lower spot price. As to the reverse *tawarruq*, it is similar to the organized *tawarruq*, but in this case, the *mustawriq* is the financial institution and the financier is the client. It is not permissible to execute both types of *tawarruq*, organized and reverse, because of the collusion between the financier and the *mustawriq*, whether it is done explicitly, implicitly, or based on common practice, in exchange for a financial obligation, is considered a subterfuge to have access to get cash money in return for more deferred money from the contract, which is the core element of *riba*.”<sup>7</sup>

Apparently, the resolution makes no difference between local and international commodities linking the ruling to the transaction between the financier and the other seeker of finance, which is the reality of all forms of banking *tawarruq*. Here, we cite the statement of ibn al-Qayyim on the invalidity of considering any subterfuge; he said, “It is indicative of the invalidity and prohibition of subterfuges that Allah only ordains the duties and forbids the banned matters for the inherent good of servants in their worldly life and eternal life. Like necessary food and medicine for good and healthy life, the Shariah is essential for human hearts. When a servant adopts any tricky means to permit what is forbidden or escape what is ordained and suspend the laws of Allah, he thus spreads evil and spoils the divine religion through several ways: first, he nullifies the wisdom inherent in the matter which he tries to escape by tricky means and acts against...In more illustrative word,

Allah for example, forbids *riba* (usury) and adultery and all their ways and means for the inherent corruption whereas He permits sale and marriages along with their means, for the pure inherent good included. It is indispensable that there must be an actual difference between the *halal* (sale/marriage) and the *haram* (usury/adultery); otherwise sale will be equal to usury and marriage to adultery. Evidently, the formal difference in isolation from the essence is baseless in the sight of Allah, His Prophet and sound nature of His servants.”<sup>8</sup> He then said, “The prohibition entails prevention, whether there is a subterfuge or not, because the prohibited matter is necessary conducive to a malicious result for which it was forbidden and this malicious result is not eliminated by subterfuges.”<sup>9</sup>

### **Governance of Islamic banking**

Governance of Islamic Banking is another matter worthy of consideration among those mentioned by the researcher. This administration may exist through the enactment of binding laws on Islamic banks by the states and Central banks, which is a very crucial matter. Much discussion is required in this regard; however, I will only comment on what the researcher referred to concerning the necessity of governing the Shariah bodies working in Islamic financial institutions. Evidently, the apparent shortcoming lies in the nature of the connection between the bodies, which represent the Shariah side and the financial institutions. This is due to the fact that the Shariah bodies affiliated with the financial institutions play an internal legislative role within a queer climate alienated from the Shariah thought and, thus, the logical and Shariah-based decision issued is suspicious in terms of the soundness of its results.

Relationships between the Shariah bodies and those who own these institutions are based on anti-Shariah basis, namely,

the direct material connection of shared interests between these two categories. The latter will thus choose, appoint, and pay for the former for issuing the legal decisions by which the owners should abide. This is in turn irrational and illegal; it involves some apparent corrupt aspects, and in this way, these Shariah bodies lose independence and fall under the effects of the owners of these institutions and their desires in which a case of conflicting interests occur. As far as the Shariah is concerned, it is impermissible for him who declares the Shariah ruling to receive any payment from the one expected to abide by this ruling as in the case of a judge's payment; he may not take anything from the litigants but rather from *Bayt al-Mal* (public treasury). It is even forbidden for the judge to take a gift from the litigants as this opens doors wide for great corruption even if the judge is noted for his fairness and honesty. This shall be the case with financial institutions; the decisions of the Shariah bodies shall bind those institutions even at the expense of their own profits and gains. However, we see that these institutions pay for the members of these bodies. They also select and appoint them and therefore it is normal that they choose bodies whose opinions agree with the interests of these institutions. Nevertheless, we can see the difference between a judge and the Shariah body, namely the judge passes ruling in relation to people's rights but the Shariah body passes ruling in relation to Allah's ruling, such as the prohibition of *riba* and *Gharar* (ambiguity sale) and so on, which is much more serious than many rights decided by judicial courts.<sup>10</sup>

This limited difference between the two does not justify the body taking remuneration from the party that is bound by its decisions; rather the selection, appointment, and dismissal of the members of the Shariah body shall be carried out by a completely independent party away from these institutions;

also, determining the payments of the body shall be assigned to an independent party. It is proven that the intervention of the central banks in some countries, in which central authorities existed, regarding the appointment or removal of these bodies is of little benefit, because the financial institutions are in charge of suggesting the appointment or the dismissal of the body. The agreement of the central banks or any central authority is routine measure and ineffective, especially when the members of the central authority are themselves the members of the Shariah bodies affiliated with financial institutions. Therefore, the evil for which the judge is prevented from taking his wage from the litigants and the wisdom behind denying the litigant the right to choose their judge is actually existent in the issuance of legal decisions for the financial institutions to act upon. It is apparent that both evils and warnings are the same.

## **Second question**

The researcher responded briefly to the question of the independence and distinction of Islamic banking from its conventional counterparts, for he previously answered it in his speech. In a comment on his answer, I state that Islamic finance offered many substantial contributions, even if it continues to face some challenges that left it in many cases relatively close to the liberal capital/conventional economy. It is necessary for the achievement of real and practical distinction between Islamic banking and conventional banking to outline a few considerations, the most important of which are the following:

- It is indispensable to activate the Shariah *maqasid* in Islamic banking and educate muftis about the basics of economics to realize the economic effect of their *fatawa*. Accordingly, consistency between the *fatawa* on finan-

cial banking and the Shariah *maqasid* behind finance follows in a manner that removes conflict between the knowledge of *mufti* about *maqasid* and his issued *fatawa* on financial products or private financial banking transactions. The juristic visions permitting the means-sales, such as the '*enah* and *tawarruq*, in the current forms conducted in some Islamic financial institutions, have proven strict in the attainment of certain formalities in pursuit of legitimacy even if these formalities have no effect on the essence of this transaction whose only difference from usury lies in wording and form. This kind of vision originates from a mentality that follows the letters of law and ignores the spirit and the *maqasid* of the same law. In fact, this mentality forms a threat to Islamic legislation. Another similar mentality sees no difference among the *riba*-based sales, permitting a sale contract and forbidding another, even if they have the same essence and effect. And yet, another mentality formulates a new sale to reach the same result, namely the exchange of money for money with a medium commodity in-between, while it is per se actually unmeant for sale and purchase. They maintain this is a permissible sale and attack fiercely other forms of *riba*-based sales.<sup>11</sup> The acceptable approach in Islamic legislation is the middle/moderate one with consistency between text and intellect as in the case of legal *qiyas* (analogical deduction) where the intellect's role is manifested in exploring the effective causes and rational grounds of texts open for justification to extend their original ruling to other similar cases when the same effective cause is assured within the process of the extraction and verification effective cause.

- It is necessary to have institutional workings for the codification of economic legislations and Islamic finance through the collective efforts of independent jurists, economists and lawyers; the issue should not be left to jurists alone, for each group alone cannot have the necessary and adequate perception for the determination of multidimensional ruling and effects. This role may be assumed by specialized academic research centers or international *fiqh* academies such as the International Fiqh Council after reforming it and recruiting necessary experts, or may be conducted in cooperation with these specialized research centers and *fiqh* academies.
- It is legally and rationally axiomatic that it is unacceptable for the Shariah institutions to be materially and directly connected with financial institutions in order to achieve real autonomy in their work, guarantee objectivity, and exclude conflicting interests. Removing this relationship must be a priority to bring about the sought reform; a reformative act before that will have but little effect in the shadow of this practice. The way to achieve this is to entrust a third party with the choice, appointment, and removal of the Shariah-based body without any right given to the financial institutions regarding the selection of this body. Any payment or sum received by this body should only come from one indirect way, such as the central bank, which should deduct the payment from the deposited reserves of the relevant financial institutions with the central bank.
- Governments represented in the respective institutions, such as central banks, should be requested to intervene and impose the rules of Shariah governance on the Islamic financial institutions in case no agreement

is made with these institutions. Governments should have them submit to the principles of administration laid down and supervised by an independent institution essentially founded for this purpose, with the authority to issue/revoke the Shariah-consistent license to operate.

**All Praise is due to Allah**

## Notes

- 1 For more information, see Dr Ma'bad 'Ali al-Jarji's Paper: "The World Financial Crisis".
- 2 The Hanafis exceptionally invalidate *'enah* sale. Evidently, their invalidation of *'enah* when a third party is missing in the contract does not conflict with their principle of validating all formal contracts, which are apparently Shariah-consistent, paying no attention to the unspoken purposes. This forbidden kind of *'enah* is exceptionally banned when the first seller acts as the second buyer in the same contract. They declare it invalid, for the text in question, namely the account of 'Aishah with Zayd ibn Arqam in which one person acts as the first seller and the second buyer. For the Hanafis, the threat that 'Aishah announced concerning this sale is not grounded in reasoning and thus maintained that only the ruling in question falls outside the realm of *qiyas*-based cases while other cases should remain apparently valid in consistency with *qiyas*. For them, the forbidden case entails that the second price is a compensation for the first price with uncompensated surplus in the transaction, which is a typical form of *riba*. See al-Kasani, *Bada'e al-Sana'e'*, (Beirut: Dar al-Kitab al-'Arabi, 2<sup>nd</sup> ed. 1982), 5:198–199.
- 3 For more information and documentation, see Ibn 'Abideen, *Hashiyah*, (Beirut: Dar Ihya al-Turtha al-'Arabi, 2<sup>nd</sup> ed. 1407 A.H./1987 C.E.), 5:48; al-Dusuqi, *Hashiyah*, (Cairo: Dar Ihya al-Kutub al-'Arabiyyah-'Isa al-Babin al-Halabi), 3:76; al-Qarafi, *al-Furuq*, (Beirut: Dar al-Ma'rifah), 3:268; Muhammad 'Ali, *Yahdheeb al-Furuq* printed with the aforementioned *Furuq*, (Beirut: Dar al-Ma'rifah), 3:275; Ibn Juzay' al-Maliki, *al-Qawaneen al-Fiqhiyyah*, (Beirut: Dar al-Kutub al-'Ilmiyyah), p. 140; al-Dardeer, *al-Sharh al-Sagheer* - printed with Bulghat al-Salik by al-Sawi, (Beirut: Dar al-Kutub al-'Ilmiyyah, 1<sup>st</sup> ed. 1995), 3:69; al-Shafi'i, *al-Umm*, a Chapter on: No Will To Legal Inheritors, Ed. Muhammad Zuhri al-Najjar, (Beirut: Dar al-Ma'rifah, 2<sup>nd</sup> ed. 1393 A.H.), 4:114; see also al-Shafi'i's treatise on "*Ibtal al-Istihsan i.e. Invalidation of Istihsan*" printed with the book of al-Umm: Ed. Muhammad Zuhri al-Najjar, (Beirut: Dar al-Ma'rifah, 2<sup>nd</sup> ed. 1393 A.H.), 7:297; ibn al-Qayyim, *'Ilam al-Muwaqqi'een*, (Beirut: Dar al-Jeel, 1973 C.E.), 3:109–121; Ibn Hazm, *al-Muhalla*, (Beirut: Dar al-Afaaq al-Jadeeda), 10:180.
- 4 In regard of these justifications, see, e.g., Resolutions of the Securities Commission Shariah Advisory Council.
- 5 Ibn al-Qayyim, *'Ilam al-Muwaqqi'een*, (Beirut: al-Maktabah al-'Asriyyah), 3:261.
- 6 For more details on this issue, see 'Abdul-Azeem Abu Zayd, "Ruling on Shares Dealing in light of Practices," Journal of Legal Sciences (An electronic semiannual Journal issued by the faculty of law, Ajman University of Science and Technology), First Year, Issue 1, Jan. 2013.
- 7 See the resolutions of International Islamic Fiqh Council, the 19<sup>th</sup> session held in Sharqa Emirate (UAE), Jumada al-Ula 1-5, 1430 A.H./April 26–30, 2009 C.E.
- 8 Ibn al-Qayyim, *'Ilam al-Muwaqqi'een*, (Beirut: al-Maktabah al-'Asriyyah), 3:240.
- 9 *Ibid.*, 3:245.
- 10 The Shariah Body may also decide on some of rights when those bodies consider grievances and complaints the clients file against these institutions and therefore the body in this case becomes like the judge who is paid a remuneration from these financial institutions, which is not permissible by Islamic Shariah.
- 11 For example, some attack the sale of *'enah* and permit banking *tawarruq* whereas others criticize *tawarruq* and introduce the organized *salam*. Ultimately, the essence and final ends of them all are the same, namely make money from cash money.





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كلية الدراسات الإسلامية  
College of Islamic Studies



Research Centre for Islamic Legislation and Ethics (CILE)

P.O Box: 34110 Doha, Qatar | Phone (+974) 4454 2840 | Fax: (+974) 4454 6576

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