



**RESOLUTIONS AND RECOMMENDATIONS
OF THE COUNCIL
OF THE ISLAMIC FIQH ACADEMY
1985-2000**



Islamic Development Bank
Islamic Research and Training Institute
JEDDAH



Islamic Fiqh Academy
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King Fahd National Library Cataloging-in-Publication Data

Islamic Fiqh Academy (Jeddah)
Resolutions and recommendations of the Council of Islamic
Fiqh Academy : 1985-2000- Jeddah.
270 P, 17 X24 cm
ISBN 9960-32-090-1
I- Islamic Fiqh I- Title
250 dc 0875/21/21

Legal Deposit No. 0875/211
ISBN: 9960-32-090-1

First Edition
1421H (2000)

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

"But no, by thy Lord, They can have No (real) Faith, Until they make thee judge In all disputes between them, And find in their souls No resistance against Thy decisions, but accept Them with the fullest conviction. "

INTRODUCTION

Bismillahi Ar-rahmanir-Rahim!

These are the resolutions and recommendations issued by the Council of the Islamic Fiqh Academy, from its 2nd session to its 12th session, held in the Kingdom of Saudi Arabia, the Hashemite Kingdom of Jordan, the State of Kuwait, the Sultanate of Brunei Darussalam, the United Arab Emirates and the State of Bahrain.

They are the conclusions of research papers and studies conducted on many contemporary issues. They are also answers of the Academy's Council to inquiries from Muslim countries, various organizations and institutions and Muslim communities about rituals, personal statutes, transactions and new developments in the fields of economics and medicine.

The publication of these resolutions and recommendations will make available to all Muslims the fruit of serious collective efforts made by an elite of the Ummah's scholars.

In collaboration with these scholars and experts in the fields of economics, astronomy and medicine, the Islamic Fiqh Academy considers and discusses various issues, making sure that its *Fatawas* (legal decisions) are based on Shari'a principles, i.e. the Holy Qur'an, the *Sunnah* and other sources such as the principle of consensus (*Ijma*) and analogy (*Qiyas*), with a view to finding appropriate solutions that would guide believers in their activities.

May Allah bless this endeavour and make it beneficial to whoever needs it. May He guide and help us to be of service to our religion, enhance our Muslim Ummah and help us to meet the challenges of our times as well as the present and future problems of life.

May Allah's prayers be upon His Messenger, Muhammad, his kindred and Companions.

Mohamed Habib Ibn Al-Khodja
Secretary General of the Islamic
Fiqh Academy

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**Resolutions and Recommendations
of the Second Session of the Council
of the Islamic *Fiqh* Academy**

**Jeddah (Kingdom of Saudi Arabia)
10-16 Rabiul Thani 1406 h/22- 28 December 1985**

Bismillah Arrahman Arrahim

Praise be to Allah, the Lord of the Universe, and Prayers and Blessings be upon Sayyidina Muhammad, the last of the Prophets, and upon his Family and his Companions

RESOLUTION N° 1 (1/2)

CONCERNING ZAKAT ON DEBTS

The Council of the Islamic *Fiqh* Academy, during its second session, held in Jeddah (Kingdom of Saudi Arabia), from 10 to 16 Rabiul Thani 1406 H (22-28 December 1985) ;

Having looked into the studies presented about << *Zakat* on debts >>, and After thorough discussions which covered the subject from its different aspects, it became evident that :

1. There is no statement in the Book of Allah, Almighty, or the Sunnah of His Messenger (PBUH), elaborating (rules of) *Zakat* on Debts. ;
2. Numerous views have been reported from the Companions and the Tabe'een (the generation after the Companions) –May Allah be satisfied with them- from the viewpoint of the method of paying *Zakat* on debts.
3. Accordingly, the Islamic Schools of Jurisprudence have differed clearly on the subject.
4. The difference of opinion (regarding this subject) is, in turn, caused by their differing opinion regarding the (following) fundamental principle : whether receivable assets can be classified as actually received assets.

The Council RESOLVES THE FOLLOWING:

1. The lender is obligated to pay *Zakat*, every year, on his loaned money, if the borrower is solvent.
2. The lender is obligated to pay *Zakat*, after the elapse of one year starting from the day he actually receives his loaned money, if the borrower is impoverished or controverting.

Verily, Allah is all-knowing

Bismillah Arrahman Arrahim

Praise be to Allah, the Lord of the Universe, and Prayers and Blessings be upon Sayyidina Muhammad, the last of the Prophets, and upon his Family and his Companions

RESOLUTION N° 2 (2/2)

CONCERNING
ZAKAT REAL ESTATES
AND RENTED NON AGRICULTURAL LANDS

The Council of the Islamic *Fiqh* Academy, during its second session, held in Jeddah (Kingdom of Saudi Arabia), from 10 to 16 Rabiul Thani 1406 H (22-28 December 1985);

Having looked into the studies presented about *Zakat* real estates and rented non-agricultural lands >>, and

After thorough and in-depth deliberations which covered the subject from its different aspects, it became evident that :

1. No clear statement is traced which levies *Zakat* on real estate and rented lands.
2. Similarly, no statement has been reported levying current *Zakat* on the yield of real estate and non-agricultural rented lands.

The Council RESOLVES :

1. No *Zakat* is levied on assets of the real estate and rented lands.
2. *Zakat* is due and payable on its yield, which is one fourth of the one tenth (2,5%), after the elapsing of one year period from the date of its actual receipt, if all other conditions are present and no impediments exist.

Verily, Allah is All-Knowing

Bismillah Arrahman Arrahim

*Praise be to Allah, the Lord of the Universe, and Prayers and Blessings be upon
Sayyidina Muhammad, the last of the Prophets, and upon his Family and his
Companions*

RESOLUTION N° 3 (3/2)

CONCERNING THE RELIGIOUS INQUIRIES SUBMITTED BY THE INTERNATIONAL INSTITUTE OF ISLAMIC THOUGHT IN WASHINGTON, DC (USA)

The Council of the Islamic *Fiqh* Academy, during its second session, held in Jeddah (Kingdom of Saudi Arabia), from 10 to 16 Rabiul Thani 1406 H (22-28 December 1985);

Having looked formed a committee composed from the members of the Academy, to look into the questions received from the International Institute of Islamic Thought in Washington, DC (USA) and after having received the answers prepared in this regard:

HAS NOTICED THAT:

1. The answers have been worded in a very short form and are not sufficient to convince and eliminate the dissension or rejection.
2. The Academy must endeavor to resolve difficulties facing Muslim brothers (living) in the West.

AND THEREFORE RESOLVES

First: The General Secretariat of the Academy is commissioned to assign these questions to whomsoever it deems suitable from among its Members or experts to prepare reasoned answers to those questions, substantiated by proofs from Islamic Law and statements of the earlier Muslim jurists and present it to the Council in a convincing and clear form.

Second: The General Secretariat is commissioned to report its findings to the Third session of the Council. **Verily, Allah is All-Knowing**

Bismillah Arrahman Arrahim

*.Praise be to Allah, the Lord of the Universe, and Prayers and Blessings be upon
Sayyidina Muhammad, the last of the Prophets, and upon his Family and his
Companions*

RESOLUTION N° 4 (4/2)

CONCERNING THE QADIANIYYA

The Council of the Islamic *Fiqh* Academy, during its second session, held in Jeddah (Kingdom of Saudi Arabia), from 10 to 16 Rabiul Thani 1406 H (22-28 December 1985) ;

Having looked into the request for juristic opinion submitted to it by "The Islamic Legal Council, Capetown (South Africa)" about the ruling concerning "The Qadianiya" and the group branching from it , referred to as the "Lahorites", to examine whether to consider them as Muslims or otherwise, and whether it is possible for a non-Muslim to adjudicate in a controversy of this nature;

In the light of research works and documents presented to the members of the Council of the Academy related to this subject and about Mirza Ghulam Ahmad Al-Qadiani) who appeared in India in the last century and to whom the Qadiani and Lahorite sects are attributed ;

Having looked into the facts presented concerning these two sects and after having verified that Mirza Ghulam Ahmad has declared to be a prophet sent and revealed upon, and such claim having been established about him through his writings some of which he claims to be revelation made upon him ; and that he had continued to proclaim such a status all his life, inviting people through his books and speeches to believe in his Prophet hood and being a Messenger and, moreover, it has been proven that he has denied many of the very obvious teachings of Islam such as the Holy War (Jihad) ;

Having further considered the declaration made by the Islamic *Fiqh* Academy of Makkah Al-Mukarramah on this same issue ;

RESOLVES

1. The declaration by Mirza Ghulam Ahmad concerning his Prophet hood and his claim of inspiration by the Divine Revelation, is an open rejection of the obviously and categorically established religious doctrine concerning the ending of Prophet hood with Prophet Muhammad (PBUH) and that there is no revelation after him. Therefore, the said declaration from Mirza Ghulam Ahmad make him, along with all those who accept the same, apostates (Murtad), who have apostatized Islam. As far as the Lahorites are concerned, they too, like the Qadianis are apostates (Murtad) despite their description of Mirza Ghulam Ahmed as the shadow and incarnation of our Prophet Muhammad (PBUH).

2. No non-Islamic court or non-Muslim judge is entitled to make a judgment about someone's Islam or apostasy, particularly when they defy the consensus of Muslim nations represented by its academies and scholars. This is so because a judgment concerning Islam and apostasy is not recognizable except when it is issued by a Muslim who knows all prerequisites for entering into Islam or parting with it as an apostate and who has the grasp of the essence of Islam and disbelief and knows in depth what has been established by the Book, the Sunnah and the Consensus. Therefore, the decision of such a court is void.

Verily, Allah is All-Knowing

Bismillah Arrahman Arrahim

Praise be to Allah, the Lord of the Universe, and Prayers and Blessings be upon Sayyidina Muhammad, the last of the Prophets, and upon his Family and his Companions

RESOLUTION N° 5 (5/2)

CONCERNING TEST-TUBE BABIES

The Council of the Islamic *Fiqh* Academy, during its second session, held in Jeddah (Kingdom of Saudi Arabia), from 10 to 16 Rabiul Thani 1406 H (22-28 December 1985) ;

Having reviewed the studies presented by the learned jurists and physicians, relating to the issue of "Test-tube Babies" from both its medical and legal aspects;

Having discussed the content of the studies and other issues raised to clarify the subject ;

RESOLVES

First: To postpone the ruling on the subject to the next session of the Council

Second: To commission H.E. Sheikh Dr Bakr bin Abdullah Abu Zeid, the Chairman of the Council of the Academy, to make a thorough study of the subject so as to cover all its legal and medical aspects.

Third: To convey his findings to all members, through the General Secretariat of the Academy, at least three (3) months prior to the holding of the next session.

May Allah Almighty guide us on the right Path.

Bismillah Arrahman Arrahim

Praise be to Allah, the Lord of the Universe, and Prayers and Blessings be upon Sayyidina Muhammad, the last of the Prophets, and upon his Family and his Companions

RESOLUTION N° 6 (6/2)

CONCERNING MILK BANKS

The Council of the Islamic *Fiqh* Academy, during its second session, held in Jeddah (Kingdom of Saudi Arabia), from 10 to 16 Rabiul Thani 1406 H (22-28 December 1985) ;

After a legal and medical study have been submitted to the Academy, and

Having considered the contents of the two studies and having discussed each one of them in depth covering the various aspects of the subject ;

CONSTATE :

First: The Milk Banks concept and experience are a western nations initiated phenomenon ; however, as the concept was being practiced, some scientific and technical adverse effects were noticed, thus causing decrease in its use and lack of interest in it.

Second: To Islam, Breast feeding creates a bond similar to a lineage bond and forbids, according to the consensus of Muslim jurists, exactly the same which is forbidden due to actual lineage relationship. One of the goal of *Shari'a* is to safeguard the lineage of a person whereas the Milk banks lead to mix up and doubt.

Third: The social structure in the Muslim world is such that it can fulfill the needs of a premature or a weak child in need of natural breast feeding from human milk (in some special cases), thus eliminating dependency on the Milk banks. Accordingly:

R S

First: The establishment of Milk Banks should be prohibited in the Islamic World.

Second: It is prohibited to feed a Muslim child with milk from these banks.

Verily, Allah is All- Knowing

Bismillah Arrahman Arrahim

Praise be to Allah, the Lord of the Universe, and Prayers and Blessings be upon Sayyidina Muhammad, the last of the Prophets, and upon his Family and his Companions

RESOLUTION N° 7 (7/2)

**CONCERNING
RESUSCITATION EQUIPMENTS**

The Council of the Islamic *Fiqh* Academy, during its second session, held in Jeddah (Kingdom of Saudi Arabia), from 10 to 16 Rabiul Thani 1406 H (22-28 December 1985);

Having examined the medical and legal studies presented concerning "Resuscitation equipment";

And after comprehensive discussions and raising many questions, particularly in relation with the issue of life and death, because of the direct effect of the unplugging of the resuscitation equipment on the life of the patient;

And whereas many aspects related to the subject are yet to be clarified;

And whereas the Islamic Organization for Medical Sciences of Kuwait has done a thorough study of the subject which must be taken into account;

RESOLVES

First: To postpone the decision on this subject until the next session of the Council of the Academy.

Second: To entrust the General Secretariat of the Academy with the task of collecting all studies and resolutions of the Islamic Organization for Medical Sciences of Kuwait and provide the members with a clear and specific summary thereof.

May Allah the Almighty guide us on the right Path.

Bismillah Arrahman Arrahim

Praise be to Allah, the Lord of the Universe, and Prayers and Blessings be upon Sayyidina Muhammad, the last of the Prophets, and upon his Family and his Companions

RESOLUTION N° 8 (8/2)

CONCERNING
QUERIES FROM THE ISLAMIC DEVELOPMENT BANK

The Council of the Islamic *Fiqh* Academy, during its second session, held in Jeddah (Kingdom of Saudi Arabia), from 10 to 16 Rabiul Thani 1406 H (22-28 December 1985) ;

After having listened to the presentation of the Islamic Development Bank consisting of a number of questions and queries;

And after having listened to the report of the sub-committee set up during the session and composed of the members who had submitted their answers to the various issues raised, in addition to other members who joined them ;

Owing to the fact that the subject needs a more thorough and complete study, requiring further contact and consultation with the IDB in a committee set up by the Bank to discuss different aspects thereof ;

RESOLVES

1. To refer this subject to the next session
2. To request the Bank to present a report from its *Shari'a* advisory Department.

May Allah the Almighty guide us on the right Path.

Bismillah Arrahman Arrahim

Praise be to Allah, the Lord of the Universe, and Prayers and Blessings be upon Sayyidina Muhammad, the last of the Prophets, and upon his Family and his Companions

RESOLUTION N° 9 (9/2)

CONCERNING **INSURANCE AND REINSURANCE**

The Council of the Islamic *Fiqh* Academy, during its second session, held in Jeddah (Kingdom of Saudi Arabia), from 10 to 16 Rabiul Thani 1406 H (22-28 December 1985);

After having reviewed the presentations made by the participating scholars during the session on the subject of "Insurance and reinsurance"; And after discussing the same;

Having closely examined all the types and forms of insurance and having an in-depth review of the basic principles upon which they are founded and their goal and objectives;

Having looked into what has been issued by the *Fiqh* Academies and other edifying institutions in this regard;

RESOLVES

First: The commercial insurance contract with a fixed periodical premium, which is commonly used by commercial insurance companies, is a contract which contains major elements of deceit, which void the contract and, therefore is prohibited (haram) according to *Shari'a*.

Second: The alternative contract, which conforms, to the principles of Islamic dealings is the contract of cooperative insurance, which is founded on the basis of charity and cooperation. Similarly, is the case of reinsurance based on the principle of cooperative insurance.

Third: The Academy invites the Islamic countries to work on establishing cooperative insurance institutions and cooperative entities for the reinsurance, in order to liberate the Islamic economy from exploitation and put an end to the violation of the system which Allah has chosen for this Ummah.

Verily, Allah is All-Knowing

Bismillah Arrahman Arrahim

Praise be to Allah, the Lord of the Universe, and Prayers and Blessings be upon Sayyidina Muhammad, the last of the Prophets, and upon his Family and his Companions

RESOLUTION N° 10 (10/2)

CONCERNING TRANSACTIONS WITH BANKS DEALING WITH INTEREST AND TRANSACTIONS WITH ISLAMIC BANKS.

The Council of the Islamic *Fiqh* Academy, during its second session, held in Jeddah (Kingdom of Saudi Arabia), from 10 to 16 Rabiul Thani 1406 H (22-28 December 1985) ;

Having reviewed numerous studies on modern financial transactions; ***After*** ***pondering over*** said studies and thoroughly discussing all aspects thereof, the negative impact of such transactions on the international economic order and stability became obvious. especially in relation to Third world countries;

Having further deliberated on the detrimental effects of the said system, because of its deviation from directives of the Holy Book, which clearly prohibits *Riba* (usury), be it total or partial, and commands us to repent from it, and permits us to recover only the principal of loans, no more and no less, whether it is a big amount or a small one, and warns us of a war waged by Allah and His Prophet against usurers;

RESOLVES

First: Any increase or interest on a debt which has matured, in return for an extension of the maturity date, in case the borrower is unable to pay and the increase (or interest) on the loan at the inception of its agreement, are both forms of usury which is prohibited under *Shari'a*.

Second: The alternative which guarantees the cash flow and financial support for the commercial activity in a form acceptable to Islam, is to trade with each other in conformity with *Shari'a* principles.

Third: The Academy invites Governments of Islamic countries to encourage the financial institutions which operate in accordance with the principles of Islamic *Shari'a*, and to enable them to operate in every Muslim country, so that they may respond to the needs of Muslims and a Muslim does not have to live in contradiction between the demands of his faith and the realities of life.

Verily, Allah is All-Knowing

Bismillah Arrahman Arrahim

Praise be to Allah, the Lord of the Universe, and Prayers and Blessings be upon Sayyidina Muhammad, the last of the Prophets, and upon his Family and his Companions

RESOLUTION N° 11 (11/2)

CONCERNING **THE UNIFICATION OF THE BEGINNING OF LUNAR MONTHS**

The Council of the Islamic *Fiqh* Academy, during its second session, held in Jeddah (Kingdom of Saudi Arabia), from 10 to 16 Rabiul Thani 1406 H (22-28 December 1985) ;

Having reviewed the research papers submitted by its members and experts on the unification of the beginning of lunar months;

After having a thorough discussion of the views expressed on the subject and hearing several opinions concerning the adoption of the calculations pertaining to the beginning of lunar months ;

RESOLVES

First: To entrust the General Secretariat of the Academy with the task of providing documented scientific studies conducted by qualified experts in astronomy and weather observatories;

Second: To include the topic of "Unification of the beginning of Lunar months" in the agenda of next session with a view to completing research on its two aspects : the technical calculations and *Shari'a* rules

May Allah Almighty guide us on the right Path

Bismillah Arrahman Arrahim

Praise be to Allah, the Lord of the Universe, and Prayers and Blessings be upon Sayyidina Muhammad, the last of the Prophets, and upon his Family and his Companions

RESOLUTION N° 12 (12/2)

CONCERNING
THE LETTER OF GUARANTEE

The Council of the Islamic *Fiqh* Academy, during its second session, held in Jeddah (Kingdom of Saudi Arabia), from 10 to 16 Rabiul Thani 1406 H (22-28 December 1985) ;

Having considered the issue of "The Letter of guarantee" ;

Having reviewed the research papers and studies already prepared ;

After conducting elaborate deliberations and discussions ;

HAS REACHED THE FOLLOWING CONCLUSIONS

First: Any letter of guarantee, whether initial or final, is either with or without cover. Should it be without cover, then the guarantor is regarded as to have jointly pledged along with the third party, both the performance and financially. This type of pledge is in fact what is referred to as "guarantee or collateral" in Islamic *Fiqh*. If however the letter of guarantee has a cover, the relationship between the applicant of the guarantee and its issuer, is that of an agency ; and an agency may exist with or without fee, tied-in with the link of surety in favor of the beneficiary in whose benefit the guarantee is issued.

Second: The guarantee (*Kafala*) is a benevolent contract, motivated by grace and mercy. The jurists have decided against taking fee for issuing guarantees ; the reason being that, in the event of guarantor's payment of the guaranteed sum, it will resemble a loan generated profit to the lender and that is forbidden in *Shari'a*.

RESOLVES

- First:** It is not permitted to charge a fee for issuing a letter of guarantee (in which, customarily, the amount and the period of guarantee are considered) whether it is with or without cover.
- Second:** The administrative expenses for issuing a letter of guarantee of both kind are permissible by *Shari'a* , provided they do not exceed actual expenses for services of the same kind. In the event a partial or total cover is presented, it is permissible to take into account, when estimate of expenses is determined, the possible effort which may be required to provide the cover.

Verily, Allah is All-Knowing

**Resolutions and Recommendations
of the Third Session of the Council
of the Islamic *Fiqh* Academy**

**Amman (Hashemite Kingdom of Jordan) 8
to 13 Safar 1407 hill - 16 October 1986**

Bismillah Arrahman Arrahim

Praise be to Allah, the Lord of the Universe, and Prayers and Blessings be upon Sayyidina Muhammad, the last of the Prophets, and upon his Family and his Companions

RESOLUTION N° 13 (1/3)
CONCERNING
QUESTIONS SUBMITTED BY THE
ISLAMIC DEVELOPMENT BANK (IDB)

The Council of the Islamic *Fiqh* Academy, holding its third session, in Amman, Hashemite Kingdom of Jordan, from 8 to 13 Safar 1407 H (11 to 16 October 1986) ,

After intensive discussions and lengthy deliberations on all the questions submitted to the Academy by the Islamic Development Bank (IDB) ;

RESOLVES

A – Regarding service fee for IDB loans

1. It is allowed to charge a fee for loan related services. The said fee should be within the limit of the actual expenses.
2. Any fee in addition to the actual service related expenses is prohibited (*haram*) because it is considered as *Riba* (usury).

B - Regarding <<Lease Transactions>>

First: The IDB promise to lease the equipment to the client, after it has owned it, is acceptable from *Shari'a* point of view.

Second: The appointment, by IDB, of one of its clients as its agent, for the purchase, in the name of the bank, of equipment and tools, of given specifications and price, with the intention for the Bank to lease the purchased items to this client after the latter has received them, is a valid agency appointment. It is preferable however, that the purchasing agent be different from the beneficiary client, if this condition can be easily met.

- Third:** The lease agreement should be implemented after actual acquisition and possession of the equipment and should be entered into by a separate contract than the agency contract or the promise.
- Fourth:** The promise to donate the equipment at the end of the lease period is permissible if such a promise is made under a separate contract.
- Fifth:** The risk of loss and manufacturing defects rests with the Bank, in its capacity as the owner of the equipment, unless it is due to deliberate tempering or negligence of the lessee, in which case, the liability will fall then on him.
- Sixth:** The premium for the insurance, contracted as much as possible through Islamic Insurance Companies, is to be borne by the Bank.

C — Regarding future sales on installments :

- First:** The IDB promise to sell the equipment to the client, after it has owned it, is acceptable from *Shari'a* point of view.
- Second:** The appointment, by IDB, of one of its clients as its agent, for the purchase, in the name of the bank, of equipment and tools, of given specifications and price, with the intention for the Bank to sell the purchased items to this client after the latter has received them, is a valid appointment from *Shari'a* point of view. It is preferable however, that the purchasing agent be different from the beneficiary client, if this condition can be easily met.
- Third:** The Sale agreement should be concluded after actual acquisition and reception of the equipment and should be entered into by a separate contract. '

D — Regarding Foreign Trade Financing:

The principles applicable to these transactions are the same as those applicable to future sales in installments. ,

E — Regarding the interests generated from its deposits in foreign Banks

It is forbidden for the Bank to use the interests generated by its deposits in foreign banks, to protect the real value of its assets from the effects of currency fluctuation. Therefore, the said interest amount should be spent on general welfare, such as training, research, helping those in calamity, providing financial and technical assistance to member countries. Furthermore, it may be given to academic establishments, institutes, schools and that which is associated with spreading Islamic knowledge.

Verily, Allah is All-Knowing

Bismillah Arrahman Arrahim

Praise be to Allah, the Lord of the Universe, and Prayers and Blessings be upon Sayyidina Muhammad, the last of the Prophets, and upon his Family and his Companions

RESOLUTION N° 14 (2-3)

CONCERNING
ZAKAT ON COMPANY SHARES

The Council of the Islamic *Fiqh* Academy, holding its third session, in Amman, Hashemite Kingdom of Jordan, from 8 to 13 Safar 1407 H (11 to 16 October 1986) ,

After discussing the issue of "Zakat on company shares" from all its angles and studying the research works related to it ;

RESOLVES

To postpone the decision on this issue until it's Fourth session. **May Allah**

Almighty guide us on the right Path.

Bismillah Arrahman Arrahim

*Praise be to Allah, the Lord of the Universe, and Prayers and Blessings be upon
Sayyidina Muhammad, the last of the Prophets, and upon his Family and his
Companions*

RESOLUTION N° 15 (3-3)

**CONCERNING
INVESTMENT OF ZAKAT FUNDS IN PROFIT
GENERATING PROJECTS
WITHOUT ATTRIBUTING INDIVIDUAL PROPERTY
TITLE TO THE BENEFICIARY**

The Council of the Islamic *Fiqh* Academy, holding its third session, in Amman, Hashemite Kingdom of Jordan, from 8 to 13 Safar 1407 H (11 to 16 October 1986),

After reviewing the studies made on the issue of "Investment of Zakat funds in Profit generating projects without disbursing it to the individual beneficiary

After listening to the opinions of the members and experts on this subject;

RESOLVES

It is permissible, in principle, to put *Zakat* funds in investment projects which eventually lead to be owned by those who are deserving of *Zakat*, or which are under the control and administration of the entity which is responsible and has the jurisdiction over collecting and distributing *Zakat*, provided that it is done after satisfying the basic and immediate needs of the beneficiaries and with proper guarantees against loss.

Verily, Allah is All-Knowing

Bismillah Arrahman Arrahim

*Praise be to Allah, the Lord of the Universe, and Prayers and Blessings be upon
Sayyidina Muhammad, the last of the Prophets, and upon his Family and his
Companions*

RESOLUTION N° 16 (4-3)

CONCERNING TEST-TUBE BABIES

The Council of the Islamic *Fiqh* Academy, holding its third session, in Amman, Hashemite Kingdom of Jordan, from 8 to 13 Safar 1407 H (11 to 16 October 1986),

After having reviewed the studies on the subject of "Artificial insemination" and having listened to the experts and physicians;

After investigation:

It became evident to the Council that there are seven (7) known methods, used nowadays for artificial insemination:

- A. The first five (5) methods are all forbidden and absolutely prohibited for its own sake or due to ensuing consequences manifested in confusion about parenthood and loss of motherhood and other *Shari'a* prohibited matters. These methods are:
1. The fertilization taking place in vitro between the semen taken from the husband and the ovum taken from a woman who is not his wife, and the fertilized ovum is then planted in the womb of his wife
 2. The fertilization taking place in vitro between the semen taken from a man who is not the husband and the ovum taken from the wife of another man, and the fertilized ovum is then planted in the womb of his woman.
 3. The fertilization taking place in vitro between the semen and the ovum taken from spouses, and the fertilized ovum is then planted in the womb of a volunteer woman.

4. The fertilization taking place in vitro between male semen and female ovum taken from two strangers and the fertilized ovum is then planted in the womb of another man's wife.
 5. The fertilization taking place in vitro between the semen and the ovum taken from spouses, and the fertilized ovum is then planted in the womb of the husband's other spouse.
- B. However, in the Council's opinion, there is no objection if one resorts to the sixth or seventh method, in case of necessity, provided all required precautions are taken. These two methods are :
6. Fertilization in vitro of a woman's ovum by her husband's semen and implantation of the fertilized ovum in the womb of this same woman.
 7. External insemination, by taking the semen of a husband and injecting it in the appropriate place *in* the womb or uterus of his wife, for *in-vivo* fertilization.

Verily, Allah is All-Knowing

Bismillah Arrahman Arrahim

Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon Sayyidina Muhammad, the last of the Prophets, and upon his Family and his Companions.

RESOLUTION No 17 (5-3)

**CONCERNING
RESUSCITATION OR LIFE SUPPORTING EQUIPMENT**

The Council of the Islamic *Fiqh* Academy, holding its Third session in Amman (Hashemite Kingdom of Jordan), from 8 to 13 Safar 1407 1-1 (11 to 16 October 1986);

After looking into all issues raised in relation with life supporting equipment and listening to a detailed report presented by medical specialists;

RESOLVES

According to *Shari'a* a person is considered dead, and all *Shari'a* rules regarding death become effective, if he shows one of the following two signs:

1. Complete cardio-respiratory arrest and confirmation by physicians that such arrest is irreversible ;
2. Cessation of all brain activity and confirmation by physicians that such cessation is irreversible and that the brain has entered the state of decomposition.

Under these circumstances he can be weaned of the intensive care equipment supporting him, even though some organs of his body, like the heart, continue to function artificially, with the help of the supporting equipment.

Verily Allah is All-Knowing

Bismillah Arrahman Arrahim

Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon Sayyidina Muhammad, the last of the Prophets, and upon his Family and his Companions.

RESOLUTION No 18 (6-3)

CONCERNING UNIFICATION OF THE BEGINNING OF LUNAR MONTHS

The Council of the Islamic *Fiqh* Academy, holding its Third session in Amman (Hashemite Kingdom of Jordan), from 8 to 13 Safar 1407 H (11 to 16 October 1986);

Having reviewed the following two issues regarding the "Unification of the beginning of lunar months":

1. The effect of differences in horizons on the beginning of lunar months.
2. Determining the first day of lunar months by means of astronomical calculations..

Having taken note of the studies submitted by the Members and the experts on this issue ;

RESOLVES

First: If sighting of the crescent is established in one country, all Muslims must abide by it. The difference in horizon is not relevant because the ordinance for starting and ending the fasting is universal.

Second: It is mandatory to accept the sighting. However, one may get assistance from astronomical calculation and observatories with due consideration to the sayings of the Prophet (PBUH) and scientific facts.

Verily Allah is All-Knowing

Bismillah Arrahman Arrahim

Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon Sayyidinna Muhammad, the last of the Prophets, and upon his Family and his Companions.

RESOLUTION No 19 (7-3)

CONCERNING
"IHRAM" FOR THOSE ARRIVING BY AIR OR BY SEA
TO PERFORM HAJ OR UMRAH

The Council of the Islamic *Fiqh* Academy, holding its Third session in Amman (Hashemite Kingdom of Jordan), from 8 to 13 Safar 1407 H (11 to 16 October 1986);

Having taken note of the studies submitted concerning "Ihram for those arriving by air or by sea to perform Haj or Umrah".

RESOLVES

The locations (*Mawaqit*) set by the hadith of the Prophet (PBUH), should be the points at which people intending to perform Haj or Umrah, whether those who are crossing it or those living close to it, whether by land, air or sea, must put on their Ihram, because of the general command reported in the hadith of the Prophet. (PBUH).

Verily Allah is All-Knowing

Bismillah Arrahman Arrahim

Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon Sayyidina Muhammad, the last of the Prophets, and upon his Family and his Companions.

RESOLUTION No 20 (8-3)

CONCERNING

PAYMENT OF ZAKAT TO THE ISLAMIC SOLIDARITY FUND

The Council of the Islamic *Fiqh* Academy, holding its Third session in Amman (Hashemite Kingdom of Jordan), from 8 to 13 Safar 1407 H (11 to 16 October 1986);

Having listened to the statement of the Assistant Secretary General of the OIC on the activities of the Islamic Solidarity Fund (ISF) and its pressing needs for material support, and his proposal that the ISF be one of the beneficiaries of *Zakat*.

RESOLVES

To entrust the General Secretariat of the Academy to undertake, in cooperation with the Islamic Solidarity Fund, the necessary studies on this subject, for submission during the forthcoming session of the Council of the Academy.

May Allah grant us success.

Bismillah Arrahman Arrahim

Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon Sayyidina Muhammad, the last of the Prophets, and upon his Family and his Companions.

RESOLUTION No 21 (9-3)

CONCERNING
SHARI'A RULES GOVERNING PAPER MONEY
AND FLUCTUATIONS IN CURRENCY RATES

. The Council of the Islamic *Fiqh* Academy, holding its Third session in Amman (Hashemite Kingdom of Jordan), from 8 to 13 Safar 1407 H (11 to 16 October 1986);

Having taken note of the studies submitted on "*Shari'a* rules governing paper money and fluctuations in currency rate";

RESOLVES

First: Regarding Shari'a rules governing paper money:

A. Paper money is real money, possessing all characteristics of value, and subject to *Shari'a* rules governing gold and silver vis-a-vis usury, *Zakat*, Salam and all other transactions.

Second: Regarding fluctuation currency rates

A. To postpone deliberation on this issue until a study is undertaken on all its related aspects, for consideration during the fourth session of the Council of the Academy.

May Allah grand us success.

Bismillah Arrahman Arrahim

Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon Sayyidina Muhammad, the last of the Prophets, and upon his Family and his Companions.

RESOLUTION No "22 (10-3)

CONCERNING
MUQARADHA BONDS AND INVESTMENT
AND DEVELOPMENT CERTIFICATES

The Council of the Islamic *Fiqh* Academy, holding its Third session in Amman (Hashemite Kingdom of Jordan), from 8 to 13 Safar 1407 H (11 to 16 October 1986);

Having taken note of the studies presented on `Mugaradha bonds and investment and development certificates";

Having listened to the debates, which have focused on this subject;

In accordance with the Council's plan of action, stressing the necessity of undertaking a number of studies on a single topic;

Having regard to the significance of this subject and the necessity of examining it in full details, including all its aspects and getting acquainted with all opinions related to it;

RESOLVES

To request the General Secretariat of the Academy to entrust experts it deems competent, with the task of undertaking a number of studies on the subject, to enable the Council to take an appropriate decision at its Fourth session..

May Allah guide us on the right Path.

Bismillah Arrahman Arrahim

Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon Sayyidina Muhammad, the last of the Prophets, and upon his Family and his Companions.

RESOLUTION No 23 (11-3)

**CONCERNING
THE QUESTIONS SUBMITTED BY
THE INTERNATIONAL INSTITUTE OF ISLAMIC THOUGHT
IN WASHINGTON, DC (USA)**

The Council of the Islamic *Fiqh* Academy, holding its Third session in Amman (Hashemite Kingdom of Jordan), from 8 to 13 Safar 1407 H (11 to 16 October 1986);

Having taken note of the questions submitted by the International Institute of Islamic Thought in Washington, DC (USA), and the answers prepared by the Members and experts of the Council;

RESOLVES

To request the Secretary General of the Academy to convey to the Institute the following rulings of the Council:

Bismillah Arrahman Arrahim

Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon Sayyidina Muhammad, the last of the Prophets, and upon his Family and his Companions.

THE RULINGS OF THE COUNCIL ON THE QUESTIONS

QUESTION No 3:

What is the ruling concerning a marriage between a Muslim woman and a non Muslim man, especially if she is hoping that the marriage may be

instrumental in his embracing Islam? There are many women who claim that, most of the time, not enough compatible Muslim men are available, and that without marriage, they run the risk of deviation or living under extreme hardship.

ANSWER:

Marriage between a Muslim woman and a non Muslim man is prohibited by the Book, the Sunnah of the Prophet (PBUH) and the consensus of Muslim jurists. It is void, even if it has already taken place. It will not benefit from the effects of a valid marriage. In the view of Islam, the children from such marriage are not considered legitimate. The hope in Islam of a non-Muslim man does not change the rule in any way.

QUESTION No 4:

What is the ruling if marital relationship continues between a wife who has embraced Islam while her husband has remained non-Muslim ? She has children from him and she is afraid of loosing them to disbelief and deviation if she separates. Furthermore, she hopes and expects that her husband may embrace Islam if the marital relationship continues between them. Would the ruling be different if she had no hope in his accepting Islam and he treats her well and she may not find a Muslim husband if she leaves him ?

ANSWER:

A marriage is suspended simply by a wife embracing Islam and her husband refusing to do so. It is not permitted for her to continue marital relationship with him. However, she must wait for him during the waiting period (Iddah). If he accepts Islam during this period, she must join him under the suspended marriage contract.

However, if the `Iddah period expires and he did not embrace Islam, then the marriage is dissolved. If he later accepts Islam and desires to go back to their marriage, he will do so under a new marriage contract. The good or bad treatment she receives from her husband is of no relevance in permitting the continuation of the marriage.

QUESTION No 5:

It is not allowed for us to bury our dead except in licensed graveyards. What is the ruling concerning burying Muslims in non Muslim graveyards, if Muslim graveyards are not available, which is the case in most of the United States of American and European countries ?

ANSWER:

Burying Muslims in non-Muslims graveyards is permissible as a necessity in non-Muslim countries.

QUESTION No 6:

What is the ruling concerning selling a mosque "if Muslims leave the area where it is located and the mosque may deteriorate or may be expropriated as a result"? Often, Muslims buy a house and convert it into a mosque and when the majority of the Muslim community living in that area leave for work related reasons, the mosque is deserted or neglected and possibly others may seize it. Is it possible to sell it and build another mosque in a location with Muslim population ? What is the ruling concerning such a sale or replacement ? In the event it is not possible to replace it with another mosque, then what is the most appropriate way to utilize the funds from the sale ?

ANSWER:

It is permissible to sell a mosque which is not being used or when Muslims have migrated from the area where it is located or when it is threatened of expropriation by non-Muslims, provided the proceeds of the sale are used in buying another mosque in another place. .

QUESTION No 8:

Some women and young girls are compelled by work conditions or education to live alone or with other women who are not Muslims. What is the ruling concerning such mode of living ?

ANSWER:

According to *Shari'a*, it is not permitted for a Muslim woman to live alone in foreign land.. ,

QUESTION No 9:

Most women living in the United States say the maximum they can cover of their body is all except the face and hands. Some of them are prohibited by their employers to cover their head What are the parts of her body a woman can expose in front of strangers in places of work or study ?

ANSWER:

The covering for a Muslim woman -according to the majority of Muslim jurists- is all her body except her face and hands, provided she does not apprehend harassment. If, however, she expects harassment, she may cover them as well.

QUESTIONS No 10 & 11:

Many Muslim students in this country (the USA) are compelled to work to cover their educational expenses because, for the majority of them, money received from their relatives is not enough ; thus work becomes for them a necessity they cannot do without. In the majority of the cases, they do not find work except in restaurants or shops which sell alcoholic drinks or serve food containing pork or other prohibited products. What is the ruling concerning working in such places ?

What is the ruling concerning a Muslim selling alcoholic beverage and swine or distills intoxicants and sells to non Muslims ? Please note that some Muslims, in this country, have made it their profession.

ANSWER:

It is permitted for a Muslim to work in non Muslim's restaurants, only if he cannot find any other work which permissible by *Shari'a*, provided he does not directly serve, carry, manufacture or trade in alcoholic beverage. The ruling is the same with regard to serving swine meat or other forbidden things.

QUESTION No 12 :

There are many medicines which contain different quantities of alcohol, ranging between 1 % to 25% and most of these medicines are for the treatment of cold, cough, sore throat or other such common diseases. Approximately 95% of medicines for these type of diseases contain alcohol, which make finding medicines free from alcohol very difficult or nearly impossible. What is the ruling concerning using such medicines?

ANSWER:

It is permitted for a Muslim to take medicine containing a percentage of alcohol, if he cannot find any other medicine free from this substance, provided a trust-worthy and competent physician prescribes it.

QUESTION No 13:

Some yeast and gelatins contain very small quantity of substances extracted from swine. Is it permitted to use such yeast or gelatins ?

ANSWER:

It is not permitted for a Muslim to use yeast or gelatins containing extracts from swine in food stuffs. Yeast and gelatins extracted from vegetables or permissible animals are good enough substitute.

QUESTION No 14:

Many Muslims are compelled to celebrate the wedding ceremonies for their daughters in their mosques. Often these ceremonies include dancing and singing. There is no other place available to them and large enough for holding such functions. What is the ruling concerning celebrating such ceremonies in mosques?

ANSWER:

It is recommended to conclude the marriage contract in mosques. however, it is not permitted to old ceremonies in mosques if it includes prohibited acts such as men and women freely mixing, women flaunting, dancing and singing.

QUESTION No 16:

What is the ruling concerning a marriage of a Muslim student (man or woman) which the contracting parties do not intend to keep permanently ? Their intention is to terminate it at the end of their studies and return to their place of permanent residence. However, the marriage contract, normally, is a usual one and in the same form as for a permanent marriage.?

ANSWER:

The presumption in a marriage contract is continuity, permanency and formation of an everlasting family tie until and unless something causes its dissolution.

QUESTION No 17 :

What is the ruling concerning a woman who appears in places of work or education having plucked hair from her eyebrows and put kohl-makeup in her eyes?

ANSWER:

Wearing kohl is permitted by *Shari'a*, for men and for women. However, plucking one's hair from parts of the eyebrows is not permitted unless its presence really disfigures the appearance of a woman.

QUESTION No 18:

Some Muslim women feel alienated by refusing to shake hand with men who come to their places of work or schools. Thus, they shake hand with them to avoid embarrassment. What is the ruling concerning such hand shake?

ANSWER:

A hand shake between a man and a grown up girl, or vice versa, is forbidden by *Shari'a*..

QUESTION N° 19:

What is the ruling concerning renting of churches for performing the five prayers, the Friday prayer or Eid prayer, with statues and other things normally found in a church being present ? It is to be noted that churches – mostly- are the least expensive places, which can be hired from the Christians, and using some of them is permitted free of charge by some universities and charitable organizations.

ANSWER:

Renting churches for performing prayers is permissible if necessary. The prayer should not be performed in front of statues and pictures, which should be covered if they are in the direction of the Qibla.

QUESTION N° 20:

What is the ruling concerning the slaughtering of the People of the Book – the Jews and the Christians - and the food offered in their restaurants, noting that we have no knowledge of their pronouncing the name of Allah at the time of slaughtering ?

ANSWER:

The slaughtering by the People of the Book is permitted if done in a manner acceptable by *Shari'a*. The Academy recommends for a more detailed report on the subject for discussion in the forthcoming session.

QUESTION N° 21:

Many functions where Muslims are invited serve liquor or have mixed gathering of men and women, and Muslims isolation from such occasions may had to their separation from other members of the society and loss of some privileges. What is the ruling concerning attending such functions without participating in drinking liquor, dancing or eating pork ?

ANSWER:

It is not permitted for a Muslim, male or female, to attend functions in which intoxicants are served or participate in meetings of evils and disobedience.

QUESTION N° 23:

In most parts of North American states and Europe, sighting of the lunar crescent, for the months of Ramadan and Shawal, is either impossible or very difficult, The advanced technology and scientific knowledge available in most of these countries enable to predict, on the basis of astronomical calculations, with great accuracy, the birth of the crescent. Is it permitted to rely on these calculations in these countries ? Is it permitted to get assistance from observatories and accept the words of a non Muslim scientist working there, noting that it is more probable that they will be telling the truth in such matters ?

ANSWER :

In compliance with the tradition of the Prophet (PBUH) and scientific realities, it is important to rely primarily on the sighting of the crescent and then seek help from astronomical calculations and observatories. If sighting of the crescent in one city is confirmed, all Muslims must abide by it. Difference of horizon is irrelevant because of the generality of the command to start and end fasting.

QUESTION N° 24 :

What is the ruling concerning a Muslim's employment in the USA or any other non Muslim government ministry or any other agency, especially in such important industrial fields as atomic energy or strategic studies, etc. ?

ANSWER:

It is allowed for a Muslim to accept a job, permitted by *Shari'a*, in a non Muslim government agency or department, provided such job does not cause any harm to Muslims.

QUESTIONS N° 25 and 26 :

What is the ruling concerning a Muslim architect who designs buildings for non Muslims, such as churches, etc. noting that such is part of his assignment in the company in which he works and in case of his refusal he may be lose his job?

What is the ruling concerning a Muslim individual or organization donating to an educational Christian missionary organization or a church ?

ANSWER:

It is not permitted for a Muslim to design or build places of worship for non Muslims or contribute financially or physically in it.

QUESTION N° 27:

In many Muslim families, men engage in selling liquor, pork and similar things. Their wives and children do not approve of it. Noting that their livelihood depends on the earning of the men, are they committing any sin?

ANSWER:

A wife or children who are unable to earn their living by "halal" (lawful) means can get sustenance from the husband's or father's haram (unlawful) earnings from the sale of liquor, pork or other "haram" (unlawful) sources, as a matter of necessity, and after having tried to convince him to find another job and earn living by "halal" (lawful) means.

QUESTION N° 28 :

What is the ruling concerning the purchase of a house for living therein, a car for personal use or home furniture, through contracting a loan from a Bank or institution which imposes a fixed profit on such loans and uses such assets as collateral for the repayment, noting that, in the case of a house, a car or furniture, generally the alternative to the purchase is leasing on monthly installments, which customarily is higher than the monthly installment charged by the Bank ?

ANSWER:

This kind of transaction is not permitted by *Shari'a*.

Verily, Allah is All-Knowing

Bismillah Arrahman Arrahim

Praise be to Allah, the Lord of the Universe, and Prayers and Blessings be upon Sayyidina Muhammad, the last of the Prophets, and upon his Family and his Companions

RESOLUTION N° 24 (12/3)

CONCERNING **THE SCIENTIFIC PROJECTS OF THE ACADEMY**

The Council of the Islamic *Fiqh* Academy, holding its third session, in Amman, Hashemite Kingdom of Jordan, from 8 to 13 Safar 1407 H (11 to 16 October 1986),

Having considered the report of the Planning Division of the Academy on its meeting held on 8 and 9 Safar 1407 H (11 - 12 October 1986) during which it reviewed a number of topics on its agenda;

RESOLVES

First : To approve the following projects, after some amendments :

1. **Encyclopedia of economic *Fiqh***
2. **Glossary of *Fiqh* Terms**
3. **Manual of *Fiqh* Rules**
4. **A Code of the Juristic Principles of *Fiqh***
5. **Revival of *Fiqh* Heritage**
6. **Financial Regulations for the Encyclopedia of economic *Fiqh***
7. **Financial Regulations for the Glossary of *Fiqh* Rules**
8. **Financial Regulations for the Revival of *Fiqh* Heritage.**
9. **Rules of Procedure for the meetings and functioning of the Council.**

Second : To set up a quadripartite Scientific committee to lay down a methodology for each of the projects : Manual of *Fiqh* Rules and A Code of the Juristic Principles of *Fiqh*, in consultation with the Chairman of the Council and the Secretary General of the Academy.

May Allah guide us on the right Path.

Bismillah Arrahman Arrahim

Praise be to Allah, the Lord of the Universe, and Prayers and Blessings be upon Sayyidina Muhammad, the last of the Prophets, and upon his Family and his Companions

RESOLUTION N° 25 (13/3)

CONCERNING
THE RECOMMENDATIONS OF THE THIRD SESSION
OF THE COUNCIL OF THE ACADEMY

The Council of the Islamic *Fiqh* Academy, holding its third session, in Amman, Hashemite Kingdom of Jordan, from 8 to 13 Safar 1407 H (11 to 16 October 1986) ,

Having listened with particular interest to the remarks of His Royal Highness Prince Hassan bin Talal, Crown Prince of the Hashemite Kingdom of Jordan, on the pressing problems encountered by Muslims in the field of social and economic development, and which call for an urgent action to fight poverty, disease and ignorance, in view to ensuring a decent standard of living appropriate to human beings;

Having taken note of the appeal addressed by His Royal Highness the Crown Prince to the Arab and Islamic World to help the Sudan;

Conscious of the necessity of intensifying efforts aimed at rescuing Al-Aqsa Mosque, the First of the Two *Qiblas* and Third Islamic Holy Shrine, in the vicinity of which the present session is being held

Convinced of the necessity of devoting utmost attention to issues relating to the social and economic life and solidarity of Muslims, and the necessity of in-depth studies and research through scientific seminars, workshops and the like;

RECOMMENDS :

First : A wide ranging Islamic Relief Program needs to be sponsored, financed from an independent Fund to be set up for that purpose from revenues generated from *Zakat*, donations and endowments (*Wagf*).

- Second:** An appeal to be launched to the Islamic Ummah, governments and peoples alike, calling them for the pooling of all possible resources to save the First of the two "Qiblas" and the Third Islamic Holy Shrine and to liberate the occupied territories through the mobilization of all the potentials of the Ummah, the assertion of its identity, the closing of its ranks, the elimination of all causes of dissension and the adoption of *Shari'a* of Allah as a mode of life on both private and public levels.
- Third:** Due attention to be paid to the activities of the Academy in the field of studies, research, *fatwas* (rulings) and projects relating to major issues affecting the social and economic life of Muslims, the closing of their ranks, the unification of their positions and the promotion of all factors of solidarity among them, while providing them with means of facing all challenges and building their life in accordance with the rules of *Shari'a*.
- Fourth:** A distinction be made between studies, research and "*fatwas*" (Rulings) issues, thus by promoting, in regard to studies and research issues namely, scientific seminars and workshops, in compliance with a plan of action to be prepared by the Planning Section of the Academy for its submission to the Council for adoption.

May Allah guide us on the Right Path

**Resolutions and Recommendations
of the Fourth Session of the Council
of the Islamic *Fiqh* Academy**

**Jeddah (Kingdom of Saudi Arabia)
18 to 23 Jumada Thani 1408 h/6-11 February 1988**

Bismillah Arrahman Arrahim

Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon Sayyidina Muhammad, the last of the Prophets, upon his Family and his Companions.

RESOLUTION N° 26 (1/4)

CONCERNING ORGAN TRANSPLANT FROM THE BODY (DEAD OR ALIVE) OF A HUMAN BEING ONTO THE BODY OF ANOTHER HUMAN BEING

The Council of the Islamic *Fiqh* Academy, holding its Fourth session, in Jeddah, (Kingdom of Saudi Arabia), from 18 to 23 Jumada Thani 1408 H (February, 6 to 11, 1988) ,

Having considered the *Fiqh* and medical research papers forwarded to the Academy on "Organ transplant from the body (dead or alive) of a human being onto the body of another human being ";

In the light of the deliberations, the timeliness of this issue became evident, due to scientific and technological progress. Despite its proven effectiveness and positive results, some harmful psychological and social effects have also come to light in some cases, because neither the guidelines prescribed by *Shari'a*, nor its objectives, which aim at ensuring the well-being and dignity of individuals and groups, and calls for compassion and altruism, have been adhered to ;

Having summed up the points relating to this topic in its various aspects, forms and cases, each of which calls for a specific ruling ;

RESOLVES

Definition and classification:

First: The organ shall mean any part of the human body : tissue, cells, blood, etc. such as the cornea, whether still part of the body or removed from it.

Second: Usefulness, which is the core of the matter, is the benefit accruing to the beneficiary, which enables him to remain alive, or to have a basic function of his body restored, whether it is eyesight or otherwise, provided the beneficiary enjoys a respected life by *Shari'a* point of view.

Third: The form of transplanting may be divided as follows :

- Transplanting an organ from the body of a living person;
- Transplanting an organ from the body of a dead person;
- Transplanting an organ from a fetus.

First Form: Transplanting an organ from the body of a living person, under following conditions :

- a) Transplanting the organ from one part of the body to another part of the same body, such as grafting skin, cartilage, bones, veins or blood vessels, etc.
- b) Transplanting the organ from the body of a living person to another. In this case, the organ may be classified as essential for life or otherwise. If it is, it could be a single organ, e.g. the heart or liver, or pair of organs, e.g.; kidneys or lungs.

As for those organs upon which life does not depend, they could be organs performing basic function in the body or otherwise, or an organ which is automatically renewed, such as blood, or is not renewed, and some have effect on the lineage, inheritance and general personality, such as testicles, ovary, or cells of the nervous system, or have no bearing whatsoever.

Second Form: Transplanting the organ from the body of a dead person :

It is to be noted that death may take two forms :

1. When all functions of the brain come to a complete stop and no medical cure can reverse the situation.
2. When the heart and respiratory system come to a complete stop and no medical cure can reverse the situation.

In both cases, due consideration has been given to the ruling of the Council of the Academy at its 3rd session.

Third Form : Transplanting from a fetus :

Transplanting from a fetus may be performed in three cases :

- Spontaneous abortion
- Medically induced or criminal abortion
- In vitro fertilization

THE COUNCIL RESOLVES

- FIRST:** An organ may be transplanted from one part of the body to another part of the same body, provided it is ascertained that the benefits accruing from this operation outweigh the harmful effects caused thereby ; provided also that its purpose is to replace a lost organ, reshape it, restore its function, correct a defect or remove a malformation which is source of mental anguish or physical pain.
- Second:** An organ may be transplanted from the body of one person to the body of another person, if such organ is automatically regenerated, such as blood and skin. It is stipulated in this case that the donor must be legally competent, and that due account must be taken of the conditions set by *Shari'a* in this matter.
- Third:** It is allowed to transplant from a body part of an organ which has been removed because of a medical deficiency, such as the cornea, if, due to a disease, the eye had to be removed.
- Fourth:** It is forbidden to transplant from a living person to another, a vital organ, such as the heart, without which the donor cannot remain alive.
- Fifth:** It is forbidden to transplant from a living person to another an organ such as the cornea of the two eyes, which absence deprives the donor of a basic function of his body. However, if it effects only part of the basic function, then it is a matter still under consideration, as explained in Para 8 below.

- Sixth:** It is allowed to transplant an organ from the body of a dead person, if it is essential to keep the beneficiary alive, or if it restores a basic function of his body, provided it has been authorized by the deceased before his death or by his heirs after his death or with the permission of concerned authorities if the deceased has not been identified or has no heirs.
- Seventh:** It must be noted that the permission, in the preceding cases, for performing organ transplant, is conditional that it is not done on commercial grounds (selling of an organ), because under no circumstances, should the organ of a person be sold. However, incurring expenses by a person in search for an organ or voluntary compensation as a token of appreciation, is a matter still under consideration and Ijtihad.
- Eighth:** All cases and forms other than those referred to above, which are relevant to the issue, are still under consideration and research. They must be submitted and considered at a following session, in the light of medical date and *Shari'a* rules.

Verily Allah is All-Knowing

Bismillah Arrahman Arrahim

Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon Sayyidina Muhammad, the last of the Prophets, upon his Family and his Companions.

RESOLUTION N° 27 (2/4)

CONCERNING **PAYMENT OF ZAKAT IN FAVOUR OF** **THE ISLAMIC SOLIDARITY FUND AND ITS WAOF**

The Council of the Islamic *Fiqh* Academy, holding its Fourth session, in Jeddah, (Kingdom of Saudi Arabia), from 18 to 23 Jumada Thani 1408 H (February, 6 to 11, 1988),

Having considered the explanatory note on "payment of *Zakat* in favor of the Islamic Solidarity Fund and its Waqf " submitted to the Academy, and the research papers forwarded to the Academy at this session on this subject.

RESOLVES

- First:** *Zakat* funds may not be remitted to the Waqf of the Islamic Solidarity Fund (ISF) because this would lead to barring of *Zakat* funds from its legitimate beneficiaries defined in the Holy Book.
- Second:** The Islamic Solidarity Fund (ISF) may act as an agent for individuals and institutions in channeling *Zakat* to its legitimate beneficiaries under the following conditions :
- A. The rules of *Shari'a* for such agency should apply to both principal and agent.
 - B. The ISF should amend its statutes and objectives so as to be qualified to undertake operations of this nature.
 - C. The ISF should set up a special account to handle funds received as *Zakat*, so that they may not be mixed with other contributions received for purposes other than *Zakat*

- D. *Zakat* funds shall not be utilized for covering administrative expenses such as wages, salaries or other expenditures which are not among approved *Zakat* expenses.
- E. The payer of *Zakat* shall be entitled to choose the beneficiary among the eight recognized channels of *Zakat* and the ISF —in such case- must comply with his wish.
- F. The *ISF* shall disburse such *Zakat* funds to the beneficiary as speedily as possible, within a maximum period of one year, so that beneficiaries may utilize their shares.

THE COUNCIL

Eager to enable the Islamic Solidarity Fund (ISF) to fulfill its charitable aims (as stipulated in its statutes) and for which it was established ;

Committed to the resolution of the 2nd Islamic Summit Conference, which created the ISF and set the mechanism of its financing through contributions from Member States ;

Considering the sporadic remittances of voluntary contributions by some states ;

URGES Muslim countries, Governments, institutions and prosperous individuals to perform their duty and consolidate the resources of the ISF so that it may fulfill its noble objectives in the service of the Islamic Ummah.

Verily, Allah is All-Knowing

Bismillah Arrahman Arrahim

Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon Sayyidina Muhammad, the last of the Prophets, upon his Family and his Companions.

RESOLUTION N° 28 (3/4)

CONCERNING **PAYMENT OF ZAKAT ON COMPANY SHARES**

The Council of the Islamic *Fiqh* Academy, holding its Fourth session, in Jeddah, (Kingdom of Saudi Arabia), from 18 to 23 Jumada Thani 1408 H (February, 6 to 11, 1988) ,

Having considered the research papers submitted to the Academy concerning "Payment of *Zakat* on company shares" ;

RESOLVES

First: Shareholders may pay *Zakat* on their shares. The company's management may pay *Zakat* on their behalf :

- If its statutes so stipulate,
- by virtue of a General Assembly ruling
- If the law of the land requires that companies must pay *Zakat* on behalf of its shareholders
- Or if a shareholder himself empowers the Management of the Company to pay *Zakat* on his behalf.

Second: The management of the company shall pay *Zakat* on shares in the same manner as person pays *Zakat* on his wealth. In other words, it shall pay *Zakat* on the assumption that the capital of all shareholders is the property of a single person, and calculate *Zakat* accordingly, taking into account the type and value of assets subject to *Zakat*, its percentage and any other consideration relevant the *Zakat* of a physical person ; according to the principle of mixed assets generally accepted by some *Fiqh* scholars (Fuqahas) concerning all assets.

In calculating *Zakat*, the company shall take due account of shares not liable to *Zakat*, such as shares owned by the Public Treasury, charitable institutions, philanthropic societies and non Muslim shareholders, and make the necessary deductions.

Third: If, for any reason, the company did not pay *Zakat* on its assets, each shareholder liable to *Zakat* must do so on shares he owns. If the shareholder can calculate the amount the company would have paid on his behalf had it done so, he should then pay the same, since that is the basis for calculating *Zakat* on shares.

If the shareholder has no mean of knowing these elements of information for calculating the amount due, then :

If he had invested in the company to benefit from the annual dividends of his shares, and not for trading purposes, then the owner of such shares will not pay *Zakat* on the market value of shares, but only on the basis of the dividends, at the rate of 1/4 of 1/10 (2.5%) after the elapse of one year from the date of the actual reception of the dividends, provided that all other conditions are met and no impediment exists. This ruling is in conformity with resolution 2 (2/2) adopted by the Council of the Academy at its 2nd session, with respect to *Zakat* on the rented real estates and non agricultural leased lands.

If, on the other hand, the shareholder has invested in shares for trading purposes, then his shares are subject to *Zakat* as commercial goods. After the elapse of one *year* period, and if they are still in his possession, he shall pay *Zakat* on their market value ; if there is no stock market, he will pay *Zakat on* their value as appraised by qualified experts. He will pay 1/4 of 1/10 (2.5%) of their market value plus their dividends, if they yield any dividend.

Fourth: If during the year, the shareholder sells his shares he will add their price to his wealth and should pay *Zakat* on the total of his assets at the end of the year. As far as the buyer is concerned, he shall pay *Zakat* as indicated above.

Verily, Allah is All-Knowing.

Bismillah Arrahman Arrahim
*Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon
Sayyidina Muhammad, the last of the Prophets, upon his Family and his
Companions.*

RESOLUTION N° 29 (4/4)

CONCERNING
EMINENT DOMAIN
(TAKING OVER PRIVATE PROPERTY FOR PUBLIC USE)

The Council of the Islamic *Fiqh* Academy, holding its Fourth session, in Jeddah, (Kingdom of Saudi Arabia), from 18 to 23 Jumada Thani 1408 H (February, 6 to II, 1988) ,

Having considered the research papers submitted to the Academy on the subject of "Eminent domain" (Power to take over private property for public use)

Considering the well established principle of *Shari'a* with regard to the sanctity of individual property, which has become an unequivocal rule of the religion ;

Considering that protection of property is one of the five components of *Shari'a* which it endeavors to protect and that many *Shari'a* texts from the Holy Book and the Sunnah of the Prophet (PBUH) have the same purpose ;

Recalling the conclusive proof provided by the Sunnah, the action of the Companions – may Allah rest their soul- and that of subsequent generations, with regard to expropriation of real estate for the sake of public interest ; in implementation of the general principles of *Shari'a* which require safeguarding public welfare, regarding general needs as necessity and sustaining private harm to avoid public harm ;

RESOLVES

- First:** Private property must be protected from any aggression. It is not permitted to narrow the scope of protection or to limit it. The owner is absolute master of his property. He has full right to exploit it as he wishes, by legitimate means and benefit from all its lawful fruits.
- Second:** No property should be expropriated for public interest, except with due regard to the following *Shari'a* conditions:
- A. Expropriation of real estate is done by making immediate and just compensation, determined by qualified experts, and such compensation is not less than the market value of a similar property
 - B. The expropriation is carried out by public authority or by his representative in this field.
 - C. The expropriation is made in public interest, in response to public need, such as building mosques, roads or bridges, for example.
 - D. The expropriated real estate shall not be exploited for private or public investment projects and that the expropriation should not be carried out prior to its justifiable time.

If all or some of these conditions are violated, the expropriation of real estate will be regarded as an act of injustice and seizure prohibited by Allah the Almighty and His Prophet (PBUH).

If the property subject of the expropriation for public interest is no more required for that purpose, the original owner of the property or his heirs have a preemptive right to repurchase it at a just compensation.

Verily, Allah is All-Knowing

Bismillah Arrahman Arrahim

Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon Sayyidina Muhammad, the last of the Prophets, upon his Family and his Companions.

RESOLUTION N° 30 (5/4)
CONCERNING
"MUQARADHA" BONDS
AND INVESTMENT CERTIFICATES

The Council of the Islamic *Fiqh* Academy, holding its Fourth session, in Jeddah, (Kingdom of Saudi Arabia), from 18 to 23 Jumada Thani 1408 H (February, 6 to 11, 1988) ,

Having considered The research papers submitted to the Academy on "Muqaradha Bonds and Investment Certificates", which were summary to the conclusions of the seminar organized by the Academy, in cooperation with the Islamic Research and Training Institute (IRTI) of the Islamic Development Bank, from 6 to 9 Muharram 1408 H (2 - 5 September 1987), in implementation of resolution n° 10/3 adopted by the 3rd session of the Council of the Academy, in which a number of members, experts and researchers from the Institute and other scientific and economic centers participated ;

Considering the importance of this issue and the need to examine it further from all angles ;

Considering also that this formula is instrumental in promoting conditions for increasing public resources through a combination of capital and ventures ;

Having considered the 10 recommendations made by the seminar and discussed in the light of the research papers submitted in the seminar and other occasions;

RESOLVES

First: From the point of "acceptable wording" by *Shari'a* for Muqaradha Certificates :

1. *Muqaradha* Certificates are investment instruments which allocate the *Muqaradha* capital (*Mudharaba*) by floating certificates, as an evidence of capital ownership, on the basis of shares of equal value, registered in the name of their owners, as joint owners of shares in the venture capital or whatever shape it may take, in proportion to the each one's share therein. It is preferable to call this investment instrument "*Muqaradha* Deed".
2. The formula acceptable by *Shari'a*, in general, for *Muqaradha* certificates, must consist of the following elements :

First element :

The deed must represent a joint share in the project, for whose establishment or financing it has been issued. Ownership remains valid throughout the duration of the project from its beginning to its end. It also confers all rights and privileges provided by *Shari'a* upon the owner over its property, e.g. sale, donation, mortgage, inheritance, etc., bearing in mind that such certificates represent the *Mudharaba* capital.

Second element :

The contract, with regard to *Muqaradha* certificates, is concluded on the basis of terms defined in the prospectus, that offer is expressed by subscription and acceptance by approval of the issuing authority. The prospectus must provide all data required by *Shari'a* for the "*Qirad*" (Public Loan) contract (the *Mudharaba*), such as the nature of the capital, the distribution of profit and all other conditions related to the issue, which must be compatible with *Shari'a*.

Third element :

The *Muqaradha* certificates must be negotiable at the end of the subscription period, since the *Mudharib* has authorized to do so once the certificates have been issued, taking into account the following rules prescribed by *Shari'a* :

- A. If the *Qirad* capital, collected from subscription prior to its use in the project, is still in the form of cash, negotiating *Muqaradha* certificates is considered an exchange of money with money,

governed by *Shari'a* rules on money exchange.

- B. If the *Qirad* capital turns into debts, *Mudharaba* certificates should be negotiated according to the rules applied to loans.
- C. If the *Qirad* capital is converted into mixed assets, e.g. cash, debts, goods, benefits, *Mugaradha* certificates may be negotiated at the price agreed upon provided the major part of the capital is in the form of goods and benefits ; if it mainly consists of cash and debts, exchanging *Muqaradha* certificates must comply with *Shari'a* rules which will be indicated in an explanatory note to be prepared and submitted to the Academy at its next session. Whatever the case may be, all exchanges must be registered according to recognized norms in the books of the issuing authority.

Fourth element :

The one who receives the funds collected from the subscribers to the certificates, for investment in the proposed project, is called "*Mudharib* " ; his ownership in the project is limited to the extent of his subscription. Thus he is capital contributor in addition to his share in the profit, after it is actually generated in accordance with the terms in the prospectus. The "*Mudharib* 's role in handling the subscribed funds and the project property, is that of a trustworthy person, who may not be held responsible, unless his liability is permitted under *Shari'a* rules.

- 3. Taking into account the preceding rules of exchange, *Mugaradha* certificates may be exchanged in stock markets, if they are governed by the rules prescribed by *Shari'a*, in accordance with the principle of supply and demand, and subject to the approval of contracting parties. They may also be negotiated if, at a given period of time, the issuing authority makes an announcement or an offer to the public, by virtue of which it pledges to purchase the said certificates, operation to be funded by the profits yielded by the *Mudharaba* at fixed price set by qualified experts in the light of conditions prevailing in the stock market and the financial status of the project. A party other than the issuing authority, indicating its commitment to purchase the certificates using its own funds may also make an announcement.
- 4. Neither the prospectus nor the *Muqaradha* deeds should contain a

guarantee, from the manager of the funds, for the capital or a fixed profit or a profit based on a percentage of the capital. If such clause is implied explicitly or implicitly, the guarantee condition is voided, and the *Mudharib* is entitled to a profit equal to that of a similar *Mudharaba*.

5. The prospectus or *Muqaradha* deed issued pursuant to it, should not contain any statement obligating a sale, even if conditional or related to future. However, the *Muqaradha* deed may include a promise to sell and, in such case, sale is effected only on a contract basis, at a price fixed by qualified experts and agreed upon by the two parties.
6. The prospectus or *Muqaradha* deed issued pursuant to it, should not contain any statement that the company has fixed in dividends. If such clause exists, the contract is null and void.

IN CONSEQUENCE :

- A. The prospectus or *Muqaradha* deed issued pursuant to it, may not stipulate payment of a specific amount to the shareholder or to the owner of the project;
 - B. Only the profit is to be divided, as determined by applying rules of *Shari'a* ; that is, an amount in excess of the capital, and not the revenue or the yield. "*Tandeed*" (liquidation) or evaluation of the project in monetary terms determines the extent of profit. What is in excess of the capital after "*Tandeed*" or evaluation is the profit to be divided between the shareholders and the *Mudharib*, in accordance with the terms of the contract.
 - C. The profit and loss account of the project must be published and under the control of shareholders.
7. Profits are due when realized, and owned by liquidation or evaluation and become payable only upon distribution. If the project produces revenues or yields, its yields may be distributed. What is paid to the two parties to the contract before liquidation (*Tandeed*) or evaluation is considered a payment on account on the dividend.

8. It is permitted by *Shari'a* to include, in the prospectus or the *Muqaradha* certificates, a clause stating that at the end of each period, a certain percentage shall be deducted either from the share of the shareholder in the dividend-if periodic *Tandeed* is carried out-or from their share in revenue or yields distributed on account, and deposited as special reserve for contingencies, such as loss of capital.
9. There is nothing in *Shari'a* preventing the inclusion of a statement in the prospectus or the *Muqaradha* certificates, about a promise made by a third party, totally unrelated to the two parties to the contract, in terms of legal personality or financial status, to donate a specific amount, without any counter benefit., to meet losses in a given project, provided such commitment is an independent one, not related to the *Mudharaba* contract, in the sense that the enforcement of the contract is not conditional to the fulfillment of the promise, or that the promise underlines the terms of the contract. Hence, neither the shareholder nor the *Mudharib* may invoke this clause to avoid the contract or renege on his commitment, alleging that said commitment made by the third party had been duly taken into consideration in the contract.

Second: The Council of the Academy considered four other formula proposed in the recommendations made by the above mentioned seminar. They are listed as suggestions to be benefited from in setting up *Waqfs* (endowments) and its use for investment, without prejudice to the conditions incident to the continuity of the *Waqf*. The proposed formula are:

- A. Setting up a company between the *Waqf*, contributing its real estate, in one hand and financial contributors bringing in their money to strengthen the *Waqf*.
- B. Propose *Waqf* real estate as assets to a business man using his own financial resources for the development of the *Waqf*, against a share in the revenues.
- C. Setting up *Waqfs* through manufacturing contracts concluded with Islamic Banks in return for a share in profits.
- D. To rent the premises of the *Waqf* against a rental in kind, such as construction on the site only, or in addition to a small rental.

The Council of the Academy approved this recommendation and concurred with the seminar in the need for further research and study in this regard. It requested the General Secretariat to look into the matter and identify other forms of investment, acceptable by *Shari'a* and organize a seminar to examine the proposed forms of investment and report to the Council about its findings, at its following session.

Verily, Allah is All-Knowing.

Bismillah Arrahman Arrahim

Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon Sayyidina Muhammad, the last of the Prophets, upon his Family and his Companions.

RESOLUTION N° 31 (6/4)

CONCERNING **KEY MONEY**

The Council of the Islamic *Fiqh* Academy, holding its Fourth session, in Jeddah, (Kingdom of Saudi Arabia), from 18 to 23 Jumada Thani 1408 H (February, 6 to 11, 1988) ,

Having considered the research papers submitted to the Academy regarding "Key Money";

RESOLVES

1. Agreement on key money may be reached in four different manners :
 - A. Agreement concluded between the owner of the real estate and the lessee at the inception of the contract;
 - B. Agreement concluded between the owner of the real estate and the lessee during the lease period or at the end of it ;
 - C. Agreement concluded between the original lessee of the real estate and the new lessee during the lease period or at the end of it ;
 - D. Agreement between the new lessee and both the owner and the first lessee, concluded before or after the expiration of the lease period.
2. If the owner and the lessee agree that the latter, in addition to the periodic rental, shall pay a lump sum (referred to in some countries as key money), there is no objection from *Shari'a* point of view to such an operation, provided that it is part of the rental for the lease period agreed upon. In the event the contract is terminated, the paid lump sum shall be treated according to the rules applicable to rent.

3. If, during the lease period, the owner and the lessee agree that the owner shall pay a given amount to the lessee, against the acceptance by the latter to move from the premises for the remaining period of the lease contract. This form of key money is permitted by *Shari'a*, because it compensates the lessee for waiving his occupancy rights.

However, if the lease expires and the contract is not renewed, either explicitly or implicitly, by virtue of an automatic renewal clause, key money is not allowed, for the simple reason the owner is entitled more than any one else to recover his property once the lease contract expires.

4. If, during the lease period, the first lessee and the new lessee agree that the former shall evacuate the premises for the remaining period of his lease contract, against payment of an amount in excess of the periodic rental, key money is authorized by *Shari'a*, provided the terms of the contract concluded between the owner and the first lessee are strictly observed and relevant provisions of *Shari'a* laws are fully taken into consideration.

Regarding long term leases, contrary to short term rental contracts, which are concluded under some laws, the lessee may not rent the premise to another lessee and he may not accept key money, unless so authorized by the owner. However, if the agreement between the first and the new lessee after the expiration of the lease period, key money is not allowed, because the right of the first lessee to the use of the premise has expired.

Verily, Allah is All-Knowing

Bismillah Arrahman Arrahim

Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon Sayyidina Muhammad, the last of the Prophets, upon his Family and his Companions.

RESOLUTION N° 32 (7/4)

CONCERNING **SALE OF TRADE NAME AND COMMERCIAL LICENSE**

The Council of the Islamic *Fiqh* Academy, holding its Fourth session, in Jeddah, (Kingdom of Saudi Arabia), from 18 to 23 Jumada Thani 1408 H (February, 6 to 11, 1988) ,

Having considered the research papers submitted to the Academy regarding "Sale of Trade name and Commercial License", has noticed differences in the way this issue has been treated by the different authors of the studies and that the technical terminology used varied according to the language from which these formula have been translated, resulting in a confusing multiplicity of issues dealt with and diverging views thereof ;

RESOLVES

- First:** To postpone examination of this topic to the 5th session of the Council, so that it could be further researched and all related aspects covered, taking into account the following:
- A. To follow a similar methodology in the preparation of the research papers, starting with an introduction to the issue, then determining the scope of the research using all the current terminology and their synonyms ;
 - B. To refer to relevant historical precedents, *Shari'a* viewpoint and legal opinion that can clarify the topic and ensure the precision of classification ;

Second: To include the issue of "Sale of Trade Name and Commercial license" in a broader subject, such as "Incorporeal Rights" so as to be able to introduce other related concepts such as copyright, patent rights, inventor's rights, author's rights, industrial and commercial design patents and trade-marks, etc. under one heading so that the paper would be more precise and of greater benefit.

Third: Research papers may focus on a specific right among those quoted above, or researchers may extend the scope of their study to cover, within its general structure, the similar terminology.

May Allah grant us success

Bismillah Arrahman Arrahim

Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon Sayyidina Muhammad, the last of the Prophets, upon his Family and his Companions.

RESOLUTION N° 33 (8/4)

**CONCERNING
HIRE-PURCHASE CONTRACTS,
MURABAHA FOR THE ORDERER OF PURCHASE
FLUCTUATION IN CURRENCY RATES**

The Council of the Islamic *Fiqh* Academy, holding its Fourth session, in Jeddah, (Kingdom of Saudi Arabia), from 18 to 23 Jumada Thani 1408 H (February, 6 to 11, 1988),

Having reviewed the studies and research papers presented to the Academy on the topics of "Hire-purchase contracts, *Murabaha* for the orderer of purchase and Fluctuation in currency rates";

RESOLVES

1. To postpone deliberations on the subjects until its next session, so that they may be further researched.
2. To request the General Secretariat of the Academy to examine the first two issues and compile all researches on "Hire Purchase contracts", as well as all related resolutions adopted by the First seminar held in 1407 H (1987) by the Kuwait Finance House, and research papers on "*Murabaha* for the order of purchase", submitted to the seminar on Investment strategy of Islamic Banks, held in Amman (Jordan) in 1407 H (1987), in cooperation with the Islamic Research and Training Institute of the Islamic Development Bank (IDB) and the Royal Academy for Islamic Civilization.

Verily, Allah is All-Knowing

Bismillah Arrahman Arrahim

Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon Sayyidina Muhammad, the last of the Prophets, upon his Family and his Companions.

RESOLUTION N° 34 (9/4)

CONCERNING THE BAHA'I SECT

The Council of the Islamic *Fiqh* Academy, holding its Fourth session, in Jeddah, (Kingdom of Saudi Arabia), from 18 to 23 Jumada Thani 1408 H (February, 6 to 11, 1988) ,

Considering the resolution adopted by the 5th Islamic Summit Conference, held in Kuwait, from 26 to 29 Jumada Al-Awwal 1407 H (26-29 January 1987), requesting the Islamic *Fiqh* Academy to rule on the destructive sects which are incompatible with the teachings of the Holy Qur'an and the pure Sunnah ;

Considering the dangers posed to the Islamic Ummah by the Baha'i sect, and the support extended to it by forces hostile to Islam ;

Having considered in depth the beliefs of this sect and ascertained that Al-Baha', the founder of this sect, has claimed to be Messenger and alleged that his writings were divine revelations, that he has called upon all peoples to abide by his message and has denied that the Prophet of Allah (PBUH) was the last of the Messengers; that he claimed that the books revealed to him have abrogated the Holy Qur'an, and that he believes in reincarnation ;

Considering that Al-Baha' has deliberately modified or discarded a great number of *Fiqh* precepts, such as:

- Changing the number prescribed prayers and their timing,
- Raising their number to nine (9), to be performed three times daily - three prayers each time- (early morning, in the afternoon and at sunset),
- Changing the "Tayammum" ritual (Ablution with sand or stone in

absence of water), limiting it to the following declaration : "Bismillah Al-At'har, Al-At'har" (In the name of Allah, the Pure, the Pure),

- Reducing the fasting period to nineteen (19) days only ending on the Nayruz Day (March 21) each year,
- Diverting the direction of prayers (Qibla) to Al-Baha home in Acre, in occupied Palestine,
- Banning Jihad,
- Dropping legal punishment,
- Introducing equality between man and woman in inheritance and
- Permitting usury ;

Having considered the research paper on "The fields of Islamic Unity", which warns against destructive movements that split the ranks of the Ummah, threatens its unity and fragment it into sects and parties that lead to ridda (Apostasy) and alienate Islam:

RESOLVES

TO REGARD Al-Baha's claims of Prophet hood, divine revelation, his abrogation of the Holy Qur'an by his books and his changing of established rules of *Shari'a*, as flagrant violation of Islam and its tenets, and negation thereof ; consequently, the ruling on disbelievers applies to him, according to the consensus of Muslims.

RECOMMENDS

That Islamic institutions throughout the world withstand with all available potentials this heretical trend aimed at impairing Islam as creed, *Shari'a* and pattern of life.

Verily, Allah is All-Knowing

Bismillah Arrahman Arrahim

Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon Sayyidina Muhammad, the last of the Prophets, upon his Family and his Companions.

RESOLUTION N° 35 (10/4)

CONCERNING SIMPLIFICATION OF ISLAMIC LAW

The Council of the Islamic *Fiqh* Academy, holding its Fourth session, in Jeddah, (Kingdom of Saudi Arabia), from 18 to 23 Jumada Thani 1408 H (February, 6 to 11, 1988) ,

Having considered the report prepared on Academy's project of Simplification of *Fiqh*, outlining the plan of the project, as submitted by the committee entrusted with its supervision;

Having considered the report prepared by the sub-committee set up during the present session, to examine the *Fiqh* simplification project, and its recommendations to approve the above mentioned plan and instruct the General Secretariat to follow-up its implementation;

RESOLVES

To approve the plan outlined in the report of the committee entrusted with the supervision of the project, as amended by the sub-committee, and instructs the General Secretariat of the Academy to follow-up its implementation.

May Allah grant us success

Bismillah Arrahman Arrahim

Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon Sayyidina Muhammad, the last of the Prophets, upon his Family and his Companions.

RESOLUTION N° 36 (11/4)

CONCERNING **THE ENCYCLOPEDIA OF ECONOMIC *FIQH* PROJECT**

The Council of the Islamic *Fiqh* Academy, holding its Fourth session, in Jeddah, (Kingdom of Saudi Arabia), from 18 to 23 Jumada Thani 1408 H (February, 6 to 11, 1988) ,

Having considered the report presented by the committee entrusted with the preparation of the executive program for the Project of "Encyclopedia of Economic *Fiqh*", report outlining the proposed stages for the first phase (Participation Group) and its decisions;

Having considered the report prepared by the sub-committee set up during the present session, to examine the project of Economic *Fiqh* Encyclopedia, and its recommendations to approve the executive plan as amended by it, including the additional topics and reference work it has proposed ;

RESOLVES

To approve the plan outlined in the report of the committee which drew up the executive plan, as amended by the sub-committee, and instructs the General Secretariat of the Academy to follow-up its implementation.

May Allah grant us success

Bismillah Arrahman Arrahim

Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon Sayyidina Muhammad, the last of the Prophets, upon his Family and his Companions.

RESOLUTION N° 37 (12/4)

CONCERNING THE GLOSSARY OF FIOH RULES PROJECT

The Council of the Islamic *Fiqh* Academy, holding its Fourth session, in Jeddah, (Kingdom of Saudi Arabia), from 18 to 23 Jumada Thani 1408 H (February, 6 to 11, 1988) ,

Having considered the report prepared on the project of Glossary of *Fiqh* Rules;

Having also considered the report submitted by the committee set up during the present session, to examine the project and its implementation phases, and containing the finalized text and seven implementation phases ;

Considering the divergent views expressed on the first and fifth implementation phases ;

RESOLVES

1. To approve the finalized text for the project of Glossary of *Fiqh* rules, as well as the implementation phases proposed by the committee and which have rallied agreement.
2. To entrust the General Secretariat of the Academy to choose, among the two views expressed on the first and fifth implementation phases, the one it deems the most appropriate and follow-up its implementation.

May Allah grant us success.

Bismillah Arrahman Arrahim

Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon Sayyidina Muhammad, the last of the Prophets, upon his Family and his Companions.

RESOLUTION N° 38 (13/4)

CONCERNING **THE RECOMMENDATIONS OF THE FOURTH SESSION** **OF THE COUNCIL OF THE ISLAMIC FIOH ACADEMY**

The Council of the Islamic *Fiqh* Academy, holding its Fourth session, in Jeddah, (Kingdom of Saudi Arabia), from 18 to 23 Jumada Thani 1408 H (February, 6 to 11, 1988) ,

FIRST :

Having considered the research papers submitted to the Academy on the means of combating immorality which explains the sufferings of the world at large from the effects of immorality which has infiltrated the Islamic world to some extent in a way displeasing to God Almighty, in addition to being incompatible with the vanguard role assigned to the Ummah, namely to lead mankind towards a purity in action, ethics and behavior ;

In harmony with the comprehensive characteristics of Islam ; given the fact that ethic is one of the most important aspects of religion and that the privilege of belonging to Islam can only be realized when all principles and provisions of Islamic *Shari'a* are applied in all sphere of life ;

RECOMMENDS

- a) That efforts be exerted to straighten out and strengthen the religious doctrinal incentive through an overall program promoting an awareness of the spiritual benefits accruing from a sound doctrine.
- b) That efforts be made in our Islamic world to clear all media, press, television and radio, as well as commercial ads, of any factor that stimulates lustfulness, causes deviations and leads to immorality.

- c) That practical plan be worked out to safeguard the authenticity and Islamic Heritage ; abort all attempts to westernization, imitation and elimination of Islamic identity ; to face all forms of challenges, to combat intellectual and cultural invasion which does not conform to Islamic principles and ethics. Strict Islamic censorship be enforced on tourist activities and scholarship abroad, in order to avoid the impairment of the Islamic personality and ethics.
- d) The education must be Islam-oriented ; that all sciences be taught from an Islamic angle ; that religious subjects be basic subjects at all stages and all specialties ; in order to uphold the Islamic doctrine and root Islamic ethics in spirit and enable the Ummah to constantly remain at the vanguard in all fields of science.
- e) That the Muslim family be raised in a sound manner ; that marriage be facilitated ; that parents be urged to provide their children with a sound upbringing and rear a strong generation, truly venerating the Almighty, always propagating and upholding Islam ; that women be trained to undertake their role as mother and housewife ; and that an end be put to the growing phenomenon of resorting to foreign governess, in particular non-Muslim governess.
- f) That all measures be taken to ensure that youth is provided with an Islamic education, that enables them to abide by the tenets of Islam and its moral code of conduct, always aware of their duty towards The Almighty and to their country, and able to ridding themselves of the spiritual void which incites them in indulging in drugs and spirits and all forms of licentiousness; that youth be involved in the affairs of their national and be given responsibilities, each according to his abilities and competence ; that they be encouraged to fill their leisure time with useful activities and that wholesome recreation activities, sports and competitions be encouraged and directed to true Islamic orientation.

SECOND :

Having considered the research papers submitted to the Academy regarding "the fields of Islamic unity and means to benefit therefrom", and taking into account the primordial importance of the bond of Islam for the people of the Islamic Ummah: an indivisible bond, a sound foundation for the desired solidarity and a solid basis for any civilizational edifice that aims at closing the ranks of the Ummah, coordinating the efforts exerted to stand up to

contemporary challenges and securing dignity and progress ;

Considering that the bond of Islam is a strong incentive and an unfailing factor which can direct and coordinate the policies of Islamic states in the various fields of social and economic development and strengthen solidarity, cooperation and reciprocal sympathy among the peoples of the Ummah, so that they may get rid of all forms of dependence which impede the fulfillment of their aspirations to progress, invulnerability and prosperity ;

RECOMMENDS FURTHER

- a) that the Islamic faith be upheld and cleared of all alterations ; to warn against any attempt to undermine it or sow doubt about its principles, fragment the ranks of Muslims and set them against each other.
- b) That emphasis be laid on the importance attached by the Islamic *Fiqh* Academy to Islamic research and *Fiqh* studies which stimulates the ability to stand up to intellectual challenges kindled by contemporary exigencies, and on the great interest taken by Islamic *Fiqh* in the problems of society ; that Islamic *Fiqh* be considered a vital factor in the intellectual renaissance of the Ummah, and that it may be more closely associated with the plans worked out and legislation enacted by Islamic States in all fields that affect society.
- c) That closer coordination be ensured as regards to contents and methodology of education curricula, so as to secure compatibility with the sound intellectual civilization evolved by Islam, with a view to rearing a generation of Muslims who draw their faith from the same sources, abide by the same conceptual orientation and share the same pride in their civilizational affiliation.
- d) That a higher order of priority be given to scientific research in the various fields of knowledge, and that 1% of the GNP be appropriated for the financing of research programs and establishment of scientific laboratories, on the basis of coordination and cooperation among Islamic Universities.
- e) That education programs comprising a number of major themes shall be worked out in collaboration with Islamic Universities, to be aimed at *Fiqh* studies. Furthermore, a higher committee of Muslim scholars shall be established to follow up and approve these research activities and establish a Prize of Merit to be awarded to the best research.

That all information media, whether press, television or radio in the lands of Muslims have always as objective to instill veneration of God in this world, in addition to cementing unity, spread good, encourage virtue and shun principles that abet heresy, vitiate both thought and morals and lead to deviation from the straight path.

- f) That an Islamic economy be established which emanates neither from East nor from West, but an absolutely Islamic economy and an Islamic common market be set up, where Muslims would cooperation in their production activities, and in marketing their goods on their own, without resorting to other parties, because economy is the backbone of any society, and its integration will chart a course of unity for the Islamic Ummah.

TBIRD:

Considering that the "Islamization of education" in Islamic countries is today an imperative need without which Muslim generations cannot be shaped into an harmonious edifice, integrated in thought, outlook, behavior and action. Towards this end,

THE COUNCIL FURTHER RECOMMENDS:

That all sciences must be put within an Islamic context, both premise and objective, within a framework of Islamic tenets, and that Islam, by its systems and rules, be a reference. The Islamic creed must underline the formulation of this educational and pedagogical curriculum. The main characteristics of the "Islamization of education" may be summarized as follows:

- a) That the Islamic Faith build the foundation for greater Islamic ideas, which provide an overall view of the universe, of man and life, and teaches man who his Creator is, the submission of the universe to the Almighty, and the relation of man with his Creator and with society.
- b) That Islam be the pivot of social, human, economic and political sciences ; that the human theories of Islam be put in focus and related to the creation of the universe, of man and life ; that this be undertaken in coordination with the Islamic Organization for Medical Sciences of Kuwait, and the Islamic Educational, Scientific and Cultural Organization (ISESCO).
- c) That emphasis be laid on the noxiousness of materialistic and heretical

sciences which are in contradiction with the Islamic creed, and of misleading habits, such as fortune telling, magic, witchcraft and astrology ; that a warning be sounded against any science denounced and prohibited by Islam, as well as sciences that have inherent sinfulness and iniquity.

- d) That the history of science and knowledge be reformulated to lay emphasis on their development and the contribution made thereto by Muslims, as well as to clear them of eastern and western theories that infiltrates into them to deviate the course of right ; that the classification of sciences and research curricula be reviewed from an Islamic angle, through Islamic scientific centers and institutes and centres for Islamic economy, in the various Islamic countries.
- e) That sciences which research the universe, man and life have their relationship with the Creator restored. The scientific researchers who deals with these fields must view them as the product of a wonderful divine creativity and perfection of His work.
- f) That the controlling devices and rules emanating from Islam, or in consonance with its objectives be the principles governing all sciences ; that the shortcomings of western curricula be stressed, those which alleged a scission between religion and sciences, or have established some sciences on false premises, such as history, economy and social sciences.

It should be recalled that a project does exist that could provide a basis for the Islamization of education ; indeed it could be one of its essential instruments, namely the project of "Islamization of knowledge". The International Institute of Islamic Thought is in the process of working out a plan on this issue as well as an implementation program, through articles, publications and seminars.

May Allah guide us on the Right path.

**Resolutions and Recommendations
of the Fifth Session of the Council
of the Islamic *Fiqh* Academy**

**Kuwait-City (State of Kuwait)
1 to 6 Jumada al-Oula 1409 h/10-15 December 1988**

Bismillah Arrahman Arrahim

Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon Sayyidina Muhammad, the last of the Prophets, upon his Family and his Companions.

RESOLUTION N° 39 (1/5)

CONCERNING **BIRTH CONTROL**

The Council of the Islamic *Fiqh* Academy, holding its Fifth session, in Kuwait City (State of Kuwait) from 1 to 6 Jumada Al-Oula 1409 H (10 to 15 December 1988);

Having reviewed papers presented by the members and experts, on "Birth control" and *having listened* to the discussions on the subject;

Bearing in mind that, according to Islamic *Shari'a*, the purpose of marriage is procreation and conservation of the human race, and that it is not permissible to ruin this objective because such a destruction is a violation of *Shari'a* rules and directives urging for birth increase, preservation and conservation of human race, since procreation is one of the five commandments, the protection of which is prescribed by divine rules ;

RESOLVES

- First:** It is not permissible to issue a general law restricting the freedom of a married couple in the field of procreation.
- Second:** It is strictly forbidden by religion to deprive a man or a woman of his or her physical capacity to procreate, known as sterilization, except in case of necessity according to the criteria set by *Shari'a*.
- Third:** It is permissible to control temporarily the procreation in view of spacing the pregnancy periods or to interrupt it for a fixed duration in case of necessity recognized by *Shari'a* ; this should be done at the discretion of the married couple according to their mutual agreement and after consultation, provided that no prejudice is caused and that the method to be used is legal, without any harm to an ongoing pregnancy.

Verily, Allah is All-Knowing

Bismillah Arrahman Arrahim

Praise be to Allah, the Lord of the Universe, and Prayers and Blessings be upon Sayyidina Muhammad, the last of the Prophets, and upon his Family and his Companions

RESOLUTION N° 40-41 (2/5 & 3/5)

**CONCERNING
DISCHARGING OF PROMISE**

AND

MURABAHA FOR THE ORDERER OF PURCHASE

The Council of the Islamic *Fiqh* Academy, holding its Fifth session, in Kuwait-City (State of Kuwait), from 1st to 6th Jumada al-Oula 1409 H (10 to 15 December 1988) ;

Having taken cognizance of the papers presented by members and experts of the Council regarding "Discharging a promise and *Murabaha* for the order of purchase", and

Having listened to the discussions on these two subjects ;

RESOLVES

First: *Murabaha* sale by purchase orderer is permissible on goods already in the physical possession of the seller, as required by *Shari'a*, provided the seller carries the risk of loss before delivery or the consequences of returning the purchased goods because of concealed defects or any other reasons justifying the return of the goods after their reception, provided the conditions of the sale are met and with the absence of any impediments.

Second: According to *Shari'a*, a promise (made unilaterally by the purchase orderer or the seller), is morally binding on the promisor, unless there is a valid excuse. It is however legally binding if made conditional upon the fulfillment of an obligation, and the promisee has already incurred expenses on the basis of such a promise. The binding nature of the promise means that it should be either fulfilled or a compensation be paid for damages caused due to the unjustifiable non fulfilling of the promise.

Third: Mutual promise (involving two parties) is permissible in the case of Murabaha sale provided that the option is given to one or both parties. Without such an option, it is not permissible, since in Murabaha sale, mutual and binding promise is like an ordinary sale contract, in which the prerequisite is that the seller should be in full possession of the goods to be sold, in order to be in conformity with the Hadith of the Prophet (PBUH) forbidding the sale of anything that is not in one's possession.

The Council of the Academy, having noticed that the major part of the activities of many Islamic Banks were geared to financing operations of Murabaha on the purchase orders ;

RECOMMENDS

First: The activities of the Islamic Banks shall be extended to cover all the development mechanism of the economy particularly by sponsoring industrial and commercial projects, through individual initiatives or equity participation or *Murabaha* with other partners.

Second: The practical aspects of Murabaha on purchase orderer to be studied by Islamic Banks with the aim of working out the basis for safeguarding against any pitfall in the process of application and to help upholding general *Shari'a* rules as well as those governing operations of Murabaha for the orderer of purchase. .

Verily, Allah is All-Knowing

Bismillah Arrahman Arrahim

Praise be to Allah, the Lord of the Universe, and Prayers and Blessings be upon Sayyidina Muhammad, the last of the Prophets, and upon his Family and his Companions

RESOLUTION N° 42 (4/5)

CONCERNING
CURRENCY RATES FLUCTUATION

The Council of the Islamic *Fiqh* Academy, holding its Fifth session, in Kuwait-City (State of Kuwait), from 1st to 6th Jumada al-Oula 1409 H (10 to 15 December 1988) ;

Having reviewed the research papers presented by the members and experts on "Currency rates fluctuation" and after having listened to the discussions held on this issue ;

Having taken cognizance of resolution n° 2 (9/3) adopted by the Council of the Academy at its 3rd session, in which it was agreed that Bank notes, being legal currencies, possess all characteristics of valuables, are in general governed by *Shari'a* provisions applied to gold and silver, and namely rules relating to *Riba* (usury), *Zakat* and Salam (sale by advance payment) ;

RESOLVES

It is significant that a fixed debt is repaid in its own currency and not by its countervalue, because debts are settled in the same currency. Thus it is not permitted to attach fixed debts, whatever their source, to currency fluctuation.

Verily, Allah is All-Knowing

Bismillah Arrahman Arrahim

Praise be to Allah, the Lord of the Universe, and Prayers and Blessings be upon Sayyidina Muhammad, the last of the Prophets, and upon his Family and his Companions

RESOLUTION N° 43 (5/5)

**CONCERNING
INCORPOREAL RIGHTS**

The Council of the Islamic *Fiqh* Academy, holding its Fifth session, in Kuwait-City (State of Kuwait), from 1st to 6th Jumada al-Oula 1409 H (10 to 15 December 1988) ;

Having reviewed the papers presented by the Members and experts concerning "Incorporeal rights" and *after having listened* to the discussions on the subject ;

RESOLVES

- First:** Business name, corporate name, trade mark, literary production, invention or discovery, are rights belonging to their holders and have, in contemporary times, financial value which can be traded. These rights are recognized by Shari'a and should not be infringed.
- Second:** It is permitted to sell a business name, corporate name, trade mark for a price in the absence of any fraud, swindling or forgery, since it has become a financial right.
- Third:** Copyrights and patent rights are protected by *Shari'a*. Their holders are entitled to freely dispose of them. These rights should not be violated.

Verily, Allah is All-Knowing

Bismillah Arrahman Arrahim

Praise be to Allah, the Lord of the Universe, and Prayers and Blessings be upon Sayyidina Muhammad, the last of the Prophets, and upon his Family and his Companions

RESOLUTION N° 44 (6/5)

CONCERNING **HIRE-PURCHASE CONTRACTS**

The Council of the Islamic *Fiqh* Academy, holding its Fifth session, in Kuwait-City (State of Kuwait), from 1st to 6th Jumada al-Oula 1409 H (10 to 15 December 1988) ;

Having reviewed the papers presented by the Members and experts on "Hire Purchase contracts" and ***after having listened*** to the discussions on this subject:

Recalling also resolution n° 13 (1/3) adopted by the Council at its session, in response to the queries submitted by the Islamic Development Bank (IDB) (n° 1 Para b) concerning leasing operations ;

RESOLVES

First: It is preferable to refrain from the form of hire-purchase deals and adopt other alternatives of which two are mentioned hereunder :

- a) Installment sale after receiving adequate guarantees.
- b) The lease contract, by which the Lesser gives to the lessee the choice, after the end of the contract, between the following options:
 - Extension of the lease period ;
 - Termination of the lease contract and return of the property to its owner ;
 - The purchase of the leased item at market value at the end of the lease period.

Second: There are many other forms of hire-purchase contracts, on which deliberation has been postponed to the next session, pending receipt of copies of proposed contracts, and explanation given on the terms and conditions governing those contracts ; this exercise will be conducted in cooperation with Islamic Banks, in view of adopting the appropriate resolution on the subject.

Verily, Allah is All-Knowing

Bismillah Arrahman Arrahim

Praise be to Allah, the Lord of the Universe, and Prayers and Blessings be upon Sayyidina Muhammad, the last of the Prophets, and upon his Family and his Companions

RESOLUTION N° 45 (7/5)

**CONCERNING
REAL ESTATE FINANCING
FOR BUILDING AND PURCHASE OF HOUSING**

The Council of the Islamic *Fiqh* Academy, holding its Fifth session, in Kuwait-City (State of Kuwait), from 1st to 6th Jumada al-Oula 1409 H (10 to 15 December 1988) ;

After the introduction concerning the issue of "Real estate financing for building and purchase of housing",

RESOLVES

To postpone the review of this issue until the 6th session of the Council, pending additional research on the subject.

May Allah grant us success.

Bismillah Arrahman Arrahim

Praise be to Allah, the Lord of the Universe, and Prayers and Blessings be upon Sayyidina Muhammad, the last of the Prophets, and upon his Family and his Companions

RESOLUTION N° 46 (8/5)

CONCERNING LIMITATION OF THE PROFIT MARGIN OF TRADERS

The Council of the Islamic *Fiqh* Academy, holding its Fifth session, in Kuwait-City (State of Kuwait), from 1st to 6th Jumada al-Oula 1409 H (10 to 15 December 1988) ;

Having reviewed the papers presented by the Members and experts on "Limitation of profit margin for traders" and **Having listened** to the discussions held on the subject ;

RESOLVES

- First:** The basic principle in the Qur'an and the Sunnah of the Prophet (PBUH) is that a person should be free to buy and sell and dispose of his possession and money, within the framework of Islamic *Shari'a*, in accordance with the divine command : ("O ye who believe ! Consume not each other's property in vanities, unless there is trade based on mutual acceptance").
- Second:** There is no restriction on the percentage of profit which trader may make in his transactions. It generally left to the merchants themselves, the business environment and the nature of the merchant and of the goods. Care should be given, however, to ethics recommended by *Shari'a*, such as moderation, contention, leniency and indulgence.
- Third:** *Shari'a* texts have spelt out the necessity to keep the transactions away from illicit acts like fraud, cheating, deceit, forgery, concealment of actual benefits, monopoly, which are detrimental to society and individuals.

Fourth: Government should not be involved in fixing prices except only when obvious pitfalls are noticed within the market and the price, due to artificial factors. In this case, the Government should intervene by applying adequate means to get rid of these factors, the causes of defects, excessive price increase and fraud.

Verily, Allah is All-Knowing

Bismillah Arraliman Arrahim

Praise be to Allah, the Lord of the Universe, and Prayers and Blessings be upon Sayyidina Muhammad, the last of the Prophets, and upon his Family and his Companions

RESOLUTION N° 47 (9/5)

CONCERNING CUSTOMS

The Council of the Islamic *Fiqh* Academy, holding its Fifth session, in Kuwait-City (State of Kuwait), from 1st to 6th Jumada al-Oula 1409 H (10 to 15 December 1988) ;

Having reviewed the papers presented by the Members and experts on "Customs" and **Having listened** to the discussions held on the subject ;

RESOLVES

- First:** The word "Custom" means any saying, habits, abandonment or things people do and get used to. It may or may be acceptable to *Shari'a*.
- Second:** If it is a specific custom, it is recognized by those who subscribe to it. On the other hand, if it is a general custom, it is recognized by all.
- Third:** To be recognized by *Shari'a*, a custom should meet the following conditions :
- a) It should be in conformity with *Shari'a*. If it contradicts a rule of *Shari'a*, then it is not acceptable
 - b) It should be permanent or frequent
 - c) It should already exist at the time of the issue involved.
 - d) The contracting parties should not agree on opposite provisions, in which case it is not enforceable.
- Fourth:** A *Fiqh* scholar (whether Mufti or Judge) should not confine himself to dictum contained in *Fiqh* books without giving due regard to changing customs.

Verily, Allah is All-Knowing

Bismillah Arrahman Arrahim

Praise be to Allah, the Lord of the Universe, and Prayers and Blessings be upon Sayyidina Muhammad, the last of the Prophets, and upon his Family and his Companions

RESOLUTION N° 48 (10/5)

CONCERNING **ENFORCEMENT OF SHARI'A RULES**

The Council of the Islamic *Fiqh* Academy, holding its Fifth session, in Kuwait-City (State of Kuwait), from 1st to 6th Jumada al-Oula 1409 H (10 to 15 December 1988);

Having reviewed the papers presented by the Members and experts on "Enforcement of *Shari'a* rules" and *Having listened* to the discussions held on the subject ;

Taking into consideration the fact that the Islamic *Fiqh* Academy emanated from the benevolent willingness of the 3rd Islamic Summit Conference held in Makkah AI-Mukarramah, to find *Shari'a* inspired solutions to the problems of the Islamic Ummah, to conform Muslim life according to the principles of Islamic *Shari'a*, to remove the obstacles hindering the enforcement of the Holy Law, and ensure the necessary conditions for its application in order to sanctify the transcendence of God's Will and translate into reality the primacy of *Shari'a*, to put an end to the contradiction existing between some Muslim leaders and their people, to get rid of sources of tension, contradiction and conflict between various countries and bring about peace and security in Muslim countries ;

RESOLVES

The prime duty of the authority in charge of Muslims affairs is to enforce *Shari'a*. The Council URGES the Governments of all Islamic countries to implement the Islamic *Shari'a* and conform fully, entirely and lastly to it in all fields of life. The Council CALLS UPON the Muslim countries, individuals, peoples and states, to conform to the requirements of the religion of God and enforce *Shari'a*, since this religions is a belief as well as a legal system, a code of conduct and a way of life.

THE COUNCIL RECOMMENDS THE FOLLOWING

- A. The Academy should continue its thorough research and comprehensive studies in various aspects relating to the issue of *Shari'a* enforcement and ensure the follow up of the efforts being exerted in this regard in Islamic countries.
- B. To ensure the coordination between the Academy and other scientific institutions entrusted with the enforcement of Islamic *Shari'a* and devoted to evolving plans, ways and means of removing the obstacles hindering the application of *Shari'a* in Islamic countries.
- C. To collect bills relating to Islamic Law prepared in various Islamic countries in view of analyzing and benefit from them.
- D. To urge for the reform of education programmes and various means of communication in order to mobilize them towards the enforcement of Islamic *Shari'a* and the training of a new Muslim generation devoted to the Holy Law.
- E. To widen the training ground of research workers, judges, public prosecutors, solicitors, in order to prepare the human resources for the application of Islamic *Shari'a*.

May Allah grant us success.

Bismillah Arrahman Arrahim

Praise be to Allah, the Lord of the Universe, and Prayers and Blessings be upon Sayyidina Muhammad, the last of the Prophets, and upon his Family and his Companions

RESOLUTION N° 49 (11/5)

CONCERNING
INTERNATIONAL ISLAMIC LAW COMMISSION

The Council of the Islamic *Fiqh* Academy, holding its Fifth session, in Kuwait-City (State of Kuwait), from 1st to 6th Jumada al-Oula 1409 H (10 to 15 December 1988);

Having taken cognizance of the memorandum relating to the draft statutes of the International Islamic Law Commission submitted to it for consideration, by the 17th Islamic Conference of Foreign Ministers held in Amman (Jordan), as per resolution n° 45/17-P;

RESOLVES

To study the draft statutes of the International Islamic Law Commission and to take upon itself the tasks entrusted to the said Commission as an integral part of the Academy's tasks.

May Allah grant us success.

**Resolutions and Recommendations
of the Sixth session of the Council
of the Islamic *Fiqh* Academy**

**Jeddah (Kingdom of Saudi Arabia)
17 - 23 Sha' baan 1410H (October 14 - 20, 1989)**

In the name of Allah, the Most Beneficent, the Merciful

Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon Sayyidina Muhammad, the last of the Prophets, and upon his Family and his Companions

RESOLUTION N° (50/1/6)

CONCERNING **'REAL ESTATE FINANCING'**

The Council of the Islamic *Fiqh* Academy, in its sixth session held in Jeddah, Kingdom of Saudi Arabia, from 17 to 23 Sha'ban, 1410H (14-20 March, 1990),

Having studied the papers presented to the Academy on the subject of "Real Estate Financing", and **having listened** to the discussion that took place on the subject,

RESOLVED

- First:** House is a basic human need. This need should be fulfilled through legitimate means by lawful (halal) money. The method of advancing loans on interest adopted by the real estate and housing banks or other financial institutions is prohibited under *Shari'a*, no matter how high or low the interest rates may be, because this method is based on *Riba* (usury) transaction.
- Second:** There are several lawful ways which can substitute the unlawful (harm) ones for providing houses on the basis of ownership (in addition to providing them on rental basis). For example:
- a) The State can offer loans meant especially for the construction or purchase of houses and repayable in suitable installments without charging any interest, neither in express terms nor under the name of service charges. However, if the need arises to meet the expenses incurred in the operations of such loans and in their follow-up, the same can be claimed from the debtors with the condition that the claim must be restricted to the real and actual expenses in the manner specified in para (a) of Resolution (13/1-3) adopted in the third session of the Council of this Academy.

- b) The capable State can undertake a project of construction of houses to sell them to those who wish to acquire ownership. This sale may be on the basis of deferred prices to be paid in installments in accordance with the rules of *Shari'a* explained in Resolution (51/2/6) of this session.
- c) The investor, whether individuals or companies, can undertake the construction of houses which can be sold on deferred payment basis.
- d) The house can also be acquired through the contract of "Istisna" on the basis of its being binding on the parties. In this contract, the purchase of a house can be completed before it is built, provided that the specifications of the house are minutely enumerated in the contract, not leaving any vagueness which can lead to disputes. In this case payment of price in cash in full is not necessary, rather, it is permissible to defer the payment of price to such installments as may be agreed upon, keeping in view all the conditions prescribed for the "Istisna" according to the jurists who distinguish it from the contract of "Salam".

AND THE COUNCIL RECOMMENDS:

to undertake further studies for bringing out other lawful modes which can facilitate acquiring houses for those who need them.

Verily, Allah is All-Knowing

In the name of Allah, the Beneficent , the Merciful

Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon Sayyidina Muhammad, the last of the Prophets, and upon his Family and his Companions

RESOLUTION NO (51/2/6)
CONCERNING
'SALES ON INSTALLMENTS'

The Council of the Islamic *Fiqh* Academy, in its sixth session held in Jeddah, Kingdom of Saudi Arabia, from 17 to 23 Sha'ban 1410H (corresponding to 14 - 20 March, 1990),

Having studied the papers presented to the Academy on the subject of "Sales on installments", and ***having listened to*** the discussion that took place on the subject,

RESOLVES

- First:** It is permissible to fix an increased price for a commodity sold on deferred payment, as compared to its cash price. It is also permissible to mention different prices for cash and deferred sales. Even the deferred prices can vary according to the different periods specified for payment, and such variance can be expressly disclosed by the seller to the customer. But the sale cannot take place until the parties agree to contract a particular mode of payment and specify whether the payment is in cash or deferred. Therefore, if the sale takes place without specifying a single particular mode of payment, leaving it uncertain whether the buyer shall pay in cash or in installments, the sale is not valid according to *Shari'a*,
- Second:** It is not permissible, in installments sale, to fix the spot price on cash basis, then to charge interest expressly tied with different periods, as separate from the price of the commodity, no matter whether the parties have agreed on a particular rate of interest or have left it to the current market rate.

- Third:** If the buyer/debtor delays the payment of installments after the specified date, it is not permissible to charge any amount in addition to his principal liability, whether it is made a pre-condition in the contract or it is claimed without a previous agreement, because it is "*Riba*", hence prohibited in *Shari'a*.
- Fourth:** It is prohibited (Haram) for a solvent debtor to delay the payment of the installments from their due dates. However, it is not permissible in *Shari'a* to impose a compensation in case he delays the payment.
- Fifth:** It is permissible for the seller to impose a condition in the sale agreement that if the debtor/the buyer delays the payment of some installments, all the remaining installments shall be due at once before their agreed date. This condition may be a valid condition, provided that the buyer had agreed to it when entering into the sale agreement.
- Sixth:** The seller has no right to secure the ownership (of the sold commodity) after the sale has taken place. However, it is permissible for him to impose a condition that the buyer shall mortgage the sold commodity with the seller to secure his right of receiving the deferred installments of the price.

AND THE COUNCIL RECOMMENDS

to carry out further study in some issues relating to the " Sale on installments" so that it may be possible to find out an absolute ruling about them after preparing sufficient research material on them.

Among these issues are the following:

- a) Discounting the Bills of Exchange through banks
- b) Payment of debt before its due date against a rebate i.e. the issue of "*Da' wata ajjal*").
- c) The effect of the death (of one of the parties) on the remaining installments.

Verily, Allah is All-Knowing

In the name of Allah, the Beneficent , the Merciful

Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon Sayyidina Muhammad, the last of the Prophets, and upon his Family and his Companions

RESOLUTION N° (52/3/6)

CONCERNING ' THE EXECUTION OF CONTRACTS THROUGH MODERN MEANS OF COMMUNICATION'

The Council of the Islamic *Fiqh* Academy, in its sixth session held in Jeddah, Kingdom of Saudi Arabia, from 17 - 23 Sha'baan, 1410H (corresponding to 14 - 20 March, 1990),

Having studied the papers presented to the Academy on the subject of 'The execution of contracts through modern means of communication",

Keeping in view the enormous development in the field of communication instruments and the current practice of using them in the execution of contracts to ensure prompt financial transactions,

Having recalled the discussions among Muslim jurists concerning the conclusion of contracts verbally, in writing or through a messenger,

And having recalled the established principles that a contract between the two parties requires the unity of " majlis" (except in the case of will and agency), and conformity of the offer with the acceptance and the lack of any sign indicating unwillingness of a party, and the continuity of the offer and the acceptance according to custom;

RESOLVES

First : If the contract is concluded between two parties who are not present in one place, and none of them can see the other physically, can hear his voice, and they are communicating to each other through writing or through a messenger, which includes telegraph, telex, fax and the screen of computer, then, the contract shall be deemed to be

completed when the offer is communicated to the offeree and the acceptance is communicated to the offerer.

- Second:** If the contract has been concluded between two parties at the same time, and they are in different places, as in the case of telephone and wireless, then this contract shall be deemed a contract between present parties, and it will be subject to the original rules established by Muslim jurists which have been pointed out in the preamble of this resolution.
- Third:** If a person extending an offer through these instruments subjects his offer to a specified period, he shall be bound to abide by his offer throughout this period and cannot retract from it.
- Fourth:** The preceding rules shall not extend to the contract of marriage because the presence of two witnesses is a necessary condition for its validity, nor shall it extend to the contract of *Sarf*" (exchange of gold or silver against gold or silver), because it requires the possession from both sides in the "*majlis*", nor to the contract of "*Salam*" (purchase of future goods by a spot price), because the immediate payment of the capital price is necessary for the validity of such contracts.
- Fifth:** In relation to the possibility of forgery, distortion or error, reference shall be made to general rules of evidence.

Verily, Allah is All-Knowing

In the name of Allah, the Beneficent , the Merciful

*Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon
Sayyidina Muhammad, the last of the Prophets, and upon his Family and his
Companions*

RESOLUTION NO. (53/4/6)

CONCERNING "POSSESSION : ITS DIFFERENT FORMS, ESPECIALLY THE MODERN FORMS AND THEIR RULES"

The Council of the Islamic *Fiqh* Academy, in its sixth session held in Jeddah, Kingdom of Saudi Arabia, from 17 - 23 Sha'baan, 1410H (corresponding to 14 - 20 March, 1990),

Having studied the papers presented to the Academy on the subject of "Possession : its different forms, especially the modern forms and their rules",

And having listened to the discussions that took place on the subject,

RESOLVES

- First:** Just as the possession of commodities may be physical, by taking the commodity in one's hand or measuring or weighing the eatables, or by transferring or delivering the commodity to the premises of the possessor, similarly the possession may also be an implied or constructive possession which takes place by leaving the commodity at one's disposal and enabling him to deal with it as he wills. This will be deemed a valid possession, even though the physical possession has not taken place. As for the mode of possession, it may vary from commodity to commodity, according to its nature and pursuant to the different customs prevalent in this behalf.
- Second:** Some of the forms of the constructive possession recognized both in *Shari'a* and the custom are enumerated hereunder:
- i. Crediting a sum of money in the bank account of a customer, in the following cases :

- a) Where a sum of money has been credited to the account of the customer, either directly or through a Bank transfer.
 - b) Where a customer contracts a sale of "Sarf" by purchasing a currency for another currency standing in his own account.
 - c) Where the bank, on order of the customer, debits a sum of money from his own account and credits it to another account, in another currency, either in the same bank or in another bank, no matter whether it is credited in favor of the same customer or in favor of any other person. But it is necessary for the banks to keep in view the Islamic rules governing the contract of "Sarf". If such crediting takes some time to enabling the beneficiary to draw the amount so credited, this delay can be allowed, provided that it does not exceed usual period normally allowed in such transaction. However, the beneficiary of such crediting cannot deal in the currency during the allowed period until the crediting takes its full effect by enabling the beneficiary to draw the amount.
- ii Receipt of a cheque, provided that its amount stands in the account of the issuer, and can be drawn in the currency specified in the cheque, and the bank has closed it (for the payee).

Verily, Allah is All-Knowing

In the name of Allah, the Beneficent , the Merciful

*Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon
Sayyidina Muhammad, the last of the Prophets, and upon his Family and his
Companions*

RESOLUTION N° 54/5/6

CONCERNING **"TRANSPLANT OF BRAIN TISSUES AND NERVOUS SYSTEM"**

The Council of the Islamic *Fiqh* Academy, in its sixth session held in Jeddah, Kingdom of Saudi Arabia, from 17 - 23 Sha'baan, 1410H (corresponding to 14 - 20 March, 1990),

Having studied the papers and recommendations on this subject which was one of the subjects discussed in the sixth medical and *Fiqh* Seminar held in Kuwait, from Rabi'ul Awwal 23 to 26, 1410H (October 23 - 26, 1989), held in cooperation between the Academy and the Islamic Organization for Medical Sciences of Kuwait,

And in the light of the conclusions deriving from the aforesaid seminar which include that transplant here is not intended to mean transfer of a human brain from one person to another, to treat the failure of certain tissues in the brain in properly discharging chemical and hormonal material and to replace these tissues with similar tissues obtained from another source, or to treat a gap of nervous system which has resulted from some injury.

RESOLVES

First : If the source of the tissues is the suprarenal gland of the same patient and are accepted by the patient's body, because they are from the same body, the transplant is permissible in accordance with *Shari'a* .

Second : If the source of the tissues to be transplanted is an animal fetus, there is no objection to this method if its success is possible, and there is no contravention of any rule laid down by *Shari'a*. Physicians have mentioned that this method has been successful in different species of animals and it is hoped that it will prove successful if adopted

with necessary medical precautions to avoid the body's rejection of the transplanted organ.

Third: If the source of the tissues to be transplanted is live tissues from brain of a premature human fetus (in the tenth or eleventh week of pregnancy), the *Shari'a* ruling may differ in the following way :

A - The First Method:

Taking it directly from the human fetus in his mother's womb by surgically opening the womb. The removal of the brain tissues of the fetus leads to its death. This is prohibited under *Shari'a*, except if it follows an unintentional natural abortion or a lawful abortion to save the mother's life, and the death of the fetus becomes obvious. In such case , the conditions pertaining to the use of fetus as stated in Resolution No. 59/8/6 of this session must be observed.

B - The Second Method

This method may be adopted in the near future and it means the culture of brain tissues in special laboratory to benefit from them, There is no objection from *Shari'a* point of view to this method if the source of cultured tissues is lawful and they are obtained by lawful means.

Fourth : Child born without a brain

As long as the child is born alive, no part of his body may be taken away, unless it is proven that he is dead by the death of his brain stem. He is not different from other sound infants in this respect. If he dies, taking parts of his body must be in accordance with the terms and conditions applicable to the transplant of organs of the dead, such as obtaining the required permission, unavailability of a substitute, evident need and such other conditions indicated in Resolution No.26/1-4 of the Fourth session of this Academy. There is no objection under *Shari'a* to keep this brainless child on the artificial instruments upto the death of his brain stem in order to preserve the life of transferable organs and to facilitate benefiting from them by their transplant according to the aforementioned conditions.

Verily, Allah is All-Knowing

In the name of Allah, the Most Beneficent, the Most Merciful

Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon Sayyidina Muhammad, the last of the Prophets, and upon his Family and his Companions

RESOLUTION N° (57/6/6)

CONCERNING **"SURPLUS OF FERTILIZED OVULES"**

The Council of the Islamic *Fiqh* Academy, in its sixth session held in Jeddah, Kingdom of Saudi Arabia, from 17 - 23 Sha'baan, 1410H (corresponding to 14 - 20 March, 1990),

Having studied the papers and recommendations on this subject which was one of the subjects discussed in the sixth medical and *Fiqh* seminar held in Kuwait, from Rabi'ul Awwal 23 to 26, 1410H (October 23 - 26, 1989 in cooperation between the Academy and the Islamic Organization for Medical Sciences of Kuwait,

And having studied the thirteenth and fourteenth recommendations adopted in the third seminar of the Islamic Organization for Medical Sciences held in Kuwait from Sha'baan 20 to 23, 1417 H (April 18 - 21, 1987), on the issue of the disposal of fertilized ovules, and the fifth recommendation of the first seminar of the Islamic Organization for medical Sciences, held in Kuwait from Sha'baan 11 to 14, 1403 H (May 24 to 27, 1982) on the same subject,

RESOLVES

- First:** In the light of the scientifically established possibility of preserving non-fertilized ovules for future use, only the number of ovules required each time for insemination must be fertilized to avoid the existence of surplus fertilized ovules.
- Second:** If a surplus of fertilized ovules exists in any way, it shall be left without medical care until the life of this surplus ends naturally.
- Third:** It is prohibited to inseminate fertilized ovules into another woman. precaution must be made to prevent the use of the fertilized ovules in an unlawful pregnancy.

Verily, Allah is All-Knowing

In the name of Allah, the Most Beneficent , the Most Merciful

*Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon
Sayyidina Muhammad, the last of the Prophets, and upon his Family and his
Companions*

RESOLUTION NO, (56/7/6)

CONCERNING 'USE OF FETUS AS A SOURCE OF TRANSPLANT'

The Council of the Islamic *Fiqh* Academy, in its sixth session held in Jeddah, Kingdom of Saudi Arabia, from 17 - 23 Sha'baan, 1410H (corresponding to 14 - 20 March, 1990),

Having studied the papers and recommendations on this subject which was one of the subjects discussed in the sixth medical and *Fiqh* seminar held in Kuwait, from Rabi'ul Awwal 23 to 26, 1410 H (October 23 - 26, 1989) , in cooperation between the Academy and the Islamic Organization for Medical Sciences of Kuwait,

RESOLVES

First: Fetus cannot be used as source of obtaining organs to be transplanted in another person, except in certain cases and under certain conditions which must be fulfilled:

- A) No abortion can be provoked in order to use the fetus for transplant of its organs in the body of another person. The operation should be restricted to a case of natural abortion or an abortion for a lawful purpose, and no surgical operation should be resorted to in order to remove the fetus unless it is essential to save the mother's life.
- B) If the fetus has a chance of remaining alive, medical treatment must be directed to keep it alive, and not for using it in organ transplant. If it cannot survive, it must not be used except after its death and under the conditions stipulated in Res. n° 26/1/4 adopted by this Academy at its Fourth session.

Second : Organ transplant operation must not, at all, be used for commercial purpose.

Third : Supervision of organ transplant operation must be entrusted to a specialized and reliable body.

Verily, Allah is All-Knowing

In the name of Allah, the Beneficent , the Merciful

Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon Sayyidina Muhammad, the last of the Prophets, and upon his Family and his Companions

RESOLUTION NO. (57/8/6)

CONCERNING
"TRANSPLANT OF GENITAL ORGANS"

The Council of the Islamic *Fiqh* Academy, in its sixth session held in Jeddah, Kingdom of Saudi Arabia, from 17 - 23 Sha'baan, 1410H (corresponding to 14 - 20 March, 1990),

Having studied the papers and recommendations on this subject which was one of the subjects discussed in the sixth medical and *Fiqh* seminar held in Kuwait, from Rabi'ul Awwal 23 to 26, 1410H (October 23 - 26, 1989), in cooperation between the Academy and the Islamic Organization for Medical Sciences of Kuwait,

RESOLVES

First : **Transplant of sexual glands**

Since the testicles and ovaries continue to bear and discharge hereditary attributes to the transferee, even after they are transplanted in a new grantee, their transplant is prohibited by *Shari'a*

Second : **Transplant of genital organs**

Transplant of some genital organs which do not transfer hereditary attributes, except the genitals organs, is permissible for a legitimate necessity, in accordance with *Shari'a* standards and regulations indicated in Resolution No. 26/1/4 of the Fourth session of this Academy.

Verily, Allah is All-Knowing

In the name of Allah, the Beneficent, the Merciful

Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon Sayyidina Muhammad, the last of the Prophets, and upon his Family and his Companions

RESOLUTION NO, (58/9/6)

CONCERNING
RESTORATION OF AN ORGAN AMPUTATED
IN QISAS (RETALIATION) OR HADD (PRESCRIBED
PUNISHMENT)

The Council of the Islamic *Fiqh* Academy, in its sixth session held in Jeddah, Kingdom of Saudi Arabia, from 17 - 23 Sha'baan, 1410H (corresponding to 14 - 20 March, 1990,

Having studied the papers forwarded to the Academy on the subject of "Restoration of an organ amputated in Qisas or Hadd" and having listened to the discussions on the subject ;

Keeping in view that the objective of *Shari'a* in enforcing "Hadd" punishment is deterrence, and this can only be achieved by maintaining the effect of the punishment, so that it may be a permanent lesson for the offenders and may eradicate the opportunities of further crimes,

And keeping in view that the restoration of an amputated organ requires an instant operation according to modern medical science; therefore, it cannot be carried out unless there is a previous arrangement and medical preparation, which may result in diminishing the seriousness of the enforcement of "Hadd" and its required effect,

RESOLVES

First: It is not permissible, in *Shari'a*, to restore an organ amputated in "Hadd". because the object of the punishment can be achieved only if its effects remain live even after punishment, and this is the only way to prevent any neglect in the enforcement of the punishment, and any possible conflict with the rules of *Shari'a*.

Second : Since the "Qisas" (retaliation) has been ordained in order to establish equity and to give justice to the aggrieved person, and to secure the right of living in society and to provide peace and stability, therefore, it is not permissible in *Shari'a* to restore an organ amputated "Qisas" except in the following situations:

- a) The aggrieved person gives permission to the offender after the enforcement of "Qisas" to restore the amputated organ.
- b) The aggrieved person has been able to restore his own organ,

Third : If an organ has been amputated by mistake in the judgment or in the execution , it is permissible to restore the same.

Verily, Allah is All-Knowing

In the name of Allah, the Beneficent, the Merciful

*Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon
Sayyidina Muhammad, the last of the Prophets, and upon his Family and his
Companions*

RESOLUTION NO. (59/10/6)

CONCERNING "THE FINANCIAL MARKETS"

The Council of the Islamic *Fiqh* Academy, in its sixth session held in Jeddah, Kingdom of Saudi Arabia, from 17 to 23 Sha'baan 1410H (corresponding to 14 - 20 March, 1990.

After having Studied the papers and recommendations presented and conclusions reached at in the seminar held in Rabat (Morocco) on 20-24 Rabiul Thani 1410 H (October 20-24, 1989) on the subject of "Financial Markets", in cooperation between the Academy and the Islamic Research and Training Institute (IRTI) of the Islamic Development Bank, and hosted by the Ministry of Endowments and Islamic Affairs of the Kingdom of Morocco,

And in the light of the rule recognized in *Shari'a* that encouragement should be directed towards lawful earning and investment of savings through Islamic modes of investment based on the principle of sharing burdens and bearing the risks of liabilities,

And in view of the vital role played by the financial markets in mobilizing the economy and stimulating the investment operations,

And realizing the fact that giving due importance to these markets and studying their problems in the light of *Shari'a* can fulfill the need of introducing the guidance of Islamic *Fiqh* to the contemporary problems, and it conforms to the efforts exerted by Muslim jurists in explaining the rulings of *Shari'a* on financial transactions, and particularly on the principles governing the market and the system of "Hisbah" introduced to supervise the market operation; and that an equal importance should be given to the " secondary markets" which facilitate to investors the re-entry to initial markets and provide access to liquidity, and encourage investment by promoting confidence in the investors that they can leave the markets whenever they need to do so,

And after studying the papers presented to explain the working system of the existing financial markets, their procedure and the different instruments used therein,

RESOLVES

- First:** The Financial markets should be given due importance in order to discharge the obligation of preserving capital and ensuring its growth, because it leads to fulfill the general human needs and discharge the spiritual and material duties relating to capital.
- Second:** Although the original concept of financial markets is sound and its application is very much needed in the present day context, yet their existing structure does not present an example to carry out the objective of investment and growth of capital within the Islamic framework. This situation requires serious academic efforts to be undertaken in collaboration between the "Fuqaha" (Muslim jurists) and the economists, so that it may be possible to review the existing system with its procedure and instruments and to amend what needs amendment in the light of the recognized principles of *Shari'a*.
- Third:** The financial markets are established through administrative and certain procedural systems and the adoption of these systems can be attributed to the rule of general expediency ("Al Masalih Al-Mursalah") which is a recognized principle in *Shari'a* and does not contravene any of its injunctions or principles. It relates therefore to the regulation introduced by the authorities of the State, in order to organize professions and public utility services. If such regulations are carried out in complete conformity with the Islamic principles and injunctions, no one has the right to violate them or to seek devices to circumvent them.

AND RECOMMENDS :

To provide a complete picture by conducting adequate research and studies from *Fiqh* and economic perspectives on the instruments and modes used in financial markets.

Verily, Allah is All-Knowing

In the name of Allah, the Beneficent , the Merciful

*Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon
Sayyidina Mohammed, the last of the Prophets, and upon his Family and his
Companions*

RESOLUTION NO. (60/11/6)

CONCERNING
"BONDS "

The Council of the Islamic *Fiqh* Academy, in its sixth session held in Jeddah, Kingdom of Saudi Arabia, from 17 to 23 Sha'baan 1410 H (corresponding to 14-20 March 1990),

After having studied the papers and recommendations presented and conclusions reached at in the seminar held in Rabat (Morocco) on 20-24 Rabi'ul Thani 1410 H (October 20-24, 1989) on the subject of "Financial markets", in cooperation between the Islamic *Fiqh* Academy and the Islamic Research and Training Institute of the Islamic Development Bank, and hosted by the Ministry of Endowments and Islamic Affairs of the Kingdom of Morocco,

And Keeping in view that a bond is a certificate by which its issuer undertakes the liability of paying its face value to the bearer on its maturity along with an agreed interest relating to its value or to a pre-determined profit, either in lump-sum or as a discount or in the form of prizes to be distributed on the basis of ballot,

RESOLVES

First: The bonds which represent an undertaking to pay its amount along with an interest related to its face value or to a pre-determined profit are prohibited in *Shari'a*. Their issuance, their purchase and their negotiation, are all prohibited because they are interest-bearing loans, no matter whether their issuing authority belongs to the private sector or is a public entity related to the State. The change in the nomenclature, such as calling the bonds "certificate" or investment securities" or "saving certificates" or calling the interest "profit" or "income" or "service charge" or "commission" has no effect on the aforesaid ruling.

Second : The "zero coupon bonds" are also prohibited because they are loans sold at a price inferior to their face value, and the owners of such bonds benefit from the difference in their prices which is considered a discount on the bonds.

Third : Similarly, the "prize bonds" are also prohibited because they are loans in which a liability to pay a pre-determined profit or an additional amount is undertaken in favor of their bearers as a whole, or in favor of an undermined number of persons out of them. Moreover, these bonds have a resemblance with gambling ("Qimar").

Fourth: The interest bearing bonds can be substituted by the bonds and certificates issued on the basis of the contract of "Mudharabah" (Profit and loss sharing) meant for a particular project or a particular enterprise, wherein no pre-determined profit or interest shall be paid to the bearers, but they shall be entitled to get a proportionate share in the profit of the project in relation to the proportion of their respective investments. This profit cannot be given to them unless it has been actually yielded.

A draft scheme of the "Mudharabah certificate" has already been approved by the Council of the Academy in Resolution No. 30/5/4 of its Fourth session. This resolution can be availed of for further details.

Verily, Allah is All-Knowing

In the name of Allah, the Beneficent , the Merciful

*Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon
Sayyidina Mohammed, the last of the Prophets, and upon his Family and his
Companions*

RESOLUTION NO, (61/12/6)

**CONCERNING
THE TOPICS TO BE STUDIES
AND SEMINARS PROPOSED BY THE PLANNING
COMMITTEE**

The Council of the Islamic *Fiqh* Academy, in its sixth session held in Jeddah, Kingdom of Saudi Arabia, from 17 to 23 Sha'baan 1410 H (corresponding to 14-20 March 1990),

After having studied the report of the Planning Committee submitted to the General Secretariat of the Academy and distributed to members of the Council, relating to the topics proposed to the Council for its perusal and classified prioritywise in a list composed of the various following subjects :

1. International Law in contemporary Islamic *Fiqh*
2. Marriage and Succession in contemporary Islamic *Fiqh*
3. Contemporary Islamic Thought
4. Practice of the Cult in contemporary Islamic *Fiqh*
5. Transactions and Economy in contemporary Islamic *Fiqh*
6. The Foundation of Islamic *Fiqh* in the light of modernity
7. Medicine and sciences
8. New events

The report also proposes the holding of seminars on the following topics :

1. Women's Rights and duties in Islam
2. International Law in Islam
3. Human rights and coordination with the efforts exerted by the OIC

4. Child's rights in Islam with reference to the International Agreement on Child's Rights.
5. Rights and duties of non-Muslims in land of Islam
6. Today's Muslims : Between originality and dependence
7. Study of models of Islamic Constitution
8. Position of Islam regarding modern arts (painting, singing, music and theater)
9. System of Islamic Government : its foundations, its rules and the big questions of modern times.
10. Information and modern means of communications from an Islamic perspective.
11. Figh rules regarding fluctuations of convertible currencies
12. Social security in Islam and its modern applications
13. Treasury Bonds and Investment Certificates
14. Options and futures in Financial Markets.

DECIDES THE FOLLOWING

Firstly : Adopts the above mentioned proposals and entrusts the General Secretariat of the Academy to choose from among these topics, taking into account the interest attached to each one of them and especially those having been subject to a resolution of the preceding session that requested their study.

Secondly: Entrusts the General Secretariat to hold the proposed seminars and to give priority to the topics which have already been proposed for study during the past sessions, taking into consideration the situation and available means.

May Allah grant us success

In the name of Allah, the Beneficent , the Merciful

Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon Sayyidina Mohammed, the last of the Prophets, and upon his Family and his Companions

RESOLUTION NO. (62/13/6)

RECOMMENDATIONS OF THE SIXTH SESSION

The Council of the Islamic *Fiqh* Academy, in its sixth session held in Jeddah, Kingdom of Saudi Arabia, from 17 to 23 Sha'baan 1410 H (corresponding to 14-20 March 1990),

RECOMMENDS THE FOLLOWING :

- Firstly: INVITES** all Muslims to solidarity, unification of **their word and** attachment to find Islamic solutions to their problems ; to discharge their duty of presenting Islam to the world, as a radical solution to its problems, instead of hiding themselves behind materialistic principals which bankruptcy is evident. **ALSO INVITES** all Muslims to pay due attention to the fate of their brothers in the Eastern countries and to defend their legitimate rights to preserve their religious personality and to enjoy their human rights.
- Secondly:** The Council of the Academy condemns the emigration of Soviet Jews to the Holy Land, the Land of the Nightly Ascension, and is of the opinion that this constitutes a great danger confronting the Islamic Ummah as a whole. The Council call upon the Arab and Islamic Countries to unite their declarations and their position and to face this sudden danger and to use all possible means to save the occupied territories, to liberate the holy Shrines, and to get rid the place of the Prophet's Ascension of the hands of the usurpators, and to support the (Palestinian) "Intifadha" (uprising) against the Zionist enemy, in order to help it achieve its goal and ensure its continuity.
- Thirdly :** The Council invites to draw the interest of all information media of Islamic countries, to direct them towards the right path in the service of Islam and to face contemporary challenges. It entrusts the General Secretariat of the Academy to organize a special seminar on information media.

- Fourthly:** To organize a seminar on contemporary arts such as: theater, singing, music, dance, etc. covered by the media.
- Fifthly:** To undertake thorough studies and researches on the issue of expiation for multiple crimes in order to take a decision on the subject.
- Sixthly:** To postpone the examination of the issue of "Company Shares", in order to undertake more thorough study of this subject.
- Seventhly:** To organize a seminar on the issue of : "Options and Futures".
- Eighthly:** To set up, at the discretion of the Secretary General of the Academy, a Committee composed of Fuqahas and economists, in view of finding answers to the queries submitted by the Islamic Development Bank relating to its participation to activities of joint-stock companies.

May Allah grant us success

**Resolutions and Recommendations
of the Seventh session of the Council
of the Islamic *Fiqh* Academy**

Jeddah (Kingdom of Saudi Arabia)
7 - 12 Dhul Qi'da 1412H/ 9- 12 May, 1992

In the name of Allah, the Beneficent , the Merciful

Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon Sayyidina Mohammed, the last of the Prophets, and upon his Family and his Companions

RESOLUTION N° 63/1/7

CONCERNING FINANCIAL MARKETS

The Council of the Islamic *Fiqh* Academy, holding its Seventh session in Jeddah, Kingdom of Saudi Arabia, from 7 to 12 Dhul Qi'dah 1412 H (9-14 May 1992).

Having considered the research papers received by the Academy on the subject: "Financial Markets, Shares, Options, Commodities, Credit Cards".

Having listened to the discussions held about it,

RESOLVES

First: SHARES

1. Participation in stock companies.

- a) Since the essential thing about transactions is their licit nature, the establishment of a joint stock company with unprohibited purposes and activities is permissible.
- b) There is no disagreement as to the prohibition of participation in joint stock companies whose main purpose is a prohibited activity such as transactions with *Riba* (usury), production of , or traffic in, prohibited products.
- c) The basic principle is the prohibition of participating in companies that deal at times in prohibited things such as *Riba* etc. even though their main activities are permissible.

2. **Underwriting**

Underwriting is an agreement made upon establishment of a company with someone who undertakes to guarantee the sale of all or part of the shares issued, i.e. to undertake to subscribe for all shares that remain unsubscribed by others. There is no *Shari'a* objection to this provided that the obligee subscribes to the shares at nominal value without any compensation for the commitment per se though the obligee may receive compensation for work other than the underwriting - that he may carry out such as preparation of studies or marketing of shares.

3. **Spreading out payment of the Share Value upon subscription.**

There is no *Shari'a* objection to partial payment of the value of the subscribed share and to deferred payment of the remaining installment(s) for this may be considered as participation with down payment and commitment to capital increase. This does not involve any prejudice since it applies to all shares and the company's liability to third parties covers entirely the declared capital, this being the amount which the company clientele have been informed of, and satisfied with.

4. **Bearer Shares**

Since the sale of a "bearer share" involves a unidentified portion of the company assets, and the share certificate is a document which attests to entitlement to the said portion, there is no objection in *Shari'a* to the company issuing and circulating shares in this manner.

5. **Object of the contract in the Sale of Shares**

The object of the contract in the sale of Shares is the unidentified portion of the company assets and the share certificate is a document attesting to entitlement to the said portion.

6. **Preference shares**

It is not permissible to issue preference shares with financial characteristics that involve guaranteed payment of the capital or of a certain amount of profit or ensure precedence over other shares at the time of liquidation or distribution of dividends. It is however, permissible to give certain shares such characteristics as related to procedural or administrative matters.

7. **Dealings in Shares Through *Riba* Means**

- a) It is not permissible to purchase a share with an interest bearing loan offered to the purchaser by the broker or any other party against pawning of the share as this involves *Riba* (usury) deal consolidated by hypothecation, both acts being expressly forbidden since "the eater, the server, the scribe and the witness *of Riba* shall be accursed."
- b) Nor is it permissible to sell a share that the seller does not possess but has received a pledge from the broker to be loaned the share at the time of delivery since such a deal falls within the framework of sale of something that the seller does not own. The interdiction shall be more categorical if the deal is conditional upon payment of the share price to the broker who would then benefit by depositing this price with interest in order to obtain compensation for the loan.

8. **Sale or Pawning of Shares**

It is permissible to sell or pawn a share subject to the provisions of the company statute such as the possible allowance therein for sale whether free or conditional upon giving priority of purchase to long-standing shareholders. Similarly, the text of the statute should be considered for the possibility of pawning shares with partners at the rate of the common share.

9. **Issuance of Shares Charged with Issue Fees**

The addition of a certain percentage to the value of the share to cover the issue expenses raises no objection in *Shari'a* as long as the estimated percentage is reasonable.

10. **Bonus Issue and Discount Issue**

It is permissible to issue new shares to increase the capital of the company if the issue is made at real value of the shares (in accordance with expert appraisal of the company assets) or at market value.

11. **Company Guarantee of Share Redemption**

The Council RESOLVES to defer the ruling on this subject to a future session pending further research and consideration.

12. **Limiting the Liability of a Joint -Stock Company**

There is no objection in *Shari'a* to setting up a company whose liability is limited to its capital for that is known to the company clientele and such awareness on their part precludes deception. Nor is there any objection in *Shari'a* to the fact that the liability of some shareholders to the creditors is unlimited without compensation for such a commitment. That is the case for companies which include acting partners and limited partners.

13. **Limiting the negotiation of Shares to authorized brokers and Stipulation of Fees for doing Business in the Stock Markets**

It is permissible for competent official quarters to regulate the negotiation of certain shares through licensed specialist brokers exclusively for that is an official procedure which serves legitimate interests.

It is also permissible to stipulate membership fees for transacting business in the financial markets as this is an organizational matter designed to serve the said legitimate interests.

14. First Right

The Council RESOLVES to defer the ruling on this subject to a future session pending further research and consideration.

15. Title Deed

The Council RESOLVES to defer the ruling on this subject to a future session pending further research and consideration.

II - OPTION SALE

a) Form of Contract.

The purpose of option contracts is to permit withdrawal of a commitment to sell or buy something specific and described at a definite price during a given period or at a given time either directly or through an organization which guarantees the rights of the two parties.

b) Shari'a Ruling Thereon

Option contracts as currently applied in the world financial markets are a new type of contracts which do not come under any one of the *Shari'a* nominate contracts.

Since the object of the contract is neither a sum of money nor a utility or a financial right which may be waived, then the contract is not permissible in *Shari'a*.

As these contracts are primarily prohibited, their handling is also prohibited.

III- DEALING IN COMMODITIES, CURRENCIES AND INDICES IN ORGANIZED MARKETS.

1 - Commodities

Commodity transactions in the organized markets are carried out in accordance with one of the four following modes:

First mode

The contract provides for the right (for the buyer) of immediate delivery of the merchandise sold and immediate payment (to the seller) of its price and the commodities or receipts representing them are available in the permission of and held by the vendor. This contract is permissible in *Shari'a* under the well-known conditions of sale.

Second mode

The contract provides for the right to immediate delivery of the commodities sold and immediate payment of their price and for the possibility of carrying out these two actions with the guarantee of the market authority.

This contract is permissible in *Shari'a* under the well-known conditions of sale.

Third mode

The contract provides for the delivery of a described and secured merchandise at some future date, and payment of its price on delivery. It also stipulates that it shall end with the actual delivery and receipt of the merchandise.

This contract is not permissible because of the deferment of the two elements of the exchange. It may be amended to meet the well-known conditions of "salam" (advance payment). If does so, it shall be permissible.

Moreover, it is not permissible to sell a merchandise purchased under "Salam" terms with advance payment, unless the merchandise has already been received.

Fourth mode

The contract provides for the delivery of a described and secured merchandise at some future date, and payment of its price on delivery. The contract, however, does not stipulate that it shall end with the actual delivery and receipt of the merchandise, and thus it may be terminated by an apposite contract.

This type of contract is the most prevalent in the commodity markets. It is not at all permissible.

2. **Dealing in currencies**

Currency transactions, in the organized markets, are carried out in accordance with one of the four modes indicated above for the commodities.

Purchase and sale of currencies are not permissible through the third and fourth modes . They are however, permissible through, the first and second modes subject to fulfillment of the well-known exchange requirements.

3. **Dealing Indices**

An index is a figure calculated according to a special statistical method and designed to indicate volume of variation in a given market. It is the object of transactions in a number of world markets.

Sale and purchase of the index are not permissible for they are pure gambling and constitute the sale of something fictitious (something that does not exist)

4. **Shari'a Alternatives to prohibited Transactions in commodities and currencies.**

It is necessary to organize an Islamic commodity and money market based on *Shari'a* stated transactions **in** particular " bay as-salam" (advance payment sale), "as Sarf" (exchange), "wa'd bill bay" (commitment to sell at a future date), "istisna" (industrial production order), etc.

The Academy deems it necessary to make an exhaustive study of the terms of those alternatives along with their modes of application in an organized Islamic market.

IV - CREDIT CARDS

The credit card is a document given by its issuer to a mutual or a juridical person on the basis of a contract between them enabling it to buy goods or services from a vendor who approves the document, without paying the price immediately as the document includes the issuer's commitment to pay. Some types of this document make it possible to draw cash from the banks. Credit cards are of different kinds:

- A. For some of them, the drawing or payment is made from the holder's account in the bank and not from the issuer's account, and is therefore covered. For other's the payment is made from the issuer's account and is charged back to the holder at periodic intervals.
- B. Some cards impose usurious interests on the balance which remains unpaid during a specified period after due date. Others do not impose any interests.
- C. Most of the credit cards charge an annual fee to the holder while for others no annual fee is charged by the issuer.

After deliberations, the Council has decided to defer final consideration of this card's conformity to *Shari'a* and the ruling thereon to a future session pending further research and study.

Allah is Omniscient.

In the name of Allah, the Beneficent , the Merciful

Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon Sayyidina Mohammed, the last of the Prophets, and upon his Family and his Companions

RESOLUTION N° 64/2/7

CONCERNING INSTALLMENT SALE

The Council of the Islamic *Fiqh* Academy, in its seventh session held in Jeddah, Kingdom of Saudi Arabia, from 7 -12 Dhul Qi'dah 1412H (to 9 - 14 May 1992).

Having considered the research papers received by the Academy on the subject, "Installment Sale", and in continuation to the resolution n° 51/2/6 adopted on this subject by the Sixth session of the Council ;

Having heard the discussions held about it,

RESOLVES

- First:** The installment sale is permissible in *Shari'a* even if the deferred price exceed the spot price.
- Second:** Commercial papers (cheques - promissory notes, bills of exchange) are lawful types of authentication of a debt by putting it down in writing.
- Third:** The discount of commercial papers is not permissible in *Shari'a* for it amounts to a transaction involving "*Riba an Nasi'ah*" (interest on delayed repayment) which is prohibited.
- Fourth:** To reduce a deferred debt with the aim of accelerating its repayment, whether at the request of the creditor or of the debtor (pay less but ahead of time), is permissible in *Shari'a* and does not fall within the province of *Riba* (which is forbidden) if it is not based on an advance agreement and as long as the relationship between the creditor and the debtor are bilateral. If there is a third party between

them, the reduction is not permissible as it will then be subject to the ruling on discount of commercial papers.

Fifth: It is permissible for the two parties to a debt to agree on the fact that all installments shall be due for payment if the debtor refuses to repay any one of the installments owned by him, as long as he is not insolvent.

Sixth: If a debt falls due because of the death, bankruptcy or procrastination of the debtor, it may be reduced in all these cases in order to speed up the coming to terms.

Seventh: The criterion of insolvency to be applied by trustees (bankruptcy) is that the debtor has no possessions in excess of his basic needs to discharge his debt in cash or in kind.

Allah knows best

In the name of Allah, the Beneficent , the Merciful

Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon Sayyidina Mohammed, the last of the Prophets, and upon his Family and his Companions

RESOLUTION N° 65/3/7

ON

"AQD ISTISNA'A" (MANUFACTURE CONTRACTS)

The Council of the Islamic *Fiqh* Academy, in its seventh session held in Jeddah, Kingdom of Saudi Arabia, from 7 to 12 Dhul Qi'dah 1412 H (9 - 14 May 1992).

Having considered the research papers received by the Academy on the subject: Istisna' a (Manufacture) Contracts",

Having listened to the discussions held about it, taking into consideration the purposes of *Shari'a* regarding the interests of people, and the rules of *Fiqh* regarding the contracts and transactions; and considering that Istisna (manufacture) contract plays an important role in stimulating industry and in opening up vast opportunities for financing and promoting Islamic economy,

RESOLVES

- First :** That the Istisna'a (manufacture) contract which has been mentioned with regard to work and goods on credit is binding on both parties if it meets the basic requirements and conditions.
- Second:** The Istisna'a contract must stipulate the following:
- a) The nature, type, amount and required specifications of the product to be manufactured.
 - b) The time limit shall be specified.
- Third:** In the Istisna's contract, payment may be deferred in full or scheduled according to pre-determined installments and specific due dates.
- Fourth:** The Istisna'a contract may include a penalty clause if so agreed by the two contracting parties, subject to the case of force majeure.

Allah Knows best.

In the Name of Allah, the compassionate, the Merciful

*Praise be to Allah, Lord of the Worlds. Prayer and peace be upon our Master
Mohammed, Seal of the Prophets, and upon his family and companions*

RESOLUTION N° 66/4/7

CONCERNING BAY'AL-WAFA (DEBT GUARANTEE SALE)

The Council of the Islamic *Fiqh* Academy, meeting in its seventh session held in Jeddah, Kingdom of Saudi Arabia, from 7 -12 Dhul Qi'dah 1412H corresponding to 9 - 14 May 1992.

Having considered the research papers received by the Academy on the subject, "Bay al-wafa"(Debt guarantee Sale)

Having listened to the discussions held about "*bay al-wafa*" and its real nature i.e. "the sale of money on condition that when the seller returns the price, the purchaser returns to him the amount purchased"

RESOLVES

- First :** That this sale is in fact "a loan which has generated a profit". It is therefore a fraudulent practice of *Riba*, and is considered unsound by the majority of Ulema.
- Second :** The Academy considering this contact prohibited in *Shari'a*.

Allah knows best.

In the name of Allah, the Beneficent , the Merciful

*Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon
Sayyidina Mohammed, the last of the Prophets, and upon his Family and his
Companions*

RESOLUTION N° 67/5/7

CONCERNING MEDICAL TREATMENT

The Council of the Islamic *Fiqh* Academy, meeting in its seventh session held in Jeddah, Kingdom of Saudi Arabia, from 7 -12 Dhul Qi'dah 1412H corresponding to 9 - 14 May 1992.

Having considered the research papers received by the Academy on the subject: "Medical Treatment".

Having listened to the discussions held about it,

RESOLVES

I. MEDICAL TREATMENTS

The basic rule on medical treatment is that it is permissible in *Shari'a* by virtue of the mentions made about it in the Holy Qur'an and in both the verbal and the actual Sunnah, and in view of its contribution to "self-preservation", one of the objectives of legislation.

Rulings on medical treatment vary according to the situations and persons involved :

- A. It is obligatory if foregoing it may result in the person's self-destruction, loss of an organ or disability, or if the illness can spread to others as in the case of contagious diseases :
- B. It is desirable if foregoing it may weaken the body without entailing the consequences mentioned in the first case above.

- C. It is permissible if not covered by the preceding two cases.
- D. It is undesirable if there is a risk that the action to be taken may provoke complications that are worse than the illness to be removed.

II. Treatment of Desperate Cases

- A. One of the anxious of the Islamic faith is that illness and cure are in the hands of Almighty Allah, that medical care and treatment is a way of adopting the means laid down by Almighty Allah in the universe, that it is impermissible to despair of Allah's mercy but necessary to maintain the hope of recovery by the leave of God. Doctors and the patient's relatives should raise the morale of the patient and continue to look after him and alleviate his psychological and physical suffering regardless of the chances of recovery or back thereof.
- B. The concept of clinically desperate case depends on the assessment of physicians, the available medical possibilities in time and space and the patient's circumstances.

III. The Patient's Permission

- A. The patient's permission of the treatment is essential if the patient is in full legal capacity to give it. If he is not, the permission of his (or her) legal guardian shall be sought according to the order of guardianship in *Shari'a*, and in conformity with its provisions which limit the scope of the guardian's action to the benefit and interest of the person under guardianship as well as to removing harm from him (or her). If the guardian, however, RESOLVES not to give permission, his decision shall not be taken into consideration if it is clearly detrimental to the person under guardianship. The right of permission shall then be transferred to the next guardian and ultimately to the ruler.
- B. The ruler shall order the medical treatment when deemed appropriate as in case of contagious diseases and preventive immunities.
- C. In emergency cases, when the life of the victim is in danger,

medical treatment shall not depend on permission.

- D. In carrying out medical research, it is imperative to obtain the agreement of the subject if he is totally fit in a way that is devoid of coercion (as in the case of jailed people) and financial enrichment (as in the case of the poor). Moreover the research to be undertaken must not involve any harm.

It is not permissible to carry out medical research on persons that are incapacitated or those of diminished capacity, even with the permission of their guardians.

The Council of the Academy further recommends :

that the General Secretariat of the Academy request the preparation of papers on the following medical topics for submission to the future sessions of the Academy:

- a) Treatment with prohibited and incline things and criteria for the use of medicines.
- b) Cosmetic treatment.
- c) Responsibility of the physician.
- d) Treatment of woman by a male doctor, and vice-versa, and treatment of Muslim by non-Muslim.
- e) Treatment with Islamic spell (spiritual treatment).
- f) The doctor's code of ethic (to be distributed to more than one session if necessary).
- g) Competition in treatment and under of priorities to be followed.

The research be undertaken on certain types of diseases which generally result in the doctors inability or reliance to provide treatment. Examples of this are as follows:

- a) A person who has general cancer. Should he be treated or just given painkillers and tranquilizers.
- b) A child who has serious hydrocephalic (cerebral death) accompanied by certain types of paralysis and his brain is atrophied (certain areas of the brain are still working). Should such a child be operated on ? And if the child is afflicted with appendicitis or

pneumonia, should he be treated or left without treatment?

- c) An old and decrepit man has had thrombosis and is afflicted with a kind of paralysis. He is then afflicted with kidney failure. Should the kidney failure be treated with dialysis (salvation) ? If he has a sudden cardiac averts, should an attempt be made to rescue him, or should he be left without treatment ? And if he has pneumonia should he be treated or left without treatment ?
- d) A person whose brain has sustained extensive injury yet there are parts of the brain which are still working (not included in the definition of cerebral death) and he is in the coma and there is no hope of improvement in his condition. IF such a person has a cardiac arrest, should he be rescued or left without treatment? And if he has pneumonia, should he be treated ? And who RESOLVES to discontinue the treatment in such cases ? Is it a panel of doctors ? or an ethical committee ? or the doctors with the relatives ? That the stand of *Shari'a'* and Sunnah on such cases and categories be indicated.

May Allah grant us success.

In the name of Allah, the Beneficent , the Merciful

Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon Sayyidina Mohammed, the last of the Prophets, and upon his Family and his Companions

RESOLUTION N° 68/6/7

ON

INTERNATIONAL RIGHTS IN ISLAM

The Council of the Islamic *Fiqh* Academy, meeting in its seventh session held in Jeddah, Kingdom of Saudi Arabia, from 7 -12 Dhul Qi'dah 1412H corresponding to 9 - 14 May 1992.

Having considered the research papers received by the Academy on the subject "International Rights in Islam".

Having listened to the discussions held about it.

COMMENDS the efforts made in the research papers presented on the subject and discussed at its seventh session. The Council has deemed that the topic is so important and so vast that it requires further research and study from the numerous aspects which are still to be covered.

RESOLVES

First : Proposes that a preparatory committee be set up to work out a working paper for a specialized symposium to deal with the details of this topic and come up with a draft declaration of international rights in Islam, which will be submitted to the Council at its next session.

Second : The main theme of the working paper shall be as follows:

- 1.The sources of Islamic international law and international relations, i.e. : The Holy Qur'an, the Holy Prophet's Sunnah , and the practical applications under the rightly-guided Caliphs as well

as the interpretative judgements by the Fuqahas (jurisprudence) on the subject.

2. The general purposes and characteristics of Islamic *Shari'a* which have a practical impact on all attitudes:

- a) The objectives of *Shari'a*.
- b) The general characteristics.

- 3. The concept of Ummah and its unity in Islam .
- 4. The *Fiqh* Schools of thought (Mazahib) in the categorization of land.
- 5. The historical roots of the prevailing situation in the Islamic world.
- 6. The internal relations of the Islamic State (the people and the minorities).
- 7. The relations of the Islamic State with other States.
- 8. Position of the Islamic State regarding international conventions, treaties and organizations.

Third : The Council proposes that the preparatory committee prepares explanatory papers to guide researchers into the details of this theme, to be carried out within the next few months.

May Allah grant us success.

In the name of Allah, the Beneficent , the Merciful

Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon Sayyidina Mohammed, the last of the Prophets, and upon his Family and his Companions

RESOLUTION N° 69/7/7

CONCERNING CULTURAL AGGRESSION

The Council of the Islamic *Fiqh* Academy, meeting in its seventh session held in Jeddah, Kingdom of Saudi Arabia, from 7 to 12 Dhul Qi'dah 1412H (9 to 14 May 1992) ;.

Having considered the papers received by the Academy on the subject: "Cultural aggression", which explain the onset, dangers and dimensions of this invasion and the successes it has achieved in Arab and Muslim countries. They survey examples of the doubts and contestations it has aroused and the schemes and practices it has carried out, which are aimed at destabilizing Muslim society and checking the dissemination of Islamic Da'wah. The papers also explain the role played by Islam in preserving the Ummah and causing it to stand out against the invasion, and how it has frustrated many of its schemes and plots.

The papers focus on ways to face up to this invasion and to protect the Ummah from all its effects in all fields and at all levels.

Having heard the discussions held on those papers,

RECOMMENDS THE FOLLOWING:

First: That Islamic *Shari'a* be applied and adopted as a system in planning our political relations at both local and world levels.

Second: That education and instruction curricula be purified and promoted so as to build generations on contemporary Islamic foundations and to give them the right training that would enlighten them on their religion and immunize them against all forms of cultural invasion.

Third : That the preacher training curricula be developed to make

preachers (du'at) perceive the spirit of Islam and its approach to building human life, and to inform them of contemporary culture so that they may deal with contemporary societies in a fully aware and enlightened manner.

- Fourth:** That the mosque be given its interacted educational role in the life of Muslims so that they may be able to stand up to all forms and effects of cultural invasion and to have a full and sound knowledge of their religion.
- Fifth:** That the doubts coursed by the enemies of Islam be refuted with sound scientific methods and with the believer's faith in the perfection of this religion without resorting to weak defense justificatory methods.
- Sixth:** That incoming ideas and imported principles be studied and aspects of their inadequacy and shortcoming be identified honestly and objectively.
- Seventh:** The attention be given to Islamic awakening and support to the institutions working in the fields of Da'wah and Islamic action to build the upright Islamic personality which presents to human society a shining image of Islamic practice at individual and collective levels and in all areas of political, social, cultural and economic life.
- Eighth:** That attention be given to the Arabic language and action be under taken to disseminate it and promote its teaching in all parts of the world it being the language of the Holy Qur'an, and to adopt it as the teaching language at the Schools, institutes and universities in the Arab and Islamic countries.
- Ninth:** That emphasis be laid on the magnanimity of Islam which has come for the good and happiness of mankind in this world and in the hereafter. This action should be undertaken world-wide and in all living languages.
- Tenth:** That contemporary means of information be utilized in an effective and fully considered way in order to convey the word of truth and the news to all parts of the world without neglecting any available media .

- Eleventh:** That contemporary issues be met with Islamic solutions and these be put into effect and practice as successful application is the most effective means of Da'wah and rhetoric.
- Twelfth:** That action be undertaken to emphasize the aspects of Muslims unity and complementary at all levels and to solve their differences and disputes through peaceful means in conformity with the well known provisions of *Shari'a*, thereby thwarting the designs of cultural invasion aimed at fragmenting the unity of Muslims and surveying differences and disputes among them.
- Thirteenth:** That action be undertaken to build Muslims strength and economic as well as military self-sufficiency.
- Fourteenth:** That an appeal be made to Arab and Islamic states to come to aid to the Muslims who are subjected to oppression in various parts of the world, to support their causes and to repel aggression against them with all available means.

The Council also recommends that the Secretariat General of the Academy continues its effort to raise related issues at the coming meetings and symposia of the Academy given the importance of the subject of cultural 'invasion and the need to lay down an integrated strategy to confront its manifestations and developments . A start may be made with the questions of christianization and orientation at the next session.

May Allah grant us success.

**Resolutions and Recommendations
of the Eighth session of the Council
of the Islamic *Fiqh* Academy**

**Bandar Seri Begawan (Brunei Darussalam)
1 - 7 Muharram 1414H (21 - 27 June 1993)**

In the name of Allah, the Beneficent , the Merciful

Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon Sayyidina Mohammed, the last of the Prophets, and upon his Family and his Companions

RESOLUTION N° 70/1/8

CONCERNING **EXEMPTION : ITS APPLICABILITY AND ITS RULES**

The Council of the Islamic *Fiqh* Academy, holding its Eighth Session in Bandar Seri Begawan, Brunei Darussalam, from 1 to 7 Muharram 1414H (21-27 June 1993).

Having considered the research papers forwarded to the Academy on the subject of "validity and applicability of Exemption".

Having listened to the debate on the matter,

RESOLVES

1. A legitimate exemption is any provision authorized for a particular excuse to alleviate the duties of the ordained whilst the original rule is standing.

It is agreed that legitimate exemptions are permissible provided they are duly warranted and kept within the confines of their applicability and that due consideration is given to the relevant *Shari'a* terms on which such exemptions are contingent.

2. *Fiqh* exemptions are to mean the various religious Schools interpretations authorizing a certain matter as opposed to other interpretations prohibiting it. Availing of the scholars' exemptions, in applying the less restrictive of their opinions, is legitimate from a *Shari'a* perspective, under the following terms (as listed in Article 4).
3. Exemptions with respect to general matters are handled on a par with core *Fiqh* issues as long as they achieve a *Shari'a* acknowledged benefit, and are

the result of a collective effort of interpretation undertaken by competent people reputed for their piety and scholarly integrity.

4. Exemption allowed by the various *Fiqh* schools is not permissible to be availed solely on one's desire, for that would lead to ordained duties being shed . Rather, exemptions are to be taken up under the following terms:
 - a) That the scholars' articulated views evoked for exemption are *Shari'a* - acknowledged and have not been qualified as departing from the norm.
 - b) That there arises a need for the exemption so as to stave off hardship, whether for the common private or individual need.
 - c) That the exempted is capable of decision making or that he relies in the matter on a party known for its aptitude.
 - d) That availing of the exemption may not result in any of the unauthorized fakery interpretations as listed under article 6.
 - e) That availing of the exemption is not taken as a pretext to achieve unlawful goals.
 - f) That the exempted feels at ease with the exemption and readily accepts it.
2. Parallel with interpretations in drawing on different schools of Thought (Mazahib) is when the emulator approaches a single matter with a dual or multiple ramification in a way not propounded by the scholars he is emulating as to that particular issue.
3. Parallel interpretations are not permissible in the following instances.
 - a) If it leads to free - access to exemption based solely on one 's desire , or to contravening any of the terms as indicated regarding access to exemption
 - b) If it leads to an opposition to a jurisdiction rule .
 - c) If it leads to invalidating an act once applied through parallel interpretation.

- d) If it leads to contradicting a unanimous rule or its implications.
- e) If it leads to compounded situation not approved by any of the theological interpreters.

Yet Allah Knows best ...

In the name of Allah, the Beneficent , the Merciful

Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon Sayyidina Mohammed, the last of the Prophets, and upon his Family and his Companions

RESOLUTION N° 71/2/8

CONCERNING TRAFFIC ACCIDENTS

The Council of the Islamic *Fiqh* Academy, holding its Eight Session in Bandar Seri Begawan, Brunei Darussalam, from 1 to 7 Muharram 1414H (21-27 June 1993).

Having considered the research papers forwarded to the Academy on the question of Traffic Accidents .

Having listened to the debate on the matter.

Given the increasing number of traffic accidents and their increased danger for people's lives and property and given the requirements of public interest as to the rules for authorizing vehicles with due consideration to the conditions of safety such as the road worthiness of equipment, the rules for the transfer of property and provision of driving licenses with due regard to conditions relating to age, aptitude, vision, familiarity with and observance of traffic rules, and to speed and load limits.

RESOLVES

- First :** a) Complying with these regulations which are not contrary to the rules of Islamic *Shari'a* is a duty prescribed by *Shari'a* for it falls within the purview of obeying to the custodian (ruler) in the provisions he sets for public interest. Such regulations should include the *Shari'a* rules that have not been thus far applied to this field.
- b) Public interest also calls for the promulgation of different types of punitive measures including financial penalties as may be determined for anyone who contravenes traffic rules so as to reward those who, through their possession of vehicles or other means of transport, endanger people's lives on the road or in public places,

taking into consideration the prescribed terms of al-Hisba.

Second: Accidents resulting from the use of vehicles are subject to the same rules applicable to offenses as defined in Islamic *Shari'a*, even though in most cases they are the result of inadvertence - the driver is responsible for whatever damages he may cause to others whether physical or material, as long as the error and damages are established. He is only exonerated in the following instances.

- a) If the accident is the result of a force majeure which he could not anticipate or avoid. This includes all matters outside human interference.
- b) If the accident is caused by the victim largely contributing to the outcome.
- c) If the accident is due to a mistake or a transgression committed by a third party, in which case the latter is held responsible.

Third : In the case of road accidents caused by animals, the damages are covered by the animals owners if they have neglected keeping them under control. The final verdict in such cases rests with the judicature.

Fourth: If the driver and the victim share responsibility in causing the damages, then each of them shall be responsible for the damages incurred by the other, both physical and material.

Fifth:

- a) With due consideration to the details below, initially, the active party in the accident shall cover damages, even though he may not be in transgression, whereas the passive party shall only cover damages in case of transgression or excess.
- b) If the active and passive parties are both involved, responsibility shall be incurred by the active party alone unless the passive party is in transgression and the active one not.
- c) In case the accident is the result of two different causes, each contributing to the damage, then each of the parties shall bear a share of responsibility proportionate to his contribution to the accident. When their contribution to the accident is equal or undefined, the parties shall bear equal responsibility.

Yet Allah Knows best....

In the name of Allah, the Beneficent , the Merciful

Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon Sayyidina Mohammed, the last of the Prophets, and upon his Family and his Companions

RESOLUTION N° 72/3/8

CONCERNING DOWN PAYMENT SALE (EARNEST SALE)

The Council of the Islamic *Fiqh* Academy, holding its Eight Session in Bandar Seri Begawan, Brunei Darussalam, from 1 to 7 Muharram 1414H (21-27 June 1993).

Having considered the research papers received by the Academy on the issue of "Down payment sale."

Having listened to the debate on the matter.

RESOLVES

1. Down-payment (earnest) sale means the sale of a commodity with the buyer making a down-payment to the seller on the understanding that if he took the commodity the down-payment would be deducted from the selling price and if he dropped it then the down-payment would be the seller's property . It is subject to the same rules as service contracts for it is considered as the sale of a service. Exceptions are made in the case of sales whose validity is made subject to the reception of either of the two elements of the exchange (as in forward sales contracts "Bay' Salam"). In the case of sales whose validity is subject to the spot reception of the two elements of exchange (as in trades including usury money or currency exchange). In the case of "Murabaha" (Profit Sharing) for the orderer of purchase, at the stage of contracting: but is permissible at the stage of selling subsequent to the contract.
2. Down-payment (earnest) sales are permissible if the time frame of the contract is set, and the down payment is considered as part of the selling price if the purchase is carried through, and as the property of the seller if the buyer desists.

In the name of Allah, the Beneficent , the Merciful

*Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon
Sayyidina Mohammed, the last of the Prophets, and upon his Family and his
Companions*

RESOLUTION N° 73/4/8

CONCERNING AUCTION CONTRACTS

The Council of the Islamic *Fiqh* Academy, holding its Eight Session in Bandar Seri Begawan, Brunei Darussalam, from 1 to 7 Muharram 1414H (21- 27 June 1993).

Having examined The research, received by the Academy on the subject of "Auction Contracts".

Having listened to the debate on the matter.

Given the fact that auction sales are a common practice today and in some instances have involved certain excesses which have made it necessary to regulate its usage in a way that would preserve the rights of the parties to the contract in conformity with Islamic *Shari'a* rules, as they have been adopted by institutions and governments under specific administrative regulations, and in order to elucidate the *Shari'a* rules with respect to such contracts

RESOLVES

1. An auction contract is an exchange contract involving an invitation to interest parties, verbally or in writing, to partake in the auction. The contract is concluded with the consent of the seller.
2. An auction contract may vary in nature according to its object, and ramify into a sale or lease or other types of contract. According to its nature it may also be either optional such as ordinary auctions amongst individuals, or compulsory such as in the case of auctions dictated by law. It may be required by public and private institutions as well as governmental bodies and individuals.

3. The auction contract procedures in terms of written records, arrangements and administrative and legal terms and conditions must not be in contradiction with the rules of Islamic *Shari'a*.
4. Requiring a deposit from those wishing to enter the auction sale is permissible in terms of *Shari'a*. Their deposits must be re instituted to all the participants who have not been the last bidders. The deposit is deducted from the selling price for the last bidder.
5. There is no objection from *Shari'a* point of view to levying entrance fees (value of the schedule of conditions, not exceeding actual value) as it represents a cost thereto.
6. An Islamic financial institution or any other party may initiate investment projects so as to secure a higher benefit for itself, whether the investor is a party in a Mudharaba contract with the Bank or not.
7. "Najash" (Deception in bidding), is prohibited by *Shari'a*. It include the following practices:
 - a) Someone with no intention of buying offers higher bids just to entice the earnest buyer into making higher offers.
 - b) Someone not really intending to buy pretends to admire the commodity as an expert, and extol its benefits to the buyer, thus effecting a higher price.
 - c) That the owner of the commodity, the agent or the broker, claims falsely that a specific price has been paid for it, so as to mislead the buyer.
 - d) Contemporary forms of "Najash" prohibited by *Shari'a* include the use of the media, whether audio, visual, or in print to ascribe to the commodity unreal characteristics, or increase the price so as to seduce the buyer and entice him into entering the contract.

Allah knows best....

In the name of Allah, the Beneficent , the Merciful

*Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon
Sayyidina Mohammed, the last of the Prophets, and upon his Family and his
Companions*

RESOLUTION N° 74/5/8

CONCERNING SHARI'A APPLICATIONS FOR THE ESTABLISHMENT OF THE ISLAMIC MARKET

The Council of the Islamic *Fiqh* Academy, holding its Eight Session in Bandar Seri Begawan, Brunei Darussalam, from 1 to 7 Muharram 1414H (21-27 June 1993).

Having considered the researches received by the Academy on "*Shari'a* application for the establishment of the 'Islamic market" which were elaborated as a supplement to the issues of Islamic money markets and currency notes which were debated in earlier sessions, particularly at the seventh session held in Jeddah as well as in the symposium organized by the Academy for this purpose, with the aim of evolving a set of adequate legitimate instruments for a money market given the fact that the latter represents mechanism that can absorb the cash-flow available in the Islamic countries and achieve the developmental objectives of mutual support, balance and complementary between the Islamic countries.

Having listened to the deliberations on the optimal way to benefit from the various modes for the full realization of the Islamic market, namely shares, bonds and special contracts for the establishment of the Islamic market anchored in *Shari'a*.

RESOLVES

First:

Shares

The Islamic *Fiqh* Academy issued its Resolution No. 63/1/7 on Money Markets: shares, options, commodities and currencies, elucidating the rules applicable to them and the manner in which they can be utilized for the establishment of the Islamic Financial Market.

Second: Stocks (Bonds)

- a) Muqarada bonds and Investment Bonds, the Islamic *Fiqh* Academy issued its Resolution No. 30/5/4 on Muqarada bonds.
- b) Leasing or lend-leasing bonds, have been the subject of the Academy's Resolution No.44/6/56/5. Thus these bonds can play a useful role in the Islamic Financial Market in terms of public interest.

Third: Forward buying Contracts (Salam)

As Salam (forward buying) contract covers a wide scope considering its terms and conditions, it benefits the buyer in investing his surplus funds for profit, as well as the seller in securing adequate commodity prices. The Academy's Resolution No. 63/1/7 is thereby reiterated to the effect that a commodity which is subject of a forward contract cannot be sold until it is received. The Resolution stipulates "A commodity purchased through a Salam (forward buying) contract cannot be sold before it is received)"

Fourth: Manufacture Contracts (Istisna'a)

The Academy issued its Resolution No. 65/3/7 concerning manufacture (Istisna'a) Contracts.

Fifth: Deferred Sale

Deferred sale is another mode of investment which facilitates purchasing transactions as it benefits both the purchaser who gets immediate access to the commodity while paying later, and the seller who secures higher prices. This results in a broader distribution and availability of commodities for the society.

Sixth: Pledges and commitments

The Academy issued its Resolution No.40-41/2-3/5 on pledges and commitments in Murabaha for the benefit of party making the orderer of purchase.

THE ACADEMY RECOMMENDS THE FOLLOWING :

INVITES research scholars and economists to prepare studies and researches, on the topics that have not yet been discussed thoroughly, so as to elicit their applicability and draw on them in a *Shari'a* compatible manner in the Islamic Financial Market. Such topics include the following :

- a) Musharaka Bonds with all their ramifications.
- b) The elaboration of leasing or lend -leasing contracts.
- c) Compensation for Salam (forward buying), consensus settlement, discount, association, proxy, etc.
- d) pledges in other than Murabaha sales and particularly in currency exchange.
- e) Debt redemption
- f) Honorable settlement in the money market (Compensation, etc.)
- g) Clearing.

Allah knows Best....

In the name of Allah, the Beneficent , the Merciful

Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon Sayyidina Mohammed, the last of the Prophets, and upon his Family and his Companions

RESOLUTION N° 75/6/8

CONCERNING **CURRENCY ISSUES**

The Council of the Islamic *Fiqh* Academy, holding its Eight Session in Bandar Seri Begawan, Brunei Darussalam, from 1 to 7 Muharram 1414H (21-27 June 1993).

Having considered the research papers received by the Academy as the subject; "Currency issues".

Having listened to the debates on the subject.

RESOLVES

First: Work statutes, rules and regulations, and employment contracts may include definition of remuneration in currency figures provided these are duly indexed, with the provided that the Indexation should not be prejudicial to the national economy. Indexation in this context means periodical adjustment of salaries in line with the progression of the cost of living as may be assessed by the relevant and expert authority. Such adjustment aims at protecting the workers currency payments wages against any decrease in the purchasing power that the wages afford due to currency inflation and any consequent increase in the general cost of commodities and services.

For indeed the governing principle with regard to conditions of contracts is that they are permissible, excepting those that authorize something prohibited (Haram) so prohibit something authorized (Halal).

In case of overdue salaries, the aggregate debt thus accumulated becomes subject to the provisions applicable to debts as

stipulated in, the Academy's Resolution No. 42/4/5.

- Second:** The creditor and debtor may agree on the day of settlement - but not before - to the settlement of the debt in a currency other than the one specified for the debt, provided the rate of exchange applied is that applicable on the settlement date. Similarly, for debts due in installments in a specific currency, the parties may agree on the day of settlement of any installment, to have it effected, in full, in a different currency at the prevailing rate of exchange on the date of settlement. A conditional requirement in all cases is that no part of the amount subject of the currency exchange should remain outstanding, with due consideration to the Academy's Resolution No. 50/ 1 /6 .
- Third:** The two parties to the contract may, at the time of contracting, agree to the settlement of the deferred cost or salary in a specific currency to be settled in using payment or in several well - defined installments in a variety of currencies or against a given amount of gold, the settlement may also be made as indicated in the item above.
- Fourth:** A debt contracted in a specific currency should not be recorded against the debtor in its countervalue in gold or other currencies because such a practice would make it compulsory to the debtor to settle the debt in gold or the other currency, as agreed upon for the settlement.
- Fifth:** To reiterate Resolution No. 42/4/5 issued by the Academy concerning fluctuation in currency value.

THE COUNCILS RECOMMENDS THAT :

The General Secretariat of the Academy shall assign to a number of competent *Shari'a* and economics researchers known for their attachment to Islamic thought, to undertake an in-depth study of the other currency - related issues, to be submitted for consideration at future sessions of the Academy, God willing. Such issues may include;

- a) The possibility of using a hypothetical currency such as the Islamic Dinar, and particularly as regards the Islamic

Development Bank's transactions, for the extension and redemption of loans, as well as for the determination of term-loans to be settled at the equatory rate between the hypothetical currency in question and the foreign currency in which the settlement is to be effected, such as US Dollars.

- b) Alternative *Shari'a* ways for indexing deferred remuneration's to the standard average, level of prices .
- c) The concept of stagnation of currency notes and its effect on defining deferred rights and dues.
- d) Inflation thresholds at which currency notes are considered as stagnant.

Allah, though, knows best.

In the name of Allah, the Beneficent , the Merciful

Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon Sayyidina Mohammed, the last of the Prophets, and upon his Family and his Companions

RESOLUTION N° 76/7/8

CONCERNING **PROBLEMS OF ISLAMIC BANKS**

The Council of the Islamic *Fiqh* Academy, holding its Eight Session in Bandar Seri Begawan, Brunei Darussalam, from I to 7 Muharram 1414H (21-27 June 1993).

Having committed the research papers received by the Academy on "Islamic Banks' Problems,

Having listened to the debate on the matter.

Having reviewed the papers submitted on Islamic banks problems, which contained suggestions for addressing such problems in all their *Shari'a*, technical or administrative aspects as well as the problems relating to their relations with the other various parties; and having heard the debate that took place on such problems.

RESOLVES

To submit the following list with its four themes to the Academy's General Secretariat to commission experts and submit the result of their work to the Academy's future sessions in the priority order chosen by the planning committee.

Theme No. 1: Deposits and related issues

- a) Guaranteeing investment deposits in ways that are in compliance with the *Shari'a* approved rules of "Mudharaba"(sleeping partner ship)

- b) Non-interest inter-bank deposit exchange .
- c) *Shari'a* adaptation of deposits and their accounting processing.
- d) Extending a credit to a person under condition that it is used for dealings with the Bank in general or in a specific activity.
- e) Mudharaba expenses and who should bear them (the Mudharib or the object of Mud haraba),
- f) Defining the relation between depositors and share-holders.
- g) Brokerage in Mudharaba, leasing and collateral's.
- h) Defining the Mudharib (sleeping partner) in the Islamic banks' (share holders, the board of administration, or the executive board).
- i) Islamic alternative for overdraft accounts.
- j) *Zakat* in Islamic Banks on their funds and deposits.

Theme No. 2: Murabaha (profit - Sharing)

- a) Murabaha in shares.
- b) Postponing ownership registration in Murabaha (profit sharing) transactions in order to ensure that the bank's right to settlement remains guaranteed.
- c) Deferred payment Murabaha while going proxy to the orderer of purchase and considering him as a trustee
- d) Procrastination in the settlement of debts consequent on Murabaha or deferred transactions.
- e) Debt insurance.
- f) Debt redemption.

Theme No. 3: Leasing

- a) Re-leasing to the owner of the leased commodity or to someone else.
- b) Letting people's services and sub-letting them.

- c) Leasing, loaning or mortgaging shares.
- d) Maintenance of leased commodity.
- e) Purchasing a commodity from someone on condition that he leases it back.
- f) Commutation of lease and Mudharaba.

Theme N° 4

- a) Consensual condition as to the bank's right to cancellation in case of default on installments.
- b) Consensual condition as to changing the contract to a different type in case of default on installments.

THE COUNCIL FURTHER RECOMMENDS THAT :

First: Islamic Banks should continue their dialogue with the Central Banks in the Islamic States to enable the Islamic banks to fulfill their tasks in investing their clients funds, in conformity with the *Shari'a* principles which govern banking activities and in harmony with their specific nature. Central banks need to be mindful of the requisites for the Islamic banks to succeed in playing their active role in the national development within control rules and in a manner that is appropriate for Islamic banking's distinct nature. The Organization of the Islamic Conference and the Islamic Development bank are invited to resume the meetings of the Islamic States' Central Banks, which would make possible the implementation of the present recommendations requirements.

Second: Islamic Banks should see to it that their leaders and staff are given proper professional training that is cognizant of the nature of Islamic banking and provide adequate training programs in collaboration with the Islamic Research and Training Institute (IRTI) and other relevant parties concerned with training in Islamic banking.

Third: Due attention should be paid to Salam (forward buying) and Istisna'a (manufacture) contracts, as they offer a Shari'a-compatible alternative to conventional product financing modes.

Fourth: To the extent possible the use of Murabaha method for orderer of

purchase should be curtailed and confined to instances which fall under the control of the bank and where there is protection against departures from the *Shari'a* principles governing them. On the other hand other mode of investment such as Mudharaba, Musharaka and leasing should be expanded with due attention to follow-up and periodic assessment. A beneficial use should be made of the various permissible instances in Mudharaba, which would make it possible to well-define Mudharaba activity and ensure precise computation of the results.

- Fifth:** A market should be provided for commodities exchange among Islamic countries as a substitute for the international commodity market which is not free from *non-Shari'a* compatible actions.
- Sixth:** Surplus liquidity should be channeled to serve development objectives in the Islamic world, through collaboration among Islamic banks in consolidating Joint Investment Funds and initiating joint projects.
- Seventh:** Prompt action should be taken to find a factor acceptable Islam to be adopted as a substitute for usury rates of interest in the determination of margins of benefits in dealings.
- Eighth:** The structure under-pinning the Islamic financial market should be broadened through action undertaken by the Islamic banks amongst themselves and in cooperation with the Islamic Development Bank to be more innovative and entrepreneurial in the exchange of Islamic financial instruments in all Islamic countries.
- Ninth:** Relevant states , assigned parties should be invited to establish specific rules for dealing in Islamic investment modes such as Mudharaba (sleeping partnership), Musharaka (profit sharing), Muzara'a (crop-sharing) Musaqat (Plantation contract), Salam (forward buying), Istisna'a (Manufacture contract) and Ijar (leasing).
- Tenth:** Islamic banks should be invited to set up a database that would provide adequate information on Islamic banks clients and business people, so as to form a reference for Islamic banks and a source that can be drawn on in promoting dealings with integral and trustworthy parties and avoiding those who are not.

Eleventh: Islamic banks should be invited to coordinate the action of their *Shari'a* - control organs, either through reactivating of the Islamic Banks Supreme *Shari'a* Control Authority or through the initiation of a new body, in such a way as to ensure standardization of criteria for the *Shari'a* organs in Islamic banks.

Allah though knows Best.

In the name of Allah, the Beneficent , the Merciful

*Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon
Sayyidina Mohammed, the last of the Prophets, and upon his Family and his
Companions*

RESOLUTION N° 77/8/8

CONCERNING
PARTICIPATION IN THE SHARES OF RIBA
(INTERESTS)-BASED
JOINT-STOCK COMPANIES

The Council of the Islamic *Fiqh* Academy, holding its Eight Session in Bandar Seri Begawan, Brunei Darussalam, from 1 to 7 Muharram 1414H (21-27 June 1993).

Having considered the recommendation issued by the economic symposium held by the Academy in collaboration with the Islamic Research and Training Institute (IRTI) of the Islamic Development Bank (IDB) concerning the ruling applicable to participation in shares of share holding companies dealing in *Riba* (usury), and the research papers elaborated at the said symposium.

And, given the importance of this subject and the need to complete the study of all its aspects, to cover all its details and elicit all viewpoints thereon.

RESOLVES

The Academy's General Secretariat shall commission additional researches on the subject so that the Academy may take an appropriate decision at a future session.

Allah though knows Best.

In the name of Allah, the Beneficent , the Merciful

*Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon
Sayyidina Mohammed, the last of the Prophets, and upon his Family and his
Companions*

RESOLUTION N° 78/9/8

CONCERNING CREDIT CARDS

The Council of the Islamic *Fiqh* Academy, holding its Eight Session in Bandar Seri Begawan, Brunei Darussalam, from 1 to 7 Muharram 1414H (21-27 June 1993).

Having considered the research papers received by the Academy on the subject of "Credit Cards".

Having listened to the debate on the subject.

And Riven the importance of the subject and the need to complete the study of all its aspects, to cover all its details and elicit all viewpoints thereon.

RESOLVES

The Academy's General Secretariat shall commission further researches on the subject so that the Academy's Council may reach an appropriate decision at a future session.

Yet Allah Knows Best.

In the name of Allah, the Beneficent , the Merciful

Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon Sayyidina Mohammed, the last of the Prophets, and upon his Family and his Companions

RESOLUTION N° 79/10/8

CONCERNING CONFIDENTIALITY IN MEDICAL PROFESSIONS

The Council of the Islamic *Fiqh* Academy, holding its Eight Session in Bandar Seri Begawan, Brunei Darussalam, from 1 to 7 Muharram 1414H (21-27 June 1993).

Having considered the research papers received by the Academy on the subject of "Confidentiality in the Medical professions"

Having listened to the debate on the subject,

RESOLVES

- First:** A confidence is whatever someone tells another with either an anterior or subsequent request to keep it secret. This includes matters which are conventionally known to be of a confidential nature, per se, as well as a person's private matters or defects which he is loath to make public.
- Second:** Confidence is trust in the hands of the person entrusted with it, in conformity with the Islamic *Shari'a* teachings and in consonance with the ethics of magnanimity and proper conduct.
- Third:** The general rule is that divulging confidences is proscribed. Divulging a confidence without a genuine motive warranting it, is reprehensible in the *Shari'a* point of view.
- Fourth:** Secrecy is even more of a duty for individuals working in professions which are adversely affected by indiscretion such as medical ones. Such individuals are resorted to for the sake of advice

and assistance by people who open up to them and set them know all that may help them fulfill their vital tasks properly. This may include information which one keeps from all others, including one's own kin.

Fifth: On exceptional basis, the duty of secrecy is not binding in cases where keeping the secret may entail a damage greater than the one that could otherwise be encountered by its subject, or where divulging the secret may lead to a public interest that exceeds in importance the risks of keeping it. Such cases are of two categories.

a) Cases where a confidence must be broken on grounds of the rational of committing a lesser evil and obviating the greater one, and the rational of seeing to a public interest which favor enduring individual harm so as to prevent public harm if need be. These include two sets:

- Those which involve protecting society against some prejudice
- Those which involve protecting an individual against some prejudice.

b) Cases where a confidence may be broken:

- To ensure a public interest.
- To prevent a public damage.

In all such cases the objectives and priorities as set out by *Shari'a* in terms of preserving the faith, human life, reason, descendants and wealth.

Sixth: Exceptional cases as to the binding nature of secrecy must be clearly stipulated in the codes of practice for the medical and other professions. Such cases must be clearly defined and enumerated along with all the details as to the manner in which the secret would be divulged, and to whom. The relevant authorities need to familiarize each and every one with these cases.

THE COUNCIL RECOMMENDS

that medical unions and the ministries of health and health care faculties, include this topic in the college curricula, give the subject its due interest and familiarize those working in this field with the whole matter, together with adopting relevant decisions thereon, and benefiting from any researches elaborated around the subject.

Allah, though, knows best.

In the name of Allah, the Beneficent , the Merciful

Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon Sayyidina Mohammed, the last of the Prophets, and upon his Family and his Companions

RESOLUTION N° 80/11/8

CONCERNING
DOCTOR'S ETHICS : THEIR RESPONSIBILITIES AND
GUARANTEES

The Council of the Islamic *Fiqh* Academy, holding its Eight Session in Bandar Seri Begawan, Brunei Darussalam, from 1 to 7 Muharram 1414H (21-27 June 1993).

Having considered: the research papers received by the Academy on the subject of "Doctor's ethics; Their responsibilities and guarantees".

Having listened to the debate on the subject,

RESOLVES

To postpone the adoption of a resolution on the issue of doctors ethics, their responsibilities and guarantees, and the issue of treatment with *Shari'a* prohibited matter, to examine the medical code of practice elaborated by the Islamic Organization for Medical Sciences in Kuwait, and to request the General Secretariat to commission additional research on the said subjects for submission to a future session of the Academy.

Allah knows Best.

In the name of Allah, the Beneficent , the Merciful

*Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon
Sayyidina Mohammed, the last of the Prophets, and upon his Family and his
Companions*

RESOLUTION N° 81/12/8

CONCERNING MALE DOCTORS TREATING FEMALE PATIENTS

The Council of the Islamic *Fiqh* Academy, holding its Eight Session in Bandar Seri Begawan, Brunei Darussalam, from 1 to 7 Muharram 1414H (21-27 June, 1993).

Having considered the researches received by the Academy on the subject of "Male doctors treating female patients".

Having listened to the debate on the subject.

RESOLVES

As a general rule, if a female specialist doctor is available, then she should be one to examine the female patient. In the absence of such a specialist, the patient may be examined by a trustworthy non-Muslim female doctor, if not then by a Muslim male doctor, and if not, then by a non-Muslim male doctor; on the understanding that in diagnosing and treating the ailment, the doctor should see only the minimum necessary of the patient's body and to the extent possible divert his look, and that the doctor's treatment of the female patient should be in the presence of a Mahram (blood relation and certain other persons who, in the eyes of *Shari'a* are ineligible for marriages with the patient, such as brother and uncle...) or a husband or a trusted woman, to avoid "Khalwa" (two persons of opposite sex being together in a remote place).

THE COUNCIL RECOMENDS THAT

Due to insufficient number of specialized female doctors in these fields, and in order to avoid having to resort to rules of exception, health authorities should do their level best in encouraging women to register in medical science studies, in the various branches of specialty, in particular gynecology and obstetrics.

Allah knows Best.

In the name of Allah, the Beneficent , the Merciful

Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon Sayyidina Mohammed, the last of the Prophets, and upon his Family and his Companions

RESOLUTION N° 82/13/8

CONCERNING **ACQUIRED IMMUNO-DEFICIENCY SYNDROME 'AIDS'**

The Council of the Islamic *Fiqh* Academy, holding its Eight Session in Bandar Seri Begawan, Brunei Darussalam, from Ito 7 Muharram 1414H (21-27 June 1993).

Having examined the research papers received by the Academy on the subject of " Acquired immune-deficiency Syndrome (Aids)".

Having listened to the debate around the subject which concluded that, in as much as committing either of the two execrable sins, adultery and sodomy is the primary factor standing behind sexual diseases, most dangerous of which is Aids (Acquired Immune-Deficiency syndrome), combating depravity and properly directing media and tourism constitutes an important weapon for warding them off. Quite undoubtedly, upholding the teachings of the noble Islamic faith, combating depravity, reforming the media, proscribing licentious films and serials, and keeping a watchful eye on tourism, form the basic tools for warding off these diseases.

RESOLVES

In case of either member of a married couple contracting this disease, he/she must inform the other and cooperate with him/her in all protective measures.

THE COUNCIL RECOMMENDS

First: The relevant authorities in Islamic States to take all necessary measures to protect against Aids and to punish whoever transmits it willingly. It also recommends the Government of the Kingdom of Saudi Arabia to continue its intensive efforts to protect the guests of Allah and take whatever steps it may deem necessary to protect them

against the possibility of contracting Aids

Second: That victims of the disease be provided with necessary care . victims and carriers of Aids virus must avoid all that could lead to his disease being transmitted to others. Also, adequate education should be provided to children carrying the disease.

Third: The General Secretariat to commission medical doctors and theologians to carryout complementary researches on the following subjects, for submission to future sessions.

- a) Isolation of Aids carriers and victims.
- b) Employment authorities and their stand vis - a vis Aids victims.
- c) Aborting a pregnant Aids victim.
- d) Giving the right to women married to Aids victims to rescind their marriage contract.
- e) Should contracting Aids be equated with contracting a terminal disease, as regards the victim's behavior ?

Implications for mothers contracting Aids, as to their right to custody.

f) What is *Shari'a* ruling concerning someone who deliberately transmits Aids to someone else ?

- h) Compensation of victims contracting Aids through blood transfusion or any of its substances, or through organ transplants.
- i) Undergoing medical check-up prior to marriage as a means to avoid the risks of contagious diseases, most dangerous of which is Aids disease.

Yet Allah alone, Holds ultimate knowledge.

In the name of Allah, the Beneficent , the Merciful

*Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon
Sayyidina Mohammed, the last of the Prophets, and upon his Family and his
Companions*

RESOLUTION N° 83/14/8

CONCERNING REGULATING THE COMMISSIONING AND DEBATING OF RESEARCHES AT THE ACADEMY' S SESSIONS

The Council of the Islamic *Fiqh* Academy, holding its Eight Session in Bandar Seri Begawan, Brunei Darussalam, from 1 to 7 Muharram 1414H (21-27 June 1993).

Having examined the rules governing the publication of the Academy's researches, and the conditions to be met by the researches.

Having listened to the ambiguities that may surround the commissioning jobs and the determination of fixed date for the submission of researches, in such a manner as to allow the Academy's General Secretariat to assess the researches in the light of the rules of publication above mentioned.

RESOLVES

First: In case of the deadline not being observed for the submission of researches, the General secretariat may confine itself to those researches received within the fixed time frame allocated, without any commitment towards researches received after the fixed date.

Second: The Academy's General Secretariat shall not accept any research paper presented as a personal initiative by the authors not commissioned by the Academy.

Third: The deliberations in the session shall be limited to the invited members, experts and researchers of the Academy.

Yet Allah alone, Holds ultimate knowledge.

**Resolutions and Recommendations
of the Ninth session of the Council
of the Islamic *Fiqh* Academy**

**Abu Dhabi, (United Arab Emirates)
1 - 6 Dhul Qi'da 1415 H / 1 - 6 April, 1995**

Bismillah Arrahmani Arrahim

Praise be to the Lord of the Universe, and peace and blessings upon our Master Muhammad, last of the Prophets, and upon his Family and Companions.

RESOLUTION N° 84/1/9

CONCERNING **GOLD TRADE, SHARI'A SOLUTIONS FOR COMBINED** **CASH AND TRANSFER PAYMENTS**

The Council of the Islamic *Fiqh* Academy, holding its Ninth Session in Abu Dhabi, State of the United Arab Emirates, from I to 6 Dhul Qi'da 1415H (1- 6 April, 1995)

Having examined The researches forwarded to the Academy on the subject of 'Gold trade, *Shari'a* Solutions for combined cash and transfer payments.'

Having listened to the debate thereon,

RESOLVES 1 Regarding

Gold trade:

- a) Gold and silver may be purchased by certified cheques with the provision that the exchange should be "in the Majlis", (i.e. be there and then).
- b) The scholars' view as to the non-permissibility of exchanging gold jewelry for gold jewelry of higher value, is confirmed, for there is no meaning in exchanging gold for other gold of better quality or workmanship. The Academy therefore is of the view that there is no need to delve into this issue in as much as it has lost its applicability, since, in our present days, gold as currency has been replaced by paper money and that if it is exchanged against gold, will be considered as other differed kind.
- c) It is permissible to exchange a quantum of gold against a lesser quantum coupled with a throw in of a different nature on the grounds that the difference in one of the elements exchanged is compensated for by the throw-in.

d) As the following issues need further conception work as well as technical and *Shari'a* research, it has been decided to defer the adoption of decision thereon, The data required to distinguish between them having already been established as follows:

- Purchase of shares of a gold or silver mining company .
- Owning and granting ownership of gold through delivering and receiving certificates representing specific amounts of gold that are available in the safety boxes of the issuing party in such a way that he may use them for gaining access to or disposing of the gold whenever he wishes.

Second: regarding *Shari'a* solutions for combined cash and transfer payments,

- a) Transfers made in a specific currency and which the beneficiary wishes to transfer in the same currency are permissible *Shari'a* wise , whether against a fee or not , within the bounds of actual charges. When carried out without a fee, it is considered as an absolute transfer for those who do not advocate the necessity of the beneficiary's indebtedness (i.e. the Hanafis). For others it is considered as "Saftaja", which is the act of depositing a certain amount of money with someone for settlement to the benefit of the depositor or his representative in another country. In case it is made against a fee, then it is considered as an agent against a remuneration and if the transferring agents operate their business for the general public, then they are considered as guarantors for the amount, on the grounds of guarantee of common service provider.
- b) If the transfer calls for payment in a currency other than the one in which it has been deposited, then the transaction involves a currency exchange and transfer, in the sense indicated under para (a). The currency exchange operation is carried out before the transfer, the customer handing the amount over to the bank, and the bank crediting its registers with the same amount, after agreement on the rate of exchange as fixed in the receipt delivered to the customer. Afterwards, the transfer operation is carried out in the sense indicated above.

Yet Allah alone, Holds ultimate knowledge.

Bismillah Arrahmani Arrahim

Praise be to the Lord of the Universe, and peace and blessings upon our Master Muhammad, last of the Prophets, and upon his Family and Companions.

RESOLUTION N° 85/2/9

CONCERNING
'AS-SALAM (FORWARD SALE WITH IMMEDIATE PAYMENT)
AND ITS MODERN APPLICATIONS

The Council of the Islamic *Fiqh* Academy, holding its Ninth Session in Abu Dhabi, State of the United Arab Emirates, from 1 to 6 Dhul Qi'da 1415H (1 - 6 April, 1995)

Having examined the research papers received by the Academy on the subject of "As-Salam"(Forward Sale with immediate payment) and its contemporary applications".

Having listened to the debate around the subject.

RESOLVES

First: Concerning "As-Salam"(Forward Sale with immediate payment)

- a) Commodities in which Salam dealing may take place include any marketable goods with definable features, imputable as a debt. be they raw materials, agricultural produce or manufactured goods.
- b) Forward buying maturity must be well set either by linking it to a specific date or to an event whose happening is an absolute certainty although the date of its occurrence may be subject to a slight variance not likely to cause discord such as harvesting session.
- c) By and large, the rules is that Salam capital should be received promptly in the "Majlis" (i.e. time and place of the negotiation). However this may be deferred for two or three days, albeit on condition, the period of deferment being neither equal to nor in excess of the date fixed in the forward contract.

- d) It is not objectionable *Shari'a* - wise, for the purchasing party to take a pawn or a security from the recipient (the selling party).
- e) The buyer may exchange the goods subject of the Salam for something else other than cash after maturity of the sale, be it of the same nature or not, since there is no specific text or consensus objecting to it , on condition however that the substitute is itself amenable for Salam against the Salam capital.

In case the recipient (i.e. the selling party) fails to deliver the goods subject of the Salam on maturity date then the creditor (i.e. the buyer) can, at his discretion, either wait for the goods to be available or cancel the contract and recover his capital. However if the failure is due to genuine incapacity, then tolerance is in order until easier times.
- f) Penalties for delayed delivering of goods subject of a Salam sale are not permissible, for such a sale is equated with a debt and no penalties are permissible for a delay in debt settlement.
- h) A debt may not be used as a capital for a Salam sale, since this would amount to selling a debt against another debt.

Secondly: Concerning contemporary application of Forward Buying ("Salam")

Salam (Forward buying) is considered today as a highly effective financing instrument in Islamic economy and in the activities of Islamic banks, given its flexibility and responsiveness to the various needs of financing, be it for short, medium or long terms, as well as its adaptability to the needs of various and multiple sections of customers, be they producers, agrarians, industrialists, building contractors, or traders, in addition to the capacity it offers to finance operating as well as other capital expenses.

Hence the wide range of applications of Salam which include:

- a) A Salam contract may be used to finance various agricultural operations, in which case the Islamic bank deals with farmers expected to have the commodity in the right season, either from their own crop or from that of others, which they may purchase and

deliver in case of failure on their part to honor the delivery out of their own crops . The bank would thus have extended to them a benefit of great value and protected them against the failure to achieve their production targets on account of financial deficit.

- b) A Salam contract may be used to finance agricultural or industrial activities particularly for financing the stages before the production and export of the marketed goods, by means of buying them under a Salam contract and marketing them again at profitable prices.
- c) A Salam contract may be applied in financing handicraftsmen, small manufactures, farmers and industrialists by providing them with the necessary production needs in the form of tools, equipment, or raw material as a forward capital against access to some of their produce and remarking them.

THE COUNCIL RECOMMENDS that contemporary applications of Salam be finalized once the necessary specialized research papers have been elaborated.

Bismillah Arrahmani Arrahim

Praise be to the Lord of the Universe, and peace and blessings upon our Master Muhammad, last of the Prophets, and upon his Family and Companions.

RESOLUTION NO. 86/3/95

CONCERNING **"BANK DEPOSITS (Bank Accounts)"**

The Council of the Islamic *Fiqh* Academy, convened in its Ninth Session in Abu Dhabi, State of the United Arab Emirates, from 1 to 6 Dhul Qida 1415H (1 - 6 April, 1995)

Having examined the research papers forwarded to the Academy on the subject of "Bank Deposits (Bank Accounts).

Having listened to the debate around the subject

RESOLVES

- First:** Call deposits (current accounts) whether at Islamic banks or interest-based banks, are considered as loans, from a Shari'a perspective, since the bank taking delivery of these deposits is answerable for their safety and bound Shari'a wise to returning them on call. The ruling applicable to the loan is no way affected by the Bank's (the borrowers) solvency or otherwise.
- Second:** Bank deposits are of two categories depending on the type of actual banking operations:
- a) Deposits for which an interest is paid, as in the case of interest-based banks, being usury loans, are prohibited (haram) whether they are call deposits (current accounts) or term deposits, notice-deposits, or savings accounts.
 - b) Deposits placed at banks which uphold in actual practice the rules of Islamic Shari'a through an investment contract for a

profit share, are considered as Mudharaba (Sleeping partnership) capital, and hence are subject to rules applicable to Mudharaba (Kiradh) in Islamic *Fiqh*, one of which is the non-permissibility for the Mudharib (the Bank) to guarantee the capital of the Mudharaba transaction.

- Third:** The guarantee for call deposits (current accounts) are imputable to the debaters (the bank shareholders) as long as they have exclusive benefit of the profits deriving from their investment. Depositors in investment accounts are not called upon to be associated in guaranteeing such current accounts, as they are associated neither in the borrowing nor in the profits due.
- Fourth:** Mortgaging deposits, call (current accounts) and investment ones alike is permissible, and mortgages against their amounts can only take place through an arrangement precluding the account holder having access to it for the whole mortgage period. In case the bank operating the current account is itself the mortgage the amount must be transferred to an investment account, in such a way that the guarantee is no longer applicable in view of the conversion of the loan into a kiradh (Mudharaba, i.e. sleeping partnership) and the profits arising from the accounted are credited to the account holder so as to preclude the mortgagee (Creditor) from deriving benefits from any appreciation in the mortgage value.
- Fifth:** Retention on the accounts is permissible if the bank and the customer have so agreed.
- Sixth:** The norm as to the legitimacy of dealings calls for trust and honesty in disclosing data in a manner that would lit any ambiguity or deception, and that would reflect reality and dovetail with the Shari'a perspective. This is more of a duty for banks vis-a-vis the accounts they run in view of their activity being linked to their presumed credibility and for the sake of avoiding to deceive the parties concerned.

Allah knows best

Bismillah Arrahmani Arrahim

Praise be to the Lord of the Universe, and peace and blessings upon our Master Muhammad, last of the Prophets, and upon his Family and Companions.

RESOLUTION N° 87/4/9

CONCERNING INVESTMENT IN SHARES AND INVESTMENT UNITS

The Council of the Islamic *Fiqh* Academy, holding its Ninth Session in Abu Dhabi, State of the United Arab Emirates, from 1 to 6 Dhul Qi'da 1415H (1-6 April, 1995)

Having examined the research papers forwarded to the Academy on the subject of "Investment in Shares and Investment units" which indicate that the subject includes amongst its components the issue of purchasing shares of corporations whose objective and basic activities are legitimate but which borrow or deposit funds at interest,. These being corporations still to be decided upon despite the fact that two seminars have already been held about them and that a decision in principle has been issued by the Academy at its seventh session, followed by another resolution at its eighth session, to the effect that the General Secretariat should commission additional research on the subject so that the Academy may reach an appropriate decision at its following session.

Having initiated discussions around the subject, it emerged that the matter needed a lot more in-depth studies to work out regulations concerning this type of corporations which is more common within as well as outside the Islamic world.

RESOLVES:

- First:** To defer the examination of this subject on the understanding that additional studies shall be carried out to fathom it and better assimilate its technical and *Shari'a* aspects, so that the Academy may adopt an appropriate resolution thereon pursuant to the recommendation of the Eighth Session (Res.. No. **81/8/8**)
- Second:** To draw on the three research papers on funds and investment bonds in elaborating the statute as requested in Resolution No. 30 (5/4).

Allah knows best

Bismillah Arrahmani Arrahim

Praise be to the Lord of the Universe, and peace and blessings upon our Master Muhammad, last of the Prophets, and upon his Family and Companions.

RESOLUTION N° 88/5/9

CONCERNING
'CALLS FOR BIDS'

The Council of the Islamic *Fiqh* Academy, holding its Ninth Session in Abu Dhabi, State of the United Arab Emirates, from 1 to 6 Dhul Qi'da 1415H (16-6 April, 1995)

Having considered the two research papers forwarded to the Academy on the subject of "Calls for bids".

Having listened the debate around the subject.

In keeping with the Academy's practice regarding the need for the elaboration of a number of studies on each subject so as to tap its technical concepts and assimilate the *Fiqh* view points thereon.

RESOLVES;

- First:** To defer the issue of the resolution concerning the points examined under this subject, given its importance, and call for the necessary completion of the study of all the subject's aspects to cover all its details, to elicit all views thereon, and to exhaust the various fields in which bidding may take place, and more particularly those fields that are haram (proscribed by *Shari'a*) such as usury financial instruments and treasury bonds.
- Second:** That the Academy's members and experts should submit to the General Secretariat before the end of the session if possible or soon after its conclusion any technical or *Shari'a* points they may have on the subject of "Calls for bids" whether relating to the procedure or the modes and contracts for the conclusion of which the call for bids is made.
- Third:** To commission further researches on the subject (Calls for bids) to which technical, *Fiqh* and pragmatic experts will be associated.

Bismillah Arrahmani Arrahim

Praise be to the Lord of the Universe, and peace and blessings upon our Master Muhammad, last of the Prophets, and upon his Family and Companions.

RESOLUTION N° 89/6/9

CONCERNING **'CURRENCY ISSUES'**

The Council of the Islamic *Fiqh* Academy, holding its Ninth Session in Abu Dhabi, State of the United Arab Emirates, from 1 to 6 Dhul Qi'da 1415H (1- 6 April, 1995)

Having considered the research papers forwarded to the Academy on the subject of "Currency Issues".

Having listened to the debate from which it emerged that there are more than one direction concerning ways to deal with cases of over inflation which lead to the serious decline in the purchasing power of certain currencies, such as when;

- a) These exceptional cases also fall under the Academy's resolution issued at its fifth session and stipulating that the norm in the settlement of debt incurred in a specific currency is that it should be settled in the same (currency), rather than in value terms, for debts must be settled in an identical resource, and fixed debts, whatever their origin, may not be tied to the level of prices"
- b) The principle of Indexation to the cost of living (taking into consideration the purchasing power of currencies) is applied in such exceptional cases.
- c) The principle of Indexation of bank notes to gold (referring to the currency's value in gold on maturity date).
- d) The principle of mandatory agreement in honor is applied, after definition of damages incurred by the two parties (debtor and creditor).
- e) A distinction is established between the drop in currency value through market forces of offer and demand, and the state devaluating its currency through a clear decision in such a manner that the paper currency's value

which is normative and prescriptive may alter.

- f) A distinction is drawn between the drop in the currency's purchasing power occasioned by Government policies and that occasioned by external factors.
- g) The principle of (cases of catastrophe) which falls under the concept of consideration of emergency circumstances, is applied to such exceptional instances.

In light of these discrepant views which need to be duly studied and scrutinized,

THE COUNCIL RESOLVES;

First: That the Academy's General Secretariat - in collaboration with one of the Islamic financial institutions - should hold a specialized seminar that would bring together a number of specialists in the fields of economy and *Fiqh* and include some experts and members from the Academy, to explore the soundest and most appropriate way that may be agreed upon for the settlement of debts and commitments under the exceptional circumstances as mentioned above.

Second: That the symposium's agenda should include:

- a) Exploration of the notion of inflation and its various types as well as all technical conceptions relating to it.
- b) Exploration of the economic and social effects of inflation and economic solutions for them.
- c) Submission of *Fiqh* solutions to deal with inflation instances as mentioned in the preamble of the present resolution.

Third: That the symposium's findings - together with the papers and minutes of the deliberations - should be submitted to Academy's Council at its next session.

Allah knows best

Bismillah Arrahmani Arrahim

Praise be to the Lord of the Universe, and peace and blessings upon our Master Muhammad, last of the Prophets, and upon his Family and Companions.

RESOLUTION N° 90/7/9

CONCERNING ACQUIRED IMMUNO-DEFICIENCY SYNDROME (AIDS) AND FIOH RULES APPLICABLE TO IT'

The Council of the Islamic *Fiqh* Academy, holding its Ninth Session in Abu Dhabi, State of the United Arab Emirates, from 1 to 6 Dhul Qi'da 1415H (1- 6 April, 1995)

Having examined the research papers forwarded to the Academy on the subject of Acquired Immune-Deficiency Syndrome (AIDS) and the *Shari'a* rules applicable to it"

Having listened to the debate around the subject,

RESOLVES

FIRST:

Isolation of the patient

Medical data available today affirm that contagion with the human virus of Acquired Immune-Deficiency Syndrome (AIDS) does not take place through cohabitation, ordinary contact, breathing, insects bite, sharing of food, drink, swimming pools, seats, table-ware, or any of the other aspects of ordinary cohabitation. Rather, contagion can take place only through one of the following vehicles:

1. Sexual contact in any form.
2. Transfusion of contaminated blood or of its by-products.
3. Use of contaminated needles, especially among drug-addicts, as well as shaving blades.
4. Transmission from an affected mother to her child during

pregnancy or at birth.

Given the above, it emerges that, if there is no risk of contagion, isolating victims from their healthy peers is not a necessity in the eyes of *Shari'a* and the patients can be dealt with in accordance with the approved medical procedures.

SECOND: Deliberate Transmission of the Disease

Transmission of Acquired Immunodeficiency Syndrome (AIDS) to a healthy individual, in any deliberate manner is Haram (*Shari'a* proscribed) and is considered among the major evil sins and transgressions. It also calls for worldly punishment which may vary in accordance with the seriousness of the act and its impact on the health of individuals and society.

If the willful perpetrator's aim is to spread this vicious disease in society, then this act is considered as 'hiraba' a (criminal act directed against humanity) and a vicious act of evil-spreading, which warrants one of the sanctions stipulated in the verse of 'hiraba' : *"The punishment of those who wage war against God and His Apostle, and strive with might and main for mischief through the land is : execution, or crucifixion, or the cutting off of hands and feet from opposite sides, or exile from the land . that is their disgrace in this world, and a heavy punishment is theirs in the Hereafter; "(Swat , -Al Ma'idah - Verse.36)*

If his intention, in deliberately transmitting the disease, was to contaminate a specific person, and if the contamination has indeed been effected but the victim of the transmission is still alive, the deliberate transmitter is subjected to appropriate "Ta'azir" sanction (dissuasive punishment as may be decided by Sharia'a judges) . In case of the victim's death, then death penalty is considered for the transgressor. In case, however, the transgressor's intention was to transmit the disease to a specific person but contamination does not take place, the transgressor is liable to Ta'azir penalty.

THIRD: Aborting a mother affected by Acquired Immunodeficiency Syndrome (AIDS)

Considering the fact that transmission of Acquired Immune-Deficiency Syndrome (AIDS) only takes place, in the overwhelming majority of cases, at an advanced stage of pregnancy (after the fetus is invested with life) or during delivery, it is therefore not permissible to abort the fetus, in Shari'a view.

FOURTH: The right for a mother affected by Acquired Immunodeficiency Syndrome (AIDS) to have custody of and to suckle her healthy child.

In as much as current medical information indicate that there is not certain danger entailing from a mother, victim of AIDS, keeping her child in her custody and suckling it , such a case being comparable to the case of ordinary association and cohabitation, there is no Shari'a objection to the mother keeping her child in her custody and suckling it , unless there is a medical report to the contrary.

FIFTH: The right for a healthy spouse to seek separation from a partner affected by Acquired Immunodeficiency Syndrome (AIDS).

A wife may seek separation from the affected husband, considering that the Acquired Immunodeficiency Syndrome (AIDS) is a contagious disease which is transmitted mainly through sexual contact.

SIXTH: Considering acquired Immunodeficiency disease (AIDS) as a terminal disease.

Acquired Immunodeficiency disease is considered as terminal in the Sharia'a views, if all its symptoms are present and the victim is no longer capable of carrying out ordinary living, and death is imminent.

AND THE COUNCIL RECOMMENDS :

- First:** The issue of "the right to conjugal intercourse" is deferred pending further study.
- Second:** The need to keep up the checking system, during the Haj season, to ensure that pilgrims are free from any contagious disease, particularly Acquired Immunodeficiency Syndrome (AIDS).

Verily Allah is All Knowing

Bismillah Arrahmani Arrahim

Praise be to the Lord of the Universe, and peace and blessings upon our Master Muhammad, last of the Prophets, and upon his Family and Companions.

RESOLUTION N° 91/8/9

CONCERNING
THE PRINCIPLE OF ARBITRATION IN ISLAMIC *FIQH*

The Council of the Islamic *Fiqh* Academy, holding its Ninth Session in Abu Dhabi, State of the United Arab Emirates, from 1 to 6 Dhul Qida 1415H (1-6 April, 1995).

Having considered the research papers forwarded to the Academy on the subject of "The Principle of Arbitration in Islamic *Fiqh*"

Having listened to the debate around the subject;

RESOLVES:

- First:** Arbitration is an agreement between the two parties to a specific conflict, to mandate a third party to arbitrate between them and settle their differences through a binding verdict that is observant of Islamic Shari'a. Arbitration, thus conceived, is permissible, whether it is amongst individuals or in the field of international conflicts.
- Second:** Arbitration is not mandatory for the two conflicting parties nor is it for the arbitrator. Either of the parties may decline it as long as the arbitration has not started, and the arbitrator may dissociate himself from the matter - even after consenting once - as long as he has not initiated issuing any verdict. He may not designate someone else as a substitute for himself without the authorization of the two parties concerned, for their consent is tied up to his own personality.
- Third:** No arbitration is permissible in matters that are exclusive divine rights, such as Hudud (matters for which a specific punishment is already defined in the Quran), nor in matters for which a verdict is dependent on the establishment or rebuttal of another verdict concerning a third party over whom the arbitrator has no trusteeship,

such as "Li'aan*" (cursing somebody), in view of its impact on the child's right ; Nor is arbitration permissible in matters that fall within the exclusive realm of jurisdiction. Any arbitration in matters that are not eligible for arbitration is null and void.

Fourth: The norm is that an arbitrator must meet the prescriptive conditions for qualifying as a judge.

Fifth: The rule is that the verdict issued by the arbitrator should be carried through voluntarily. In case of refusal by either party, the matter is submitted for implementation to the law courts, and the latter may not repeal the verdict unless it is found to constitute an obvious inequity or departure from *Shari 'a*.

Sixth: In the absence of any international Islamic Court, Islamic States or institutions may seek arbitration from non-Islamic courts in a quest for a *Shari 'a*-compatible settlement.

THE COUNCIL RECOMMENDS

To invite the Member States of the Organization of the Islamic Conference to finalize the necessary procedures for the establishment of an International Islamic Court and to enable the latter to carry out its tasks as stipulated in its statute.

** Li 'aan: (Cursing) (i.e. when a man accuses his wife of adultery and has no witness but himself his evidence is to bear witness four times by Allah that he is telling the truth and in the fifth time, he swears that he invoke the curse of Allah be upon him if he was lying. The wife will be averted from punishment if she bears witness four times that he (the husband) was lying and in the fifth time she invokes the curse of Allah upon her if he (the husband) was telling the truth. They will then be separated by divorce. This process in Shari'a is called : 'Li'aan').*

Bismillah Arrahmani Arrahim

Praise be to the Lord-of the Universe, and peace and blessings upon our Master Muhammad, last of the Prophets, and upon his Family and Companions.

RESOLUTION N° 92/9/9

CONCERNING
'SADDUZ-ZARA"IE"
(PREEMPTION OF EVASIVE LEGAL DEVICES'

The Council of the Islamic *Fiqh* Academy, holding its Ninth Session in Abu Dhabi, State of the United Arab Emirates, from 1 to 6 Dhul Qida 1415H (1-6 April, 1995).

Having considered the research papers forwarded to the Academy on the subject of "Sadduz-zara"ie" (preemption of evasive legal devices)

Having listened to the debate around the subject.

RESOLVES

1. Preemption of evasive legal devices is one of the Islamic Shari'a principle rules. It is defined as the prohibition of an otherwise permissible matter but which may be used as a proper or stepping stone to achieve evil or transgression.
2. Preemption of evasive legal devices is not confined to matters that call for questioning or caution, rather it may extend to all that could be used as bridge way to anything illicit (Haram).
3. Preemption of evasive legal devices calls for barring the way against any subterfuge leading to the commitment of prohibited acts or to nullify any of the Shari'a requirements, though a subterfuge differs from "Zarii'a" (evasive legal devices) in that the former is dependent on the existence of deliberate intent whereas the latter is not.
4. Evasive legal devices are of several categories:

- The first category is subject of consensus as to its prohibition : This category includes devices that are stipulated in the Holy Quran and the Sunnah of the Prophet (PBUH), and those which are definitely or most probably conducive to evil action, whether the medium used is itself permissible or delegated or obligatory. Such is the case of contracts which are concluded for the purpose of committing a prohibited action (Haram) by providing for it in the contract.
 - The second category is subject of a consensus as to its optimal character. This category includes cases where the social benefit exceeds the harm that may be caused.
 - The third category is subject of disagreement : it includes cases where to all appearances, the intention is a healthy one but still shrouded in the suspicion that it is meant as a passageway to something prohibited, in view of its frequent use to such intent.
5. The criteria for allowing an evasive legal device is that it scarcely leads to evil doing or that its social benefits are more likely than any resulting evil assaulted with it.
 6. The criteria for prohibiting evasive legal devices is that it definitely or in most cases conducive to evil, or that the evil likely to arise from it is more important than any benefits associated with it.

Verily Allah is All-Knowledge

**Resolutions and Recommendations
Of the Tenth Session Of the Council
of the Islamic *Fiqh* Academy**

**Jeddah (Kingdom of Saudi Arabia)
23 — 28 Safar 1418h / 28 June — 3 July 1997**

Bismillahi Ar-rahmani Ar-Rahim

Praise be to Allah, Lord of the Universe. Prayers and Blessings be upon our Lord Mohamed, the ultimate Prophet and Messenger, on his kins and Companions.

RESOLUTION N° 99/1/10

ON **FAST-BREAKING SUBSTANCES** **IN MEDICAL TREATMENT**

The Council of the Islamic *Fiqh* Academy, holding its Tenth session in Jeddah (Kingdom of Saudi Arabia), from 23 to 25 Safar 1418H (28 June to 3 July 1997);

Having taken cognizance of the research papers prepared and relating to "Fast-Breaking substances in medical treatment" and of recommendations issued by the 9th *Fiqh* and Medical seminar organized by the Islamic Organization for Medical Sciences of Kuwait, in cooperation with the Islamic *Fiqh* Academy and other institutions, and held in Casablanca (Morocco), from 9 to 12 Safar 1418 H (14 to 17 June 1997);

Having listened to discussions held around this topic, with the participation of *Fiqh* scholars and physicians; and having examined the arguments in the light of the Holy Book, the Sunnah of the Prophet and views of *Fiqh* specialists;

DECIDES THE FOLLOWING:

Firstly: The following substances do not cause fast-breaking :

1. A drop in the eye or the ear, ear washing, nasal drop or puffing, provided that the liquid reaching the throat is not swallowed.
2. Tablets placed under the tongue to treat a chest angina or any other illness, provided nothing is swallowed.

3. Anything introduced into the uterus, be it suppositories, bath water, ureteroscope or intra vaginal auscultation.
4. Introduction into the uterus of a ureteroscope, an intra-uterine device (IUD) or any other similar device.
5. Anything introduced into the urinary tract of a man or a woman: probe, ureteroscope, radio-opaque substances, solutions for cleaning the bowel.
6. Tooth removal, or cleaning one's teeth with a toothpick or a toothbrush, provided nothing is swallowed.
7. Mouthwash, gargle, mouth-spray, provided nothing is swallowed.
8. Subcutaneous, intra-muscular or intravenous injections, excluding any perfusions and injection of nutritious fluids (serums).
9. Oxygen
10. Anesthesia by vaporization, provided nutritious fluids are not injected to the patient.
11. Whatever penetrates into the body through the skin, like creams, ointments or coetaneous patches containing medicinal or chemical substances.
12. Introduction of catheter for coronography of heart vessels and other organs.
13. Fibroscopy by laparoscopy to examine the intestines for surgery.
14. Biopsy of the liver or other organs without administration of any solutions or liquids.
15. Fibroscopy or gastroscopy without absorption of liquids or other substances.
16. Introduction of any instrument or substance into the brain or spinal cord for treatment.

17. Involuntary vomiting, to the contrary of provoked vomiting.

Secondly: The Muslim doctor must recommend to his patient to postpone any of the above-mentioned treatments until after fast breaking, should such a delay do no harm to his health.

Thirdly: To postpone any decision concerning the following cases, pending further study and research to know their effect in fasting, emphasizing the Tradition of the Prophet and stories collected from his Companions:

1. Broncho-dilatory vaporization and inhalation of medicinal steam.
2. Phlebotomy and bloodletting practice.
3. Blood sampling for analysis and blood transfusion (for the donor as well as for the receiver).
4. Peritoneal hemo-dialysis (placing a tube into the abdomen to inject an appropriate ionic solution to replace the blood ions through the peritoneum) or artificial kidneys.
5. The introduction of whatsoever into the anus: rectal injection, suppositories, rectoscope or rectal touching during a medical consultation.
6. Surgery under general anesthesia, when the patient has previously declared his intention to fast and has not received any solution or nutritious fluids through perfusion.

Allah is All-Knowing

Bismillahi Ar-rahmani Ar-Rahim

Praise be to Allah, Lord of the Universe. Prayers and Blessings be upon our Lord Mohamed, the ultimate Prophet and Messenger, on his kins and Companions.

RESOLUTION N° 100/2/10

ON **HUMAN CLONING**

The Council of the Islamic *Fiqh* Academy, holding its Tenth session in Jeddah (Kingdom of Saudi Arabia), from 23 to 25 Safar 1418H (28 June to 3 July 1997);

Having taken cognizance of the research papers prepared and relating to "Human Cloning" and of recommendations issued by the 9th *Fiqh* and Medical seminar organized by the Islamic Organization for Medical Sciences of Kuwait, in cooperation with the Islamic *Fiqh* Academy and other institutions, and held in Casablanca (Morocco), from 9 to 12 Safar 1418H (14 to 17 June 1997);

Having listened to discussions held around this topic, with the participation of *Fiqh* scholars and physicians ;

CONCLUDES THE FOLLOWING:

PREAMBLE:

God Almighty has created human being in the best of its form and has surrounded it with His Solitude. Hasn't the Almighty said : *"We have honored the sons of Adam, provided them with transport on land and sea, given them for sustenance the best and purest and conferred on them special favors above a great part of our Creation".* (Surat "Bani Isra'il/Isra'a V. 70).

God Almighty has endowed man with a spirit, has honored him by making him responsible, has made him His regent on earth, has allowed him to colonize this planet and has honored him by entrusting him with a mission compatible with his nature –this indeed is perhaps man's very nature. The Almighty has said : *"So set thou thy face steadily and truly to the Faith ; (Establish) God's handiwork according to the pattern on which He has made*

mankind : no change (let there be) in the work (wrought) by God : that is the standard Religion, but most among mankind understand not" (Surat 'Rim" V. 30).

Islam insists on the necessity of preserving man's innate nature, by maintaining the five universal principles : religion, life, reason, offspring and wealth; and also by protecting man from any corruptive modification both at the level of causes and consequences, as witnessed by the following "Hadith Qudsi" (Divine Words pronounced by the Prophet (PBUH), quoted by Al-Qurtubi from the narration of Qadi Isma'il : "I have created my servants all pure, but Satan has come to deviate them from their religion... and ordered them to change my creature".

God Almighty has taught to man what he ignored and has ordered him to research, observe, think and meditate. In many verses of the Holy Qur'an, God Almighty calls out man : "Don't they see ?", "Don't they look out ?", "Doesn't man see that We created him from a drop of sperm ?", "these are signs for those who understand", "this is a reminder for the conscious minded", "Read! In the Name of Your Lord Who has created".

Islam does not set up any obstacle or any obstruction to the freedom of scientific research that constitutes a mean to discover the order established by God Almighty in His creation. Nevertheless, Islam stresses that the door cannot be left wide open, without restriction, to the generalized implementation, without limit, of the results of scientific research, without examining them closely in the light of *Shari'a*, so as to authorize what is lawful ("Halal") and prohibit what is not ("Haram"). It is not allowed to apply a discovery just because such an application is technically possible. It has to be a useful science serving public interest and protecting people from harm's way. Science must respect human dignity, its place in the world and the purpose for which the Almighty God has created him. Man should never be a field for experimentation. In any way, should his identity, his specificity and his particularity be violated. Science should neither shake the stability of social structure, nor distract the foundation of parenthood, marriage links and family structures as they have been known through the history of mankind and preserved by the Divine Law on sound and strong bases set up by God.

One innovation of our time concerns a topic that has focalized public attention the world over, through the mass media, and that is "Cloning". It was therefore necessary to let people know the position of *Shari'a* on this issue, after

having it studied, in all its details, by an elite group of experts and scholars specialized in this field.

DEFINITION OF CLONING

It is generally known that the order set up by God stipulates that any human being created God is the result of the encounter between a spermatozoid and an ovule which nucleus contains a number of chromosomes equal to half the number of chromosomes contained in the cells of the human body. When the spermatozoid of the father (the husband) unites with the ovule of the mother (wife), the result transforms into an embryo containing a complete genetic map and capable of reproducing itself.

Once it fixes itself in the womb of the mother, this embryo gradually develops to become a complete being that will be born by the will of God. Thus, the initial cell divides itself into two identical cells, then four, then eight, and so on, until reaching the stage of determining the differentiation of the embryonic being. If one of the cells of the embryo divides itself into two identical parts, we obtain identical twins. Such an experience has been possible with some animals and has resulted in giving birth to identical twins. This operation has been considered as a form of cloning or procreation, inasmuch as it yields identical copies or species. This technique has been called "cloning by division".

There is another method of cloning a fully-grown being. It consists in taking the nucleus of a cell containing the complete DNA of a subject and injecting it into an enucleated avocet. A new embryo containing a complete DNA and capable of reproducing itself is therefore created. Implanted into the uterus, the embryo develops, reaches its full shape and becomes a living being fully constituted given birth by the will of God Almighty. This type of cloning is known as "nuclear transfer" or "Nucleus replacement". This is what is called "cloning" and this operation has led to the birth of the ewe "Dolly". But this new creature is not an identical copy of the original, because the enucleated ovule of the mother still contains remains of the nucleus in the area surrounding the removed nucleus. These remains have a noticeable effect on the transformation of the characteristics inherited from the cell. In our knowledge, such an experience has not yet, been applied to human being.

Cloning is therefore giving birth to one or several living beings, either by transplanting the nucleus of a cell into an enucleated ovule, or by dividing a fertilized egg before the tissues and limbs differentiation stage.

No one ignores that such operations do neither constitute a total creation, nor a partial one. God Almighty has said : "... Or do they assign to God partners who have created (anything) as He has created, so that the creation seemed to them similar ? Say : "God is the Creator of all things : He is the One, the Supreme and Irresistible" (Surat "The Thunder/Ra'ad" V. 16).

God Almighty also said : "Do ye then see ? The (human seed) that ye throw out, is it ye who create it, or are We the Creator ? We have decreed death to be your common lot and We are not to be frustrated from changing your forms and creating you again in (forms) that ye know not. And ye certainly know already the first form of creation : why then do ye not celebrate His praise?" (Surat Al-Waqi'ah/The Inevitable Event V. 58 to 62).

And the Lord also said : "Doh not man see that it is We who created him from sperm ? Yet behold ! he (stands forth) as an open adversary ! And he makes comparisons for Us and forgets his own (origin and) creation, saying : "Who can give life to (dry) bones and decomposed ones (at that) ? Say : "He will give them life Who created them for the first time ! For He is well versed in every kind of creation. The Same Who produces for you fire out of the green tree, when behold! Ye kindle therewith (Your own fires)! Is not He Who created the heavens and the earth able to create the like thereof ?" Yeah, indeed! For He is the Creator Supreme, of skill and knowledge, (Infinite)!" Verily, when He intends a thing, His Command is "Be" and it is!" (Surat Basin, V. 77 to 82).

The Almighty also said : "Man We did create from a quintessence (of clay); then We placed him as (a drop of) sperm in a place of rest, firmly fixed! Then We made the sperm into a clot of congealed blood ; then of that clot (We made) a (fetus) lump; then We made out of that lump bones and clothed the bones with flesh ; then We developed out of it another creature. So blessed be God, the Best to create!" (Surat Al-Mu'minun. The Believers V. 12 to 14).

On the basis of the studies previously presented to the Academy, the discussions held thereon, and the principles of *Shari'a*,

DECIDES THE FOLLOWING :

1. It is prohibited to clone human being, such as in the above-mentioned two cases or by any other method that results in the multiplication of human specie.

2. In case of violation of *Shari'a* prescriptions underlined in the first paragraph, consequences of such acts should be brought to the notice of the Academy so as to clarify *Shari'a* rules thereon.
3. Are prohibited all cases implying the intervention of a third party in the procreation process, whether a uterus, an ovule, a spermatozoid or a body cell for cloning.
4. It is permitted by *Shari'a* to use cloning techniques and genetic engineering in the fields of microbiology, botanic and zoology, and thus within the limits prescribed by *Shari'a*, in order to serve general interest and prevent inconvenience.
5. Invites Islamic countries to adopt laws and rules in order to close all direct and indirect avenues from local or foreign institutions, research institutes and foreign experts so as to prevent them from using Islamic countries as experimentation fields for the propagation of cloning.
6. The Council of the Academy and the Islamic Organization for medical Sciences shall jointly ensure the follow-up of the issue of cloning and of any new discovery in this field, shall establish the terminology of cloning and organize seminars and meetings in view to popularize *Shari'a* rules on the subject.
7. The Council calls for the establishment of specialized committees comprising experts and *Fiqh* scholars, in order to set up the rules of ethics to be observed in the field of research in biology in Islamic countries.
8. The Council calls for the creation and strengthening of scientific establishment and institutes dealing with research in biology and genetics, but in field other than human cloning, in compliance with *Shari'a* rules, so that the Islamic world would not be left in a state of dependency in this field.
9. Devoting the application of scientific discovery from an Islamic standpoint and invite all media to adopt an attitude in conformity with the prescriptions set by religion concerning these issues, to avoid to use these discoveries in a way incompatible with the spirit of Islam and to make public opinion aware of the right to verify

information before any decision on the subject, as required by Almighty God who said : "When comes to them some matter touching (public) safety or fear, they divulge it. If they had only referred it to the Apostle or to those charged with authority among them, the proper investigators would have tested it from them (direct)" Surat "An-Nisa'a / The Women V. 83).

Verily Allah is All Knowing

Bismillahi Ar-rahmani Ar-Rahim

Praise be to Allah, Lord of the Universe. Prayers and Blessings be upon our Lord Mohamed, the ultimate Prophet and Messenger, on his ki's and Companions.

RESOLUTION N° 101/3/10

ON SACRIFICIAL ANIMALS AND SHARI'A RULES FOR SLAUGHTERING THEM

The Council of the Islamic *Fiqh* Academy, holding its Tenth session in Jeddah (Kingdom of Saudi Arabia), from 23 to 25 Safar 1418H (28 June to 3 July 1997);

Having taken cognizance of the research papers prepared and relating to "Sacrificial animals and *Shari'a* rules for Slaughtering them" and Having listened to discussions held around this topic, with the participation of *Fiqh* scholars, physicians and nutrition specialists;

Recalling that animal slaughtering is one of the issues subject to *Shari'a* rules confirmed by the Holy Book and the Tradition (Sunnah) of the Prophet (PBUH); observing these rules is part and parcel of the respect towards Islamic tenets and signs distinguishing a Muslim from a non-Muslim.

Recalling also the saying of the Prophet (PBUH) : "He who does his prayer as we do ; who turns his face as we do towards the Qibla, who eats the meat of the animal we have slaughtered, that one is a Muslim and enjoys the protection of God and His Prophet".

DECIDES THE FOLLOWING:

First: The lawful killing of an animal is carried out according to one of the following methods :

1. **Cutting the throat** of the animal (*Dhabh*) : it consists in cutting the esophagus, the two jugular veins and the pharynx of the animal. This is the method preferred by *Shari'a* for killing cattle,

sheep, goats and poultry. It is also permitted for other animals.

2. **Slaughtering** (*Nahr*) : it consists in plunging a knife in the base of the neck. This is the method preferred by *Shari'a* for killing camels and similar animals. This method is also tolerated for the killing of cattle.
3. **Immolation** (*'Aqr*) : it consists in wounding an animal when there is no other choice, at any part of the body. This method is applied for wild animals hunting of which is lawful (Halal), or ferocious domestic animals.

If the animal is captured alive, it should be slaughtered or have its throat cut

Second: Lawful killing of an animal is subject to the following conditions:

1. The person performing the killing must be of age and enjoying full mental faculties ; he must be a Muslim or belonging to a religion of the Book (Jews or Christians). The meat of an animal killed by pagans, atheists, non-believers, Mazdeans, renegades, or any other infidels, at the exception of the People of the Book, is prohibited for consumption.
2. The killing must be performed with a sharp cutting instrument, either made of iron or other metal, able to make the blood spurt. Teeth (ivory) or fingernails cannot be used.
3. It is prohibited to eat the meat of animals killed by suffocation, or knocked out with a blunt object (stone, stick, etc.), or killed after a deadly fall from an elevated spot or in a ravine or after receiving a blow from the horn of another animal, or the remains of an animal devoured by wild animals or birds of prey not trained for hunting. Nevertheless, if the animal is captured alive, then slaughtered, it is lawful (Halal) to eat it. .
4. The person performing the killing must invoke the Name of God at the beginning of the operation. The use of a recorded "Takbir" cannot replace the act of "Takbir" (invocation of the Name of God). But if the person performing the killing forgets to invoke the Name of God, the meat of the killed animal is still lawful

(Halal) for consumption, according to *Shari'a*.

Third: The killing of an animal should be performed with a decent behavior, as required by *Shari'a*, like being merciful and gentle towards the animal, before, during and after the killing.

The sharpening of the instrument should not be performed in front of the animal. An animal should not be slaughtered in front of another animal. It is forbidden to kill an animal with a non-sharpened instrument. The animal to slaughter should not be tortured. No part of its body should be cut off and it should not be skinned, or thrown into boiling water, or plucked, before one makes sure it is completely dead.

Fourth: The animal to be slaughtered must be free from any contagious disease that would alter the consistency of its flesh and be harmful to the consumer's health. This sanitary requirement is imperative concerning the meat sold on the market place or imported.

Fifth:

1. The lawful slaughtering must, in principle, be carried out without knocking out the animal, since the Islamic method, by its requirements and rules, is the best because it is more merciful towards the animal and shortens its suffering. Therefore, it is requested from the concerned authorities to develop the means and tools to be used in slaughtering large animals, so as to fully comply with these requirements.
2. While complying with the provisions of here above paragraph 1, it is permitted to eat the meat of an animal slaughtered in a lawful way, after it is knocked out, when it is technically certified that the animal did not die from this operation before it is slaughtered. This procedure is defined as follows by experts :
 - a) Application of two electrodes on the temples or the forehead or the nape of the animal.
 - b) The voltage must be between 100 and 400 volts.
 - c) The electric power must be between 0,75 to 1 ampere for sheep and between 2 and 2,5 amperes for cattle.

- d) The electrical shock must last 3 to 6 seconds.
- e) It is prohibited to knock the animal out with a needle gun, an axe, a hammer or by inflating the animal as in the English method.
- f) It is prohibited to knock out poultry by electric shock, experience having demonstrated that in this method many animals die before they are slaughtered.
- g) It is allowed to eat the meat of an animal slaughtered after knocking it out with the use of a mixture of carbon dioxide and air or oxygen, or by using a round-headed pistol that would not provoke the death of the animal before it is slaughtered.

Sixth: Muslims living in Islamic countries must try, through legal ways, to obtain permission to slaughter animals according to the Islamic method, without knock out.

Seventh: Muslims traveling abroad or living in a non-Islamic country are allowed to consume the meat of lawful animals slaughtered by People of the Book, after making sure it is free from any forbidden ingredient. This meat is however prohibited if it is proven that the animal has been killed using a prohibited method.

Eighth: In principle, the killing of poultry or other animals must be done manually; however, it is permitted to use mechanic instruments for slaughtering poultry, if conditions stipulated in Paragraph "SECONDLY" are met. It is permitted to invoke the Name of God once before the slaughtering of several animals, provided that there is no interruption in the process. If the operation is interrupted, the invocation must be repeated.

Ninth:

1. If meat are imported from countries where the majority of the population is from the People of the Book and where animals are killed in modern slaughterhouses, following one of the lawful methods and abiding *by* the conditions set *by Shari'a* in this regard in Paragraph "Secondly", their consumption is lawful, in compliance with the Divine Words: "... The food of the People of the Book is lawful to you..." (Surat The Table Spread / Al-Ma'idah — V. 6).

2. Meat imported from countries where the majority of the population does not belong to the People of the Book are forbidden, since there is a strong suspicion that the slaughtering of the animals has been carried out by an unauthorized person in regard of *Shari'a*.
3. Consumption of meat imported from countries defined in Paragraph 2 here above is permitted if the slaughtering process is supervised by an authorized Islamic institution and if the person carrying out the operation is a Muslim or from the People of the Book.

THE COUNCIL RECOMMENDS THE FOLLOWING:

1. Governments of Islamic countries are hereby invited to approach the authorities of non-Muslim countries where Muslim live, so as to offer the Muslim community the possibility to slaughter animals using method acceptable to *Shari'a* without knocking them out.
2. To eliminate all problems arising from the importation of meat from non-Muslim countries, it is necessary to implement the following measures :
 - a) To develop livestock in Islamic countries in order to achieve self-sufficiency in this field.
 - b) To limit, as much as possible, the import of meat to Islamic countries.
 - c) To import live animals and slaughter them according to the Islamic method, so as to make sure that conditions set by *Shari'a* are observed.
 - d) To request the Organization of the Islamic Conference to set up a unique Islamic Body in order to improve the control operations of imported meat, and thus by creating an institution entrusted with the task of setting detailed rules specifying *Shari'a* conditions for slaughtering and to carry out directly on the spot the control and supervision of this task, with the assistance of experts in *Shari'a* and technicians. A distinctive trademark registered and protected internationally by law would validate meat certified by this body.
 - e) Endeavor in view of making of the institution mentioned in paragraph (d) the only authority entrusted with carrying out this

mission of control and calling upon the Islamic countries to recognize only this authority.

- f) Pending the implementation of the recommendation contained in paragraph (d) above, it is requested from meat importers and exporters to commit to fully respect lawful conditions for the slaughtering of any animal intended for the consumption in Islamic countries, in order to spare Muslims from committing prohibited acts (Haram) by resorting to easy solutions and importing meat without making sure from the outset that the animal has been slaughtered in a proper way.

Verily Allah is All Knowing!

Bismillahi Ar-rahmani Ar-Rahim

Praise be to Allah, Lord of the Universe. Prayers and Blessings be upon our Lord Mohamed, the ultimate Prophet and Messenger, on his kins and Companions.

RESOLUTION N° 102/4/10

ON
CREDIT CARDS

The Council of the Islamic *Fiqh* Academy, holding its Tenth session in Jeddah (Kingdom of Saudi Arabia), from 23 to 25 Safar 1418H (28 June to 3 July 1997);

Having taken cognizance of the research papers prepared and relating to "Credit cards" and Having listened to discussions held around this topic, with the participation of *Fiqh* scholars and economists;

1. **ENTRUSTS** the General Secretariat of the Academy with the following tasks:

- a) Making the inventory of the various conditions and conventions relating to cards issued by banks.
- b) Set up a committee in view of examining the nature of the cards in order to determine their characteristics and their differences and to define adaptations complying with *Shari 'a* rules, and thus after having collected samples of cards issued by banks in Arab and foreign countries.
- c) Organize a seminar to discuss this topic, in the light of previous preparations so as to make thorough proposals to be submitted to the next session of the Council of the Academy.

2. **RECOMMENDS** the following:

- a) To emphasize the necessity to reformulate economic terminology

regarding this topic as well as the objectives set by *Shari'a* concerning lawful and unlawful transactions, according to their proper realities and in full transparency with regard to their content. In this regard, it is necessary to give preference to existing terms in *Shari'a* terminology so as to consecrate their form and content, especially the terminology likely to have a *Shari'a* jurisprudential impact, and thus in order to rectify economic terminology and harmonize it with *Fiqh* terminology, drawing from the heritage of the Ummah and *Shari'a* concepts.

- b) To insistently invite concerned authorities in Islamic countries to forbid banks from issuing usurious credit cards, in order to protect the Islamic Ummah from the risks inherent in usury and to preserve national economies and individual wealth.
- c) To create a *Shari'a-based* economic and financial body entrusted with protecting individuals from being exploited by banks and to safeguard their rights in the limits of the *Shari'a* provisions and financial policy, so as to protect national economy and set up carefully worked out rules intended to protect society and individuals from being exploited by the banks and protect the Ummah from negative effects ensuing from this practice.

Verily Allah is All Knowing

Bismillahi Ar-rahmani Ar-Rahim

Praise be to Allah, Lord of the Universe. Prayers and Blessings be upon our Lord Mohamed,' the ultimate Prophet and Messenger, upon his kins and his Companions.

'RESOLUTION N° 103/5/10

ON
THE ROLE OF MUSLIM WOMEN
IN THE DEVELOPMENT OF ISLAMIC SOCIETY

The Council of the Islamic *Fiqh* Academy, holding its Tenth session in Jeddah (Kingdom of Saudi Arabia), from 23 to 25 Safar 1418H (28 June to 3 July 1997);,

Having taken cognizance of the recommendations relating to "The role of Muslim women in the development of Islamic society" and having listened to discussions held around this topic;

DECIDES THE FOLLOWING:

ENTRUSTS the General Secretariat of the Academy to set up a committee in order to study recommendations relating to "The role of Muslim women in the development of Islamic society" and to submit the results of this meeting to the next session of the Council, God willing.

May Allah grant us success.

**Resolutions and Recommendations
of the 11th Session of the Council
of the Islamic *Fiqh* Academy,**

**held in Manama, (State of Bahrain)
25 - 30 Rajab 1419 H / 14-19 November 1998)**

In the Name of Allah, the Most Beneficent, the Merciful

Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon Sayyidina Muhammad, the last of the Prophets and upon his Family and his Companions

RESOLUTION N° 98 (1/11)

ON **ISLAMIC UNITY**

The Council of the Islamic *Fiqh* Academy, emanating from the Organization of the Islamic Conference, in its 11th session held in Manama, Bahrain on 25-30 Rajab 1419 H (14-19 November 1998),

Having examined the research papers presented to the Academy in connection with the issue of Islamic Unity , and in the light of the discussions which brought this issue into focus as being one of the most important issues that needs to be studied, both theoretically and practically , and in view of the fact that striving to unify the Muslim Ummah intellectually, legislatively and politically , and draw it to the creed of pure monotheism, is one of the main objectives of this International Academy,

RESOLVES

First: Islamic unity is a duty which Almighty Allah has commended us to adhere to and achieve and made it a concomitant description of this Ummah when He said "And hold fast, all of you, to the rope of Allah, and be not divided" ; and He also said "This is indeed your Ummah; it is a single Ummah". The Prophetic Sunnah stressed this call in words and deeds. The Prophet (may peace and blessings be upon him) said "All the Muslims' blood is of equal value, and all the Muslims are like one hand against others, and the lowest of rank among them moves around freely under their protection."

This unity was realized by the Prophet (may peace and blessings be upon him) in practical life by forging brotherhood between the Muhajirin (immigrants) and Al-Ansar (supporters). He

also laid it down in the first document of the establishment of the Islamic State in Al-Madina Al- Munawwarah in which he described the Muslims as being "a single Ummah unlike the rest of the human beings."

The meanings of such verses from the Holy Qur'an and from the sayings of the Prophet (may peace and blessings be upon him) make it incumbent upon the believers to unify their ranks under the banner of Islam, by holding firmly to the Holy Book and Sunnah, and renounce historical enmity, tribal differences and disputes, personal ambitions and racial slogans. When the Muslims abode by the above Islamic teachings, during the Prophet's lifetime and the era of the early Muslims, then, the religion and rule of Islam spread in the East and in the West, and the Muslim Ummah led mankind through the Islamic civilization which was the most glorious civilization, because it was established on the principle of servitude to Allah alone; and thus justice, freedom and equality prevailed.

- Second:** Islamic unity lies in ensuring servitude to Allah, the Almighty, in belief and in words and deeds, under the guidance of the Qur'an and Sunnah. It also lies in preserving what unifies Muslims on common terms in the various intellectual, economic, social and political spheres of life. Once the Muslim nation abandoned the factors of its unity, reasons of discord began to emerge, deepening further, later on, disunity among Muslims. This was due to various reasons, among which the efforts of colonization that raised the banner "divide and rule", thus splitting the Muslim Ummah and the ranks of Arabs and Muslims into small parts on nationalist and ethnic grounds. Besides, most of the efforts of orientalist focused on the perpetuation of discord and disunity in their studies and books, which they disseminated among Muslims.
- Third:** Jurisprudential (*Fiqh*) differences which are based on Ijtihad (personal reasoning) in understanding the meanings of *Shari'a* texts are, in themselves, natural consequences. They, in fact, contributed to the enrichment of legislation which realizes the purposes and characteristics of *Shari'a*, mainly making things easy and bearable for Muslims.
- Fourth:** It is a Muslim duty to preserve the status of all the Prophet's Companions (may Allah be pleased with them). The Ulema (Muslim

scholars of *Shari'a*) should be called upon to extol the Companions' position and services in transferring *Shari'a* to the Muslim Ummah and highlight their rights over it. Also, governments should be called upon to issue regulations which punish whoever denigrates or looks down upon them in any way whatsoever. This will preserve the sanctity of the Companions of the Prophet (may peace and blessings be upon him) and nip in the bud one of the reasons of discord.

Fifth: It is a Muslim duty to adhere to the Holy Book and Sunnah and to the guidance of the Ummah's worthy ancestors, the Companions (may Allah be pleased with them), and those who follow their steps. It is also a Muslim duty to discard delusions, avoid what spreads sedition among Muslims and what leads to their disunity, and instead channel Muslim efforts to the call for Islam and the propagation of its principles among non-Muslims.

RECOMMENDATIONS

Needless to say that our age is an age of regional blocks, which serve various intellectual, social and economic purposes, under the banners of globalization, secularism and modernism, and also because of the media's unrestricted openness. This makes the Muslim world targeted in a bid to put an end to its distinctive features, destroy its basic elements and undermine the foundations of its spiritual and intellectual civilization. Our nation cannot be protected from these perils and threats except by unifying its ranks and getting rid of the reasons of discord, especially that our nation has all factors of unity which include a common belief and common social, economic, legislative and cultural factors.

Hence, the Islamic *Fiqh* Academy makes the following recommendations:

- a) Confirming the Academy Resolution no. 48 (10/5) in respect of the application of the Islamic *Shari'a* laws and the subsequent recommendations on the same topic, and the Academy's Resolution no. 69 (7/7) in respect of the intellectual invasion, the subject matter of the first recommendation.
- b) Calling upon the governments of Muslim countries to support the efforts made by both the Organization of the Islamic Conference (OIC) and the Islamic *Fiqh* Academy, considering that these efforts

are forms of unity among Muslims, politically and intellectually.

- c) Leaving behind historical disputes, because their effects only lead to inflaming enmity and deepening discord.
- d) Maintaining good opinion, and mutual trust between Muslims, both as governments and peoples, by means of directing media towards fostering the spirit of unity, promoting the ethics of dialogue and accepting views based on Ijtihad.
- e) Benefiting from fateful issues which unify the Muslim Ummah, mostly the issue of Al-Quds and Al-Aqsa Mosque, the first of the two Qiblahs and the Prophet's Masra (the place from which he made his night journey), in order to ward off the dangers which threaten its Islamic character. The Academy also stresses that the issue of Al-Quds and Al-Aqsa Mosque is an issue for all the Muslims.

The participants to the Conference appeal to the governments of Muslim countries to give this issue, and other similar issues, due attention and take prompt and appropriate measures, which include the following:

- Denouncing the policies of expulsion, judaization and settlement which Palestinian lands and people are being subjected to, as well as denouncing the occupation, injustice, oppression, deprivation, killing and dislodgment which the Palestinians are suffering from. Added to this are the humiliation of human dignity and the abuse of the basic human rights.
 - Extending full support to Palestinian Jihad (holy war), to the holy land of Palestine and its Al-Aqsa Mosque, the first of the two Qiblahs, in its struggle for independence, and siding with it and with the Palestinian people in their perseverance.
 - Condemning the Zionist movement and the Israeli occupation for the forms of oppression and the various aspects of ugly aggression against the struggle of the Palestinian people for freedom and for the liberation of their sacred sites.
- f) Paying due attention to mechanisms proposed for discussion. They

have priority in achieving Muslim unity in stages, such as :

1. Designing educational curricula on Islamic principles
2. Formulating a joint Islamic media strategy
3. Establishing a common Islamic market
4. Establishing an Islamic Court of Justice

- g) The General Secretariat of the Islamic *Fiqh* Academy should form a committee from among its members and experts to set up practical studies that take into consideration the current situation of the Muslim Ummah. Such studies should include the cultural, social and economic aspects and put down mechanisms of achieving unity in these spheres, while benefiting from the current efforts in the framework of Arab and Muslim organizations, and seeking the assistance of experts in these various disciplines .
- h) And in order to ensure the efficiency of such a committee and the implementation of the findings of its studies, we recommend that its members and duties be approved by the Islamic Conference Organization.

*May Allah's prayers and blessings be upon our Prophet,
and upon his family and Companions.*

In the Name of Allah, the Most Beneficent, the Merciful

*Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon
Sayyidina Muhammad, the last of the Prophets and upon his Family and his
Companions*

RESOLUTION N° 99 (2/11)

ON SECULARISM

The Council of the Islamic *Fiqh* Academy, emanating from the Organization of the Islamic Conference, in its 11th session held in Manama, State of Bahrain, on 25-30 Rajab 1419 H (14-19 November 1998),

Having examined the research papers presented to the Academy in respect of "secularism" and in the light of the discussions which drew attention to the seriousness of the matter facing the Muslim Ummah,

RESOLVES

- First:** Secularism (which is the separation between religion and daily life) started as a reaction to the arbitrary acts committed by the Christian Church in the medieval ages.
- Second:** Secularism spread in the Muslim countries with the force of colonization and its stooges, and under the effect of orientalism, and thus led to the fragmentation of the Muslim Ummah, to casting doubts on the true belief and to the distortion of the bright history of our nation. It also led to the spreading of misconception among the young generation that there is discrepancy between reason and *Shari'a* texts; and thus secularism strived to replace the perfect *Shari'a* by man-made laws and promote licentiousness, moral degradation and the destruction of noble values.
- Third:** From secularism spread destructive ideologies which invaded our countries under different names, such as racism, communism, Zionism, freemasonry, etc., which led to the dissipation of the Ummah's resources and the deterioration of economic conditions,

The result was the occupation of some of our holy lands, such as Palestine and Al-Quds. This is an indication of its failure to do our Ummah any good.

Fourth: Secularism is a man-made system based on principles of atheism which run counter to Islam, in part and whole. It converges with international Zionism and calls for licentiousness. Therefore, it is an atheist sect that is rejected by Allah and His Messenger and by all the believers.

Fifth: Islam is a religion, a state and a comprehensive way of life. It is suitable for every time and every place. It does not approve of the separation between religion and life. It requires that all laws and regulations emanate from it, and that practical life follow its system whether in politics, economics, sociology, education, media, or any other sphere of life.

RECOMMENDATIONS:

The Islamic *Fiqh* Academy makes the following recommendations:

- a) Muslim rulers should confront the methods of secularizing Muslims and their countries and take the necessary measures to protect them from such methods.
- b) Muslim scholars should spread their missionary efforts to expose secularism and warn against it.
- c) Drawing up a comprehensive Islamic education plan for schools, universities, research centres and information networks to devise one formula and one educational discourse and to stress the need for the revival of the role of the mosque, to pay special attention to sermonizing, preaching and guidance, to give preachers adequate qualifications which respond to the requirements of our age, to refute misconceptions about Islam, and to protect the goals of our noble *Shari'a*.

*May Allah's prayers and blessings be upon our Prophet,
and upon his family and Companions.*

In the Name of Allah, the Most Beneficent, the Merciful

Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon Sayyidina Muhammad, the last of the Prophets and upon his Family and his Companions

RESOLUTION N° 100 (3/11)

ON

ISLAM FACE TO FACE WITH MODERNISM

The Council of the Islamic *Fiqh* Academy, emanating from the Organization of the Islamic Conference, in its 11th session held in Manama, Bahrain, on 25-30 Rajab 1419H (14-19 November 1998),

Having examined the research papers presented to the Academy in respect of "Islam face to face with global modernism" and in the light of the discussions which drew attention to the seriousness of the matter, revealed and highlighted the true nature of modernism as being an intellectual theory based on the idealization of reason, rejection of the unseen, denying inspiration and destroying everything related to beliefs, values and morals.

The most important characteristics of modernism in the opinion of those who advocate it are the following :

- Absolute reliance on reason and restriction to data of empirical science away from the Islamic Ageedah (belief).
- Complete separation between religion and all cultural, social, economic, political and charitable organizations; and hence it is allied with secularism.

Therefore, the Islamic *Fiqh* Academy makes the following recommendations:

First: Modernism, as referred to above, is an atheist concept that is rejected by Allah and His Prophet and by the believers, because it contradicts the principles of Islam and its fundamentals, regardless of the cloth it dons, namely jealousy for Islam and the pretence of reviving it.

Second: Within the canons of Islam and the characteristics of its *Shari'a*, there is enough for mankind anywhere and any time. That is because Islam is built on firm foundations without which human life cannot stand, and on variables that ensure progress and development and accommodate everything new and beneficial through Ijtihad, which is governed by and based on the various sources of Islamic legislation.

RECOMMENDATIONS

- a) The Organization of the Islamic Conference should form a committee of Muslim thinkers to monitor the phenomenon of modernism and its results and study it in a comprehensive, objective and scientific manner in order to warn against its falsehood and protect Muslim youngsters from its serious consequences.
- b) Muslim rulers should use all means to repel the mischievous methods of modernism and take the necessary measures to protect their countries and Muslim citizens from it.

*May Allah's prayers and blessings be upon our Prophet,
and upon his family and Companions.*

In the Name of Allah, the Most Beneficent, the Merciful

*Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon
Sayyidina Muhammad, the last of the Prophets and upon his Family and his
Companions*

RESOLUTION N° 101 (4/11)

ON DEBT SALE AND LOAN DEBENTURES AND THEIR ISLAMIC SUBSTITUTES IN PUBLIC AND PRIVATE SECTORS

The Council of the Islamic *Fiqh* Academy, emanating from the Organization of the Islamic Conference, in its 11th session held in Manama, Bahrain, on 25-30 Rajab 1419 H (14-19 November 1998) ,

Having examined the research papers presented to the Academy in connection with the issue of "*Debt sale and loan debentures and their Islamic substitutes in public and private sectors*", and in the light of the discussions which drew the attention of the participants to the fact that this issue is one of the critical issues in the area of modern Islamic transactions,

RESOLVES:

- First:** It is not permissible to sell a deferred debt by the non-debtor for a prompt cash, from its type or otherwise, because this results in *Riba* (usury). Likewise, it is not permissible to sell it for a deferred cash, from its type or otherwise, because it is similar to the sale of a debt for a debt, which is prohibited in Islam. There is no difference whether the debt is the result of a loan or whether it is a deferred sale.
- Second:** Emphasizing the Academy's Resolution no. 60/11/6, in respect of bonds, issued during its Sixth Conference held in Saudi Arabia on 17-23 Sha'ban 1410 (14-20 March 1990) and on Paragraph 3 of the

Academy's Resolution no. 64/2/7 in respect of discounting commercial papers, carried during its Seventh Conference held in Saudi Arabia on 7-12 Dhul Qi'da 1412 H (9-14 May 1992).

Third: The Academy reviewed other forms of the debt sale, and thought it better to postpone taking decisions thereupon in order to conduct further research. It also requested the General Secretariat to form a committee entrusted with the task of studying such forms and suggest alternatives which are acceptable by Islam for the debt sale so that they can be proposed again to the Academy during a coming session.

*May Allah's prayers and blessings be upon our Prophet,
and upon his family and Companions.*

In the Name of Allah, the Most Beneficent, the Merciful

Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon Sayyidina Muhammad, the last of the Prophets and upon his Family and his Companions

RESOLUTION N° 102 (5/11)

ON **CURRENCY TRADING**

The Council of the Islamic *Fiqh* Academy, emanating from the Organization of the Islamic Conference, in its 11th session held in Manama, Bahrain, on 25-30 Rajab 1419 H (14-19 November 1998),

Having examined the research papers presented to the Academy in connection with the issue of "*Currency Trading*" and having listened to the discussions which took place about this subject,

RESOLVES

- First:** Confirming the Academy's Resolution no. (21/9/3) in respect of banknotes and the change in the value of currency, Resolution no. (63/1/7) in respect of stock exchanges, paragraph (Three): trading in commodities, currencies and indexes of organized markets, Resolution no. (2) on trading in currencies, and Resolution no. 53 (4/6) in respect of receipt of money, paragraph (Two): (1-c).
- Second:** It is not permissible in *Shari'a* to sell currencies by deferred sale, and it is not permissible, still, to fix a date for exchanging them. This is evidenced in Qur'an, Sunnah and Ijma' (the consensus of the Muslim Ummah).
- Third:** *Riba* (usury), trading in currencies, and exchange of currencies that do not comply with the principles of Islamic *Shari'a* are among the most important reasons for the financial crises and economic fluctuations which have gripped some countries.

RECOMMENDATIONS

The Islamic Fiqh Academy makes the following recommendation:

- It is incumbent upon Muslim governments to exercise control over money markets and oblige them to regulate their activities, which are carried out in currencies and other transactions, in accordance with the principles of Islamic *Shari'a*, because these principles are the safety valve against economic disaster.

*May Allah's prayers and blessings be upon our Prophet,
and upon his family and Companions.*

In the Name of Allah, the Most Beneficent, the Merciful

Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon Sayyidina Muhammad, the last of the Prophets and upon his Family and his Companions

RESOLUTION N° 103 (6/11)

ON
MAINTENANCE CONTRACT

The Council of the Islamic *Fiqh* Academy, emanating from the Organization of the Islamic Conference, in its 11th session held in Manama, Bahrain, on 25-30 Rajab 1419 H (14-19 November 1998),

Having examined the research papers presented to the Academy in connection with the issue of "*Maintenance contract*" and having listened to the discussions that took place about it,

RESOLVES

First: A maintenance contract is an independent new concept to which the general rules of contracts apply. Its regulation and jurisprudential ruling vary according to its form. It is in fact a compensation contract which involves an undertaking by one party to inspect and repair, periodically or whenever there is an emergency, a machine or anything else for a specific period of time in return for a specific compensation. The maintenance contractor may undertake to provide labour only or labour as well as spare parts.

Second: A maintenance contract has many forms, among which those which have been explained above, namely:

1. A maintenance contract that is not related to another contract, whereby the maintenance contractor undertakes to provide labour only, or to provide ordinary materials which the contracting parties usually do not take into consideration. This contract is regulated as *Ijarah* (hire) contract to provide labour, and it is a contract permissible by *Shari'a*, provided that the period of labour

and wages are known.

2. A maintenance contract that is not related to another contract, whereby the maintenance contractor undertakes to provide labour, while the client undertakes to provide materials. The regulation and jurisprudential ruling of this form are the same as those of the first one.
3. Conditional maintenance in the sale contract which is to be provided by the seller for a specific period of time. This is a contract in which sale and condition are combined, which is permissible in *Shari'a*, whether maintenance is with or without the provision of materials.
4. Conditional maintenance in the Ijarah (hire) contract which is to be provided by both parties of the contract. This is a contract in which Ijarah (hire) and condition are combined. The ruling of this form of contract is that maintenance, if it is of the type which is contingent upon the fulfillment of benefit, then it is binding to the owner of the hired property without any condition. However, it should not be imposed as an obligation on the client. As for maintenance which is not contingent upon the fulfillment of benefit, it may be imposed as an obligation for either party, if it is specified in a manner that precludes ignorance. There are other forms of contracts which the Academy decides to postpone for further study and research.

Third: In all forms, maintenance should be specified in a manner which precludes ignorance that leads to dispute. This also applies to the specification of materials if they are to be supplied by the maintenance contractor. Likewise, wages should be specified in all cases.

*May Allah's prayers and blessings be upon our Prophet,
and upon his family and Companions.*

In the Name of Allah, the Most Beneficent, the Merciful

Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon Sayyidina Muhammad, the last of the Prophets and upon his Family and his Companions

RESOLUTION N° 104 (7/11)

ON **WAYS OF MAKING USE OF NAZILAHS (FATWAS)**

The Council of the Islamic *Fiqh* Academy, emanating from the Organization of the Islamic Conference, in its 11th session held in Manama, Bahrain, on 25-30 Rajab 1419 H (14-19 November 1998),

Having examined the research papers presented to the Academy in connection with the issue of "*Ways of making use of Nazilahs (Fatwas)*" and having listened to the discussions which took place about it,

RESOLVES:

1. Making use of the heritage of *Fiqh fatwas* (Nazilahs) of all their forms in finding solutions to contemporary issues, whether in connection with the methodology of fatwa in the light of the general rules of Ijtihad (personal reasoning), Istinbat (inference), takhreej (interpretation) and *Fiqh* rules, or in connection with *Fiqh* branches which Faqeehs (scholars of *Fiqh*) had previously dealt with issues similar to them in practical applications in their times.
2. Editing the most important *Fiqh* books, and reviving the auxiliary *Fiqh* books, such as "*Al-Tanbihat 'ala Al-Mudawwanah*" by Al-Qadi Iyadh, "*Al-Barnama'f*" (*The Programme*) of Sheikh 'Adhoom, "*Fatawa*" by Al-Imam Al-Ghazali, "*Taqweem Al-Nadar*" by Ibn Al-Dahhan, and books on the Maliki school of *Fiqh* and its science capitals, such as Fez, Al-Qayrawan and Qurtuba, "*Ma'roodhat*" by Abu Al-Su'ood, and such other books which are a way of showing the vitality of *Fiqh*.
3. The preparation of a detailed book explaining the principles of making *fatwas* and the methodology of Muftis (the Muslim scholars who make

fatwas), the terminology of the various schools of *Fiqh*, the ways of tarjeeh (preponderance) and takhreej (interpretation) established in each school of *Fiqh*, including the collection of what is commonly in practice in the Malikite and other schools of *Fiqh*, and publishing the book entitled "*Al-Madkhal ila Fiqh Al-Nawazil*" by the Chairman of the Academy.

4. Introducing other fatwa books in which the *Fiqh* rules are clearly defined in order to get to the rules on which the fatwa is based but which are not included in *Fiqh* writings.

RECOMENDATIONS

1. Extreme precaution should be made against the *fatwas* that are not backed by a principle of *Shari'a* or based on evidence accepted by *Shari'a* but are based only on illusory benefit refuted by Islam and springing from fancies and is influenced by circumstances, conditions and customs that are in conflict with the principles, tenets and objectives of *Shari'a*.
2. Calling on those who are responsible for *fatwas*, namely Muftis, bodies and committees, to take the resolutions and recommendations of *Fiqh* Academies into consideration, in an endeavour to regulate, co-ordinate and unify *fatwas* in the entire Muslim world .
3. Restricting the issuing of *fatwas* to people who are known for their scholarship, knowledge, righteousness and fear of Allah, the Almighty.
4. Those who issue *fatwas* should respect the regulations stated by the ulema (Muslim scholars of *Shari'a*) concerning the issuing of fatwa, particularly the following:
 - a) Abiding by evidence from Qur'an, Sunnah, Ijma' (consensus of the Muslim Ummah), Qiyas (analogy), and other evidence from *Shari'a*, in addition to abiding by the rules of Takhreej (looking for evidence) and those of Istinbat (interpretation).
 - b) Paying attention to priorities in bringing about good and staving off evil.
 - c) Taking into consideration the real, material world, the customs and

changes of environments and circumstances which do not clash with any of the fundamentals of *Shari'a*.

- d) Going along with the circumstances of the progress of civilization which combine both genuine interest and compliance with the rules of *Shari'a*.

*May Allah's prayers and blessings be upon our Prophet,
and upon his family and Companions.*

In the Name of Allah, the Most Beneficent, the Merciful

*Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon
Sayyidina Muhammad, the last of the Prophets and upon his Family and his
Companions*

RESOLUTION N° 105 (8/11)

ON
GENETICS, GENETIC ENGINEERING
AND THE HUMAN GENOME :
AN ISLAMIC PERSPECTIVE

The Council of the Islamic *Fiqh* Academy, emanating from the Organization of the Islamic Conference, in its 11th session held in Manama, Bahrain, on 25-30 Rajab 1419 H (14-19 November 1998),

Having examined the research papers presented to the Academy in connection with the issue mentioned above, and the resolutions and recommendations of the 11th *Fiqh* Medical Symposium held by the Islamic *Fiqh* Academy in Jeddah, the Islamic Organization for Medical Sciences in Kuwait, the Regional Office of the World Health Organization in Alexandria and the Islamic Organization for Education, Science and Culture on 23-25 Jumada Al-Thaniya 1419 H (13-15 October 1998) in Kuwait,

RESOLVES to postpone discussion of this subject waiting for further study and research.

*May Allah's prayers and blessings be upon our Prophet,
and upon his family and Companions*

In the Name of Allah, the Most Beneficent, the Merciful

Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon Sayyidina Muhammad, the last of the Prophets and upon his Family and his Companions

RESOLUTION N° 106 (9/11)

ON
THE EXPERTS SEMINAR ON THE ROLE OF WOMEN
IN DEVELOPING THE MUSLIM SOCIETY

The Council of the Islamic *Fiqh* Academy, emanating from the Organization of the Islamic Conference, in its 11th session held in Manama, Bahrain, on 25-30 Rajab 1419 H (14-19 November 1998),

Having deliberated the above-mentioned topic and debating it,

RESOLVES to postpone taking decision thereupon for further study. For this purpose, it set out a committee including Sheikh Dr. Bakr Bin Abdullah Abu Zayd, Chairman of the Academy Council, Sheikh Mohamed Ali Al-Taskhiri and Qadhi Mohamed Taqi Usmani. This Committee shall submit its report for discussion to the Academy's next session.

*May Allah's prayers and blessings be upon our Prophet,
and upon his family and Companions.*

**RESOLUTIONS & RECOMMENDATIONS
OF THE TWELFTH SESSION OF
THE ISLAMIC FIQH ACADEMY
HELD IN RIYADH (KINGDOM OF SAUDI ARABIA)**

During 25 Jumad Thani - 1st Rajab 1422 H (23 — 28/9/2000)

In the name of God, Most Gracious, Most Merciful

Praise be to Allah the Lord of the Universe, and blessing and peace be upon our Master Mohammed the last of the Prophets, and upon all his kin and companions

**Resolution No. 107 (1/12)
On "Delivery and Tendering Contracts"**

The Council of the Islamic Fiqh Academy of the Organization of the Islamic Conference, in its Twelfth Session held in Riyadh (Kingdom of Saudi Arabia) during the period from the 25th of *Jumad Thani* — to the 1 of *Rajab* 1421 H (23 -28/9/2000),

And having looked into the research papers on *Delivery and Tendering Contracts* submitted to it, and listening to the discussions of its members, experts and a number of *Fuqaha'a* on the subject,

Decides the following:

1. Delivery Contract (*Aqdul Tawreed*)

- Firstly:** Delivery Contract is a contract according to which the first party undertakes to deliver, at specific periods of time, successive amounts of a well known commodity to another party, against a certain amount of money either totally or partially payable in the future.
- Secondly:** If the commodity in question is of the type that needs to be manufactured, the contract is *Istisna'a* and should abide by the *Istisna 'a* rulings as stipulated in Resolution No. 65(3/7) of the Academy.
- Thirdly:** If the commodity is not of the type that needs manufacturing and if it is a well defined commodity that should be delivered at a specific date in the future, the contract may take one of two forms
- A) *When the orderer pays the whole price at the time of signing the contract.*** In this case the contract can be subjected to the *Shari 'ah* rulings on *Salam* and thus becomes permissible as stipulated in Resolution No. 85 (2/9) of the Academy.

B) *When the orderer does not pay the whole price at the time of signing the contract* The contract here becomes impermissible if it is based on exchange of binding promises (*Mua 'adah*) between the two parties. Impressibility of such arrangement, as indicated in Resolution No. (40 — 41) of the Academy, is due to the fact that exchange of enforceable promises between any two parties is similar to concluding a contract. Hence a sale contract concluded in this manner would entail the prohibited practice of selling a debt for a debt.

If, however, the promises exchanged between the two parties are not binding to one or both of them, the deal becomes permissible, yet the sale has to be finally concluded with either a new contract or on spot at the time of delivery.

2. Tendering Contracts

- Firstly:** Tendering is a means of reaching the lowest price offer for providing a good or service. The party who demands the good or service calls offers from interested suppliers according to given conditions and specifications.
- Secondly:** Tendering is permissible in *Shari'ah*. It resembles Auctioning and needs to observe all its *Shari'ah* stipulations. This is so whether Tendering is public or limited, internal or external, open or confidential. Resolution No. 73 (8/4) on this subject has been passed by the Eighth Session of the Academy.
- Thirdly:** It is permissible to restrict Tendering to officially classified tenderers or those who obtain government licenses, provided that such classification or licensing is founded on fair grounds.

And Allah (S W. T) knows better

In the name of God, Most Gracious, Most Merciful

Praise be to Allah the Lord of the Universe, and blessing and peace be upon our Master Mohammed the last of the Prophets, and upon all his kin and companions

**Resolution No. 108 (2/12)
On "Credit Cards"**

The Council of the Islamic Fiqh Academy of the Organization of the Islamic Conference in its Twelfth Session held in Riyadh (Kingdom of Saudi Arabia) during the period from the 25th of Jumad Thani to 1st of Rajab 1421 H (23 — 28/9/2000),

And on the basis of its Resolution No. 65/1/7 on Financial Markets which decreed postponement of passing a final decision on the issue of Credit Cards to a forthcoming session,

And in view of its Resolution No. 102/4/10,

And after studying the research papers on *Credit Cards*, submitted to it, and listening to the discussions of the *Fuqaha'a* and economists,

And in view of its Resolution No. 63/1/7 which defines the Credit Card as:

A document that its issuer (issuing bank) gives to a natural or legal person (card bearer) according to a contract between them. The card bearer becomes able, by virtue of this arrangement, to purchase goods or services from those who recognize the card without immediate payment of the price as commitment will thus fall on the issuer. Payment is made from the account of the issuer who will afterwards charge the card bearer at regular time intervals. Some issuers used to impose usurious interest on the total outstanding balance that the bearers owe to them, after due date of payment, while other do not,

Decides the following:

Firstly: It is impermissible in *Shari 'ah* to issue a Credit Card or use it if its conditions include imposition of usurious interest. This is so even if the card bearer has the intention to pay within the moratorium period that precedes imposition of interest.

Secondly: It is permissible in *Shari 'ah* to issue Credit Cards that do not carry a condition of imposing interest on the debt. Permissibility of this deal entails also two further considerations:

- A) Permissibility for the issuer to take from the bearer a specific amount of money at the time of issuing or renewal of the Card. Such amount constitutes the actual fee that the issuer deserves according to the services it provides to the bearer.
- B) Permissibility for the issuer to take a commission on the goods or services purchased by the bearer, provided that such goods or services are sold at the same price whether in cash or credit.

Thirdly: Using Credit Cards for cash drawing results in a loan from the issuer to the bearer and is permissible if it does not entail payment of usurious interest. The fixed amount of money to be taken by the issuer as a fee for his actual services, and which has nothing to do with the loan amount or duration is not considered as usurious. However, any charge over and above this fixed amount is impermissible because it is usurious as indicated in Resolutions No. 13 (10/2) and 13 (1/3) of the Academy.

Fourthly: It is impermissible to use Credit Cards for purchasing gold, silver or currencies.

And Allah (S. W. T) knows better

In the name of God, Most Gracious, Most Merciful

Praise be to Allah the Lord of the Universe, and blessing and peace be upon our Master Mohammed the last of the Prophets, and upon all his kin and companions

**Resolution No. 109 (3/12)
On "Penalty Provision"**

The Council of the Islamic Fiqh Academy of the Organization of the Islamic Conference in its Twelfth Session held in Riyadh (Kingdom of Saudi Arabia) during the period from the 25th of *Jumad Thani* to 1st of *Rajab* 1421 H (23 — 28/9/2000),

And after considering the research papers on *Penalty Provision* presented to it, and listening to the discussions of its members, experts and some other *Fuqaha 'a*, ***Decides the following:***

Firstly: A **Penalty Provision** in legal terminology is a condition agreed to by the two parties of a contract as to how compensation stipulated for one of them in case of default or delay from the part of the other can be assessed.

Secondly: The Council confirms its previous resolutions regarding Penalty Provision including the following:

- Its Resolution No. 85 (2/9) on *Salam* which stipulates that "*it is impermissible to include a Penalty Provision for delay of providing the commodity since a commodity sold through Salam is a debt and it is impermissible to impose an additional charge for delayed repayment of debt.*"
- Its Resolution No. 65 (3/7) on *Istisna 'a* which stipulates that "*It is permissible to include a penalty provision in the Istisna 'a contract except for inevitable circumstances.*"
- Its Resolution No. 51 (2/6) on Installment Sale which stipulates that "*When the purchaser delays payment of due installments no additional charge should be imposed on him whether by virtue of a predetermined condition or otherwise. Such a practice amounts to commitment of prohibited usury.*"

Thirdly: It is permissible to include the Penalty Provision in the original contract or make it as a separate agreement that succeeds the contract and precedes the occurrence of the anticipated loss.

Fourthly: It is permissible to include a Penalty Provision in all financial contracts except when the original commitment is a debt. Imposing a Penalty Provision in debt contracts is usury in the strict sense.

Consequently, it is permissible, for instance, to make a Penalty Provision on the contractor in contractual agreements, the deliverer in delivery contracts and the manufacturer in Istina 'a contracts who fails to or delay in meeting his commitments.

Whereas it is impermissible, for instance, to make a Penalty Provision in Installment Sale on a debtor who delays repayment of outstanding installments, whether due to insolvency or payment evasion. It is also impermissible to impose such a provision in the Istisna 'a contract on a purchaser who delays or fails to meet his obligations.

Fifthly: The loss that may be compensated includes actual financial loss incurred by the partner, any other material loss and the certainly obtainable gain that he misses as a result of his partner's default or delay. It does not include moral losses.

Sixthly: The Penalty Provision should become null and void when the concerned partner proves that his failure to meet obligations was due to reasons that fall out of his control, or when he proves that no loss has been incurred by his partner as a result of his breach of the contract.

Seventhly: The Court may, if so required by one of the two parties, adjust the amount of the compensation, subject to a reasonable justification, or when the compensation proves to be exaggerated.

Recommendation:

The Council recommends convening of a specialized seminar to work out the conditions and arrangements that could enable the Islamic banks to guarantee collection of their outstanding debts.

And Allah (S. W. T) knows better

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

Praise be to Allah the Lord of the Universe, and blessing and peace be upon our Master Mohammed the last of the Prophets, and upon all his kin and companions

Resolution No. 110 (4/12)
On "Lease Ending with Ownership and Leasing Bonds"

The Council of the Islamic Fiqh Academy of the Organization of the Islamic Conference in its Twelfth Session held in Riyadh (Kingdom of Saudi Arabia) during the period from the 25th of *Jumad Thani* to 1st of *Rajab 1421 H* (23 — 28/9/2000),

And after considering the research papers on *Lease Ending with Ownership and Leasing Bonds* submitted to it, and listening to the discussions of its members, experts and some other *Fuqaha'a*,

Decides the following:

1. Lease Ending with Ownership

Firstly: The criteria for permitted and prohibited forms are as follows:

- A) Prohibition Criterion
When the deal involves conclusion of two different contracts at the same time, for the same commodity and for the same duration.
- B) Permissibility Criteria:
 - 1. The presence of two contracts that are totally separate and independent with respect to time of their conclusion and in which the sale contract succeeds the lease contract, or the presence of a promise that would enable the lessee to become the owner at the end of the contract period. In this connection Option and Promise stand on equal footing with regard to their *Shari 'ah* rulings.
 - 2. There should be a genuine desire from the two parties to conclude the lease contract and not just to use it as a mere veil for the sale contract.
 - 3. The leased property should be guaranteed by the owner and not the lessee. In this sense the owner should bear any damage that is not caused by misuse or negligence of the lessee. The lessee has to bear nothing even if such damage has made the property completely useless.

4. If the contract includes insurance of the property, insurance should be made according to the Islamic methods and at the expense of the owner alone.
5. Throughout the lease period the contract should be subjected to *Shari 'ah* rulings on *Ijarah*, whereas *Shari 'ah* rulings on Ownership should be observed when ownership of the property is shifted to the lessee.
6. The cost of maintenance, excluding operational expenses, should be borne by the lessee throughout the lease period.

Secondly: Some Prohibited Forms of the Contract:

- A) A Lease Ending with Ownership contract that leads to transfer of ownership to the lessee against the amounts of rent he pays during the contract period, without signing a separate sale contract. In other words, when the same lease contract automatically changes into a sale contract.
- B) A lease contract according to which the property is given to the lessee against a specific amount of rent and for a specific period of time, coupled with a sale contract that becomes effective only when the lessee pays the whole amount of rent agreed upon, or at a certain date in the future.
- C) An appropriate lease contract including an option for the owner to sell the property to the lessee, at the end of the leasing period.

The above juristic opinions have been adopted in the resolutions of various *Shari 'ah* boards including the Board of Eminent *Shari 'ah* Scholars of the Kingdom of Saudi Arabia.

Thirdly: Some Permissible Forms of the Contract

- A) A lease contract that enables the lessee to make use of the leased property against a specific amount of rent and for a specific period of time, along with a separate contract offering the property as a gift to the lessee. The latter contract becomes effective at the end of the lease period and when the lessee has paid all the amounts of rent agreed upon. A promise from the owner to give the property as a gift to the lessee, after the lease period and full payment of due rent, is also acceptable (as per Resolution No. 13/1/3 on *Hibab* which has been passed by the Council in its Third Session).
- B) A lease contract offering the option to the lessee to purchase the property, after the lease period and full payment of due rent, at

the then prevailing market price (as per Resolution No. 44 (6/5) issued by the Council in its Fourth Session).

- C) A lease contract that enables the lessee to make use of the leased property against a specific amount of rent and for a specific period of time coupled with a promise from the owner to sell the property to the lessee, after full payment of due rent, at a price to be mutually agreed on
- D) A lease contract that enables the lessee to make use of the leased property for a specific amount of rent and a specific period of time, while the owner gives the option to the lessee to own the property at any time if he so wishes. The sale, in this case, is to be made according to a new contract on due time and at the then prevailing market price (as per Resolution No. 44/6 (5) of the Council), or at any other price to be agreed upon at the time of concluding the sale contract.

Fourthly: There are some other forms of Lease Ending with Ownership that still remain controversial among Muslim jurists. Such forms need a thorough study to be presented to the Council in one of its forthcoming sessions.

2. Leasing Bonds

The Council recommends preparation of more researches and studies on this subject so as to be considered in one of its forthcoming sessions.

And Allah (S. W. T) knows better

In the name of God, Most Gracious, Most Merciful

Praise be to Allah the Lord of the Universe, and blessing and peace be upon our Master Mohammed the last of the Prophets, and upon all his kin and companions

**Resolution No. 111(5/12)
On "Investment of Awqaf Resources"**

The Council of the Islamic Fiqh Academy of the Organization of the Islamic Conference in its Twelfth Session held in Riyadh (Kingdom of Saudi Arabia) during the period from the 25th of *Jumad Thani* to 1st of *Rajab 1421 H* (23 — 28/9/2000),

And having looked into the research papers on *Investment of Awqaf Resources* submitted to it, and listening to the discussions of its members, experts and some other *Fuqaha 'a*,

Decides the following:

Postponement of the subject for further research and study specially with regard to the following aspects:

1. Investment of Waqf Resources.
2. Dedicating Money as Waqf.
3. Changing the Original Function of the Waqf.
4. Merging Awqaf Properties
5. The difference between a Waqf and a Trust.

And Allah (S. W. T) knows better

In the name of God, Most Gracious, Most Merciful

Praise be to Allah the Lord of the Universe, and blessing and peace be upon our Master Mohammed the last of the Prophets, and upon all his kin and companions

Resolution No. 112(6/12)
On "Establishing Legal Proofs on Inferences and Signs "

The Council of the Islamic Fiqh Academy of the Organization of the Islamic Conference in its Twelfth Session held in Riyadh (Kingdom of Saudi Arabia) during the period from the 25th of *Jumad Than'* to 1st of *Rajab* 1421 H (23 — 28/9/2000),

And having looked into the research papers on "*Establishing Legal Proofs on Inferences and Signs*" submitted to it

Decides:

Postponement of this subject to be discussed in one of the forthcoming sessions of the Council. The Council should restrict its research to a comprehensive presentation of the new issues and their respective *Shari'ah* rulings.

And Allah (S. W. 7) knows better

In the name of God Most Gracious, Most Merciful
Praise be to Allah the Lord of the Universe, and blessing and peace be upon our
Master Mohammed the last of the Prophets, and upon all his kin and companions

Resolution No. 113(7/12)
On "Children and Aged Rights "

The Council of the Islamic Fiqh Academy of the Organization of the Islamic Conference in its Twelfth Session held in Riyadh (Kingdom of Saudi Arabia) during the period from the 25th of *Jumad Thani* to 1st of *Rajab* 1421 H (23 — 28/9/2000),

And having looked into the research papers **on Children and Aged Rights submitted to it, and** the Recommendations of the Medical & *Fiqhi* Seminar on Aged Rights held in the State of Kuwait under the auspices of the Academy and the Islamic Organization for Medical Sciences of Kuwait, during 9 — 12 *Rajab* 1420H (18 — 21/10/1999),

And in view of the discussions of its members, experts and other *Fugaha'a* on the subject,

Declares that:

Firstly: Children Rights in Islam:

Preservation of childhood is a fundamental prerequisite of a morally stable society. This is why Islam has given much care to observation of Children Rights, by urging upon people to get married and advising each of the two couples to be very cautious when selecting his spouse, in order to guarantee a stable and healthy family environment.

The Council Therefore Decides the Following:

1. Protection of the fetus in the womb of its mother against all types of practices that may turn out to be harmful to it or to the mother such as alcohol and drugs, is a vital requirement in any Muslim society.
2. A fetus acquires the right to survive since the beginning of its formation. Hence, it should not be subjected to hazardous acts like abortion, deformation or any other injury.
3. Following his birth, every child obtains several material and moral rights. His material rights include, among others, rights of ownership, inheritance, bequest, gift and *Waqf* whereas his moral rights include the right of having a good name, a kin, a religion and a country.

4. The society and the state should guarantee all children rights for orphan, foundling, homeless and war-victim children who have no one to support them.
5. A child has the right of enjoying natural suckling up to the age of four years.
6. A child has the right of being nursed and brought up in an appropriate and healthy familial environment. His mother, if capable, is the most suitable person to look after him, followed by his other kin in the order prescribed by *Shari 'ah*.
7. Guardianship on self and property of the child, whether from the part of relatives or legal authority, is an indispensable right for him. Such right should be guaranteed for him as long as he is below the age of maturity. On maturity he should be left free to manage his own affairs.
8. Appropriate upbringing, moral commitment, education, training, gaining experience, self-dependency and acquiring of skills in *Shari 'ah*-accepted professions are among the most fundamental rights of children. Moreover, gifted children should be given special care in order to develop their outstanding skills. All the above should be sought within the confines of *Shari 'ah* directives.
9. Islam prohibits negligence of children whether from the part of the parents or whoever else, so as to safeguard them against vagrancy and loss. It also prohibits exploitation of children by putting them to works that lead to abuse of their physical, mental or psychological abilities.
10. Aggression against beliefs, personalities, honor, properties and minds of children is a serious crime in Islam.

Secondly: Aged Rights:

Islam has given much care to human being at the various stages of his age. Honoring of all descendants of *Adam* is a well-emphasized aspect of the Islamic *Shari 'ah* as Allah (S. W. T.) says in the holy Quran: "We have honoured the sons of Adam" (17:70), and He also says "Thy Lord hath decreed that ye worship none but Him and that ye be kind to parents" (17:23). In this regard also the Prophet Mohammed (P. B. U. H.) says "Every youth who honors an aged for the sake of being so, Allah will make somebody else do the same with him at that age" (Narrated by Tirmithi). The Prophet (P. B. U. H.) also says "Alienated from us, he who neither confers mercy upon our young nor acknowledges the honor of our aged" (Narrated by Tirmithi and Ahmed in his *Mosnad*).

Therefore, the Council decides the following:

1. An aged should be enlightened about what he needs to do in order to enjoy a healthy physical, spiritual and social life. He should also be enlightened about the *Shari 'ah* rulings and directives which guide him in discharging of his religious and social commitments and make him entitled to blessing and reward from Allah (S. W. T.).
2. The aged should have a role to play in their societies and should enjoy all human rights.
3. The family is the best place where an aged can enjoy a happy life. In such environment the .aged will be in a position to get support from his sons, grandsons, relatives, friends and neighbors. For those who have no families to stay with, the family environment has to be made available to them at the aged hostel.
4. Educational systems and mass media should be used for boosting public awareness about the position of the aged and their rights with special emphasis on filial piety.
5. Aged hostels should be established for hosting those who have no person to support them, or those whose families are unable to support them.
6. More consideration should be given to promotion of Geriatric studies in medical colleges and health institutes, training physicians on diagnosis and treatment of geriatric diseases and establishing specialized centers for such diseases in the hospitals.
7. The ,aged should have their special seats in the means of public transportation and public places and their special area in car parks.

Recommendation:

The Council recommends adopting the Kuwait Declaration on the Aged Rights.

And Allah (S. W. I) knows better

In the name of God, Most Gracious, Most Merciful

Praise be to Allah the Lord of the Universe, and blessing and peace be upon our Master Mohammed the last of the Prophets, and upon all his kin and companions

Resolution No. 114(8/12)
The Islamic Declaration
On "Role of Woman in Development of Muslim Society "

The Council of the Islamic Fiqh Academy of the Organization of the Islamic Conference in its Twelfth Session held in Riyadh (Kingdom of Saudi Arabia) during the period from the 25th of *Jumad Thani* to 1st of *Rajab* 1421 H (23 – 28/9/2000),

And having considered the recommendations of the Expert Seminar on "*Role of Woman in Development of Muslim Society*" held in Tehran (The Islamic Republic of Iran) during the period 17 – 19 *Dhul Qa'da* 1415H (17 – 19/4/1995) in pursuit of Resolution No. 10/7 of the Seventh Islamic Summit, which has been amended by the *Fatwa* Committee in the Ninth and Tenth Sessions of the Council,

And in order to confirm the values that have been conferred by Islam upon Woman, and violated by the international conferences on the subject particularly those of Cairo and Beijing and the others that came afterwards,

And in the light of the previous Islamic declarations against such abominable campaigns,

Decides the following:

Firstly: One of the objectives of Islam is to build a society in which both man and woman have a vital role to play in the process of development. For this reason Islam has given woman her full rights which conform to her character, abilities, needs, aspirations and basic role in life. In Islam the society is considered as one unit within which the integrant roles of man and woman are to be determined. The Holy *Quran* and the *Sunnah* also emphasize the unity of the Islamic *Ummah* as a whole, spell out the distinct characteristics of man and woman and specify the position of each of them in the Muslim society.

Secondly: A family that is based on *Shari 'ah*-sanctioned marriage constitutes the cornerstone of a healthy society. Therefore, Islam prohibits any other form of constituting a family. It also prohibits any other alternative relationship that falls beyond *Shari 'ah* boundaries. Woman, by virtue of motherhood and other characteristics plays a vital role in the stability and prosperity of the family.

Thirdly: Motherhood is one of the natural functions of woman, which she can not perform unless she obtains all the rights sanctioned to her by Islam.

Fourthly: Woman and man are equal in the sense that both of them enjoy the honor of belonging to humanity. Moreover woman has various rights and obligations that conform to her nature, abilities and character. Although man and woman have different natural characteristics, yet the responsibilities assigned to them are viewed as complementary in Islamic *Shari 'ah*.

Fifthly: The Council calls for respect of woman in all fields of life and denies all offensive practices that she suffers from at present times such as familial violence, sexual exploitation, licentious practices, prostitution, procurement and inducement of woman to commit adultery. Such practices are quite prevalent in the societies that degrade woman and disregard her *Shari 'ah*-sanctioned rights. Islam is sacrosanct of all these detestable practices.

Sixthly: Information media should be used to enhance the positive role of woman in society and deny all forms of woman exploitation such as using her as a means in shameful presentations of commercial advertisement and thus abusing her character and dignity.

Seventhly: A great deal of effort should be exerted in order to alleviate sufferings of women especially Muslim women who still remain as victims of armed struggles, colonization, poverty and economic pressures.

Eighthly: Comprehensive and sustainable development can be achieved only on a solid religious and moral basis. This necessitates rejection of all attempts to impose foreign cultural and social concepts on the society and condemnation of the continuous attacks against *Shari 'ah* rulings that relates to woman.

Ninthly: The Council categorically denies the practices of some governments in preventing Muslim women from adhering to their religion and observing its directives like, for instance, putting on a face veil in observance of modesty.

Tenthly: Attempts should be made to separate female educational institutions at all levels from those of male, so that women students can enjoy all their *Shari 'ah*-sanctioned rights and be able to adhere to the instructions of their religion.

Eleventhly: The original teachings of the Islamic *Shari 'ah* is the only source that should be referred to for interpretation of and elaboration on the clauses of this declaration.

And Allah (S. W. T) knows heifer

In the name of God, Most Gracious, Most Merciful
Praise be to Allah the Lord of the Universe, and blessing and peace be upon our
Master Mohammed the last of the Prophets, and upon all his kin and companions

Resolution No. 115(9/12)
On "Inflation and Change of Currency Value"

The Council of the Islamic Fiqh Academy of the Organization of the Islamic Conference in its Twelfth Session held in Riyadh (Kingdom of Saudi Arabia) during the period from the 25th of *Jumad Thani* to 1st of *Rajab* 1421 H (23 — 28/9/2000),

And having considered the recommendations, suggestions and final declaration of the *Fiqhi* and Economic Seminar on Issues of Inflation (in its three sessions of Jeddah, Kuala Lumpur and Manama),

And after listening to the discussions of its members, experts and some Muslim *Fuqaha'a* on the subject,

Decides the following:

Firstly: Reconfirmation of Resolution No. 42 (4/5) of the Council, which states that:

'In principle debts that have already been created in terms of a certain currency should be repaid in terms of that same currency and not in terms of an equivalent value, because a debt has always to be settled with its exact similar. It is therefore impermissible to link the already existing debts, whatever their source might be, to price level "

Secondly: It is permissible for the two parties, and as a precautionary measure against an expected inflation, to make the debt in terms of a means other than the currency that will encounter a fall in value. Debt in this case can be made in terms of one of the following:

- A) Gold or silver
- B) A homogeneous commodity
- C) A basket of homogeneous commodities
- D) Another more stable currency
- E) A basket of currencies

The amount repaid in the above forms should be exactly similar to the original debt (with regard to amount and type of currency), as the borrower should be indebted with no more than what he has received actually.

The above stated forms differ totally from the prohibited arrangement in which the two parties first specify the debt amount in terms of a certain currency, and then agree that repayment should be made in terms of another stable currency or basket of currencies (Indexation). This later arrangement has been strictly prohibited by Resolution No. 75 (6/8 — Fourthly) of the Academy.

Thirdly: It is impermissible in *Shari 'ah* at the time of concluding the debt contract to link the repayable amount to one of the following:

- A) An accounting currency
- B) Cost of living index or any other index
- C) Gold or silver
- D) The price of a certain commodity
- E) Growth rate of Gross National Product (GNP)
- F) Another currency
- G) Interest rate
- H) Price of a basket of commodities

Indexation in this way is prohibited because it involves a great deal of *Gharar* and *Jahalah* (uncertainty and-lack of information), since both parties will not be in a position to know what will be the commitment at the end. Such lack of information violates one of the fundamental conditions of the contract validity. If the indicator used for indexation happens to show an increase, this will lead to discrepancy between the original debt amount and the amount to be repaid i. e. to commitment of usury.

Fourthly: Indexation of Salaries and Rents:

- A) Reconfirmation of Resolution No. 75 (6/8) Clause: Firstly, which stipulates permissibility of indexation of salaries according to change in the price level.
- B) It is permissible for the contract parties, in case of long period leasing of property, to specify the amount of rent of the first period and then agree in the contract on indexation of the rent for the forthcoming periods according to a certain indicator, provided that the rent amount will become known at the beginning of every period.

Recommendations:

The Academy recommends the following:

1. As the major cause of inflation is the increase in the quantity of money issued by concerned authorities due to various well known reasons, the Council calls on such authorities to spare no effort for

eliminating this underling factor which leads to a great deal of harm to the society. Inflationary financing, whether for the sake of curbing down the budget deficit or funding development programs, should be avoided. At the same time the Council urge upon Muslim societies to abide by the Islamic values in consumption and refrain from extravagance, affluence and profligacy which lead to inflation.

2. Increasing economic cooperation among Muslim countries specially in the field of trade and exerting efforts for substituting industrial imports from Western countries by similar products of Islamic countries. Efforts should also be exerted for strengthening the bargaining and competitive position of Islamic countries.
3. Conducting studies at the level of the Islamic banks in order to determine the effect of inflation on its assets, and propose suitable measures of safeguarding depositors and investors against adverse effects of inflation. Also at the level of Islamic financial institutions there is a need for developing accounting standards that could be used under inflation.
4. Conducting a study on the effect of extensive use of the Islamic instruments of financing and investment on inflation and the *Shari 'ah* issues involved therein.
5. Studying the feasibility of resorting back to some form of the Gold Standard so as to avoid inflation.
6. In view of the fact that increasing production and the actually utilized productive capacity are two of the main weapons of fighting inflation at the short and medium run, efforts should be made for enhancing the volume and quality of production in Islamic countries. This could be done through designing plans and measures that aim towards boosting the levels of saving and investment and hence facilitating attainment of sustainable development.
7. The Council calls on the governments of the Islamic countries to put more tight controls on their budgets (including current, development and independent budgets) that draw upon sources of public revenues. Such controls include minimization and rationalization of public expenditures in the light of the directives of the Islamic *Shari 'ah*. When a dire need arises for evolving means for dealing with a budget deficit, governments of the Islamic countries should resort to the prevailing Islamic financial instruments which rest on partnership, sale and leasing. They should refrain from resorting to usurious borrowing whether from

banks and financial institutions or through issuing of borrowing bonds.

8. Adherence to *Shari 'ah* controls at the time of using instruments of fiscal policy, whether for manipulation of public revenues or public expenditures. This could be done by establishing such policies on the principles of justice, public interest, relief of the poor and just distribution of the tax burden among the members of the society so that each of them takes up the share that conform to his financial ability (measured in terms of both income and wealth).
9. There is a need for using all *Shari 'ah*-accepted tools of fiscal and monetary policies as well as methods of moral persuasion, and economic and administrative policies, in order to safeguard Muslim societies against the evils of inflation. Such arrangements should aim towards reducing the inflation rate to the minimum.
10. Making necessary arrangements that guarantee an independent decision of the central bank with regard to matters of monetary management and in relation to the bank's endeavor for achieving stability and fighting inflation. Moreover arrangements should be made for facilitating continuous cooperation between the central bank and the economic and financial authorities, so as to achieve the objectives of economic development, economic and monetary stability and elimination of unemployment.
11. Conducting careful studies on government enterprises with the aim of assessing their economic feasibility and considering the possibility of subjecting them to privatization in the light of the teachings of the Islamic *Shari ah*. Such arrangements are supposed to improve productivity of the privatized enterprises, reduce the budget burden and hence mitigate the adverse effects of inflation.
12. The Council urges upon individual Muslims and Muslim governments to adhere to the rules of the Islamic *Shari 'ah* and abide by its economic, educational, moral and social principles.

4 recommendation:

The Council has decided postponement of discussion on the proposals for dealing with inflation to one of its forthcoming sessions.

And Allah (S. W. T) knows better

In the name of God, Most Gracious, Most Merciful

Praise be to Allah the Lord of the Universe, and blessing and peace be upon our Master Mohammed the last of the Prophets, and upon all his kin and companions

**Resolution No. 116(10/12)
On "Translation of the Holy Quran"**

The Council of the Islamic Fiqh Academy of the Organization of the Islamic Conference in its Twelfth Session held in Riyadh (Kingdom of Saudi Arabia) during the period from the 25th of *Jumad Thani* to 1st of *Rajab* 1421 *H* (23 — 28/9/2000),

And having considered the working paper on "*Translation of the Meanings of the Holy Quran*" received from the Secretariat General of the Conference of Ministers of Awqaf & Islamic Affairs, and which has been prepared by the King Fahad Complex for Printing of the Holy Quran, to discuss the standards, special conditions and procedures for translation of the Holy Quran,

And after the thorough deliberations of its members, experts and some *Fuqaha 'a* on the subject.

Decides the following:

Clearance of all the points presented in the paper regarding translation of the meanings of the Holy Quran.

And recommends:

Establishment of an organization to look after interpretation of the Holy Quran and its related sciences. The proposed organization should be linked to the King Fahad Complex for Printing of the Holy Quran.

And Allah (S. W. T) knows better

In the name of God, Most Gracious, Most Merciful

Praise be to Allah the Lord of the Universe, and blessing and peace be upon our Master Mohammed the last of the Prophets, and upon all his kin and companions

Resolution No. 117(11/12)

On "Establishment of an Islamic Organization for the Holy Quran "

The Council of the Islamic Fiqh Academy of the Organization of the Islamic Conference in its Twelfth Session held in Riyadh (Kingdom of Saudi Arabia) during the period from the 25th of *Jumad Thane* to 1st of *Rajab* 1421 H (23 — 28/9/2000),

And having studied the items and content of the working paper on "*Establishment of an Islamic Organization for the Holy Quran*" submitted by the Ministry of Awqaf and Islamic Affairs of the State of Qatar,

And after through discussion,

Has seen that the Ministry of Awqaf and Islamic Affairs of the State of Qatar, the Ministry of Awqaf and Islamic Affairs of the Kingdom of Saudi Arabia and the King Fahad Complex for Printing of the Holy Quran should coordinate their efforts regarding this issue.

And Allah (S. W. T) knows better

In the name of God, Most Gracious, Most Merciful

Praise be to Allah the Lord of the Universe, and blessing and peace be upon our Master Mohammed the last of the Prophets, and upon all his kin and companions

A Call Regarding the Holy Quds (Jerusalem)

The participants in the Twelfth Session of the Islamic Fiqh Academy held in Riyadh (Kingdom of Saudi Arabia) during the period from the 25th of Jumad Thani to 1st of Rajab 1421 H (23 — 28/9/2000), were amazed at hearing the aggressive declarations and unjust suggestions of the Jewish authorities regarding the city of Jerusalem. The scholars, jurists and thinkers participating in this session, therefore, confirm the following invariable considerations:

1. Jerusalem constitutes part of Muslims belief. It concerns Muslims all over the World because this city had come to witness the miracle of the *Isra 'a and Mi 'raj* (Prophet Mohammed's Midnight Journey to the Seven Heavens) that has been indicated in the Holy Quran.
2. The fact that Jerusalem is an Islamic city is well emphasized in a Quranic text that could never be revoked, changed or amended. There is no room for midway solutions in this respect.
3. The participants call on the rulers and people of the Muslim and Arab worlds to defend this occupied city and its Holy Mosque and support its people who have already stationed themselves for fighting. This should be done to stop judaization and internationalization of the city, which can never be accepted by Muslims.
4. The *Al Aqsa* Mosque is for Muslims only. The Jews should have no access to it. The participants, therefore, warn the Jews from the danger of breaching the sanctity of this mosque and charge the Jewish authorities with the responsibility of any offensive action against it. The position of the *Al Aqsa* Mosque is far above all negotiations *and* reconciliation efforts.
5. Just peace and stability in the region can never be achieved until the Jews refrain from occupying Jerusalem and its Holy Mosque and give back Palestine to its own people.

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**Legal Deposit No.
ISBN: 9960-32-090-1**