

European Council for Fatwa and Research

Resolutions and Fatwas

Second Collection

Translators

Shakir Nasif Al-Ubaydi

Anas Osama Altikriti

Editors

Anas Osama Altikriti

Mohammed Adam Howard

First: Da'wa
Fatwa (1)
Inter-Faith Dialogue

Many use phrases such as 'narrowing gaps between religions' to describe inter-faith dialogue. However, the right way to describe these dialogues is to use terms like co-operation, dialogue, participation or the like. In this regard, the Council wishes to draw attention to the fact that if what is meant by the above phrase is to dilute or eradicate essential differences between Islam and other faiths, then this call is rejected. Allah (swt) says in the Holy Quran: "*And argue with them in a way that is better*" (16:125)

Allah (swt) also states: "*And so judge (O Muhammad) among them by what Allah has revealed and follow not their vain desires, but beware of them lest they turn you far away from some of that which Allah sent down to you*" (5:49)

However, dialogue and co-operation between Islam and other faiths can be acceptable for Allah (swt) says: "*Say (O Muhammad): O people of the Scripture (Jews and Christians): come to a word that is just between us and you, that we worship none but Allah (alone), and that we associate no partners with Him, and that none of us shall take others as lords besides Allah*" (3:64)

Following the example of our beloved Prophet Muhammad (ppbuh) who held a dialogue with Christians of Najran¹, dialogues can be held with peoples of other faiths on basis of the oneness of God, prophets and the origin of mankind. These dialogues should, however, be conducted in a healthy atmosphere, and they should be free from coercion, patronising others or offending them .

Despite the fact that Islam is different from other heavenly faiths, there is an area where Islam and the other heavenly faiths can meet. For instance, all divine faiths acknowledge the concept of deity, prophethood and the hereafter. They accept the principles of good manners and the social structure of family. They hold similar views on environmental issues, human rights, rights of oppressed peoples, confronting

¹ The story of the Prophet Mohammed (ppbuh) with the Christians from Najran is well known throughout the book of Seera. The narration of which was reported by Abdullah ibn Abbas and relayed by Ibn Jareer Al-Tabari in his "Tafseer" (3/305), Al-Bayhaqi in "Dala'il Al-Nubuwwa" (5:384). Also the story was reported by Kurz ibn Alqama and relayed by Al-Tabarani in "Al-Mu'jam Al-Awsat" (No.3918) and Al-Bayhaqi in "Al-Dala'il" (5/382). The story was also reported by Jaber ibn Abdullah and relayed by Al-Hakim in "Al-Mustadrak" (2:593). The collation of all these narrations implies the authenticity of the story, and the story itself is reported "Sahih Al-Bukhari" (No.4110) on the authority of Ibn Mas'ood in brief.

despotism and injustice, rejecting genocide, aggression and fanaticism, disseminating tolerance, etc .

What emphasises dialogue and stresses co-operation is the dominance of the materialistic, permissive and atheist culture, and the crumbling of social order at a time where the entire world is connected to each other through the communication revolution which turned the world into a small village. The Holy Quran states: "*O mankind! We have created you from a male and female, and made you into nations and tribes, that you know one another. Verily, the most honourable of you with Allah is that (believer) who has piety (Taqwa)*" (49:13). The Prophet Mohammed (ppbuh) testified to the fact that all human beings are brothers² and the Holy Quran states: "*Help one another in Al-birr (all that is good) and Taqwa (virtue, righteousness and piety); but do not help one another in sin and transgression*" (5:2).

[Resolution 1/4]

²This is in reference to the Hadith reported by Zaid ibn Arqam, whom said: The Prophet (ppbuh) used to say after the end of each prayer: "O Allah, our Lord and the Lord of all things, I bear witness that you are the Lord, with no associate..." and within those words: "I bear witness that all servants are brothers of one another". Narrated by Ahmed (No.19293) and Abu Dawood (No.1508) with a weak chain of narration. However, the brotherhood of humanity is a concept emphasized and stipulated by numerous Quranic verses in addressing the stories of messengers and prophets with their people and tribes.

Fatwa (2)

The participation of women in public work

Resolution:

The Council wishes to draw attention to the unique status given to Women in Islam, as she was considered the equal half of man, thus equal in all aspects of humanity as well as in shouldering the trust of Allah Almighty and carrying the burden of respective rights and responsibilities. Allah Almighty stated in the Holy Quran “*And they (women) have rights (over their husbands) similar to those (of their husbands) over them to what is reasonable*” (2:228). It goes without saying that the woman was subject to horrendous injustices and oppression and was deprived of her rightful and proper status until Islam came and returned unto her that status.

Concerning the participation of women in public work, the Council also wishes to affirm the woman’s complete and full right, which at times increases to become an obligation to participate in establishing and managing Islamic centres and charitable organizations which play a role in enhancing the roles and statures of Islam and Muslims in society, particularly Muslim women. A woman may also participate in and contribute towards organizational work in its various formats, which carry the aim of establishing Islam within life as a whole. Women may also take part in political life, whether as a voter or a candidate for an official post.

However, all this must be in compliance with the principles and ethics of Islam.

[Resolution 5/5]

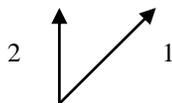
Third: Prayer

Fatwa (3)

Q) A few years ago a group of Muslims rented a hall for the Muslim community in the city for performing their prayers and practicing their educational activities. Soon the direction of qibla was determined with several compasses, and prayers were performed accordingly for about a week. Since the direction the compasses pointed to was not parallel to the wall of the praying site (see diagram), the then Imam of the group gave his fatwa that it was permissible (or preferable) to change the direction so that the rows would be parallel to the long wall of the hall, and thus deviation from the exact direction would be about 30 degrees or a little more, depending on the following:

- 1. The Saying of Allah (swt) in the Chapter of Al-Baqara: “To Allah belong the East and the West. Whither you turn there is Allah’s Face.” (2:115)*
- 2. The saying of Prophet (Peace be upon him) on the authority of Abu Hurayrah: “Between East and West is a qibla.”*
- 3. The necessity that the first row accommodate the largest number of praying persons.*

The direction was actually changed and lines were drawn to mark the rows on the floor parallel to the wall and they have been still in that position till now. Whenever a brother objects to that, calling for abiding by the original principle, he is confronted with the saying that the fatwa is still valid, and that raising the problem in the presence of new praying persons who are not aware of it would create controversy. What is the ruling about our situation in the light of Sharia? What shall we do?



- 1- The original direction according to the compass.
- 2- The modified direction to agree with the wall.

A) Facing *qibla* -the *ka'ba* or the Sacred House- while performing prayers is one of the compulsory acts of praying, in the opinion of all the Madhahib (Schools of Jurisprudence) and according to the consensus of the Umma.

This is primarily based on the saying of Allah (swt): “*From where you start forth turn your face in the direction of the Sacred Mosque and wherever you are turn you face thither.*” (2:149)

Muslims were for long interested in pinpointing the direction of *qibla* by setting up marks and signs, and in our time they have invented compasses and watches one may carry in his hand to show him the direction of *qibla* wherever he may be.

If a Muslim can pinpoint the direction of *qibla* precisely, he is not allowed to deviate from it intentionally without an excuse, particularly in mosques, for *qibla* is there all the time. Therefore, Muslims are keen to extensively investigate so that no error is made that would make the people of the mosque lose *qibla* for a period known only to Allah.

We have noticed that Muslims who assign rooms or halls for the prayers in governmental offices, in airports or schools, etc. which have not been built originally to be mosques, and are not oriented in alignment with *qibla*, draw lines or use pieces of thread to precisely mark the direction of *qibla* even if they were not parallel to the wall of the place. We have thus noticed the Brothers in the USA and Europe, on buying a church, draw lines in it in agreement with *qibla*.

Therefore, the deed of our Brothers in the mosque surprised us, for they have deviated from *qibla* by more than 30 degrees permanently, not for just one person or one occasional prayer.

The evidence cited by our Brother is objectionable and vulnerable to criticism. The saying of Allah (swt): “*To Allah belong the East and the West. Whither you turn there is Allah's Face.*” (2:115), was revealed after the *Hijra* (emigration) to console the Messenger (Peace be upon him) and his Companions, who had been exiled from Makkah and parted with their mosque and place of praying, as is said by Ibn Kathir in his interpretation of the said verse. Others say that Allah (swt) revealed the verse before turning towards *qibla* was imposed. The verse then was abrogated by the recurrent order, in the same *surah*, that one should face the Sacred Mosque.

Some others say: The verse was revealed as permission from Allah for the traveler to perform voluntary extra prayers on the back of his camel (or other means of

transportation) in whatever direction he moves, and in case of direct fighting and intense fear.

Still some others say: This verse was revealed for those who are in doubt about (the actual) direction of *qibla*, such as a traveler on a cloudy day who finds no guide or a landmark to show him the correct direction and thus prays according to his conjecture, as some of Companions did in some cases. To such people may be said: “Whither you turn there is Allah’s Face.”

The hadith “*Between East and West is a qibla*” – supposing it is authentic³ is applied when one is in a desert or at a place where *qibla* cannot be pinpointed precisely. The hadith was meant for the people of Madinah and others in their situation to whom *qibla* lies southward, while to the people of Yemen the situation is the opposite; for them *qibla* lies northward.

Yet, the hadith has not been reported through an authentic invulnerable route. Those who regard it authentic do so because it has been reported through numerous routes, though each route singly is not sufficient evidence.

As for citing as evidence the necessity of accommodating the largest number of praying persons in the first row, it has not been said by anybody and it is not required that one row should include the largest number. Perhaps that means the preference of making the Muslims’ mosques wide rather than long. This is true when a mosque is built as such, but if we convert a certain building into a mosque, we are limited and restricted by its manner of construction.

We have never known a single *faqih* who allowed intentional deviation from *qibla*, in all the prayers permanently in the event that the direction thereof is known. This may be permissible for some individuals in some situations for certain excuses particularly if the deviation is slight.

³Narrated by Ibn Abi Shaybah (2/362), Al-Tirmidhi (nos. 342-344); Ibn Majah (no. 1011); Al-Tabarani in “al-Awsat” (nos. 794, 1945, 9136) from Abu Hurayrah’s hadith. Al-Tirmidhi regards it sahih (authentic); Al-Darqatni (1/270); Al-Hakim (1/205); Al-Bayhaqi (2/9) from ‘Umar’s hadith. Al-Hakim regards it sahih. But al-Darqatni, in “Al-‘Ilal” (2/31-32), correcting, says it is mawquf (i.e. not connected to the Prophet (Peace be upon him)).

But it is impermissible at all to have this deviation in the mosque and to decide *qibla* with an intentional error and without any excuse. We have often performed our prayers behind respectful *Imams* who would instruct the persons praying behind them saying: “*Qibla* is a little to the right or a little to the left,” being keen to observe this obligation that is necessary as a criterion and a condition of sound prayers.

The Brothers in this mosque should put an end to this error and ask for Allah's forgiveness and never return to it after this answer. Should they persist on this error and not quit, their prayers would be invalid.

[Third Session]

Fatwa (4)

The Combination of Maghrib and Isha'a prayers due to the extremely late entrance of Isha'a time or the disappearance of its legal signs in some countries

The Council concluded that it is permitted to combine these two prayers in Europe during Summer when Isha'a enters around midnight, or the signs of Isha'a disappear totally, so that Muslims do not face difficulty which was lifted from upon them by virtue of the Holy Quran. This permission is also due to the hadith of Ibn Abbas in Sahih Muslim: *"The Prophet peace be upon him, combined the Zuhr and Asr prayers and Maghrib and Isha'a prayers when he was not in a state of danger and when there was no rain. Ibn Abbas was asked: Why did he do so? He replied: He wanted to lift the difficulty from upon his Umma"*⁴.

In the same respect, it is also permitted for a Muslim to combine Zuhr and Asr prayers in these countries during Winter when the day is very short and it becomes increasingly difficult for employees to pray each in its own time. The Council, however, warns Muslims against combining the said prayers without the actual need to and against making this permission a constant habit.

[Third Session]

⁴ Sahih Muslim (The Chapter of Prayer for travelers and the shortening thereof – Section of Combination between two prayers without being on travels 1/490-491 No.705)

Fatwa (5)

The collection and distribution of Zakat by charity organizations

Q) Is it permissible for non-Governmental charitable organisations to collect Zakat money and subsequently distribute it according to the legal specifications of Shari'a? May such organisations spend part of the Zakat money they have collected to cover the administrative expenses which they incur as a result of their efforts? Some claim that due to the absence of the Khilafa, such organisations may not collect Zakat, as this is the sole right and responsibility of the Caliph. Is this true?

A) *Zakat* is the third pillar of Islam, and is the pillar which upholds the financial and social basis of the society. Indeed, it is *Zakat* that treats poverty, deprivation, and homelessness, and contributes towards raising the word of Islam in the way of Allah Almighty. Thus, *Zakat* is intended for the needy amongst Muslims, and for those who assist and help those needy Muslims in various manners and methods.

Zakat was declared comparable to the pillar of Prayer, and indeed closely associated thereto in precisely 28 instances of the Holy Quran, as well as in numerous hadiths of the Prophet (ppbuh). Therefore, Anas (ra) said: "May Allah bestow his mercy upon Abu Bakr, as he was of great knowledge"⁵, referring to Abu Bakr's insistence that both *Zakat* and prayer go equally in terms of their uncompromising status for a Muslim. He, may Allah Be pleased with him, told those who said after the death of the Prophet Mohammed (ppbuh) "We shall pray, but shall not perform *Zakat*", he told them: "By Allah, I shall fight those who separate between prayer and *Zakat*".⁶ Thus, if prayer is obligatory at all times and in all places, whether the Caliph is present or not, *Zakat* is also obligatory during all times and in any places.

There are three guardians of *Zakat*:

First: The Sultan, or the ruler, who must take *Zakat* from the wealthy and give it to the poor.

⁵ This was relayed by Al-Qurtubi in his commentary (8/74) from the narration of Ibn Abbas> Al-Tabari also relayed this statement in his commentary (10/87) from the narration of Abdul Rahman ibn Zaid ibn Aslam.

⁶ Agreed upon, narrated by Al-Bukhari (No.1335) and other instances, and Muslim (No.20) from the narration of Abu Hurayra.

Second: The social conscience of the Muslim *Umma*, which is manifested by its obligation to give advice and to uphold religion, and to enjoin what is good and forbid what is evil.

Third: The inner guard of *Iman* within the Muslim heart. Thus, even if the first guardian is absent, the other two remain strong. Should the first and second guardians become absent, then the guardian of *Iman* remains prominent and alert and motivates the Muslim to carry out his duties, even if no one forced him to do so.

In the event that a Muslim Caliph, ruler or regional authority is absent from the helm of the *Umma*, the Muslim group ought to organize its affairs in manner which facilitates the collection of *Zakat* from those who are under obligation to perform this pillar, and to distribute these monies amongst the eight channels stipulated by *Shari'a*, or those present from the eight. For instance, should the channel 'Slaves' or *fil Riqab* not be present, then the monies are to be distributed amongst the seven remaining channels, and should the 'Administrators of *Zakat*' or 'Muslims of weak hearts who are desired to be strengthened and motivated, i.e. '*Al-Mu'allafati Qulubuhum*' not be present, then the monies are to be distributed amongst the remaining channels, each according to its size and actual need. This was the opinion of the vast majority of scholars.

This is further emphasised due to the need for Muslims to organise their lives even if they were only three, as mentioned in the hadith: "*If you were three in travel, choose one of you to become your leader*"⁷, so that there affairs do not become chaotic and haphazard. Therefore, the claim that *Zakat* ought to be deserted due to the absence of *Khilapha*, i.e. Caliphate, hence, allowing people to starve to death, is on which has no basis of truth nor reason, and leads only to our desertion of the pillars of Islam without evidence. Allah Almighty stated in the Holy Quran: "*and fear Allah to the extent of your ability*" (64:16), the hadith of the Prophet (ppbuh) stipulated: "*If I order you to do something, do as much of it as possible*"⁸. Thus, if we failed in establishing the *Khilapha* and managed to perform our personal duties, then we must do those according to the command of Allah Almighty and His Prophet Mohammed (ppbuh) realising that the lifting of some obligations or the partial lifting thereof, does not imply nor result in the lifting of all obligations, or the lifting of such obligations

⁷ Authentic Hadith (Sahih), narrated by Abu Dawood (No.2608, 2609) from the Hadiths of Abu Saeed Al-Khudri and Abu Hurayra. This is also emphasised by a Hadith narrated by Omar ibn Al-Khattab in the Musnad of Al-Bazzar (No.329) which is a good narration.

⁸ Narrated by Al-Bukhari (No.6858) and Muslim (No.1337) on the authority of Abu Hurayra.

partially. It is also significant to note that the Muslims during the Makkan era, were obliged to pay *Zakat*, as testified by the various verses in the Makkan chapters of the Holy Quran, despite the fact that the Islamic state of Madinah was yet to be established (The precise amounts and measures of *Zakat* as we know it today were established and decreed in Madinah). Indeed we find in the verses that were revealed in Makkah prior to the establishment of the Islamic state, a grave warning to those who left feeding the poor, attributing this characteristic to the non-believers and declaring that this is indeed a reason for one being lead to hell fire

Therefore, the presence of these charitable organizations is permissible and the work they perform in collecting *Zakat* money is also permissible. Also, these organizations are allowed to deduct from the monies which they collect to cover their administrative expenses on condition that this does exceed one eighth of the money collected, as they are considered “Administrators of *Zakat*” or *Qa’imeen A’layha*.

[Third Session]

Fatwa (6)

Q) What is the ruling on donating money which is suspected of coming from a source prohibited by Islam, such the donations made by bodies and companies which practice prohibited trades and dealings?

A) It is permissible to accept donations from either individuals, establishments or governments, whether Muslim or otherwise, even if it was most likely that these monies came from suspicious sources from the Islamic perspective, unless the donations themselves were prohibited in essence, such as donations of alcohol or pork. The reason is that the majority of scholars considered these donations to be forms of gifts. However, as soon as these donations become in our possession, they must be governed according to Islamic ways and methods.

In the event that these donations are from an non-Muslim source, exceptions are made in two cases:

- 1) That these donations lead to the weakening of our support for and allegiance to Islam and Muslims.
- 2) Should this donation be made under conditions which are contradictory to the best interest of Islam and Muslims.

[Fifth Session]

Fatwa (7)

Charity Organisations benefiting from interest monies of individuals and banks, advertising and opening designated accounts for such monies

Resolution

Almost all Muslims in the West find it obligatory to open bank accounts with banks that practice usury *riba* as standard practice, and are thus paid interest money on these accounts. In this case, a Muslim finds him or herself with one of two options: either to leave these monies to the bank, which causes many benefits to be missed by Muslims, particularly if these banks support and fund anti-Islamic activities, or to spend these monies in various charitable means. Due to the fact that the reason these monies were deemed *haram*, is because of the manner in which they were gathered or spent, and not because the money is *haram* in itself; it remains that it is *haram* for the person him or herself who accumulated this money. Thus, it is *haram* for a person who has accumulated interest money to use this money for personal benefit, whilst the money is in no way *haram* for the poor or for charitable establishments.

Upon this, the Council sees that it is permissible for charitable organisations to ask those who have such accounts for the interest money which they are accumulating. Similarly, the Council finds that it is also acceptable for charitable organisations to obtain these monies from other sources, such as private establishments or banks.

However, these charitable organisations must avoid, as much as possible, mentioning the source of these monies as a means of advertising for that particular source, due to the fact that this establishment is involved in a practice which is unlawful in principle. It is also permissible to open an account in order to collect these monies.

[Seventh Session]

Fourth: Fasting and Qurbani

Fatwa (8)

The appointment of lunar months, particularly Ramadhan for the benefit of fasting and Shawwal for the benefit of break-fast, and whether Astronomy has any say in this matter.

Resolution

The Council, having examined the forwarded papers and debated this matter at length and in great detail, reached the following resolution:

The beginning of Ramadhan and Shawwal is decided as a result of viewing, either by the naked eye or by means of astronomy, when made in any Islamic country by sound legal means, in accordance to the holy prophetic saying in the authentic hadith: “*When you see the crescent begin your fasting and when you see it again break your fasting*”⁹, and in another: “*Fast when you see it (the crescent) and break your fast when you see it (the crescent)*”¹⁰. This is on condition that the firm scientific astronomical calculations do not contradict the possibility of such sighting in any country. If these calculations rule out the possibility of sighting, however, the sightings of individuals are rejected and refused as they may have occurred out of mistake, imagination or even a false and untrue claim. Moreover, the testimonies of individual witnesses constantly carry the element of imperfection, whilst astronomical calculations are sound and unequivocal, and the scholars have agreed that what is imperfect does not stand up to nor overtake what is deemed firm and sound.

The Council also affirms that by astronomical calculations, by no means is it referring to the prohibited and outlawed astrology, nor is it referring to the various calendars which have become widespread throughout Islamic countries, as many may believe. Rather, we mean by astronomical calculations, the fruits of the modern science of astronomy which is built upon sound arithmetic and scientific bases, which has advanced enormously and helped man to reach the moon and other planets, and in which Muslim scientists all over the world, have excelled.

[Third Session]

⁹ Narrated by Muslim (Chapter of Fasting – Section of the Compulsion of Fasting Ramadhan when the new moon is witnessed 2/760) on the authority of Abdullah ibn Omar and 2/762 from the Hadith of Abu Hurayra.

¹⁰ Agreed Upon: Narrated by Al-Bukhari (No.1810) and Muslim (No.1081/18) from the Hadith of Abu Hurayra.

Fatwa (9)

The significance of observing the age of the sacrificed animal (Qurbani)

Resolution

The Council explained that the reason for determining the age of the sheep or cow to be slaughtered, is to ascertain the extent of benefit achieved, in order for the *Qurbani* to be sufficient. The age of the animal is certainly one method of determining this, and thus the basic principle is to observe that the animal has indeed reached a particular age. However, in some circumstances, the animal may have achieved sufficient growth before reaching the appropriate age, especially in the case of lambs which grow rapidly in Europe, or feeding cows which grow in several months, whether through natural means or through feeding methods. In such cases, slaughtering these animals as *Udhiya* is acceptable, because the legal objective of observing age is fulfilled. It is worth noting that this was also approved by a number of famous Maliki scholars. However, the Council calls upon Muslims to observe health and safety issues related to slaughtering animals suffering from disease and illness such as Mad Cow disease, Foot and Mouth disease and the such, which would pose an obvious health hazard as well as being unacceptable from the *Shari'a* point of view. In this regard, the Council draws Muslims' attentions to the following:

- Observing health and safety regulations, which decree the monitoring of a registered veterinarian in all official slaughter houses.
- It is permissible from the *Shari'a* point of view for a Muslim to authorise another to slaughter an animal on his behalf, or to make a *Qurbani* in another country, particularly those in which Muslims suffer oppression, famine or extreme need.
- In the event that a Muslim wishing to make a *Qurbani* cannot do so in the first day of *Eid-ul-Adha*, it is permissible to perform this ritual up until the fourth day of *Eid*.

[Seventh Session]

Fifth: Family and Personal Status

Fatwa (10)

Q) In the event that a mother or wife dies, are the funds which she had accumulated during her life-time to be considered as her personal estate and are thus to be divided amongst her inheritors according to that fact? It is important to note that some of those funds are not registered under her name, and others came to her as gifts from her husband and weren't officially registered under her name, which makes it very difficult to account for all these funds.

A) These funds which the woman accumulated in any acceptable manner or form during her marital life, such as gifts and grants, are considered to be her personal wealth and estate, regardless of whether these were officially registered under her title or not. Therefore, these funds are to be divided amongst her inheritors in the manner stipulated by Allah Almighty.

[Fifth Session]

Fatwa (11)

Q) A woman came to Britain in the company of her husband, who was awarded a scholarship to study. She was suffering from pregnancy problems. On consulting specialists it appeared that the best way (for her problem) was through in vitro fertilization (using sperm from her husband). Thus nine embryos were formed and were kept frozen by the doctors. The woman was assigned an appointment to implant some of those embryos. However, on going to the agreed appointment, the woman proved to the doctors to be pregnant normally. That was a divine miracle to the family and the doctors. Consequently the lady gave birth to a lovely normal healthy daughter. The question is: The family will return to their homeland after the husband finishes his studies. What shall the lady do with those nine frozen embryos? Can she implant some of them in her uterus and leave the others frozen with the health authorities in Britain, bearing in mind that the family will almost certainly not return to Britain? Or should she dispose of them?

A) The ruling about how to deal with these nine embryos is as follows:

- 1) The lady may implant any of these embryos in her uterus as long as she is still the wife of the man from whom the sperm was taken. But if she is separated from him through death, divorce or the like and thus is no longer under the bond of marriage with him, it will be unlawful to implant any of them and she should destroy them or what remains of them.
- 2) In case the wife leaves Britain, if she thinks she will come to this country again to implant one of the embryos she is permitted to keep the embryos frozen till then for that purpose. But if she thinks that she will not (or most probably will not) return, it will be unlawful to leave them behind, but she or her husband should destroy them.
- 3) In all cases, we find nothing against destroying them, whether the lady will or will not return. However, with the probability of not returning, it is not permissible to leave them, but they must be got rid of.

[Fourth Session]

Fatwa (12)

A Woman ratifying her own marriage contract without the intervention of her legal guardian '*Wali*'

Resolution

Marriage is one of the most important contracts due to the fact that it signals the creation of a new family within society; the birth of new individuals into the world and the duties and responsibilities which fall unto each of the two partners.

As a result of marriage being a contract between the two spouses as partners to the contract, the full consent of whom is deemed vital for the ratification to proceed, the Legislator; Allah (swt), did not allow for the guardianship of the father of the bride or any one else to become one by which the guardian forces or compels the woman to marry to a man whom she does not want. Indeed Islam granted the woman full rights to accept or reject whomever proposes to her in marriage.

Ibn Abbas (ra) that a small girl came to the Prophet Mohammed (ppbuh) and told him that her father had forced her to marry against her will. The Prophet gave her the right to choose either to stay married or to annul the marriage contract.¹¹ The prophetic texts all came to affirm this right for women. The Prophet (ppbuh) stated that "*the virgin shall not be married until her permission is given neither a previously married woman until she overtly states her acceptance*"¹², he (ppbuh) added: "*and the virgin shall be asked her permission by her father*"¹³. By this, Islam decreed that marriage be built upon a basis of love, desire and mercy. Allah (swt) stated: "*And among His signs is this, that He created for you mates from among yourselves, that you may dwell in tranquillity with them, and He has put love and mercy between your hearts*". (30:21)

It is usually impossible to attain these beautiful aims and objectives within a marriage which was established with force and compulsion. However, since the woman, despite her Islamically granted independence, was always subject to the desires of the ill-hearted and evil opportunists; Islam decreed legislations which would maintain her

¹¹ Authentic Hadith, ascribed by Imam Ahmed (No. 2469), Abu Dawood (No.2096), Al-Nasa'I in "Al-Sunan Al-Kubra" (No.5387) and Ibn Maja (No.1875) from the Hadith of Abdullah ibn Abbas. Ibn Al-Qattan and Ibn Hazm considered the Hadith sahih, and it was strengthened by Al-Khatib Al-Baghdadi, Ibn Al-Qayyim and Ibn Hajar.

¹² Agreed upon. Narrated by Al-Bukhari (No.4843, 6567, 6569) and Muslim (No.1419) from the Hadith of Abu Hurayra.

¹³ Narrated by Muslim in his Sahih (No.1421/68) and Al-Bayhaqi in Al-Sunan Al-Kubra (7/115) from the Hadith of Ibn Abbas. This is one of the manners in which the Hadith was narrated.

rights and deter those whom carry ill-aims and desires. Therefore, Islam gave great importance to the approval of the woman's guardian in a manner which reflects the significance of the marriage contract. This also adds another dimension to the beautiful state of tranquility and love in which the entire family will find themselves, as the woman will remain on good terms with her parents or guardians, in contrast to what would happen if she went against their wish. In this case the opposite of what Islam aimed to achieve would undoubtedly prevail. Despite the general consensus among scholars that the approval of the woman's guardian is preferable and much more favourable, they differed regarding whether it is actually a condition for the correctness of the marriage contract:

1- The majority of scholars agreed that the approval of the guardian is a condition, without which the contract would be incorrect, based upon the statement of the Prophet Mohammed (ppbuh): "*The marriage of any woman married without the permission of her guardian is false*"¹⁴. He (ppbuh) also stated: "*No marriage is to take place without the guardian*".¹⁵

2- The followers of Imam Abu Hanifa stated that the permission of the guardian is not a condition, and they based their conclusion upon many evidences, such as the Hadith narrated by Muslim and the Four Narrators of Hadith, that the Prophet (ppbuh) stated : "*The previously married woman shall have the right to decide for herself, whilst the virgin shall be asked permission to be married, and a sign of her permission being granted is her keeping silent*"¹⁶. They added that that the permission of the guardian only becomes a condition if the girl is under the age of puberty. They also said that: "if the adult sound minded woman married herself (without the interference of her guardian), her marriage would be correct given all other conditions are fulfilled. Her guardian maintains the right to appeal to the Judge and request the annulment of the contract if her partner is not equal to her, in which case the Judge, having confirmed the truth of this, must accept his appeal. The European Council for Fatwa and

¹⁴ Narrated by Ahmed (6/47, 66, 165), Abu Dawood (No. 2083), Al-Tirmithi (No.1102) and Ibn Maja (No. 1879) from the Hadith of Aisha. Al-Tirmithi deemed the hadith good, whilst Ibn Maja (No.4074) and Al-Hakim (No.2/168) considered it authentic.

¹⁵ Narrated by Ahmed (19518, 19710, 19746), Abu Dawood (No.2085), Al-Tirmithi (No. 1101) and Ibn Maja (No.1881) from the Hadith of Abu Musa Al-Ash'ari. The Hadith was deemed authentic by Ali ibn Al-Madini, the Shaykh of Al-Bukhari, whilst Al-Bukhari, Al-Tirmithi, Al-Hakim and Al-Bayhaqi strengthened its narration.

¹⁶ Narrated by Malik in his Muwatta' (No.1493), Ahmed (No. 1888 and others), Muslim (No.1421), Abu Dawood (2098), Al-Tirmithi (No.6/84-85) and Ibn Maja (No. 1870) from the Hadith of Ibn Abbas.

Research advises women not to disregard their guardians, whom wish only for their best interest and that they marry good men rather than deceitful and ill-heart suitors.

The Council also advises fathers to facilitate the marriage of their daughters and to consult with them in regards with those whom propose to them in marriage, without transgressing in using the rights that Islam granted to them. The Council also reminds them of the saying of the Prophet Mohammed (ppbuh): *"If someone comes to propose in marriage and he is of acceptable religion and behaviour, then accept his proposal, otherwise and great turbulence and corruption will spread on earth"*¹⁷. Fathers must also realise that preventing their daughters from getting married is a great injustice which is outlawed and prohibited by Islam. The Council also advises Islamic Centres to take the aforementioned into consideration, as it is safest and best. However, if the woman does not have a legal guardian, then the Islamic Centre itself must act as her guardian in countries lacking an Islamic legal system. The Council finally affirms that it believes that if a mature and sound-minded woman was to marry herself (without the interference of her guardian) then her marriage would be correct.

[Resolution 3/4]

¹⁷ Narrated by Yehia ibn Ma'een in his "Tareekh" (3/40), Al-Bukhari in "Al-Kuna" (p.26), Al-Tirmithi (No. 1085) and others from the Hadith of Abu Hatim Al-Muzani. Al-Tirmithi considered it a good Hadith.

Fatwa (13)

The allowance of marriage to 4 women and the abuse of this allowance

Prior to Islam, men used to marry as many women as they wished without any limits nor conditions. When Islam was revealed, it prescribed a limit to the number of women one may marry and also placed conditions for this to take place.

As for the limit, Islam prescribed that the maximum number of women a man can marry is four, as stated in the Quran: "*Marry women of your choice, two or three or four*" (4:3). When a man from the tribe of *Thaqeef* who was married to ten women, embraced Islam the Prophet Mohammed (ppbuh) commanded him to choose four from amongst them and to divorce the rest¹⁸.

As for the condition, it is the confidence of the man that he can actually be totally just and fair between his wives, otherwise he is not allowed to re-marry. The Quran stated: "*but if you fear that you will not be able to deal justly (with them), then only one*" (4:3). In addition, the other conditions of any marriage must also be present, such as the ability to provide for the family and the ability to satisfy the sexual needs of the woman. The reason for the allowance for a man to marry more than one woman is because Islam is a realistic religion and one which is not based upon idealistic notions which would cause real problems of everyday life without solution or treatment. It is very probable that a man marrying a second wife could be solving a problem, in that his first wife is incapable of bearing children or has extended menstruation cycles which result in his sexual needs being unsatisfied. The first wife could be ill and thus, instead of divorcing her and leaving her alone, could marry a second wife and remain next to his first wife, and so on. This allowance also solves the problem of a widow who needs a husband to care for her but does not wish for an unmarried young man, similar to a divorced woman with children. Indeed this allowance may solve a social problem which arises from the high proportion of good women who want to marry in comparison to able men. This is a common problem which increases particularly in the aftermath of wars and the such. The fact, in this case, is that the extra women do one of three following options:

¹⁸ Narrated by Ahmed (No. 4609, 4631, 5027 and 5558), Al-Tirmithi (No. 1128) and Ibn Maja (No.1953) from the Hadith of Abdullah ibn Omar. The Hadith was authenticated by Ibn Hibban (No. 4156-4158), Al-Hakim (No.2/192) and Ibn Hazm in "Al-Muhalla". Some from amongst the scholars of Hadith considered there to be a discrepancy from the narration aspect. However, there is no question as to the correctness of the meaning.

- 1) That they remain unmarried for the rest of their lives, and are thus deprived from being a wife and a mother, which is a great injustice.
- 2) That they fulfill their sexual needs regardless of decrees of religion and acceptable behaviour, which will result in a tragic loss in this life and the hereafter.
- 3) That they agree to marry an already married man who is capable of meeting their living and sexual needs and who is confident in his ability to deal fairly and justly between his wives.

As for those who say that this allowance is often abused by some men, it is an unfortunate fact that many rights are abused or are used in inappropriate manners. This does not mean that we must cancel these rights. Indeed, there are many men who abuse their first and only wives, so does this lead us to cancel marriage in its entirety? Freedoms are often abused. Should we cancel freedoms? We see that states and governments abuse elections; would it be right to cancel these processes? In fact we find that authority and government is frequently abused, so would it be acceptable to cancel authority and let society decline into a state of chaos? It would be better, instead of calling for the cancellation of these rights, to set up boundaries and regulations which would limit the possibility of such rights being abused.

[Resolution 4/4]

Fatwa (14)

The marriage of a man and a woman whom had committed adultery with each other

Resolution

If a man and a woman who used to commit adultery (*Zina*) with each other wished to repent to Allah (swt), to leave haram for halal and the life of impurity to a pure and clean state of living, then their marriage is correct by the consensus of scholars. The majority of scholars did not set repentance or *Tawba* as a condition for the correctness of the marriage to a woman adulteress, as it was narrated that Omar (ra) punished a man and a woman who were found guilty of adultery and then attempted to bring them together in marriage¹⁹.

The Hanbalis alone set repentance as a condition and gave in evidence the Quranic verse: "*The adulterer cannot have sexual relations with any but an adulteress, and the adulteress, none can have sexual relations with her but an adulterer. To the Believers such a thing is forbidden*" (24:3).

As for the issue of the period of waiting '*I'dda*' for an adulteress before she can marry, there is a difference amongst the scholars. The Council's opinion in relation to this matter is the view adopted by the Hanafis, the Shafi'is and Al-Thawri, that the adulteress has no period of waiting, even if she was actually pregnant as a result of her act of fornication. This was narrated on behalf of three of the companions who later became Caliphs: Abu Bakr, Omar and Ali (ra)²⁰. They all gave in evidence the agreed upon Hadith: "*The son of adultery shall be related to the husband and for the adulterer shall be total loss and deprivation*"²¹, as the waiting period aims to keep correct account of the baby's ancestry whilst the same does not apply to the child of adultery, and thus no waiting period is required. If a man married a woman pregnant

¹⁹ Narrated by Al-Shafi'I in "Al-Umm" (10/38). Al-Bayhaqi narrated (7/155) from the Hadith of Abu Yazeed Al-Makki: "A man married a woman who had a daughter from another man whilst he had a son from another woman. The boy fornicated with the girl who subsequently became pregnant. When Omar came to Makkah, the matter was raised before him, so he called them and asked them. They both admitted to the sin. Omar (ra) then punished them by whipping them, and then attempted to bring them together in marriage, but the boy refused". A good narration.

²⁰ Noted by Mohammed ibn Al-Hassan Al-Shaybani in "Al-Hujja 'Ala Ahlil Madina" (3/388), 389) narrated by Abu Bakr and Omar. Al-Bayhaqi mentioned the meaning of this in "Al-Sunan" (7/155) and it was narrated by Ibn Hazm in "Al-Muhalla" (9/476) from the tow Companions' Hadith, and also noted a Hadith (10/28) narrated by Omar carrying the same meaning.

²¹ Agreed upon; narrated by Al-Bukhari (No.1948 and other locations) and Muslim (No.1457) from the Hadith of Aisha.

with a child of adultery from another man, the marriage is correct according to Abu Hanifa and his companion Mohammed, and thus the fatwa of the Hanafi school. However, he is not to indulge into sexual intercourse with her until she gives birth, as the Prophet Mohammed (ppbuh) stated that: "*It is not for a man who believes in Allah and the Last Day to allow his water to irrigate the plant of another*"²².

This is unlike the case where the child of adultery is actually his, as the Hanafis and all those who deemed the marriage correct, agreed that he is then allowed to have sexual intercourse with her, as the plant is his and the pregnancy is because of him.

[Resolution 5/4]

²² A Good Hadith. Narrated by Ahmed (28/207 No.16997), Abu Dawood (No.2158 and 2159) and Al-Bayhaqi (No.7/449 and 9/124) from the Hadith of Ruwayfi' ibn Thabit which enjoys a good narration chain.

Fatwa (15)

Equality between the husband and wife in a marital relationship

The wife is equal to her husband within a marital relationship. The Holy Quran called each "one half of a pair", as each, bears responsibility for the worries and feelings of the other half and thus they both form a complete pair. We also observe from the statement of Allah (swt): "*And among His signs is this, that He created for you mates from among yourselves, that you may dwell in tranquillity with them, and He has put love and mercy between your hearts*" (30:21) and from His statement: "*And Allah has made for you mates of your own nature, and made for you, out of them, sons and daughters and grandchildren, and provided for you sustenance of the best*" (16:72), we observe that the address in both verses is to both men and women alike, as there is no evidence that there is an exclusive address to men in these two cases.

Meanwhile, the verse in which Allah (swt) addressed men alone, was directly followed by a statement that men and women are equal within a marital relationship. Allah (swt) stated: "*Permitted to you on the night of the fasts, is the approach to your wives, they are your garments and you are their garments*" (2:187), in which we see how immaculately Allah (swt) described the relationship of men and women to each other, as being "garments" to one another, which reflects closeness, warmth, proximity and adornment. However, this equality in principle, does not contradict the fact that there are duties and responsibilities unique and specific to each part of this relationship, such as the responsibility of the man to protect and maintain his wife and family, which is termed *Qawama*. Allah stated in the Quran: "*Men are the protectors and maintainers of women, because Allah has given each preference over the other, and because they support them from their means*" (4:34). The beauty of the Quranic expression is illustrated in the statement that "*Allah has given each preference over the other*" and not merely that Allah gave preference to men over women. This is because men are preferred in some aspects and women are preferred in others; particular the emotional aspect of life, whilst the man is obliged to pay the marital gift or which is known today as Dowry or '*Mahr*', to establish the marital house and support it. Therefore, if a man ever attempts to harm this family; he will be the very first victim of this act of destruction.

The Quran also emphasised that duties and obligations of both parties are perfectly equal apart from a few exceptions. Allah (swt) stated: *"And women shall have the rights similar to the rights against them, according to what is equitable; but men have a degree over them"* (2:228). It was narrated that Ibn Abbas (ra) stated: "I make myself beautiful for my wife such as she does for me"²³, and then gave in evidence the previous verse. Imam Al-Tabari explained the term *Daraja* or (degree) which occurred in the verse, as being extra marital duties and responsibilities. Others explained it to be equal to the term *Qawama* previously illustrated, and both explanations are correct. The Prophet Mohammed (ppbuh) placed the responsibility upon each partner within a marriage, as in the Hadith of Ibn Omar (ra): *"Each of you is a shepherd and you are each responsible for your herd and the man is a shepherd amongst the members of his family and he is responsible for them and the woman is a shepherd in her husband's house and she is responsible for it"*²⁴.

The responsibility of the woman within her marital home obliges her to play an educational and advisory role towards her husband, as she extends advice to him and wishes him the best at all times. She must call him to do good whenever he falls short of doing so, and must prohibit him for indulging into wrong-doing, as this is the obligation upon each and every Muslim towards the other, such as a son towards his father, a student towards his or her teacher, and a citizen towards his or her ruler. However, this commanding good and prohibiting evil must be within the regulations and boundaries mentioned by the Scholars in sound books and references. Allah (swt) states: *"The believers, men and women, are protectors one of another: they enjoin what is just and forbid what is evil"* (9:71). Thus, the marital relationship does not by any means, annul the act of enjoining good and forbidding evil, but rather emphasises and stresses it. We learn that the wives of the good predecessors would remind them before they left their homes to work, trade or travel: "Beware of bringing back what is Haram, as we would be happy to tolerate hunger and the cold, but we would never be able to withstand the heat of Hellfire and the wrath of the Almighty"! Therefore, if a woman found her husband falling short in fulfilling his obligatory prayers, she must advise him in a beautiful way to maintain his prayers, and if she found him consuming alcohol, she must advise him to refrain from drinking what is considered the mother

²³ This meaning was narrated from Ibn Abbas, and was abrogated by Ibn Jareer in his "Tafsir" (2/453) and Ibn Abi Hatim (No.2196) from the said Hadith of Ibn Abbas.

²⁴ Narrated by Al-Bukhari (No.853 and other locations) and Muslim (No.1829).

of all evil. She must also advise him to maintain his religion, faith, wealth, children and family and not to agree with Satan in his words and actions.

As for the question: Does the husband enjoy any authority over his wife, and to what extent? The answer would be: the husband enjoys the *Qawama* explained above, but it is not by any means, an absolute and infinite authority. Rather it is an authority which is restricted by the regulations of the Shari'a and the considerations of the society within which one lives. The regulations of the family are restricted by two matters in the Holy Quran:

First: A divine restriction, i.e. from Allah (swt). This is referred to in the Quran as "the boundaries of Allah" and occurred many times regarding the context of family.

Second: A human restriction, which is referred to in the Quran as "Ma'arof" or good, i.e. what is appreciated and acknowledged by people of sound minds, good tastes and people of wisdom.

As for the first restriction, we read from the Quran in relation to divorce: "*These are the limits ordained by Allah, so do not transgress them, if any do transgress the limits ordained by Allah, such persons wrong themselves as well as others*" (2:229). In another verse, Allah (swt) stated: "*these are the limits of Allah which he has illustrated to people who know*" (2:230) and in another: "*those are the limits set by Allah, and any who transgresses the limits of Allah does verily wrong his own soul*" (65:1).

As for the second human restriction, Allah (swt) states: "*Live with them on a footing of kindness and equality*" (4:19) and "*But he shall bear the cost of their food and clothing on equitable terms*" (2:233) and "*either take them back on equitable terms or set them free on equitable terms*" (2:231) and "*For divorced women is a suitable gift*" (2:241).

Thus and in principle, the affairs of the marital home and the family must be done in consultation between the husband and wife, as consultation can only bring good. The Holy Quran stressed this in the context of weaning the child: "*If they both decide on weaning by mutual consent and after due consultation, there is no blame on them*" (2:233).

However, if they fail to reach an agreement, then the husband shall have the authority to decide, but within the boundaries of *Ma'roof* explained. It is not for the husband to force his wife to do anything, merely to fulfill his desires under the pretence of 'obedience of the husband', as any obedience must be within the boundaries of *Ma'roof*. It is correct to say: that the wife must obey her husband within the limits of *Ma'aroorf* alone, according to the Quran when addressing the oath of allegiance given by women to the Prophet (ppbuh): "*and they will not disobey you in any just matter*" (60:12). The authentic Hadith also stated: "*Obedience is verily in just matters*"²⁵.

[Resolution 6/4]

²⁵ Narrated by Al-Bukhari (No. 4085, 6726, 6830) and Muslim (No.1840) from the Hadith of Ali ibn Abi Talib.

Fatwa (16)

The ruling on a Woman divorcing herself

Resolution:

Having discussed this issue at considerable length, The Council reached the following:

First: As a point of principle, Islam granted the right of divorce to the man.

Second: A woman may divorce herself, if she had stipulated that she has this as her right as a condition in her marital contract, or if she received such authority or was granted such a right by her husband afterwards.

Third: A women may request that her marriage be terminated ‘*Khulu*’ before a Judge, who should in turn make every attempt to reconcile the couple. If this proved futile, then he is to grant the woman her wish and to rule the marriage terminated.

Fourth: A woman may agree with her husband to divorce under any conditions which are acceptable from the Islamic perspective and which they mutually approve to.

Fifth: The woman may request from the judge to rule that they be separated and the marriage terminated, due to harm being inflicted upon her. The Judge may then grant her request, if she proved her claim, having spent every effort in reaching a reconciliation between the man and woman, including assigning two arbitrators to help him in his task.

[Resolution 2/5]

Fatwa (17)

Ruling on a divorce issued a non-Muslim judge

Resolution:

The principle is that a Muslim only resorts to a Muslim Judge or any suitable deputy in the event of a conflict. However, and due to the absence of an Islamic judicial system in non-Muslim countries, it is imperative that a Muslim who conducted his Marriage by virtue of those countries' respective laws, to comply with the rulings of a non-Muslim judge in the event of a divorce. Since, the laws were accepted as governing the marriage contract, then it is as though one has implicitly accepted all consequences, including that the marriage may not be terminated without the consent of a judge. This case is similar to that in which the husband gives authority to the judge to do so, even if he did so implicitly, and which is considered acceptable by the vast majority of scholars. The jurisprudence '*Fiqh*' principle applicable in this case is that whatever is normal practice is similar to a contractual agreement. Also, implementing the rulings of a non-Muslim judiciary is an acceptable matter, as it falls under the bringing about of what is considered to be of interest and to deter what is considered to be of harm and may cause chaos, as stipulated by more than one of the most prominent Islamic scholars, such as Al-I'zz ibn Abdul Salam, Ibn Taymiyyah and Al-Shatibi.

[Resolution 3/5]

Fatwa (18)

Ruling on a wife's request to be divorced from her sinning (*Fasiq*) husband

Resolution:

Marriage is indeed a sacred bond which brings together a man and a woman by virtue of the teachings of the Quran and the *Sunna*. Indeed, the manner in which Allah Almighty described this relationship is as though one constitutes a garment to the other; “they are a *Libas* (i.e. body cover) for you and you are the same for them” (2:187), thus illustrating the closeness, affection, warmth and love of one for the other.

Thus, each partner in this sacred relationship must treat the other beautifully and properly. A man must not divorce his wife to bring harm upon her, as this constitutes an act which demolishes this noble establishment, breaks the woman's heart and possibly separates between the woman and her children without any reason. Thus, the separation between a man and his wife was considered as one of the major and grave sins, and one of the most beloved actions of Satan, as was narrated in a number of Hadiths.²⁶

And since, the man must never divorce his wife in order to bring harm upon her without reason, it is also forbidden for a woman to ask for a divorce without a sensible reason. In the Hadith narrated by Ahmed and Al-Tirmithi, who declared it a good Hadith, that Thowban, May Allah be Pleased with Him, stated that the Prophet (ppbuh) said: “Any woman who asks her husband to divorce her without an acceptable reason, shall never smell the scent of Paradise”²⁷.

The obvious implication of the Hadith, is that if she asked for a divorce with an acceptable reason, then she is allowed to do so.

²⁶ Such as the Hadith narrated by Jaber ibn Abdullah, who stated: “The Messenger of Allah (ppbuh) said: ‘Iblees places his throne upon water, then sends his groups. The closest to him are the those who commit the most grievous of sins (Fitna). One of them would approach him and say: I did so and so. Iblees would reply: You have done nothing. Another would approach and say: I did not leave him until I caused him to leave his wife and for them to be separated. Iblees would bring him close to his throne and would say: How good you are!’” Narrated by Muslim (No.2813/67).

²⁷ Musnad Ahmed (5/277) and Jami' Al-Tirmizi (No. 1187). Abu Dawood (No. 2226) and Ibn Maja (No. 2055) also narrated the Hadith.

Thus the question is: Is the husband's dissipation or sinfulness considered a reasonable justification for the woman requesting a divorce?

It is without doubt that sinners vary in the manner and extent to which they sin, and also vary in their relationship with their wives. Some force their wives to assist them in committing their sinful acts, such as to serve him alcohol, which is an act deemed forbidden for her, and thus she has the right to request a divorce in avoidance to any punishment that may come her way as a result of committing what is essentially Haram.

Others, mistreat and abuse their wives, which gives the woman the right to request a divorce, specially should the husband continue to abuse her, and she holds no hope of him repenting and correcting his ways. There are also those who neither force their wives to assist them in committing their sinful acts nor do they abuse and mistreat them. Some, although sinners, may be good to their wives and do not force them to do what they wish not to. This case is obviously different to the first two.

The majority of scholars, for instance, stipulated that a man who does not pray out of laziness, rather than denial of the obligation of prayer, is a wayward *Fasiq* and not a reverted *Kafir*, and thus he is not to be separated from his wife.

Thus, the Council sees in this case that should the woman hold hope in her husband's repentance and that she may have a role in offering him advice which could lead him to a better state of conduct, then she ought to be tolerant, even if he did not pray or if he drank alcohol. This tolerance becomes more of an obligation should the couple have children, whom may go astray or be negatively affected by any separation.

However, the Council emphasizes that this does not include a husband who believes that it is permissible to desert mandatory prayers or to consume alcohol, as he would then have reverted to clear and overt *Kufr*, which deems the separation between him and his wife mandatory.

[Resolution 8/6]

Fatwa (19)

The Ruling on a Muslim inheriting his non-Muslim Relatives

Resolution:

The Council sees that Muslims must not be prohibited from inheriting their non-Muslim relatives, or receiving their bequeaths. Indeed, the Council does not find any contradiction with the authentic Hadith: “A Muslim does not inherit a *Kafir*, nor a *Kafir* a Muslim”²⁸, which implies the *Kafir* who is in a state of battle with Muslims. It is also important to note that in the initial stages of Islam, Muslims were not prohibited from inheriting their non-Muslim relatives. This was the line followed by Companions such as Muath ibn Jabal²⁹ and Mu’awiya ibn Abi Sufyan³⁰ and Followers including Sa’eed ibn Al-Musayyab, Mohammed ibn Al-Hanafiyya, Abu Ja’far Al-Baqer, Masrooq ibn Al-Ajda’ and which was preferred by Ibn Taymiyya and his student Ibn-ul Qayyim.

[Resolution 1/5]

²⁸ Narrated by Al-Bukhari (No.6383) and Muslim (No.1614) from the Hadith of Osama ibn Zaid.

²⁹ Narrated by Abu Dawood (No.2912) and Al-Bayhaqi (6/205, 254-255)

³⁰ Narrated by Abu Shayba (11/374) from Abdullah ibn Ma’qal, who said: “ I have seen no better judgment after that of the Messenger of Allah (ppbuh) than that of Mu’awiya in respect of the People of the Book. He said: “We inherit them and they do not inherit us, as it is permissible for us to marry from them whilst they may not marry from us”. Correct narration.

Sixth: Funerals (*Al-Janaiz*)

Fatwa (20)

The Ruling of participating in the funeral of a non-Muslim relative

Resolution

Islam orders that parents be treated kindly and graciously even if they are non-Muslims. Allah (swt) says: “*Your Lord has decreed that you worship Him and that you be kind to parents*” (17:23). Allah Almighty also says: “*But behave with them in this life kindly*” (31:15). Islam also exhorts people to observe and maintain good relationship with kith and kin.

The obligation of kindness and good relationship is emphasized on the occasions of joy and merriment as well as on the occasions of difficulties and afflictions, the greatest of which is death that brings relatives together when they are bereaved of one of them. Man intrinsically tends to express his feelings towards the deceased, whether a relative or a close acquaintance. Therefore, we read in the authentic hadith on the authority of Abu Hurayrah (May Allah be pleased with him): “*The Prophet (Peace be upon him) visited the grave of his mother and wept and caused those who were with him to weep, and said: ‘I asked my Lord to allow me to ask forgiveness for her, but He refused to give me permission. Then I asked Him to permit me to visit her grave and he gave me leave. So, visit graves for they remind one of death’*”. Narrated by Muslim and Ahmad and the Compilers of *Sunan* except al-Tirmidhi³¹.

Moreover, Islam calls for respecting man, whether a believer or a disbeliever, in his lifetime and posthumously. It is reported by Al-Bukhari and Muslim in an authentic hadith that the Prophet (ppbuh) stood up when a Jewish funeral proceeded in front of him. Somebody informed him that the dead person was a Jew. The Prophet replied: “*Is it not a soul?*”³²

Now, the soul of a father, a mother or a close relative is entitled to more respect. Therefore a Muslim may attend the funeral of his non-Muslim parents or one of his non-Muslim relatives. He may attend the religious ceremonies held for the deceased in churches and synagogues, provided that he should not participate in the prayers, rites and other religious activities. He may also attend the burial process. In all that his

³¹ Ahmad in his “Musnad” (no. 9688); Muslim (no. 976); Abu Dawud (no. 3234); Al-Nasa’i (no. 2034); Ibn Majah (no. 1572)

³² Al-Bukhari (no. 1250); Muslim (no. 916) from the hadith of Qays ibn Sa’ad and Sahl ibn Hanif.

intention should be to do the duty of kindness (to parents) and good relationship with kith and kin, and sharing the misfortune with the family and strengthening the relationship with relatives and avoiding what may lead to estrangement if he fails to attend such occasions.

[Resolution 4/6]

Fatwa (21)

Ruling of burying a Muslim in the cemeteries of non-Muslims

Resolution

There are certain determined legal Rulings concerning the Muslim on his death, such as washing him, wrapping him with a shroud, performing the *Janazah* prayer for him, in addition to burying him in Muslims' cemeteries; that is because Muslims have their own way of burying the dead and preparing graves, such as simplicity, facing *qibla* and avoiding the imitation of polytheists, the affluent, and the like.

It is known that every religious community have their own cemeteries; Jews have their own cemeteries; as do the Christians and the pagans, therefore, it is natural that Muslims have their own cemeteries too. Muslims living in non-Muslim countries should try, through approved channels, to have their own cemeteries whenever possible, for that would enhance their presence and preserve their personality. If they fail to have their own separate cemetery, they should at least have a specific and exclusive spot within the cemetery of non-Muslims wherein they could bury their dead.

If even both alternatives are not available and a Muslim dies, he may be buried anywhere possible, even if in the cemetery of non-Muslims, for Allah does not burden a person beyond his ability. Burying the Muslim, in this case, in the cemeteries of non-Muslims would not cause him any harm, for what will benefit the Muslim in the Hereafter will be his endeavor and righteous deeds, and not the spot where he is buried. *“And man can have nothing but what he strives for”* (53:39) And as Salman al-Farisi (May Allah be pleased with him) said: *“Land does not sanctify anybody, but a person's own deeds sanctify him”*.³³

Besides, burying the deceased in the place where he or she dies is the practice primarily recommended by Sharia, and it is easier than transferring the dead to Muslim countries as do some Muslims, for that causes difficulties and costs a lot of money needlessly.

If the Islamic cemetery is far from the residence of the deceased's family, it will not be an acceptable excuse to bury him in a (nearby) non-Muslim cemetery, for visiting

³³Mentioned by Malik in Al-Muwatta (no. 2232) with the word “man” instead of “person”.

cemeteries is primarily recommended for the benefit of the visitor, to receive admonition and learn a lesson, as is confirmed in the hadith: *“I commanded you not to visit graves, but now I strongly recommend visiting them, for that makes the heart tender and the eye shed tears and it reminds of the Hereafter”*. (Narrated by Ahmad and al-Hakim on the authority of Anas)³⁴.

A Muslim can pray for the dead person and ask forgiveness for him, and, by the Grace of Allah, the reward thereof will reach him wherever the supplicant or the seeker of forgiveness for him may be³⁵.

[Resolution 5/6]

³⁴It is a hasan hadith; Ahmad (no. 13487); Al-Hakim in Al-Mustadrak (1/376) through two routes on the authority of Anas.

³⁵Dr Muhammad Fuad al-Birazi, member of the Council disagrees by saying: “I see that in the case of the non-existence of an Islamic cemetery, the heirs of the deceased are to be allowed to transfer him to his country if they can afford that; otherwise, he may be buried in the part allotted for Muslims in Christian cemeteries.”

Seventh: Earning a Living and Business

Fatwa (22)

The Ruling regarding revoking a contract after it has been signed

Signing a contract in any transaction renders the contract obligatory on both parties and neither of them is entitled to revoke it unilaterally without the consent of the other party. This will oppose what Allah (swt) and His Messenger (ppbuh) ordained and the texts of Quran and *Sunnah* confirmed. Allah (swt) says: “*O you who believe! Fulfill all obligations*” (5:1). Allah (swt) also says: “*And fulfil (every) covenant for (every) covenant will be inquired into*” (17:34). Allah (swt) also says: “*Fulfill the covenant of Allah when you have entered into it and break not your oaths after you have confirmed them; indeed you have made Allah your surety*”(16:91).

Qur’an in several verses strongly blames those who treat pledges lightly and break them after their being concluded. The prophet (Peace be upon him) regarded breaking a pledge as a branch of hypocrisy and a one of the basic traits of a hypocrite. “*Four (traits) would render that who is characterized by them an absolute hypocrite, and whoever has one trait of them has one trait of hypocrisy till he gives it up*”. Then he mentioned among them “*If he gives a pledge he will break it*” (Narrated by Al-Bukhari and Muslim on the authority of ‘Amr).³⁶

The contract does not have to be a written one, for mutual verbal agreement is enough to establish it, but either part has the option to revoke the contract, as we think, if he finds a better alternative, if the two parties are still at the site where the contract has been made, as is illustrated in the authentic hadith: “*The seller and buyer have the option (to change their minds) before separating*” (Narrated by Al-Bukhari and Muslim on the authority of Ibn ‘Umar³⁷). The hadith gives the option of revoking a contract to a person who has rashly and unthinkingly made it.

Similarly, a person who feels that he has been badly cheated, may raise his case to an arbitrating party that may give the option of revoking (the contract) because of being cheated, if that party is convinced of that, according to the Hanbali School and others. A Muslim can escape the problem of revoking the contract after its conclusion if he stipulates for himself the option to annul the contract within a specified number of

³⁶Al-Bukhari (nos. 34, 2327, 3007) and Muslim (no. 58)

³⁷Al-Bukhari (no. 2001 and other positions), Muslim (no. 1531) from Ibn ‘Umar’s hadith. Al-Bukhari (no. 1973 and other positions); Muslim (no. 1532) from the hadith of Hakim ibn Hizam.

days during which he can revoke the transaction. This was what the Prophet (Peace be upon him) advised one of the Companions to do when he complained of being cheated in business. The Prophet (Peace be upon him) said to him: “*If you do business, say: No cheating!*” This is narrated in the two *Sahihs*.³⁸ In other than the two *Sahihs*: “*And I have the option for three days*”³⁹, and Muslims should commit themselves to their conditions.

Otherwise, a Muslim should respect his own word, which is one of the values that Islam calls for, so that dealings are stable and people’s lives are straight and settled. A poet said: I never say one day “yes” to follow it with “no” even if I would lose all property and children.

Islam, moreover, prohibits the Muslim to complete with his brother who is about to conclude a transaction with somebody else and make a higher bid to usurp the transaction from him. In this respect the authentic hadith states: “*A Muslim should not compete with his brother for a (nearly concluded) transaction*”.⁴⁰

[Resolution 6/6]

³⁸Al-Bukhari (no. 2011 and other positions); Muslim (no. 1533) from the hadith of Abdullah ibn ‘Umar.

³⁹It means that the prophet (Peace be upon him) permitted him to have the option for three days, as is narrated by Al-Darqatni (3/54-55); Al-Hakim (no. 2210); Al-Bayhaqi (5/273) from the hadith of ibn ‘Umar with a hasan isnad and with the wording: If you trade, say: ‘No cheating,’ and in any goods you buy you have the option for three days.”

⁴⁰Agreed upon; Al-Bukhari (no. 2033 and other positions); Muslim (no. 1515) from Abu Hurayrah’s hadith. In its wording “a man” occurs in place of “a Muslim”.

Fatwa (23)

The Ruling on sports as a Profession

Resolution

The council answered by emphasizing the rule “Taking a permissible (*mubah*) work as a profession is permissible,” unless something is excepted with evidence (to the contrary). Sports per se are at least permissible if not recommended or compulsory. Allah’s Messenger (Peace be upon him) urged the *Umma* to practice some sorts of sports that keep man healthy and the *Umma* strong unless they lead to mischief.

[Seventh Session]

Fatwa (24)

The Ruling regarding boxing as a profession

Resolution

Taking boxing as a hobby, not by beating a human-being, but by practicing it by beating at inanimate objects is permissible and not risky. But taking it as a profession is unlawful, for it may harm the one being beaten. It may cause death or permanent physical disability. Such mischief is not allowed by the Islamic Sharia even for a non-Muslim in the light of the actual practice of this sport, and the legal ruling states: “No mischief nor mutual harming”.

Boxing is also based on directing a hit against the head and face. Allah’s Messenger (Peace be upon him) said: “*If any of you fight (or hit, in another version), he shall avoid the face*” (Agreed upon).⁴¹

[Fifth Session]

⁴¹Al-Bukhari (2420); Muslim (no. 2612) from Abu Hurayrah’s hadith.

Fatwa (25)

The right of an employee to use his work equipment for private purposes

Resolution

The basic principle in regards with public funds, i.e. that of government or private establishments, is that they are not to be infringed upon, particularly that the Qur'an and authentic hadiths emphasised the severe punishment awaiting those who indulge into such funds without due right. Indeed, Scholars considered these funds similar in status to the money of an orphan, and is thus to be maintained and preserved and not to be touched. However, the exception in this case is that which has become customary practice widely acknowledged and accepted by society, as this implies that there is an implicit and underlying permission. In any case, one must not use this permission extensively, as the basic principle aforementioned stands and remains valid. In addition, a Muslim, who seeks perfection in his religion, ought to refrain from such practices in accordance with the hadith: "*...and whoever remains away from controversial matters, has indeed perfected his religion and reputation*".⁴²

[Seventh Session]

⁴² Excerpt from the hadith of Al-Nu'man ibn Bashir in which the Prophet (ppbuh) states: "Halal is clear and Haram is clear". Agreed upon, narrated by Al-Bukhari (No.52, 1946) and Muslim (No.1599).

Fatwa (26)

Purchasing houses with an usurious loan for Muslims living in non-Muslim countries, i.e. taking up a mortgage to buy a house

The Council discussed in detail several papers concerning the purchasing of mortgaged houses and came to the following conclusion:

- The Council stresses what had been agreed upon by the Muslim *Umma* that usury is forbidden. It is a major sin and is one of the seven gravest ones. Those who commit it are considered as being waging war against Allah (swt) and His Prophet (ppbuh). In this vein, the Council supports what has been decided by *Fiqh* Councils throughout the Muslim World that bank interests are usury.
- The Council, therefore, invites the Muslim community to do its utmost to seek Islamic alternatives such as *Murabaha* (sale at a profit), which is practiced by Islamic Banks. They should avoid doubtful matters to the furthest extent possible. It encourages them to establish their own construction companies that can build houses and sell them to Muslims with relaxed, less strict lawful ways of payments.
- The Council calls upon Islamic organisations throughout Europe to enter into negotiations with European banks to find formulas that are acceptable to the Muslim buyer. Formulas like *Bei Al-Taqsit*, (sale for deferred payment), where the buyer is required to pay more money due to the fact that payment is not immediate. This formula will help both banks as well as the Muslim community. This formula is in operation in some European banks. In addition to this, some European banks opened branches in some Muslim countries, where transactions are run according to the *Shari'a* as in Bahrain. In this regard, the Council would send appeals to European bank to observe the needs of the Muslim community .

If all the above suggestions are un-available, the Council, in the light of evidence and juristic considerations, see no harm in buying mortgaged houses if the following restrictions are strictly observed:

- a) The house to be bought must be for the buyer and his household.
- b) The buyer must not have another house .

- c) The buyer must not have any surplus of assets that can help him buy a house by means other than mortgage.

This Fatwa is based on the following two major juristic considerations:

First: The agreed upon Juristic Rule which states that extreme necessities turn unlawful matters lawful. This Rule is derived from five Quranic texts, amongst them: “*He (Allah) has explained to you in detail what is forbidden to you, except under compulsion or necessity*” (6:119), and “*But whosoever is forced by necessity without willful disobedience, nor transgressing due limits; (for him) certainly, your Lord is oft-Forgiving, most merciful*” (6:145).

Moreover, Jurists have established that *Hajah*, i.e. need or necessity, whether for an individual or a group, can be treated in equal terms like *Darurah*, i.e. extreme necessity. *Hajah* or need is defined as those things which put the Muslim in a difficulty, if not fulfilled, even if he or she can do without. *Darurah* or extreme necessity, on the other hand, is that which the Muslim cannot manage without. Allah (swt) has lifted difficulty as stated in Sura Al-Hajj and Al-Ma'idah: “*And He has not laid upon you in religion any hardship*” (22:78), and “*Allah does not want to place you in difficulty, but He wants to purify you, and to complete His Favour to you that you may be thankful*” (5:6).

The house that can satisfy the criteria set up by the definitions of *Hajah* i.e. need and *Darurah* i.e. extreme necessity above is the one that is suitable for the Muslim family in terms of size, location, locality and amenities.

But as the fatwa is built on the Rule of *Darurah* i.e. extreme necessity or *hajah*, i.e. the need (which is treated in a similar manner like *Darurah*), the Council stresses that there is another Rule which governs and complements the rule of extreme necessity and need. This rule reads what has been made permissible due to extreme necessity must be dealt with great care and taken in measure. It should be restricted to those who are in real need for a house. However, the fatwa does not cover taking up mortgage to buy a house for commercial reasons or for purposes other than buying an own house for those who do not have one.

Undoubtedly, accommodation is necessary for individuals as well as families. Allah (swt) has granted His favours upon His servants and showed them His bounties,

amongst these is their houses: "*And Allah has made for you in your home an abode*" (16:80). The Prophet (ppbuh) has explained that a spacious house is one element of three or four elements that constitute the concept of happiness. Rented houses do not fulfill all that the Muslim normally needs. They do not give him the sense of security, as he or she keeps paying towards rent for long periods of time. The tenant might be asked to evacuate their rented accommodation for reasons like size of the family, or the number of guests whom visit. When getting older or have his or her benefit suspended they might even be thrown out of the house. Buying one's own house discharges Muslims from all these discomforts and helps them settle closer to mosques, Islamic centres or schools as it helps them build up their smaller Muslim community within host countries where families get to know each other and work to establish their cultural identity .

Buying an own house also helps the Muslim family to modify it to accommodate their social and religious needs. Besides all these individual benefits, it helps the Muslim community, being a minority, to free themselves from the financial pressure that renting accommodation often causes, and focus their attention to the call to Islam and help the host community wherever possible and permissible. This cannot in fact be possible if the Muslim family works all the time just to pay towards the costs of their rented accommodations as well as their living costs .

Second: The juristic verdict which claims that it is permissible for Muslims to trade with usury and other invalid contracts in countries other than Islamic countries. This opinion is held by a number of renowned scholars such Abu-Hanifah, his colleague Muhammad Al-Shaybani, Sufayn Al-Thawri, Ibrahim Al-Nakha'i, and according to one opinion of Ahmad Ibn Hanbal which was declared as true by Ibn Taymiah, according to some Hanbalite sources. It is also the declared opinion of the Hanafi school of jurisprudence. What makes this last criterion accommodate our fatwa is a number of considerations, amongst which are the following:

- 1) According to Sharia, Muslims are not obliged to establish the civil, financial and political status of Shari'a in non-Muslim countries, as these lie beyond their capabilities. Allah (swt) does not require people to do things that are beyond their capacity.
- 2) Prohibiting usury is a matter that concerns the host non-Muslim countries, and which Muslim communities can do nothing about. It has many things to do

with the socio-economic philosophies of the host countries. However, in these countries what is required of the Muslim is to establish the Shari'a rulings in matters that concerns him in person such as the rules that govern acts of worship, food, drink and clothes, marriage, divorce, inheritance and so on. If Muslims choose not to deal with these invalid contracts, including contracts involving usury in non-Muslim countries, this would weaken them financially. Islam is, however, supposed to strengthen Muslims not weaken them, increase rather than diminish them, benefit and not to harm them. Some Salafi scholars claimed that Muslims could inherit non-Muslims as this goes in line with the hadith which says: "*Islam increases and does not decrease*"⁴³, i.e. increases Muslims in power, wealth, etc. Similar in content is the other hadith which states: "*Islam is superior and none can excel it*"⁴⁴. Therefore, if Muslims are not to trade with these invalid contracts and transactions (where extreme necessity and urgent need is involved), then they will end up paying what is required from them (in transactions that involve usury) without receiving any benefit in return. They will be losers as they will be obliged to honour these transactions, and in return they will get nothing. This way Muslims will be financially deprived and suppressed. Islam never punishes Muslims for their Islam nor abandons them in countries other than their own Muslim countries. Islam never means to let unbelievers abuse Muslims financially or otherwise, at a time where it prohibits them from getting any benefit in return.

Concerning the claim that the Hanafi Madhab allows usury in cases where the Muslim is the recipient, i.e. the beneficiary, and that the Madhab permits invalid contracts only if two conditions are satisfied :

⁴³ Abu Dawood narrated (No.2912) as did Al-Bayhaqi, through the same channel (6/205, 254-255) from Abdullah ibn Burayda, "That two brothers; a Jew and Muslim, fell into a conflict and asked Yehia ibn Ma'een to arbitrate between them, whom went on to award the Muslim the inheritance. He, i.e. Yehia, said: Abul Aswad informed me that a man told him that Mu'ath had told him: "I heard the Prophet Mohammed (ppbuh) say: "Islam increases and does not decrease", and upon this he awarded the inheritance to the Muslim. The chain of narraition to Abul Aswad is correct, however this chain is disconnected between Muath and Abul Aswad, as the narrator who made the narrated connection is unknown, however it is linked to the hadith of A'ith ibn Amr, with which it becomes a Good narration.

⁴⁴ A Good Hadith due to another. Narrated by Al-Rawyani in his 'Musnad' (No.783), Abu Nu'aym in "Akhhbar Asbahan" (1/65) and Al-Bayhaqi (6/205), where two narrators are unknown. However, the previously mentioned hadith of Mu'ath ibn Jabal testifies to its authenticity, in addition to the fact that this hadith also came with a correct chain of narration that links it to Ibn Abbas, and which is relayed by Al-Tahawi in "Sharh Ma'ani Al-Athar" (3/257) and which Al-Bukhari considered as suspended (1/454) in "Kitab Al-Jana'iz" and authenticated by Ibn Hajar in "Al-Fath" (9/421). This Hadith and the one previously mentioned are both supported by the Quranic verse: "*It is He Who sent His Messenger with Guidance and the True Religion to make it prevail over all religions*" (**:33) and (**:9).

First: Where the Muslim is the beneficiary, and

Second: Where deception -involving non-Muslims- is not involved .

Arguing against this claim, first we would maintain that in our case, the benefit has not been realised. The second is the claim has not been authenticated as this has been affirmed by Muhammad Al-Shaibani; one the chief scholars of the Hanafi Madhab and a student of Abu-Hanifah, in his book “Al-Siyar Al-Kabir”. Moreover, earlier scholars of the Madhab did not set up any conditions (regarding trading with usurious contracts in non-Muslim lands). However, in our case even if the Muslim is the giver (of usury) he or she is still the beneficiary as he or she will gain an owned house after a number of years.

Furthermore, statements forwarded by Muslims living in Europe to the Council through correspondence and/or direct contacts inform that payments made towards a mortgage are equal, and sometimes lower, than those paid as mere rent mortgage. It follows that if we are to forbid usurious transactions, Muslims will be impeded from securing their own house, despite it being one of *Al-Hajat Al-Asliyyah* i.e. the essential and basic necessities, according to jurists’ terminology. Hence, Muslims will end up paying towards rents for a number of years without owning their houses, while they can own them if these payments are to be made towards mortgages .

Finally, even if this transaction is declared as invalid by the Hanafi School of jurisprudence, and those who hold a similar view, it will certainly be permitted where *Hajah* (i.e. the need that is treated by jurists on similar grounds like *Darurah*, i.e. extreme necessity, which makes impermissible things permissible) comes into consideration .

What makes our argument sound and valid is that Muslims are compelled to take usury, i.e. they do not deal with it on purpose or by their free choice. The prime criterion for forbidding usury, according to a number of Quranic verses, revolves essentially around taking usury (not giving it). However, giving usury was forbidden only to obstruct pretext, i.e. ways leading to usury, which is termed by jurists as ‘*Sad Athara’i*’. On similar grounds, notaries and witnessing usurious transactions was prohibited. They were made as such to check the means that lead to usury .

While taking usurious loan is categorically forbidden, paying interest towards a loan is permitted if there is *Hajah* i.e., an urgent need as maintained by a number of jurists. It has also been maintained that taking a usurious loan is permitted if there is no other

way available. A famous rule that we could put forward in this regard is what has been made forbidden for an essential reason within the transaction can only be made permissible for cases where *Darurah* i.e. extreme necessity, is involved, and what has been made forbidden to obstruct further ways that lead to usury can be made permissible for *Hajah*, i.e. need.

[Resolution 2/4]

Fatwa (27)

Insurance and Reinsurance

Resolution

The Council discussed the research and the papers presented to it concerning the issue of insurance and how it is dealt with in Europe and reviewed the publications of the Fiqh Academies, conferences and scientific forums on this matter, and has arrived at the following:

First: Taking into consideration the resolutions issued by some *Fiqh* Academies that prohibit business insurance (which is based on fixed premiums without giving the insured any of the profits of the company or charging him any of its losses) and the lawfulness of cooperative insurance (which is based on regular cooperation among the insured and distributing the surplus, if any, among them – the role of the company being confined to running the budget of insurance and investing its assets), there are cases and environments that require solutions to deal with special situations and meet their needs, particularly the case of Muslims in Europe where business insurance is prevalent and where people are badly in need of benefiting by it to ward off the risks they are largely exposed to in daily life in all its forms, and in the absence of the Islamic alternative (i.e. the cooperative insurance) and the difficulty to find it nowadays. Therefore, the Council gives the *fatwa* permitting business insurance in the following and similar cases:

1- The cases of legal compulsion, such as insurance on cars, machinery and equipment, for employees and officials (social security and pension), and some cases of health insurance, study insurance, etc.

2- Cases where insurance is required to ward off critical situations and severe difficulty and where the risk in the system of business insurance is excused. Following are some examples:

- a) Insurance on Islamic institutions such as mosques, centers and schools, etc.
- b) Insurance on cars, machinery, equipment, houses, professional and commercial establishment, to avoid the perils that are difficult to cover such as fires, theft and the impairment of various facilities.
- c) Health insurance to avoid the high costs which the insured and the members of his family may have to pay, in the absence of free, slow, or technically low level health coverage.

Second: Postponing the subject of life insurance in all its forms to another session to complete its study.

Third: The Council recommends that wealthy and intellectual figures try hard to establish financial Islamic establishments, such as Islamic banks, and Islamic cooperative insurance companies as much as possible.⁴⁵

[Resolution 7/6]

⁴⁵Dr Muhammad Fuad al-Birazi, member of the Council, disagreed by saying: “I see that insurance is permissible if it compulsory by law, in addition to cooperative insurance if it is available. Otherwise, it is prohibited.”

Eighth: Food & Drink

Fatwa (28)

Q) We have come to realize that all soda drinks (such as Coca Cola) contain an amount of alcohol, according to academic papers published in the United States. Food and drug laws in America stipulate that if the amount of alcohol in a drink is less than 0.5%, then the drink is not considered an alcoholic drink. Also, laws allow manufacturing companies to conceal these contents if they are of very small quantities. Is it permissible for a Muslim to consume drinks which contain such amount of alcohol?

A) This amount of alcohol, if proven to be accurate and does indeed form an ingredient of these drinks, does not effect the permissibility thereof, and does not transform any drinks or food from being Halal into becoming Haram. This can be deduced from the hadith of the Prophet Mohammed (ppbuh): “If a drink causes intoxication when consumed in large quantities, then consuming small quantities thereof is deemed Haram”. This is an authentic hadith narrated by Abu Dawood and Al-Tirmizi from the hadith of Jaber ibn Abdullah, and is also narrated by Al-Nasa’i and Ibn Maja from the hadith of Abdullah ibn Amr⁴⁶. The clear implication of the hadith is that should a drink not cause intoxication if consumed in large quantities then it is deemed Halal. Indeed, these soda drinks do not cause one to become intoxicated whatever quantities were consumed, and thus it is not important to disclose these ingredients as they do not affect the concerned food or drink’s permissibility.

[Fifth Session]

⁴⁶ Abu Dawood (No.3681), Al-Tirmizi (No.1865) and Ibn Maja (No.3393) from the hadith of Jaber. It was also narrated by Al-Nasa’i (No.5607) and Ibn Maja (No.3394) from the hadith of Abdullah ibn Amr.

Fatwa (29)

The legal decision in regards with meat and poultry products sold by non-Muslims in Europe.

The Council discussed this matter at great length acknowledging that it is a matter which has created great concern and debate amongst Muslims. The Council concluded that it is necessary for Muslims to abide by the conditions of slaughtering according to the Islamic Shari'a, so that they please their Lord and protect their identity from compromise and external threats as well as to protect themselves from consuming what is illegal and forbidden.

Having examined the various methods of slaughter, many of which consist of various illegal acts which lead to the death of a large proportion of animals, particularly chicken, The Council decided the illegality of consuming the meat of chicken and cows, whilst the meat of lamb, sheep and calves is allowed as the method of slaughtering these in many countries does not contradict the methods decided by the Islamic Shari'a. The Council hereby recommends to all Muslims that they establish their own slaughter houses so that they may fulfill this important need whilst protecting their religious and cultural identity. The Council also calls upon the Western governments to recognise the religious aspects of Muslims, including enabling them to slaughter according to Islamic Shari'a, similar to other religious communities and groups such as the Jews. The Council also calls upon the Islamic countries to import meat which has been slaughtered according to the Shari'a and which are supervised and administered by the trusted Islamic centres throughout the West.

[Third Session]

Fatwa (30)

The ruling of Vinegar manufactured from alcohol

The Council ruled that if alcohol naturally becomes vinegar then it is Halal and pure (*Tahir*), by virtue of the consensus of scholars. However, scholars differed regarding if it became vinegar as a result of deliberate processing and treatment, such as adding salt, bread or a particular chemical. Some said that it is pure and may be used as it has completely transformed from the original state of being alcohol. Others said that it does not become pure and may not be used, because we are commanded to stay away from alcohol. Having considered both opinions, the European Council for Fatwa and Research concluded that the first opinion which states that vinegar made deliberately from alcohol is pure and may be used, is correct. This is because acetification, i.e. making something into a vinegar, removes the element which makes alcohol principally haram, namely; intoxication, and thus becomes permissible, particularly that there are many benefits to be gained from vinegar such as medicine, food and others. It is important to note that any ruling is entirely bound by the reason and wisdom and in the case of vinegar, we realise that the element of intoxication has been completely eliminated. This is affirmed by the hadith of the Prophet Mohammed (ppbuh): "*What a good seasoning vinegar is*"⁴⁷, without specifying the kind or type of vinegar. We also note that the Prophet (ppbuh) did not order us to seek the origin of the vinegar nor to make any enquiries in that respect. As for the statements which state the prohibition of acetification, these are to demonstrate the firm position of Islam in regards with alcohol itself, so that no one becomes complacent in this regard.

[Resolution 7/4]

⁴⁷ Narrated by Muslim (No.2051), Al-Tirmizi (No.1840) and Ibn Maja (No.3316) from the hadith of Aisha. Muslim also narrated the hadith (No.2052) as did Abu Dawood (No.3821), Al-Tirmizi (No.1842), Al-Nasa'i (No.3796) and Ibn Maja (No.3317) from the hadith of Jaber ibn Abdullah.

Ninth: Mannerisms and Behavior

Fatwa (31)

Q) If a woman fell in love with a man, is she considered to have sinned?

A) Whatever feelings overcome one's heart without his or her choice, then no sin is deemed to have been committed. Indeed, feelings of love and hate which overcome one's emotions inadvertently are not considered sins, unless they drive that person to act upon those feelings in an unlawful manner. Allah (swt) said in the Holy Quran: *"Allah does not overburden a soul with what it cannot bear"* (2:286). The Prophet Mohammed (ppbuh) stated in the authentic Hadith: *"Allah Almighty has forgiven for my Umma what they have concealed in their hearts, unless they act accordingly or speak aloud"*. Agreed upon; narrated by Abu Huraira⁴⁸.

However, a man and woman must not indulge in any acts which would cause such emotions to overcome their hearts, as this may lead to sinful acts being committed. Also, they must consider the best of solutions in such circumstances, namely; marriage. The Prophet (ppbuh) said: *"We have seen no better solution for those in love than marriage"*, narrated Ibn Maja from the Hadith of Ibn Abbas, may Allah be pleased with him and his father⁴⁹.

[Fifth Session]

⁴⁸ Narrated by Al-Bukhari (No. 2391, 4968, 6287) and Muslim (No.127)

⁴⁹ Ibn Maja (No.1847)

Fatwa (32)

The ruling on a Muslim woman revealing her ‘*Awra*’ (parts of the body which must not be revealed to non-chaperon men) before a non-Muslim woman, and her swimming in a communal swimming pool.

Resolution

The Council considered the matter of a Muslim woman revealing her ‘*Awra*’ before a non-Muslim woman and joining in a safe and secure communal swimming pool, and found that there is no objection to this, as the *Awra* of the woman to another woman, is similar to the *Awra* of a man to another man., namely; from the navel to the knee, according to the Hanbali school of jurisprudence as well as an approved statement within all three other schools of jurisprudence.

The Council meanwhile, encourages all good Muslim sisters to lower their gaze as to what others reveal of their *Awra*, and to appoint one of their sisters to train and teach them to swim. However, as it is apparent that the non-Muslim women in question were commendably keen not to share the swimming pool with men, our Muslim sisters ought to take this opportunity and introduce them to Islam and its sublime values and ethics.

[Resolution 4/5]

Fatwa (33)

Ruling on offering congratulations to non-Muslims on their festive occasions

Resolution

There can be no doubt as to the importance and the sensitivity of this issue, specially to Muslims residing in the West. The Council received numerous questions and queries whom live in these countries and interact with the non-Muslims thereof. Indeed, between the Muslims and the non-Muslims are strong and integral links stipulated and deemed necessary by the means and manner of life itself, such as neighbourly relations, friendship at work or study. In fact, a Muslim may actually feel in debt toward the non-Muslim in particular circumstances, such as towards the hard-working and selfless supervisor or lecturer, a sincere and skilful doctor and others. A famous Arab said what implies the meaning that one is enslaved by others' favours.

Thus, what is the position of the Muslim as to such people who are non-Muslims, who do not actually hold any animosity towards Muslims, do not fight them due to their religion and did not actively seek to expel Muslims from their homes and lands?

The Holy Quran stipulated regulations as to how relationships between Muslim and non-Muslim are to be governed and carried out, in the chapter of 'Al-Mumtahina', which was essentially revealed to address the pagan polytheists. Allah (swt) said: *"Allah does not forbid you to deal justly and kindly with those who fought not against you on account of religion and did not drive you out of your homes. Verily, Allah loves those who deal with equity. It is only as regards those who fought against you on account of religion, and have driven you out of your homes, and helped to drive you out, that Allah forbids you to befriend them. And whosoever will befriend them, then such are the wrong-doers"* (60:8-9).

Thus the verse stipulated that there is a clear difference between those who fight Muslims and treat them as enemies, and those who interact and deal with Muslims in peace.

The latter, were commanded to be treated well and in a just and beautiful manner, more so than to merely give them what is duly theirs in rights and to take from them what is duly your. Indeed, the command is to treat them beyond those mannerism and to deal with them in beautiful and ideal ways.

As for the other group, which the verse clearly forbid any allegiance to them or support offered in their favour, they are those who chose to become enemies of Islam and Muslims and worked actively to expel them from their homes and lands for no reason other than that they proclaim that Allah Almighty is their Lord, as did Quraish and the infidels of Makkah in respect to the Prophet Mohammed (ppbuh) and his Companions.

Al-Bukhari and Muslim both narrated from the Hadith of Asma'a bint Abi Bakr (ra), that she came to the Prophet Mohammed (ppbuh) and said: O Messenger of Allah! My mother, who is a *Mushrik* i.e. a polytheist, has come to visit me and she desires to be close to me and to give me gifts,. Shall I greet her and treat her well? The Prophet (ppbuh) stated: "Greet your mother and treat her well".⁵⁰

This, whilst the woman was a *Mushrik*, and the Quran clearly stipulates that the People of the Script, i.e. Jews and Christians, are far closer to Islam and Muslims than *Mushriks*. Indeed, the Quran gave allowance to eat from the food of the People of the Script and to marry from them. Allah (swt) stated in the Chapter of Al-Ma'ida: "*..The food of the People of the Scripture is lawful to you and your is lawful to them, lawful to you in marriage are chaste women from the believers and chaste women from those who were given the scripture before your time*" (5:5) Also, if a marriage is permissible from them, then it goes without saying that marriage implicitly and necessarily decrees love and closeness; Allah (swt) stated: "*And amongst His signs is this, that He created for you wives from among yourselves, that you may find repose in them, and He has put between you affection and mercy*" (30:21). Indeed, how can a man despise his wife, who is ultimately his partner in life, his spouse, the mother of his children? Allah (swt) stated: "*..they are body cover for you and you are the same for them*" (2:187). Moreover, an important consequence and result of marriage is the coming together of two families, to form blood bonds and relationships, a form of natural human form of relating to one another. Allah (swt) stated "*And it is He Who has created man from water, and has appointed for him kindred by blood, and kindred by marriage*" (25:54).

Also, the feelings and affections of maternity, and the clearly stipulated and emphasized rights of a mother upon her children in Islam. One asks in this context: is it an acceptable act according to these stipulations that one does not greet or

⁵⁰ Narrated by Al-Bukhari (No.2477, 3012, 5633, 5634) and Muslim (No.1003)

congratulate his or her non-Muslim mother on a day of festivity which she celebrates? What about relatives from his mother's side, such as grandparents, uncles, aunts and cousins? All those have rights upon a Muslim clearly stated in the Holy Quran, where Allah (swt) states: *"But kindred by blood are nearer to one another regarding to inheritance in the decree ordained by Allah"* (8:76), and also: *"Verily, Allah enjoins justice and perfect mannerisms and giving to kith and kin"* (16:91).

Thus, if maternity and blood relation rights are obligatory upon a Muslim, in a way that exemplifies the beautiful mannerisms of Islam and Muslims, it is also obligatory upon a Muslim to pay the due rights which work towards showing Muslims as people of beautiful character. The Prophet Mohammed (ppbuh) advised Abu Thar (ra) saying: *"Be aware of Allah wherever you are, and follow up a sin that you have committed with a good deed, so that sin may be erased, and treat people with beautiful mannerisms"*.⁵¹ As is evident, the emphasis is upon "...and treat people with beautiful mannerism" not "...treat Muslims". The Prophet Mohammed (ppbuh) also advised strongly to deal with non-Muslims in a mild and delicate manner, away from using terrorising and stern methods. It was reported that when a group of Jews approached the Prophet (ppbuh) and greeted him with twisted pronunciation, and thus uttered 'Assam Alaykum O Mohammed!' instead of 'Assalamu Alaykum', the former meaning: 'death and destruction become upon you'. Aisha (ra) heard them and responded by saying: 'Assamu Alaykum also and the curse and wrath of Allah!' The Prophet rebuked Aisha for what she had said. She told him: 'Did you not hear what they said?' He said: "I did; and I responded by saying: and upon you", i.e. that death will come upon you as it will come upon me. He went on to say: "O Aisha! Allah (swt) loves gentleness in all matters".⁵²

Indeed the permissibility of congratulating non-Muslims on their festive days becomes more of an obligation if they were to offer their greetings on Islamic festive occasions, as we were commanded to return good treatment with similar treatment, and to return the greeting with a better one, or at least with the same greeting. Allah (swt) stated: *"When you are greeted with a greeting, greet in return with what is better than it, or at least return it equally"* (4:86).

⁵¹ Narrated by Ahmed (5/153, 158, 177), Al-Tirmithi (No.1987), Al-Darmi (No.2688), and Al-Hakim (No.178) on the authority of Abu Thar.

⁵² Agreed upon. Narrated by Al-Bukhari (No.2777 and other locations) and Muslim (No.2165) on the authority of Aisha.

A Muslim must never be less charitable or pleasant or indeed of lesser mannerisms than any other, as the Prophet Mohammed (ppbuh) stated in the hadith: “The most perfect believers in terms of their Iman are those who possess the most beautiful mannerisms”⁵³, and he (ppbuh) also stated: “Very I have been but sent to perfect the most noble of mannerisms”.⁵⁴

The significance of this increases dramatically if we are interested in inviting them to Islam and to liken Muslims to them, which is an obligation upon us all, as this cannot be achieved by treating them roughly, sternly and violently, but rather by beautiful mannerisms and sublime ethics. The Prophet Mohammed (ppbuh) dealt with the polytheists of Qureish in the most beautiful of ways and manners, throughout his life in Makkah despite their animosity, persecution, oppression and extreme insult of him (ppbuh) and his companions. This was epitomized by the fact that due to the incredible trust they had in him (ppbuh), they deposited their wealth and possessions with him, in fear that they may be lost or stolen. When the Prophet went on Al-Hijra (emigration) to Madina, he left behind Ali (ra), whom he commanded to return the deposits and trusts that were with him (ppbuh)

Thus, there is nothing to prevent a Muslim or an Islamic centre from congratulating non-Muslims, either verbally or by sending a card, which contains no symbols or icons of religious implications which may contradict Islamic faith and principles, such as the crucifix; a concept totally outlawed and denied by Islam. Allah (swt) stated in the Holy Quran: “..but they killed him not, nor crucified him, but the resemblance of Jesus was put over another man” (4:156).

Indeed, one finds in the customary words of congratulations, nothing which carries any explicit nor implicit recognition of any aspects of their faith or belief, nor any condoning thereof.

There is also no objection to accepting gifts and presents from them, and to return their gifts in kind. The Prophet Mohammed (ppbuh) accepted the gift of the King of

⁵³ Authentic Hadith, narrated by Ahmed (No.7402, 10106, 10817), Abu Dawood (No.4682), Al-Tirmithi (No.1162) and Al-Darmi (No.2689) on the authority of Abu Huraira. Al-Tirmithi commented: “A good authentic hadith”.

⁵⁴ Authentic Hadith. Narrated by Ahmed (No.8952), Al-Bukhari in ‘Al-Adab Al-Mufrad’ (No.273) and Al-Bazzar (No.2470 – Kashful Astar) and the hadith was narrated according to his narrated wording. The narration chain is authentic, i.e. Sahih. Abdul Barr also deemed the hadith authentic in “Al-Tamheed” (24/333).

Egypt and several others⁵⁵, on condition that these gifts are not unlawful in themselves, such as being alcohol or pork.

We also wish to mention that some jurists, such as Shaykh-ul-Islam Ibn Taymiyya and his student the great scholar Ibn-ul-Qayyim adopted stringent measures and restricted the permissibility of this issue and the participation of Muslims in the celebrations of non-Muslims. We adopt this same stance, advising Muslims not to celebrate the festivities of non-Muslims, whether Mushriks or People of the Script, as we find some ignorant Muslims celebrating Christmas as they would normally celebrate Eid-ul-Fitr and Al-Adha, and maybe even more so. This is unlawful, as we Muslims have our unique festivities, but see no objection to congratulating others on their festivities, if there is some relationship or fellowship links which deem positive social interaction and beautiful exchange a must according to our sublime and noble Islamic Shari'a.

As for patriotic or national celebrations and festivities, such as Independence Day, Union Day, Mother's Day, Childhood Day and the such; there is no objection whatsoever to a Muslim congratulating others in those regards, and indeed to participate therein as citizen of those lands, whilst observing Islamic mannerisms and controls in all matters.

[Resolution 3/6]

⁵⁵ Reports thereof are plentiful and their implications are authentic and approved, relayed by Al-Tahawi in "Sharh Mushkil Al-Athar" in an appropriate and comprehensive manner in both (6/399) and (11/128).

Fatwa (34)

Regulations controlling the meeting of men and women

Resolution

Meeting, co-operating and integrating between men and women is an instinctive and natural matter, which cannot be averted in reality. Indeed, Islam; the religion of natural instincts and inclinations, conveyed nothing which prevented such meetings from taking place, but rather set the following conditions and restrictions:

- The forbiddance of the meeting of a man and a woman in solitary, i.e. the meeting of a man and a foreign woman in a situation or position invisible to others. This is based upon the hadith, in which the Prophet Muhammad, peace and prayers be upon him states: “*Never are a man and woman in solitary, but with Satan present with them*”.⁵⁶
- Avoiding physical contact, so as not to lead to sexual arousal.
- Avoiding *tabarruj*, i.e. revealing parts of the body which Allah Almighty and His Messenger (ppbuh) ordered to be concealed and covered. Thus, according to the majority of scholars, a woman meeting with foreign men, must cover all her body apart from her face and two hands.

The woman must observe proper conduct in her speech and movement when in the presence of foreign men. Thus, she must not speak or act in a manner which attracts and leads to the arousal of men. Allah Almighty stated: “*if you do fear Allah, be not too complaisant of speech, lest one in whose heart is a disease should be moved with desire; but speak a speech which is just*” (33:32). Allah (swt) also says: “*And they should not strike their feet in order to draw attention to their hidden ornaments.*” (24:31). As long as men and women abide by these conditions in any meeting or activity, there is nothing to prevent them from doing so, provided that this gathering is a serious and constructive meeting, such as scientific, educational or cultural activities. It is worth noting that these conditions remain valid even if the women involved are non-Muslims, as the possibility of arousal does not subsist. It is also important to note that it is preferable for men and women’s seating areas to be separate, particularly if no reason calls for any other arrangement.

[Seventh Session]

⁵⁶ Narrated by Ahmed (No.114, 177) and Al-Tirmizi (No.2165) from the hadith of Omar ibn Al-Khattab. Al-Tirmizi declared it a Good and Authentic hadith.

Fatwa (35)

The Ruling concerning the woman's taking leave (of the husband) if she wants to leave house; and her travel without a *Mahram* i.e. Cheperon.

1) The Ruling concerning the woman's taking leave on leaving home:

It is incumbent on the woman to inform her husband when she wants to go outside her home. However, the woman's leaving her house to work, study or run errands for the home and the children, will not require but a general consent on the part of the husband, and the wife is not to ask leave every time. The matter is subjected to common tradition. If the wife's going out of the house is to visit a family not known to the husband, or if her going out entails staying overnight outside the house, the leave and consent of the husband become necessary. If the husband refuses, the woman shall not go out. Muslim morality also requires that the husband should tell his wife if he wants to travel or stay overnight outside the house, for she has the right to know her husband's whereabouts when he is absent from home.

2) The Ruling regarding a woman's travel without a Mahram

This is primarily unlawful according to the hadith of the Prophet (ppbuh): "A woman who believes in Allah and the Hereafter shall not travel for (a period of) a day and a night unless accompanied by a Mahram of hers"⁵⁷. Depending on this general text some scholars are of the opinion that a woman should not travel by herself. Other scholars stipulate that her travel is permissible in the company of a trustworthy group of men or men and women. The prohibition conveyed by the hadith is justified by fearing that the woman may be exposed to mischief or temptation if she travels alone, bearing in mind that the dangers of travel were numerous in the past. Caliph Omar ibn Al-Khattab (ppbuh) allowed the Prophet's wives to travel for *Hajj* with a group of believers and sent with them Othman ibn 'Affan and 'Abdul-Rahman ibn 'Auf.⁵⁸

In the hadith of the Prophet (ppbuh) to 'Adiy ibn Hatim we read: "If you live long, you will see the woman travel from Heerah⁵⁹ to cicummbabulate Ka'ba fearing none but Allah"⁶⁰. This confirms that the cause (of the prohibition) is fear (of insecurity). If

⁵⁷Narrated by both al-Bukhari (no. 1038) and Muslim (no. 1339) on the authority of Abu Hurayrah.

⁵⁸Al-Bukhari (no. 1761) and Al-Bayhaqi (4/326-327)

⁵⁹Heerah is a city in Iraq.

⁶⁰Al-Bukhari (no. 3400) from the hadith of 'Adiy ibn Hatim.

security is guaranteed and fear is no more present, a woman may travel, particularly nowadays when travel has become easy, whether by air, train or coach. In all these means of transportation, company is available and security is realized for the Muslim woman.

This is in respect of the woman's travel from one town to another or from one country to another and her arrival on the same day of her travel whereupon she finds company providing security. If the journey requires staying overnight in a hotel on the way, or the journey is intended to perform a certain task that requires residence for a certain period, the woman, in this case, is supposed primarily to travel with a *Mahram* of hers, or reside for the required period with a Muslim family in that country to evade the likelihood of temptation or mischief the woman may face.

Finally, the Council urges parents to bring up their daughters and the husbands to educate their wives according to the guidance of Allah (swt), for a Muslim woman will certainly follow the guidance of Allah (swt) steadfastly if she has received her due amount of education and instruction and has learned the rulings and rules of Sharia and has comprehended her religion.

[Fifth Session]

Tenth: Miscellaneous

Fatwa (36)

Giving up Jerusalem is a betrayal of Allah, His Messenger and the Believers

It is unlawful to surrender any part of Islamic land, for Islamic land is not the right of a president, a prince, a minister or of a group of people to surrender it under the event of exerted pressure or difficult circumstances. Rather, individuals and communities should try to use all means to withstand occupation, free the Holy Jerusalem and restore it to the Muslim territory.

If one of the *Umma's* generations proves unable or unwilling to do so, it does not have the right to impose its disability or unwillingness on the future generations of the *Umma* till the Day of Judgment by surrendering what it is not entitled to surrender.

Therefore, the Council's *Fatwa* is that it is prohibited and unlawful to sell land in Jerusalem or in any other location in Palestine to the enemies or accept compensation for it by the homeless refugees, for Muslim lands are not to be given up or compensated for in any case, and whoever does so betrays Allah, His Messenger and the Muslim society.

If this ruling applies to any Muslim land, it should be more strict concerning the land in Holy Jerusalem, the first of the two *qiblas*, the city of Al-Aqsa Mosque, and the third of the most venerated cities to Muslims next to Makkah and Medina, and the land that was the destination of *Isra'* (night travel) and the starting point of *Mi'ra* (ascendancy to Heaven). It is enough that Allah (*swt*) praised it in His Saying: "*Glorified (and Exalted) is He who took His Slave for a journey by night from Al-Masjid al-Haram (at Makkah) to Al-Masjid Al-Aqsa (in Jerusalem), the neighborhood whereof we have blessed in order that we might show him of Our Signs*" (17:1)

Therefore, Jerusalem has its place in the heart of every Muslim, whether east or west. It touches its membrane and goes deep in it, out of sincere love of it, eagerness to keep it intact, and defending its sanctified features and taking care of its affairs. Because of it, the Palestinian issue has become the first issue of Muslims. They hurry to protect it and they fight in its cause and offer their souls and valuable property for its sake.

Jerusalem is not for the Palestinians alone; it is for the whole Muslims, Arabs and non-Arabs. It is also for all Arabs, both Muslim and Christian.

The Palestinians are not entitled to decide by themselves the fate of Jerusalem and ignore the right of the Muslims all over the world. Consequently, Muslims, wherever they may be, should do their duty and do their utmost to defend Jerusalem and Al-Aqsa Mosque. It is a common obligation. All Muslims should work together to defend them with their souls and property and whatever they possess. Otherwise, they would incur the punishment of Allah (swt).

Allah (swt) says: *“O you who believe! What is the matter with you, that, when you are asked to march forth in the Cause of Allah, you cling heavily to the earth? Are you pleased with the life of this world rather the Hereafter? But little is the enjoyment of the life of this world as compared to the Hereafter. Unless you march forth, He will punish you with a grievous penalty and replace you by another people; but Him you will not harm in the least, for Allah has power over all things”* (9:38-39).

When the crusaders occupied Jerusalem in the past, the people who tried hard to free it were non-Arab Muslims, such as the Turk ‘Imad-ud-Din Zinki, his son Nur-ud-Din Mahmud, known as the Martyr, and his student the Kurdish Salah-ud-Din Al-Ayyubi, who Allah (swt) chose to free Jerusalem.

Muslims numbering over 1.3 billion are still everywhere ready to sacrifice and expend everything for the sake of their dear Jerusalem. This is perceived by every individual among the Muslim nations from Philippine and Indonesia in the East till Mauritania in the Arabian West, although this is not manifested strongly and clearly by some Muslim rulers, unfortunately.

Jerusalem is a dear part of Islamic home and Islamic land. Muslims have been in it for 14 centuries. They did not usurp it from the Jews. Indeed, Jews ceased to live in it for hundreds of years. Their state had come to an end hundreds of years before; a state which lasted for no more than a few hundred years. Arabs and others lived in it for thousands of years. When the Caliph Omar ibn Al-Khattab (ra) received Jerusalem from its Christian Patriarch Sapharnius, one of the conditions agreed upon with him stipulates: *“The Jews shall not live with them”*.

The sovereignty over Jerusalem should be Islamic – Arabian - Palestinian. This does not prevent Christians or Jews from practicing their religious rites with the freedom and tolerance characteristic of Islam through the ages: *“And Allah has full power and control over His Affairs, but most of men know not”* (12:21).

[Resolution 1/6]

Fatwa (37)

Ruling on transferring human organs to be transplanted in somebody else

Resolution

The Council endorses the resolution adopted by the International Islamic Juristic Academy in Makkah (of Muslim World League) No.26 (1/4) and the Resolution of the International Islamic Juristic Academy at Jeddah, (of the Muslim World Organization) concerning one's benefiting by the organs of another living or dead person. The Resolution states:

1) From the point of view of definitions and classifications:

First: "An organ" means (here) any portion of a human body, whether tissues, cells or blood, etc., such as the cornea, whether that portion is still attached to the body or separated from it.

Second: "Utility" which is the issue under discussion: is the utility which is targeted because it is necessary for the survival of the user, or for maintaining one of the essential functions of the body, such as sight, etc., provided that the user is leading a legally decent life.

Third: Utility is divided into the following types:

- (1) Transferring the organ from a living person.
- (2) Transferring the organ from a dead person.
- (3) Transferring (the organ) from embryos (and fetuses)

The first type: Transferring the organ from a living person includes the following cases:

- a- Transferring the organ from one position of a body to another position in the same body, like transferring skin, cartilages, bones, vessels, blood, etc.
- b- Transferring the organ from the body of a living person to the body of someone else. In this case the organ is either something the person's survival depends on or something the person's survival does not depend on.

The organs which are necessary for the survival of a person may be single like the heart and the liver or not single like the kidneys are lungs.

Organs that are not decisive in the survival of a person either perform an essential function in the body or do not do so; some of them may be spontaneously replaced and some may not be replaced; some may influence ancestry, genes, and general personality such as a testicle, an ovum and cells of the nervous system, and some may have no effect on such things.

The second type: Transferring an organ from a dead person: It is noticed that death comprises two cases:

The first case: the death of the brain whereupon all its functions become totally idle and medically irrevocable.

The second case: the medically irrevocable complete stoppage of the heart and respiration.

In both cases the Resolution of the Academy in its Third Session has been taken into consideration.

The third type: Transferring organs from embryos and fetuses.

These are benefited by in three states:

- 1) The state of fetuses of spontaneous abortion (miscarriage).
- 2) The state of fetuses aborted for a medical or criminal cause.
- 3) The state of zygotes implanted outside the womb.

From the view point of *Sharia* rulings:

First: It is lawful to transfer an organ from one's body to another position of one's own body, taking into consideration that one is sure that the potential advantages of such an operation outweigh the probable disadvantages, and provided that the purpose is to replace a missing organ or restore its shape or usual function, or to reform a defect or remove ugliness that causes the person psychological or physical harm.

Second: It is lawful to transfer an organ from the body of one person to the body of another, if such an organ is replaced spontaneously, such as blood and skin, on condition that the donor is completely legally qualified and all legal points are met.

Third: It is lawful to benefit by part of an organ that has been excised from somebody else's body due to his being sick, like taking the cornea of a person whose eye has been excised for a pathological reason.

Fourth: It is unlawful to transfer an organ which is necessary for the survival of a person, such as the heart, from one person to another.

Fifth: It is unlawful to transfer an organ from a living person if its removal will disrupt a fundamental function in his life, even if his life is not jeopardized, such as transferring the corneas of both eyes. However, if the transfer disrupts part of an essential function, the case will require further discussion and investigation, as will be shown in 'Eighth'.

Sixth: It is lawful to transfer an organ from a dead person to a living one if his life depends on that organ, or the soundness of one of his essential functions depends on it, provided that the dead person had given his permission or his heirs had given theirs after his death, or provided that the Muslim governor agrees if the deceased is not identified or has no heirs.

Seventh: It should be noticed that the permission of transferring an organ in the cases illustrated above stipulates that this should not be done through buying the organ; for it is unlawful to take a human being as an article for sale in any case. Anyhow, if the user offers money to get the required organ if necessary or as a gift, the matter will need further investigation and reasoning.

Eighth: All other cases and situations apart from the ones mentioned above that are relevant to the present subject will require special investigation and consideration and should be presented for study and research in another session, in the light of medical data and legal rulings.

A. The Council also confirms Resolution No.57 (8/6) of the International Islamic Juristic Academy at Jeddah regarding transplantation of the reproductive organs. It states:

First: The transplantation of the reproductive glands: since the testicle and the ovum continue conveying and secreting the genetic code of the donor even after they have been transplanted in the new receiver, such transplantation is unlawful in the light of *Sharia*.

Second: The transplantation of the organs of the reproductive system: the transplantation of some of the organs of the reproductive system that do not transfer the genetic characteristics –excepting the genitals- is lawful if necessary in the light of *Sharia* and according to the legal rules and criteria stated in Resolution No.26 (1/4) passed by this Academy.

B. The Council also confirms Resolution No.54 (5/6) of the International Islamic Juristic Academy in Jeddah concerning the transplantation of the cells of the brain and the nervous system. It states:

First: If the source of the tissues is the adrenal gland of the patient himself and he has the ability to accept the tissue immunologically, since the tissues are taken from the same body, the operation is acceptable in the light of *Sharia*.

Second: If the source is an animal fetus, it is not objectionable to follow this approach, it is likely to succeed and is not followed by legally unfavorable consequences. Physicians have mentioned that this method has been successful among various species of animals and it is hoped that it will be successful if the necessary medical precautions are taken to avoid immunological rejection.

Third: If the source of the tissues is living cells taken from an embryo (in the tenth or eleventh week), the ruling varies as follows:

- a) The first method: taking the cells directly from the human embryo in its mother's womb by opening the womb surgically. This entails the death of the embryo as some of the cells are taken from its brain. This is unlawful in the light of *Sharia*, unless it takes place after a natural unintentional miscarriage or legal abortion to save the mother's life and after the sure death of the embryo, taking into consideration the conditions that will occur under the topic of benefiting by fetuses in Resolution No.95 (8/6) of this Session.
- b) The second method: it is a potential method that the near future may convey, by which brain cells may be cultivated to benefit by them. This will be acceptable in the light of *Sharia* if the source of the cultivated cells is lawful and the cells have been obtained lawfully.

Fourth: The brainless newborn, if it is born alive, should not be tampered with by taking any of its organs till it is definitely dead by the death of its brain stem. It is treated in this respect as a normal newborn is treated. When it dies, the transferring of some of its organs should be subjected to the rules and condition to be regarded when transferring the organs of the deceased, such as the required permission, absence of an alternative, necessity, etc. and what is included in the Resolution No.26 (4/1) among the Resolutions of the Fourth Session of this Council. It is not objectionable legally to keep the brainless

newborn under the emergency appliances even after the death of its brain stem -which can be diagnosed- to maintain the activity of the transferable organs, so that they may be made use of by transferring them from it to another person under the conditions mentioned above.

2. The European Council for *Fatwa* and Research, after the discussion, has supplemented the subject with the following issues concerning the transplantation of organs:

- a) If the donor or his heirs specified a certain person to benefit by the donated organ, or they authorized some party to specify the person to benefit by it, that should be abided by as much as possible. If this cannot be fulfilled for a personal or medical reason, the issue should be referred to the heirs of the deceased; if impossible, the issue is to be raised to the authority that is concerned with the Muslims' interests in non-Muslim countries.
- b) If a person writes a document donating one of his organs posthumously, the ruling of testaments and wills shall be applied, and neither the heirs nor anybody else has the right to change the will.

In case there is a law stating that unless a person declares his unwillingness to let others benefit by his organs after his death, he will be regarded as willing, his not announcing his refusal openly is considered implied consent.

[Resolution 2/6]