The Islamic Banks

Etienne Renaud

The Prophet said: "There will come a time for men when no one will be anxious about profits, whether lawful or unlawful" Bukhârî, *Ventes* (34), *bâb* 7.

One of the aspects of the Islamic renewal is the growing importance of Islamic banking organizations in economic life. With the oil boom, Arab states found themselves with a surplus of petro-dollars which had to be invested somewhere, and at the end of the 1970's this situation led private groups as well as, occasionally, state enterprises to set up financial institutions in accordance with the spirit of Islam. Hence arose a whole host of banks proclaiming their adherence to the *sharî'a* and seeking to attract the new capital. Countries like Iran and Pakistan even islamized the whole of their banking system, both for religious motives and also to show their disapproval of Western capitalism. There was even talk of an "Islamic economic theory". There were international colloquia on the subject and Internet sites blossomed.[1] There is already a substantial literature on this subject.[2]

Because of its topicality, it may be useful to try and examine the subject in greater depth. One can however deal here only with the essential problem. We shall look first at the ban on usury in the Koran and in the tradition, and then at juridical developments. Then we shall consider the different juridical attitudes in different Muslim countries.

Usury in the Koran

We must of course seek in the Koran the initial reason for the condemnation of the taking of interest. The root *RBW* means "increase". The word *ribâ* in the sense of usury is only found in four Koranic passages. We may study them in chronological order.

The first is in surat 30 (*al-Rûm*), dating from the third Meccan period, shortly therefore before the Hegira.

"What you lend at interest (*ribâ*) for the sake of increasing (*li-yarbuwa*) your property will bring you no increase (*lâ yarbû)* in the sight of God, while what you give away as alms (*zakât*) in seeking the face of God will bring many times its value." (Q. 30, 39)

There is not yet an explicit condemnation but only a moral directive according to social justice. This fits the context of the time and place, in which the Muslim community is still a small minority in a society in which commerce recognizes no moral rules and in which usury is a widespread practice.[3]

The three other passages are all from the same period and probably date from a few years after the installation in Medina. Following the order established by J. Schacht[4], we begin with the verse 3, 130: "Do not practise (literally "eat") usury by multiplying capital beyond due measure."

Here is the first formal prohibition. It may well have been addressed in the first place to the Jewish community of Medina, well-known for its financial practices. It seems to be aimed at a particular form of usury, later called *ribâ al-jâhiliyya* (pre-Islamic usury), according to which if a debt was not repaid at the proper time the amount due was increased.

Here next is a long passage from the surat *al-Baqara*:

"Those who feed on usury will only rise again (on the last day) like those possessed by the devil. They say in effect, "usury and selling are the same thing", whereas God permits selling but forbids usury… God will reduce interest to dust while making alms fruitful…O you believers, fear God, renounce the excess of

usurious interest, if you really believe. If you do not follow this ruling, you may expect the hostility of God and of his Messenger. If you repent, you will retain your capital, neither harming anyone else nor suffering harm yourselves. To a debtor in difficulty, grant a delay until his situation improves. And if you renounce your rights, that will be better still." (Q.2, 275-280).[5]

This is a fundamental passage for our present reflection. One may list the following points:

- The clear distinction between commerce and *ribâ*;
- *Ribâ* is condemned by God, while on the other hand he encourages almsgiving;
- Faith implies the renunciation of usury;
- Nevertheless, capital will be safeguarded;
- Further, one may not put pressure on people who are in difficulties.

There is a final, third passage whose context suggests that it is also addressed to the Jews. It confirms the preceding prohibitions.

"And because they take *ribâ* while it is forbidden, and unlawfully eat the property of other people." (Q. 4, 161)

Until now, we have often ignored the Arabic word *ribâ.* How indeed is it to be translated? Simply "interest"? or "excessive interest"? Our interpretation of the Koranic interdiction will depend on our understanding of this term.

It may be observed that there is a similar ambiguity in French. In ancient usage, "usury" meant simply "interest taken on a sum of money" (Robert), whereas we use it today to denote an extortionate rate of interest.

In the Koranic teaching, ethical motives predominate. It is profoundly wrong to exploit the weakness of a debtor for one's own personal advantage. One may recall the case of the *ribâ al-jâhiliyya*, in which one profits from a debtor who is insolvent. It is also immoral to enrich oneself without risk, to collect more money simply because one is rich. More broadly, capital is seen as having a social function at the service of the development of society. Wealth is not an end in itself. God in fact is the "absolute owner" of all things on earth, and man is only the depositary and the beneficiary. He must therefore use the goods of the earth for the ends for which God created them and entrusted them to humanity.[6]

Let us now take a quick look at the tradition.

The Tradition

There are a number of *hadîth* which speak of usury.[7] They confirm the prohibition. One reads for example: "The Prophet forbade living off interest and causing others to do so."[8]

Exemplary punishment awaits the usurer.[9] Usury will however become widespread.[10]

"Certainly a time will come when a man will not be concerned to enquire whether the money he is handling comes from a lawful or an unlawful source."[11]

The Prophet is said to have repeated the ban on usury during the farewell pilgrimage: "God forbids usury. It will remain unlawful up to the resurrection."[12]

After Muhammed's death, the subject was still discussed in the community. 'Umar, the second caliph, is credited with some hesitant remarks on the subject of *ribâ*:

"The verses which treat of *ribâ* are among the last revealed verses of the Koran, and the Prophet died before he explained their meaning. You should therefore abstain from what is doubtful and adopt what will not give rise to any scruple."[13]

"I fear that we may have abstained from nine-tenths of things which are permitted, out of excessive fear of *ribâ*."[14]

And elsewhere:

"I would have preferred that the Prophet had given you definite explanations, so as to eliminate all controversy concerning certain cases of *ribâ*."[15]

The Juridical Schools[16]

The different Islamic schools of law have elaborated on the material in the Koran and the *sunna* concerning the *ribâ*, seeking to define precisely which transactions are to be considered usurious. Apart from the *ribâ al-jâhiliyya*, the pre-Islamic practice of which we have already spoken, the jurists distinguished two other kinds of *ribâ*. The first, called *ribâ al-nasî'a* (or *ribâ* of credit) is the relation between creditor and debtor in which the creditor's profit is the result of a pecuniary obligation. The other form, or *ribâ al-fadl*, consists of an exchange of different kinds of goods in which the enrichment of one of the parties is due to an imbalance between what is given and received.

In the first type, the usurious pressure is evidently more easily identified.

In fact the ban on *ribâ* has remained intact as a religious obligation. Everyone recognizes that the rule may not be openly transgressed. At the same time however business transactions cannot ignore the matter of interest. In practice therefore one may have recourse to a number of juridical expedients (*hîa*, pl. *hiyal*) constituted by a series of acts, each of them formally perfectly lawful and in accordance with the letter of the Koranic text even if they contradict its spirit. It may be observed in passing that literal attachment to the text naturally leads to the search for expedients. The *hîla* constitute a *modus vivendi* between theory and practice.[17]

A classical and rudimentary way of getting round the ban was the *mukhâtara*, called also *bay' al-îna* (sale on credit). This involves a double contract of selling and buying back (*bay'atân fi bay'a)*; the lender sells an article for a value equal to the capital required by the borrower but with added interest and with payment in instalments; but he buys back the same article simply for the capital due. This transaction was known in mediaeval European mercantile practice as *mohatra.* It amounted to a thinly disguised usurious practice which was later condemned by a number of schools.

Down the years a number of more complex interpretations were produced in which the creditor's profit was moderated by a form of risk-sharing which seemed to bring the transaction more into line with the Koran's ban. We shall look at some of them below, including the *mudâraba.* The *murâbaha* has come into vogue again with the birth of Islamic banks.

It is interesting to see how the debate on the taking of interest reappeared in the twentieth century. A principal figure in the debate was the reformist Shaykh Muhammad 'Abduh (1849-1905). In a celebrated *fatwa* he declared that taking interest on the deposits in saving accounts was lawful. He avoided the word interest because of its historical overtones and preferred to speak of "dividends" or "profits" accruing from savings accounts and regarded as serving the public interest.[18] This *fatwa* had important repercussions and was taken up by various disciples, including Râshid Ridâ and then, in 1957, Mahmûd Shaltût. The latter advanced ethical arguments to justify the taking of interest on bank deposits, citing the values of solidarity and the encouragement of saving.

We find the same thinking in the Mufti of Egypt, Muhammad Sayyid Tantawî, who later became Shaykh al-Azhar. In 1989 he also insisted on the importance of advancing the common good.[19] Even earlier, in the 1950's, the eminent lay jurist 'Abd al-Razzâq Ahmad al-Sanhûri (died in 1971), the father of the Egyptian civil code, had articulated motives justifying lending at interest.[20]

These declarations, although attracting strong criticism, tried to reconcile the great principles of Islam with the demands of modernizing the economy. Somewhat in the same spirit, one may mention the works of the Egyptian Muhammad Sa'îd'Ashmawî[21], who stressed the difference between interest and *ribâ*,

and the *fatwa* of the Saudian Ibrâhim al-Nâsir[22] declaring that Muslim law did not reject the modern banking system and the interest it generates. Again, the majority of Muslim jurists did not respond positively to these interpretations[23] but preferred specifically Islamic alternatives. They sought to retain the traditional provisions of Islamic law while making them competitive with capitalist institutions.

We may now review these traditional strategies and see how they are applied in the modern context. To understand these applications however we need to make a digression into the philosophy of contracts in Muslim law.

The Reasons for the Prohibition

To understand the ramifications of the question of *ribâ*, we may first attempt to offer a precise definition. This will enable us to see the deep reasons for the ban on interest before we say a word about the form of contracts in Islam.

Joseph Schacht, the leading specialist on Islamic law, thus defines *ribâ*:

"A unilateral right entailing no corresponding obligation, laid down in favour of one of the contracting parties in the exchange of two financial payments."[24]

Gian Mari Piccinelli, who has made a special study of the Islamic banking system,[25] gives a somewhat broader definition. For him the ribâ is "all increase of wealth which is not based on, and does not derive from, the productive action of its possessor."[26] He adds that "productive action" must be taken in a wide sense. Financial risk may be considered in itself to constitute a form of action.

As for the reason for the ban on interest, one may invoke first the religious motive. God condemns the *ribâ* in the Koran, and obedience to God therefore obliges the believer to renounce all unlawful profit. The prohibition however goes beyond the categories of lawful and unlawful. As Sâmî Hammûd says, "behind the ban there is a whole philosophy of the function of capital, which should be placed at the service of society." This philosophy is both ethical and economic. In studying the Koranic verses, the stress had been laid on the ethical dimension: not exploiting the insolvent debtor, not enriching oneself without any risk…But there is also the economic dimension of encouraging the spirit of enterprise, against the perverse effects of speculation. The system of interest reinforces the tendency for capital to accumulate in the hands of a minority. Demanding a fixed rate of interest without taking into account the results of an operation distorts both wealth-creation and productivity. The Islamic system on the other hand seeks to privilege the rôle of the investor beyond that of the lender or creditor. No doubt, profit is permissible, but this does not mean that rates of interest are to be fixed in advance. There should be rather a system of participation in both profit and loss which enables each of the partners to play an active part in the economic process.[27] In other words, the value of capital must depend on investment. There is thus a stimulus towards a productive economy in which the emphasis is on investment rather than on lending and borrowing.

These considerations already help us to penetrate more deeply into the Islamic economic system. If however we are to understand the structures established by Muslim law to promote these principles of partnership, and sometimes to hide the notion of interest, we have to make a little excursus into contracts in Islam. The notion of contract (*'aqd*, pl. *uqûd*) occupies an important place in Muslim law[28] within the framework of what are called the *mu'âmalât* (transactions in human society), as distinct from the *'ibâdât* which regulate worship.

In the classical tradition, the contract must have certain characteristics:

- The mutual exchanges must be in principle simultaneous, especially when the product can change with time, as with a future harvest. There is an abundant literature in the *hadîth* on this theme.
- There must be no doubt about ownership, in order to put some order into all the legal fictions (*hiyal).*
- The products must be of the same nature:
  The Prophet said: "Gold for gold, equality for equality, and silver for silver, equality for equality."[29]
- Finally the contract must not depend on chance. Hazard (*gharâr*) is forbidden, in order to prevent the stronger from exploiting the weaker in situations of uncertainty.

The jurists therefore established precise limits on contracts which might involve chance, as in the sale of something to come, and declared invalid, contracts in which the uncertain future object was the principal clause. This was the case in all insurance contracts (*ta'min*), unknown to the classical law.[30]

With the growing importance of insurance in modern life however, many theories have been advanced to justify their legality[31]. The principle of solidarity in particular has been invoked. A complementary reason has been advanced concerning life insurance: death is in the hands of God and one must commit oneself to his Providence.

After this study of the moral and economic principles underlying the ban on *ribâ*, and the consequent philosophy of Islamic banks, we may now present some of the concrete ways, rooted in traditional Muslim law, in which these banks operate.

The *murâbaha*

In Islamic banking practice, one of the commonest instruments of credit for businesses[32] is the *murâbaha* (from the Arabic root *ribh*, meaning gain, profit). In English the word is often translated *Mark-up* or *Cost-plus financing*.[33] It concerns a contract of re-sale: the bank acquires a piece of property required by its own client for a given price. The bank then resells the property at a higher price defined at the moment of contract. This price includes the bank's gain (*ribh)* payable within a certain time, usually between six and nine months.

According to the rules developed by the *fuqaha'*, the purchase price, which is the basis of the premium payable by the intermediary, must be known, and the two successive selling operations must be clearly distinct. When the payment is made by instalments, one speaks of *bay'mu'ajjal.*

The provider gives the merchandise directly to the client who chooses it himself and orders it on the account of the bank. This operation is used especially for short-term commercial operations.

The banks in fact play the rôle of financial intermediary; there is a three-sided structure in which, instead of the traditional loan, there are two sales contracts. This practice has given rise to a number of criticisms in the West since there is a tendency to see in it disguised interest through selling at a profit. In fact the bank incurs no risk concerning the merchandise, since it is the client who is responsible for it. The bank's only risk is the financial risk of anticipation.

The *mudâraba*[34]

Another practice is the *mudâraba*[35]. This is a commercial association in which a money-owner (rabb al-mâl) entrusts a sum to an agent (*mudârib, âmil*) who trades with it and shares with the original owner a determined share of the profits when he returns the capital.[36] It is a trust relationship (*amâna)* combined with work and it becomes an association with sharing of profits. It resembles a real contract of association (cf. *infra*), but with this difference that there is no common capital contribution nor co-management. Here the original owner of the money risks his capital while the agent expends his time and effort.

This type of contract was widely used in the tenth century in Italian ports. It was called *commenda* and it operated as the engine of commerce in the Middle Ages. It is used especially in trading activities.

This type of contract also involves commercial credit. It is also called *qirâd*[37] *or muqârada*, from the root *qard*, meaning "loan". This term can however lead to confusion, for in the Islamic juridical tradition the contract of *qard* is used especially in the context of charitable work, and in particular in what the Koran calls *qard hasan*, an expression which occurs twenty-six times in the Koran[38]. In this operation a sum is given without any expectation of return. This too forms part of the activities of Islamic banks which are often asked to manage the funds of *zakât.*[39]

As far as credits are concerned, it is accepted that the borrower may have to carry the administrative costs of the service provided by the bank.[40] Many questions however are still discussed and unresolved.

What resort for example is open to the creditor if his partner is late? May one set up a system of guarantees? Can the cost of credit be linked to the inflation rate?

The *mudâraba* has had no difficulty in adapting to banking techniques. The mandate of the agent, while being liberal enough in principle, often includes a clause allowing the bank to terminate the contract at will if there are doubts about the realization of the project.

Moreover, the *mudâraba* can function in two quite different ways. It may be the bank itself which proposes a credit to businesses, and it then plays the rôle of *rabb al-mâl*. In the other case, the bank acts as agent (*'âmil*) and accepts responsibility for administering the funds given by individuals for investment.

A particular case of exercising this second *mudâraba* concerns the funds of solidarity (*takâful*) in which investments are made for a special purpose. In other words they constitute a kind of insurance in situations where Muslim law forbids conventional insurance contracts. If one of the participants in the investment fund dies, his heirs receive not only the capital already deposited along with profits accrued, but even the capital which he had committed himself to pay in up to the age of sixty. It is here that the principle of solidarity intervenes in that it is covered by the profits which would have been due to the other participants.

The *mushâraka*[41]

This word may be translated "financing by participation". It concerns a contractual society set up for the joint exploitation of capital, with joint participation in profits and losses.

For example, a client with a specific business project submits his proposition to a bank and asks for capital to raise shares for the project.[42] The bank provides the necessary capital and liquid assets provided that:

1. The profits will be shared by the contracting parties in a proportion agreed at the time of the contract;
2. Any losses will be exactly proportionate to the share of each of the parties in the capital of the society.

The contract between the partners is fiduciary and may be of two kinds. It may be based on a general agreement to act in mutual interest (*shirka mufâwada*) or it may contain a number of clauses concerning such things as the agreement, the amount of capital, and the orientations of the society. One has then a *shirkat al-'inân*, the word *'inân* designating the bridle of a beast of burden. This second form has been more widely approved by the juridical schools than the first, the feeling being that in the latter the participation is uneven.

A further distinction concerns the length of time of the participation. There may be a *mushâraka* with no determined time-limit, which facilitates long-term projects, or a decreasing *mushâraka* (*mutanâqisa*) in which the bank's share is progressively reduced, the shares being reallocated little by little to the entrepreneur who finally becomes the sole owner of the capital. The *mushâraka* contract is often used in import credits, but it can also be applied to agriculture or industry.

Other Types of Contract

There are a number of other ways in which one can make profits without having to speak of interest. There is the case for example of *bay'salam*, or sale with postponed delivery, a common practice in classical Islam. The delivery of the goods in question is postponed to a later date on payment on the spot market. So a farmer may sell his fruit harvest in advance in order to pay his labourers.[43]

Given the presence of very uncertain factors, jurists have sought to bring the elements of this kind of contract into equilibrium by introducing restrictions which make its use difficult in banking practice. Moreover, the bank itself has to organize the sale of the product, which in principle it can only do when it is in actual possession of the merchandise. Sometimes it may get round the difficulty by becoming itself the client of a third party in a *salam* contract.[44]

Closely connected with the *salam* contract is the *bay' al-istinâ* or "sale of manufacture". One party buys the goods which another undertakes to make according to specifications laid down in the contract. The

difference from the *salam* sale is that it concerns manufactured goods. This contract is used in the construction of buildings or factories.

Hiring (*ijâra)*[45] is also another legitimate way of making a profit. It is possible to hire out very costly goods like industrial material, aeroplanes, boats, which enable the customer to avoid paying the full capital cost. The bank buys the property and becomes the owner. The client may sometimes become the owner at the end of the hiring period on previously-agreed conditions (contract of hire-sale).

It seems that the Islamic banking product which enjoys the most success today is a form of micro-credit started in Bangladesh[46] and now widely used in other countries.

The Application of the Traditional Means in the Contemporary Context

In the examples we have already cited, we have given indications of contemporary practice in Islamic banks, for what was formerly the sphere of individual initiatives has now been transferred to the banks. If we take the example of the *mudâraba*, the bank can play the part of the owner of the capital but it may also act as the agent who makes the investment. In this way it becomes the intermediary/administrator for an individual's money intended for investment.[47]

It is in fact clear that both the Koranic prohibitions and the different procedures used by the classical law to express, or simply to get round, these interdictions concern essentially transactions between individuals. With the development of exchanges in the Middle Ages, the operations were extended to a larger area, but were still at the commercial level. Modern Islamic banks extend the area still further into the financial sector. This change of scale is significant. In addition, one has started to talk of an Islamic economic model which is in conformity with the *sharî'a* . There has also developed a kind of "Islamic audit", and financial institutions display certificates issued by specialized juridical institutions.[48] This Islamic model sometimes goes as far as to present itself as an alternative to the conventional Western model, based on capitalism. There has been an evolution from the transactional model between individuals to the macro-economic model.[49] Governments themselves may feel called to intervene in this domain.
It would need a special study to explain the positions adopted by different Muslim states. We content ourselves here with a rapid presentation.

The Legislation of Muslim States[50]

Islamic banking legislation in Muslim states varies greatly according to their particular history and political options.

Three countries are in a class of their own in making the Islamic banking system obligatory. They are Iran, Pakistan and Sudan.

Since the 1979 revolution, Iran has systematically islamized the banking system, and since 1986 the whole banking sector has been largely incorporated into the economic structure of the government.[51]

Pakistan followed the same path in 1984 when it laid down Islamic norms for the banks, and Sudan has now done the same.

Paradoxically, Saudi Arabia, in spite of its wahhabite puritanism, does not figure in this list. If the *sharî'a* regulates all the aspects of social life, there are sectors which come under a "special" legislation. Since one of these sectors is the whole management of the oil industry in its international dimension, this legislation constitutes a major part of commercial law. No doubt it avoids speaking of "interest", preferring "commissions" ('umûla) or "profits" (*ribh*), and it seeks justification by citing the Koranic verse, "Fulfil your commitments."[52]

The United Arab Emirates are more or less in the same situation, whereas they offer a different justification, the principle of necessity (*darûra*): "Necessity justifies recourse to a forbidden act." In the present situation, an isolated banking institute could not survive in a world financial system based on interest. A further specious argument is also adduced: only physical persons can commit sin, juridical persons cannot.

Kuwait offers a curiously paradoxical split between the civil code which declares interest-bearing loans invalid and the commercial code which recognizes them. In Egypt, the 1971 Constitution declared the *sharî'a* to be "one of the sources of law". In the 1980 version it became "the principal source", but this clause has had no impact on the civil code, which endorses interest-bearing loans. The case is similar in Iraq and Syria, whose civil codes remain inspired by the tradition of the West.

At the beginning of the twentieth century, Tunisia made an attempt, with the help of the Italian jurist Santillana, to arrive at a uniform civil and commercial code which, while being based on the Western model, would take into account the Muslim context. The split between the two codes however, already mentioned in the case of Kuwait, reappeared, and Tunisian jurisprudence endorses the application of a system of interest without bothering too much about the Islamic tradition. The same applies to Morocco, although its jurisprudence seeks to come somewhat closer to traditional Islamic institutions.

We must also mention Malaysia which, with the *Islamic Bank Act* of 1983, allowed the establishment of Islamic banks operating alongside traditional banks. In the same year, Turkey issued a decree regulating the constitution and operations of "special financial institutes", meaning especially Islamic banks, although the country's official policy of secularism did not allow the term to be used.

Western countries have also felt these developments, and Islamic banks, with some modifications, are beginning to appear, sometimes limited to an "Islamic desk" in other banks. The development of Mediterranean relations has stimulated the search for "compatible" financial instru-ments which can function without restriction on either side of the Mediterranean.[53]

Some Concluding Reflections

Our study began with the Koranic prohibition of *ribâ*, and we then followed the tradition, considering the different solutions offered by the *fiqh* schools of classical Islam, and proceeding to contemporary practice and the juridical policy of Muslim states. After this fairly rapid survey, we seem to be left with two questions, one ethical and the other economic.

The first is of the ethical and religious order: what is to be our judgment on the establishment of the Islamic banks?

One might see in it a courageous effort to bring the different sectors of life, and of economic life in particular, into conformity with the law of God and the demands of conscience. In a world dominated by materialism and the thirst for gain, here at least we have an attempt to create a "clean" economy.[54] There is no doubt that for many Muslims this is the aim, and it is wholly praiseworthy. It is an effort to go against the current of the pervading secularism and the law of profit, and it may involve a willingness to sacrifice competitiveness with other banks for the sake of religious principle.

At the same time, however, one cannot fail to be struck by the casuistry and the formalism of some of the solutions advanced to get round the Koranic prohibition. The debate seems often artificial. Some may even consider that the whole question is really political, just one more expression of Islamic separatism and the desire to reject everything coming from the West.

We leave it to the reader to find his own answer to this question.

The second question is more specifically economic. What is the real impact of these Islamic banks on the world banking system? Are they really viable?

If we believe the publicity diffused on the Internet[55], we might be impressed by the development of Islamic banks in the 1980's and by the number of colloquia held on the subject. We might think that we have here a development at the sharp end of progress, a truly competitive phenomenon, destined to grow in importance and to attract little by little the reserves of capital from Arab oil.

On the other hand, one may feel sceptical and see the development of Islamic banks as a very marginal phenomenon. I may mention one significant personal experience. When I was in Paris I tried to find

documentation on the subject. But in all the leading Paris bookshops specialising in economics, I could find only one relevant publication.[56]

The truth must be found between the two extremes. It is difficult to gain an exact idea of the real rate of growth of Islamic financial activity. Franck Vogel, in his book already often quoted, suggests that the volume of financial operations may be of the order of one hundred billion dollars, meaning by a billion a thousand million. He puts the growth rate for the last five years at 15%,[57] but thinks that this may now be slowing down. The competition with conventional banks is very keen, the number of contracts offered is far poorer and even these are mostly limited to short-term investments. The general reduction in interest rates throughout the world has undermined the competitiveness of the services offered by Islamic banks. The Islamic banking market only continues to function because it attracts religious circles. It has suffered some severe setbacks. The Gulf War led to the transfer to Swiss banks of a large proportion of the capital in Middle Eastern Islamic banks, and it has never come back. Furthermore, Islamic banking services can only survive in a period of great banking stability. They cannot cope with inflation.

If it is to continue to prosper, the Islamic economy needs to be managed with great imagination. It can however be severely handicapped by those who try to lay down its rules, the specialists of the *fiqh* who, to put it mildly, are possessed by a casuistic and conservative spirit.

Notes

[1] For example, www.islamic-banking.com, which gives all kinds of other sites.

[2] Some works will be mentioned in the course of this article, and they nearly all contain a bibliography. One could also consult the internet site.

[3] For more details, see LAMMENS, *La Mecque à la veille de l'hégire*, pp. 139 and ff, 155 and ff., 213 and ff.

[4] *Encyclopédie de l'Islam*, 2ème éd., "ribâ", T. 8, pp. 508-510.

[5] In Bukhârî, *buyû* (34), *bâb* 25, Ibn 'Abbâs is said to have said: "this was the last verse revealed to the Prophet".

[6] "Il sistema bancario islamico",…p. 64

[7] Cf. WENSINCK, *A Handbook of Early Muhammadan Tradition*, Brill 1971, under the word "Usury". A good collection of the hadîth on the subject may be found in the Yemeni Qâdî Muhammad al-SHAWKANI, *Nayl al-awtâr*, Beirut, Dâr al-jîl, 1973, pp. 295-325.

[8] Bukhâri, *Buyû* (34), *bâb* 25, 113.

[9] Bukhâri, Buyû (34), *bâb* 24; Ahmad b. Hanbal, II, 353, 363.

[10] Abu Dâwûd, *Aqdiyâ* (23), 3; Ibn Mâja, *Tijârât* (12), 58.

[11] Bukhâri, *buyû* (34), 23.

[12] Quoted by Zoubeir OBEIDI, *La Banque Islamique*, Paris, al-Salâm, 1988, p. 56. For a more extended discussion on the hadîth on the ribâ, see the article in Schacht, *Encyclopédie de l'Islam, 2ème édition*, "*ribâ*", T. 8, pp. 508-510. One may also consult Haçène BENMANSOUR, *Politique économique en Islam*, Paris, al-Qalam, 1994.

[13] Quoted by Zoubeir OBEIDI, *La Banque Islamique*…, p. 56.

[14] Quoted by Zoubeir OBEIDI, *La Banque Islamique*…, p. 56.

[15] H'mida ENNAIFER, *le* ribâ *en Islam, historique et actualité*, unpublished article, p. 4.

[16] In this section I have been greatly helped by PICCINELLI Gian Maria, *Banche islamiche in contesto non islamico, materiali e strumenti giuridici*, Rome, Istituto per l'Oriente, 1996, pp. 22-26. Professor PICCINELLI kindly agreed to read my text and gave me a great deal of complementary information. Among other things he drew my attention to a book translated and presented under his auspices, *Questioni di diritto islamico dell'economia, le fatâwa del gruppo Dallah-Albaraka*, due to appear in 2,000; as well as to a book by Professor Deborah SCOLART, *Comptabilità tra gli istrumenti di finanziamento internazionale e il profit loss sharing di diritto islamico*, due to appear in the *Quaderni*, of the interdisciplinary centre for studies on the Islamic world of the university of Tor Vergata in Rome.

[17] SCHACHT, Introduction…, p. 85.

[18] There is a long discussion on this *fatwa* in Z. OBEIDI, *la banque islamique. Une nouvelle technique d'investissement*, Beirut 1988, pp. 58-62. There is also material in M. RODINSON, *Islam et Capitalisme*, Paris 1966, pp. 159-160. Maxime Rodinson declares in particular: "That there is a fundamental opposition between Islam and capitalism is no more than a myth." (p. 166)

[19] *al-Ahrâm*, 8 September 1989.

[20] On this whole subject see bibliographical details in Franck E. VOGEL and Samuel L. HAYES, III, *Islamic Law and Finance: Religious Risk and return*, London, Kluwer Law International, 1988, p. 46.

[21] Muhammad Sa'îd 'ASHMAWI, *Al-ribâ wa l-fâ'ida fi l'islâm*, Cairo, Dâr Sînâ li-l-nashr, 1988.

[22] Ibrâhim b. 'abd Allâh al-NASIR, *Mawqif al-sharî'a min al-masârif*, typescript, n.d., 20 pp.

[23] Cf H'Mida ENNAIFER, art. Cit., p. 3.

[24] Joseph SCHACHT, Introduzione al diritto musulmano, Torino, Fondazione Agnelli, 1995, p. 154.

[25] See especially Gian Maria PICCINELLI, "Il sistema bancario islamico", *Oriente Moderno*, nuova serie, anno VII (LXVIII), N. 1-9 (Gennaio-Settembre 1988), pp. 1-408; and, same author, *Banche Islamiche in contesto non islamico*, Roma, Istituto per l'Oriente, 1996, 320 pp.
[26] "Il sistema bancario islamico",…p.8.
[27] *Banche Islamiche in contesto non islamico*…, p. 12.
[28] One may consult in particular SANTILLANA David, *Istituzioni di diritto musulmano malichita*, Roma, Istituto per l'Oriente, 1938, 2 vol.
[29] Bukhâri, *Ventes* (34), *bâb* 87.
[30] For a bibliography, see G.M. PICCINELLI, "Il sistema bancario islamico",…p. 15, notes 22 and 23.
[31] See on this subject *Islamic Law and Finance*…pp. 150153, or G.BEAUGE, ed. *Les capitaux de l'Islam*, Paris, Presses du C.N.R.S., 1990, chapter 8, "Islam et assurances" (E. KLINGMUELLER), pp. 153-165.
[32] Some of the sources say that this covers as much as 80% of the business of Islamic banks.
[33] For a bibliography on this practice, see G.M. PICCINELLI, "Il sistema bancario islamico",… p. 143, note 7.
[34] See the article "Mudâraba" by Jeanette A. WAKIN in *'L'Encyclopédie de l'Islam*, 2ème éd. Vol.VII, pp. 286-287. Also the article "Qirâd" by A.L. UDOVITCH (Vol. V, pp. 132-133), for the two terms are practically synonymous.
[35] For a bibliography, see Gian Mari PICCINELLI, *Banche islamiche*…, pp. 102-116, especially note 7; or, same author, "Il sistema bancario islamico",…p. 13, note 37, and p. 31, note 108. See also N. SALEH, *Unlawful Gain and legitimate Partnership in Islamic Law*, Cambridge/N.Y., 1986.
[36] The word is often rendered into English as "profit and loss sharing". The same expression could in fact be applied to the whole Islamic banking theory. In the case presented here, there is no real sharing in loss, since any loss on the capital is borne by the original owner. A better rendering of *mudâraba* would be *silent partnership*, "partnership" in the full sense being *mushâraka*, to be discussed below.
[37] Cf note 29.
[38] Q. 2, 245; 5, 12; 57,11; 57, 18; 64, 17; 73, 20.
[39] See on this subject M. SADEQUE, "Components of Islamic banking" in *Thoughts of Islamic Banking*, articles presented at the 2nd International Seminar on Islamic Banking, 15-17 December 1980, Dhaka, pp. 103-108.
[40] Cf the decision of the Islamic Academy of *Fiqh* of the Organization of the Islamic Conference at its third session in Amman (11-16 October 1986) in response to a question from the Islamic Development Bank.
[41] Gian Maria PICCINELLI, *Banche Islamiche*…, pp. 120-126. For a bibliography see also "Il sistema bancario islamico",…p. 31.
[42] This type of contract may become an operation of project financing or venture capital, to use the Western terms.
[43] This practice can in fact lead to the exploitation of poor peasants who may find themselves obliged to sell their harvest for 50% of its value (Mohammed CHARFI, *Islam et liberté, le malentendu historique*, Paris, Albin Michel, 1999, p. 127).
[44] Examples in Franck E. VOGEL and Samuel L. HAYES, III, *Islamic Law and Finance: Religion Risk and Return*, London, Kluwer Law International, 1998, p. 146, pp. 248-252.
[45] On hiring in banking practice see "il sistema bancario islamico",…p. 33, Note 115, or *Islamic Law and Finance…*, p. 190 and index.
[46] The Grameen Bank, established in 1979. It is not however specifically Islamic.
[47] See "Il sistema bancario islamico",…p. 31.
[48] Some of these certificates can be seen on the Internet. So the *Kuwait Financial House* has a certificate issued by *hay'at al-fatwâ wa-l-murâqaba al-shar'iyya* (office of the *fatwas* and charaic control).
[49] Franck VOGEL and Samuel L. HAYES, III, *Islamic Law and Finance*…, p. 30.
[50] For the whole of this section, see Gian Maria PICCINELLI, *Banche Islamiche*…, pp. 41-61.
[51] See "Il sistema bancario islamico",…p.21
[52] Q.5,1. Cf the corresponding Latin phrase, *pacta sunt servanda*.
[53] Gian Maria PICCINELLI, *Banche Islamiche*…, pp. 6-7.
[54] According to Professor Piccinelli, this will certainly be the major theme of the future, both in Islam and in the West. There is a need to go beyond capitalist economic mechanisms and to put man once more at the centre of the system. There are already some moves towards ethical banking in Europe. They remain timid, but they may grow. We may have here an important area for dialogue and co-operation.
[55] Cf Note 1.
[56] The only French sources quoted in this article are contained in minor publications from Muslim publishers. The great majority of the material published on this subject in Western languages is in English. One may consult in this connection the rich catalogue of the *Islamic Foundation* of Leicester. A few French titles are contained in bibliographies:
ALGABID Hamid, *Les Banques islamiques*, preface by Christian Gavalda, Paris, Economica, 1990.
BEAUGE, Gilbert, ed. *Les capitaux de l'Islam*, Paris, Presses de CNRS, 1990.
BENMANSOUR Hacène, *Politique économique en Islam*, Paris, al-Qalam, 1994.
PARIGI Stéphanie, *Les banques islamiques, argent et religion*, Paris, Ramsay, 1989.
[57] Franck E. VOGEL and Samuel L. HAYES, III, *Islamic Law and Finance*…, p. 5.