ISLAMIC SECURITIES IN MUSLIM COUNTRIES' STOCK MARKETS AND AN ASSESSMENT OF THE NEED FOR AN ISLAMIC SECONDARY MARKET[1]

ABDUL RAHMAN YOUSRI AHMED[2]

Despite certain differences between the modern Islamic activities and the conventional ones prevailing in Islamic countries in the areas of banking, investment and trade, Islamic activities have gradually taken a foothold in terms of both form and effect, and have extended their roots across conventional barriers, and even to the non-Islamic world. The continuing progress of the Islamic economic activity requires the tapping of all possible means through which such activity can be encouraged. It is imperative to explore all possible approaches that can enhance the process of mobilizing Islamic financial resources and expanding shari'ah *compatible investment outlets for utilizing such resources. The present paper investigates the functioning of Islamic securities and examines the possibilities of their development within the existing regulations and economic determinants in Islamic countries. The paper also examines the need for an Islamic secondary stock market and the conditions for its emergence*.

1. CURRENT ISLAMIC SECURITIES

The aim of this sector is to define Islamic securities currently on the market, and to analyze and evaluate their salient features from both the *shari'ah* and the Islamic economic perspectives.

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Professor and Head of the Economics Department, Faculty of Commerce, University of Alexandria, Egypt.

1.1 Types of Islamic Securities Currently on the Market and their Special Features

During the last decade,[1] considerable efforts have been made in the field of Islamic thought regarding securities. These efforts were of great significance in terms of both theory and practice and are well supported *shari'ah*-wise. In our present review we shall confine ourselves to those securities which have passed the conceptual stage into being a tangible reality.

These Islamic securities are:

1. *Investment Deposit Certificates, Kuwait Finance House and Sudan Islamic Banks*

Kuwait Finance House (Kuwait) has issued three types of Investment Deposit Certificates whose particular feature is that they are based either on an unrestricted *mudarabah* contract, or on a restricted one, or tied to a specific activity (earmarked). For certificates issued on the basis of unrestricted *mudarabah*, the minimal amount of the nominal value for each certificate is one thousand Kuwaiti dinar, and the term is to be agreed upon with the buyer, with the provision that it should not be less than one year which can be extended if the holder so wishes. In this way the unrestricted *mudarabah* contract becomes a fixed term contract. Neither the holder of the certificate, nor the beneficiary, nor any party carrying withdrawal rights may withdraw any part of the certificate value during the specified term. As for the issues made on conditional terms, they are tied (in one of the three types) to real estate investment. Profits are computed annually after deduction of actual maintenance and overhead expenses at the rate of 2.5% of annual returns. In this case, investment is made for an unspecified period of time. The investor is free to dispose of the certificates through sale or alienation, on the condition that he enters that in the records of the Kuwait Finance House.[2]

In Sudan, Islamic banks, namely, Faisal Islamic Bank of Sudan, Sudan Islamic Bank and the Islamic Cooperative Development Bank, issue "Investment Deposit Certificates" which share a number of features. They are totally interest-free, their proceeds are invested on the basis of unrestricted *mudarabah*, the holder of the certificate authorizes the issuing party to utilize the certificates in the way that serves the benefit of both parties (i.e. the holder of the certificate as the fund provider and the Bank as a *mudarib*: entrepreneur). When profits are realized, they are shared on the basis of 70% for the holder of the certificates and 30% for the bank. It is to be noted that the holders of the investment deposit certificates incur direct costs of their investment only, and likewise they do not share in any profits made by the bank from other sources or operations. The holders of the certificates of deposit may not alienate or transfer their certificates to a third party without the bank's approval. The bank may not be asked to pay the nominal value of the certificate before maturity. An exception can be made with the bank's approval.[3]

2. *Muqaradah Bonds*

Muqaradah and *mudarabah* are two different words linguistically, but in terms of their meaning and substance in *shari'ah* they are the same. These bonds are issued by the Ministry of Endowments and Islamic Affairs and Sanctities in Jordan.[4] A *muqaradah* bond is an instrument of a fixed value issued in the name of its holder against the amount of money he has contributed towards the implementation of the project with the aim of making profitable investment. The instrument is transferable to a third party under intimation to the issuing party which thus registers the transfer of title. The instrument holder’s liability vis-a-vis the project is confined to the amount specified in the bond. This is exactly the principle of limited liabilities. In the prospectus of *muqaradah* bonds, it is clearly indicated that the bonds do not yield any interest, their holders cannot claim any interest and are entitled to a fixed percentage of net profits of the project as laid down in the prospectus at the end of each fiscal year after the necessary grace period for the implementation of the project. The merits of these bonds, which are guaranteed by the Ministry of Endowments, include the following: their profits and nominal value may be transferred outside Jordan and they are exempt from income tax in Jordan. One of the conditions stipulated in the prospectus for the issue of *muqaradah* bonds is that they are subject to a systematic "redemption" (*itfa*'). To this effect it is stated under the conditions for the issue of such bonds that the issuing party shall set aside a certain share of net profits for redeeming the bonds. It is also stated in the prospectus of *muqaradah* bonds that they are negotiable at the Stock Market of Amman in accordance with the rules, regulations and directives of the market, and that the issuing party, i.e. the Ministry of Endowments, may purchase them at the stock market without any limitation or condition.

3. *Islamic Transactions Certificates*

These bonds are issued by the Islamic Transactions branches of Bank Misr (Arab Republic of Egypt) for a nominal value of 1000 Egyptian pounds (or US dollars) and their multiples. The bond is nominal and is issued for a term of five renewable years. The prospectus of these bonds states that they are to be invested in Islamic projects and that the bank is mandated to act on behalf of their holders in determining the appropriate methods of investment, on the basis of unlimited *mudarabah* rules. The prospectus also provides for a monthly return payable in the same currency in which the bonds have been issued at a rate fixed by the Bank under the item of profit and loss, with the proceeds being payable biannually after computation of the operations results as they may appear in the financial statements of the Islamic Transactions branches. The certificate holder may recover its value six months after the date of its issue and may also be granted an interest free loan (*qard hasan*) from the Bank with the certificates as a collateral.[5]

4. *IDB Investment Certificates*

These are investment certificates issued for financing trade among Islamic countries. They may also be used to finance certain other operations for specific purposes including leasing. Each certificate has a nominal value of one thousand US dollars and a term that is linked to the portfolio term, which is 25 years.[6]

The liability of the certificate holders including the Bank is limited to the value of the rights of each in the portfolio. It is stipulated in the statute that the Bank shall manage the portfolio as a *mudarib* and shall abide by the Islamic *shari'ah* rules in its investment operations. The Bank keeps a special ledger for these certificates. The ownership of the certificate may be transferred after recording the new holder's name in the said ledger and in accordance with the forms approved by the Bank and signed by both the seller and the buyer. The statute also states that dealings in subscription certificates shall be confined to Islamic banks and financial institutions and that the Bank shall work for listing subsequent issues in the stock markets of those countries whose regulations allow their listing, and hence their value could be determined by supply and demand in the market. However, until such listing is complete, the Bank shall declare its readiness to buy back any certificates offered to it, and to sell those in its possession against a basic price equivalent to the net nominal value of the certificate. Once the portfolio becomes operative, the IDB would announce the buying and selling prices of the issued certificates in the light of the financial position of the portfolio, bearing in mind also the supply and demand conditions prevalent in the market. With regard to the net returns of the portfolio, the statute stipulates that they are to be distributed annually as follows: 5% for the IDB as a *mudarib*, 5% to be retained for the enhancement of the portfolio's financial position, and 90% to the certificate holders.

5. *Participation Term Certificate*

These certificates are financial instruments issued by banks and financing institutions in Pakistan. These are negotiable certificates based on the principle of profit and loss sharing and aim at mobilizing medium and long term financial resources in the local currency for industrial and other projects.[7] The Government of Pakistan has issued a statutory law governing all legal matters related to these certificates, by making certain adjustments in the Corporate Law. The term of the certificate does not exceed ten years excluding the grace period, with guarantees in the form of a legal right to foreclosure of the fixed assets of the company using the funds of these certificates in addition to other collaterals in the form of the current assets. The certificates also carry a right to a share in the profits, similar to those payable to stocks and shares, at a predetermined rate . It is worth noting here that profits paid to certificate holders are computed before tax, and are considered as tax-deductible expenses. Another characteristic of the participation term certificates is that their holders are entitled to distributed profits before shareholders.[8] That is to say, if profits are realized in any fiscal year, the rights of certificate holders take precedence over any claims on the shareholders part. In case of loss, claims are first met from the reserve funds which form the credit balance in the profit and loss account of the issuing party. If thess are not sufficient to cover the claims, the remaining part is shared between the participation term certificates and the other project creditors in proportion to their respective contributions to the financing of the project. It is to be noted that the entire amount obtained from term participation certificates is used for the implementation of the project under the commitment of the project sponsors to manage their operations according to the best known methods and in line with any other commitments they may have made towards the certificate holders. In order to protect the interests of the certificate holders, a board of trustees is elected to follow up the implementation of the project and to ascertain its genuineness through actual observation of operations and examination of records. Furthermore, the participation certificate holders have the right to transfer a certain part of their certificates into ordinary shares of the issuing company. The regulations also stipulate that the issuing party may grant shareholders the right of purchasing participation term certificates.

6. *Investment Council Unit Fund Certificates - Bangladesh*

These certificates are issued by the Investment Council in Bangladesh which is a governmental non-banking financing institution operating mainly on interest-basis. However, the authority also arranges the establishment of unit funds operating on the basis of *mudarabah*. Each fund is totally independent in terms of assets and liabilities and has its own independent management.[9] The funds' resources are mobilized together

through the sale of the above mentioned certificates which are known under the names: ICB Unit Certificates
and ICB Mutual Certificates.

The first category of certificates is redeemable whereas the second one is not. Both are negotiable at the stock market of Bangladesh and their prices are listed. The resources of the funds are used in investment operations whose returns are appropriated by certificate holders after deduction of a specific administrative charge for the Investment Council of Bangladesh (ICB).

7. *Qard Hasan Certificates (Interest-free loan) - Malaysia*

Qard hasan certificates are short-term certificates issued by the Malaysian government by virtue of a parliament decree, in order to obtain interest-free loans from banks, institutions and private individuals. This is the concept of *qard hasan* (interest-free loan) advocated by the Islamic *shari'ah*.[10]

According to the regulations applicable to these certificates, the principal (the loan) is repaid to its owners by the issuing party (the government) without any return or material benefit whatsoever. The proceeds from issues of these certificates enable the government to go through with its projects without any need to increase supply of money (inflationary financing) or to levy more taxes as is the case in conventional systems. Therefore, such certificates will have an expansionary effect without generating inflationary tendencies from which most developing countries are now suffering.

2. *SHARI'AH* POSITION REGARDING CURRENT ISLAMIC SECURITIES

With regard to various Islamic securities reviewed in the first section, and issued - as stated in their prospectuses - on the basis of *mudarabah* contracts, we shall now direct our attention to:[11]

a) Clarifying certain rules concerning the application of the *mudarabah* terms in the field of securities,

b) Reviewing some of the *shari'ah* objections faced by the securities currently on the market.

2.1 Some Rules Relating to the Application of *Mudarabah* Conditions in the Field of Securities

1. An Islamic security may be issued on the basis of absolute or conditional *mudarabah*. In the case of absolute *mudarabah*, security holders grant their unconditional consent to the issuing party to utilize their funds in all fields of investment conforming to the *shari'ah*. As for conditional *mudarabah*, the prospectus specifies particular fields for the utilization of the funds. This is illustrated in the Conditional Investment Deposit Certificates issued by Kuwait Finance House.

2. There ought to be a specific date for calculating operating results and distribution of realized profits and specification of profit sharing rates between the issuing party - as a *mudarib* (responsible for actual management of the project) whether wholly or partially - and the holders of the securities as financiers and project owners. The issuing body may be no more than a broker or an agent acting on behalf of the real *mudarib*, and the accumulated funds are to be used by an investor other than the issuing party. In this case, the realized profits will be distributed among the holders of the securities and the management of the project using the funds, with the issuing party retaining a share against its representation in the *mudarabah* operation. A typical example of these certificates is the securities issued by the Islamic Development Bank (Jeddah) and made available to businessmen in Islamic countries to finance foreign trade and other operations. The prospectus issued by the issuing party defines the rates of profit sharing and the portion of the profits that can be retained as a reserve fund. The act of purchasing the securities under the conditions stated in the prospectus is considered as a clear acceptance of these conditions and a confirmation of the *mudarabah* contract.

3. In case of losses incurred by projects or operations financed through securities, the party in charge of actual management (the *mudarib*), may be able to meet the loss out of the financial reserves retained from profits realized in earlier periods. If, however, this is not possible, it might have no option but to resort to partial or full liquidation of the operations, and the current value of the securities might decline in proportion to the loss or the need for liquidation. Thus, the security holders, being the capital owners, would have to meet any loss incurred just as they reap realized profits.

4. Any omission of the conditions relating to profit and loss as well as any ambiguity in prescribing these conditions in the prospectus is considered as a violation of the *mudarabah* contract. It may be noted that the prospectus of the IDB portfolio is very detailed and accurate in this respect, whereas in some other cases no details are given as

to what can be expected in case of loss as if this possibility were totally ruled out. This is likely to raise a great deal of suspicion.

5. It must be pointed out here that the issuing party is bound by *shari'ah* to uphold the conditions under which the securities were issued whether it is acting as the end-user or just an agent for these accumulated securities. In case of violation of the conditions, the issuing party becomes the "guarantor" for value of the securities in the face of their owners in accordance with the stipulations of the *mudarabah* contract.

6. It is also to be noted that in all cases the project or the investment activity financed through securities has its own financial entity as distinct from that of the issuing party. It follows then that the property or assets of the issuing party are totally distinct from those of the project or the investment activity financed through securities. There is also total separation between the commitments of the issuing party in its own capacity and between the commitments of the project financed through the securities. Hence the project or activity financed by the securities has its independent accounts and budget. The security holders' liability is limited to their holdings, and in case of the issuing party falling in debt as a result of any activity that falls outside the scope of the project financed by the securities the creditors have no right to the assets of the project as it stands independently.

2.2 Some *Shari'ah* Objections Against Islamic Securities: Review and Comments[12]

1. *Shari'ah Objections to the Jordanian Muqaradah Bonds*

a) Some criticism is raised against the use of the word “bond” to describe these financial instruments. A bond is defined in civil law as a perpetual debt on the issuing party commanding a fixed periodical return agreed upon on the date of issue which is a usurious interest.

b) The Law on the basis of which the *muqaradah* bonds have been issued does not sanction any right to bond holders with regard to the project ownership. Rather, it holds in trust the amounts they have paid which it returns to them at their value at the date of redemption. The Jordanian government guarantees the full settlement of the nominal value of the bonds on maturity.

c) *Muqaradah* bond holders get their share of any realized profits. However they are not bound, as they should have been according to their status as fund providers in *muqaradah* contracts, to any commitments in the absence of profits, which means that they do not incur losses. In other words, they are entitled to their principal (what they have paid) in full under all circumstances. This is no doubt in conflict with the *mudarabah* contract which necessitate that fund providers should share profits when realized and should bear losses when incurred, whatever the amount, out of the principal. The crux of the matter is that *mudarabah* contracts do not permit burdening the *mudarib* with any responsibility of guaranteeing the principal or its full repayment to the fund provider whatever happens to the project.

d) On the basis of the above, it has been argued that *muqaradah* bonds do not relate to *mudarabah* except in name and that the cash return received by the bond holders from the issuing party (the Jordanian Ministry of Endowments) is in fact considered as usurious interest.

In response to these objections, it may be pointed out that:

i) The conventional meaning of the term "bond" in civil law could be restated in line with Islamic *shari'ah* rules, as changing the meaning of a man-made law is permissible in *shari'ah*.

ii) Islamic *shari'ah* scholars consider guaranteeing repayment of the nominal value of bonds as a violation of *shari'ah* rules, for it involves a clear violation of the *mudarabah* contract in which the principal cannot be guaranteed along with the right to share in the realized profits. Yet we cannot ignore the *shari'ah fatwa* (legal opinion) issued in Jordan allowing such guarantees, and I believe that Islamic economists have to analyze the implications of these divergent views. On the one hand, we find that guaranteeing repayment of the principal value of the bonds along with the payment of profits entails discarding the principle of "*Al Kharaj Bil Dhaman*" (i.e. No gains without risk bearing, or sharing should be in both cases: profit and loss). This is a serious matter, yet we should also take into consideration that present day Islamic societies lack Islamic economic products. They are dominated by banks that openly deal in interest-based transactions and with stock markets that are replete with interest carrying bonds. In fact, any contemporary Islamic economic activity, or even an attempt to advocate it, is strongly fought against from both inside and outside Islamic societies. Therefore, when the government of an Islamic country under such circumstances offers guarantees to any Islamic security issued by one of its official bodies, this can only lead to greater acceptance of the "new instruments" by the masses. Let us, therefore, look at the Jordanian government's position as a positive one which, despite all differences, is bound to encourage people to buy an Islamic security probably for the first time ever and make them have a positive stand towards abstaining from dealing with interest operating banks and financing institutions. It is quite evident that issuing of *muqaradah* bonds with this incentive may deviate from certain Islamic *shari'ah* rules but it would be of a great educative value in encouraging people to free themselves from the clutches of usury transactions and associate themselves with *halal* ones. It is true that *muqaradah* bonds have not actually succeeded in effecting the passage of Muslim investors from the former to the latter sphere, but the same can be said of some other controversial financial techniques carried out by Islamic banks, such as *murabahah* sales. In brief, a global, long term view may tolerate certain secondary deviations for the sake of achieving high priority goals.

Let us discuss the issue further: the general public in our contemporary Islamic societies have been accustomed to dealing with interest. Not only that; even some of those speaking on behalf of Islamic *shari'ah* or issuing *fatwa* have gone so far as to authorize such interest. So now, what should we expect if we want these people to discard the financial instruments which provide them with regular interest and which guarantee their principal. Do we expect them to withdraw their bank deposits which are guaranteed and are interest generating as well, and buy instead a security which neither carries a guarantee for the principal nor generates interest? We should not be utopian in our expectations. The (bitter) reality is that the majority of our societies have been accustomed to interest especially when they are provided with justifications which (in their view) are "*shari'ah*-based". The fact is that we are faced with a great difficulty in that there is no incentive for change among a major number of Muslims today, a difficulty which may be attributable to the gap which exists between the main stream of Islamic thought - and Islamic economics. At any rate, the Jordanian government has provided a potent incentive to effect a behavioral change through the guarantee it offers for the acquisition of Islamic securities. From this general outpost which offers a view of the overall public interest of promoting Islamic economics rather than a partial view of maintaining the details and the terms of the contract, we find that the benefit of maintaining the guarantee offered by the Jordanian government exceed that of ruling it out. The issue of Islamic economics in the current and prospective eras calls for exerting a dynamic approach on our part. This means that what we may accept today out of expediency, we would have to discard once the factors necessitating it no longer exist. Thus we need to see to it that the guarantee of *muqaradah* bonds is dispensed with once people get used to dealing with this or any other Islamic security and become more willing to accept the risk involved in economic activity. This should be the long term objective that we have to keep in sight.

It is, therefore, preferable that the Jordanian Ministry of Endowment adds in a later issue (according to an appropriate amendment introduced in the legislation related to *muqaradah* bonds) a text to the effect that measures will be adopted for the formation of a capital reserve fund to be raised through the retention of a certain percentage of the realized profits, and that losses (if incurred) would be covered from this fund. As for the case when the reserve fund would be insufficient to cover the losses, the bond holders would immediately convene a meeting as owners of the project(s) financed by the bonds in question. In such a case the redemption date would be deferred pending the clarification of the financial position of the project and the evolution of ways and means to meet the loss.

2. *Shari'ah Objections to the Participation Term Certificates (PTC) of Pakistan*

Due to certain similarities between the PTC of Pakistan and bonds transacted in the Western markets, doubts have arisen as to the *shari'ah* permissibility of the PTCs.[13]

Once again the issue of “guarantee” for the certificate's nominal value gives rise to objections on the same grounds mentioned in the pervious section on the Jordanian *muqaradah* bonds. However, the provisions for the "guarantee" of participation term certificates differ from those applicable in the case of the Jordanian *muqaradah* bonds in that they constitute a legal right of foreclosure on the fixed assets. In the case of the *mudarabah* contract, it is not easy to defend such a guarantee for it involves treating the certificate holders as if they were “creditors” to the projects, though they should normally be assumed as the owners of the project and therefore liable to incur any risks related to its activities. It may be argued that this arrangement was meant to provide a guarantee for the certificate holders in case the project using their funds fails to observe the terms of the *mudarabah* contract. However, this is not clearly stated in the available prospectus of such certificates.

Another objection is raised regarding the preference given to participation certificate holders over shareholders involved in the same project in the case of both profit and loss. What makes them deserve such preference? It is commonly known that in the case of interest-bearing instruments, bond holders are considered as “creditors” entitled to a periodic return which the issuing party undertakes to pay whether profits are realized from the project or not. Also holders of interest-bearing instruments have the right to claim the value of their bonds even in the case of loss or liquidation. Yet, what *shari'ah* justification can be given for granting holders of PTC's the right to "the profit" before the shareholders, or the right to be first to avoid "losses"? Does the nature of the *muqaradah* contract justify granting preference to a temporary contributor (the participation term certificate holder) over a permanent contributor (ordinary shareholders)? To our knowledge neither *muqaradah* contracts nor Islamic participation methods in general provide for such preference. Nevertheless, the matter should be further studied in relation to present day conditions and the urgent desire to achieve the economic interests of the institutions or communities which seek to apply Islamic *shari'ah* in the economic field.

3. *Objections to the Investment Fund Certificates - Bangladesh*[14]

Objections raised in this case are not related to the technique itself or the terms of issue, but rather to actual practices pertinent to utilization of the resources mobilized through these certificates. Such resources are generally invested in profit generating activities, but any surplus funds are deposited with conventional banks and earn interest. Such a practice, naturally, is not Islamic, and whatever interest is realized through it, and distributed among the certificate holders, is not *halal* (*shari'ah* accepted) money. Some would even question the profits realized through investments in certain projects.

In the course of commenting on these fund certificates, one researcher says that it is necessary to ensure that the profits generated from them are realized through *shari'ah* acceptable activities. *Riba* (usury) is prohibited, yet not every profit is *halal*. For instance profits paid by corporations specializing in wine-production or in any other socially harmful commodity, are not acceptable. However, we do not have sufficient information on the operations or activities in which the investment fund resources are used. Still, the researcher's question has placed a thick halo of doubt around the legitimacy of these investment fund certificates, and the question raised is at all events worthy of attention. As a matter of fact, declaring an Islamic financing technique in the prospectus turns out sometimes to be something different from what is revealed through actual practice. It is, however, assumed that under an Islamic system, the responsibilities of *Diwan Al Hisba*[3] should include monitoring actual behavior in the market place so as to combat any deviation that might lead to a serious gap between Islamic *shari'ah* and market dealings.

4. *Doubts surrounding the Certificates of Bank Misr Branch for Islamic Transactions*

The Islamic transactions branches of conventional banks have been open to doubts and polemics regarding the seriousness of their Islamic financial transactions. Some hold the view that these branches are nothing more than fictitious windows opened for the sake of attracting savings of Muslims not wishing to deal with interest, and then to use these savings, along with other resources that may be accumulated by the bank, in conventional banking operations. The advocates of this view vindicate it through theoretical proofs based on the nature of banking activities and their methods of mobilizing resources and utilizing them in addition to the fact that conventional banks, in their use of the overall resources, cannot separate the amounts raised through Islamic modes and those raised through conventional modes. Hence, such academic debates open the way for diverse possibilities of which some may be agreeable to the advocates of these views while others may clash with their opinions. Practical evidence is therefore required to either prove or refute such propositions. In fact, those who are skeptical about the activity of the Islamic transactions branches of conventional banks have failed to provide a single item of evidence in substantiation of their claims. Regarding Bank Misr Branch for Islamic transactions we have no reason to be skeptical or accusative about the nature of its activity, especially as the management of the parent Bank has never failed to reiterate that the activities of the Islamic branches and their accounts are held independently and under the control of a *shari'ah* supervisory board. In addition, Bank

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A religious body organized by the Islamic state to supervise market dealings.

Misr in particular has an excellent record and a long standing experience in the field of direct investment in Egypt. Therefore, raising doubts about its commitment to Islamic banking methods in the branch set up for that purpose, amounts to challenging the seriousness of a bank that is so much dedicated to safeguarding its banking reputation. It may even imply challenging the ability of the Egyptian Central Bank to keep an eye on banking activities as such, a matter that would naturally be denied even by those who question the seriousness of the Islamic transactions branches. On the other hand, I personally believe that any conventional bank in setting up an Islamic transactions branch provides a tangible proof of the success achieved by the Islamic movement in penetrating the dominant traditional banking system. This matter ought to be encouraged rather than subjected to attack and skepticism. Hence, the Islamic certificates issued by Bank Misr branch for Islamic transactions should not be attacked on the basis that they are issued by a conventional bank.

2.3 Economic Evaluation of Islamic Securities[15]

In this context we shall take into consideration all the securities which have been reviewed in the first section, irrespective of *shari'ah* doubts raised against some of them or against some of the terms under which they were issued. The economic evaluation of securities will comprise three aspects:

a) Suitability of the security for the issuing party and/or for the end user of the finance.
b) Suitability of the security for the purchaser.
c) The benefits accruing to the economy as a whole from Islamic securities.

a) Suitability of the security for the issuing party and/or the end-user of finance

The party issuing the securities, be it a bank, a corporation or a government authority, may itself be the end-user of the finances, or it may simply be acting as a broker or an agent, in which case the accumulated funds would be transferred to another bank, project or other investment outlets. A review of the past history of stock markets world wide shows that securities have played a major role in providing an additional source of financing through direct recourse to the market by offering securities that carry particular characteristics or merits. Could it, therefore, be said that the issued Islamic securities have had similar merits? Our evaluation here will be at the micro-level. As for the macro-level and whether Islamic securities have led to the development of Islamic financing resources or not, these we shall be addressing later in the paper.

Institutions that launched Islamic securities have been successful in raising funds through them, but we need to distinguish between four distinct cases if we are to assess the significance of this new mode of financing.

<u>Case # 1</u>: Banks which have instruments other than securities but very similar to them, with the latitude to use these financing resources at virtually the same level of competence. In this case we find that Islamic securities are simply another ordinary option rather than a "distinct" one. This is well illustrated in the case of investment certificates of deposits whose value can be recovered from the issuing banks within a period not much exceeding that required for withdrawal of term investment deposits carried by individuals directly with these banks (one year, for instance, as in the case of the Deposit Certificates of the Kuwait Finance House). It may be argued that a security's status is different from that of annual investment deposits inasmuch as the latter may be withdrawn in case of contingency against the loss of return thereon. But we feel that this distinction is more theoretical than practical in the case of Islamic banks because the great majority of one-year investment deposit holders tend to keep it until maturity so as not to be deprived of returns. Moreover, some security prospectuses include a special provision to the effect that the security holders may, exceptionally, withdraw their value before maturity as is the case with the investment deposit certificates issued by Faisal Islamic Bank of Sudan. It is well understood that an exception may result in the cancellation of the original provision or at least vitiate it in practice. Hence the difference between investment deposit certificates and investment deposits with which a direct account is opened with the same bank vanishes.

<u>Case # 2:</u> The case of banks and institutions which have managed, through the issue of securities, to avail themselves of a new vehicle for the mobilization of financial resources. It is to be noted that securities enable the issuing party to secure medium or long-term financing and that securities are transferable but the issuing party is not bound to return their value before maturity. It can, then, be said that this represents a new financing technique that could make a direct contribution to the financing of medium and long term investment. This is well illustrated by the portfolio of PTCs in Pakistan, and the IDB Portfolio certificates. The latter have provided - through their first issue - an

opportunity to mobilize the surplus funds at the level of Islamic banks in the member countries of the Organization of Islamic Conference (OIC), and the use of these funds to provide financing for foreign trade and other operations in these countries. This constitutes a positive step towards the mobilization of surplus cash liquidity of Islamic banks and rechannelling them in economic activity in the Islamic countries. The problem of surplus liquidity of Islamic banks was widely experienced in the 1980s and called for some radical solution as it was a major cause of the declining profitability of these banks.

The subsequent issues of the IDB Portfolio certificates will have a different target as, unlike the first issue, those issues will be made open to the public. In this case the IDB portfolio would compete with other Islamic banks for the same stock of resources (accordingly, the IDB certificates may be considered as an additional mode of financing at the micro rather than the macro level).

Case # 3: The case of securities issued by governmental bodies, such as the ones issued by the Jordanian Ministry of Endowments or the Ministry of Post, Telephone and Telegraph in Sudan. These securities enable the issuing party to reach new sources of finance because these institutions do not have the other alternatives available to banks in the field of fund raising.

Case # 4: The case of Islamic securities issued by branches of banks whose head offices and most branches still deal with interest, such as the ones issued by the Islamic transactions branches of Misr Bank. Here we find that Islamic securities offer an outstanding method of resource mobilization. That is because these institutions are still raising the major share of their resources through the interest-based techniques. Hence the diversity is apparent and the securities are, in fact, a supplement rather than a substitute for other techniques. In this case Islamic securities are considered as an additional method of financing that has considerable importance to the issuing parties.

b) Stability of securities for the purchaser

Securities may be acquired for a fundamental objective which is to invest in the productive project financed through them, or for the same purpose in addition to the returns which may be realized in case of selling these securities at a higher price. In certain cases, securities are bought for the latter purpose only. It may not be possible to analyze all these cases simultaneously. Rather they need to be addressed separately. Therefore, we shall start by ignoring purchases made for the mere sake of trading (with the intention of selling at an appropriate time) and assume (for the sake of simplicity and analysis) that purchases for actual investment shall not be mixed with the purchases made for temporary financial gains whenever possible. We shall thus be able first to focus on the appropriateness of securities for the final purchaser who is the real investor (the owner of principal), who must be the subject of interest from an Islamic economic perspective. Economic theory regards purchasing securities from the purchaser's point of view as generally dependent on two basic factors: income and liquidity which we shall briefly review before we discuss the return expected from financial trading.

Return Element: This element is considered as the determinant factor in the purchase of securities as far as the real investor, or the final holder is concerned. The conventional theory postulates that an individual would normally accept to part with his savings or his idle cash balances for the benefit of others against a secure return (interest) or an anticipated or uncertain return (profit). Under the conventional systems, the individual may have to weigh fixed periodic interests which he can obtain from the purchase of bonds against profits of undetermined value which may or may not be realized, and also the possibility of loss in the case of ordinary shares. The final purchaser also may have to weigh these two options and compare them with premium shares which carry the right to a specific share of the realized profits before ordinary shares, with the remaining profits distributed to all including holders of preferred as well as ordinary shares. The individual is motivated to purchase ordinary shares and take "risk" by expectation of substantial profits which, if realized, would be far in excess of the fixed interest. When buying preferred shares the individual attempts to strike a balance between the "risk" element linked to uncertainty and the guarantee element linked to certainty of returns.

Conversely, under the Islamic system there are only ordinary shares and other similar securities which have been introduced over the past few years and which are based on risk taking and the profit/loss sharing principle. The majority of contemporary *fiqh* scholars are of the view that interest-bearing instruments are not acceptable in *shari'ah*, and that the same applies to the preferential claim of preferred shares on profits.

As for Islamic securities currently on the market (excluding ordinary shares) they are all issued on the basis of *mudarabah* rules which entail profit and loss sharing. However, three phenomena have emerged through past (albeit limited) experience.

First phenomenon: Though the rule provides for sharing in both profit and loss the latter (i.e. loss) has never existed and the average return has been in most cases rather stable and very close to the prevailing interest rates.

Second phenomenon: A number of parties issuing Islamic securities have introduced some arrangements which more or less conceal the "guarantee" related to the return on the securities. In some cases there has been a guarantee for repayment of the security's nominal value (Jordanian *muqaradah* bonds) or solid guarantees for repayment (PTC of Pakistan).

Third phenomenon: Some Islamic security issuing bodies (e.g. Investment Fund Units - Bangladesh) have indulged in an underhand practice of "interest-bearing investments" and then offered the security holders what they termed "profits".

We have already referred to the *shari'ah* stand regarding such issues. Economically, however, these three phenomena together have led to a partial (or sometimes total) removal of the risk element linked to uncertainty which should normally underlie Islamic securities. Consequently, in quite a few cases Islamic securities in reality have revealed an unacceptable degree of similarity with usurious ones.

Yet, the desire to move away from uncertain returns and the tendency towards the guaranteed returns resulting from the above three phenomena have, in fact, contributed to the wide acceptance of "Islamic" securities by buyers in contemporary Islamic countries. The opposite would, however, have been the case had they (the buyers) upheld, on their part, the rules of true Islamic *mudarabah*. The fact is that the circumstances that most Islamic countries have been and are still witnessing in terms of rampant usury practices on the part of government banks, and public or private companies have affected the behavior of the Muslim investor to such an extent that he has come to prefer a secure, guaranteed return under well-defined arrangements. Yet this same Muslim investor continues to hear and read about the "prohibition of *riba*" and might in fact be ready to accept change if he were to find an Islamic alternative that proves to be "better than" the prevailing usurious practices in the field of economic and financial activities. This investor, however, can hardly be able to make proper judgment as to which of the two systems is better because he does not have the reasonable criteria yet. That is why when securities of Islamic nature carrying certain guarantees (apparent or hidden) for a regular return and for the principal itself were issued, they became widely accepted. In brief, these Islamic securities were in complete conformity with the nature of this Muslim investor and therefore they were able to meet wide acceptance. It is expected that some time is needed before this attitude undergoes any substantial change and we attain a stage of awareness of proper Islamic conduct followed by a stage of maturity. Only then will the Muslim investor be, practically, unprepared to accept any violation of Islamic *shari'ah* rules governing transactions. It may then be expected that the Muslim investor will no longer purchase any securities issued under terms that deviate from the Islamic *mudarabah* rules. It may then also be expected that the value of any Islamic security would drop if the investment financed through it happens to be in disparity with *shari'ah* rules.

The Element of Liquidity

When a buyer opts for the purchase of a security against a cash payment he knows that he is going to part with full cash liquidity, i.e. to sacrifice his cash as a liquid asset which is essential for actual transactions, and needed as a reserve for the future transactions, too. Yet, assuming that a particular individual has calculated his cash needs for transactions and reserve and finds that he has a cash surplus, why shouldn't he part with this liquidity and exchange it for another asset that may provide him with a return? According to the conventional theories, economic rationality leads an individual to arrange in his mind the various assets he possesses in order of their degree of liquidity as reflected in their proximity to cash. Cash funds are alone in being fully (100%) liquid, while all other assets fall in varying degrees below money. A bank current deposit is the closest asset to cash liquidity (quasi money) followed by certain securities carrying strong guarantees relating to easy accessibility at any time, and so on downwards until we come to very low-liquidity assets such as a house in a faraway suburb or a secluded farmland, away from ordinary roads and communication systems. The reason why the western theory places securities close to cash is that they have stock markets where these securities can easily be sold or cashed at any time. In fact, as long as the project behind the securities is not facing any noticeable stagnation or recession, the security will normally find an immediate buyer either directly or through well-known brokers at the stock market. However, there has to be some other reason or incentive to motivate the individual to part with his cash as a liquid asset and turn it into security. The incentive here is the expected or probable return from the security, as we have pointed out earlier.

The liquidity concept is understandable and useful in economic analysis notwithstanding the fact that the advocates of this theory compare liquidity with expected interest. We do not care for the expected return because we do not consider it, from the Islamic perspective, an illegitimate (*haram*) return which may not be taken into consideration in analysis. It is quite feasible, however, to adopt the idea of liquidity in Islamic economic analysis without any consideration to the interest element. We shall bear in mind here that Islam urges individuals not to hoard funds but rather to invest them in productive activities. We therefore have a new factor, the individual's faith which acts as a motivator for him to renounce his cash liquidity. If we were to consider Islamic securities currently on the market, it could be noticed that they are less liquid than term deposits with Islamic banks though the difference becomes marginal in a number of cases where the security issuing parties declare themselves ready to buy-back the securities without any loss to their holders and after a certain period of time which may sometimes be limited to three to six months. This is in addition to the possibility of selling the security to another buyer at any time under arrangements made by the issuing party. Naturally, no one can deny that Islamic securities currently on the market are less liquid compared to securities on western markets and to similar ones in our own countries due to the fact that the latter types of securities can easily be purchased and sold at all times and in any amount. Moreover, this relatively high level of liquidity in the nearby markets offers greater possibilities for the achievement of profits from price speculation. Yet, these same factors may occasionally lead to a total collapse of the market leaving it in a state of panic, and with considerable losses.

The Element of Windfall in Trading Transactions

There is another type of "return" that may accrue to security holders as a result of their purchase and sale on the market, irrespective of the yield derived from the productive activity, be it in the form of interest or profit. In all regular world financial markets, the prices of securities may rise or fall, depending on three elements:

1. The economic performance of the projects financed through securities in terms of achieved profit or loss.
2. The economic conditions prevailing locally or internationally, as all projects in any country are linked to these conditions in case of booms and depressions.
3. Price speculations on the part of bulls and bears in security markets which are linked to various economic factors and to projections of price tendencies which may be right or wrong.[16]

Under such upward and downward changes in the prices of securities, individualsmay at times achieve windfall profits through the purchase or sale of securities at the "opportune" moment. These occasional profits may exceed (at times by far) the guaranteed returns (interests) or non-guaranteed profits (operating profits) of the same securities. Also, the case may be totally the reverse in other circumstances where large losses could be incurred.

The legitimacy of profits realized through purchase and sale of securities has been discussed on the basis that securities are normally purchased in order to be held. In short, Islamic securities are similar to shares owned by individuals in existing projects, and are therefore in no way to be equated with debts. Since individuals are entitled, according to the contract, to sell or buy securities to or from others, they are also entitled to dispose of or purchase these securities at the time most convenient to them. There are, however, two conditions that have been laid down for such profits to be legitimate:

1. That the price difference should not be resulting from contrived or deliberate price bidding. This is in fact what happens more often than not in the major western security markets, and what has in turn infected (quite regrettably) several Islamic countries. Islam has strictly admonished any deliberate pushing up of prices whether through monopoly or *najash* (pushing the prices up without actually intending to buy). The same admonition applies to deliberate reduction of prices whether through monopoly or for any other purpose.[17]

2. That the purchase or sale of the securities be made through the issuing party (or its representative). The securities thus would be ceded by the original holder and purchased by the new acquirer in the presence of the issuer. This supervision represents in itself a condition that may greatly limit the irrational (at times frantic) behavior of sale and purchase under the hypnotic effect of particular rumors spread about by some brokers claiming that prices would rise or drop to such a level. Such a limitation will, no doubt, largely contribute to streamlining the returns achieved through price speculations, and preserve the balance of the stock market and hence that of the productive activity linked to the issued funds as well as that of the economy in general.

Regarding Islamic securities currently on the market the problem of price overbidding are either totally nonexistent or only marginal, either because there are no stock markets in many of the Islamic countries, or because the terms of issue of these types of securities make them invulnerable to such overbidding (e.g. the dealings being made only through the issuing party).

Certain concluding remarks on the appropriateness of Islamic securities for the purchaser

a) The more the Muslim purchaser is keen to maintain his faith, and the more he is aware about the rules governing *mudarabah* contracts, the more hesitant he is to acquire (Islamic) securities issued with terms which virtually guarantee a regular periodic return in addition to guaranteeing the principal.

b) A true Muslim will not consider it a great sacrifice when he parts with his surplus liquidity because Islam urges him to invest his idle balances in productive activities which may benefit the Islamic society, yet he will not hesitate to seek the optimal investment opportunities likely to provide him with a better yield. Therefore, the best securities to a Muslim are those issued (a) by ventures serving the objectives of Islamic economic activity, (b) projects expected to yield higher returns, (c) the Muslim buyer who acquires them will not feel embarrassed to take advantage of price changes through the sale of securities in his possession or repurchasing them later on for the benefit of achieving windfall profits from this transaction as long as (i) he is not linked whether as a major or secondary contributor, to the price changes which he would have taken advantage of, and (ii) he has concluded the transaction in accordance with the terms set out by the security issuing party.

The above observations are related to the mature Muslim purchaser who is well informed of *shari'ah*, as we have noted before. As for the remaining (majority of) Muslim buyers of Islamic securities, the following points could be relevant:

a) They are still comparing issued securities and other alternatives in Islamic banks with those in conventional banks in terms of return and looking for the highest guarantees for such returns.

b) They agree to part with their liquidity only when they ascertain the possibility of recovering their funds on call or within a period of time not exceeding three to six months. Hence, financing long term investments becomes difficult or rather impossible, and in the absence of secondary markets for Islamic securities, it would be difficult for any party issuing such securities to find itself a prosperous primary market unless it manifests its readiness to repurchase the issued securities on call or within a short period not exceeding three months.

For these reasons, it could be noted that Islamic securities which have met some *shari'ah* objections regarding the guarantees, covering the principal in addition to providing a sustained income, were more popular. It could also be found that Islamic securities issued by parties who undertook to repurchase them and extended facilities for their transfer to others were more readily accepted than others. Under such conditions, it is not surprising to note that Islamic securities issued by Islamic branches of conventional banks are successful, popular, and convenient for the ordinary purchaser.

c) The benefits accruing to the economy as a whole from Islamic securities

To assess Islamic securities from an economic perspective it is not sufficient to analyze their convenience to the issuing party or to the projects financed through them on the one hand and to the security buyer on the other. Rather, the analysis should be extended to the macro level so as to encompass their effect on the economy at large. We shall approach this analysis with an attempt to answer the following two questions:

1. Have Islamic securities, as a new mode of financing, played a positive role in mobilizing financial resources at the macro level?
2. Have Islamic securities contributed to financing important productive activities for economic development in Islamic countries?

We shall try to provide an answer to these two questions based firstly on theoretical reasoning and secondly on certain practical observations and reports issued by some of the Islamic securities issuing parties. Before doing that, we would like to underline the importance of the second approach in checking the validity of any reply and note that there are difficulties in collecting sufficient statistical data on the total flow of financial resources within Islamic countries and the share of Islamic financing therein, in addition to the share of Islamic securities in the latter, and the productive activities financed through Islamic securities in particular.

In reply to the first question we have two possibilities. First, it is possible that the increase in Islamic financial resources through the sale of securities was achieved at the cost of a drop in deposits at Islamic banks or at least a slower rate of their growth. This is probable for both the Islamic banks that have issued these securities and the other banks because Islamic securities were in several cases a very close substitute to term investment deposits of these banks. In one case, the issue of Islamic securities has led directly to the transfer of the financial resources from the Islamic banks to the issuing party, which was in line with a deliberate policy. This was the case of the IDB portfolio certificates. Bearing in mind that the resources thus transferred were mostly idle, it may be said that the IDB certificates were successful in achieving effective mobilization of financial resources. Alternatively, it can be said that they have been successful in increasing the rate of utilizing investible Islamic resources at the macro level. However, we cannot claim that the IDB portfolio offered a way to mobilize new Islamic financial resources. Yet, once these certificates prove to be successful they will offer a sound mode for mobilizing financial resources directly from the public and this is exactly what has been envisaged for future issues.

The second possibility is that the issue of Islamic securities would have prompted an increased number of Muslims who hold idle savings or cash balances to join the Islamic financing operations. In that case the securities would have made a net contribution towards the mobilization of Islamic financial resources. In order to test this hypothesis at the level of banking activity we need to define the changes in the volume of deposits at non-Islamic banks and the sale of interest-bearing securities in particular over a rather long period of time and compare them with the changes witnessed in the sale of Islamic securities. Such an exercise is hardly possible at this time. Yet certain practical observations and reports point to the plausibility of this hypothesis. Among these observations is the spread of Islamic transactions certificates issued by the Islamic branches of certain banks which are still not committed to Islamic *shari'ah* in their conventional dealings, and the increase in the sale of these certificates at a rate beyond that of term deposits of the issuing party. This may be taken as an evidence in support of the likelihood - mere likelihood - of the conversion of some of those who used to deal in interest to the Islamic system which is based on the idea of profit and loss sharing. We insist that this is a “mere likelihood”, for only long term statistics will enable us to judge the soundness of the trend once it is defined, and once other factors affecting the change have been assessed.

It may also be argued that *muqaradah* bonds have played a positive role in providing a new source of Islamic financing at the macro level. Undoubtedly, the terms at which *muqaradah* bonds were issued have been successful in attracting many people away from the sphere of conventional financing and hoarding to the sphere of Islamic financing.

We can perhaps weigh up the two possibilities "in theory". To my estimation, the first possibility was closer to reality at the initial stage of the Islamic experience in the field of financing while the second possibility has also become later on feasible and even got gradually closer to actual reality compared with the first. When we talk about "theoretical weighing up" we mean to emphasize that we do not have at present anything that could enable us to reach a verdict supported with numerical data and confirmed through practical observation and reports. However, when we state that the second possibility has become more realistic, we mean that the Islamic securities experiment has passed the limited first stage of diverting investment deposits of Islamic banks to the securities issued with the same banks, and has now reached a new stage marked by a gradual conversion to Islamic financing at the expense of other alternative modes of financing.

The plausibility of the second possibility opens the way to a third possibility at a later prospective stage - that is when Islamic securities come to play a role in mobilizing idle resources of Muslim individuals and in motivating these Muslim investors to increase their savings and their investments in Islamic securities and hence their contribution towards development.

In an attempt to answer the second question which has been raised earlier, we may point out to the fact that the experience of Western countries has established earlier (at the end of the nineteenth century and during the present century) that issuing securities has led to a tremendous increase in the financial capabilities of projects and has consequently enhanced their investment capacities. This same development has also led to separation between management and ownership which further contributed to the achievement of the "managerial revolution" and provided circumstances that were convenient for achieving managerial efficiency and increasing productivity in general. All these developments had their important reflections and significant implications for economic development.

We do not expect to witness such results at present - or in the foreseeable future - as regards the experience of Islamic securities, as this experience is still of a short duration (despite the passage of a number of years) and the securities are still limited in terms of quantity and variety, in addition to the fact that the secondary markets in many

Islamic countries are rather non-existent. Yet we have a number of observations to put forward in this regard:

1. The actual practices followed by most Islamic banks that have issued securities point to a general trend towards diversification of investments, with a view to reducing their risks. It may be noted that this approach was imposed by the circumstances surrounding the first stage of Islamic banking and the desire to limit the possibility of loss to a minimum and to try to "guarantee" a specific level of return (profit) for the customers of these banks which would be close to that achieved in other economic activities.

   Of course, the policy of diversifying investment and risks and attempting to minimize these risks under the conditions of a small-size market with limited purchasing power (which is the case in most Islamic countries) in addition to tight organizational facilities, could only lead to the emergence of modest projects in the fields of commerce, consumer goods or food processing industries, construction, hotel industry and tourism. These are the traditional and familiar fields in the (developing) Islamic countries which gain the interest of most investors, Muslim and non Muslim, nationals and foreigners, who want to reduce their investment risks and achieve relatively quick returns. This is in addition to the fact that the market conditions in the (developing) Islamic countries dictate a small or a medium size project as the optimal size for projects established in most of these traditional fields. It was therefore expected, under such circumstances, that the role played by Islamic securities in terms of bringing about structural changes in the projects' size or field of activity would be very limited.

2. Most of the issued Islamic securities have a maturity of one year or less (three months in some cases). This does not provide any real opportunity for long term financing for productive projects, particularly in the industrial field. Hence, most of the issued Islamic securities are not expected to be instrumental in effecting structural changes in the economy.

3. In those cases where Islamic securities were issued on the basis of unrestricted *mudarabah* contracts, the *mudarib* (i.e. the issuing party or the financed project) could have been able to use the funds in the most profitable *shari'ah* accepted fields. However, in most cases, as mentioned earlier, operations were conducted according to the traditional pattern generally prevailing in developing countries. In those cases where securities were issued on the basis of conditional *mudarabah* contracts, most investments, here again, were polarized around traditional fields such as real estate, whereas they could have otherwise been directed towards certain vital projects in the fields of industry or towards the development of new types of agricultural products or land reclamation projects, after a thorough study and evaluation of their expected returns.

It seems, therefore, that the problem is not linked to the form of issue or the type of security, as much as to the way the financial resources are utilized in relation to the economic development issue in Islamic countries. As a consequence, Islamic economic action should not concentrate on only a change in the mode of financing, whether through deposits, Islamic securities or other vehicles. Rather, we need to develop a conscious attitude of pursuing optimal utilization of the accumulated Islamic financial resources, through *shari'ah* accepted outlets, whether at the national level for each country individually, or at the international level for the Islamic world at large.

3. SITUATION AND CONDITIONS OF STOCK MARKETS IN MUSLIM COUNTRIES

This section of the paper aims at identifying:

1. The legal and economic conditions and the situation of the present stock markets in Muslim countries.
2. Compatibility or convergence of these conditions and the situation in the market with the Islamic securities, and actual initiation of these securities in the stock exchange.
3. Accessibility of one Muslim country's Islamic securities to the market in another Muslim country.
4. Some proposals for improving the chances for the acceptance and exchange of Islamic securities locally and internationally within the Muslim World.

Needless to say that to investigate the above points in the best way and to include as many Muslim countries as possible would require an academic effort and field work by a full research team for a considerable period of time. Hence, it may be stated that what will be presented here will be only the main features. In addition, in view of the scarcity of detailed statistics and specialized references on the activities of stock markets in Muslim countries only a few countries will be selected for this discussion. The selected countries are: Egypt, Jordan, Kuwait and Sudan. This choice has been warranted by the following considerations:

a) These countries are characterized by relative maturity of their stock markets, the openness, to some degree or another, of their laws and regulations to deal in Islamic securities and the free movement of foreign capital. They are not as such conventional closed markets, but rather are relatively mature.

b) There are a number of other Muslim countries that are characterized by relatively organized or developed stock markets (e.g., Turkey, Tunisia and Morocco). However, the laws and regulations governing their markets have been developed to suit securities that are unequivocally prohibited in Islam (such as preferential stocks, etc.). These laws and regulations, in addition to the economic conditions prevalent in these countries, have not provided the opportunity for dealing in Islamic securities.

c) Secondary securities markets in most Muslim counties are almost non-existent, or where they exist, are unorganized, or are regulated by laws and regulations that do not allow sufficient dynamics required to achieve their objectives, especially if we take into consideration the nature of the institutions that dominate them.

This does not mean in any way that Egypt, Jordan, Kuwait and Sudan are the only cases that deserve to be studied. There are other cases that are worthy of study such as Pakistan, Iran and Malaysia. However, because of the limited resources available for this study it has not been possible to include them in the discussion.

The study of the structures of stock markets and the rules governing them in the selected countries shows the following:

3.1 The Stock Market in Egypt

Although the legal framework of the stock market in Egypt is not based on the rules of *shari'ah* in some cases, it is not at variance with it in other ones. In fact, *shari'ah* should have been the main source of legislation in Egypt. As is apparent from the developments over the past twenty years there is an increasing tendency to revive this legislative source. Hence, it is expected that, in future, interpretation and development of laws will be towards supporting the cause of Islamic economics.

When we review the securities in the Egyptian market, we find that they include *mudarabah*, *murabahah*, diminishing *musharakah* and active *musharakah* bonds. This shows that the legal and organizational framework has not impeded dealings in these securities. It is to be noted that the wording of deposit certificates makes allowance for introducing the Islamic form if the certificates are linked with a changeable return that depends on the outcome of the projects financed through them instead of a fixed return calculated as a percentage of the cash value of the certificate (which is the essence of *riba*).

As already pointed out, the regulations governing the secondary market do not constitute an obstacle impeding dealings in Islamic securities. Therefore, it can be said that the obstacle facing Islamic securities, whether at the level of the primary or the secondary market, is neither legal nor organizational. In fact, the growth in the number of issues of Islamic securities in the primary market and dealings in them in the secondary market in Egypt depends first on the trustworthiness of the issuing party, then secondly on the viability of the projects financed through them, which in their turn lead to winning the public’s confidence.

3.2 The Stock Market in Jordan

There are many similarities in the conditions in Jordan and Egypt. Therefore, it will suffice to give hereunder the main distinctive features of the stock market in the Hashemite Kingdom of Jordan. These are:

1. The Jordanian market is characterized by Islamic securities issued and exchanged according to a new legislation made for them. This legislation organizes the processes of issuing of and dealing in these securities, and safeguards the interests of their holders vis-a-vis the issuing parties and the parties utilizing the funds raised through them in projects that are important for the Jordanian economy.

2. There are undoubtedly special privileges given to Arab countries' citizens in securities transactions and transfers of foreign exchange. Since they are all Islamic countries, these privileges imply the possibility of expanding the transactions of the Jordanian stock market on an Islamic basis in the case of expanding the issuance of Islamic securities.

3. Similar to the situation in the Egyptian stock market, there is no legal constraint in issuing or dealing in Islamic securities. The only problem in fact is the relatively low weight or level of activities of the economic or financing institutions which issue or can issue Islamic securities under these conditions.

3.3 The Stock Market in Sudan

The main characteristics of this market from the Islamic perspective are:

1. It is noteworthy that the activities of the *shari'ah* observing institutions are growing constantly inside Sudan. Reports state that the Islamic Development Corporation is one of the most important public joint stock companies in Sudan. It abides in all its transactions by the tenets of *shari'ah*. The company's nominal capital is one billion dollars divided into one billion share (the share value is one US.dollar). It is to be noted that 60% of the company's capital has been assigned to non-Sudanese Muslims and the remaining 40% to the Sudanese citizens.

2. The activities of Faisal Islamic Bank of Sudan are worthy of a special mention, both in the field of economic activity and in the stock market. That is so because Faisal

Islamic Bank of Sudan is one of the largest banks operating in the country and contributes a great deal in establishing joint stock companies in Sudan. The nominal capital of the Bank is one hundred million pounds divided into ten million shares with a value of ten pounds per share. Once again, sixty per cent of the Bank's capital is assigned to non-Sudanese and forty per cent to Sudanese Muslims.

3.Another important aspect is that Sudan has revived the levying of the religious duty of *zakah* within the general taxation system. For this purpose, it issued the Law of *Zakah* and Tax in 1984. In this regard, Sudan has been ahead of many other Muslim countries in the modern world. Rules and regulations specify types of intangible wealth and methods of assessing *zakah* on them including bank deposits, accounts, bonds and shares inside and outside Sudan.

4.In studying the Sudanese economy, it becomes apparent that it is in need of major projects that in their turn require huge capital that can only be mobilized through the issuance of securities. Hence, any economic plan or policy aiming at raising the rate of economic development would necessarily require boosting the stock market.

5.It is evident from studying the organizational framework of the Sudan stock market that the legislation is flexible and the role of *shari'ah* is prominent (especially after a recent announcement by the Government with respect to the enforcement of *shari'ah*). Consequently, the door is quite open without doubt for promoting the primary market on sound Islamic grounds. Similarly, organization of the secondary market can be achieved on the same grounds without any obstacles.

6.Economic reports indicate that the potential for boosting the issuance and exchange of Islamic securities in Sudan is good. The supporting factors include: the adequacy of legislation, the major stock companies and banks that are established on Islamic principles (as already mentioned), the saving incentive and the change in the individuals' and companies' attitude in investing their savings in securities based on profit and loss sharing rather than in banking deposits for a fixed interest.

3.4 The Stock Market in Kuwait

The case of Kuwait deserves special study and analysis. The Kuwaiti economy possessed (and still possesses) financial surpluses that are available for investment. Kuwaiti surplus funds overflowed to the outside world. It may be mentioned that the first launching of government bonds was in 1968 in favor of the International Bank of Reconstruction and Development. During the period 1968-1974 twelve issuances were made in favor of foreign borrowers. One report states that: "In view of the availability of liquidity and the low rates of interest in Kuwait, the companies operating in Kuwait financial market have managed to attract a great number of international borrowers. Their nationalities are so varied that they include Europe, America, Far East and Japan, thus decreasing the risk and accomplishing geographical diversification for the Kuwaiti investor".[19] This last phrase should be given particular attention. Investment in these regions is made in economically developed countries or is utilized by international companies that belong to economically advanced countries. This is the type in vogue in our modern world. The developing countries find it safer to invest their surplus funds in advanced countries to lessen a great deal the investment risks (thus widening the gap between the two blocs). It may be noted that although the Kuwaiti financial market is open to foreign investment, the Islamic companies have failed to expand their activities. It seems that the profit and loss sharing mode was not practically convenient particularly when the issuance for instance were in favor of Islamic or Arab countries facing difficulties in effecting economic development. This highlights that pure economic considerations have left no scope for the Islamic consideration which was almost absent.

It may be noted that the Kuwaiti stock market is characterized by its large size, high rate of stock recycling and the big volume of its operations. Its rank was the eighth among international markets in 1981 in terms of the volume of operations. From the Islamic perspective, ordinary shares are legally permissible since they share in profit and loss, unlike the premium or preferential shares. However, permissibility of ordinary shares from the *shari'ah* point of view should not prevent us from verifying their permissibility with regard to their utilization. The funds raised through ordinary shares may fall in the hands of foreign companies that do not pay attention to the *shari'ah* tenets (*halal*, *haram* and the interests of the Muslim *ummah*) when utilizing these funds. Or, they may fall in the hands of national companies that do not care about investment priorities conforming to the Islamic methodology. On the other hand, these shares may be badly used and deviate from their objectives, when they are used in severe speculations aiming only at high and quick profits.

As for interest-based bonds and deposit certificates which yield fixed returns and have a guaranteed principal, these are all prohibited from the *shari'ah* point of view.

Reports indicate that the absence of secondary market in Kuwait was "one of the main obstacles that faced the growth of the security market at the beginning". Thus the secondary market presence played a reverse role if we take the Islamic dimension into account. It may also be noticed that Kuwaiti banks have played a major role in the development and promotion of interest (*riba*)-based-securities.

The Kuwait Finance House has been the only institution to issue deposit certificates conforming to the Islamic mode of *musharakah*. Expanding the area of Islamic securities issuance is theoretically possible. However, in practice, it depends on issuing Islamic securities that are more diversified and more "vital". We feel that those concerned with the cause of Islamic economics in Kuwait (and similar Islamic countries) should identify some vital projects that are important for the national economy and make sure that their profit rates are, on average, not less than the prevailing profit rates. Then investment bonds or certificates of these projects may be launched on the basis of *mudarabah* by prominent and economically well-reputed institutions so as to give the ordinary investor the important feeling of security. The Kuwaiti market is studded with various types of securities and is characterized by its great activity. However, it will not be enough to rely on "the Islamic sentiment" of some people to give way to the Islamic securities. Rather, they should enter into open competition and prove their success.

3.5 Some General Observations on Stock Markets in Muslim Countries and the Possibility of Improving the Chances for Dealing in Islamic Securities

Before we conclude this section, we shall present some general observations on stock markets in Muslim countries together with some proposals for improving the chances of dealing in Islamic securities. It will be noticed here that Muslim countries share most of the general characteristics with contemporary developing countries with which they have many socioeconomic conditions in common. In fact, the difference between Muslim countries and the rest of the developing countries lies in two aspects: a distinctive ideological heritage on the one hand and the recent trend to revive it in thought and application on the other hand. In fact, the second aspect is the more important because, in its absence the difference we are talking about will be governed by pure value judgment and will be far detached from reality. The general observations are as follows:

1. The evolution of stock markets in various Muslim countries was influenced by the Western capitalist civilization during the colonial period whether military, political or economic, and whether the latter coincided with the former, or preceded it or took place later on. This Western capitalistic influence made its way through the large scale activity of foreign investors and multinational companies as well as the national companies which established close financial and economic ties with the Western world. Foreign investors, whether individuals or firms, launched securities in their favor in their colonies or in the previously occupied countries after evacuation and succeeded in establishing primary markets, and sometimes even secondary markets through their continued activity. That is how the interest (*riba*)-based securities came to be known. The evolution of the national stock markets followed this on the same principles, and economic subordination played its role in emphasizing this type.

Therefore, one of the main proposals that we put forward to improve the chances of dealing in Islamic securities is the eradication of intellectual and economic subordination which made the Muslim countries cling to securities incompatible with *shari'ah*, and to the economies of western countries and their financial markets. This subordination should be overcome through the establishment and consolidation of *shari'ah*-observing institutions like banks and firms, because the institutions that functioned in the past on non-Islamic principles were, and still are, the cause of keeping the situation as it is. Moreover, the establishment of Islamic multinational firms with securities to be launched and negotiated at the level of the Muslim world can play a vital role in the independence of Islamic securities markets from other markets and consequently in improving the chances for enhancing Islamic securities and their negotiation.

2. The laws and regulations governing stock markets in all Muslim countries were introdced after the coming into operation of these markets. Stock markets came into existence through the interaction of economic and financial factors and not through policies aiming at achieving specific developments. Developments took place and the laws and regulations were issued later on to organize what was actually in existence. Although some Muslim countries did their best to tailor laws and regulations for their

stock markets according to their own circumstances, most of these laws and regulations came to be mere copies of Western legislation. Many Muslim countries have lately shown increased interest in developing laws and regulations governing their stock markets in order to increase the effectiveness of their role in the service of economic activity at home. However, the general trend dominating the process is affected by the Western legislation and the developments related to them. Thus, in the statute of a stock market of an Islamic country, the objectives of the market include: "developing methods and ways for market procedures with the help of those in effect in developing countries". Also, in most development projects there are phrases stressing the necessity for catching up with "modern development".[20] While it occurs to the minds of many in the developing countries - including Muslim countries - that modern development is the best; in fact, it is not so. Modern development is in fact the development emanating from the interaction of a number of technological, economic, social, intellectual and behavioral factors in the society of the countries leading the process of economic progress in the world. This development is suitable for these developed countries but it is not necessarily so for developing countries. On the contrary, it may impede their development totally.[21] The Islamic "developing" countries should in fact care for their own interests and develop the legal framework and the organizational set-up that is suitable for them and for their economic development. They should also, as Islamic countries, keep in mind that the Islamic *shari'ah* is the best source to depend on for improving the existing legal and economic situation. A limited number of Muslim countries have already started in this direction, which is indispensable should we want to improve the legal milieu of Islamic securities or any other form of Islamic economic activity.

3. As a logical result of the above consideration, types of securities issued in Muslim countries are none but copies of the securities developed in the Western capitalist world. Even their *modus operandi*, such as issuance and exchange, have been copied from the same source. For a very long time, no efforts were made independently by individuals or formally by governments, to scrutinize these existing securities from the *shari'ah* point of view, in order to probe their nature, function and objective, and ultimately validate or invalidate them. Some academic discussions that have emerged lately revolved on the interest system and its legality, and were extended to include some types of securities with predetermined periodic interest. Only during the past two decades have these discussions gained momentum especially in the countries where the Islamic trend (in politics and economics) has clearly emerged. With the establishment of some Islamic economic institutions (Islamic banks and firms) in this environment, the

launching of certain types of Islamic securities started for the first time in the history of Muslim countries. This new development requires in-depth scrutiny in order to avoid everything that may adversely affect it or eventually destroy it. In addition, it requires to be supported by sound *shari'ah* and economic principles in order to attain the Islamic economic objectives.

Very briefly, in my view, there are three conditions for a security to be Islamic:

First: To be committed to the conditions of profit and loss sharing in a clear, unequivocal stipulation based on the legal rules governing the *mudarabah* and partnership contracts. It may be noted that this condition is "necessary" but not "sufficient", in the sense that to be committed to it is an uncontroversial Islamic requirement, but it is not sufficient in itself for an issued security to be "actually so in application". When we say: a clear unequivocal stipulation, we mean to avoid the problems and embarrassment that took place when some securities (issued as Islamic) stipulated "profit sharing" without mentioning "loss", or stipulated what meant a guarantee of the principal for the security holder.

Second: Resources mobilized through these securities (issued on non-interest basis) should not be rechannelled to institutions not functioning in conformity with *shari'ah* and to firms dealing with interest in all their activities. This can occur when Islamic banks issue securities and then channel the funds mobilized through these securities to certain firms on the basis of profit and loss sharing. But these firms may deal with banks and other firms on an interest basis. Also, the funds mobilized through these securities should not be invested in projects which yield predetermined "returns" that are fixed in advance, without sharing in the risks of this return-yielding activity. Such returns are nothing but interest and the term profit is merely a misnomer just for covering it up.

Third: The funds mobilized through these securities should be utilized in priority projects that clearly fulfill the public interest of the Muslim society. These funds should not be invested, for instance, in non-Islamic foreign countries on the pretext that investments in these countries are more secure and more profitable. This is a clear subordination and is not less vicious than *riba*; it is even worse. It simply means that the wealth of Muslims is delivered to non-Muslims who would thus become more powerful in return for meagre profits to the investors, however high these profits may seem to be. This can be clarified if we take into account that it is not merely a matter of profit when the project is on a Muslim land. There are in fact many other benefits that may accrue, such as employment, technological progress and the support these projects lend to other projects that are upstream or downstream complementary with them, in addition to the dynamic impact in the long run. There is of course also the consideration that an investment in a foreign project or firm outside Muslim countries does not carry any guarantee that the funds will be utilized in *shari'ah* conforming ways, or not invested in prohibited areas. Since we abide by the Islamic doctrines and priority areas in investment, we should not permit utilization of the funds mobilized through these securities in producing luxury articles while there are people in Muslim countries in a very dire need for the basic necessities or for essentials that would mitigate the hardships of their life. On this ground no Muslim would tolerate issuance of Islamic securities whose mobilized funds would be used in the trade of gold, in importing of luxurious cars or in building tourist beach resorts. This all would hurt the whole cause and would render the Islamic security a toy in the hands of those who play on the hearts and sentiments of Muslims.

It is my view that enhancing the chances for dealing in Islamic securities is closely linked from the practical point of view to the enforcement of these conditions. The public in Muslim countries look with the highest esteem and greatest regard at the word "Islamic" that is linked to some securities that have been lately issued. If actual experience shows that it is a misnomer bearing nothing but the "form", or the Islamic project does not care for the Islamic world interests and needs for producing the essentials and the basic necessities at this stage, etc., confidence will stagger or will even be totally lost. Conversely, if practical experience shows the keenness of the Islamic project to achieve the public interest inasmuch as it is keen on maximizing its profits within the framework of Islamic *shari'ah*, then the whole environment will improve and any securities issued for financing such a project will undoubtedly meet with acceptance.

4. ASSESSMENT OF THE NEED FOR AN ISLAMIC SECONDARY STOCK MARKET

This last section of our present investigation aims at assessing the need for a secondary stock market in an Islamic framework. This will be achieved through, first, analysis of the situation that warrants its establishment and the basic requirements for its success, and second, description of the most prominent objectives and functions of such a market.

4.1 Analysis of the Situation Warranting the Establishment of a Secondary Stock Market and its Prerequisites

In the context of the present development processes that are undertaken by all contemporary Muslim countries combined with the endeavor to revive the application of *shari'ah*, the volume of the activities of Islamically oriented projects is expected to increase. In fact, these projects depend at the inception of their activities either on private individual financing and subscriptions from relatives and friends or on financing from Islamic banks. However, these two types of financing have narrow limits and consequently cannot stretch beyond short and medium term financing. Therefore, it has become mandatory for the Islamically oriented projects to obtain access to the financial market directly through launching their own securities to cover their long-term financing requirements.

It may also be noted that some Islamic banks have already taken this step of getting into the financial market and have issued medium or long term securities in order to establish a new financing source that would enable them to respond to the needs of projects seeking growth. This trend is expected to increase in future. It is also expected that Islamic banks would contribute to the sale promotion and marketing of financial securities of Islamically oriented projects.

Given the above, it can be stated that the greater the keenness of the Islamically oriented projects to grow and expand within the framework of economic development and the more expanded the Islamic economic insurgence is in future, the more the need for a *shari'ah*-based security secondary market.

Similarly, it is noticed that most modern Muslim countries are lacking in the basic conditions required for developing a successful secondary market in *shari'ah*-based securities. Among these conditions is the one that requires the *shari'ah*-based economic activity to attain a degree of maturity to produce a favorable climate for bringing about "external surpluses" required for its sustenance. The Muslim countries should have the capability to translate the relevant part of the Islamic *shari'ah* into the form of essential regulations and systems that would contribute to setting up a secondary stock market capable of meeting the challenges of our modern life. They should also have enough human expertise and know-how to run the activities of this market successfully and to supervise it to ensure that it would not deviate from fulfilling the *shari'ah* objectives and the interests of the Muslim *ummah*.

These conditions may be realized in part or in full in the foreseeable future in some Muslim countries that have some experience in the activities of stock markets and a strong Islamic economic movement.

Based on the above we find that the establishment of an Islamic secondary stock market will not come about as a natural development at present. In fact, what is required is to make preparations for this market through Islamic studies regarding its laws, regulations, objectives and functions.

It may also be noted that the success of establishing an Islamic secondary stock market and ensuring its survival and growth in the long run will not depend only on a good organizational structure to run its affairs and Islamic legislation to safeguard it, but also on the employment of human expertise and know-how that are Islamically oriented to perform its duties and to have peculiar characteristics that would distinguish it from the conventional stock markets. That is so because if we assume, for the sake of discussion, that the Islamic secondary market will adopt objectives similar to the objectives of the already existing conventional markets, this latter will outrun the former in activities for many reasons, the most important of which are the long experience of the parties dealing in it and the coherence of its organizational structure.[22]

Hereunder are the main characteristics of the Islamic secondary market in terms of its distinctive objectives and functions.

4.2 The Envisaged Objectives and Functions of an Islamic Secondary Market

1. Invigorating and boosting medium and long-term Islamic financing of Islamic projects through facilitating and streamlining adequate *shari'ah*-based guarantees for negotiating Islamic securities according to current prices. At the micro level, the realization of this objective would include the application of the rule of removing the hardship and facilitating the procedures for those dealing in securities. It also includes safeguarding them against uncertainty, injustice and becoming victims of some monopolizing mediators. At the macro level the realization of this objective includes contributing to building up the Islamic economy internally, and consequently overcoming the economic subordination from which the Muslim (developing) countries suffer at present.

2. Developing the dealers' rational investment behavior through providing sufficient information on the "real" economic and financial positions of Islamic projects and enterprises whose securities are negotiated in the market. Realization of this objective which is based on the rule, "Advice is the core of religion" contributes to the achievement of the best results in the optimum utilization of economic resources in the long run.

3. Safeguarding the dealers in securities and the institutions and enterprises issuing them as well as the economic activity of the Islamic society against irrational and illegal speculations. This can be achieved through disseminating appraisal studies of the general trend in the price of negotiated securities. This will narrow down the possibility of irrational price speculations that are based on haphazard conjectures. As for safeguarding the market and the Islamic economic activity against illegal price speculation, this can be done through removing all the causes which lead to it. We have explained earlier that price speculation in securities is not objectionable except when it is coupled with *najash* i.e. speculation without any real intention to buy. Therefore, it is one of the functions of an Islamic secondary market to eliminate speculation that focuses on intentionally raising or lowering the price of securities with the objective of realizing quick profits regardless of the consequences for the market and the economic activity. One of the means to safeguard the market against the non-*shari'ah* price speculations is to impose tight controls on deferred sale of financial papers. It is also possible to depend on direct *shari'ah* supervision and controls to prevent any implicit or explicit agreements between individual dealers and brokers from engaging in such speculative activities and to penalize the violators.

5. CONCLUSION

It is clear from the foregoing that it is necessary to set up an Islamic secondary market for securities, the main objectives and functions of which have been delineated. However, most of the prerequisites for a natural birth of such a market do not exist at present. Therefore, endeavors should be made for their realisation.

Hence, we have to consider a transitional stage between the present situation and the aspired one for setting up such a secondary security market. What we need most in this transitional period is to win the confidence of people in the securities issued on an Islamic basis, and persist in infiltrating the present conventional stock markets with a view to Islamizing their activities by introducing more non-interest issuances. This can only be achieved when the *shari'ah*-based investment projects realize actual success and go on expanding. There is a further step that is more ambitious and an advance towards the target. That step is to endeavor to adjust and develop the present rules governing the dealings in stock markets in the Muslim countries. This can only be achieved through the efforts of men dedicated to the cause of Islamic economics in the legislation and economic areas and who are at the same time holding responsible positions. Such an adjustment and transformation will help creating a better climate for Islamic securities and a gradual transformation into an Islamic stock market.[23]

In order to highlight the importance and need for setting up an Islamic secondary stock market, let us ask about the alternative in case it is not set up or no efforts are made to establish it. Would that alternative be nothing but to continue to deal in the Islamic securities in the present stock markets in Muslim countries according to the existing rules and systems? Such a practice will be faced with many obstacles, unbalanced advantages and uncalculated competition with interest-based securities, or securities issued by companies and institutions uncommitted and indifferent to the issues of *halal* and *haram*, thus leading to continued weakening of the tide of financing of *shari'ah*-based investment projects.

NOTES AND REFERENCES

1.Contributions to the topic of Islamic economics in general and investigations of the issues related to Islamic financing in particular have abounded since 1976, the date when the First International Conference on Islamic Economics was held. Among the most important conferences that contributed to investigating the issues related to Islamic financing were the one held in Cairo on "Financial Resources of the State in Modern Society from Islamic Perspectives" organized by the Islamic Development Bank in collaboration with Al Azhar University and Faisal Islamic Bank of Egypt in 1406H (1986), and the one held in Kuala Lumpur, Malaysia on "Developing a System of Financial Instruments" organized by the Islamic Development Bank and the Malaysian Ministry of Finance in 1407H (1986). In the present paper, I have made recourse to the papers presented at these two conference, especially the second.

2.Based on statements and reports issued by Kuwait Finance House and the Islamic Banks in Sudan on investment certificates, their types, conditions of issuance and features, etc., See also: Arab Stock Markets, Organization, Instruments and Procedures, pages 285-286.

3. Sources are the same as in note 2 above.

4.Waleed Khayrullah "*Al-Muqaradah* Bonds as the basis of profit-sharing in *Islamic Economic Studies*, Vol.1, No.2, 1994.

5.Information bulletins issued by Bank Misr (Egypt) on Islamic Transactions Certificates.

6.A bulletin issued by the Islamic Development Bank on Islamic Banks Portfolio entitled "Invitation to Businessmen in OIC Members Countries to Benefit from Trade Operation Financing extended by the Islamic Banks Portfolio: (undated), Jeddah, Saudi Arabia.

7.See, Qureshi, D.M., "The Role of *Shari'ah*-based Financial Instruments in Muslim Countries", a research paper presented in the "Seminar on Developing A System of Financial Instruments" held in Kuala Lumpur in 1407H (1986).

8.Ibid. This issue needs reviewing because if the shareholders participate in bearing the risk and so do the *musharakah* bond holders, then what is the difference and on what grounds such preferential treatment can be justified? We shall discuss this issue later.

9.See, M. Azizul Huq: "Utilization of Financial Instruments - A Case Study of Bangladesh", a research paper presented in the Seminar on "Developing A System of Financial Instruments" held in Kuala Lumpur 1407H (1986).

10.See, Abdul Halim Ismail: "Sources and Uses of Funds - A Case Study of Bank Islam, Malaysia. Paper presented in Kuala Lumpur Seminar, 1407H (1986) referred to before.

11.These comments are my personal views. I feel that Islamic economists should be objective in expressing their views and with as much clarity as possible. This may help reconsideration of some *shari'ah* decisions *fatwa* that have been taken regarding some issues without getting sufficient information from Islamic economists.

12.These bonds have faced many objections in different symposia on Islamic economics held after their issuance. See, for instance: Ahmed Ali Abdullah, "Available Means for Islamic Banks on International Markets", a paper presented at the Seminar on Islamic Banks. State of the Art and Actual Practice, organized by Arab Banks Union. Amman, Jordan, 1988. Also, see the reference given under note no. 8.

13.Objections raised against Pakistani PTCs are included in D.M. Qureshi's paper and the comments made on it. See: Proceedings of Kuala Lumpur Seminar 1407H (1986) referred to in note 9 above.

14.See Reference given under note no. 9 and the comments thereon at the conference referred to.

15.Discussions on economic appraisal of securities were included in various parts in the proceedings of Kuala Lumpur Seminar. However, one of the most prominent presentations dealing directly with the issue was M.A. Mannan's "An Appraisal of Existing Instruments from Islamic Perspectives". Apart from this presentation, there were good observations made by Mohammed Ariff in reviewing the Conference Proceedings under the title "Overview" (included in the proceedings).

16.Discussions on price speculation, their profits and legality from the *shari'ah* point of view were included in M.A. Mannan's paper and the commentary thereon and also in Mohammed Ariff's paper, both referred to above. See also Saifuddin Ibrahim Taguddin, "Investment and Stock Market from Islamic Perspective", League of Arab States, General Secretariat, General Administration of Economic Affairs (undated).

17. According to the Prophetic Saying: "Do not raise the price when you do not have the intention to buy". *Najash* (raising the price without the intention to buy) is explicitly forbidden. This does not differ from lowering the price without the intention to sell, because this is also another way of tricking other dealers on the market in order to achieve private trivial benefits. This is the behavior of the two types of speculators: bulls for raising the price and bears for lowering the price, to secure temporary gains that may be considerable regardless of the interests of security holders (the real investors) who do not get engaged in such practices, or the interests of the productive projects that are financed through the issued securities. These speculators act like vultures dropping down on the market buying and selling as they wish at the opportune time after they manipulate the prices enough for achieving their end.

18. Main reference: Arab Stock Exchange Markets, op.cit. Recourse has been made to this reference in identifying the main features of the selected Islamic countries stock markets.

19. Ibid, pages 267-268.

20. Ibid, page 274.

21. Developing countries in general and Muslim countries in particular suffer from sociological dualism considered by a number of contemporary economists to be one of the most serious phenomena affecting economic developments. See: Abdul Rahman Yousri Ahmad, "Studies in Islamic Economics", pages 110-111, *Dar Al Jam'aat Al Misreyyah* - Alexandria.

    The reason for stating that Islamic countries "in particular" suffer from it is the contradiction that is clearly seen in the these countries between the exogenous thought (imported from abroad) and the endogenous (originally rooted inside the country) one. The endogenous thought in these Muslim countries is related to an ancient civilization and associated with an ideology that still exists and attempts are made to revive it. This is different from the situation in non-Muslim countries where the endogenous thought has collapsed or is collapsing giving way to modern Western or Eastern civilizations without any significant resistance.

22. We say that if an Islamic market has been set up without any distinctive features, then the existing conventional market will outrun it simply because it has an actual experience and a coherent organization, according to the rules of the game. The problem here is that this is not a far-fetched supposition, since a number of Islamic securities, as already pointed out, are not characterized by distinctive

features from the Islamic point of view, neither in their terms and conditions at issuance nor in respect of the activities financed through them.

23. In reviewing the situation of the existing stock markets in some Muslim countries we can see that several laws and regulations governing them are at variance with their the objectives of *shari'ah*. Therefore, there is a point of "convergence" that may make it possible if adequate efforts are made.