Early Forms of Insurance in Muslim Society

(on the Example of Such Institutions as Diyah and Zakat)

According to most Western experts, insurance originated in the 14th century C.E., although some scholars hold that insurance proper did not appear before the 18-19th centuries[i]. A minority (B. Emerigon, P. Goldschmidt and others) hold that the insurance contract was already known in Ancient Rome. They refer mainly to trade and religious unions known as *collegia tenniorum* and *collegia funeraticia*. The insurance contract is the key to this dispute: those scholars who deny the existence of insurance in antiquity and early Middle Ages (up to the 14th century when marine insurance began to be widely practiced in Europe) base their view on the fact that the insurance contract was unknown in those times[ii].

As for Muslim scholars, many point to the institutions of *diyah* (blood money) and *zakat* (charity tax) as the precursors of insurance relations in the Muslim world[iii].

The term *"diyah"* signifies compensation for murder or injury paid by the perpetrator or his (her) relatives to the victim or his (her) relatives. Western legal theory treats this institution as part of the criminal law[iv]. Islamic legal theory sees it differently and treats *diyah* and *zakat* as early forms of insurance in the Muslim world[v]. Unlike European legal systems, Islamic law does not divide the subject matter or regulation methods into branches[vi].

In my opinion, classifying Islamic legal institutions into branches and sub-branches, as is common in European jurisprudence, may lead to an erroneous understanding of *Shariah*. This is what N. Tornau warned against in the middle of the 19th century:

…First, the different chapters of Islamic law do not have a logical correlation between them, and it is difficult to correlate the articles of these chapters with new divisions based on principles that do not exist among Muslims without changing the structure within each chapter, and without establishing new ideas that are not in the spirit of the Islamic legal doctrine. For example, the political and military codes (*fiqh* branches according to Mouradgea d'Ohsson's[vii] book – R.B.) included many subjects that Muslims regard as religious duties, such as *zakat* and war against the infidel; the chapter on usurpation (*ghasb*) was included by d'Ohsson, based on European categories, in the criminal code, whereas Muslims consider usurpation as a civil act that is not subject to a criminal sanction or correctional measures. Second, Mouradgea d'Ohsson tried to group together subjects that have only an apparent resemblance but are quite different in

essence… For instance, the dedication of a *waqf*, a voluntary act, should not be included in a chapter on *zakat*, payment of a share of one's income that is compulsory for every Muslim[viii].

For this reason, I find it preferable, when studying various *fiqh* institutions, to follow the Islamic tradition in the classification of legal branches and institutions.

In pre-Islamic times, the obligation to pay *diyah* rested on the paternal relatives (*'aqilah*) of the murderer, who pay the blood money to the heirs of the murdered member of the other tribe. If they do not or can not pay *diyah,* the relatives of the victim are entitled to vengeance. Therefore, *diyah* was often paid by the entire tribe from a special fund. Thus, through the support of the tribe, the murderer was exempted from criminal prosecution even if his relatives were unable to provide compensation for murder. The merit of this institution can be fully appreciated if we consider that sometimes entire clans and tribes could perish in a blood feud: the killing of one man entailed the killing of another in retaliation, so that one could not estimate the number of potential victims.

If the crime was committed by a slave, the blood money was paid by his master, who could also sell the slave to repay all or part of the debt. By providing protection to one of its members, the tribe not only guaranteed his safety but also provided the relatives of the victim with his debt.

Islam confirmed the legitimacy of *diyah*, recognizing its important role in stopping inter-tribal feuds and uniting all the tribes and peoples into a single Muslim community. The Quran says:

Never should a believer kill a believer; except by mistake, and whoever kills a believer by mistake it is ordained that he should free a believing slave, and pay blood-money to the deceased's family, unless they remit it freely. If the deceased belonged to a people at war with you, and he was a believer, the freeing of a believing slave (is enough). If he belonged to a people with whom ye have treaty of mutual alliance, blood-money should be paid to his family, and a believing slave be freed. For those who find this beyond their means, (is prescribed) a fast for two months running: by way of repentance to Allah: for Allah hath all knowledge and all wisdom (4: 92)[ix].

The Prophet himself established specific sums as compensation for various injuries. For example, 15 camels for a skull fracture, and 10 for the loss of a toe or a finger. In an injury proved a fatal, the murderer was obliged to pay 100 camels or its equivalent to the victim's relatives[x].

The institution of *diyah* is mentioned in almost every branch of *fiqh*, but it is principally regulated by the *'ūqūbāt*, which according to western categories are part of the criminal law. The terms of the payment of *diyah* are as follows:

1) *diyah* for murder is paid as an alternative to the law of talion (a soul for a soul, an eye for an eye, a tooth for a tooth), if the victim's relatives agree to that[xi],

2) *diyah* for a wound or injury is intended to avoid an equivalent talion punishment (*qisas*), if the victim and his relatives agree to that[xii].

Diyah is reduced by half if the victim is female, or if the crime was committed by a female. If a pregnant woman is killed, double *diyah* is to be paid: for herself and for the foetus.

The principle of compensation and group responsibility is also reflected in the accord concluded between the *muhajirīn* and the *ansar* after the Prophet's arrival in Medina. Under this accord, all Medinan Muslims, regardless of their tribe or clan, became a single community. A special fund (*al-kanz*) was set up to which the members of the *Ummah* made yearly contributions. This fund was used to pay *diyah* for Muslims, including cases in which the murderer was not identified but it was known that he was a member of the Muslim community[xiii]. If an enemy captures a Muslim and makes him a prisoner of war, the prisoner's paternal relatives are required to pay ransom (*fidya*) to free him[xiv].

In Muslim countries the transition from *diyah* (blood money paid through subsequent allocation among the members of the community or tribe) to *zakat* (a compulsory tax used, among other things, to ransom Muslims from captivity) during the rule of al-khulahfa' ar-rashidun (the four rightly-guided caliphs (632-661), confirms the validity of this statement.

The institution of *zakat* is an immense subject and we will consider only those aspects that the majority of Muslim scholars directly link to insurance.

Like *diyah*, *zakat* was known to bedouin tribes before the emergence of Islam and was related to the custom of sharing the booty, when a special fund was set up to help the tribe as a whole and its individual members[xv].

The Quran treats *zakat* as a regular tax for the benefit of needy members of the *Ummah* (Q. 2: 215, 219; 51: 15-19, and others), though in the first years of the *Ummah* its payment was irregular and often voluntary[xvi].

The obligation to pay *zakat* rests upon Muslims who are adult, free and legally capable. Those who are entitled to receive *zakat*, as mentioned in Q. 9:60, are as follows:

1) the poor and the needy (those who do not have sustenance for one year);
2) collectors of *zakat*;
3) non-Muslims, if they help Muslims in a war;
4) debtors who cannot repay their debts[xvii];
5) travelers in a foreign land if they do not have the means to return home.

Students living far from home also have the right to receive aid from the *zakat* fund[xviii].

The Arabic language has a special term for someone who suffers a loss: *gharim*. Some scholars hold that in case of a loss, the *gharim* has the right to full compensation for all his losses, however large, from the *zakat* fund[xix].

Thus, *zakat*, among other things, performed and continues to perform the functions of social security and insurance against loss.

If a Muslim dies without having paid *zakat*, the amount that he owes is taken out of his estate. The majority of Muslim population did not know anything about insurance in its modern form up to the beginning of 19th century.

The development of insurance in its modern form in the Muslim world is connected with the name of *Hanafi* scholar Ibn ‘Abidin (1784-1836). In his “Answer to the Perplexed: A Commentary on “The Chosen Pearl”, Ibn ‘Abidin describes the case of a merchant who leased a ship from the shipowner. In addition to the freight, the merchant paid a sum known as *sukra* (premium)[xx]. From this sum, in case of an accident during the voyage, the shipowner used this sum to pay reasonable compensation for the damage suffered by the owner of the cargo[xxi].

According to Ibn ‘Abidin, the merchant does not have the right to claim compensation for the value of the property, even if the shipowner (carrier) agrees to that, if the carrier was not at fault. However, if the insurance contract was concluded in a non-Muslim country. In that case, the Muslim cargo owner has the right to claim compensation for the value of any property that was lost or damaged[xxii].

Beginning in the early 19th century, the Muslims began to use foreign insurance companies and also established their own, which, however, did not always comply with the *Shariah* principles. This gave rise to doubts as to the validity of insurance under Islamic law. In 1906, the Mufti of Egypt, Muhammad Baqit, approved the idea of insurance as described by Ibn ‘Abidin[xxiii].

Until the second half of the 20th century, some Muslim scholars have held that the recognition of insurance is inevitable in the modern world, while others have criticized the commercial insurance contract for non-compliance with the provisions of *Shariah*. Regular scientific publications dedicated to *takaful* (mutual assistance)[xxiv] as an alternative to the conventional insurance system started to appear only in the late 1980s and early 1990s. These

were primarily the works by Ma'sum Billah, Ahmad Ibrahim, Azman Ismail, Kamaruddin Sharif and others[xxv].

In the Middle Ages the institution of *diyah* largely ensured the safety and security of each individual member of the community, and the order and stability of society as a whole. The *Ummah* ensured redistribution of accumulated capital, on a non-profit basis, in favor of those who had suffered material loss. Therefore, it comes as no surprise that mutual insurance[xxvi] would develop in the Muslim world, where trust between partners is of utmost importance.

As for *zakat*, apart from its general function as a social tax supporting the needy, it also played the role of mutual insurance against loss[xxvii]: the debt of an insolvent debtor was repaid from the *zakat* fund, and the debtor himself, if imprisoned, was ransomed from the same fund.

Of course, it would be a mistake to argue that *diyah* or *zakat* anticipated or epitomized the insurance system in its modern form. However, we should not underestimate the importance of these institutions in providing social assistance to the needy, especially considering that the first Western countries started developing the notion of a social tax (of which *zakat* is one) only in the middle of the 19th century.

In the modern world, Muslim scholars do not object to mutual (cooperative)[xxviii] insurance on the grounds of its non-compliance with *Shariah* principles[xxix].

The situation is different with commercial, or for-profit insurance. Muslim scholars have many reasons to question it.

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[i] See, for example: G. Schmoller, *Grundriss der Allgemeinen Volkswirschaftslehre* (1904), vol. 2, aufl. 1-6, 335.

[ii] For more information see: V.K. Reicher, "Dokapitalisticheskoye strakhovaniye" ("Pre-capitalist Insurance"), in *Strakhovoye pravo* (*Insurance Law*) (1999), No. 4, 65.

[iii] Muslim scholars do not deny the tort nature of the institution of *diyah*, or that *zakat* is primarily a tax for the benefit of the needy. However, in their opinion, this did not prevent *diyah* and *zakat* from performing the additional function of mutual insurance.

[iv] See, for example: *The History of State and Law of Foreign Countries*, ed. N. Krasheninnikova, (Moscow: Norma, 2002); *Criminal Law of Foreign Countries*, I. Kkozochkin e.a., (Moscow: IMPE, 2001), etc.

[v] See, for example: Ma'sum Billah. Quantum of Damages in Takaful: the Possibilities of Adaptation of the Doctrines of al-Diyah and al-Daman. A Reappraisal", in *Journal of Islamic Banking and Finance*, (2000), Vol. 17, No. 1, 25-52; M.A. Az-Zarka. *Sistema strakhovaniya. Yeye sushchnost i vzglyad shariata na neye* (*System of Insurance. Its Nature and the Shariah Perspective*), (Kazan: Iman, 1999) etc. A position similar to that of Muslim scholars with regard to blood money as an early form of insurance may be found in the Russian legal literature: "The emergence of insurance in Russia is linked by researchers with the old Russian code of laws known as "*Russkaya Pravda*" ('Russian Law', 10-11th centuries), which first provided for compensation payable by the commune in case of murder" (S.A. Rybnikov. "Ocherki istorii strakhovaniya v Rossii" ("Studies in the History of Insurance in Russia"), in *Vestnik Gosudarstvennogo Strakhovaniya* (*Bulletin of State Insurance*) (1927), 19-20 (quoted from: *Finansovoye pravo* (*Financial Law*), ed. N.I. Khimicheva (Moscow: Yurist, 1998), 378. Moreover, Rybnikov, who compared *dikaya vira* (blood money), paid by a member of the *verv'* (commune) in case of an unpremeditated murder, with contract insurance, finds the former to contain "all the elements of civil liability insurance" (quoted from: V.K. Reicher, "Dokapitalisticheskoye strakhovaniye", 87). V.K. Reicher, on the other hand, believes that *dikaya vira* paid by the entire commune when the murderer was not found has nothing to do with insurance. In his opinion, when the murderer was not found, *dikaya vira* was required by law (or custom) and constituted a common duty of all the members of the *verv'*. In the case of an unpremeditated murder, on the other hand, *dikaya vira* was the result of a preliminary "insurance contract" and was compulsory only for those and for the benefit of those who had joined through that contract a kind of mutual insurance company. Therefore, the term "insurance" can be used only with reference to relations arising from an unpremeditated murder, (see V.K. Reicher, "Dokapitalisticheskoye strakhovaniye", 89-90).

[vi] For example, the well-known work of Abu Yusuf "*Kitab al-Kharaj*", which deals with the system of Muslim taxation, contains a chapter entitled "On vicious people and thieves, on crimes and on what punishments are appropriate in each case", *diyah* is mentioned on many occasions here.

[vii] Ignatius Mouradgea d'Ohsson (1740-1807), diplomat for the Swedish emabssy in Istanbul, author of the fundamental "*Tableau general de l'Empire Ottoman*" (*General Picture of the Ottoman Empire*).

[viii] N. Tornau. *Izlozheniye nachal musulmanskogo zakonovedeniya* (*The Elements of Islamic Law*) [Reprint of the 1850 edition], (St. Petersburg: Adir, 1991), V-VI.

[ix] The text of the Quran is quoted from the following edition: The Holy Quran. (English Translation of the Meanings and Commentary), (Madina: King Fahd Holy Quran Printing Complex, 1411 h).

[x] Quoted from: R.I. Bekkin, "Problema sootvetstviya sushchnosti kommercheskogo strakhovaniya normam musulmanskogo prava" ("Problem of Compliance of Essence of Commercial Insurance with the Principles of Islamic Law"), in *Vostokovedny Sbornik* (*Bulletin of Oriental Studies*) (Moscow: The Institute of Israeli and Middle Eastern Studies, 2001), Issue. 2, 100.

[xi] The *diyah* for a murder is inherited and shared by the relatives of the deceased.

[xii] In cases of an unpremeditated murder, wound or injury, a talion punishment is completely ruled out, and *diyah*, along with sanctions imposed by the authorities, remains the only liability borne by the culprit. The relatives of the victim, or the victim himself/herself if he/she is alive, may pardon the culprit, which is the best solution according to the Quran (Q. 2:178).

[xiii] Islam. Entsiklopedichesky Slovar' (Islam Encyclopedic Dictionary), ed. G.V. Miloslavsky e.a. (Moscow: Nauka, 1991), 25.

[xiv] Interestingly, similar insurance-like relations are found in the Muscovite Russia (16-17th centuries). Suffering from constant incursions of belligerent neighbors and losing precious human resources on its outskirts, the Muscovite state was interested in devising a system that would bring prisoners back. Initially, the money paid from the Czar's coffers to ransom prisoners was recovered by taxing the population based on the fiscal units of the time, known as *sokhas* (wooden ploughs). Later, according to the Muscovite Law Code (*Sobornoe Ulozhenie*) of 1649, a special fund was established to pay ransom for prisoners: a special tax was levied to secure the funds for ransoms. Contributions to the ransom fund varied depending on the social rank of the taxpayer. The social status of the prisoner also corresponded to a specific level of ransom (with the exception of the highest dignitaries). According to Reicher, this scheme of financing ransom for prisoners, despite its fiscal form, contained all the essential elements of government insurance against imprisonment. It should be noted that a similar evolution, from a system of post-

factum allocation to regular payments, marked the development of insurance in the world, (see V.K. Reicher, "Dokapitalisticheskoye strakhovaniye", 89-90).

[xv] Islam. Entsiklopedichesky Slovar' (Islam Encyclopedic Dictionary), 74.

[xvi] Ibid, 74.

[xvii] Muslim scholars maintain that "an insolvent debtor is under Allah's protection", see: N. Tornau. *Izlozheniye nachal musulmanskogo zakonovedeniya*, 320.

[xviii] For instance, the Punjab *Zakat* Council distributed Rs 570 million among students in vocational institutes through local *Zakat* and '*Ushr* Committees in the last financial year. See Punjab Zakat Council gave students Rs 570m in 2002-03// www.dailytimes.com.pk

[xix] See N. Tornau. *Izlozheniye nachal musulmanskogo zakonovedeniya* (*The Elements of Islamic Law*), 37.

[xx] This root is also used for the Arabic translation of the word "insurance": "*sikurtah*".

[xxi] M.A. Az-Zarka. *Sistema strakhovaniya. Yeye sushchnost i vzglyad shariata na neye* (*System of Insurance. Its Nature and the Shariah Perspective*), (Kazan: Iman, 1999), 8.

[xxii] Ibid, 8-9.

[xxiii] S. Mankabady. "Insurance and Islamic Law", in *Arab Law Quarterly*, (1989), Vol. 4, 21.

[xxiv] *Takaful* (*Arabic* 'mutual provision of guarantees'): Islamic insurance. A system based on the principles of solidarity and mutual assistance, under which the parties to the contract support each other when any of them suffers a loss (which means primarily a monetary compensation). According to Muslim scholars, the Islamic insurance (*takaful*) contract, as opposed to the conventional insurance contract, does not contain the elements of *gharar (uncertainty)* and *riba (usury)* (*author's termination – R.B.*).

[xxv] See M.N. Siddiqi. *Insurance in an Islamic Economy,* (1985); A. Ibrahim. The Administration of Islamic Financial Institutions", in *Syariah Law Journal,* (1991), Vol. 7, 15-20; M. Billah. Life Insurance? An Islamic View, in *Arab Law Quarterly*, (1993), Vol. 4, 315-324; *Kamus Insurans (Insurance Dictionary)*/ Kamaruddin Sharif, Yahaya Besah, Zuriah Abdul Rahman; ed. Yulis Haji Alwi, 1995.

[xxvi] Mutual insurance is a form of insurance protection, when the insured is a member of a mutual insurance society. Each member of a mutual insurance society is both the insurer and insured. All members of such a society in certain cases have to compensate losses to the member who met these losses.

[xxvii] According to Muslim scholars, *zakat* is no longer able to perform the many functions of insurance in today's world: "The existence of *zakat* funds does not mean that people should not take care of themselves. On the contrary, they should make every effort to avoid using funds intended for the needy and the downtrodden. There is no doubt that damage from modern plane, car and railway accidents in any country may greatly exceed the amount of *zakat* funds. Therefore, we need insurance, which will allow to use *zakat* funds for their original purpose", see: Az-Zarka. *Sistema strakhovaniya. Yeye sushchnost i vzglyad shariata na neye* (*System of Insurance. Its Nature and the Shariah Perspective*), 56.

[xxviii] Sometimes, Muslim scholars use the adjectives "mutual" ("*tabaduli*") and "cooperative" ("*ta'awuni*") in connection with insurance. For example, cooperative insurance is opposed to commercial insurance, which seeks to generating profit. However, a number of Muslim scholars distinguish "cooperative" and "mutual" in reference to Islamic insurance. In their opinion, cooperative insurance does not rule out for-profit orientation. For example, the incorporation documents of all Islamic insurance companies stipulate the cooperative basis of their operations. Thus, all Islamic insurance companies in Saudi Arabia are considered to be cooperative (National Company for Co-operative Insurance (NCCI), Saudi Insurance Company (Methaq) and others); in fact their operations have little to do with mutual insurance.

[xxix] See, for example, the resolution on compliance of mutual (cooperative) insurance and reinsurance with the Shariah principles, adopted by the Islamic Fiqh Academy (the Organization of the Islamic Conference) at its second session held in Jidda (Saudi Arabia) from October 22 to December 28, 1985 (see: Resolution No. 9 (9/2) Concerning Insurance and Reinsurance).