



Matters of *Hijrah* (Emigration) and *Harb* (Warfare)

Installment #1

Is Hijrah From Non-Muslim Lands Compulsory?

Excerpts from

The Ruling of Residing in the Lands of the Unbelievers and Proclaiming its Compulsoriness in Some Situationsⁱ

By Sheikh ‘Abdul-‘Azeez ibn Muhammad ibn As-Siddeeq Al-Hasani Al-Ghimaari – may Allah be pleased with him

One of the last Great Hadeeth Masters of Morocco

Sheikh ‘Abdul-‘Azeez says:

Imam Ahmad relates with a sound chain on the authority of Mushaaji’ ibn Mas’ood that he brought the Prophet – may Allah bless and grant him peace – one of his nephews to make the pledge to him for the emigration (hijrah). So the Messenger of Allah – may Allah bless and grant him peace – said:

“No. Rather (make the pledge) on Islam. For verily there is no hijrah after the Conquest. But he will be among those who follow (the emigrants) in good.”

‘Aisha – may Allah be pleased with her – clarified this that we have stated by her statement:

“There is no hijrah today. The believers – each of them used to flee with his deen to Allah – High is He – and to His messenger out of fear of being persecuted for it. As for today, Allah – High is He – has made Islam manifest. And the believer worships his Lord wherever he pleases.”ⁱⁱ

The scholars have said:

“She alluded to that the reason for hijrah is “fear of persecution (khauf al-fitnah) because of religion (deen). As for if one is capable of worshipping Allah – High is He – in any place, it (i.e. hijrah) is not required of him.”

Rather, some of the Imams have said:

“When one is capable of openly practicing the religion in any one of the lands of the unbelievers, the land has become by it the Abode of Islam. So residing in them is better than leaving them because of what is hoped of (in) others entering into Islam. Rather, for him to remain at that point would be given more weight than to emigrate because of the benefit found in that to Islam and the Muslims.”

And that is from two regards:

The first: is the hope that occurs - due to openly practicing the rites of Islam – of the unbelievers entering into Islam. And that is one of the greatest of objectives (maqasid) in the Shariah, and the most important of what the sincere workers can do who are true to their religion.

The second: is that he – by being able to openly practice the rites of Islam and declare the oneness of God without fear of harassment, the land becomes an Abode of Islam in his regard and in regard to other Muslims.ⁱⁱⁱ

So if he was to emigrate from it, it would become an Abode of Warfare (Daar al-Harb). For this reason, the jurists (fuqahaa) have said:

“It is incumbent upon the Muslim in this situation to remain and not emigrate.”

The most erudite Sheikh of the Shaafi’ees in his time, Ibn Hajar Al-Haithami said in Al-Fataawaa al-Hadeethiyah: 204 in answer to a question raised to him about the hadeeth (that says):

“I (the Prophet) am innocent of any Muslim residing in the midst of the Pagans (mushrikeen).”

(He says) after comments whose verbatim is:

“So if you say: the statement of the jurists – “It is permissible to reside between them for whoever has safety in his person” – might conflict with it, I’d say: “It doesn’t conflict with it, because they stipulated that he be safe in openly displaying his religion. And when one is safe in that, there is in his residing between them a benefit to the Muslims outweighing his departure from their midst. So they permitted that for such a one so that his place from which he emigrates doesn’t become an Abode of Warfare. Rather, him residing there in that instance is compulsory.” [End quote]

So he expressly proclaimed that whoever is secure from persecution (fitnah) for his religion and is able – along with that – to openly declare the word of *tauheed* (God’s oneness), and proclaim the rites of Islam, it is compulsory for him to remain so that his location from which he emigrated doesn’t become an Abode of Warfare.

And this is clearly apparent to those who ponder on the proof texts (nusoos), and is acquainted with the comments of the Imams in the subject we are speaking on.

(This is) Because the hadeeths found with respect to the prohibition against residing in the lands of the unbelievers are construed (to refer) to when one isn’t able of carrying out the rites of the religion, fears persecution for that, and isn’t secure in his person and his wealth because of his religion.

As for when the Muslim is able to establish the rites, publicly state the word of God’s oneness (tauheed), the public summons (adhaan) to the prayers when it is called for, fasting, and other rulings, then there is nothing against him in residing in the lands of the unbelievers at all (mutlaqan).^{iv} And there is no objection (haraj) in remaining in them for any aim, like commerce, studying (qiraa’ah), and work. And no one has spoken of the prohibition of that based on the proof that Allah’s messenger – may Allah bless and grant him peace - when the Muslims became settled, their affair became strong, their strength (saa’id) increased, (when) they became manifest, and were safe from persecution for their religion and their persons, he (the Prophet) didn’t order those who came to him as believers to emigrate to the lands of Islam and to part with the Abode of Unbelief (Daar al-Kufr).

Tabaraani relates with a fair chain (hasan) on the authority of Hasan ibn Saalih ibn Basheer ibn Fudaik (that) he said:

“Fudaik went out to Allah’s messenger – may Allah bless and grant him peace, and then said: “O Allah’s Messenger! Verily they claim that whoever doesn’t emigrate is destroyed.” So Allah’s Messenger – may Allah bless and grant him peace – said: “Establish prayer, pay Zakat, abandon iniquity, and live in the land of your people wherever you please.”

And Ahmad, Bazaar, and Tabaraani relate – and the chain of Ahmad is fair (hasan) – on the authority of ‘Abdullah ibn ‘Amr (that) he said:

“An austere and bold nomad came, and then said: “O Allah’s Messenger! Where (to) is the hijrah? To *you* wherever you may be? To a designated land? To a specific people? Or (is it that) when you die, it ends?” He (Abdullah) said: “So the Messenger of Allah – may Allah bless and grant him peace – got silent, and then said: “Where is the one asking about the hijrah?” He said: “Here I am, O Allah’s Messenger!” He (the Prophet) said: “When you establish prayer, and pay the Zakat, then you are an emigrant even if you die in Al-Hadrami.” He (Abdullah) said: “He means a land in Yamaamah.”^v

And in one narration (he says):

“Hijrah is for you to abandon the indecencies (fawaahish), those that are apparent and those that are hidden, to establish the prayer, and to pay the Zakat. Then you are an emigrant (muhaajir).”

This is explicit (nass) regarding what I have adopted and determined. Likewise, is the hadeeth before it.

And it is known that Yamaamah was during the period of Allah’s Messenger – may Allah bless and grant him peace – an Abode of Unbelief (Daar al-Kufr), since it wasn’t opened up until the Caliphate of Abu Bakr – may Allah be pleased with him.

So it isn’t proper after this to dispute, to indulge ignorantly, to speak futilely, and to launch forth with speculation in this topic.

Similarly, Allah’s Messenger – may Allah bless and grant him peace – allowed for a people to reside in Mecca after their (acceptance of) Islam and before the conquest of it. Among them are Al-‘Abbaas, his uncle – may Allah be pleased with him, because they didn’t fear persecution (fitnah) and they were safe from harm happening to their persons in (doing) that.

And in that is the clear evidence of the non-compulsoriness of emigration from the Abode of Unbelief and the non-prohibition of residing in it when the Muslim is safe from persecution because of his religion.

Imam Naasir As-Sunnah Muhammad ibn Idrees Ash-Shaafi’ee – may Allah be pleased with him – said in Al-Umm (4/84) in his comments on the obligation of hijrah being on those who can withstand it:

“It is only on he who is persecuted for his religion in the land that he accepts Islam in, because Allah’s Messenger – may Allah bless and grant him peace – permitted for a people in Mecca to reside in it after their (acceptance of) Islam: Al-‘Abbaas ibn ‘Abdil-Muttalib and others – (that was) when they didn’t fear persecution. And he used to order his soldiers to say to those who accepted Islam: “If you emigrate, you have what the emigrants have. And if you remain, you are like nomads.” And he (the Prophet) only grants them a choice in what is permitted for them.”

He said also during comments about the authorization of hijrah (4/84) after comments:

“So Allah’s Messenger – may Allah bless and grant him peace – ordered a faction. Then it emigrated while not forbidding those who remained. He left the (choice) of hijrah to them.”

And Shaukaani conveyed in (Nail al-Autaar) 8/29 on the authority of Abu Bakr ibn Al-‘Arabi Al-Maaliki (that) he said:

“Hijrah: it is the departure from the Abode of Warfare (Daar al-Harb) to the Abode of Islam (Daar al-Islam). And it happened during the time of the Prophet – may Allah bless and grant him peace, and

continued after him for whoever feared persecution. And the one that has ended altogether is betaking one's self to wherever he (the Prophet) might have been.”

And Baihaqi put together in his Sunan a special chapter for this reason. He said:

“Chapter of the License given to Reside in the Abode of Paganism (Daar ash-Shirk) for whoever does not fear Persecution.”

He mentioned in it hadeeths that indicate what he entitled the chapter for.

Similarly, Haafiz Al-Haithami made a chapter in Majma' Az-Zawaaid for the hadeeths that we have mentioned along with his statement: (Regarding he who Establishes the Religion Wherever He Is). He also made a chapter for it in another topic with his statement: (Regarding He who Hasn't Emigrated and Established the Religion and the Shariah).

As for Haafiz Abu Bakr Al-Haazimi, he has expressly stated that the compulsoriness of hijrah from the Abode of Unbelief is abrogated, and that hijrah was compulsory at the beginning of Islam according to what the hadeeth indicates. Then it became recommended, not compulsory.

[End of Part 1: Taken from pp. 11-15]

Abdullah bin Hamid Ali

ⁱ Hukm al-iqaamati fee bilaad al-kuffaar wa bayaan wujoobihaa fee ba'd al-ahwaal, Mataabi' al-Booghaaz ('Imarah Venezuela – Avenue Holland, Tangiers, Morocco). Second Publication: 1416/1996.

ⁱⁱ Bukhaari, Kitaab Manaajib al-Ansaar.

ⁱⁱⁱ This statement is quoted from the great Shaafi'ee scholar of the 5th Islamic century, Imam Abu al-Hasan Al-Maawardi (450 a.h.). Cross reference with Fath al-Baari and Imam Nawwawi's commentary on his 40 hadeeth collection.

^{iv} Notice here how Sheikh 'Abdul-'Azeez in mentioning what it means to be able to openly practice one's religion, how he makes no mention of being able to implement the Islamic legal punishments (hudood). This is because the implementation of the hudood is one of the rules specifically left on the shoulders of the Islamic state (al-ahkaam as-sultaaniyyah), not the common folk. This will be dealt with in a later installment, in sha Allah.

^v This hadeeth further clarifies that the meaning of being able to establish or openly practice your religion in a non-Muslim land has nothing to do with being able to punish people with the Islamic punishments for fornication, adultery, theft, etc.

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Matters of *Hijrah* (Emigration) and *Harb* (Warfare)

Installment #2

Is Hijrah From the Lands of the Unbelievers Compulsory?

Part 2

Scholarly Quotes

Ibn Hazm says in *Al-Muhallaa* 12/124,

“And the statement of Allah’s Messenger – may Allah bless and grant him peace – “I am innocent of any Muslim residing in the midst of the unbelievers” – clarifies what we have said, and that he – upon him be peace – merely meant by that the Abode of Warfare. Otherwise, (we find that) he appointed his governors over Khaibar while all of them (residing there) were Jews.

And when those under (Islam’s) protection (ahl adh-dhimmah) in their cities while having no other (faith group) mixing with them, the one (Muslim) residing among them to govern them (imaaratin ‘alaihim) or to do business with them is not called an unbeliever and not a sinner. Rather, he is a good Muslim. And their abode is an Abode of Islam, not an Abode of Polytheism (Daar Shirk), because the Abode is attributed to the one who has mastery over it, who rules it, and controls it.”

And he says on page 125,

“And as for he who flees to the land of warfare due to oppression that he fears, and he does not wage war against the Muslims, didn’t help them (i.e. the unbelievers) against them (i.e. the believers), and doesn’t find any one who will grant him refuge among the Muslims, then (for) this individual – there is nothing against him, because he is under duress and compelled.”

Ibn Taimiyah says in his *Fataawi* 28/204 after comments about the compulsory migration,

“And from this chapter is the emigration from the Abode of Unbelief and Sinfulness to the Abode of Islam and Faith. For verily it is a migration from the place of residence between the unbelievers and hypocrites who don’t grant him the capability to do as Allah – High is He – has ordered him.”

Haafiz As-Suhaili – may Allah be pleased with him – says in *Raud Al-Anf* while speaking about the emigration to Abyssinia and the conversation between the Najaashi, Ja’far ibn Abi Taalib, and his companions,

“And among the legal rulings (fiqh) that it contains are: To depart from the homeland even - if the homeland happens to be Mecca in spite of its virtue – when the departure happens to be out of flight with the religion – even if (that flight) isn’t to (one of the lands of) Islam.

For surely the Abyssinians were Christians worshipping the Messiah. And they didn’t say that he was “The Slave of Allah.” That has become plain in this hadeeth...

And they departed from Allah’s sacred house to an Abode of Unbelief. But their doing that was out of caution for their religion and out of hope to be left alone with the worship of their Lord while making mention of Him in security and serenity.

And this is a ruling that continues whenever evil gets the upper-hand in a land and a believer is harassed because of the truth, and he sees falsehood overtaking the truth, and hopes to be in another land – i.e. a land wherein he will be left alone with his religion and openly display the worship of his Lord, then departing in this manner is incumbent upon the believers. And this is the hijrah that doesn’t end until the Day of Resurrection. And to Allah belongs the East and the West. So everywhere you turn, then there is Allah’s face.”

And *Ibn Hajar Al-‘Asqalaani* says in *Fath Al-Baari* (6/115) while commenting on the Prophet’s statement: “There is no hijrah after the Conquest.” He says,

“That is, the Conquest of Mecca. Or the intent is what is more general than that alluding to that the ruling of other than Mecca in that regard is (the same as) its ruling. So hijrah is not compulsory from a land that the Muslims have opened up. As for prior to the Conquest of the land, then those of the Muslims in it are (in) one of three (classes):

The first: is one who is capable of hijrah from it who isn't able to openly display his religion in it and not fulfill his obligations. Then hijrah from it is compulsory.

The second: is one who is capable, but *is* able to openly display his religion and fulfill his obligations. Then it is recommended in order to increase the number of the Muslims, to give them aid, to wage jihad against the unbelievers, having security from their treachery (*ghadr*), and achieving comfort from seeing indecency among them.

The third: is one who is unable (to make hijrah) because of an excuse such as being in captivity, sickness, etc. Such is permitted to remain. But if he burdens his self and bears the burden of departure, he is rewarded.”

And a similar break down can be found in the statements of *Ibn Qudaamah* in *Al-Mughni* (10/514).

[End of Installment #2]



Matters of *Hijrah* (Emigration) and *Harb* (Warfare)

Installment #4

Is a Caliph or Sultan Required For the Enforcement of the Islamic Determined Punishments (Hudood)?

And Does Being Able to Openly Practice Your Religion in Non-Muslim Lands Mean that One be Able to Implement the Determined Punishments?

Scholarly Quotes

Imam An-Nasafi says in his ‘Aqaaid,

“The Muslims must have an Imam (i.e. caliph) in order to implement their legal judgments, to enforce the determined punishments (hudood), to secure their inlets (thugoor), to prepare their armed forces, to take their (obligatory) alms (sadaqaat), to suppress the rebels (mutaghalibah), thieves (mutalassisah), and the brigands (quttaa at-tareeq), to implement the Friday prayers (juma’) and holiday prayers (‘ayaad), to resolve the disputes occurring between the servants (of Allah), to accept the testimonies related to the rights (of people), to marry off the young boys and girls who have no legal guardians, to divide the booty, and other than that.”ⁱ

Imam At-Taftaazani says in Sharh Al-‘Aqaaid in commenting on the Caliphate,

“(It is) Among the affairs that the commoners of the Ummah do not undertake. So if it is said, “Why is it not sufficient to have one possessing might in ever region? And from where is it compulsory to erect one who has universal superintendence (ar-riaasat al-‘aammah)?

We'd say: "Because it leads to disputes and controversies that lead to the rupture of the affair of the religion and secular world as we see in this age of ours."

He also says,

"Then if it is said: "Then let it be sufficient to have one possessing might (shaukah) who has universal superintendence – be he an Imam or other than an Imam. For surely the arrangement of security occurs with that as in the era of the Turks."

We'd say: "Indeed! Some order in the matter of the secular world (dunyaa) occurs. However, the matter of the religion is disturbed. And it is the most important goal and the most important issue."ⁱⁱ

Sheikh Nuh 'Ali Sulaimaan Al-Qudaatⁱⁱⁱ says in his Sharh of Jauharat at-Tauheed,

"Of what it is known is that the Noble Qur'an and the Prophetic Sunnah both contain judgments pertaining to the entire society, and that no one is able to apply except for the governing authority (daulah). And that is like adjudication (qadaa) in the various areas like requital (qisaas), the determined penalties (hudood), contracts, and like guarding the religion and society by (waging) jihad, fulfilling social justice, propagating Islam in all regions of the world, and judgments other than these that individual persons are not capable of carrying out.

And Allah's Messenger – may Allah bless and grant him peace – established the Islamic state with his emigration to Medinah, The Enlightened. And because of this, the emigration was a beginning for Islamic history, since it is the beginning of the establishment of the Islamic state. And Allah's Messenger – may Allah bless and grant him peace – was the head of the Islamic state, the orator of the Friday prayer, the judge in disputes, the commander in chief of war, etc. And he wasn't able to do that prior to the emigration and the establishment of the state. So the establishment of the Islamic state was essential (daroori) so that the Islamic judgments that Allah meant for people to adhere to could be applied. Allah – High is He – has said,

((And whoever doesn't judge by what Allah has revealed, then those are the unbelievers)) [Maaidah: 44].

And after the death of the Prophet – may Allah bless and grant him peace – the noble Companions made haste to appoint a head of the Islamic state. And were distracted by this matter from (the matter of)

preparing the Prophet – may Allah bless and grant him peace – and his burial in spite of their ardent love for him, because they understood from him that this matter is not to be delayed.

By this, the People of the Sunnah find proof for the obligation of appointing a leader for the Muslims who happens to be a substitute for the Prophet – may Allah bless and grant him peace – in universal superintendence of the affairs of the religion and the secular world. And they called him the *Khaleefah* of Allah’s Messenger, *Ameer al-Mu’mineen* (Commander of the Faithful), and the *Imam* of the Muslims (*Imam al-Muslimeen*). And all of them are names for one designee. He is the leader of the Islamic nation.

And appointing the Caliph (khaleefah) is a communal obligation (fard kifaayah) upon all of the Muslims since the demise of the Prophet – may Allah bless and grant him peace – until the coming of the Hour. So when the People of Influence (ahl al-hall wa al-‘aqd) – i.e. The Notables of the people (wujahaa an-naas) – carry it out, the sin falls from others...”^{iv}

Imam Al-Baijoori^v says in his commentary on the Jauharah,

“And among the proofs indicating the obligation of it (i.e. the caliphate) by way of scripture (shar’): is that the Divine Lawgiver (Shaari’) has ordered the implementation of the determined penalties (hudood), the securing of the inlets, and the preparation of the armed forces. And that is only completed with an Imam that they return to in their affairs...”^{vi}

Imam Ibn Taimiyah says,

“As for His saying – High is He – ((And when you judge between people that you judge fairly)) [Nisaa: 58], verily the judging between people is in the determined penalties (hudood) and the rights (huqooq). And they are two divisions: The first division is the determined penalties and rights that are not due to specific people. Rather, their benefit is for the generality of the Muslims or a category of them while all of them are in need of them. And they are called the determined penalties of Allah and the rights of Allah such as the penalty (hadd) for the brigands, the thieves, those guilty of illicit sexual intercourse, and the like of them.

And (it is also) like the judgments in the wealth supervised by the Sultan (amwaal sultaaneeyah), endowments (auqaaf), and the wills (wasaayaa) that are not for a specific person.

These are among the most important affairs of governments (wilaayah). And because of this, ‘Ali ibn Abi Taalib – may Allah be pleased with him – said:

“The people must have a governing authority (imaarah) – be it righteous or unrighteous.” Then it was said,
“O Commander of the Faithful! This righteous one, we have known. But what is the case of the unrighteous one?” He said: “The determined penalties are enforced by it. The roads are kept secure by it. The enemy is fought by it. And the spoils are divided by it.”^{vii}

Then Imam Al-Maawardi states in *Al-Ahkaam As-Sultaaneyah* 10 duties of the caliph. Among them he mentions,

“...the implementation of the determined penalties (hudood), so that Allah’s inviolable acts – High is He – are guarded from being violated, and so that the rights of His slaves are protected from loss and consumption.”^{viii}

All of these quotes clearly indicate that the implementation of the *hudood* is the duty left on the shoulders of the *khaleefah*, not the common Muslim. The duty of the common Muslim is to work toward appointing a *khaleefah* through the People of Influence (Ahl al-Hall wa al-‘Aqd) that represent them and their concerns. If no one appoints the *khaleefah* – according to the conditions for appointing a *khaleefah* outlined in the Shariah, the sin is on all Muslims until they do.

But in the absence of that *khaleefah*, no Muslim or group of Muslims may take it upon themselves to implement the *hudood* on others, because this is tantamount to one performing the job of another who has contracted with his employer that only he is to carry out the task.

Now, what this means for Muslims living in non-Muslim lands is that to be able to carry out the *hudood* is not a condition for our residence in such countries. And what further supports this is the following hadith:

- Imam Nasaai reports on the authority of Abu Sa’id that a nomad asked Allah’s Messenger – may Allah bless and grant him peace – about hijrah. And he said: “Mercy be on you! Verily the matter of hijrah is severe. So do you have any camels?” He said: “Yes.” He (the Prophet) said: “So do you pay its due alms (Zakat)?”^{ix} He said: “Yes.” He (the Prophet) said: “Then work beyond the sea. For verily Allah – Mighty and Majestic – will never abandon anything of your work.”

And notice in this hadith, the Prophet – may Allah bless and grant him peace – allowed this man to remain outside of the Muslim lands in spite of the fact that those lands didn’t implement the *hudood*.

ⁱ Al-Mataalib al-Wafeeyah Sharh Al-‘Aqaaid An-Nasafeeyah Ta-leef Sheikh Abdullah Al-Harari, Daar al-Mashaaree’ lit-tabaa’ati wan-nashri wat-tauzee’, 1418/1998, pp. 144-145.

ⁱⁱ Taken from Sharh al-'Aqaaid: pp. 181-182.

ⁱⁱⁱ He is the former Chief Justice and Mufti of the Jordanian armed forces, and a Doctor in Shariah (Islamic Law).

^{iv} This quote is from Al-Mukhtasar Al-Mufeed fee Sharh Jauharat at-Tauheed, Daar Ar-Raazi, 'Ammaan, Jordan, 1420/1999, pp. 220-221.

^v He is Ibraaheem ibn Muhammad ibn Ahmad, the Shaafi'i scholar who died in the year 1277 a.h.

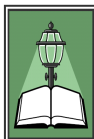
^{vi} Tuhfat al-mureed sharh jauharat at-tauheed, Daar al-kutub al-'ilmeeyah 1422-2001, p. 220.

^{vii} Taken from As-Siyaasah Ash-Shar'eeyah Islaah ar-Raa'i war-Ra'eeyah of Ibn Taimiyah, Daar al-kutub al-'ilmeeyah, p. 65.

^{viii} Al-Ahkaam as-Sultaaneyah, Daar al-kutub al-'ilmeeyah, 1405/1985, p. 18.

^{ix} This is an important reference to for a later installment we plan to write related to the matter of Zakat and whether or not a khaleefah is required before one is obliged to pay Zakat.

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Matters of *Hijrah* (Emigration) and *Harb* (Warfare)

Installment #3

Is An Accord (*Sulh*) with the Non-Muslim Government Required Before A Muslim Can Reside in the Land of the Unbelievers?

Excerpts from

The Ruling of Residing in the Lands of the Unbelievers and Proclaiming its Compulsoriness in Some Situations

By Sheikh ‘Abdul-‘Azeez ibn Muhammad ibn As-Siddeeq Al-Hasani Al-Ghimaari – may Allah show him mercy

One of the last Great Hadeeth Masters of Morocco

Before dealing with the topic of this installment let us consider the following in order to grant a proper context to the response of Sheikh ‘Abdul-‘Azeez.

He says on page 22 of his treatise:

“And the Companions – may Allah be pleased with them – used to advance proof for the permissibility of any particular act that they did by the fact that the Qur’an was being revealed and it didn’t forbid it - as (in what) happened regarding the matter of withdrawing prior to ejaculation (‘azl) that Jaabir – may Allah be pleased with him – forwarded as proof for its permissibility with what we have mentioned.

So the first place that Allah – High is He – mentions that while not treating it with any prohibition or censure is His saying – High is He – in Surat Al-Jumu’ah:
((And when they see trade and amusement, they disperse to it, and leave you standing)).

It has come regarding the occasion of descent of the verse – as in Bukhaari and Muslim on the authority of Jaabir ibn ‘Abdillah (that he said):

“While we were praying with the Prophet – may Allah bless and grant him peace – a caravan from Shaam approached bearing food. So they (those attending Jumu’ah) gave it their attention until there didn’t remain with the Prophet – may Allah bless and grant him peace – any more than 12 men. Then this verse came down:
((And when they see trade are amusement, they disperse to it, and leave you standing)).”

Then the Sheikh says on the same page and what follows it,

“And of what is known is that Shaam during the era of Allah’s Messenger – may Allah bless and grant him peace – was an Abode of Unbelief. And in spite of that, he did not forbid the Companions from traveling to it for commerce, and he did not condemn them for that – as is the custom of the Qur’an. For verily it never mentions a matter the subject of censure without dealing with it and clarifying it – as he did here. For surely he didn’t deal with (the matter of) traveling to Shaam for commerce. Rather, he merely dealt with censuring what they did of their dispersing from Allah’s Messenger – may Allah bless and grant him peace – at the time of the (Jumu’ah) sermon (khutbah), nothing more.

So if traveling to the Abode of Unbelief had been forbidden and it had not been permitted for the Muslim, He (Allah) – High is He – would have clarified it in this incident (qissah), since delaying the clarification (of a ruling) from the time of the need (for clarification) is not permissible...”

The Issue of the Accord (Sulh)

On page 40 and 41 of the author’s treatise he says the following:

“And maybe one will say here that this (thing) that they (the scholars) have made permissible with respect to entering into the lands of the unbelievers is premised on a condition. It is that there be for the Muslims a pact of security (amaan) with them (i.e. the unbelievers) or a treaty (mu’aahadah) so that the one residing in their midst might be secured from their abuse as is known. And where is this today?”

The response: is that restricting the entrance into the lands of the unbelievers with this condition, it has its place (feehi maa feehi).

But the Companions, when they were going to Shaam for commerce and bringing commodities back from it to Medinah during the time of Allah's Messenger – may Allah bless and grant him peace, there was no agreement ('ahd), pact of security (amaan), or treaty (mu'aahadah) between Allah's Messenger – may Allah bless and grant him peace – and the Romans in Shaam (all) of what indicates that all that is desired is for the one entering their lands that he be secured in his (practice of his) religion, his person, and his wealth, even if that is not built upon an agreement ('ahd) or pact of security (amaan).

And this is what his order of the Companions to immigrate to Abyssinia indicates – may Allah bless and grant him peace, because (with) its ruler (malik), not a single individual was wronged in his presence. So Allah's Messenger – may Allah bless and grant him peace – deemed the existence of this matter with the *Najaashī* to be sufficient.

Similarly, that thing whose mention has preceded on the authority of Abu 'Ubaid in Kitaab al-Amwaal indicates the lack of consideration given to this condition in that 'Umar used to take the full farm produce tax ('ushr)ⁱⁱ from those actively involved with war (ahl al-harb), because they used to take the like of it when they (the Muslims) came to their lands.

Also, (the same goes for) what he (Abu 'Ubaid) related on the authority of Ziyaad bin Hudair that they used to take the farm produce tax from the People of War (ahl al-harb) just as they used to hold us in contempt (yu'affiroonanaa) when we came to them. Meaning, They dealt with the merchants among the Muslims with malice (muraaghamah) and an interaction uncharacterized by enthusiasm (laa mujaamalah).

Then – as a result of this - this condition (stipulated) by the jurists (fuqahaa), there is no proof for it. And it is merely an abandonment of the more appropriate analogy (istihsaan)ⁱⁱⁱ, nothing more. And even according to the view of it been compulsory, that (accord) also exists today.

For verily all the Islamic countries are bound together with the European and American countries by treaties whereby the immigrant subjects are protected from their abuse, their treatment of them with what leads to oppression of them and a squandering of their rights. And this is well-known, in no need of clarification.

So preventing (one) from residing in the lands of the unbelievers from this regard is not found, it is not permitted to hold it as a view, and none use it as proof for what he has delivered as a legal opinion (fatwa)

related to interdiction (man') and prohibition (tahreem), except for one who has no scrutiny and doesn't do well in examining the views of the jurists.”

End of Part 3

ⁱ The title of the ruler of Abyssinia was ‘Najaashi.’

ⁱⁱ The tax on farm produce was 10%. For this reason it is call ‘*al-ushr*’ – The tenth.

ⁱⁱⁱ *Istihsaan* is a tool of ijtihaad. Its linguistic meaning is ‘to consider something to be good.’ Its technical definition is:

“Digressing from the more appropriately considered analogy (qiyaas jali) for the less considered analogy (qiyaas khafi) or from a universal ruling (hukm kulli) to an exceptional ruling (hukm istithnaai) due to an interest (maslahah) that demands that digression.”

In the above case, the more appropriately considered analogy would be to not give consideration to there being a pact of safety between the Muslims and the non-Muslim officials in the land of the unbelievers, since the Prophet – may Allah bless and grant him peace – never demanded that from anyone, since the atmosphere in non-Muslim lands where Muslims resided during his time wasn't hostile to them. As for the less considered analogy in this case, it would be to demand a pact of security (amaan) from the unbelievers for the protection of their Muslim subjects. The interest of safety of one's person, religion, and wealth is what would cause the jurists to digress from the more appropriately considered analogy in places where the atmosphere against Muslims is hostile as was the case in Andalusia (Muslim Spain) after the unbelievers drove the Muslims out and retook control of the lands. Any Muslim staying in such a place would only be legitimized after there was an insurance given by the ruling powers that Muslims would be safe to freely

practice their religion according to the requirements of the rule of *istihsaan*. Unfortunately, for those who'd like to cling to *istihsaan* for demanding that Muslims initiate a pact with the unbelieving authorities, there is no consensus among legal theorists (usooliyyoon) that *istihsaan* is a valid rule of law. So to demand this from every Muslim regardless of the particular school of law they follow and regardless of the change of circumstances in the world today would not be just and fair.