

HIJRAH IN ISLAM

*Navigating Through the Controversies and Misinformation
Surrounding Migration and Residence of Muslims*



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Wassalamu alaykum wa rahmatullah wa barakatuh.

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INTRODUCTION

There are currently over a billion Muslims living in countries on all continents that are predominantly non-Muslim lands, or in Muslim lands that do not have Islamic law as the main legal system of the country. Some of these Muslim communities have been living as minorities since the time of the Prophet's companions.¹ Some Muslims interpret certain verses of the Qur'an and Hadith and statements of particular scholars to imply that it is prohibited for Muslims to reside in non-Muslim lands or even in Muslim countries where Islamic law and governance are not in full practise, or at least, not to their standards.² They regard such nations or political-legal jurisdictions as "Lands of War" or "Enemy States" (*Dar al-Harb*) which is seen as synonymous with "Lands of Disbelief" or "Polytheism" (*Dar al-Kufr* or *Dar al-Shirk*).

The concept of "Migration" (*Hijrah*) is understood by them to be related to the concept of "*Al-wala' wa al-bara*" – which refers to "association with Allah and dissociation from what is sinful". Migration to or residing in a non-Muslim country is seen as and construed to be a form of showing preference for, love, association, liking and support (*wala'*) for a sinful place and the

¹ <https://www.pewresearch.org/religion/2011/01/27/the-future-of-the-global-muslim-population/>.

² Amjad M. Mohammed notes that there seems to be a tacit consensus among contemporary Muslim globally in the recognition of "countries" or "states" as legitimate lands (*diyar*, sing. *dar*) in Islamic political-legal law, and as the new status quo in the twenty-first century. (See, Amjad M. Mohammed, *Muslims in Non-Muslim Lands: A Legal Study with Applications*, Islamic Texts Society, Cambridge, UK, 2013, p.129-131.

“man-made” or secular laws and the “unislamic systems” of governance which operate in such countries. Meanwhile, migration away from such a place is seen as a form of dissociation, dislike, or disavowal (*bara'*) for sinfulness and disbelief (*kufir*).

They consider residence and working in such “*Dar al-Kufr* or *Dar al-Shirk*” countries as a form of allegiance (*al-wala'*) to sinfulness and evil, and any migration to, or residence in such lands is regarded as prohibited (*Haram*) in Islam. They therefore consider it a religious obligation (*wajib*) for each and every capable Muslim, including converts to Islam (“reverts”) to migrate (*Hijrah*) from such lands to a “Land of Islam” (*Dar al-Islam*) where Islamic law is predominant.

Some consider Muslims who willingly accept the rule of non-Muslims and live under any rule other than the Shari'ah (Islamic law) as committing acts that will nullify their faith (*Kufr*), by preferring the ways of disbelief and non-Muslims, to those of Allah and Islam.³ This is seen as an implication of the fact that loyalty and sovereignty can and should only be given to and by Allah and that Islam is the only way of life for Muslims.

Did the Prophet and his Companions regard non-Muslim lands as prohibited for the early Muslims to live in after they converted to Islam? Were Muslims forbidden by the Qur'an and Sunnah to

³ Al-Qahtani, *Al-Wala' wa al-Bara' fi al-Islam*, Daar Tayyibah, al-Riyadh, 6TH Edition, 1413AH, 1992, p. 271-273.

migrate to, reside in, engage and integrate into the societies of non-Muslim lands if they were afforded the freedom of worship? Must conscientious Muslims who really care about Islamic teachings all migrate (*Hijrah*) from such lands to the “Lands of Islam”? What exactly happened during the time of the Prophet (p) and his Rightly Guided Companions? How did Islam spread if Muslims were not permitted to migrate to and reside in non-Muslim lands? Were all people who embraced Islam in the various parts of the early Muslim nation expected to all migrate to Medina where the Prophet (p) and most of his companions resided? Is that what actually happened? Did the Prophet (p) and his companions live as minorities in predominantly non-Muslim lands under non-Muslim laws? What exactly do the Qur’an and Sunnah, and the example of the Rightly Guided Companions of the Prophet (p) teach regarding migration and residence as minorities among people of other faiths?

This is the subject matter of this book.⁴

Overview of Debates on Muslim Residence in non-Muslim Lands

Muslims have in various parts of the world, lived as minorities in very diverse contexts. The jurists both past and present, through their “independent juristic reasoning” (*ijtihad*) have consequently equally developed diverse terms and designations for classifying the times and international relations for the world around them.

⁴ For further readings on how various Muslim minorities are surviving and thriving in various non-Muslim countries and contexts, see: Tariq Ramadan, *To Be a European Muslim*, The Islamic Foundation, Leicester, 1999.

They naturally differed in the terms they used, the definitions of each term, the criteria for each definition, the examples, and the legal implications of each to Muslims.

Although, some scholars often claim that Islamic law divides the world into only two basic categories, *Dar al-Islam* and *Dar al-Harb* (also referred to by some as *Dar al-Kufr* or *Dar al-Shirk*), these two categories do not reflect the true complexity of Islamic juristic thought on this issue. Muslim jurists from the earliest periods did attempt to find a way to distinguish between the jurisdiction of Muslims and non-Muslims, but they could not agree on a definition of *Dar al-Islam* or on the number of categories into which the world is divided. Consequently, the classification of territories or lands in Islamic law is laden with ambiguity and diversity of opinion based on historical context of the jurists, their criteria and reasoning (*Ijtihad*).⁵

For example, a classical jurist such as al-Khatib al-Baghdadi discusses the separate terms *Dar al-Islam*, *Dar al-Iman*, *Dar al-Shirk*, *Dar al-Fisq*, and *Dar al-Kufr*.⁶ Abu al-Hassan Al-ʿAshʿari discusses six different positions on *Dar al-Islam*.⁷ In the legal texts of the Hanafi schools, we find no less than six different

⁵ Shams al-Din al-Ramli, *Fatwa al-Ramli*, on the margin of Ahmad b. Muhammad Ibn Hajar al-Haytami, *al-Fatwa al-Kubra al-Fiqhiyya*, Dar al-Kutub al-ʿIlmiyya, Beirut, n.d.), vol. 4, 52-53; Khaled Abou El Fadl, *Islamic law and Muslim minorities*, P. 161.

⁶ Al-Baghdadi, *Kitab Usul al-Din*, Dar al-Hilal, Beirut, 1980, p. 270; Cited in Khaled Abou El Fadl, *Islamic law and Muslim minorities*, p.161.

⁷ Abi al-Hasan al-Ash'ari (d. 324/936), *Maqalat al-Islamiyyin*, ed. Muhammad 'Abd al-Hamid, al-Maktaba al-'Asriyya, Beirut, 1990, vol. 2, 154; Cited in Khaled Abou El Fadl, *Islamic law and Muslim minorities*, p.161.

categorisations of lands with their own nuanced definitions – *Dar al-Islam* (land of Islam, or “Muslim State), *Dar al-Harb* (enemy state), *Dar al-Shirk*⁸ (non-monotheistic state), *Dar al-Kufr* (non-Muslim state), *Dar al-Sulh* (peace/treaty state), and *Dar al-Muwada’a* (also, peace/treaty state).⁹ Al-Makki al-‘Alimi mentions *Bilad al-Khilaf* (land over which there is a divergence of opinion).¹⁰ Jurists also disagreed on the status of a particular territory.¹¹ As will be discussed later on in this material, other classical jurists who faced nuanced socio-political contexts, or who differed in the criteria they used, and their own independent reasoning (Ijtihad), came up with other terms such as (but not limited to) *Dar al-‘Ahd* (Land of Treaty), *Dar al-Amn* (Land of Safety), *Dar al-Bid’ah* (Land of Heresy), *Dar al-Muraqaba* (Land of mixed Communities), *Dar al Shahadah/Da’wah* (Land of Witnessing), *Dar al-Ridda* (Land of Apostasy), etc.¹²

⁸ See Amjad M. Mohammed, *Muslims in Non-Muslim Lands: A Legal Study with Applications*, Islamic Texts Society, Cambridge, UK, 2013, p. 141 for a brief discussion on the nuanced difference in classical Hanafi texts between *Dar al-Shirk* (which would include certain Jewish and Christian sects) and *Dar al-Kufr* (reserved primarily for pagans or polytheists in general).

⁹ See Sarakhsi, *Kitab al-Mabsut*, vol.10, p.21, 83 and 111; vol.14, p.56. Cited in Amjad M. Mohammed, *Muslims in Non-Muslim Lands: A Legal Study with Applications*, Islamic Texts Society, Cambridge, UK, 2013, Mohammed, *Muslims in Non-Muslim Lands: A Legal Study with Applications*, Islamic Texts Society, Cambridge, UK, 2013, p.141.

¹⁰ Al-Makki al-‘Alimi, *al-Lum’a*, vol.2, p.383. Cited in El-Fadl...p.161.

¹¹ See El-Fadl and Moussa Abou Ramadan, “Muslim Jurists’ Criteria for the Division of the World into *Dar al-Harb* and *Dar al-Islam*”, in *International Law and Religion: Historical and Contemporary Perspectives*, ed. Martti et. al, Oxford University Press, United Kingdom, 2017, p.231 for further references on the diversity of opinions among classical jurists on this topic.

¹² Ahmed Al-Dawoody, *The Islamic Law of War: Justifications and Regulations*, Palgrave Macmillan, New York, 2011, p.96; Wahbah al-Zuhayli, *Athar al-Harb fi al-Islam: Dirasah Muqaranah*, 3rd ed., Dar al-Fikr, Damascus, 3rd Ed., p.194.

As none of these terms which were/are used by these jurists were explicitly defined and used by the Qur'an, the Prophet Muhammad (p) or the consensus of his Rightly Guided Companions, every term used and defined by one group of jurists or School of Law (*Madhhab*) is often challenged by others. Some of these terms were viewed as synonymous or overlapping by some, but not by others. They also did not agree on all the examples they gave for most of the designations. This is to be expected since they each independently addressed diverse and sometimes very different and changing geo-political contexts. They also differed on the criteria and purpose of the designations.

This subject is therefore one of legitimate differences of opinion (*Khilaf*) and in which diversity of opinions is and should be appreciated and respected. It is also by definition, a subject of juristic speculation based on presumptive evidence (*zanmi*) and should not therefore be a basis for excommunication (*Takfir*) of any Muslim.

The ethics of disagreement (*Adab al-Ikhtilaf*) is critical in maintaining brotherhood while exploring the various nuanced positions of scholars as they each exercise their juristic tools and methods in arriving at what would be relevant in guiding Muslims closer to the truth of Islamic teachings as these apply to specific contexts. The fact however that Muslims and their scholars today also live in diverse geo-political contexts with differing forms and degrees of justice and freedom of religion, makes it difficult for all Muslims everywhere to agree on the

relevance of what other scholars in other countries may regard as relevant to their own unique context and times.

Agreements and Disagreements on the Classification of Lands

Theoretically, however, scholars seem to generally agree that a land or country governed by non-Muslims which was actively hostile or in a state of war with Muslims was a *Dar al-Harb* (Abode of War). They also agreed that a land or country that was governed by Muslims and in which Islamic law was justly and fully operational was regarded as a *Dar al-Islam* (Land of Islam).¹³ Other than these, they differed on almost every other issue.¹⁴

What seems obvious also, is that there are many and often contradictory definitions given by jurists and schools of law (*madhhabs*) who used different criteria in different contexts for determining how to designate or label a particular territory or

¹³ Identifying an example of such a *Dar al-Islam* is usually debatable, as scholars would differ on what exactly constitutes the full implementation of “Islamic law”. This is also because many so-called “unislamic”, “secular”, “customary” or “man-made laws” (such as traffic and environment laws, and policies related to defence, agriculture, education and healthcare, etc.) are actually justified in Islamic jurisprudence under the categories of laws related to social and mundane affairs (*mu’amalat*) that are acceptable in Islamic legal theory (*Usul al-Fiqh*), based on secondary sources of Shari’ah. These sources of Islamic law include “public interest” (*maslahah*), “blocking the means” (*sadd al-dhari’ah*), customary laws and norms (*al-urf wa al-adah*), juristic discretion (*istihsan*), legal presumption (*istishab*), etc. These are in turn all supported by the general implications of various texts of the Qur’an and Sunnah related to enjoining right and forbidding wrong, promoting justice and compassion, wisdom and welfare, etc.

¹⁴ See discussions in El-Fadl, Amjad M. Mohammed, *Muslims in Non-Muslim Lands: A Legal Study with Applications*, Islamic Texts Society, Cambridge, UK, 2013, Moussa, Zuhayli, Qaradawi, Abu Zahra, Kallaf, Auda, Al-‘Alwani, etc.

land at their time. What for one jurist was a *Dar al-Kufr* (Abode of Disbelief), was also a *Dar al-Harb* (Abode of War/Hostility) or *Dar al-Shirk* (Abode of Polytheism) for another; what for one jurist was a *Dar al-Kufr* (Abode of Disbelief), was a *Dar al-Sulh* or *Dar al-‘Ahd* (Abode of Alliance/Treaty) for another; and what was a *Dar al-Sulh* or *Dar al-‘Ahd* (Abode of Alliance/Treaty) for one, was a *Dar al-Islam* (Abode of Islam) for another. In other words, what was a *Dar al-Islam* for one jurist, was a *Dar al-Sulh* for another, or a *Dar al-Kufr* for another, or yet a *Dar al-Harb* (Abode of War/Hostility) for someone else. Some only recognized two types of lands: *Dar al Harb/Kufr* and *Dar al Islam*. Everything else fell either under one of these, or was not recognized.

Consider for example the challenge with how to categorise the well-known land of Abyssinia or Ethiopia¹⁵ in the early days of Islam, using the various criteria of different jurists. This was a Christian kingdom which had given refuge, security, and freedom of religion to the early Muslims who were escaping persecution in Mecca. As jurists differed in their criteria for classifying lands, they naturally differed in how they categorized the land.¹⁶ Considering that the governance and law of the land of Abyssinia were not based on the Qur’an or Sunnah, some jurists regarded it

¹⁵ The area Habasha (Abbyssinia) today covers the countries Ethiopia, Eritrea and Somalia.

¹⁶ Ibn Al-Qayyim, *Ahkam Ahl al-Dhimmah*, Beirut: Ramady/Ibn Hazm, 1997, vol.2, p.728; Al-Mawardi, *Alawi al-Kabeer fi Fiqh Madhab al-Imam al-Shafie*, Dar al-Kutub, Beirut, 1999, vol.14, p.267; Al-Bayhaqi, *Sunan al-Bayhaqi al-Kubra*, Dar al-Bazz, Mecca, 1994, vol.9, p.16; Ibn Taymiyah, *Al-Nubuwat*, Al-Matba’ah Al-Salafiyah, Cairo, 1386 A.H, vol.1, p.197; : Ibn Taymiyah, *Kutub wa Rasa’il wa Fatawa*, Maktabat Ibn Taymiyah, no date, vol.28, p.146.

as a *Dar al-Kufr* (Abode of Disbelief) and others as *Dar al-Shirk* (Abode of Polytheism), but not necessarily as *Dar al-Harb* (Abode of War/hostility – whether real or potential). This is even though the King is believed by scholars to have ultimately embraced Islam.¹⁷ Others viewed the 3 (*Dar al-Kufr*, *Shirk* and *Harb*) as all synonymous. Considering the justice and safety it gave Muslims, it was considered *Dar al-‘Adl* (Abode of Justice) or *Dar al-‘Amin* (Abode of Security) by others. Since there was a tacit agreement to peaceful coexistence and exchange of gifts between Abyssinia and Medina, some regarded it as similar to *Dar al-Sulh/‘Ahd* (Abode of Treaties/Truce). Considering the security and safe space it gave for Muslims and Islam to flourish, grow and spread, it was regarded as *Dar al-Islam* (Abode of Islam) by other jurists.

Considering the fact that all these definitions are products of different contextual *ijtihad* (independent reasoning) of various past jurists, some contemporary scholars have either come up with new classifications such as *Dar al-Shahadah* and *Dar al-Da’wah* (Abode of Witnessing Islam) which they regard as being more applicable and sensitive to current realities.¹⁸ These new terms, are also products of *Ijtihad* in response to new contexts, emphasizing the role of Muslims in sharing the message of Islam through words and actions, and the potential opportunities that these lands give to this ever-relevant objective. Some have also

¹⁷ Al-Imam Shams al-Deen al-Dhahabi, “*Siyar A’lam al-Nubala’*”, Mu’assasah al-Risalah, Beirut, Lebanon, 1994, 10th Ed, Vol. 1, P. 428.

¹⁸ Some of these categorisations were also viewed as purely theoretic and academic, with little or no legal implications in the opinion of the scholars who proposed these.

regarded most of the old classifications as mostly irrelevant to current international relations and to most modern contexts.¹⁹ This is seen as justified in the light of the legal maxim, “There is no denying that rulings change with changes in context” (*Layunkar taghayyur al-Ahkam bi taghayyur al-Ahwal*).²⁰

Coming to a consensus or an agreed criteria or definition of any of these terms seems so far to only complicate an endless debate for many. Considering the fact however, that the Prophet (p) and his companions actually lived as minorities in numerous contexts, and always in multireligious communities, there should be (as there is) ample evidence from the Sunnah and *Sirah* (biography of the Prophet (p)), to give guidance to Muslim minorities regarding residence and/or migration (*Hijrah*). These sources offer insights for every generation of Muslims for when a Muslim must migrate from a community, land, or country, and when they are permitted or even recommended to remain resident as minorities in non-Muslim lands or to reside in lands headed by Muslims, but which do not operate Islamic law.

Looking carefully at some of the clear teachings of the Qur'an and Sunnah on where the early Muslims (*Salaf*) actually resided (irrespective of the designations given by later scholars) is an easier way of answering the key questions raised earlier regarding

¹⁹ Wahba al-Zuhayli, *Athar al-Harb fi al-Fiqh al-Islami: Dirasa Muqaririna*, 3rd ed., Dar al-Fikr, Beirut, 1998, pp. 192 – 194.

²⁰ Muhammad Sidqi, *Kitab al-Wajiz fi Eidhahi Qawaid al-Fiqh al-Kuliyah*, Muassat al-Risalah, Beirut, 4th Edition, 1996, p. 310.

migration (*Hijrah*) and residence. By considering when it was regarded obligatory or recommended for Muslims to migrate from a land, during the time of the Prophet (p) and his companions, it should be easy to also know when it was not obligatory or recommended to do so, irrespective of what terms and categorisation various jurists used to refer to the lands in their own particular geographical, political, and historical contexts.

Our prayer is that this book will therefore guide towards greater intellectual humility, restraint, and moderation (*wasatiyyah*), while also giving more assurance in identifying the correct understanding and use of *takfir*. Our hope is that this effort contributes to answering the prayer, “O Allah, shows us truth for what it is, and gives us the will to pursue it; and also, to show us falsehood for what it is, and gives us the resolve to keep away from it”.²¹

²¹ This supplication has been attributed to Umar bin al-Khattab. See Sheikh Mansur bin Yunus al-Buhuti, *Sharh Muntaha al-Iradat*, Dar Atlas al-Khadra li al-Nashr wa al-Tawzi', Riyadh, 2019, vol.3, p.497; Ibn Shahin, *Madhabih Ahl al-Sunnah*, al-Maktabah al-Shamilah 3.35, vol.1, p.40; Muhammad Abu Zahra, *Zahrab al-Tafasir*, Dar al-Fikr al-Arabi, vo.1, p.671; Al-Mubarakfuri, *al-Misbah al-Munir fi Tabzib Tafsir ibn Kathir*, 2nd edition, Maktabah Darussalam, Lebanon, 2003, vol.1, p.591.

BEYOND BORDERS: MIGRATION, RESIDENCE, AND IDENTITY IN ISLAM

The Arabic word "*Hijra*" or *Hijrah*, comes from the root word "*Ha-ja-ra*", which means literally and more broadly migration, departure, or emigration in general, and the movement of people from one place or context to another. This movement could be for a variety of reasons – safety and security, commerce and economic, political or environmental, educational or social, tourism or exploration, spiritual or moral/ethical, and other personal reasons. These could be voluntary or involuntary.

Hijrah also refers to the historical event of the migration of the Prophet Muhammad (p) and his followers from Mecca to Medina. The first Hijrah however was that of the Prophet's companions from the persecution in Mecca to the safety of Abyssinia in East Africa.

Hijrah also carries significant spiritual and ethical meanings, including the importance of seeking refuge in God from evil and Satan, and turning away in repentance from wrong-doing or sin, or moving from vice to virtue and righteousness. It could also imply physically moving from a community or context of negative influence, persecution, or war, to one of safety, peace, community support and freedom of religion.

The Meanings of “Migration” (*Hijrah*) in the Qur’an and Hadith

The Qur’an and Hadith use the word “*Hijrah*” to refer to both physical migration of persons from one place to another, and also to moral or spiritual “migration” from vice, wrongdoing and sin to repentance (*tawbah*) and virtue. The physical (or outward or apparent) migration is meant to enhance or facilitate the spiritual and moral (or inward or hidden) migration.¹

Allah says, *“Those whom the angels take (in death) while wronging themselves, (the angels) will say, ‘In what (condition) were you’ they will say, ‘We were oppressed in the land’. They (the angels) will say, ‘Was not the earth of Allah spacious (enough) for you to emigrate (tuhajiru) therein?’”* For those, their refuge is Hell – and evil it is as a destination. Except for the truly oppressed among men, women, and children who cannot devise a plan nor are they directed to a way. For those it is expected that Allah will pardon them, and Allah is ever Pardoning and Forgiving.”² (Qur’an 4:97-99).

Hijrah therefore could also be to migrate away from a place, for fear of temptation or the negative influence of others on one’s faith or that of one’s dependents.

¹ Ibn Qayyim al-Jawziyyha, *Zad al-Muhajir Ila Rabbih*, p.13 cited in, Fallah Zardumi, *Fiqh al-Siyasah al-Shar’iyyah li al-Aqalliyat al-Muslimah*, 1426AH, p.150; Ibn Hajar al-Asqalani, *Fath al-Bari*, vol. 1, p.54.

² Qur’an 4:97-99.

“O you who believe, save yourselves and your families from a fire,..... (Qur’an 66:6)

Regarding the moral or spiritual forms of Hijrah, the Prophet (p) is reported to have said, *“A Muslim is the one from whose tongue and hands the Muslims are safe, and a Muhajir (emigrant) is the one who refrains from what Allah has forbidden”*.³

In another narration, “The believer is the one from whom people’s wealth and lives are safe, and the *Muhajir* is the one who forsakes mistakes and sins.”⁴

According to Abdullah bin ‘Amr, *"A man said: 'O Messenger of Allah! Which emigration (Hijrah) is best?' He said: 'To leave what your Lord, the Mighty and Sublime, dislikes...'".*⁵

According to Mu'awiya, the Prophet (p) said, *"Emigration will not come to an end till repentance (from wrongdoing) comes to an end, and repentance will not come to an end till the sun rises in the place where it sets."*⁶

This moral and spiritual form of *Hijrah* is agreed by scholars to be an individual obligation (*fard ‘ayn*) upon every Muslim, as

³ *Sahih Al-Bukhari*, hadith no. 9.

⁴ *Musnad Ahmad*, Hadith no. 23965

⁵ *Sunan al-Nas’I*, hadith no. 4165.

⁶ *Musna Ahmad*, hadith no. 16906.

every Muslim is expected to refrain from sinful and forbidden acts to the best of their ability. The Prophet (p) says: *“Avoid that which I forbid you to do, and do that which I command you to do, to the best of your capacity...”*⁷

As this discussion intends to focus primarily on legitimacy and conditions surrounding physical migration and residence, it will not dwell on the spiritual forms of Hijrah, though the societal context and influences on an individual are often important factors for decisions related to residence and migration.

Understanding the conditions for migration (*Hijrah*), and when it is required (obligation or recommendation) or not, based on how the Prophet Muhammad (p) and his companions actually understood and implemented the relevant texts of the Qur'an and Hadith, allows us to move away from vague and debated terminologies for lands in various contexts, and focus on the key principles of Shari'ah that guided the decision to reside or migrate from a place. In other words, knowing when Hijrah was prescribed by the Prophet (p) gives us a more reliable and accurate reference point for understanding conditions of residence or Hijrah than trying to analyse the implications of various designations given by various jurists who were responding to diverse contexts based on their Ijtihad (independent reasoning).

⁷ Sahih Muslim, hadith no. 6259.

Allah says in the Qur'an (4:59): *"O believers! Obey Allah and obey the Messenger and those in authority among you. Should you disagree on anything, then refer it to Allah and His Messenger, if you (truly) believe in Allah and the Last Day. This is the best and fairest resolution."*

Studying the conditions for Hijrah from the Prophet's time will allow us to understand the relevant texts (Qur'an and Sunnah) better, and to decide more confidently on what to do in our current contexts, and which particular scholarly opinion (and *ijtihad*) is more relevant to us in our own particular community.

Migration (*Hijrah*) And Muslim Residence In The Qur'an And Sunnah

The Qur'an and Sunnah make it clear that Muslims are not only free to move and live wherever they wish on earth (or in this universe!), but the divine texts actually encourage travel and exploration of the world in search of beneficial knowledge, wisdom, livelihood, trade, refuge, and the resources and the bounties which Allah has provided for humanity and His creation. It is through moving on earth that mankind fulfils his role as a vice-gerent, inheritor, caretaker, steward, custodian, deputy and guardian (Khalifah) on earth, and it is through travel, migration and interactions with others that the message of compassion and guidance of Allah reaches all places and peoples.

The Qur'an describes the Prophet Muhammad (p) as a *"mercy to the worlds"*. (Qur'an 21:107) This mission can only be realised if

Muslims are ready to move, migrate and reside in other lands, and live by example. This was well understood and actually done by the Prophet's closest companions soon after his demise.

Some of the relevant texts of the Qur'an and Hadith include:⁸

- *“Do they then not **travel through the Earth**, so that their minds gain wisdom, and their ears thus learn to hear? For surely it is not the eyes that are blind, but blind are the minds which are in the foremost”*. (Quran 22:46)
- *“He it is who enables you to travel by land and sea; until when you are in the ships, and they sail on with them in a pleasant breeze, and they **rejoice**”*. (Quran 10:22)
- *“Lawful for you is **all water-game**, and all the catch of the sea, as enjoyment for you and for those who travel”*. (Quran 5:96)
- *“Once the prayer is over, **disperse through the Earth** and go in quest of some of divine Bounty, and remember God frequently, so that you may succeed”*. (Quran 62:10)
- *“Was God's Earth not spacious enough that you could **emigrate** in it?”* (Quran 4:97)

⁸ Numerous other texts from the Qur'an encourage people to move and travel to 'read' divine messages and signs (Qur'an 31:31, 12:105, 22:46); for trade and commerce (Qur'an 17:66, 2:164, 62:10); to explore new horizons (Qur'an 16:14, 35:12, 45:12); for recreation (Qur'an 10:22, 5:96, 30:46); to learn from visiting new places (Qur'an 22:46, 31:31); to immigrate (Qur'an 4:97, 16:41); to study creation and science (Qur'an 29:19-20); to study archaeology and history (Qur'an 47:10, 40:82, 35:44, 40:21); and to learn from the past (Qur'an 6:11, 3:137, 16:36, 27:69, 30:41-43). Numerous hadith also encourage travelling in search of knowledge.

- “*And how many a Message in the Heavens and the Earth which they pass by, yet they turn away from it!*” (Quran 12:105)
- “*Do they not see how God originates creation, then reproduces it: surely that is easy for God*”. Say: “*Travel through the Earth and deeply observe how God did originate the creation; then God produces the next creation; surely God has power over all things*” (Quran. 29:19-20)
- “*Travel through the Earth and deeply observe how was the end of the rejectors (of faith)*”. (Quran 6:11)
- “*Those who have emigrated for God because they were oppressed, We will grant them good in this world, and the reward of the End will be greater, if they knew*”. (Quran 16:41)
- “*Verily We have sent thee in truth, as a bearer of glad tidings, and as a warner: and there never was a people, without a warner having lived among them (in the past)*.” (Qur’an 35:24)
- “*We surely sent a messenger to every community, saying, Worship Allah and shun false gods.*” (Qur’an 16:36)

And from the Hadith, we read:

- Abu Sa’id al-Khudri reported: The Messenger of Allah, peace and blessings be upon him, said, “*The entire earth*

*has been made a place of prayer, except for graveyards and washrooms.”*⁹

- *"Three supplications are answered without a doubt: the supplication of someone who is oppressed, the supplication of someone on a journey, and the supplication of parents for their children".*¹⁰
- The Prophet (p) said: *"I have been given five things which were not given to any amongst the Prophets before me... "The earth has been made for me (and for my followers) a place for praying and a thing on which to perform Tayammum (dry ablution). Therefore, my followers can pray wherever the time of a prayer is due..."*¹¹

Migration (Hijrah) And Muslim Residence in Islamic Legal Theory (Usul Al-Fiqh)

As the subject matter of travel, migration and residence is primarily related to the juristic category of mundane or worldly (*dunya*) affairs, and transactional matters (*mu'amalat*), it is governed by the Islamic maxims of legal presumption (*Istishab*) of permissibility of all things – which is that everything is permissible except what is prohibited by evidence. The well-known legal maxim states that, “the legal premise of all things is that of permissibility” (*al-‘asl fi al-ashya’ al-ibahah*).¹²

⁹ al-Tirmidhi, no. 317.

¹⁰ Al-Adab al-Mufrad, no. 32.

¹¹ Bukhari, no. 438.

¹² Shihab ad-Din al-Qarafi, *Kitab al-Furuq*, Matha’ah Dar Ihya al-Kutub al-‘Arabiyyah, Cairo, vol. IV, p.40; Jamal al Din Atiyyah, *Al-Tanzir al-Fiqhi*, p. 208; Abdurahman bin

This maxim is stated or rephrased by scholars below in a number of ways so as to make clearer its meaning and implications:

“Everything is halal except what is haram”.¹³

*“Whatever is not haram is in fact halal.”*¹⁴

*“Halal is the original (default) verdict for everything, in social transactions or mu’amalat.”*¹⁵

Abu Bakr al-Suyuti, *Al-asbab wa al-Nazair*, vol.1, p.107; Badruddeen Muhammad bin Abdullahi Al-Zarkashi, *Al-Bahr Al-Muheet Fi Usul Al-Fiqh*, Dar al-Kutub al-Ilmiyyah, Beirut, 1421 AH, vol.1, p.126; Ibrahim bin Ali bin Yusuf al-Shirazi, Dar al-Fikr, Damascus, 1403AH, vol.1, p.535; Abu Sulayman, ‘Abd al-Wahhab, “*An-Nazariyyah wal-Qawa’id fi al-Fiqh al-Islami*” in *Majallah Jamai’ah al-Malik ‘Abdal-‘Aziz*, No.2, May 1978, p.53; Muhammad Amir, *Taysir Al-tahrir*, Dar Nashr, vol.2, p.247; Abdullah bin Yusuf al-Juda’i, *Taysir Ilm Usul al Fiqh*, p.34, 69, 71 and 72; Abdullah al-Fauzan, *Khulasah al-Usul*, p.7; al-Zarqa, *Sharh al-Qawa’id al-Fiqhiyyah*, p.299; Muhammad bin Hassan al-Dadaw, *Sharh alwaragaat*, p.76; Abdulkareem al-khudair, *Sharh Matn al Waragaat*, p.410; Abdulwahab Khallaf, *Ilm Usul al-Fiqh*, Maktabah al-Da’wah, p.91; Muhammad Amin Ihsan Almujaiddi Albarkati, *Qawa’id al-Fiqh*, Dar al-Nashr, p.14; Zakariyya bin Gulam Qadir Albakistani, *Usul al-Fiqh ‘Ala Manhaj Ahl al-Hadith*, Dar al-Kharraz, 1423 AH., p.116; Mashur bin Hasan Al-Salman, *Al-Tahqiqat wa al-Tanqihat al-Salafiyah ‘ala Matn al-Waragaat*, Dar Imam al-Malik, U.A.E, 1426AH, p.584-589; Mohammad Akram Laldin, *Introduction to Shari’ah and Islamic Jurisprudence*, 2nd ed. CERT, Kuala Lumpur, 2008, Tariq Ramadan, *To Be a European Muslim*, The Islamic Foundation, Leicester, 1999, Yusuf al-Qaradawi, *The Lawful and the Prohibited in Islam*, IIFSO, Salimiah, 1992, p. 14-18; Mohammad Hashim Kamali, *Qawa’id Fiqh, The Legal Maxims of Islamic Jurisprudence*. p.2.

¹³ Ibn Muflih, (quoting Ibn Taimiyyah), *Al-Adab al-Shar’iyyah wa al-Minah al-Mar’iyyah*, Beirut, 1419 AH, vol.1, p.137.

¹⁴ Tariq Ramadan, *To Be a European Muslim*, The Islamic Foundation, Leicester, 1999, p.64; Zakariyya bin Ghulam Qadir Al-Pakistani, *Usul al-Fiqh ala Manhaj ahl al-Hadith*, p.116.

¹⁵ Ibn Taimiyyah, *Al-Qawa’id al-Nuraniyyah al-Fiqhiyyah*, p.112-113, cited in Yusuf al-Qaradawi, *The Lawful and the Prohibited in Islam*, Al-Birr Foundation, London, 2003 p.5-6; see also *What is Islamic Culture?*, Da’wah Institute of Nigeria, Islamic Education Trust, Minna, 2009, p. 4-5.

In other words, as is clear from the numerous texts or the Qur'an and Sunnah cited earlier, Muslims are free and permitted to travel, migrate, and reside anywhere they want on earth, and for any legitimate reason, unless there is clear evidence (*dalil*) to the contrary. The absence of any prohibition is itself evidence of permissibility for migration, travel, and residence. Conversely, Muslims are not obligated (*Fard/wajib*) to migrate (*Hijrah*) from any land (Muslim or otherwise) to any other land without clear evidence from the sources of Shari'ah to that effect.

While the opinions and "independent reasoning" (Ijtihad) of any scholar while responding to his context is worthy of respect, scholarly opinion and ijihad are not legitimate sources (*adillah*) of Islamic law. Consequently, one scholar's Ijtihad does not negate that of another. The strength of a religious opinion is based not on the name or number of those who hold that view, but on the strength of the evidence for it from either the primary sources of law (Qur'an and Sunnah), or the secondary sources such as scholarly consensus (*Ijma'*), analogical deduction (*Qiyas*), consideration of public interest (*Maslahah*), the unchallenged opinion of a Companion (*Ra'yi al-Sahabi*), juristic discretion (*Istihsan*), legal presumption of the status quo (*Istishab*), local custom ('Urf), etc.

Migration (*Hijrah*) And Muslim Residence In the Lives of The Prophet (P) And His Companions

Understanding the realities of when and why the Prophet (p) and his companions decided to reside or migrate (*Hijrah*) from one

place to another is critical in providing the context in which the relevant texts of the Qur'an or Hadith on Hijrah can more correctly understood. Text without context is pretext and leads to mistaken assumptions and interpretations of the relevant texts. The biography (*Sirah*) of the Prophet (p) allows us to understand how they understood and implemented the texts relevant to Hijrah, and whether or not they understood, as some do today, that it is not permissible for Muslim to reside in or migrate to non-Muslim lands, or lands where Islamic law does not regulate the judicial system of the society.

The following points from the earliest periods of Islam are worth bearing in mind:

1. The Prophet (p) – as with a number of other prophets (p) – was sent to start his mission among non-Muslims. He was sent first to Mecca, the largest polytheist centre of worship and pilgrimage in Arabia at the time. This was where he was born, and where he and many of his closest companions grew up. It was the society Allah chose for him to reside in and start his mission.

The Qur'an tells us of various prophets who were sent to various polytheists and non-Muslim nations, and who lived and died there.¹⁶ The Qur'an or Sunnah make no hint that these prophets (p) and their followers were not expected to integrate, mix with, live and share the

¹⁶ See the case of Prophet Yusuf in Qur'an 40: 34.

message of Islam in those non-Muslim lands. Some who tried to avoid facing their unresponsive polytheist communities, such as Prophet Yunus (p),¹⁷ were actually sent back to them. Prophet Yusuf (p) in fact offered to work under the non-Muslim king of Egypt at the time, and he played a critical role in safeguarding food security.¹⁸

Ibn Umar reported that the Messenger of Allah (p) said, *“The believer who mixes with people and is patient with their harm has a greater reward than the believer who does not mix with people, nor is patient with their harm.”*¹⁹

How is the message of guidance expected to reach those non-Muslims who need such guidance if Muslims are not going to travel, meet, and interact with people of other faiths and in their lands? How is Islam expected to spread to the whole world if Muslims are expected to remain in or actually move to Muslim lands?

2. When the Prophet (p) started his mission in Mecca, the society was not initially hostile to his message and the early converts to Islam. In spite of the polytheism in Mecca, the Prophet (p) did not teach his companions that

¹⁷ See the story of Yunus in Qur'an 37:139 – 148.

¹⁸ Qur'an 12:54-55.

¹⁹ Sunan Ibn Majah, no. 4032.

living in a polytheist society was wrong, or that it was better for them to isolate themselves from the rest of society, or move out and camp in the desert, or live elsewhere. Indeed, it was such a society, with all its corruption, immorality, tribalism, disbelief and polytheism, etc. that the early Muslims were expected to positively influence and reform. No one was required to migrate (*Hijrah*) from Mecca to anywhere else simply due to the dominance of polytheism (*Shirk*) or disbelief (*Kufr*) of the people.²⁰

3. Before and during this period, the Prophet (p) was economically and socially engaged with the Meccan community. He was involved in business, partook in mediation and peacebuilding, and was a member of a local human rights advocacy organisation, called the “Alliance of Virtue” (*Hilf al-Fudul*). He integrated into the society without isolation or being assimilated into its wrong ways and customs. Later on in life, after Islam was well established in Medina, the Prophet (p) fondly mentioned to his companions about his involvement with the *Hilf al-Fudul*, and his readiness to join such a group again, if he was invited to do so.²¹ This association with

²⁰ Far'h al-Bar 2/189 cited in Al-Umary, Akram Diya': Al-Sirah al-Nabawiyah al-Sahihah, Maktabah al-Ulum wa al-Hikam, al-Madinah al-Munawwarah, 1994, 6th Ed. p. 170.

²¹ Al-Baihaqi, hadith no.12114; Sunan Al-Kubra Al-Dala'il Gharib al-Hadith, hadith no.243.

concerned polytheist citizens in enjoining right and forbidding wrong, was not understood by the Prophet (p) or his companions as a form of allegiance (*wala'*) to sinful behaviour or beliefs. It was simply (as with many other alliances and treaties) a means of serving common interests.

4. During the later Meccan period when the Meccan leadership and some of their followers started to persecute and torture some of the weaker Muslims of Mecca, the Prophet (p) suggested that they migrate (*Hijrah*) and seek refuge in Abyssinia, which was a Christian Kingdom ruled by a just king, the Negus or (*Najashi*). This was the first formal Hijrah, and it was done to escape persecution and denial of religious freedom. The fact that Abyssinia was a Christian kingdom and not operating Islamic law did not prevent the Prophet (p) from sending his companions there. Migration (*Hijrah*) to a non-Muslim land was not seen as a form of allegiance (*wala'*) to Christians or to Christianity.²²
5. The Prophet (p) and a few of his companions were still safe in Mecca and did not yet have major fears for their own safety and security. However, the Prophet (p) still

²² Al-Imam Shams al-Deen al-Dhahabi, "*Siyar A'lam al-Nubala'*", Mu'assasah al-Risalah, Beirut, Lebanon, 1994, 10th Ed, Vol. 1, pp. 430 – 434.

remained in Mecca, in spite of the polytheism, and did not regard remaining there as contrary to Islamic teachings. While there was prejudice, discrimination, and verbal abuse, he felt safe enough to remain there and continue his mission of calling them to Islam. He did not migrate (*Hijrah*) simply because it was an option and he had the means. He had a mission to do his best in his own hometown.

6. When the Prophet (p) lost his wife, Khadija, and his uncle Abu Talib, he lost some of his most important sources of protection in his Clan, Banu Hashim. Mecca was no longer safe, and he decided to migrate when he knew that his life was at risk. He was reluctant to leave his hometown, as were his other companions. But he feared for his life and narrowly escaped an assassination attempt, and there was also a bounty on his head, for a hundred camels to whoever could capture him, dead or alive.²³ The context makes it clear that it was not the polytheism of Mecca that instigated his migration (*Hijrah*) or those of others, but the unbearable persecution and denial of religious freedom.

²³ Sahih Al-Bukhari, hadith no.3419; Sahih Muslim, hadith no.2009; And this is the wording of Ahmad hadith no.17627 this is about which Al-Arna'ut said, "Its chain is authentic according to the criteria of [Imam] Muslim; Al-Imam Shams al-Deen al-Dhahabi, "*SiyarA'lam al-Nubala'*", Mu'assasah al-Risalah, Beirut, Lebanon, 1994, 10th Ed, vol. 1, pp. 430 – 434.

²³Muhammad Rida, *Muhammad Rasul Allah*, Dar Al-Kotob Al-Ilmiyyah, Lebanon, 3rd Ed. 2006, p. 123.

According to Ibn 'Abbas the Messenger of Allah even said about Mecca: *"How sweet of a land you are and how dear you are to me, and if it were not that my people expelled me from you, I would not have lived in other than you."*²⁴ In another Hadith the Prophet (p) made this supplication: *"O Allah, make us love Madinah as dearly as we love Mecca, or more than that. O Allah! Make it healthy for us and bless for us it's Sa' and Mudd (Medinan food measurements). And remove its fever from us..."*²⁵ This hadith makes it abundantly clear that the reason why the Prophet (p) left Mecca was not because of its laws as a land of polytheism or disbelief (*Dar al-Shirk* or *Dar al-Kufr*), but because he was expelled from it. He makes it clear in his own statement, that if not for the persecution or expulsion by the Meccans, he would not have lived elsewhere.

7. The Prophet (p) escaped the Meccan plot to assassinate him and **migrated (Hijrah) to Medina**. At the time, Medina was predominantly a polytheist and Jewish society. But it was safe and secure, and Muslims were free from persecution, and had the freedom to practice and share their faith with others. The Prophet (p) had a written security and civil contract or charter or pact between the Muslims and the various polytheist and Jewish tribes in Medina. This was the first interfaith

²⁴ Sunan al-Tirmidhi, hadith no. 3926

²⁵ Sahih al-Bukhari, hadith no. 1889.

charter and constitution for a multireligious society in history. It was called the *Sahifah* or *Wathiqah* (Charter or constitution) of Medina. It recognised the equal citizenship, rights, and responsibilities of all the members of the charter.²⁶

Medina, the capital city-state of Islam during the lifetime of the Prophet, remained a multireligious society right until the demise of the Prophet (p) and his companions. There was no compulsion in religion, and Jews were not forced to accept Islamic law. They were judged by their own religious laws. Respecting the rights of others to govern themselves by their own laws was not understood as a form of alliance (*al-wala'*) with their laws, sin or disbelief.²⁷

8. While the Prophet (p) and some others were not safe from the persecution of the Meccans, those who were safe and did not feel threatened were permitted to remain in Mecca. This included **the Prophet's uncle, al-Abbas bin**

²⁶ Adil Salahi, Muhammad, *Man and Prophet: A Complete Study of the Life of the Prophet of Islam*, The Islamic Foundation, UK, 2002, p 242; Muhammad Rida; *'Muhammad Rasul Allah'* Dar Al-Kotob Al-Ilmiyyah, Lebanon, 3rd Ed. 2006, pp 128-129.

²⁷ Tariq Ramadan, *In the Footsteps of the Prophet*, Oxford University Press, New York, 2007, p.87-91; Muhammad Rida; *'Muhammad Rasul Allah'* Dar Al-Kotob Al-Ilmiyyah, Lebanon, 3rd Ed. 2006, pp 128. In Sahih Muslim no. 1699 there is a case of Jews who committed adultery and were judged in accordance with the Torah.

Abdul Muttalib.²⁸ He remained in Mecca until after the conquest. Meanwhile, he managed the well of Zamzam as part of his clan's responsibility for the polytheist pilgrims and others in Mecca.²⁹ His remaining in Mecca was not seen as going against any Islamic teachings of the Qur'an or Sunnah, nor was it seen as allegiance (*al-wala'*) to paganism or to the land of disbelief and polytheism.

The case of Al-Abbas makes it clear that it was insecurity, religious persecution and the inability to practice Islam in peace, along with the means to migrate, that was the reason for migration by the Prophet (p) and his other companions. Those companions who did not face such threats or fears were not obliged to migrate, and were not criticized for staying in non-Muslim lands, where they felt safe, even if others did not have the same levels of safety and security.

9. In response to a misconception held by some of the early Muslims who were of the opinion that migration was an obligation on all converts from their native non-Muslim lands, we have the following Hadith: Salih bin Bashir reported that the companion **Fudaik** went to the Prophet

²⁸ Al-Imam Shams al-Deen al-Dhahabi, "*SiyarA'lam al-Nubala'*", Mu'assasah al-Risalah, Beirut, Lebanon, 1994, 10th Ed, Vol. 2, p. 79; Yusuf al-Qaradawi, *Fiqh al-Jihad*, Maktabah Wahbah, Cairo, 2009, vol.2, p. 952.

²⁹ Muhammad bin Ishaq; '*Al-Sirah al-Nabawiyah li Ibn Ishaq*' Dar Al-Kotob Al-Ilmiyyah, Beirut, Lebanon, 2004, p. 120

(p) and said: ‘O Messenger of Allah, people think whoever does not migrate will perish’. The Prophet (p) said: *‘O Fudaik! Establish prayers, avoid sins, and live in the land with your people wherever you wish.’*³⁰

This hadith clearly shows that the opinion that it is prohibited or even discouraged for Muslims to live in non-Muslim lands when such Muslims are free to practice the fundamentals of their faith is wrong. The Prophet (p) in this Hadith did not just permit Fudaik, but actually instructed him to reside anywhere he wished among his people. To claim that all Muslims should migrate from non-Muslim lands, including those who have the same freedom of religion as Fudaik (or even more), is clearly refuted by this Hadith, and that of Al-Abbas.

10. One of those people who came to Mecca was a man by the name **At-Tufayl ibn Amr al-Dawsi**, a leader of the tribe of Daws (Banu Daws), who came from the southern part of Arabia along the coast, called the Tihama area. He came on a visit to Mecca and the Meccan leaders started to make efforts to discourage him from seeing the Prophet (pbuh), which eventually roused his curiosity to meet the Prophet (p). He eventually met him (p), listened to his teachings, and accepted Islam. He then went back to his people and when he tried to preach to

³⁰ Sahih Ibn Hibban Hadith no. 4969.

them, they rejected it and became hostile to the message. Tufayl went back to the Prophet (p) seeking his permission to migrate (do *Hijrah*) and leave his islamophobic community and stay with the Prophet (p) in Mecca. However, after affirming that the level of hostility he faced at home was not serious enough as to threaten his life or faith, the Prophet (p) told him to go back to his people and continue to bear their intolerance and hatred with patience, civility and good character, while gradually spreading the message of Islam by whatever means was possible to him. He did as instructed, and over time, the whole community eventually embraced Islam and became an important Muslim stronghold. That was where Abu Hurayrah, the famous Hadith narrator originally come from. He was from Banu Daws, and his becoming Muslim was partly the result of the efforts of Al-Tufayl.³¹

Thus, we learn from the Prophetic example and the Prophet's instruction to Al-Tufayl that it only becomes necessary to do *Hijrah* (migration) from a place when it is so intolerably hostile that you are denied the right and freedom to live securely and no longer have the freedom to practice your religion. But so long as you are safe, and you have the freedom to practice and share your religion

³¹ Khalid Muhammad Khalid, *Men Around the Messenger*, Dar al---Kotob al-Ilmiyah, Lebanon, 2006, p.422.

with others, it is actually encouraged for you to stay in such non-Muslim societies. Why? Because that is how Islam spreads! And that was how it spread to the rest of the world!³²

11. While Medina had become a safe haven for Muslims, those who remained in Abyssinia were not criticised for remaining in non-Muslim lands that were safe and which respected their freedom to practise and share Islam. The last group of Muslims from Mecca to leave Abyssinia arrived in Medina in the 7th year of Hijrah, just less than 3 years before the Prophet (p) passed away.³³

The existence of a safe “Islamic state” in Medina was not seen by the Prophet (p) as a reason to prohibit Muslims from residing in a non-Muslim land or make it compulsory to migrate to Muslim lands where Islamic law and governance was in practise. They were never criticised from staying in safe non-Muslim lands for “longer than necessary”.

³² Similar case like that of Tufayl bn Amr occurred to Abu Dharr al-Ghifari cited in Khalid Muhammad Khalid, *Men Around the Messenger*, Dar al-Kotob al-Ilmiyah, Lebanon, 2006, p.46.

³³ Al-Imam Shams al-Deen al-Dhahabi, “*Siyar A’lam al-Nubala’*”, Mu’assasah al-Risalah, Beirut, Lebanon, 1994, 10th Ed, Vol. 1, p. 437. Khalid Muhammad Khalid, *Men Around the Messenger*, Dar al-Kotob al-Ilmiyah, Lebanon, 2006, p.198.

12. Some of the Muslim refugees in Abyssinia (such as **Zubair bin Awwam**) actually supported the government in gathering military intelligence and in actual fighting in a war, to defend the State against its opposition and rebels. The Muslims there were law-abiding citizens who played their part in successfully defending their just, non-Muslim hosts. This support was recognised and rewarded by the king.³⁴

Although the government was not operating Islamic law, yet it was not seen by these respected companions or by the Prophet (p) as a reason to prohibit Muslims from supporting and contributing to their host community of Abyssinian Christians in matters as serious and sensitive as security. Supporting the state was also not seen as alliance (*al-wala'*) with their religion, nor implying a preference for disbelief (*Kufr*) or non-Muslims over Muslims and Islam.

13. During the 2-year period when the Treaty of Hudaibiyya between the Meccans and the Muslims of Medina was in place, there were many Muslims residing in Mecca, some of whom wanted to leave but were not permitted unless with the express permission of the Meccan authorities. Otherwise, the Prophet (p) was obliged by the treaty to

³⁴ Al-Imam Shams al-Deen al-Dhahabi, "*Siyar A'lam al-Nubala'*", Mu'assasah al-Risalah, Beirut, Lebanon, 1994, 10th Ed, Vol. 1, p. 434.

send them back to the Meccans.³⁵ Mecca at this time was what some jurists would refer to as an “Abode of Peace or Treaty” - *Dar al-‘Ahd* or *Dar al-Sulh*.

The Treaty of Hudaibiyyah stipulated the fact that those in Mecca were under Meccan political authority and legal jurisdiction. They were expected to recognise the authority and leadership of the territory of Mecca which they had found themselves in. And the Prophet (p) agreed to and signed this treaty. Muslims living in Medina (Dar al Islam) were also expected to respect and recognise the autonomy, leadership, and sovereignty of the Meccan authorities they had entered into this treaty with.

In recognition of the legal autonomy and political sovereignty of states with whom Muslims have a treaty, Allah says in the Qur’an (8:72), *“Those who believed, emigrated, and strived with their wealth and lives in the cause of Allah, as well as those who gave them shelter and help—they are truly guardians of one another. As for those who believed but did not emigrate, you have no obligations to them until they emigrate. But if they seek your help (against persecution)*

³⁵ Sahih Bukhari, Hadith no. 2581; Sunan al-Kubra, Hadith no. 18587; al-Mujam al-Kabir, Hadith no. 13; Musnad Imam Ahmad bn Hanbal, Hadith no. 18928; Ibn Kathir, al-Bidayah wa al-Nihayah, Maktabah al-Ma’arif, Beirut, vol.4, p.175; Muhammad bin Ishaq; *‘Al-Sirah al-Nabawiyyah li Ibn Ishaq’* Dar Al-Kotob Al-Ilmiyyah, Beirut, Lebanon, 2004, pp. 466-467.

in faith, it is your obligation to help them, except against people bound with you in a treaty. Allah is All-Seeing of what you do.”

Consequently, even though most of the Companions of the Prophet (p) were opposed to the unfair and humiliating conditions of the Treaty of Hudaibiyyah which the Prophet (p) had agreed to, all Muslims of Medina and Mecca were required to respect and honour the signed treaty.

14. While the city-state of Medina was under constant threat from the hostile Meccan polytheists and their allies, the Prophet (p) encouraged some of those tribes that embraced Islam to come to the safety of Medina and also to assist in defending the Muslim capital.³⁶ So long as there was a threat from a formidable enemy to be fought, such as the Quraysh of Mecca, there would always be the need for migration from such hostile territories and for reinforcements for the Muslim army. In one hadith, the Prophet (p) made this clear when he said, *“emigration will not stop provided the enemy is being fought.”*³⁷

³⁶ <https://www.history.com/this-day-in-history/muhammad-completes-hegira>

³⁷ *Sunan al-Nasa’I al-Sughra*, hadith no. 4102; *Musnad Ahmad bn Hanbal*, hadith no. 22324.

After the peaceful occupation or conquest of Mecca, and the neutralization of the threat posed by them to Muslims in the region, there was no longer a need for more people to migrate to Medina since Mecca was now safe and part of Muslim controlled territory.³⁸ The Prophet (p) according to Ibn Abbas, is then reported to have announced that there was, “*No Hijrah after the conquest, except for striving (Jihad) and good intention...*”³⁹ This Hadith makes it clear that Hijrah from non-Muslim lands that were no longer hostile to Muslims, was not necessary.

Additionally, the reason some were asked to move to Medina was not because they lived in multireligious or non-Muslim lands of disbelief (*Dar al-Kufr*), but for strengthening the security and defense of Muslims especially the capital at the time. This migration to Medina stopped after the conquest of Mecca.

Even when the Prophet (p) did encourage some Muslims to come to Medina, it was understood to have only been encouraged not compulsory. On no occasion did the Prophet (p) compel those who embraced Islam from amongst the Arabs to migrate to him in Medina, and he

³⁸ Abd al-Aziz bn Salih al-Jarbu', *Al-Flam bi Wujub al-Hijrah min Dar al-Kufr Ila Dar al-Iman*, p.12, al-Maktabah al-Shamilah, 3.13; Yusuf al-Qaradawi, *Fiqh al-Jihad*, Maktabah Wahbah, Cairo, 2009, vol.2, p. 954.

³⁹ Sunan al-Tirmidhi, hadith no. 1516.

never reproved or blamed them for staying in their own vicinities.⁴⁰ Besides, the need to migrate to Medina during the life of the Prophet (p) was seen as a contextual requirement of the time, and which was abrogated or overtaken by the event of the conquest of Mecca.⁴¹

15. **After the demise of the Prophet (p)** many of his great companions deliberately moved out of Medina and the Muslim cities with their families, to various lands of non-Muslims, in order to share the message of Islam with them and build peace treaties.⁴²

Why would these companions and their students and families migrate to non-Muslim lands if it was actually forbidden for a Muslim to reside in such lands or in lands where Islamic law was not operational? How could the generation of those who best understood Islam, do the exact opposite of what is claimed to be an Islamic requirement?

⁴⁰ Abd al-Aziz bn Salih al-Jarbu', *Al-Ilam bi Wujub al-Hijrah min Dar al-Kufr Ila Dar al-Iman*, p.10.

⁴¹ Al-Sarakhsi, *al-Mabsut*, vol.6, p.123; n.d, al-Maktabah al-Shamilah (3.13); 'Ala' al-Din al-Kasani, *Bada'i al-Sana'I*, Dar al-Kutub al-'Arabi, Beirut, 1982, vol. 1, p.158.

⁴² Salman al-Farisi died in Al-Mada'in (ancient Ctesiphon) (Pp. 41-43), Bilal lived and died in Sham (p. 72), Abu Ubaydah bin al-Jarrah died in Jordan (p. 180), Abu Ayyub al-Ansari was buried in Constantinople (now Istanbul) (p.293), etc. all cited in Khalid Muhammad Khalid, *Men Around the Messenger*, Dar al-Kotob al-Ilmiyah, Lebanon, 2006.

Allah says, “(But) *they are not all alike: among the followers of earlier revelation, there are upright people...*” (Qur’an 3:113), and “*Among the followers of earlier revelation are some who, if entrusted with a hoard of gold, will (readily) pay it back; others, who, if entrusted with a single silver coin, will not repay it unless you constantly stand over them demanding it.*” (Qur’an 3:75)

Thus, they are not all enemies at war with Muslims and who cannot be trusted.

Regarding people of other faiths who have not been hostile to Muslims, Allah says,
“*As for such (of the unbelievers) who do not fight against you on account of (your) faith, and neither drive you forth from your homelands, Allah does not forbid you to show them kindness and to behave towards them with full equity: for verily, Allah loves those who act equitably.* Allah only forbids you to turn in friendship towards those who fight against you because of (your) faith, and drive you forth from your homelands, or aid (others) in driving you forth: and as for those (from among you) who turn toward them in friendship, it is they, they who are truly wrongdoers!” (Qur’an 60: 8-9)

The Qur’an clearly distinguishes what relations are expected with non-hostile people of other faiths who have not denied Muslims their freedom of religion and right to land, from those who have.

Categorising all non-Muslims therefore as enemies and at war with Muslims is not a position based on the Qur'an or Sunnah, nor was it the practise of those many companions who actually migrated and lived among such people of other faith, many of whom eventually embraced Islam or entered into peace treaties with Muslims.

16. The Qur'an acknowledges the merits and sacrifices of those who migrated (Hijrah) seeking freedom to be Muslims, after they had been wronged and persecuted on account of their faith, and Allah promises them a reward in this life and the next. The texts make it clear that these Muslims were victims of oppression while seeking Allah and His Messenger.

“And those who emigrated (hajaru) for [the cause of] Allah after they had been wronged – We will surely settle them in this world in a good place, but the reward of the Hereafter is greater, if only they could know.” (Qur'an 16:41).

Historically this migration was from unbearable hostility and persecution, away from oppression and towards a more supportive and faith-enabling environment, and seeking freedom to practise Islam in peace. Sometimes, this migration (Hijrah) was from Muslim to non-Muslim lands.

Similarly, Allah says, “*And whoever emigrates (yuhajir) for the cause of Allah will find on the earth many [alternative] locations and abundance. And whoever leaves his home as an emigrant to Allah and His Messenger and then death overtakes him - his reward has already become incumbent upon Allah. And Allah is ever Forgiving and Merciful.*” (Qur’an 4:100). Both these texts show that the migration (Hijrah) which is praised here is one done in “*the cause of Allah*”.

Various Muslim populations of the past and present, including their scholars, have sometimes had to migrate and escape political and religious persecution from some Muslim leaders and despots. Some of these populations took refuge from their Muslim leaders and caliphs in non-Muslim lands that were more hospitable and accommodating of these Muslims. In the period of Umayyad Caliphate during the reign and tyranny of **Hajjaj bin Yusuf** (41-95 AH),⁴³ many Muslims fled from Iraq, taking refuge in Malabar, India, where they had to adopt the clothes of the Hindus and limit public display of their Islamic identity.⁴⁴ Since the second

⁴³ Muhammad Hamidullah, *The Muslim Conduct of State*, (7th Edition), Muhammad Ashraf, Lahore, 1977, p.123. Cited in Amjad M. Mohammed, *Muslims in Non-Muslim Lands: A Legal Study with Applications*, Islamic Texts Society, Cambridge, UK, 2013, p.128.

⁴⁴ Muhammad Hamidullah, *The Muslim Conduct of State*, (7th Edition), Muhammad Ashraf, Lahore, 1977, p.123. Cited in Amjad M. Mohammed, *Muslims in Non-Muslim*

century of Islam, significant Muslim populations have resided in non-Muslim territories, especially in coastal India and China.⁴⁵

17. In another verse of the Qur'an, Allah blames and promises to punish those who allowed themselves to be pressured into wrongdoing. They had the ability to migrate but refused to, and instead resorted also to wrongdoing and sin. Ibn Kathir in his commentary on this verse, says these people became hypocrites.⁴⁶

“Those whom the angels take (in death) while wronging themselves, (the angels) will say, ‘In what (condition) were you’ they will say, ‘We were oppressed in the land’. They (the angels) will say, ‘Was not the earth of Allah spacious (enough) for you to emigrate (tuhajiru) therein?’ for those, their refuge is Hell – and evil it is a destination. Except for the truly oppressed among men, women, and children who cannot devise a plan nor are they directed to a

Lands: A Legal Study with Applications, Islamic Texts Society, Cambridge, UK, 2013, p.128, and Khaled Abou El Fadl, *Islamic law and Muslim minorities*.

⁴⁵ Muhammad Hamidullah, *The Muslim Conduct of State*, (7th Edition), Muhammad Ashraf, Lahore, 1977, p.121-129, cited in Khaled Abou El Fadl, *Islamic law and Muslim minorities*.

⁴⁶ Ibn Kathir mentions that Al-Dahhak stated that this verse was revealed in reference also to some Muslim hypocrites who did not join the Messenger of Allah (p), but remained in Mecca, and went out with the Polytheists of Mecca to fight against the Muslims in the Battle of Badr, and they were among those who were killed in the fighting. (*Tafsir Ibn Kathir*, Darussalam Publishers, p.559).

way. For those it is expected that Allah will pardon them, and Allah is ever Pardoning and Forgiving.” (Qur’an 4:97-99).

Those however who had no realistic options out of such toxic environments, negatively influencing contexts, hostile or oppressive communities, who were truly weak (*mustad’afin*) and unable to migrate are those who can expect Allah’s pardon and mercy.

This verse reinforces the reasons for migration (*Hijrah*) observed in the life of the Prophet (p) and his companions, that the major reasons why migration would be an obligation on a capable Muslim would be in order to either escape from persecution and oppression, or protect their faith and to move away from a very toxic or negatively influencing environment. In the absence of these, a Muslim was permitted to reside in non-Muslim lands.

Some Juristic Commentaries on Migration (*Hijrah*) And Muslim Residence based on the Sirah

Muhammad al-Shaybani (d. 189 AH) reports that the duty to migrate to the Land of Islam (*‘ard al-Islam*) after conversion was abrogated at the time of the Prophet (p). Those who convert but

do not migrate to *Dar al Islam* are like the nomads (*a'rab*) who accepted Islam but refused to join the Prophet (p) in Medina.⁴⁷

Writing many years after al-Shaybani, Abu Bakr al-Sarakhsi explained that although the duty to migrate was abrogated, most jurists recommended that the nomads still migrate to Medina so that they might learn their religion; but if these nomads could learn their religious duties in their tribal residence, there was no reason for them to migrate.⁴⁸

Imam al-Shafi'i argued that even after the establishment of the Islamic state in Medina, Al-'Abbas and others were allowed to reside in Mecca which was then a non-Muslim territory. Additionally, the Prophet (p) allowed various nomadic tribes that converted to Islam to remain outside the domains of the lands of Islam. The Prophet (p), according to Imam al-Shafi'i, would not have given these people a choice of residence if it was sinful for them to retain their independence. Consequently, Muslims who convert to Islam in non-Muslim lands may reside there unless these Muslims fear enticement away from Islam (*Idha lam yakhafu'l-fitnata fi'l-din*).⁴⁹

⁴⁷ Abu 'Abdullah al-Shaybani, *The Islamic Law of Nations: Shaybani's Siyar*, trans. Majid Khaduri, The John Hopkins Press, Maryland, 1966, p. 187; Al-Shaybani's view reiterates his view in his *al-Radd 'ala Siyar al-Awza'i*, ed. Abu al-Wafa al-Afghani, Dar al-Kutub al-'Ilmiyyah, Beirut, n.d., p.124.

⁴⁸ Al-Sarakhsi, *Al-Masbut*, Dar al-Ma'rifa, Beirut, 1986, vol. 10, p.94-95. Cited in Khaled Abou El Fadl, *Islamic law and Muslim minorities* ... p.146.

⁴⁹ Abu Abdallah al-Shafi'i, *Al-Umm*, ed. Muhammad al-Najjar, Dar al-Ma'rifa, Beirut, n.d., vol.4, p.161; cited in El-Fadl... p.147.

Imam al-Baghawi argues that a Muslim is permitted to reside in a non-Muslim land if he or she is able to manifest his or her religion, but *Hijrah* from non-Muslim territory is obligatory if a person fears the loss of religion (*Khashiya an yuftana fi dinihi*).⁵⁰ Al-Ramli was a respected Shafi'i jurist and mufti of Egypt and was given the title of *al-Shafi'i al-Saghir* ("the Little Shafi'i" or "Junior Shafi'i"). He was asked about the Muslims living under the political leadership of a Christian king in one of the Andalusian countries called Aragon. Al-Ramli, citing the precedent of a Companion of the Prophet (p) who was allowed to reside in non-Muslim Mecca, replied that the Muslims of Aragon do not have to migrate because they can manifest their religion. He argues that they are not allowed to leave because their residence might be a mechanism by which Islam could spread. He argues that the area in which they reside is part of *Dar al-Islam*, and that if they left, it would revert to being *Dar al-Kufr*. Also, the long period during which Muslims there have been able to enjoy their religious freedom creates the presumption that they will be safe from forced conversion or oppression in the future.⁵¹

⁵⁰ Cited in Al-Nawawi, *Al-Majmu'*, vol.19, p.264.

⁵¹ Shams al-Din al-Ramli, *Fatawa al-Ramli*, on the margin of Ahmad bin Muhammad Ibn Hajar al-Haythami, *al-Fatawa al-Kubra al-Fiqhiyya*, Dar al-Kutub al-Ilmiyya, Beirut, n.d., vol.4, p.52-53.

Commonly Misinterpreted Text Related to Hijrah

1. Allah says in the Qur'an, *"Indeed, those whom the angels take (in death) while wronging themselves – (the angels) will say, 'In what (condition) were you?' They will say, 'We were oppressed in the land.' They (angels) will say, 'Was not the earth of Allah spacious (enough) for you to emigrate therein?' For those, there refuge is Hell – an evil it is as a destination".* (Qur'an 4:97)

It has been assumed by some that all Muslims living in non-Muslim lands are automatically part of the "oppressed in the land". They have therefore interpreted this verse to mean that all Muslims who have the means are expected by this verse to migrate, as a religious obligation, from such lands to the Abode of Islam (*Dar al-Islam*), and they are prohibited from residing in non-Muslim communities.

This understanding is contrary to what has been witnessed in the life of the Prophet (p) and his companions. The companions lived in various non-Muslim communities so long as their safety and religious freedoms were secure. There are also many cases of Companions who after the demise of the prophet (p) migrated to and resided in safe non-Muslim communities. They did not migrate to Medina or "*Dar al-Islam*" but to non-Muslim lands where they established peace treaties and spread the message of Islam. Also, for the many people who embraced Islam in such non-Muslim lands including Egypt, Syria, Turkey, Azerbaijan, Abyssinia, etc., as

long as they were not persecuted on account of their faith, they remained in such non-Muslim lands and did not migrate to Medina.

This verse simply warns those whose faith will be compromised by their remaining in communities that deliberately try to force and negatively influence them to abandon their religion, while they have the means to migrate to safer communities. The key concern of the verse is for Muslims to avoid contexts of persecution and negative influence on their faith.

As is clear from the tradition of the Prophet (p) and his companions, this was not understood to apply to all non-Muslim communities, many of which were safe for Muslim to migrate to or reside in.

2. *“Those who believed, emigrated, and strived with their wealth and lives in the cause of Allah, as well as those who gave them shelter and help—they are truly guardians of one another. As for those who believed but did not emigrate, you have no obligations (wilayah) to them until they emigrate. But if they seek your help (against persecution) in faith, it is your obligation to help them, except against people bound with you in a treaty. Allah is All-Seeing of what you do”. (Quran 8:72)*

This verse has been understood by some to mean that Muslims who are residing in non-Muslim lands are living in a

place where the Prophet (p) has no obligations towards them. Such Muslims who put themselves in a situation where the Prophet (p) has dissociated himself from, are living in a sinful context, and consequently have to migrate to where they are under the jurisdiction and responsibility of Allah and His messenger (p).

There has been a diversity of interpretations given to this verse by scholars. The understanding however that this verse prohibits Muslim residence in non-Muslim lands is not supported by the context of the text itself nor what is well-known and established from the life (*sirah*) of the Prophet (p) and his companions. This is because the early Muslims were known to have lived in numerous non-Muslim lands where they were safe and not persecuted on account of their faith, including Abyssinia, Egypt, Syria, etc., especially after the demise of the Prophet (p).

The phrase “you have no obligations to them (*walayatihim*)” which has been interpreted by some to mean “you are dissociated from them” was understood by some such as Ibn Abbas, Mujahid and Qatadah to refer to having no obligations related to inheritance.⁵² In other words, it was understood to mean that those who did not migrate to Medina forfeited their right to inheritance from those who

⁵² Al-Tabari, *Jami' al-Bayan fi Ta'wil al-Qur'an*, Mu'assasah al-Risalah, 2003, vol. 13 pp. 78-80.

did, and vice-versa.⁵³ This was in the early Medinan period when the migrants (*muhajirun*) were allowed to inherit from the Medinan Muslims or “Helpers” (Ansar), and vice-versa, as part of a strategy for strengthening their brotherhood, social cohesion, and making migration easier. This strategy was however later superseded by the verse that restricted inheritance (*mirath*) to real family members (Qur’an 8:75 and 33:6).⁵⁴ Other means of inheritance via a bequest (*wasiiyyah*) remained an option.

According to Ibn Kathir however, the phrase “*you have no obligations to them (walayatihim)*” was understood to also apply to the absence of an obligation on the part of the Prophet (p) to give a “share in the spoils of war” to those who did not migrate, and hence did not participate in battles alongside the Muslims of Medina. Such Muslims would only have a share in the booty if they joined the Muslims.⁵⁵ He supported this opinion with the Hadith of Buraidah al-Aslami in which the Prophet (p) said: “... *tell them (the new Muslims) to migrate to the Abode of the Emigrants (Dar al-Muhajirin – i.e., Medina). If they comply, they will be treated as equals with the emigrants. But if they choose to stay in their lands,*

⁵³ Al-Tabari, *Jami’ al-Bayan fi Ta’wil al-Qur’an*, Mu’assasah al-Risalah, 2003, vol. 13 pp. 78-80.

⁵⁴ Al-Tabari, *Jami’ al-Bayan fi Ta’wil al-Qur’an*, Mu’assasah al-Risalah, 2003, vol. 13 p. 80.

⁵⁵ Ibn Kathir, *Tafsir al-Qur’an al-Azim*, Dar Taibah li al-Nashr wa al-Tawzi’, 1999, vol. 4, p. 96.

they will be treated as equals with Muslim Bedouins; they will have no share in the booties, except if they join the Muslims in battle..."⁵⁶

It is clear from these interpretations that the verse does not imply a prohibition of Muslim residence in non-Muslim lands if they were safe and free from religious persecution. It is consequently also not evidence for the obligation of Muslims to migrate (*hijrah*) from safe non-Muslim lands.

3. Some scholars have tried to justify the prohibition of residing in or migrating to non-Muslim lands with the prophetic Hadith which says: *"I dissociate myself from all Muslims living in the midst of polytheists...."*⁵⁷

The historical context and occasion of this statement in the Hadith (*Sabab al-wurud*), makes it very clear that this statement of the Prophet (p) had nothing to do with the prohibition of Muslims migrating to or living in the midst of non-hostile people of other faith. It is only easy to misinterpret if the context is not considered seriously, since it is well-known and authentically established by the Prophet (p) and especially his companions lived amongst polytheists in Mecca and Medina, and in many other parts of the world especially after the demise of the Prophet (p).

⁵⁶ Musnad Ahmad, no. 23030.

⁵⁷ Sunan Abu Dawud, hadith no. 2274; *Sunan al-Tirmidhi*, hadith no. 1530.

This statement of the Prophet (p) in this hadith however, was actually in response to a very specific situation where some converts to Islam who lived in the midst of a group of polytheists that were hostile to Medina, were unknowingly killed in the battle that ensued. The Prophet (p) was making it clear that he would not be responsible for the payment of the blood money (*diyya*) in such cases of accidental killing or manslaughter, where the Muslims lived in the midst of hostile non-Muslims. In this particular case, the Prophet (p) actually paid the equivalent of half the normal value of the *diyya*.⁵⁸

The many well-known cases of Al-Abbas in safety in Mecca, those companions who lived peacefully in Abyssinia, the numerous others who left Medina, travelling to and living in the midst of peaceful polytheists in various parts of the world after the demise of the Prophet (p), all prove that the Prophet (p) and his Companions did not understand this hadith outside its context, and did not interpret it to mean it was prohibited for Muslims to reside in the midst of non-hostile polytheists and other non-Muslim communities.

⁵⁸ Muhammad Shams al-Haq al-Azim al-Abadiy, *‘Awn al-Ma’bud: Sharh Sunan Abu Dawud’*, Dar Al-Kotob Al-Ilmiyyah, Beirut, 1415, vol. 7 p. 218, no. 2645.

4. The Prophet (p) is reported to have said: “*Anyone who associates with a polytheist and lives with him is like him*”.⁵⁹

This hadith has been interpreted by some to mean that it is prohibited for a Muslim to associate with a non-Muslim or reside in a non-Muslim country or community.

This claimed interpretation of the implications of this hadith conflicts with what is found in the lived example (sunnah) of the prophet (p) and that of his companions who resided and associated with various non-Muslim communities in Mecca, Abyssinia, Medina and elsewhere. After the Prophet’s demise, many of his companions moved permanently to other predominantly non-Muslim communities where there associated and lived with those populations.

It is for example well-established that the Prophet (p) associated with his polytheist community in Mecca and was even nicknamed “The Trustworthy” (Al-Ameen). He also had close relations with his beloved uncle, Abu Talib until his demise. He and his companions only left Mecca when the religious persecution became unbearable, and their lives were threatened.

It is also important to note that the Prophet (p) permitted his uncle, Abbas who had embraced Islam to remain in Mecca, and he was not prohibited from associating with the

⁵⁹ Abu Dawud, no.2787.

polytheists there. In fact, Abbas was responsible for the management of water from the well of Zamzam for visitors and pilgrims.⁶⁰

Sheikh AbdulMuhsin al-‘Abbad when explaining the hadith in question said that this hadith implies that if a person is not able or free to openly practise and express their religious identity and symbols (*Sha’air al-Deen*) then it is necessary for such a person to migrate to another place where he or she is free and able to practice their religion.⁶¹

On a similar hadith - *“Do not live among the idolaters, and do not assemble with them, for whoever lives among them or assembles with them, is similar to them”*, Imam al-Khattabi cited some of what scholars have said about this hadith, one of which is that “a Muslim should not bear the unique characteristics of a polytheist, nor should he resemble him in his spiritual path and appearance”.⁶²

In summary, this hadith and other similar hadiths do not in any way prevent a Muslim from associating and living with non-hostile people of other faith, nor do these hadith prohibit a Muslim from residing in their environment provided he or

⁶⁰ Muhammad bin Ishaq; *‘Al-Sirah al-Nabawiyyah li Ibn Ishaq’* Dar Al-Kotob Al-Ilmiyyah, Beirut, Lebanon, 2004, p. 120.

⁶¹ Abdulmuhsin al-‘Abbad, *Sharh sunan Abi Daud*, al-Maktabah al-Shamilah, vol. 1 p.2.

⁶² SafiyyurRahman Mubarakfuri, *Tuhfah al-Ahwazi Sharh Sunan al-Tirmidhi*, al-Maktabah al-Shamilah, vol.4, p.276.

she is able to practice their religion without any impediments or fear of persecution. This hadith and similar others, simply warn against forming close associations or living arrangements with individuals or communities that can have a profound negative influence on one's own beliefs and actions, potentially leading them away from the path of Islam.

5. The Messenger of Allah (p) said: *“Allah will not accept any good deed from a polytheist who commits polytheism after becoming Muslim, until he leaves the polytheists and joins the Muslim”*.⁶³

The case presented in this hadith is one where a polytheist becomes a Muslim but remains in his polytheist community and is influenced by them to continue to practice polytheism even after claiming to have embraced Islam. The hadith makes it clear that if such as Muslim was sincere about having embraced Islam, that he would migrate away from what will influence him back to into polytheism. Deliberately choosing to remain in a community which negatively influences him is proof of his insincerity of accepting Islam.

According to Al-Sindi, the apparent meaning of the hadith indicates “that this polytheist who converted to Islam had apostatized, and committed polytheism after his conversion to Islam, then he returned to Islam. At this juncture, no deed

⁶³ Ibn Majah no. 2536; Musnad Ahmad no. 20037.

will be accepted from him until he leaves the abode of disbelief.”⁶⁴

This hadith is evidence for weak Muslims to migrate away from communities that negatively influence them towards apostasy, to the safety of Muslim communities. This hadith is not asking all Muslims living in non-Muslims communities to leave their communities. It is also not referring to those who feel safe in their faith within non-Muslim communities, and who do not feel threatened by their communities to leave Islam.

As noted repeatedly, the companions, during and after the time of the Prophet (p), lived in numerous non-Muslim lands that respected their freedom of religion. The Prophet (p) and his companions only migrated away from the polytheist community of Mecca because of religious persecution and fear for their safety.

The hadith therefore is only addressing those who fear the apostatizing influence of their communities and advising them to relocate away from such communities to Muslim communities if they have the means and are sincere.

⁶⁴ Amad bin Hanbal, *Musnad Ahmad*, Muassasah al-Risalah, ed. Shuaib al-Arnaout, vol. 33, p. 238.

According to Ibn Taimiyyah,⁶⁵ it is concerning such individuals – who persisted in their wrongdoing – that the following verse was revealed as a warning:

“Those whom the angels take (in death) while wronging themselves, (the angels) will say, ‘In what (condition) were you’ they will say, ‘We were oppressed in the land’. They (the angels) will say, ‘Was not the earth of Allah spacious (enough) for you to emigrate (tuhajiru) therein?’ For such, their refuge is Hell – and evil it is a destination...” (Qur’an 4:97-99).

Scholars such as Ibn Hajar and al-Mubarakfuri, after citing similar hadiths concluded that they are related to those who are not safe concerning their religion (yet refused to migrate).⁶⁶

The claim that this hadith is evidence for the prohibition of migrating to, or residing in non-Muslim lands, is not justified by its text or by the understanding and practices of the Prophet (p) and his companions who resided in various non-Muslim communities outside Medina.

In conclusion, the hadith under discussion is only evidence for the obligation of hijrah from the apostatizing influence of a society. It is not a basis for prohibiting Muslims from

⁶⁵ Ibn Taymiyyah, *al-Sarim al-Maslul ‘ala Shatim al-Rasul*, Dar Ibn Hazm, Beirut, vol. 2, p. 106.

⁶⁶ Ibn hajar, *Fath al-bari*, vol. 8, p. 432; al-Mubarakfuri, *Tuhfah al-Ahwazi*, vol. 4, p. 258; al-Mubarakfuri, *Mir’ah al-Mafatih sharh mishkat al-masabih*, vol. 9, p. 462.

residing in non-Muslims communities that give assurances of safety and freedom of religion.

6. It is narrated by Abdullah bin Waqdan al-Sa'di that the Messenger of Allah (p) said: *"Migration will continue as long as an enemy is fought with."*⁶⁷

This hadith is interpreted by some Muslims to justify the obligation of *hijrah* on every Muslim residing in a non-Muslim land, even if they have the freedom of religion there and are free from persecution.

In a more complete narration of this hadith, the narrator, 'Abdullah bin Waqdan al-Sa'di said: *"We came as a delegation to the Messenger of Allah, each of us with a question to ask him. I was the last of them to come in to the Messenger of Allah, and I said: 'O Messenger of Allah, I have left people behind me, and they are saying that emigration (Hijrah) has ceased.' He said: 'Emigration will not cease so long as the disbelievers are being fought.'"*⁶⁸

The hadith simply clears the misconception that there will never be a need for migration again by making the obvious link between enemies or hostile others and the need for migration and movement of people. This hadith reminds the questioner and those with such an opinion of the fact that the existence of conflict situation nearly always necessitates

⁶⁷ *Al-Sunan al-Kubrah*, hadith no. 18235; *Musnad Ahmad*, hadith no. 22324.

⁶⁸ *Sunan al-Nasa'i*, hadith no. 4172 and 4183.

migration. This may be the migration of refugees, asylum seekers, soldiers, etc.

Scholars have therefore understood this hadith to mean that the existence of enemy states (*Dar al-Harb*) and the possible necessity of war against such hostile or persecuting states, automatically implies the need for migration of Muslims away from such hostile environments. It could also mean that the existence of enemies or hostile disbelievers would imply the need for movement or migration of soldiers to the battlefield.⁶⁹

Al-San'ani commented on this hadith saying that it is an indication that the ruling of *hijrah* stands till the Last Day, even though it does not imply an obligation.⁷⁰

Al-Imam Badr al-Din al-ʿAyni said that provided the lands of disbelief exists in the world, migration (*hijrah*) will remain obligatory on whoever embraces Islam and fears persecution due his religion.⁷¹ In other words, migration is not a necessity if there is no fear of persecution, as was seen in the life of the Prophet (p) and his companions.

⁶⁹ Al-Sindy, *Hashbiyah al-Sindy ʿala Sunan al-Nasaʿi*, vol. 5, p.471, al-Maktabah al-Shamilah, 3.35.

⁷⁰ Muhammad bin Ismaʿil al-San, Vol.6, p.133, al-Maktabah al-Shamilah, 3.13.

⁷¹ Badr al-Din al-ʿAyni, *Umdah al-Qari Shar Sahih al-Bukhari*, Vol.25, p.107, al-Maktabah al-SHamilah, 3.13.

There is therefore nothing in this hadith to justify the obligation of *hijrah* irrespective of the situation a Muslim finds him or herself. Instead, it only proves the legitimacy of *hijra* when the circumstances call for it, and dispels the view held by some that there will never be a need for Hijrah.

7. **Another hadith that has been interpreted to justify the obligation of *hijrah* from non-Muslim lands that do not persecute Muslims, is the following: Mu'awiya reported God's messenger (p) as saying, "*Emigration will not come to an end till repentance comes to an end; and repentance will not come to an end till the sun rises in the place where it sets (the West)*".⁷²**

Some have understood this hadith to justify migration of Muslims from all non-Muslim lands even if they do not face any religious persecution nor fear for their religion.

There is however nothing in the wording of this hadith, or in the tradition of the Prophet (p) or his companions to support this understanding. On the contrary, there is ample evidence to show that Hijrah was only obligatory for those who were able to, when they faced unbearable persecution or fear for their safety.

⁷² *Musnad Ahmad*, hadith no. 16906; *Sunan Abu Dawud*, hadith no.2481; *Sunan al-Nasa'i al-Kubrah*, hadith no. 8711.

The hadith does not suggest that the Prophet (p) was even referring purely to physical *hijrah* or the migration of people from one environment to another, or from a safe land of non-Muslims to anywhere else. The clear association in the hadith of *hijrah* with repentance, obviously indicates as some scholars have argued, that the *hijrah* in this hadith refers to the spiritual or moral *hijrah* from wrongdoing, sinfulness and vice to repentance and Allah.

As noted earlier, the physical (or outward) form of migration (*hijrah*) is also meant to also enhance or facilitate the spiritual and moral (or inward or spiritual) form of migration or repentance.⁷³ The two are therefore not mutually exclusive, but complementary in their purposes. In other words, the moral or spiritual *hijrah* may include the need for physical *hijrah*.

The Prophet (p) is reported to have said, “*Definitely migration (Hijrah) is of two forms. The first of these is the migration from evils (sayyi’at), and the second is to migrate to Allah and His Messenger. And hijrah will not cease so long as repentance is being accepted (by Allah); and it will continue to be*

⁷³ Ibn Qayyim al-Jawziyya, *Zad al-Muhajir Ila Rabbih*, p.13 cited in, Fallah Zardumi, *Fiqh al-Siyasah al-Shar’iyyah li al-Aqalliyat al-Muslimah*, 1426AH, p.150; Ibn Hajar al-Asqalani, *Fath al-Bari*, vol. 1, p.54.

acceptable until the sun rises from the West. And when it rises (from the West), the fate of every heart will be sealed...".⁷⁴

In the context of spiritual *hijrah*, the Prophet (p) is reported to have said, *"The believer is the one from whom people's wealth and lives are safe, and the Muhajir (migrant) is the one who forsakes mistakes and sins."*⁷⁵ According to Abdullah bin 'Amr, *"A man said: 'O Messenger of Allah! Which emigration (Hijrah) is best?' He said: 'To leave what your Lord, the Mighty and Sublime, dislikes...'"*.⁷⁶ On another occasion the Prophet (p) said, *"A Muslim is the one from whose tongue and hands the Muslims are safe, and a Muhajir (emigrant) is the one who refrains from what Allah has forbidden"*.⁷⁷

It is in the context of such moral and spiritual *hijrah* from what is forbidden to what is enjoined, that some scholars believe that the Prophet (p) also said, *"Emigration will not come to an end, untill repentance (from wrongdoing) comes to an end; and repentance will not come to an end till the sun rises from the place where it sets."*⁷⁸

⁷⁴ Al-Tahawi, *Sharh Mushkil al-Athar*, ed. Shu'aib al-Arnaout, Mu'assasah al-Risalah, 1994, vol.7, p.47, hadith no.2635.

⁷⁵ *Musnad Ahmad*, Hadith no. 23965

⁷⁶ *Sunan al-Nas'I*, hadith no. 4165.

⁷⁷ *Sahih Al-Bukhari*, hadith no. 9.

⁷⁸ *Musnad Ahmad*, hadith no. 16906.

Accordingly, Imam al-Tahawi said regarding this hadith, the *hijrah* mentioned is the *hijrah* from wrongdoing, and not the other form of (physical) *hijrah*. This is based on the statement in the hadith, “until repentance comes to an end”.⁷⁹

Ibn Abd al-Barr similarly said regarding this hadith, after citing other similar one, that it applies to spiritual migration (*hijrah*) and not the physical form.⁸⁰

While discussing the subject of repentance before the End Times, Sheikh Uthaimen cites this hadith as evidence. This indicates that he understood the meaning of *hijrah* in this context to be of the spiritual form.⁸¹

In conclusion, this hadith does not justify the interpretation which tries to consider it as evidence of the obligation for Muslims to migrate (*hijrah*) from safe non-Muslim communities or countries where these Muslim minorities have freedom to practise the most essential teachings of their religion and do not fear persecution on account of their faith. It should be reiterated, that once the early Muslims (*Salaf*) were free from any form of unbearable persecution in

⁷⁹ Al-Tahawi, *Sharh Mushkil al-Athar*, ed. Shu'aib al-Arnaout, Mu'assasah al-Risalah, 1994, vol.7, p.5, hadith no.2634.

⁸⁰ Ibn Abd al-Barr, *Al-Tamhid*, Mu'assasah al-Qurtuba, vol.8, p.389-390.

⁸¹ Muhammad ibn Salih bin Muhammad al-Uthaimen, *Sharh al-'Arba'iyin al-Nawawiyah*, Dar al-Tharya li al-Nashr, p.104.

a community, they were also considered free to reside in such non-Muslim communities.

8. Jarir bin Abdullah al-Bajali, who was a leader of his tribe (Bajilah), is reported to have said that: "I came to the Prophet (p) when he was accepting the people's pledge (*bay'ah*), and said: 'O Messenger of Allah, extend your hand so that I may give you my pledge, and state your terms, for you know best.' He said: *'I accept your pledge that you will worship Allah, establish prayers (Salah), pay the Zakah, be sincere toward the Muslims, and desert the polytheists (mushrikin).*"⁸²

The last phrase of the Hadith – “and desert the polytheists (*mushrikin*)” – is used by some as evidence for the obligation of migration (*Hijrah*) from non-Muslim lands, including those that are not hostile to Muslims.

There are numerous multiple-chained (*mutawatir*) hadith from Jarir regarding his pledge with the Prophet (p), and they do not contain this last phrase “...and desert the polytheists”.

⁸³ It is only in one isolated (*gharib*) but authentic hadith,

⁸² Sunan al-Nasa'i, Hadith no. 4177; Musnad Ahmad, Hadith no. 19163.

⁸³ See: Sahih al-Bukhari, Hadith 55,493,1313; Sahih Muslim, Hadith no. 83 & 85; *al-Mu'jam al-Awsat*, Hadith 596; *Sunan al-Darimi*, Hadith 2595; *Musnad Ahmad*, Hadith 19228.

narrated through Abu Wa'il from Jarir which is cited above that this phrase appears.⁸⁴

While this hadith is authentic, there does not appear to be any evidence that this additional phrase “and desert the polytheists” applied to others or became part of the policy for the companions who embraced Islam. This is especially as this incident of Jarir’s embracing Islam occurred after the conquest of Mecca when there was no longer the policy recommending new Muslims and their communities to move to or closer to Medina for security purposes.⁸⁵

It is known from the biography of Jarir that he personally did spend time in Medina after embracing Islam.⁸⁶ After a while in Medina where he learnt more about Islam, the Prophet (p) then sent him to Yemen which was a non-Muslim land at the time in order to propagate Islam.⁸⁷ Afterwards, and during the period of the Rightly Guided Caliphs, he spent most of his time in what at that time was also predominantly non-Muslim region of the Levant (*Sham*) and Iraq, and was involved in

⁸⁴ Authenticated by Al-Albani. See Nasiruddeen al-Albani, *Irrwah al-Ghalil*, al-Maktab al-Islami, Beirut, 2nd ed., 1985, vol.5, pp.31-32.

⁸⁵ Al-Dhahabi, *Siyar A'lam al-Nubala*, Muassasat al-Risalah, 3rd ed., 1985, vol.2, p.532.

⁸⁶ Al-Dhahabi, *Siyar A'lam al-Nubala*, Muassasat al-Risalah, 3rd ed., 1985, vol.2, p.534. See also, *Musnad Ahmad*, no. 19227.

⁸⁷ Al-Dhahabi, *Siyar A'lam al-Nubala*, Muassasat al-Risalah, 3rd ed., 1985, vol.2, p.536.

propagating Islam and in battles defending it from hostile others.⁸⁸

It seems clear from the life of the main narrator of the hadith, Jarir, that the additional instruction to “desert the polytheists” was not understood to be a permanent prohibition of residing amongst polytheists, as can be seen from the fact that the Prophet (p) himself sent him to such polytheist communities to propagate Islam. The instruction can also not be generalized to apply to others since they did not have such additional clauses (“and desert the polytheists”) in their pledges with the Prophet (p).

In conclusion, it can safely be said that the additional clause of “deserting the polytheists” was temporary and specific to Jarir while he learnt more about Islam. It was not a new policy prohibiting Muslims from migrating to or residing in safe non-Muslim lands which was the norm during the life of the Prophet (p) and his companions, especially after his demise.

Lessons from the Qur'an, Sunnah and Sirah for Muslim Minorities

There is therefore nothing entirely new or strange about Muslims living as minorities in non-Muslim land and under non-Muslim leadership in Islamic history, and from the time of the Prophet

⁸⁸ Al-Dhahabi, *Siyar A'lam al-Nubala*, Muassasat al-Risalah, 3rd ed., 1985, vol.2, p.535.

(p) himself and his closest companions.⁸⁹ This was true for most of the other prophets sent by Allah to the various communities, nations and tribes of humanity who were predominantly non-Muslims. Those mentioned in the Qur'an include Nuh/Noah, Abraham, Ayub/Job, Yunus/Jonah, Lut/Lot, etc. Thousands of other prophets have not been named in the Qur'an. Allah seems not to have ever had a problem with sending righteous persons to live with and positively influence non-Muslim communities and contribute to their welfare.

Most Muslims who faced tolerable degrees of religious freedoms and justice bore patiently in their host communities, and gradually thrived, not just survived. Where and when persecution was intolerable, they migrated to safer or less hostile non-Muslim communities and made peace treaties with others.

Being in a polytheist society did not prevent the Prophet (p) from cooperating with fellow citizens in promoting justice and the common good, peacebuilding and being charitable, supporting victims and being hospitable, managing funds and investments, and living a life that earned him the reputation of

⁸⁹ What is relatively new is the international peace treaties under the UN along with the changed new norm of peace as the default relationship between nations. The concept of the "nation state" and acceptance of equal citizenship and the United Nations agreements are also new developments in international relations that were not in place during the period of most classical jurists. It is some of these change norms that have resulted in changes in some contemporary rulings related to Islamic political thought. This is in line with the legal maxim, (*La yunkar taghayyur al-Ahkam bi taghayyur al-Ahwal*).

“*The Trustworthy One*” – Al-Amin – among the polytheists of Mecca.⁹⁰

In some of these non-Muslim states and communities, members of the Muslim minorities have been appointed as leaders. Prophet Yusuf (p) for example, was put in charge of the food security of all Egypt under the leadership of a non-Muslim king, as cited earlier. He did not simply accept a position of leadership, but in fact asked for the appointment, as mentioned in the Qur'an. (Qur'an 12:55)

Some embraced Islam while being heads of state, such as Najashi of Abyssinia, and while still remaining the king of the Christian kingdom of Abyssinia.⁹¹ The Prophet (p) did not even suggest that he should leave the throne of his kingdom. It is reported that Najashi the King of Abyssinia embraced Islam but did so quietly and he was buried by his people as a Christian. The Prophet (p) organised a funeral prayer for him in Medina and said of him when addressing his companions as a “righteous man” and “your brother”.⁹² This was in spite of the fact that the Muslim king was

⁹⁰ Abu Abdullah Muhammad bin Ahmad Al-Qurtubi, *al-Jami' li Ahkam al-Qur'an*, vol.16, p.170, & vol.19, p.75, 284, Al-Maktabah al-Shamilah 3.13; Ibn Kathir, *al-Bidayah wa al-Nihayah*, Maktabah al-Ma'arif, Beirut vol.2, p.301-303; Ibn Kathir, *Sirah al-Nabawiyyah*, al-Maktabah al-shamilah, 3.13, vol.1, p.280; Ibn Hisham, *Sirah al-Nabawiyyah*, vol.2, p.19; Safy al-Rahman Mubarakfuri, *Al-Rahiq al-Makhtum*, (The Sealed Nectar: Biography of the Noble Prophet), Dar-Salam Publishers, Riyadh, 1996, p.47.

⁹¹ Al-Imam Shams al-Din al-Dhahabi, *Siyar A'lam al-Nubala'*, 10th Ed., Mu'assasah al-Risalah, Beirut, Lebanon, 1994, Vol. 1, P. 428.

⁹² Bukhari, 3877.

not once known to have performed the five daily prayers (salat), fasting in Ramadan, given out zakat, etc.⁹³ It should also be noted, that his inability even as a leader to establish or attempt to implement anything in Islamic law was never a basis for censure or any criticism of him by the Prophet (p) or any of his companions. No one ever accused him of doing wrong by heading a disbelieving nation (*Dar al-Kufr*). On the contrary, he was regarded as a “righteous man” and prayed for by the Prophet (p) himself.⁹⁴

The companion **Tufayl al-Dawsī** was the leader of his tribe Banu al-Daws, when he embraced Islam. The Prophet (p) did not ask him to relinquish his leadership of a non-Muslim society which at the time was actually opposed to Islam. The Prophet (p) in fact asked him to return to his community and bear with them patiently as he gradually shared the message of Islam with them, and they eventually accepted it from him.⁹⁵

Many others became Muslims while still remaining leaders in non-Muslim governments and positively influencing their societies, which gradually became more and more Islamic, such as the Mongols princes who embraced Islam and who gradually spread Islam with their colleagues and families. There are many

⁹³ Ibn Taimiyyah, *Majmoo' al-Fatawa*, Dar al-Wafaa, 3rd edition, 2005, vol.19, p.217.

⁹⁴ Anyone who has a problem with a Muslim leading or holding political office in a non-Muslim state needs to think carefully about the tradition and sunnah of the Prophet (p) and his companions on this question.

⁹⁵ Al-Asbahani, *Dala'il Nubuwwah*, Maktaba Al-Shamela, 3.35, vol.1, pp.218-219.

parts of the Muslim world in the past and present where their leaders became Muslims while still leading their non-Muslim communities, but which gradually and eventually turned to Islam.⁹⁶

Even today, we have various converts to Islam and Muslims who are occupying leadership positions in predominantly non-Muslim countries and are positively influencing those communities. This is not a contemporary issue that needs new and original verdicts. This reality has been with Islam from the beginning, and their continued leadership was not criticised by the Prophet (p) or the Rightly Guided Companions.

Peaceful Muslim relations with residence and integration in non-Muslim territories automatically imply certain compromises. And this was part of what the Prophet (p) taught and practiced as exemplified during the approximately two-week period of negotiating the terms of the Treaty of Hudaibiyyah.⁹⁷ Rejecting all compromises would make Muslim residence in non-Muslim territory impossible, and would undermine the presence, influence and spread of the most essential and fundamental

⁹⁶ Similar examples include that of Munzir ibn Sawa Al-Tamimi, the ruler of Bahrain, who sent his two sons to the Prophet (p) after accepting Islam, for further readings see al-Mubarakfuri, Saif-ur-Rahman, *al-Raheeq al-Makhtoom*, "The Sealed Nectar", Multaqah Ahl al-Hadith, Maktaba al-Shamela, p. 319.

⁹⁷ Mahdi Rizqullah Ahmad, *al-Sirah al-Nabawiyah fi Daw'i al-Masadir al-Asliyyah*, Markaz al-Malik Faisal li al-Buhuth wa al-Dirasat al-Islamiyyah, al-Riyadh, 1992, p. 493.

teachings of Islam (the *ma'lum min al-din bi al-darurah*) and its priority objectives related to social justice and human welfare.

Islamic jurisprudence, however, has developed several mechanisms and concepts based on the Qur'an and Sunnah, as practiced by the Prophet (p) and his Rightly Guided Companions, that facilitate and sanction (but also restrict certain) compromises. These mechanisms include the principles and legal maxims related to duress (*ikrah*), hardship (*mashaqqah*), necessity (*darurah*), need (*hajah*), concession (*rukhsa*) and public welfare (*maslahah*).⁹⁸

⁹⁸ These concepts can be found in any good textbook on Islamic legal theory and principles (*Usul al-Fiqh*), and in classical juristic texts (*fatwa* literature) that addressed the questions and needs of (among others) Muslim living as minorities or of conquered Muslim majorities. There is however special consideration given to these in contemporary literature that focus on Islamic Jurisprudence for Muslim Minorities (*Fiqh al-Aqalliyyat*). This is occasioned by the reality today of more than a third of all Muslims living as minorities in non-Muslim lands. (See Mohammed Kettani: *Muslim Minorities in the World Today*, Mansell Publishing Ltd, London, 1986 p. 241). While this genre of literature sounds new, the subject matter and principles are germane to Islamic law from its earliest sources and origins. See also, “*The Simplified Encyclopaedia of Contemporary Issues in Islamic Jurisprudence Fiqh* (Jurisprudence of Muslim minorities) Center of Research Excellence in Contemporary Fiqh Issues; Osoul Global Center, Riyadh, 2018.

The Laws of the Land and Muslim Identity

Every Muslim belongs to the global community of Muslims or Ummah of Islam. This is an exclusive religious or faith community bound by their common essential and fundamental beliefs and practices that are in turn based on definitive textual evidence of the Qur'an and Sunnah regarding which there is no difference of opinion among scholars – *ma'alum min al-deen bi al-darurah*.⁹⁹ Only deliberate and conscious rejection of the truthfulness of these essential fundamentals can take a person out of the fold of Islam and into disbelief (*Kufr*).¹⁰⁰ Members of this large global community of Islam meet annually during the Hajj pilgrimage. All Muslims of all times and places belong to this community of believers, and should be regarded as such, whether they live as a majority or minority, under Islamic law or non-Muslim laws, whether they are good or bad, and even whether they are the oppressors or the oppressed.

Islam as a religion and *Dar al-Islam* as a territory, are not synonymous. While a *Dar al-Islam* status would be desirable, Islam can exist and flourish as it did in the beginning without

⁹⁹ Tabari, *Jami' al-Bayan fi Ta'wil al-Quran*, Muassat al-salah, 1st edition, 2000, vol. 6, p.459; Al-Dhahabi, *Siyar a'lam al-Nubala*, Mu'assasat al-Risalah, 3rd edition, 1985, vol. 7, p. 155; Al-Shatibi, *al-Muwafaqat*, Dar ibn 'Affan li al-Nashr wa al-Tawzi' Cairo, 1st edition, 1997, vol. 5, p. 174.

¹⁰⁰ Rabi' al-Madkhali, *Hujjiyyat khabr al-Ahad fi al-'Aqaid wa al-Ahkam*, Maktabah Shamilah 3.35, p.61; Abdullah Ibn Baaz, *Bayan al-Taauheed al-Lazi Arsala bihi al-Rusul*, Ri'asat Idarat al-Buhuth al-'Ilmiyyah wa al-Ifta wa al-Da'wah wa al-Irshad, 1st edition, 1996, p.27; Wahbah Zuhaili, *al-Fiqh al-Islami wa Adillatuhu*, Dar al-Fikr, Damascus, 4th edition, vol. 7, p. 141.

such a territory. And if Muslims are able to practise their religion in a territory, they may reside in it regardless of the formal juristic categorisation and terminology of that territory.

During the time of the Prophet (p) and his companions, the laws of the land in which Muslims lived was not and has never been what makes a person a Muslim or not. It is also not whether they are sinful or not, whether they honour and respect the laws of Islam, or whether they flaunt and disobey them. So long as they accept as true, and believe in the known essential and fundamental beliefs, laws and practices of Islam, they are Muslims, even if they do not implement these teachings. Muslims who do not implement or obey the laws of Allah, while accepting them to be truly divine, are Muslims even if they are regarded as guilty of wrongdoing (*fīsq*) and sinful actions (*ma'asiya*).

There may however be several legitimate reasons based on the sources of Shari'ah such as "consideration of public interests" (*maslahah*), preclusion or "blocking the means" (*sadd al-dhari'a*), juristic discretion (*istihsan*), etc., for not implementing certain normative laws of Islam in particular contexts. This is similar to the case of Caliph Umar suspending the prescribed (*Hadd*) punishment for theft, due to his of "consideration of public interests" (*maslahah*) in a context of social necessity (*darurah*).¹⁰¹

¹⁰¹ Al-Walid Ibn Rushd, *Al-Bidayah al-Mujtabid wa Nihayah al-Muqtasid*, Dar al-Fikr, Beirut, n.d, vol.1, p.291, and Mohammed Biltaji, Manhaj 'Umar Ibn al-Khattab fi al-Tashri', 1st ed. Dar al-Salam, Cairo, 2002, p. 190. Cited in Jasser Auda, *Maqasid al-*

The “Declaratory Laws” (*ahkam al-wada’iyah*) of Shari’ah determine the appropriateness of a law to its context based on the existence of causes (*sabab*), prerequisite conditions (*shart*) being met, and the absence of hindrances and preventatives (*mani*).¹⁰² This is very important to the understanding of when general rulings of the Shari’ah apply and when exceptions to those rules are called for by the Shari’ah itself. This is also important in appreciating when strict or normal laws (*‘azimah*) are to be followed, and when Shari’ah demands that these be replaced by concessionary laws (*rukhsah*).¹⁰³

A Muslim who breaks or does not follow or implement the categorical laws of Allah in the Qur’an or Hadith, which prohibits drinking alcohol, or consuming pork, involved in adultery (zina), or dealing in usurious (*riba*) transactions, etc. is

Shariah as Philosophy of Islamic Law, IIIT, Herndon, 2008, p.10. See also Ahmad Hasan, *The Early Development of Islamic Jurisprudence*. Islamic Research Institute, Islamabad, 1970, p.145; Ibn al-Mulaqqan, *Al-Badr al-Munir fi Takhrij al-Ahadith Wa al-Athar al-Waqi’ah fi al-Sharh al-Kabir*, Saudi Arabia: Dar al-Hijrah, 1425, vol.8, p.679; ‘Atiyyah bin Muhammad Salim, *Sharh Bulugh al-Maram*, al-Maktabah al-Shamilah, 3.13, 1420, p.12.

¹⁰² See Shaykh Abdullah bn Bayyah, *The Pursuit of Peace*, Abu Dhabi Forum for Peace, Abu Dhabi UAE, 2022, pp.106- 107.

¹⁰³ For more discussion on “Declaratory Laws” (*ahkam al-wad’iyyah*) and their effects on primary rulings (*Azimah*) and concessionary rulings (*Rukhsa*), see Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, The Islamic Text Society, Cambridge, 2001, pp. 290-294; Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law*, IIIT, Herndon, 2008, pp. 139- 140. See also, al-Shawkani, *Irshad al-Fuhul li Tahqiq ‘ilm al-Usul*, Dar al-Kitab al-Arabi, 1st ed. 1999, vol.1. pp. 31 – 35. Abdulwahab Khallaf, *‘Ilm Usul al-Fiqh*, Maktabah al-Dawah, Cairo, 2nd ed, vol.1, pp. 117 – 123. Al-Amidi, *al-Ihkam fi Usul al-Ahkam*, al-Maktabah al-Islami, vol.1, pp. 129 – 131. Maktabah al-Shamela v.3.35.

still a Muslim, even though he or she may be committing a sin. Such a person may be regarded as a wrongdoer (*fasiq*) and guilty of sin (*ma'asiya*), but not a disbeliever (*kafir*), as long as he or she accepts Allah's judgement (*hukum*) that these actions are wrong and sinful.

Allah describes different levels of believers, but still recognises them as believers. *"And among them are some who sin against themselves; and some who keep half-way [between right and wrong]; and some who, by God's leave, are foremost in deeds of goodness: [and] this, indeed, is a merit most high"*. (Qur'an 35:32).

When a people or a leader is in a position to establish Islamic law in a place or on a particular issue but refuses to out of laxity and weakness in faith, they are still Muslims even if wanting, blameworthy and sinful. But they are not excommunicated (*takfir*) out of the Muslim Ummah. In other words, declaring a land as a land of Disbelief (*Dar al-Kufr*) was never understood by jurists as also implying that those Muslims living there were to be regarded as disbelievers or Kuffar.

The practise of regarding people who do not implement Islamic laws in a place, or on a particular issue, as excommunicated from the fold of Islam and therefore disbelievers (*kuffar*), was historically known to be the critical identifier and the characteristic marker of the violent Muslim extremist sects generally referred to as the Khawarij. This was the group that regarded the fourth of the Rightly Guided Caliphs, Ali bin Abi

Talib as a disbeliever (*kafir*) because in their view, he did not implement the law of Allah in the literal text of the Qur'an, and they assassinated him on that account. The Khawarij regarded the breaking or non-implementation of Islamic law as automatically tantamount to, and proof of disbelief (*Kufr*). The ideology behind this Khawariji perspective – that of Muslims who break or do not implement Islamic laws being disbelievers - has been criticised and refuted by all the distinguished scholars of mainstream Islam – *Ahl al-Sunnah wa al-Jama'ah*. Those who continue to hold on to this “takfiri ideology” have also continued to be referred to as Khawarij by scholars even today.

Disturbingly, some who claim to also be critical of the historical Khawarij sects of the past do not seem to see “the sheep in wolves clothing,” and the new packaging of the same central idea (of sinning equals disbelief) that leads to the excommunication (*takfir*) and killing of wrongdoers and innocent Muslims.

Some have tried to justify their belief by claiming that the establishment of a political state operating Islamic legal law is an obligation on every Muslim, an article of faith and matter of creed (Aqidah), and part and parcel of the belief in the Oneness of Allah (*Tawhid*). Consequently, not pursuing efforts to establish such an Islamic state and law is tantamount to rejection of Allah's Oneness (*Tawhid*) and Sovereignty as the Lawgiver, and this implies disbelief (*Kufr*). This ideology which has reappeared in the Twentieth Century under the term “*Tawhid al-Hakimiyyah*” has implications that are too similar to Khawarij in

their perspective and judgement of those who do not implement Islamic law in their area of jurisdiction. Instead of the breaking or non-implementation of Islamic laws being regarded as equivalent to a sin (*fisq*) and a form of wrongdoing (*ma'asiya*), as is the unanimous position of mainstream Islam (*Ahl al-Sunnah wa al-Jama'a*), they regard such sin as proof of rejection of Allah's will and tantamount to disbelief (*Kufr*). This has been used to justify regarding Muslim-majority states that do not implement Islamic law as being part of *Dar al-Kufr* and *Dar al-Harb*, and which can and should be fought against.¹⁰⁴

This interpretation of Islamic theology and creed (*Aqidah*) has no support in the Qur'an or Sunnah, as understood by the Rightly Guided Companions and scholars of mainstream Islam. Indeed, it is this Khawarij ideology that resulted in the killing of the last of the four Rightly Guided Caliphs. On the contrary, the idea that wrongdoing, breaking or neglecting the law is tantamount to disbelief (*Kufr*) is contrary to numerous teachings and texts of the Qur'an and Sunnah, and what was known about the Oneness of Allah (*Tawhid*) during the time of the Rightly Guided Caliphs and early scholars (*salaf*). It has a characteristic sign of Khawarij narratives and the political ideology which continues to be used by violent extremists to excommunicate, fight, and kill thousands of Muslims.

¹⁰⁴ For further reading on the subject See *Taubid Hakimiyyah Verses in Ibn 'Ashur's Interpretation* by Saifuddin Herlambang Munthe; "Al-Hakimiyyah Zhabirah al-Ghuluww fi ad-Din", sumber: <http://www.habous.gov.ma>, accessed on March 22, 2018.

Suffice it to say that the Negus and king of Abyssinia did not implement any known law of Islam in his kingdom, but he was a Muslim, and the Prophet (p) prayed for him and described him as a “*Rajulun Salih*”. No mainstream scholar of Islam has ever regarded him as anything less than what the Prophet (p) said, simply because he did not as a king implement any aspect of Islamic law.

Regardless therefore, of the formal juristic categorisation and terminology of a territory, if the legality of Muslim residence in a non-Muslim territory or country is admitted, then migration (*Hijrah*) away from there is not necessary, and all other issues related to migration are secondary. Similarly, if migration from a place is not necessary, then residence is not just permissible, but may even be recommended, as it was during the lifetime of the Prophet (p) and his companions after him. It is therefore up to Muslim minorities and their scholars in consultation with those experienced in similar contexts, to determine what the best ways are for responding to the various other challenges they face.

RESIDENCE IN NON-MUSLIM LANDS: CLASSICAL OPINIONS AND THEIR CONTEMPORARY RELEVANCE

Humanity has divided the world into different territories and categories of human beings. Some have distinguished people based on race, tribe, religion, gender, development, and civilization, etc. Some viewed those who shared their chosen identity as part of the civilized world, while others were either uncivilized, less civilized, barbarians, savages, etc. Christendom historically refers to the Christian states, Christian empires, Christian-majority countries and the countries in which Christianity dominates, prevails, or that it is culturally or historically intertwined with. Christendom was historically a term used to describe the Christian world and represented a geopolitical power that was juxtaposed with both the pagan and especially the Muslim world.¹⁰⁵

As mentioned earlier, some Muslim scholars of the past and present have, based on their *ijtihad* (juristic reasoning) in their contexts given verdicts to the effect that it is prohibited for Muslims to travel to or reside in non-Muslim societies that have been designated as *Dar al-Kufr* (Land of Disbelief) regardless of

¹⁰⁵ <https://en.wikipedia.org/wiki/Christendom> Retrieved on 21/06/2023.

the degree of safety, security, justice and freedom of worship and religion Muslims have or can have in such communities.

Others have unfortunately understood these verdicts and rulings (fatwas) as if they are absolute and unchanging religious truths from the Qur'an and Sunnah, and not a part of a variety of rational juristic responses (*Ijtihadi*) to particular societal contexts. Based on this belief, some have concluded that all non-Muslim societies are prohibited for Muslims to reside in.¹⁰⁶ Others conclude that non-Muslim lands are *Dar al-Harb* and are to be fought.

We shall briefly look more systematically at the diversity of past and present scholarly opinions on how lands, "abodes", territories or countries were classified, and the implications of these to Muslim residence in non-Muslim lands or countries.

Firstly, it is important to understand that scholars have had various criteria for classifying lands. For some scholars, the classification and categorization of a particular land had direct implications to whether or not Muslims could reside there. For others, it did not. As these criteria and classifications are not directly from the Qur'an or Sunnah, or from the Rightly Guided

¹⁰⁶ This is in spite of the fact that many of the Companions of the Prophet (p) lived under non-Muslim rule during and after the time of the Prophet (p). Many actually relocated from the Muslim centre and city-state of Medina (undisputedly a *Dar al-Islam*) after the demise of the Prophet (p) and settled as minorities in non-Muslim lands (*Dar al-Kufr*) and which did not have any knowledge of Islam, let alone implement Islamic law.

Caliphs, the scholars have differed on these, and on their implications to Muslim residence in, and relationship with non-Muslim lands.

Five major criteria seem to have been used by scholars to determine if a territory is a “Land of Islam” (*Dar al-Islam*). Some use a combination of these criteria. Some scholars agree on the validity of some of these criteria, while others disagree.¹⁰⁷ They include:

1. A land where Islamic rules and laws (*Abkam al-Islam*) apply.¹⁰⁸
2. A land of a Muslim ruler, and where he has control (*Isti’la*) over its affairs.¹⁰⁹
3. A land of security for Muslims.¹¹⁰
4. A land where the practicing of public acts of worship (*Sha’a’ir al-Islam*) is allowed.¹¹¹
5. A land of Justice” (*Dar al-‘Adl*).¹¹²

¹⁰⁷ Jasser Auda, *What is the Land of Islam?*, www.jasserauda.net, n.d., p.8-17.

¹⁰⁸ For further references to classical scholars who depend on this criterion, see Jasser Auda, *What is the Land of Islam?*, www.jasserauda.net, n.d., p.8-10.

¹⁰⁹ For further references to classical scholars who depend on this criterion, see Jasser Auda, *What is the Land of Islam?*, www.jasserauda.net, n.d., p.8, 8-10.

¹¹⁰ For further references to classical scholars who depend on this criterion, see Jasser Auda, *What is the Land of Islam?*, www.jasserauda.net, n.d., p.8, 10-11.

¹¹¹ For further references to classical scholars who depend on this criterion, see Jasser Auda, *What is the Land of Islam?*, www.jasserauda.net, n.d., p.8, 11-12.

¹¹² For further references to classical scholars who depend on this criterion, see Jasser Auda, *What is the Land of Islam?*, www.jasserauda.net, n.d., p.9, 12-15.

¹¹² For further references to classical scholars who depend on this criterion, see Jasser Auda, *What is the Land of Islam?*, www.jasserauda.net, n.d., p.9, 15-17.

Based on these criteria, classical scholars have classified lands (communities or countries) very differently, and into numerous categories based on their *ijtihad* and in response to their historical contexts and geo-political realities.

For the purpose of understanding juristic positions related to Muslim residence (and migration) some classified lands into two, others into three, and others differed from the rest in their definitions and terms, reflecting their independent assessment, criteria and reasoning (*Ijtihad*).

Within the diversity of views in determining the classification of territories, it will be noticed that some of the jurists distinguished between *a place of safety and justice where Islam as a religion is free to flourish*, and *a place where Islamic law had jurisdiction over physical territory*. In other words, while some of these jurists concerned themselves more with the security of Muslims and the freedom to spread of *Islam as a universal moral imperative*, others focused primarily on *Islam as a territorially based political identity*.¹¹³ One perspective therefore focused more on *the potential of the religion of Islam to grow in influence in a territory*, while the other on *the kinetic or actual influence and presence of Islamic law in a territory*.¹¹⁴ One considered the future potentials and opportunity for Islam (*da'wah* opportunity) of a location, while the other focused on the present reality and area under

¹¹³ Khaled Abou El Fadl, *Islamic law and Muslim minorities*, p.164.

¹¹⁴ i.e., the “future potential for Islam” instead of “the current status quo”.

control (jurisdiction and legal possession of real estate and territory).

We shall for the purpose of simplifying this diversity and relating it to the subject of Muslim residence in non-Muslim lands, categorise the major perspectives into three slightly overlapping groups.¹¹⁵

The Traditional Binary or Two-State paradigm

Some Muslim scholars of the past and present have based on their juristic reasoning (Ijtihad) in response to their contexts, classified the entire world into only two major domains based primarily upon the criteria of whether or not Islamic law and governance system is being applied.¹¹⁶ Those countries governed by Islamic law are termed *Dar al-Islam* (Land of Islam) while the rest of the world is regarded as *Dar al-Kufr* ("Land of Disbelief") or *Dar al-Shirk* (roughly "Land of Polytheism").¹¹⁷ The rest of the world (*Dar al-Kufr/Shirk*) is also regarded as *Dar al-Harb* (Land of War or enemy states) whether or not these were lands with security or asylum for Muslims or were accommodating of Muslim freedom of worship. The presence or absence of temporary peace treaties does not change the designation of a

¹¹⁵ Similar to, but different for Anjad M. Mohammed, *Muslims in Non-Muslim Lands: A Legal Study with Applications*, Islamic Texts Society, Cambridge, UK, 2013, p.137-147.

¹¹⁶ There are many nuances among those who hold this paradigm that cannot be presented here. Focus will primarily be on the majority's view as it relates to Muslim residence in non-Muslim lands.

¹¹⁷ *Dar al-Harb* is also referred to by some scholars as *Dar al-Bid'ah* (Land of Heresy) or *Dar al-Ma'asiya* (Land of Sin) and *Dar al-Dhulm* (Land of Injustice).

land. All non-Muslim countries were viewed as actively or potentially hostile to *Dar al-Islam* and hence regarded as “enemy states” or *Dar al-Harb*.

Also, it has been noted that this view is held mainly by scholars from those schools of law (such as the Hanbali and especially the Maliki) that spread and interacted more with western Christendom, mainly European Christians in the western parts of the Muslim world – the Middle East and North Africa. These 2 schools in particular seem to have shared similar contexts and experiences, and often very negative ones from the Inquisition in Spain, the invasions by the Crusaders, etc., in the hands of their Western Christian conquerors and colonialists. These developed similar approaches and perspectives regarding international relations and the question of Muslim residence in non-Muslim lands.¹¹⁸ For most Christians at the time, the world was also divided into two, Christendom and the Pagan World, which for many included Muslims.¹¹⁹

In addition to Imam Malik bin Anas, as cited by Sahnun (d.248 AH),¹²⁰ Al-Wansharisi (d.914) citing Ibn Rushd,¹²¹ and the Maliki Shaykh al-Azhar, ‘Ilish (d. 1299 AH), and others, held the

¹¹⁸ Amjad M. Mohammed, *Muslims in Non-Muslim Lands: A Legal Study with Applications*, Islamic Texts Society, Cambridge, UK, 2013, 146.

¹¹⁹ wikipedia.org/wiki/Christendom retrieved 19th June 2023.

¹²⁰ Sahnun, *Al-Mudawwana al-Kubra*, Matba’a al-Sa’ada, Cairo, 1905, vol. 3, p. 22.

¹²¹ Al-Wansharisi, *Ansa al-Matajir*, Maktaba al-Thaqafa al-Diniya, Al-Zahir, 1996, p.30; Ibn Rushd, *al-Muqaddimat al-Munahhidat*, vol. 2, p.151 - cited in Fallah Zardumi, *Fiqh al-Siyasah al-Shar’iyyah li al-Aqalliyat al-Muslimah*, 1426AH, p. 154.

view that the implementation of Islamic law was the determinant of whether a country was to be regarded as *Dar al-Islam* or *Dar al-Harb*.¹²²

The Hanbali jurist, Ibn Qayyim for example states that for the majority of jurists, *Dar al-Islam* is a territory where Muslims live, and where Islamic laws (*ahkam al-Islam*) are implemented. If Islamic laws are not applied, it cannot be said to be a Muslim territory, even if it is close to *Dar al-Islam*.¹²³ This is similar to the opinion held by Ibn Muflih al-Maqdisi.¹²⁴

Hijrah consequently means migration in the cause of Allah from the land of disbelief and sin to the land of Islam and obedience.¹²⁵ According to Ibn Al-Arabi, *Hijrah* means departure from the abode of war (*dar al-Harb*) to the abode of Islam (*dar al-Islam*)¹²⁶. Ibn Qudama defines *Hijrah* as setting out from the land of disbelief to the land of Islam.¹²⁷ The Zahiri School of law

¹²² Moussa Abou Ramadan, "Muslim Jurists' Criteria for the Division of the World into Dar al-Harb and Dar al-Islam", in *International Law and Religion: Historical and Contemporary Perspectives*, ed. Martti et. al, Oxford University Press, United Kingdom, 2017, p.226

¹²³ Ibn Qayyim al-Jawziyyah, *Ahkam Ahl al-Dhimma*, Ramli lil-Nashr, Dammam, 1997, vol.2, p.728.

¹²⁴ Ibn Muflih al-Maqdisi, *Al-Adab al-Shar'iya*, Muassasat al-Risala, 1999, vol.1, p.211-212.

¹²⁵ Muhammad al-Thani Abd al-Mumin, Muhammad al-Haj Abu Bakar, et al. *Al-Wasatiyyah fi al'I'tiqad*, Wisdom Publishers, Abuja - Nigeria, 2019, p. 55.

¹²⁶ Ibn al-Arabi, *Ahkam al-Qur'an*, vol, 2, p. 453, al-Maktabah al-Shamilah, 3.35.

¹²⁷ Ibn Qudamah, *al-Mughni*, Dar al-Fikr, Beirut, 1405 AH. vol.10, p.505.

is also of the view that a Muslim must not live in a non-Muslim land even if he or she has the freedom to practice their religion.¹²⁸ For some of those who hold this binary paradigm, *Dar al-Harb/Kufr* included Muslim lands conquered and colonised by non-Muslims. It also included Muslim lands where Islamic law was not the dominant law of the land, since the law of the land was the main criteria for classifying lands.

In other words, the presence or absence of the dominance of Islamic law for Muslims was the most important criteria and condition for categorising a land as *Dar al-Islam* or *Dar al-Kufr/Harb* and not the religious identity of the citizens. Some who held this position, narrowed down the meaning of “application of Islamic law” to imply mainly the criminal law, and others narrowed it down even further to the application of the “prescribed punishments” (*hudud*) in particular.¹²⁹

Non-Muslims who accept to live with treaties under the protection (*dhimma*) of *Dar al-Islam* and under its sovereign ruler or caliph, are regarded as living in *Dar al-Islam* and do not belong to the political-legal jurisdiction of *Dar al-Harb*.

Based on this two-state paradigm, most Muslim and non-Muslim countries in the world today (East and West) are viewed as *Dar*

¹²⁸ Ibn Hazm, *al-Muhallah bi al-Athar*, vol.5, p.419 cited in Fallah Zardumi, *Fiqh al-Siyasah al-Shar'iyah li al-Aqalliyat al-Muslimah*, 1426AH, p.154.

¹²⁹ Jasser Auda, *What is the Land of Islam?*, www.jasserauda.net, n.d., p.8.

al-Harb (enemy states). Consequently, the scholars of this persuasion regard it as prohibited for Muslims to reside in the West or anywhere other than in Muslim lands where Islamic law (of varying degrees) is recognised. Hijrah from non-Muslim lands – irrespective of the degree of security, justice and freedom from religious persecution – is regarded as an obligation for those with the means and opportunity.

This binary perspective was probably the most politically pragmatic and realistic for the international relations in its context. It was the equal and opposite of the Christendom binary approach. A challenge today is that some regard this categorisation as a divine prescription of the Shari'ah based on the Qur'an and Sunnah, and not as a juristic opinion in response to its historical and changing context, which may not be universal for all Muslims and times. Some who hold this view today, do not recognise the existence of peace treaties (such as those of the UN, AU, EU, etc.) as changing the context of this dichotomy. While recognising the legitimacy and even desirability of peace treaties for the purpose of peace and security in international relations, these do not change the fact that non-Muslim lands are *Dar al-Kufr* and therefore *Dar al-Harb*, and hence prohibited for Muslim residence. *Hijrah* is therefore still seen as an obligation on such Muslim minorities within these places.

For some of these jurists, the justifications for this binary paradigm of the world comes mainly from the historical realities on the ground and the lived experiences of many of the scholars who held this perspective.¹³⁰ Residing in such enemy states was regarded by some as supporting the economy of an enemy state (*Dar al-Harb*) that is hostile to or instead of that of *Dar al-Islam*.¹³¹ It was also seen by some as liking and preferring the culture and morals of the Other over that of Islam and Muslims.¹³²

Some lend support for this binary paradigm with evidence from the early period of Islam, when most nations outside the city-state of Medina were viewed as a threat and enemy. Most relationships were those of either friend or foe.¹³³ The unwritten policy in international relations for most of the world at the time, and for most of human history was “conquer or be conquered”;

¹³⁰ Amjad M. Mohammed, *Muslims in Non-Muslim Lands: A Legal Study with Applications*, Islamic Texts Society, Cambridge, UK, 2013; Khaled Abou El Fadl, “Islamic Law and Muslim Minorities: The Juristic Discourse on Muslim Minorities From the Second/Eighth to the Eleventh/Seventeenth Century, *Islamic Law and Society* 1,2, E.J. Brill, Leiden, 1994, pp.141-142.

¹³¹ Khaled Abou El Fadl, “Islamic Law and Muslim Minorities: The Juristic Discourse on Muslim Minorities From the Second/Eighth to the Eleventh/Seventeenth Century, *Islamic Law and Society* 1,2, E.J. Brill, Leiden, 1994, p.157.

¹³² Khaled Abou El Fadl, “Islamic Law and Muslim Minorities: The Juristic Discourse on Muslim Minorities From the Second/Eighth to the Eleventh/Seventeenth Century, *Islamic Law and Society* 1,2, E.J. Brill, Leiden, 1994, p.155.

¹³³ Amjad M. Mohammed, *Muslims in Non-Muslim Lands: A Legal Study with Applications*, Islamic Texts Society, Cambridge, UK, 2013; Khaled Abou El Fadl, “Islamic Law and Muslim Minorities: The Juristic Discourse on Muslim Minorities From the Second/Eighth to the Eleventh/Seventeenth Century, *Islamic Law and Society* 1,2, E.J. Brill, Leiden, 1994, p.163.

“colonise or be colonised”.¹³⁴ The dichotomy of territories and lands into two - those of Islam and peace (*Dar al-Islam*) as opposed to Disbelief and War (*Dar al-Kufr/Harb*) was also a reflection of the historical context and geopolitical realities of the relevant jurists.¹³⁵

In addition, some present texts in support of this paradigm are also cited from the period before the conquest or occupation of Mecca, when the Prophet (p) initially encouraged the early Muslims and communities who embraced Islam before the conquest of Mecca to migrate and unite in and around Medina against hostile neighbours, and especially Meccan Quraish and their allies. Support for this perspective therefore comes from Hadith where the Prophet (p) made it clear that he would not be responsible for protection of those Muslims who chose to reside outside his political-legal jurisdiction and among hostile others.¹³⁶ Some scholars also justified the prohibition of residing in or moving to non-Muslim lands with the prophetic Hadith cited earlier which says: *“I dissociate myself from all Muslims living in the midst of polytheists....”*.¹³⁷ As discussed earlier in this material under “Commonly Misinterpreted Texts Related To Hijrah”, this statement of the Prophet (p) was actually in response to a very

¹³⁴ Jeffrey Lang, *Struggling to Surrender: Some Impressions of an American Convert to Islam*, Amana Publications, USA, 1994, p. 190.

¹³⁵ Amjad M. Mohammed, *Muslims in Non-Muslim Lands: A Legal Study with Applications*, Islamic Texts Society, Cambridge, UK, 2013, p.137.

¹³⁶ See earlier discussion under “Commonly misinterpreted Hadith related to Hijrah and Residence”

¹³⁷ Sunan Abu Dawud, hadith no. 2274; *Sunan al-Tirmidhi*, hadith no. 1530.

specific situation where some converts to Islam who lived in the midst of a group of polytheists that were hostile to Medina, were unknowingly killed in the battle that ensued. The Prophet (p) was making it clear that he was dissociating himself from the responsibility of the payment of the blood money (*diyya*) in such cases of accidental killing or manslaughter, where the Muslims lived in the midst of hostile non-Muslims.¹³⁸ The historical context and occasion (*Sabab al-wurud*) of this hadith, makes it clear that this statement had nothing to do with the prohibition of Muslims migrating to or living in the midst of non-hostile people of other faith which was done by the Prophet (p) himself, and by his companions.

Some have also tried to justify this paradigm from the texts of the Qur'an and Hadith by claiming that verses prescribing peaceful coexistence and treaties with non-hostile others (discussed in Qur'an 60:8, etc.) have been abrogated by the "Verse of the Sword" (Qur'an 9:5). Some scholars have interpreted this verse to imply that there are to be no more peace treaties with people of other faiths – especially polytheists.¹³⁹ Some others consider Qur'an 9:5 is giving the last word on international relations with polytheists, while Qur'an 9:28 as giving the last word on

¹³⁸ Muhammad Shams al-Haq al-Azim al-Abadiy, *ʿAwn al-Maʿbud: Sharh Sunan Abu Dawud*, Dar Al-Kotob Al-Ilmiyyah, Beirut, 1415, vol. 7 p. 218, no. 2645.

¹³⁹ Ibn Kathir, *Tafsir al-Quran al-ʿzim*, Dar Tayyibah li al-Nashr wa al-Tawzi, 2nd edition, 1999, vol.4 pp112-114; Abu Abdulillah al-Qurtubi, *al-Jami' li ahkam al-Quran*, Dar al-Kutub al-Misriyyah, Cairo, 2nd edition, 1964, vol.8, p.73; cited Auda, *what is the land of Islam?*, p.18.

international relations with People of the Book – Jews and Christians.¹⁴⁰

For these scholars therefore, it is prohibited for Muslims who have the means, and are not driven by necessity, to live outside *Dar al-Islam*. All those who embrace Islam in non-Muslim lands are obligated to migrate (*Hijrah*) from all parts of the world to *Dar al-Islam*, which is understood to be where Islamic law governs the land.¹⁴¹ And if for any legitimate reason, they are unable to migrate, they should as much as possible socially isolate themselves from their host communities so as to prevent assimilation into the religion, norms and morals of *Dar al-Kufri/Harb*.¹⁴² Experience from various contexts has shown that this was a real fear for not only, but especially oppressed Muslim minorities in different parts of the world.¹⁴³ Temporary visits by

¹⁴⁰ Ahmed Al-Dawoody, *The Islamic Law of War: Justifications and Regulations*, Palgrave Macmillan, New York, 2011, p.64.

¹⁴¹ See Shaykh Muhammad Naasiruddeen al-Albaanee, *The Obligation of Hijrah from the Lands of Shirk and Kufir*, SalafiManhaj, 2004; Shaykh Abdur Rahmaan al-Adanee, *Questions and answers concerning al-Hijrah: Emigrating to the land of Islam*, masjiduthaymeen.org, 2005.

¹⁴² Amjad M. Mohammed, *Muslims in Non-Muslim Lands: A Legal Study with Applications*, Islamic Texts Society, Cambridge, UK, 2013; Khaled Abou El Fadl, "Islamic Law and Muslim Minorities: The Juristic Discourse on Muslim Minorities from the Second/Eighth to the Eleventh/Seventeenth Century, *Islamic Law and Society* 1,2, E.J. Brill, Leiden, 1994, p.163.

¹⁴³ Khaled Abou El Fadl, "Islamic Law and Muslim Minorities: The Juristic Discourse on Muslim Minorities from the Second/Eighth to the Eleventh/Seventeenth Century, *Islamic Law and Society* 1,2, E.J. Brill, Leiden, 1994, p.156.

traders, emissaries, scholars and preachers were permitted if safe, but permanent residence was regarded as impermissible.¹⁴⁴

Yusuf al-Qaradawi commented on Ibn Qudama's explanation¹⁴⁵ of the need for Muslims to migrate from non-Muslim lands to *Dar al-Islam*. He says that this is on the assumption that the person who is encouraged to migrate does not have the role of teaching or preaching Islam to non-Muslims. As for a person who plays those roles, his stay in the land of non-Muslims will be better as that would be regarded as a form of Jihad.¹⁴⁶

It should however be noted, that the designation of a place by these jurists as *Dar al-Harb* does not in any way imply that they condoned extrajudicial acts of violence against *Dar al-Harb* without clear permission from the caliph of *Dar al-Islam*, or Muslim head of state. All texts of the Qur'an and Hadith that are related to legal punishments or warfare are applied only through the proper legal authorities of the state, and never through personal discretion, which would be as a criminal act. Declaring a place as *Dar al-Harb* was not a permission for anyone to commence hostilities against others. It was simply a theoretical juristic categorization among other categorisations proposed by

¹⁴⁴ Khaled Abou El Fadl, "Islamic Law and Muslim Minorities: The Juristic Discourse on Muslim Minorities from the Second/Eighth to the Eleventh/Seventeenth Century, *Islamic Law and Society* 1,2, E.J. Brill, Leiden, 1994 pp.147-150.

¹⁴⁵ Ibn Qudamah, *al-Mughni*, Dar al-Fikr, Beirut, 1405 AH. vol.10, p.505.

¹⁴⁶ Ibid. Yusuf al-Qaradawi, *Fiqh al-Jihad*, Maktabah Wahbah, Cairo, 2009, vol.2, p. 952.

the reasoning (Ijtihad) of other jurists. It is only the head of state that can decide to make it law, and to act upon it.¹⁴⁷

For most of these jurists, even when war was regarded as justified against enemy combatants, it was to be managed by the state authorities of Dar al Islam and not anyone else among the Muslim citizens.

The Traditional Tripartite or Three- State Paradigm

Some Muslim jurists of the past and present have based on their juristic reasoning (*Ijtihad*) in response to their contexts, classified the world into three major domains or lands based primarily on the criteria of the safety from religious persecution and security for Muslims which was usually indicated by the existence of peace treaties. These three states are:

1. *Dar al-Islam* (Land of Islam)
2. *Dar al-Harb* (Land of War, or enemy territory), and
3. *Dar al-Sulh*/ *Dar al-‘Ahd* (Land of Treaty, or Peace-treaty State). *Dar al-Sulh* was also referred to by some scholars as *Dar al-‘Ahd* or *Dar al-Muwada’a*.¹⁴⁸

¹⁴⁷ Qur’an 4:89 and 8:72, were used as evidence for the obligation of Hijra before migration. See Abu Hayyan, *Tafsir al-Bahr al-Muhit*, vol. 4, p. 219, al-Maktabah al-Shamilah, 3.35; ‘Muhammad Rashid Rida, *Tafsir al-Manar*, vol. 6, p. 354, al-haiha al-Misriyyah, 1990.

¹⁴⁸ Amjad M. Mohammed, *Muslims in Non-Muslim Lands: A Legal Study with Applications*, Islamic Texts Society, Cambridge, UK, 2013, p.141.

Imam al-Shaff'i is credited as introducing the term "*Dar al-Ahd*" ("Abode of Treaty") to juridical discussion, referring to nations that were not politically Islamic, but which held political alliances or were at peace with one or more Muslim states.¹⁴⁹

The Qur'an and Sunnah are clear on the need for Muslims to support peace treaties (*Sulh*) with even former enemies, and the obligation to respect such treaties.

- *"And if they (your enemy) incline to peace, incline you also to it, and trust in Allah". (Qur'an 8:61)*
- *"...but if they cease, let there be no hostility except to those who practice oppression". (Qur'an 2:193)*
- *"(Fight them) except those who join a people between whom and you there is a treaty, or those who come to you because their hearts restrain them from fighting you or their own people..." (Qur'an 4:90).*

Here, the Qur'an is also prohibiting Muslims from fighting those non-Muslim nations or communities that are protected by other non-Muslim nations who have peace treaties with Muslims. The rest of the verse reads:

"... If Allah had willed, He would have given the unbelievers power over you, and they would have fought you. Therefore, if they withdraw from you and fight you not, and instead send you

¹⁴⁹ Ibn Abu Ya'la, *Tabaqat al-Hanabilah*, vol.2, p. 193. Cited in Ismail Lutfi Fattani, *Ikhtilaf al-Darain wa Atharulu fi al-Kam al-Munkahat wa al-Mu'amalat*, p.43.

guarantees of peace, know that Allah has not given you a license (to fight them).” (Qur’an 4:90)

- *“If one amongst the (combatant) polytheists asks you for asylum grant it to him so that he may hear the word of Allah and then escort him to where he can be secure, ...” (Qur’an 9:6)*
- *“...As long as they stand true to you, stand you true to them: For Allah does love the righteous”. (Qur’an 9:7)*

Based on these and other clear texts of the Qur’an and Hadith, some scholars regard any classification of lands that does not clearly provide for *Dar al-Sulh/‘Ahd* - lands with peace treaties and alliances with Muslims – as incomplete or over-simplistic.

It has been noted by some that those schools of law such as the Hanafi and Shafi’i which spread further into the eastern parts of the Muslim world (towards Turkey, India and Indonesia) interacted more significantly with Byzantine or Orthodox Christians and various non-Christian communities such as Zoroastrians, Hindus, Buddhists and many others.¹⁵⁰ These appear to have had more diverse religious contexts and experiences than those who faced Christendom in the West, and probably resulted in their more nuanced approaches to

¹⁵⁰ Amjad M. Mohammed, *Muslims in Non-Muslim Lands: A Legal Study with Applications*, Islamic Texts Society, Cambridge, UK, 2013, pp. 145-148.

international relations and a greater accommodation of Muslim residence in non-Muslim lands.¹⁵¹

From the perspective of this paradigm, *Dar al-Islam* was the land of Islam dominated by Muslims and Islamic law. *Dar al-Sulh* was a land of non-Muslims where their laws dominated, but who had peace treaties and alliances directly or indirectly with *Dar al-Islam*. *Dar al-Sulh* was a term used to refer to a land that was *Dar al-Kufr* (Land of Disbelief) or *Dar al-Shirk* (Polytheist State) in its religious identity, but which was at peace with Muslims, and therefore not an enemy state or *Dar al-Harb* (Land of War).

So, for example, Medina after the migration (*Hijrah*) there by the Prophet (p) was *Dar al-Islam*. Abyssinia and Mecca during the period of the Treaty of Hudaibiyya were both *Dar al-Sulh/ 'Abd* or *Dar al-Muwada'a*. Mecca was a *Dar al-Harb* or enemy state before the Treaty of Hudaibiyya and after they broke that treaty. It later became a *Dar al-Islam* after its threat was neutralised with the conquest or occupation of Mecca.

Some of those who hold this three-state paradigm therefore agree that the world can theoretically be classified into 2 domains based on the criteria of the religion of those who

¹⁵¹ Amjad M. Mohammed, *Muslims in Non-Muslim Lands: A Legal Study with Applications*, Islamic Texts Society, Cambridge, UK, 2013, pp. 141 – 142.

dominate the land – *Dar al-Islam* (Land of Islam) and *Dar al-Kufr/Shirk* (Land of Disbelief/ Polytheism). However, they subdivide *Dar al-Kufr/Shirk* into 2 further domains – *Dar al-Sulh* and *Dar al-Harb*. *Dar al-Sulh* (Land of Treaty) are non-Muslim lands where Muslims can reside without fear of persecution on account of their faith, while *Dar al-Harb* (Land of War) are hostile or enemy states where Muslims are not safe, and do not have the freedom to practise their faith.¹⁵²

Muslims residing in safe non-Muslim countries – similar to those Muslims residing in Mecca during the period of the Treaty of Hudaibiyyah, etc. – are expected to recognise the leadership of the territory they have chosen to reside in. Muslims living in *Dar al-Islam* are also expected to respect and recognise the autonomy, leadership, and sovereignty of the *Dar al-Sulh* country they have entered into treaties with. It is for this reason, that even though most of the Companions of the Prophet (p) were opposed to the unfair and humiliating conditions of the Treaty of Hudaibiyyah which the Prophet (p) had agreed to, all Muslims of Medina and Mecca were required to respect and honour the signed treaty, and those Muslims in Mecca were expected to recognise the leadership of Mecca as their political leaders under whose political-legal jurisdiction they resided in.

¹⁵² Amjad M. Mohammed, *Muslims in Non-Muslim Lands: A Legal Study with Applications*, Islamic Texts Society, Cambridge, UK, 2013, pp. 142 – 143.

Regarding this non-interference in the domestic affairs of other nations, and the recognition of the legal autonomy and political sovereignty of states with whom Muslims have a treaty, Allah says in the Qur'an, *"Those who believed, emigrated, and strived with their wealth and lives in the cause of Allah, as well as those who gave them shelter and help—they are truly guardians of one another. As for those who believed but did not emigrate, you have no obligations to them until they emigrate. But if they seek your help (against persecution) in faith, it is your obligation to help them, except against people bound with you in a treaty. Allah is All-Seeing of what you do."* (Qur'an 8:72)

Regarding Muslim residence in non-Muslim land, those who hold this paradigm are of the opinion that Muslims are permitted to live in any non-Muslim country anywhere in the world which has peace treaties with *Dar al-Islam* or Muslim nations, and for as long as these treaties are in place. Today, nearly every nation has direct or indirect treaties with Muslims through the United Nations (UN) or other regional treaties and international alliances.¹⁵³ The countries that have treaties with Muslim nations therefore include nearly all countries on all continents in the modern world. Some distinguished contemporary jurists regard all countries and member states of these treaties in the world today as *Dar al-*

¹⁵³ Examples include the Commonwealth, Organization of Islamic Cooperation, International peace/security treaties.

Sulh or *Dar al-‘Ahd* (Lands with Treaties) and not *Dar al-Harb*.¹⁵⁴

In the opinion of a distinguished contemporary jurist, Abdul Wahab al-Khallaf (d.1956), *Dar al-Harb* is a territory where Muslims, the propagation of their faith, or those who propagate it are attacked. He also acknowledges the existence of a territory of non-Muslim people, who do not attack Muslims and do not prevent the peaceful propagation of Islam. It is, in his opinion forbidden to fight against such a people because, according to him, there is a current principle of peaceful coexistence, and there is no justification to deviate from that status quo.¹⁵⁵

Another distinguished contemporary jurist, Yusuf al-Qaradawi (d. 2022), disagrees with the respected contemporary jurist, Wahba al-Zuhayli who claims that the juristic division of the world has no direct basis in the Qur’an

¹⁵⁴ Zuhayli, Al-Qaradawi, Abu Zahra – Cited in Moussa, Moussa Abou Ramadan, “Muslim Jurists’ Criteria for the Division of the World into Dar al-Harb and Dar al-Islam”, in *International Law and Religion: Historical and Contemporary Perspectives*, ed. Martti et. al, Oxford University Press, United Kingdom, 2017, p. 231.

¹⁵⁵ Abdul Wahab Khalaf, *al-Siyasa al-Shar‘iyyah wa Nizam al-Dawla al-Islamiya*, Al-Matba’a al-Salafiya wa Maktabatuhu, Cairo, 1931, p.72-75. Cited in Moussa Abou Ramadan, “Muslim Jurists’ Criteria for the Division of the World into Dar al-Harb and Dar al-Islam”, in *International Law and Religion: Historical and Contemporary Perspectives*, ed. Martti et. al, Oxford University Press, United Kingdom, 2017, p.231

or Sunnah and is purely a product of juristic reasoning (Ijtihad)¹⁵⁶ in response to historical contexts.¹⁵⁷

Al-Qaradawi regards *Dar al-Islam* as a single territory where the majority of inhabitants recognise the oneness of Allah, and that Muhammad is His Prophet and Messenger, even if some of them do not formally operate an Islamic governance system nor establish Islamic law, as is the case with the ex-Soviet Muslim states in Asia, such as Azerbaijan, Uzbekistan, Tajikistan, etc.¹⁵⁸ He therefore classifies Egypt and Turkey as part of *Dar al-Islam*.¹⁵⁹ As for the rest of the world, al-

¹⁵⁶ *Ijtihad* by its very nature depends on presumptive (*zanmi*) evidence. Its basis in Shari'ah sources are either presumptive texts – i.e., texts from the Qur'an or Hadith with no definitive meanings or agreed implications (*zanmi al-dilalah*) – or the many secondary sources of Shari'ah such as juristic consensus (*Ijma'*), reasoning by analogy (*Qiyas*), public interest (*Maslahah*), customary practice (*al-'Urf*), juristic discretion (*Istisnas*), legal presumption (*Istishab*), etc. depending on the school of law (Madhhab). For a more thorough analysis of the arguments used by Zuhayli to justify his conclusion, see Wahba al-Zuhayli, *Athar al-Harb fi al-Fiqh al-Islami: Dirasa Muqarina*, 3rd ed., Dar al-Fikr, Beirut, 1998, pp. 192 - 196.

¹⁵⁷ Al-Qaradawi for example cites texts such Qur'an 4:92 that mentions "hostile people" as evidence in support of the traditional division into two. Others regard this a descriptive of a historical reality, and not a prescription or recommendation. Earlier jurists did not cite this verse in support of their divisions. The interpretation of this and similar texts or the Qur'an and hadith to support a particular political division of the whole world is itself evidence of the effort of independent juristic reasoning (*Ijtihad*), which has naturally created a diversity of legitimate opinions among jurists of various historical contexts. See Moussa Abou Ramadan, "*Muslim Jurists' Criteria for the Division of the World into Dar al-Harb and Dar al-Islam*", in *International Law and Religion: Historical and Contemporary Perspectives*, ed. Martti et. al, Oxford University Press, United Kingdom, 2017, p.234.

¹⁵⁸ Yusuf Al-Qaradawi, *Fiqh al-Jihad: Dirasa Muqarina li-Ahkamihi wa Falasafatihi fi Du'al Qur'an wa al-Sunna*, Maktabat Wahbe, Cairo, 2009, p.890.

¹⁵⁹ Yusuf Al-Qaradawi, *Fiqh al-Jihad: Dirasa Muqarina li-Ahkamihi wa Falasafatihi fi Du'al Qur'an wa al-Sunna*, Maktabat Wahbe, Cairo, 2009, pp.879-910. Cited in Moussa Abou

Qaradawi regards them as territory of treaties (*Dar al-‘Ahd*)¹⁶⁰ and is ready to abandon the terms “*Dar al-Harb*” and “*Dhimmi*” when they are irrelevant to the realities of nation-states today.¹⁶¹ He stresses that Muslims are obliged to honour their commitments to treaties such as those of the UN.

In conclusion, those jurists and schools of law that hold this tripartite or 3-state perspective or paradigm, regard it permissible for Muslims to reside in safe non-Muslim lands that have alliances and treaties with Muslim nations. This implies the permissibility of Muslims today to live anywhere in the modern world where they can live in adequate peace, and practise or propagate Islam.

Other Independent Paradigms for Domains or States

This third category is a collection of those numerous juristic positions that have nuanced interpretations of territories that significantly differ from the categorization of the majority. The uniqueness of the opinions of these jurists makes it difficult (and unfair) to categorise them under any of the earlier two (binary

Ramadan, “*Muslim Jurists’ Criteria for the Division of the World into Dar al-Harb and Dar al-Islam*”, in *International Law and Religion: Historical and Contemporary Perspectives*, ed. Martti et. al, Oxford University Press, United Kingdom, 2017, p.234.

¹⁶⁰ This is with the exception of the State of Israel. Though he accepts the observance of treaties signed between Israel and Muslim states. (Yusuf Al-Qaradawi, *Fiqh al-Jihad*, p.907).

¹⁶¹ Yusuf Al-Qaradawi, *Fiqh al-Jihad: Dirasa Muqarina li-Abkamih wa Falasafatih fi Du’al Qur’an wa al-Sunna*, Maktabat Wahbe, Cairo, 2009, p. 909.

and tripartite) paradigms discussed. The perspectives presented in this category come from all the major schools of law and demonstrate not just the internal diversity of views within each school (*madhhab*), but also the dynamic and intellectual independence of jurists in their approaches and reasoning (*Ijtihad*). It often also demonstrates their acute perceptivity and sensitivity to their diverse political realities, and their interest in realising the higher intents and objectives (*Maqasid*) of Shari'ah as related to Muslim residence, migration (*Hijrah*), international relations, and the Islamic law of war and peace. While some of these jurists seem to agree with some of the earlier classifications, they would differ significantly in their definitions of similar terms.

The Shafi'i Hadith scholar, Ibn Hajar al-Asqalani for example cites the view of another prominent Shafi'i jurist and political theorist, Imam al-Mawardi, who was of the opinion that if a Muslim is able to practice Islam openly in a non-Muslim land, then that land becomes *Dar al-Islam* (the Abode of Islam) by virtue of his settling there, and living there is preferable to moving away from it as other people may be attracted to Islam merely by their interaction with him.¹⁶² According to al-Mawardi, "The public acts of worship (*sha`a'ir*) of Islam such as group prayers in mosques and call for prayers are the criteria by which

¹⁶² Ibn Hajar al-Asqalani, *Fath al-Bari*, Dar al-Fikr, Beirut, vol.7, p.230. See also, Al-Nawawi, *Al-Majmu'*, vol.49, p.264.

the Prophet (pbuh) differentiated between the Land of Islam and the Land of Disbelief.”¹⁶³

Fakhr al-Din al-Razi, another Shafi’i jurist writes that "If the Islamic acts of worship are evident in streets and public places, this certainly entails that Islam is dominant.”¹⁶⁴

A distinguished Hanbali jurist, Ibn Taymiyyah equally wrote that, “The public acts of worship (*sha`a’ir*) of Islam are the true signs that a certain land is a Land of Islam.”¹⁶⁵ In a *fatwa* given by Ibn Taymiyyah regarding a unique context (at the time), he described the territory of Mardin (a city in today’s Turkey) in which Muslims lived as minorities, but which was neither *Dar al-Islam* where Islamic law is applied, although its soldiers are Muslims, nor is it *Dar al-Harb*, but “something in-between” - *Dar al-Murakkabah* (or “composite territory”).¹⁶⁶

Imam Abu Hanifa states: “The purpose (*maqsud*) of calling a certain land a ‘Land of Islam’ or a ‘Land of Disbelief (*kufir*)’ is not Islam versus *kufir*. It is security versus insecurity.”¹⁶⁷

¹⁶³ Al-Mawardi, *Al-Ahkam al-Sultaniyah*, vol.1, p.275. Auda, *What is the Land of Islam?*, www.jasserauda.net, n.d., p. 13.

¹⁶⁴ Al-Razi, *Al-Mabsul fi ‘Ilm Usul al-Fiqh*, vol.4, p.43. Cited in Auda, *What is the Land of Islam?*, www.jasserauda.net, n.d., p. 13.

¹⁶⁵ Ibn Taymiyyah, *Al-Nubuwat*, vol.1, p.197.

¹⁶⁶ Ibn Taymiyyah, *Al-Majmu’ al-Fatawa*, Dar al-Wafa, 2005, vol.28, p.240-241.

¹⁶⁷ Al-Kasani, *Bada’i’ al-Sana’i’ fi Tartib al-Shara’i*, Al-Maktabah Al-Shamela 3.35, vol.15, pp. 406 – 407.

According to the Hanafi jurist, Al-Kasani, the classification of *Dar al-Islam* or *Dar al-Kufr* is not a function of Islam or *Kufr* as such. For him, *Dar al-Islam* means absolute safety for Muslims and absolute fear for disbelievers, while *Dar al-Kufr* implies absolute safety for disbelievers and absolute fear for Muslims. What seems to have been more important for al-Kasani was safety and fear.¹⁶⁸

According to one of the last great Hanafi jurists, Ibn ‘Abidin (d.1252), if Islamic law is enforced in a territory as well as the law of polytheists (*Ahl al-Shirk*), then that territory is not *Dar al-Harb*.¹⁶⁹

The Andalusian Maliki jurist, Ibn Abd al-Barr (d.463 AH) regarded the call for prayer (*adhan*) as a criterion for distinguishing between *Dar al-Islam* and *Dar al Harb*.¹⁷⁰ This is

¹⁶⁸ Al-Kasani, *Bada’i al-Sana’i fi Tartib al-Shara’i*, Dar al-Kutub al-‘Ilmiyya, Beirut, 2003, vol.9, pp.518-520.

¹⁶⁹ Ibn ‘Abidin, *Radd al-Muhtar ‘ala al-Durr al-Mukhtar Sharh Tanwir al-Absar*, Dar al-‘Alim al-Kitab, Al-Riyad, 2003, p.288. Cited in Moussa Abou Ramadan, “Muslim Jurists’ Criteria for the Division of the World into *Dar al-Harb* and *Dar al-Islam*”, in *International Law and Religion: Historical and Contemporary Perspectives*, ed. Martti et. al, Oxford University Press, United Kingdom, 2017, p.224.

¹⁷⁰ Ibn Abd al-Barr, *Al-Istidhkar*, Dar al-Wa’, Cairo, 1993, p.18. Cited in Moussa Abou Ramadan, “Muslim Jurists’ Criteria for the Division of the World into *Dar al-Harb* and *Dar al-Islam*”, in *International Law and Religion: Historical and Contemporary Perspectives*, ed. Martti et. al, Oxford University Press, United Kingdom, 2017, ...p.225

also reported to be the opinion of the Maliki jurist, Qadi 'Iyad that was mentioned by al-Mawwaq al-Maliki.¹⁷¹

According to another Maliki, Imam al-Qarafi (d.684 AH), the Maliki jurist, Imam al-Mazari (d.536 AH) says that the call to prayer has two implications. Firstly, it is ceremonial and announces that the territory in which it is called is *Dar al-Islam*, and that the prayer is a collective obligation, which means that if a part of the community does fulfil the obligation, the others are exempt, but if the population does not fulfil this obligation, then it will be fought. The second implication of the call for prayer, is that it tells the time.¹⁷² While discussing the benefits of the call to prayer (*adhan*), the Maliki jurist, Al-Nafrawi mentions that it tells the time for prayer and announces that this is *Dar al-Islam*.¹⁷³

¹⁷¹ Al-Mawwaq, *Al-Taj wa al-Iklil li Mukhtasar Khalil*, Dar al--Kutub al-'Ilmiyya, Beirut, 1994, p.110. cited in Moussa Abou Ramadan, "Muslim Jurists' Criteria for the Division of the World into Dar al-Harb and Dar al-Islam", in *International Law and Religion: Historical and Contemporary Perspectives*, ed. Martti et. al, Oxford University Press, United Kingdom, 2017, p.225.

¹⁷² Al-Qarafi, *Al-Dhakhira*, Dar al-Garb al-Islami, Beirut, 1994, vol.2, p.58. cited in Moussa Abou Ramadan, "Muslim Jurists' Criteria for the Division of the World into Dar al-Harb and Dar al-Islam", in *International Law and Religion: Historical and Contemporary Perspectives*, ed. Martti et. al, Oxford University Press, United Kingdom, 2017, p.225

¹⁷³ Al-Nafrawi, *Al-Fawakih al-Dawani 'ala Risalah al-Qayrawan*, Dar al--Kutub al-'Ilmiyya, Beirut, 1997, vol.1, p.265. Cited in Moussa Abou Ramadan, "Muslim Jurists' Criteria for the Division of the World into Dar al-Harb and Dar al-Islam", in *International Law and Religion: Historical and Contemporary Perspectives*, ed. Martti et. al, Oxford University Press, United Kingdom, 2017, p.225.

According to another Maliki jurist, Al-Dasuqi (d.1230 AH), *Dar al-Islam* does not turn into *Dar al-Harb* simply by conquest, but only when there are no Muslim ceremonies anymore. For him, as long as the Muslim ceremonies and festivities are held, or at least some of them, then the territory does not become *Dar al-Harb*. The same opinion is held by Imam al-Sawi.¹⁷⁴

Some Maliki jurists such as Al-Khurashi (d. 1090 AH) defines *Dar al-Harb* as a place where the army of the enemy is camped, and there is no safety for Muslims there, even if it is within the political-legal jurisdiction of *Dar al-Islam*.¹⁷⁵ This also the position of Salih al-Azhari (d. 1335 AH).¹⁷⁶

The distinguished contemporary Syrian jurist, Wahba al-Zuhayli, holds an opinion similar to that of Imam Shafi'i which is that the world is one entity. To him, the division into *Dar al-Harb* and *Dar al-Islam* is not relevant if there is no war. He says, "(contemporary) international law is in accordance with the Islamic Shari'ah in holding that the world is one and that war is a transient phenomenon that exists due to animosity between two

¹⁷⁴ Al-Sawi, *Bulghat al-Salik li Aqrab al-Masalik*, Dar al--Kutub al-'Ilmiyya, Beirut, n.d., vol.2, p.187.

¹⁷⁵ Al-Khurashi, *Sharh al-Khurashi*, Al-Matba'a al-Kubra al-Amiriyah, Bulaq, 1899/1900, p. 62.

¹⁷⁶ Salih al-Azhari, *Al-Thamar al-Dani*, (n.p., n. pub., n.d.), p.190. Cited in Moussa Abou Ramadan, "Muslim Jurists' Criteria for the Division of the World into Dar al-Harb and Dar al-Islam", in *International Law and Religion: Historical and Contemporary Perspectives*, ed. Martti et. al, Oxford University Press, United Kingdom, 2017, p.226.

states, and that this situation will disappear with the disappearance of war”.¹⁷⁷

According to another distinguished contemporary Egyptian jurist, Muhammad Abu Zahra (d. 1974), the world today is organised through the United Nations. The member states which include Muslim states, are obliged and committed to the UN regulations and statues. He says the Qur'an makes it obligatory to meet one's commitments. Thus, the entire world has turned into *Dar al-'Ahd*, and there is, in reality, no longer a division into *Dar al-Harb* and *Dar al-Islam*.¹⁷⁸

Discussion on the Various Domains

El-Fadl and others suggest that the positions of the different schools and scholars should be viewed as historical responses to historical challenges. Islamic legal solutions imply ethical choices and responsibility. While the rulings and decisions of pre-modern Muslim jurists will not necessarily resolve the various dilemmas facing modern Muslim minorities, they do however, provide

¹⁷⁷ Wahba al-Zuhayli, *Athbar al-Harb fi al-Fiqh al-Islami: Dirasa Muqarina*, 3rd edn., Dar al--Fikr, Beirut, 1998, p.196. Cited in Moussa Abou Ramadan, "Muslim Jurists' Criteria for the Division of the World into Dar al---Harb and Dar al---Islam", in *International Law and Religion: Historical and Contemporary Perspectives*, ed. Martti et. al, Oxford University Press, United Kingdom, 2017, p.233.

¹⁷⁸ Muhammad Abu Zahra, *Al-Tlaqat al-Duwaliya fi al-Islam*, Dar al--Fikr al-'Arabi, Nasr City, 1995, p.56-60. Cited in Moussa Abou Ramadan, "Muslim Jurists' Criteria for the Division of the World into Dar al---Harb and Dar al---Islam", in *International Law and Religion: Historical and Contemporary Perspectives*, ed. Martti et. al, Oxford University Press, United Kingdom, 2017,p.232

examples of pragmatic and ethical choices made by earlier jurists in response to particular historical challenges.¹⁷⁹

The dichotomous or binary paradigm (of *Dar al-Islam* vs. *Dar al-Harb*) discussed earlier becomes potentially dangerous for all Muslims once it is taken literally as dogma or divine teachings of Islam, and beyond the theoretical discussions of jurists exercising their reasoning (*Ijtihad*) in their own diverse contexts. It is the most abused and misused of the 3 paradigms. It is the one most often used by Muslim extremists to justify the excommunication (*takfir*) of fellow Muslims and Muslim states that do not implement Islamic law to their satisfaction. They regard these Muslims as living in *Dar al-Harb*, and consequently try to justify migrating away from, and fighting them in the name of Jihad.

This understanding and justification of war against others, purely because a community is not Muslim and thus designated as “*Dar al-Harb*”, implies fighting a community simply because they profess another religion, and not because they have fought or been hostile towards Muslims. This is an erroneous and deviant understanding of Jihad and international relation of the Prophet Muhammad (p), that is not supported by any evidence from the Qur’an and Sunnah, and from the practices of the Rightly Guided Companions of the Prophet (p). In fact, the attempt to justify fighting peaceful non-Muslim nations simply due to

¹⁷⁹ Khaled Abou El Fadl, *Islamic law and Muslim minorities*, p.187.

difference in religion (and not due to unacceptable hostility or aggression), is a clear violation of numerous explicitly clear texts of the Qur'an and Sunnah as understood and implemented in the lives of the Prophet (p) and his companions. This opinion has been effectively refuted by numerous classical and contemporary jurists including Ibn Taymiyyah and many others.¹⁸⁰

As reiterated throughout this discussion, all the political-legal classifications of domains, lands, territories or countries (into *Dar al-Islam*, *Dar al-Sulh*, *Dar al-Kufr*, etc.) and the various preferred criteria and definitions adopted by particular schools of law or scholars are based primarily on independent juristic reasoning (*Ijtihad*) in response to their own geo-political contexts.

The inconsistency among scholars with diverse criteria and categorization of lands is therefore only evidence of the dynamism of their juristic reasoning (*ijtihad*) and independent juristic assessment of their contexts and realities. Scholars clearly differed in their decisions regarding how to define and classify lands and international relations based on their multiple priorities, interests, and concerns. Sometimes the same scholar would have more than one opinion based on his own learning,

¹⁸⁰ Ibn Taymiyyah in *Risalah al-Qitaal* (p.123-125); Qaradawi in *Fiqh al-Jihad*; Ibn Taymiyyah in *al-Siyasat al-Shar'iyyah* (p. 123); Ramadan al-Buti in *Jihad in Islam: how to understand and practice it*; Ahmed al-Dawoody in *Islamic Law of War: Justification and regulation*; Wahba al-Zuhayli in *Athar al-Harb fi Fiqh al-Islami*; Zakariyyah al-Bardisi, *al-Iqraa baina al-Shari'ah wa al-Qanun* (415); Da'wah Institute in *The Use, Misuse and Abuse of Jihad*; Khaduri, *al-Harb wa al-Silam fi al-Sharia'ah al-Islamiyyah*

exposure, changing context, or the specific case he was dealing with. Sometimes the scholars are forced to formulate new terminology and categorizations through original Ijtihad for dealing with his nuanced reality. They would often use the same terms as earlier scholars, but with radically different definitions and legal implications.

The geo-political context of each domain's scholarly position is not static. They are diverse, dynamic, and ever-changing, and so are the scholarly opinions and responses to these changing realities. The scholarly rulings on these are not doctrinal or dogmatic and fixed (*thawabit*) rulings (*hukm*) of Shari'ah based on any clear and explicit texts of the Qur'an and Sunnah. While some scholars have tried to link their interpretations to the texts of the Qur'an and Hadith, most of the distinguished scholars and commentators of the Qur'an and Hadith have not understood the interpretations of these texts as necessarily supporting only these juristic positions and political implication.

Consequently, distinguished jurists throughout Islamic history are critical of any particular juristic method of classification, that is itself a product of Ijtihad, being imposed on or regarded as the one and only correct method for all Muslims everywhere and for all time. The *Ijtihad* by some jurists in one context cannot and should never be regarded as binding on other jurists of the same or of different contexts. It is well-known among jurists also that the *Ijtihad* of one or some jurists on an issue does not invalidate the *ijtihad* of others. Hence, one of the Islamic legal maxims

accepted by all schools of law (*madhhabs*) states that "One ijtihad is not invalidated by another Ijtihad" (*Al-ijtihad la yanqudhu bi al-ijtihad*).¹⁸¹

No legal (fiqhi) opinion that is the product of human and juristic reasoning (Ijtihad) in any context should be treated as if it was Divine injunction, and it should never be imposed on others. Sufyan At-Thawri was reported to have said, "If you see a man doing something over which there is difference of opinion among scholars, and which you believe to be forbidden, you should not forbid him from doing it".¹⁸²

Some jurists therefore question the relevance of many of the categorisations that are based on the reasoning (*Ijtihad*) of any past scholars to all current and multiple evolving global realities. These scholars call for more independent critical assessment of current realities and policies in international relations based on analysis of original texts and a consideration what is relevant to the best interests of specific Muslims' communities in their own contexts.

¹⁸¹ Suyuti, *Al-Ashba wa al-Naza'ir fi Qawa'id wa furu' fiqh al-Shafi'iyyah*, p. 101, Dar al-Kutub Ilmiyyah, Beirut, Lebanon; al-Zarkashi, *al-Manthur fi al-Qawa'id*, p. 32, al-Maktabah al-Shamilah, 3.35; Zain al-Din al-Sunuki, *Gayah al-Wusul fi Sharh lub al-Usul*, p. 167, al-Maktabah al-Shamilah, 3.35.

¹⁸² Quoted in Abdal Hakim Murad, *Understanding the Four Madhhabs*, Cambridge: Muslim Academic Trust, 1999, p.13).

Each community of Muslims or country should therefore have the freedom to decide what criteria best meet their needs and interests (*Maslahah*) when considering their realities and the consequences of rulings. Each Muslim community, leadership and their scholars are the ones to determine for themselves how best to describe their unique realities and relations with others.

Being oblivious to our realities and dogmatically following the opinions and classifications of past scholars, especially on socio-political issues can be retrogressive and has very often prevented Muslims from being united on key issues related to their security and political stability. Various distinguished jurists have criticised such blind imitation of the rulings of earlier jurists.¹⁸³

Reasons for the Obligation of Hijrah

Muslim jurists, both past and present, have differed regarding various issues surrounding migration (*Hijrah*) and residence in non-Muslim lands. In spite of this diversity, a closer examination of the primary textual evidence from the Qur'an and Sunnah, in light of the *Sirah* and practise of the Prophet's Companions to determine when it was required (recommended or obligatory) for a Muslim to migrate (*Hijrah*) from a non-Muslim land, reveals

¹⁸³ Ibn Taimiyyah, *Majmoo' al-Fatawa*, Dar al-Wafaa, 3rd edition, 2005, vol.4, p.197; Ibn Taimiyyah, *Majmoo' al-Fatawa*, Dar al-Wafaa, 3rd edition, 2005, vol.7, pp.71-72; Al-Shawkani, *Irshad al-Fuhul li Tahqiq al-Haqq min 'ilm al-Usul*, Dar al-Kitab al-'Arabi, 1st edition, 1999, vol 1, p.216; Ibn al-Qayyim, *Flam al-Muwagqi'in 'an Rabb al-'Alamin*, Maktabah al-Kulliyat al-Azhariyyah, Cairo, 1968, vol 1, p.7, p.39 see also al-Shawkani, *al-Qawl al-Mufid fi adillah al-Ijtihad wa al-Taqlid*, Dar al-Kitab al-Misry, Cairo.

greater consensus around at least 2 major factors that make migration an obligation:

1. **Seeking freedom from the threat of religious persecution, oppression and insecurity.** This is the freedom to practise the essentials of Islam. This was understood to mean that Muslims (such as those in Abyssinia) did not have to hide their Muslim identity in public out of fear of persecution. They were relatively free to display the basic “symbols of Islam” and could perform the compulsory prayers (*salat*) - including Friday and ‘Eid prayers, call *adhan*, fast in Ramadan, give zakat and charity, go for Hajj pilgrimage, etc. without threat or intimidation.

Being in a non-Muslim land, there were some compromises as this freedom did not automatically mean they could apply all of the provisions of the Islamic legal, economic, political or social system. Escaping religious persecution and insecurity appear to be the main reasons for forced or involuntary migration (*Hijrah*) in the life of the Prophet (p) and his companions. This was a migration from communities that were hostile and at war with Islam and Muslims.

The freedom from a toxic environment or social context which forces a person into wrong-doing, immorality and a life of sin is another related reason for migration (*Hijrah*). This consideration is very subjective, and its

assessment varies from one person to another, and from one environment or community to another, even within the same family, social group, city or country. This could apply to any country of any religious community. Some feel that while this consideration is important, it is easily subsumed under this first consideration as “religious persecution and moral oppression by a society or cultural context” instead of just religious persecution by a state and its laws. It is viewed by some as a moral consideration and a function of individuals which depends on their personal strength, social network, faith, wisdom, and resilience. Once the first condition of freedom from religious persecution is met, it is then up to individuals and communities to find ways of dealing with temptations and morally toxic contexts, and to pursue the spiritual or moral Hijrah needed to change and deal with such temptations and social challenges. Consequently, some scholars describe Hijrah as also meaning “a departure from the abode of heresy (or religious innovation – *bid’ah*) or that an abode that is overwhelmed by sins to a better land is also considered to be *Hijrah*”.¹⁸⁴

Every society, land or nation has its ethical challenges and its unique toxic or high-risk locations, or social contexts of higher levels of crime, corruption, immorality and

¹⁸⁴ Muhammad bin Abdullah al-Andalusi, *Abkam al-Qur’an*, Dar al---Kutub ak-Ilmiyyah, n.d, vol.2, p.413.

sinful behaviour. Non-Muslims and their lands are not all the same.¹⁸⁵ Some are more hospitable and accommodating of Muslims than others, and vice-versa. Some Muslims are able to cope better than other Muslims, while others have to move (*Hijrah*) to better working environments, neighbourhoods or towns, within the same country or elsewhere. Some Muslim minorities and their communities are able to thrive very well in non-Muslim lands and positively influence the understanding and practise of Islam in their families and communities, better than in even some predominantly Muslim communities and countries.

Forsaking a spiritually corrupting and sinful environment was seen by some as similar to, and a part and parcel of forsaking a morally hostile environment of religious persecution and oppression.¹⁸⁶ As with the other conditions for migration/residence, it is the individual concerned who is usually in a better position to consult and assess themselves, their own social context and its

¹⁸⁵ Qur'an 3:113, *"Not all of them are alike: Among the People of the Book there are those communities who are upright ..."*

¹⁸⁶ While growing spiritually and contributing to society, Muslims are not expected to search for or migrate to utopian "sin-free" environments. While this may be desirable, that was not what the community of Medina was like at the time of the Prophet (p) or that of the Rightly Guided Caliphs. Every country and community comes with its challenges to believers. Muslims are expected to, as with all the Prophet and their companions, be a source of guidance and mercy to the worlds, enjoining right and forbidding wrong, and promoting peace, compassion and justice wherever these are missing or insufficient.

impact on them and their family, and vice-versa, and decide what best to do.¹⁸⁷

2. **The ability and means to migrate.** This is the capacity to travel or migrate from the place of residence and persecution to a place where he/she will have the desired freedom from religious or other persecution.

In this regard, some have greater ability and opportunities than others, and each is expected to do their best. *“Allah does not charge a soul except (with that which) it is capable of...”* - and therefore responsible for. (Qur'an 2:286). The Prophet (p) said: *“Avoid that which I forbid you to do and do that which I command you to do, to the best of your capacity....”*¹⁸⁸

Those who should but are genuinely weak (*mustad'afin*) and do not have the ability to migrate are exempted from the obligation to migrate from such societal contexts, so long as that excuse exists.

¹⁸⁷ To be fair to the efforts of various religious communities and nations around the world, and to avoid the arrogance of stereotyping any particular community, it should be noted, that some communities in Muslim lands, and “Islamic States” are for some people more morally and spiritually corrupting than some in non-Muslim lands, and vice-versa. So also, there are some communities in Muslim lands that some people find more morally and spiritually uplifting and supportive than some non-Muslim lands, and vice-versa. And Allah knows best.

¹⁸⁸ Sahih Muslim, hadith no. 6259.

“...Except for the oppressed among men, women, and children who cannot devise a plan nor are they directed to a way. For those it is expected that Allah will pardon them, and Allah is ever Pardoning and Forgiving.” (Qur’an 4:98-99)

The inability to migrate is not confined to only physical or mental weakness, health, age and financial incapability. It also includes safety and security considerations, family obligations, legal restrictions, and the ability to legally migrate (without facing deportation) to the new preferred country of residence. Modern requisites of traveling such as passport, visas, residence permits, conditions and rights of citizenship, etc., and the short and long-term consequences of such migration are also to be considered. These are among the greatest juristic hindrances (*mani*) to migration (*Hijrah*) in modern contexts which many writers on this subject do not pay adequate attention to.

Hijrah and Muslims Residence Today

During the time of the Prophet (p) and his companions, the absence of any one of the 2 conditions discussed above – religious persecution or corrupting environment, and the ability to migrate - implied that the Muslims were free from the religious obligation to migrate (*Hijrah*) from non-Muslim lands. This also means that a Muslim is free to reside in any non-Muslim community, neighbourhood, or country – as in the case

of Abyssinia and those various non-Muslim nations where Companions lived in or migrated to, during and after the demise of the Prophet (p) – which gives Muslims adequate security, justice, and freedom from religious persecution.

The same conditions, by extension apply to Muslim lands that may be governed by unethical or corrupt Muslim leaders, or where Islamic law and governance is not at all or sufficiently in place, but where the basic human rights and religious freedoms are respected. In these Muslim countries and communities, some Muslims may find greater religious freedom, or find less morally corrupting social environments than in those communities where they are a minority. Sometimes, Muslims might also be more able to significantly influence positive changes and reforms in societies where they are already a majority.

With the adoption by almost all nations of the various peace treaties of the United Nations, including the UN's Universal Declaration of Human Rights and other charters that respect individual and communal Freedom of Religion and Beliefs (FoRB), most countries in the modern world have Muslims and other religious minorities whose basic rights are protected by international conventions and treaties. This is true especially in countries that score high on the Human Development Index¹⁸⁹ or the "Islamicity Index" (or I²).¹⁹⁰

¹⁸⁹ https://en.wikipedia.org/wiki/Human_Development_Index and https://en.wikipedia.org/wiki/Mahbub_ul_Haq The "Human Development" approach

There is nothing explicitly clear in the Qur'an or the tradition (Sunnah) of the Prophet (p) or his companions, to suggest that it is a religious obligation or even a recommendation for Muslims today, and in most parts of the modern world, to migrate to "*Dar al-Islam*" (land of Islam). Similarly, there is no evidence prohibiting Muslims from residing as minorities in a country governed by non-Muslims, or in Muslim lands that do not operate Islamic law. The UN Human Rights Declaration, and other international security charters and peace treaties make most of the modern world a *Dar al-Adl* or *Dar al-Sulh* at worst, or even *Dar al-Islam* (from Al-Mawardi's definition) at best.

For someone who is in a situation or land where he or she cannot profess their faith or practice their religion, or is facing unbearable persecution, and is capable of migration (*Hijrah*), all Muslim scholars are of the view that migration in such a life or

tries to measure the "richness of human life" by focusing on the quality and quantity of "knowledge", "decent standard of living", "promoting equality and social justice", "human security and rights", "environmental sustainability", "participation in politics and community life", "long and healthy life", "engagement in productive work", etc. See http://hdr.undp.org/sites/default/files/2015_human_development_report.pdf.

¹⁹⁰ Scheherazade S. Rehman and Hossein Askari, "How Islamic are Islamic Countries?" in *Global Economy Journal*, Vol. 10, Issue 2, Article 2, Berkeley Electronic Press, USA, 2010. The first 5 top ranking countries in the world according to the Islamicity Index are New Zealand, Luxemburg, Ireland, Iceland and Finland. The first OIC country on the list is Malaysia, which ranks number 38. This study concludes by saying, "It is difficult at this time to draw more concrete conclusions other than to say that it is our belief that most self-declared and labelled Islamic countries are not conducting their affairs in accordance with Islamic teachings – at least when it comes to economic, financial, political, legal, social and governance policies." (p.20-21).

faith-threatening situation is either compulsory¹⁹¹ or according to some, only recommended.¹⁹²

Some jurists for example were of the opinion that based on Qur'an 4:97, migration (*Hijrah*) was compulsory for whoever knows that he or she does not have security for his/her faith, as the verse only exempts those who are not capable of migration due to their weaknesses or illness.¹⁹³ Others however, emphasize that in spite of this, the Prophet (p) was never known to have compelled anyone to do Hijrah, nor did he blame anyone who did not migrate.¹⁹⁴ This is therefore seen as an individual and private decision for those concerned. Some classical jurists actually forbid or at least discourage *Hijrah* from non-Muslim lands, if the person concerned has the security of his faith and is also capable of inviting others to Islam.¹⁹⁵

¹⁹¹ Ibn Hajar al-Asqalani, *Fath al-Bari*, Cairo, Al-Matba'ah al-Salafiyyah, 1380 AH, vol.7 p.229 - 230; al-Baghawi, *Sharh al-Sunnah*, al-Maktab al-Islami, 1394 AH, vol.10, p. 373; Abubakar bn Abdullah, *Sharh Sahih al-Tirmidhi*, Cairo, al-Matba'ah al-Misriyyah, 1st Edition, 1350 AH, vol.7, p.88; Abd al-Rahman al-Mubarkafuri, *Tuhfah al-Ahwazi Sharh al-Jami' al-Tirmidhi*, al-Maktabah al-Salafiyyah, 2nd Edition, 1384 AH, vol.5, p.215.

¹⁹² Abd al-Aziz bn Salih al-Jarbu', *Al-Plam bi Wujub al-Hijrah min Dar al---Kufr Ila Dar al---Iman*, p.10, n.d, (al-Maktabah al-Shamilah 3.13). For the view of Hanafis on non-Obligation of *hijrah*, see: Al-Sarakhsi, *al-Mabsut*, vol.6, p.123; n.d, al-Maktabah al-Shamilah (3.13); 'Ala' al-Din al-Kasani, *Bada'i al-Sana'I*, Dar al---Kutub al-'Arabi, Beirut, 1982, vol. 1, p.158.

¹⁹³ Muhammad bn Idris al-Shafi'I, *Al-Umm*, Vol.4, p.169; Ibn Qudamah, *al-Mughni*, Dar al---Fikr, Beirut, 1405 AH. vol.10, p.505.

¹⁹⁴ Abd al-Aziz bn Salih al-Jarbu', *Al-Plam bi Wujub al-Hijrah min Dar al---Kufr Ila Dar al---Iman*, p.10.

¹⁹⁵ Abd al-Aziz bn Salih al-Jarbu', *Al-Plam bi Wujub al-Hijrah min Dar al---Kufr Ila Dar al---Iman*, p.19.

It is again the individual concerned, or their guardian, who understands their context best, that can determine what threats or opportunities he or she faces, and whether their migration (*Hijrah*) or residence would be obligatory, recommended, discouraged, or forbidden. The decision therefore to reside or migrate (*Hijrah*) is a moral choice and responsibility of the individual concerned. Those who refuse to migrate for whatever reason, cannot and should not be regarded as disbelievers (*kuffar*) on account of their choice of where to reside or migrate to.

In conclusion, the attitude expected of Muslims towards friend or foe is summarized in Qur'an 60:8-9 where Allah says; *"As for such (of the unbelievers) as do not fight against you on account of (your) faith, and neither drive you forth from your homelands, Allah does not forbid you to show them kindness and to behave towards them with full equity: for verily, Allah loves those who act equitably. Allah only forbids you to turn in friendship towards such as fight against you because of (your) faith, and drive you forth from your homelands, or aid (others) in driving you forth: and as for those (from among you) who turn towards them in friendship, it is they, they who are truly wrongdoers!"*

CONCLUSION

Throughout this book, we have explored various aspects of the Islamic principles on migration (*Hijrah*), highlighting various juristic discussions on the topic. From the classical paradigms to the contemporary challenges faced by Muslims residing in non-Muslim lands, the book has endeavoured to bridge the gap between tradition and modernity, inviting readers to examine the intersections of faith and reality critically.

The book explored the meanings of migration (*Hijrah*) in the Qur'an and Hadith, as well as in Islamic Legal Theory (*usul al-fiqh*). While *Hijrah* is not merely a physical relocation but also a spiritual and ideological journey towards the fulfillment of one's faith, we paid particular attention to physical migration, particularly from a land/location considered to not be a "Land of Islam" to one considered as such. We examined the Quranic and Sunnah perspectives of the physical hijrah, revealing how it played a pivotal role in the lives of the Prophet (P) and his companions, and our exploration of the Islamic legal theory (*usul al-fiqh*) emphasized the importance of understanding the jurisprudential foundations that guide Muslim residence.

We also expatiated on the issue of classification of lands into various domains such as *Dar al-Islam* ("Land of Islam"), *Dar al-Harb* ("Land of War"), *Dar al-Kufr* ("Land of Disbelief"), *Dar al-Shirk* ("Land of Polytheism"), *Dar al-Sulh* ("Land of

Treaty”), *Dar al-‘Adl* (“Land of Justice”), etc. It was shown that all the political-legal classifications of domains, lands, territories or countries (into *Dar al-Islam*, *Dar al-Sulh*, *Dar al-Kufr*, etc.) and the various preferred criteria and definitions adopted by particular schools of law or scholars are not based on any divine prescription from the Quran or multiple chained (*mutawatir*) hadith but primarily on independent juristic reasoning (*Ijtihad*) in response to their own geo-political contexts. The examination of classical opinions regarding residence in non-Muslim lands revealed diverse paradigms and perspectives. We saw that the traditional binary and tripartite paradigms are not exhaustive and that there are other independent paradigms that consider different domains and states.

Understanding the reasons for the obligation of Hijrah shed light on the historical context in which these opinions developed. Our exploration concluded that there is nothing explicitly clear in the Qur’an or the tradition (Sunnah) of the Prophet (p) or his companions, to suggest that it is a religious obligation or even a recommendation for Muslims today, and in most parts of the modern world, to migrate to “*Dar al-Islam*” (land of Islam). Similarly, there is no evidence prohibiting Muslims from residing as minorities in a country governed by non-Muslims, or in Muslim lands that do not operate Islamic law, particularly if they are safe and free to practice their religion. The section on commonly misinterpreted texts related to Hijrah addresses the various verses of the Qur’an and hadith that some interpret to imply that Muslims living in non-Muslim lands are Islamically

obliged to migrate, thus providing clarity for Muslim minorities navigating their faith in diverse lands. Also, the discussion on the laws of the land and Muslim identity highlighted the complexities of balancing religious obligations with civic responsibilities in contemporary society.

In today's interconnected world, where Muslims reside in various cultural and legal contexts, we hope that by this effort, Allah inspires a new era of tolerance, empathy, and unity within the global Muslim community, paving the way for a future where diversity is celebrated, and understanding prevails.

And Allah knows best.

