

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ



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

Installment #3

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

Excerpts from

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

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

One of the last Great Hadeeth Masters of Morocco

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

He says on page 22 of his treatise:

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

So the first place that Allah – High is He – mentions that while not treating it with any prohibition or  
censure is His saying – High is He – in Surat Al-Jumu’ah:

((And when they see trade and amusement, they disperse to it, and leave you standing)).

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

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

((And when they see trade are amusement, they disperse to it, and leave you standing)).”

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

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

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

### The Issue of the Accord (Sulh)

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

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

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

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

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

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

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

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

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

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

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

End of Part 3

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<sup>i</sup> The title of the ruler of Abyssinia was ‘Najaashi.’

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

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

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

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

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