

THE DAR AL-ISLAM AND THE DAR AL-HAJR:
A Discourse on the Crafting of a Muslim State

by

Ismail Eris, BA

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2000

Presented to the Faculty of the Graduate School
of the University of Texas at Austin
in Partial Fulfillment
of the Requirements
for the Degree of

Master of Arts

The University of Texas at Austin

August, 2000

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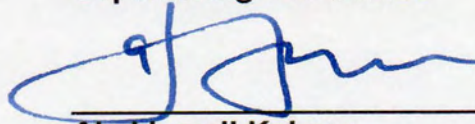
A Discourse on the Crafting of a Muslim State

To my wife, my son,

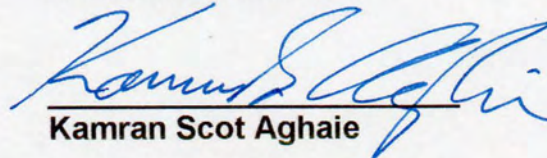
and my daughter who passed away in 1995, but continue to live in our

hearts

Approved by
Supervising Committee

A blue ink signature, appearing to read 'Akeel', written over a horizontal line.

Akeel Ismail Kahera

A blue ink signature, appearing to read 'Kamran', written over a horizontal line.

Kamran Scot Aghaie

To my wife, my son,
and my daughter who passed away in 1996, but continues to live in our
supported me during the tough hearts I have special thanks to
Dr. Adel Ibrahim Hanna for his guidance, encouragement, and patience
throughout the writing of my thesis, and studies at The University of Jordan
in Amman. My thanks are also given to Dr. Hamran Soud Agha for his
valuable assistance. I would like to thank my wife and son who have
always been with me and encouraged me throughout my studies.

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THE TYPICAL **Acknowledgements**

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INTRODUCTION:

Throughout Islamic history, Muslims have lived in non-Muslim societies as minorities. In this essay, the central questions to be dealt with have to do with Islamic law and its application to Muslims living in non-Muslim societies. We will examine three aspects of the debates surrounding the issue of Muslims living under non-Muslim rule: (1). A historical and theoretical basis of Muslim concepts of *dar al-Harb* and *dar al-Islam*; (2). How these rules have been applied practically to cases since the early period of Islam; (3). And the problems faced in the modern world regarding this concept.

In chapter one, we deal with the term *dar*, its legal and lexicographical meanings. Secondly, the basis of the concept of *dar* based on the key sources of Islam, and thirdly, interpretations of these sources by Muslim scholars. Finally, we shall study the types of *dar*, and several closely related legal principles established by Muslim scholars. In chapter two, we shall discuss the application of these legal rulings with regard to social and religious life. The central question of chapter two will be the concept of migration, (*hijra*). We examine the question in light of historical cases, such as the status of Muslim minorities after the reconquest of Spain by

Christian armies in 1492 CE. We will also examine a contemporary case: The situation of Muslims in India after 1920. Chapter three deals with current debates about the concept of *dar*, and the idea of voluntarily migration from Muslim countries to the West.

In each chapter, we will examine the relevant Qur'anic verses and *ahadith* (Traditions of the Prophet Muhammad [SAS]) related to this debate. We will also discuss the opinions of medieval and modern Muslim scholars. We note accepted opinions, as well as opinions that are controversial.

The primary sources used in this study include the following: Shaybani (d. 189/796) *Siyar al-Kabir* and *Sharh al-Siyar al-Kabir* a commentary by Sarakhsi (d. 483/1090); Mawardi (d. 450/1058) *al-Ahkam al-Sultaniyah*; Sarakhsi *al-Mabsut*; Shafi'i (d. 204/819) *Kitab al-'Umm*; Ibn Qudamah (d. 622/1223) *Mughni al-Muhtaj*; Malik (d. 179/795) *al Mudawwana al-Kubra*. We also have made use of compilations of legal rulings, (*fatawa* books) such as the book of the Maliki scholar al-Whansharisi (d. 1505CE) *al-Mi'yar al-Mu'rib*, al-Ramli (d. 957/1550) *Fatawa al-Ramli*; Ibn Taymiyyah (d. 728/1328) *Majmu'at Fatawa*, and a contemporary scholar Ahmet Ozel *Islam Hukukunda Ulke Kavrami, Dar'ul Islam Dar'ul Harb*.

CHAPTER ONE

The Types of *Dar* in Islamic law

The Qur'an and the accepted traditions attributed to the Prophet (*Hadith*) do not clearly define any territories as being either *Dar al-Islam* or *Dar al-Harb*. Contemporary Muslim scholars agree that medieval Muslim scholars were the source of such distinctions through their own interpretations of the Qur'an and *hadith*.¹ There is no doubt that the terms are not literally used in the Qur'an. However, the term *dar al-Harb* occurs in some weak *ahadith*, which are accepted by Hanafi scholars. Take for example the following:

لاَتَقَامُ الْحُدُودُ فِي دَارِ الْحَرْبِ

The *hudud* or punishments are not applied in the *dar al-Harb*.²

حُكْمُ الرِّبَا لَا يَجْرِي بَيْنَ الْمُسْلِمِ وَالْحَرْبِيِّ

Legal rules concerning interest do not apply between a Muslim and a non-Muslim in the *dar al-Harb*.³

¹ Such as Zuhayli, Mustafa Wahbah, *Athar al-Harb fi al-Fiqh al-Islami*, 135, Beirut, 1966; A. Abel "Dar al-Harb" *Encyclopedia of Islam*

² Sarakhsi, Muhammad Ibn Ahmad (d. 483/1090), *Al-Mabsut*, Vol. IX, 99-100, Beirut, 1970; Shafi'i, Muhammad ibn Idris (d. 204/819), *al-Umm*, Vol. VII, 322, Qahirah, 1973

³ Sarakhsi, *Ibid.* Vol. X, 28; Shafi'i, *Ibid.*, Vol. VII, 326

منعت دار الاسلام ما فيها و اباحت دار الحرب ما فيها

Seizure of property is prohibited in the *dar al-Islam*, but lawful in the *dar al-Harb*.¹

We will examine these and other ahadith in the following chapters. There is no strong literal evidence for the division of the world into the *dar al-Islam* and the *dar al-Harb*. Muslim scholars created the division by interpreting the objectives of the *Shari'ah*.

There is no clear conceptualization of an Islamic state before the immigration of the Prophet (pbuh) from Makkah to Medina in 622 CE. After the migration to Medina, the Prophet (pbuh) founded the first Islamic state. Scholars also consider Madina as the first *dar al-Islam*. Some *ahadith* refer to Medina as *dar al-Hijra* or *dar al-Muhajirin*, i.e. the land of immigration or the land of immigrants.²

The word دار *dar* literally means a house, building, locality, abode, area, land, or country.³ In legal terms it means "a country which is under the control of a Muslim or non-Muslim ruler".¹ According to this definition, the status of the ruler is a distinctive

¹ Mawardi, Ali ibn Muhammad (d. 450/1058), *al-Ahkam al-Sultaniyah wa-al-Wilayat al-Diniyah*, 66, 1978

² Bayhaqi, Ahmad ibn al-Husayn (d. 458/1066), *al-Sunan al-Kubra*, Vol. IX, 9, Beirut, 1900

³ Hans Wehr *A Dictionary of Modern Written Arabic*, New York, 1971

factor in this definition. In Islamic law there are four classifications of the term *dar*:

a. Dar al-Islam دار الاسلام:

Dar al-Islam literally means the abode of Islam. As mentioned above, the status of the ruler is the primary determining factor in this definition. The whole territory in which Islamic law prevails is called *dar al-Islam*.² Most Muslim scholars articulate similar definitions for *dar al-Islam*. For example the Hanafi scholar Sarakhsi defines it as the lands under the rule of Muslims. The Hanafi scholar Kuhistani (d. 950/1544) characterizes *Dar al-Islam* as any land under the power of a Muslim ruler. It is also defined as the land under the control of Islamic law.³ The view of Shafi'i scholars, on the other hand, reflects the transformation of *dar al-Islam* into *dar al-Harb*. According to them, there are three types of *dar al-Islam*: (1) Land where Muslims live (2) Land that is conquered by a Muslim army and left to non-Muslims in return for the *jizya* (poll tax) (3)

¹ Ibn 'Abidin, Muhammad Amin ibn 'Umar (d. 1252/1836), *Radd al-Muhtar 'ala al-Durr al-Mukhtar Sharh Tanwir al-Absar*, Beirut Lubnan, Vol. VI, 275, 1994-1998

² A. Abel, "Dar al-Islam" *Encyclopaedia of Islam*, Leiden Brill, 1993

³ Ozel, *Islam Hukukunda Ulke Kavrami*, *Darul Islam Darul Harb*, 80-81

Land that was under the control of Muslims but was later conquered by non-Muslims.¹

As we see, in the definitions of the *dar al-Islam*, both religion and population are unimportant. In other words, the *dar al-Islam* is the land where a Muslim ruler has control and rules according to Islamic law. It is not important whether he or his constituents are in the majority.²

There are different terms used for the *dar al-Islam*. For example *daruna*, i.e. our land (Sarakhsi), *dar al-Iman*, i.e. land of faith (Ibn Arabi (d. 543/1147)), *dar al-Tawhid*, i.e. land of monotheism (Sarakhsi), *dar al-Muslimin*, i.e. abode of Muslims (Imam Shafi'i), and *Dar al-Ahkam*, i.e. land in which the principles of Islamic law are the ruling power (Sayyid Sharif Jurjani (d. 816/1413)).¹

b. Dar al-Harb دار الحرب:

The term Dar al-Harb literally means the land of war, military, confrontation, or opposition. However, there are many different definitions. (1) *Ahl al-Harb* is defined as: "those who have refused to

¹ Ibn Hajar al-Haythami, Ahmad Muhammad (d. 973/1565), *Tuhfat al-Muhtaj bi-Sharh al-Minhaj*, Vol. VI, 350, Bumba'i

² Ozel "Dar'ul Islam", *Turkiye Diyanet Vakfi Islam Ansiklopedisi*, Uskudar Istanbul, 1988

be converted after being duly invited on the best terms, against whom any kind of warfare is henceforth permissible in keeping with the *ahkam* (the legal principles) in surah 9".² (2) The Shafi'i scholar Bujayrimi (d. 1221/1866) describes the *dar al-Harb* as: "...lands that are under the control of a non-Muslim ruler who is not obliged to give *jizya* (poll tax) to the Muslims and have never been under the control of Islam."³ (3) Other terms used for the *dar al-Harb* are *daruhum*, (their land)--Sarakhsi; *dar al-Shirk*, (land of polytheism)--Imam Shafi'i, and *dar al-Kufr* or *dar al-Kuffar*, (land of infidelity or land of the infidels). Some compound nouns containing ethnic names have also been used for *dar al-Harb*, such as *dar al-Atrak*, (land of Turks) and *dar al-Hind*, (country of India).⁴

Shafi'i scholars argue that if a place is converted into *dar al-Islam* by conquest, it should never transform into *dar al-Harb* again.¹ The two Hanafi scholars, Abu Yusuf (d. 182/798) and Muhammad al-Shaybani (d. 189/796), agree that the important factor in the

¹ Ozel, *Islam Hukukunda Ulke Kavrami*, 83 footnote 45

² A. Abel, "Dar al-Harb", *Encyclopaedia of Islam*, Leiden Brill, 1993

³ Ibn Hajar al-Haythami, Vol. IX, 269; Zaydan, Abd al-Karim, *Ahkam al-Dhimmiyyin wa al-Musta'manin fi Dar al-Islam*, 19, Baghdad, 1976

⁴ Ozel, *Islam Hukukunda Ulke Kavrami*, 83 footnote 45

definition of *dar al-Islam* is the application of Islamic law. Therefore, a country under the rule of Islamic law is called *dar al-Islam*, otherwise it is not. Consequently, *dar al-Islam* turns into *dar al-Harb* after the rule of Islam is lost.² According to Abu Hanifa (d. 150/767) there are three factors that affect the transformation of *dar al-Islam* into *dar al-Harb*: (1) The rule of infidels gains supremacy in the land, (2) The land in question is adjacent to *dar al-Harb* (3) The Muslims and *dhimmis* are no longer governed by the original pacts that they enjoyed before the non-Muslim occupation.³

Another controversy about the application of Islamic law in *dar al-Harb* concerns the degree to which these laws should be within that context. Although Sunni legal Schools accept the application of Islamic law to Muslims living within the *dar al-Harb*, they disagree about the extent of its application. The Hanafi scholar Dabusi (d. 430/1039) says that "there are two territories: the *dar al-Islam* and the *dar al-Harb*, but according to Imam Shafi'i the world is only one territory as far as the application of Islamic law [is

¹ Ibn Hajar al-Haythami, Vol. VI, 350, Vol. IX, 269; Ramli, Muhammad ibn Ahmad (d. 1595 CE), *Nihayat al-Muhtaj ila Sharh al-Minhaj fi al-Fiqh 'ala Madhhab al-Imam al-Shafi'i*, Vol. V, 454, Misr, 1967-1969

² Sha'rani, 'Abd al-Wahhab ibn Ahmad, *al-Mizan al-Kubra*, Vol. II, 153, Misr

³ Sarakhsi, Vol. X, 114; Sha'rani, Vol. II, 153

concerned]".¹ Some Shafi'i, Hanbali, and Maliki scholars have the same opinion that Islamic law applies to Muslims with equal force wherever they reside.² Several Hanafi scholars also make a distinction between *dar al-Islam* and *dar al-Harb* for the application of the *Shari'ah*.

The classification and its debate can be divided into four groups: family law, inheritance law, penal law, and Islamic economics.

Family Law:

According to the Islamic law marrying *kitabiyyat* (women of the book) is normally permitted. However, some Muslim scholars hold that intermarriage while living in the *dar al-Harb* is *makruh* (religiously objectionable). They believe that intermarriage in the *dar al-Harb* has some shortcomings, such as cultural assimilation especially since it affects children.¹

Since the division of the *dar* may affect the marriage, it has been discussed by Hanafi scholars, who argue that if one of the

¹ Abu Zayd Abdullah Ibn Umar Dabusi, *Tasis al-Nazar*, 58-59

² Malik ibn Anas (d. 179/795), *al-Mudawwanah al-Kubra*, Vol. VI, 291, Beirut, 1900; Ibn Qudamah, Muwaffaq al-Din 'Abd Allah ibn Ahmad (d. 622/1223), *al-Muqni' fi fiqh Imam al-Sunnah Ahmad ibn Hanbal al-Shaybani*, Vol. III, 451, al-Qahirah, 1900

spouses migrates to the *dar al-Islam* from the *dar al-Harb* as a *dhimmi*² or as a *musta'man*³ and later becomes a *dhimmi* or converts to Islam, divorce is imminent. On this point Shafi'i agrees with the Hanafi scholars.⁴ However other Shafi'i, Hanbali, and Maliki scholars say that separation is not based on physical territory but because of the changing of religion.

Inheritance Law:

Muslim scholars also differ about whether *ikhtilaf al-Dar* or the difference between territories affects inheritance. The generally accepted opinion is that territory does not have an effect on inheritance among Muslims. Another opinion is that non-Muslims cannot inherit from Muslims. However they also discuss whether inheritance between Muslims and non-Muslims is allowed.⁵ There is no controversy about inheritance among non-Muslims if they have the same status. According to Hanafi scholars, if non-Muslims have

¹ Shaybani, Muhammad ibn al-Hasan (d. 189/796), *Sharh Kitab al-Siyar al-Kabir*, Vol. V, 1838, Cairo, 1971; Sarakhsi, Vol. X, 96

² "A non-Muslim who is in the covenant of protection (*dhimmah*) with the Muslim state and has the right of permanent residence in the Muslim land", Ronald L. Nettler, "Dhimmi", *Oxford Encyclopedia of Modern Islamic World*, New York, 1995

³ "A non-Muslim who is temporary resident, and who has assurance of protection in an Islamic state" Zaydan, 46-56

⁴ Sarakhsi, Vol. V, 51; Ozel, *Islam Hukukunda Ulke Kavrami*, 163-66

⁵ Ibn Rushd al-Kurtubi (Averroes), *Bidayat al-Mujtahid wa-Nihayat al-Muqtasid*, 385-386, al-Qahirah, 1970

different status, as *dhimmis* or as citizens of other countries either *musta'mans* or *harbis*¹, *ikhtilaf al-Dar* (differences between countries) prevents inheritance.² Shafi'i scholars agree with Hanafi scholars about this point, but they argue that it is not the *ikhtilaf al-Dar* but the physical separation that prevents inheritance.³ According to the Hanbali and Maliki scholars it does not have any effect on inheritance.⁴

Penal law:

There are three questions to be considered under this topic. (1) If a crime committed inside the borders of the *dar al-Harb*, can the guilty party be punished for these crimes by the courts within the *dar al-Islam*? (2) More specifically, is it possible to apply the Muslim penal law to the soldiers of a Muslim army inside the borders of *dar al-Harb* for the crimes committed there? (3) Finally what is the status of Muslim judges appointed by a non-Muslim government in *dar al-Harb*?

¹ A non-Muslim who is citizen of a country which does not have an agreement with Islamic state

² Shaybani, Vol. II, 466, Vol. V, 2045; Ibn Qudamah, *Muwaffaq al-Din 'Abd Allah ibn Ahmad, Mughni*, Vol. VI, 343, 1983

³ Ramli, *Nihayat al-Muhtaj*, Vol. VI, 28; Ibn Hajar al-Haythami, Vol. VI, 416-417; Ibn Qudamah, *Mughni*, Vol. VI, 343

⁴ Ibn Qudamah, *Mughni*, Vol. VI, 343; Zaydan, *Ibid.* 532

Muslim jurists accept that if a *harbi*¹ commits a crime against a *harbi*, or against a Muslim, within the borders of the *dar al-Harb*, and then migrates to *dar al-Islam* after getting *aman* (to be granted with protection) or converting Islam, he cannot be sentenced for the crime.² However, if he commits the crime inside the borders of the *dar al-Islam*, he is to be punished even if he escapes to the *dar al-Harb*.³ Hanafi scholars believe that the penal law cannot be applied to Muslims who commit crimes within the borders of the *dar al-Harb* except for the punishment of damages.⁴ They hold that the violation of the rules of Islamic law is prohibited in both places. However this is merely a moral necessity, and a person committing a crime in the *dar al-Harb* is liable only before Allah in the Hereafter.⁵ In other words, their punishment is left up to Allah. Some Shafi'i, Maliki, and Hanbali scholars say that the Qur'anic text and the *ahadith*, which are the basis of penal law, only have general meanings.

¹ A non-Muslim who is citizen of a country which does not have an agreement with Islamic state

² Abu Jaghfar Muhammad Ibn Jarir al-Tabari (d. 310/923), *Ikhtilaf al-Fuqaha'*, 82, 1980, Beirut, Lubnan

³ Shaybani, Vol. V, 1940, 2012-2013;

⁴ Malik ibn Anas, Vol. VI, 291; Ibn Qudamah, *al-Muqni*, Vol. III, 451; Bayhaqi, *Ibid.* Vol. IX, 103-106; Qurtubi, Vol. XII, 171

⁵ Al-Fadl Khaled Abou, "Islamic Law and Muslim Minorities: The Juristic Discourse On Muslim Minorities From the Second/Eight to the Eleventh/ Seventeenth Centuries", *Islamic Law and Society*, 1994

Consequently we cannot apply different rules for the *dar al-Islam* and the *dar al-Harb*. Muslims who commit crimes within the *dar al-Harb* are responsible for their acts both morally and legally.¹ Imam Shafi'i says that *halal*, (lawful) things are *halal* everywhere and *haram*, (unlawful) things are *haram* everywhere.² According to Shafi'i scholars, the only exception is the ignorance of the law.³ On the other hand, Hanafi scholars cite a hadith as their evidence.⁴ They say that the execution of the punishments is one of the duties of the head of the state, and he can fulfill this task only inside the borders of the *dar al-Islam*.¹

According to Hanafi scholars penal law can be applied to soldiers of the Muslim army within the borders of the *dar al-Harb*. According to Hanafi scholars, punishments for a crime committed outside the military camp of the Muslim army can be applied to the criminals (with the exception of damages) either inside the borders of the *dar al-Harb* or after returning to the *dar al-Islam*, because of the above-mentioned reasons. Inside the camp is considered to be

¹ Tabari, *Ikhtilaf al-Fuqaha'*, 82-83; Bayhaqi, Vol. IX, 104

² Bayhaqi, Vol. IX, 103-106

³ Abou al-Fadl, 173

⁴ Prophet said, "The *hudud* or punishments does not apply in *dar al-Harb*". It is accepted as a weak hadith.

part of the *dar al-Islam*, thus punishments for crimes can be applied there or after returning to one's homeland.² Hanbali scholars maintain that the punishment should be postponed until returning to the *dar al-Islam*.³ Imam Shafi'i and Imam Malik say that if punishment is applicable immediately, it should be applied. If it is not, and there is a possibility that application of the punishment may cause problems for Muslims, it can be delayed until returning to the *dar al-Islam*.⁴

The following two *fatwas* (legal judgments) illustrate this argument. The first one issued by the Maliki scholar al-Wansharisi (d. 1505CE) about Muslim judges appointed by Christians in Spain. In his *fatwa* (legal judgment) he argues that the decision of Muslim judges nominated by the Christians are not recognized because they are not legitimate.⁵ The Hanafi scholar Ibn Abidin (d. 1252/1836) disagrees with al-Wansharisi's *fatwa* (legal judgment) about the judges of Andalusia. He argues that under normal

¹ Sarakhsi, *Al-Mabsut*, Vol. IX. 99-100, Vol. X. 96; Shaybani, Vol. V, 1884

² Shaybani, Vol. V, 1851; Sarakhsi, *Al-Mabsut*, Vol. IX. 100; Sha'rani, Vol. II, 182

³ Ibn Qudamah, *al Muqni*, Vol. III, 451; Ibn Qudamah, *Mughni*, Vol. IX, 298

⁴ Malik Ibn Anas, Vol. VI, 291; Bayhaqi, Vol. IX, 105; Shafi'i, Vol. VII, 323; Bayhaqi, Vol. IX, 105

⁵ Wansharisi, Ahmad ibn Yahya, *al-Mi'yar al-Mu'rib wa-al-Jami' al-Mughrib 'an Fatawa ahl Ifriqiyah wa-al-Andalus wa-al-Maghrib*, Vol. II, 133-35, Rabat, 1981

circumstances, the appointment of a judge is the duty of the caliph. However, in the case of Andalusia, and in similar cases, there is a necessity of appointment of judge. Muslims must agree on a Muslim in order to judge their cases, and perform the congregational prayers. If the non-Muslim government appoints a Muslim for these duties, and the Muslims accept this appointment, then it is a legal and authoritative appointment.¹

Islamic economics

The first important issue concerns the property of Muslims which has been seized by non-Muslims. Shafi'i scholars say that non-Muslims cannot legally possess the property of Muslims, and that the said property still belongs to the Muslim owner. If Muslim troops regain the property, it should be given to the Muslim owner either before or after the distribution of the booty.² Zahiri scholar Ibn Hazm (d. 456/1063), and Jafari scholars share the same opinion.³ Their evidence is the verse 141 of surat al-Nisa:

¹ Ibn 'Abidin, Vol. VIII, 41-2

² Ozel, *Islam Hukukunda Ulke Kavrami*, 159-160

³ 'Ali ibn Ahmad Ibn Hazm (d. 456/1063), *al-Muhalla*, Vol. VII. 349, Misr, 1964; Ja'far ibn al-Hasan Muhaqqiq al-Hilli, *Shara'i' al-Islam fi al-Fiqh al-Islami al-Ja'fari*, Beirut, 1960

الَّذِينَ يَتَّبِعُونَ بِكُمْ فَإِنْ كَانَ لَكُمْ فَتْحٌ مِّنَ اللَّهِ قَالُوا أَلَمْ نَكُن مَّعَكُمْ
وَأِنْ كَانَ لِلْكَافِرِينَ نَصِيبٌ قَالُوا أَلَمْ نَسْتَحْوِذْ عَلَيْكُمْ وَنَمْنَعَكُمْ مِّنَ
الْمُؤْمِنِينَ قَالَهُ يَحْكُمُ بَيْنَكُمْ يَوْمَ الْقِيَامَةِ وَلَنْ يَجْعَلَ اللَّهُ لِلْكَافِرِينَ عَلَى
الْمُؤْمِنِينَ سَبِيلًا

...Allah will judge between you (all) on the Day of Resurrection. And never will Allah grant to the disbelievers a way (to triumph) over the believers.

A Majority of the Muslim scholars believe that within the borders of the *dar al-Islam* Muslims have ownership of the property, according to verse 29 of *surat al-Baqara*: "He it is Who created for you all that is on earth...". They believe that in this verse, the word 'you' is a general term, and it includes both Muslims and non-Muslims. In other words, it is *mubah* (lawful) for all human beings to take possession of anything on earth. However, once the property is owned by someone it becomes untouchable to others. If he or she loses ownership of this property, it returns to its original *mubah* condition. If non-Muslims can seize and transfer the property to the *dar al-Harb*, then they own the property. If Muslims conquer the non-Muslims' country and take that property back, the previous

Muslim owner gets the property before distribution of the booty, but after the distribution he can get it in return by paying its value.¹

A similar discussion about the property of non-Muslims who convert within the borders of the *dar al-Harb* is mentioned by some Shafi'i scholars. They say that the property is legally protected, and if a Muslim army conquers the country, their property belongs to them and cannot be included in the booty.² The Zahiri scholar Ibn Hazm agrees with Shafi'i scholars on this point.³ Hanafi scholars believe that movable belongings do not become a part of booty but their land does. If they immigrate to the *dar al-Islam* before conquest, then both movable belongings and land become a part of the booty.⁴

Another related discussion concerns the prohibition of *riba* or usury. It is unanimously accepted by Muslim scholars that *riba* is prohibited among the Muslims wherever they are. However they disagree about interest-bearing trade between Muslims and non-Muslims inside the borders of the *dar al-Harb*. Maliki, Shafi'i,

¹ Shaybani, Vol IV, 1246, 1247, 1297, 1324, Vol. V, 1743; Sarakhsi *al-Mabsut*, Vol. X, 52

² Shafi'i, Vol. IV, 191; Ramli, *Nihayat al-Muhtaj*, Vol. VIII, 69-70

³ Ibn Hazm, Vol. VII, 309

⁴ Sarakhsi, *Al-Mabsut*, Vol. X, 66; Kasani, Abu Bakr ibn Mas'ud, (d. 587 /1191) *Kitab Bada'i' al-Sana'i' fi Tartib al-Shara'i'*, Vol. VII, 105, Beirut, Lubnan, 1974

Hanbali, Zahiri and the Hanafi scholars share the same opinion. They interpret the text and the *ahadith* that prohibit *riba* based on context. For Muslims, *riba* is permitted neither in the *dar al-Islam* nor in the *dar al-Harb*. According to them *riba* is also prohibited for non-Muslims living in the *dar al-Islam*.¹ A *fatwa* (legal judgment) issued by the Shafi'i scholar, Ibn Hajar al-Asqalani (d. 1449CE) explains this opinion. When he was asked about whether a Muslim can accept usury from the *ahl al-Harb* (citizens of *dar al-Harb*) when dealing with them, and cheat them in measures and weights, he said that Muslims neither accept usury nor cheat them in their dealings.² Imam Abu Hanifa and Muhammad al-Shaybani disagree. They argue that if the Muslim is the receiving party of the excessive part, they permit interest-bearing transactions. They hold the same opinion about obtaining the money of non-Muslim by their consent through gambling, selling swine, or the meat of a dead animal to them. Their first evidence is the *hadith* that we mentioned above.¹ Another proof is that Abbas, the uncle of the Prophet (pbuh) had

¹ Malik Ibn Anas, Vol. IV, 271, Beirut, 1900; Sarakhsi, *Al-Mabsut*, Vol. XIV, 56; Shafi'i, *al-Umm*, Vol. VII, 358-59; al-Tabari, *Ikhtilaf al-Fukaha*, 82-3; Ibn Qudamah., *Mughni*, Vol. IX, 284

² Abou al-Fadl, *Ibid.* 176

conducted interest-bearing transactions in Makkah after the prohibition of *riba*. The Prophet (pbuh) had not prevented him before the conquest of Makkah.² Jafari scholars agree with Imam Abu Hanifa and Muhammad al-Shaybani about this subject. They use another hadith as evidence:

ليس بيننا وبين أهل حربنا ربا نأخذ منهم ألف درهم بدرهم ولا نعطيهم

The Prophet (pbuh) said that there is no *riba* between us and a group whom we fight against. We take from them a thousand dirham in return for a dirham, and we don't repay them.³

c. *Dar al-Baghy* دار البغي and *Dar al-Adl* دار العدل:

The *Dar al-Baghy* and the *dar al-Sulh* are in a way the subdivisions of the *dar al-Islam* and the *dar al-Harb*. In the following verse, Muslims are ordered to obey the head of the state¹:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ
فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ كُنْتُمْ تُؤْمِنُونَ
بِاللَّهِ وَالْيَوْمِ الْآخِرِ ذَلِكَ خَيْرٌ وَأَحْسَنُ تَأْوِيلًا

¹ حكم الربا لا يجري بين المسلم والحربي The interest rule does not apply between Muslim and non-Muslim in the land of Kufr..

² Shaybani, Vol. IV, 1487-88; Sarakhsi, *Al-Mabsut*, Vol. X. 28, Vol. XIV. 57

³ Muhammad Jawad Maghniyah, *Fiqh al Imam Jafar al Sadiq*, Vol. III. 278, Beirut, Lubnan, 1984

O you who believe! Obey Allah and obey the Messenger (Muhammad (pbuh)), and those of you (Muslims) who are in authority. (And) if you differ in anything amongst yourselves, refer it to Allah and His Messenger (pbuh), if you believe in Allah and in the Last Day. That is better and more suitable for final determination²

If a group of Muslims rise up against the head of the state because of a legal reason, this group is called *bughat* or *ahl al-Baghy*, i.e. rebels and the land under their control is called as *dar al-Baghy* or land of rebellion.³ *Dar al-Baghy* (land of rebellion) is accepted as a part of *dar al-Islam*. The other part of *dar al-Islam* is called *dar al-Adl* (abode of justice). *Dar al-Baghy* (land of rebellion) is also called the *dar al-Jawr*, (abode of injustice).⁴ According to Muslim scholars, in order to call a group *bughat* (rebels), they should have evidences for their rebellion from the sources of Islam.⁵ They might be right or wrong in their interpretation of these sources. If they are wrong, they are invited to obey the head of the state,

¹ Ibn Abidin, Vol. VI, 416

² Noble Qur'ân 4; 59

³ Ibn Abidin, Ibid. Vol. VI, 410-11; Zaydan, 232

⁴ Ozel, *Islam Hukukunda Ulke Kavrami*, 137

⁵ Zaydan, 234

otherwise the head of state should fight them until they obey his authority.¹ This is mentioned in the following verse:

وَإِنْ طَائِفَتَانِ مِنَ الْمُؤْمِنِينَ اقْتَتَلُوا فَأَصْلَحُوا بَيْنَهُمَا فَإِنْ بَغَتْ
إِحْدَاهُمَا عَلَى الْأُخْرَىٰ فَقَاتِلُوا الَّتِي تَبْغِي حَتَّىٰ تَفِيءَ إِلَىٰ أَمْرِ اللَّهِ فَإِنْ
قَاءَتْ فَأَصْلَحُوا بَيْنَهُمَا بِالْعَدْلِ وَأَقْسِطُوا إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ

And if two parties of groups among the believers fall into fighting, then make peace between them both, but if one of them rebels against the other, then fight you (all) against the one that which rebels till it complies with the Command of Allah; then if it complies, then make reconciliation between them justly, and be equitable. Verily! Allah loves those who are equitable.²

Some Muslim scholars believe that *ahl al-Baghy* (rebels) are apostates, but Imam Malik says that they are not apostates but *fasiqs* or transgressors against the religion. He adds that they are invited to repent, if they do not repent then they are punishable by death.³ According to Mawardi, rebels may not be killed except on

¹ Qurtubi, Vol. XVI, 321

² Noble Qur'ân 49; 9

³ Malik ibn Anas, Vol. III, 47-50

the battlefield, at the time of battle.¹ The rules about the *bughat* (rebels) and the *dar al-Baghy* (land of rebellion) are related to the fourth Caliph Ali b. Abi Talib, Muawiya, and the *Khawarij*.² Because the *dar al-Baghy* (land of rebellion) was accepted as a part of the *dar al-Islam*, they had the same rule of government. Although the rebel government was not a legal government, it was still recognized as legitimate on some restricted issues, such as cases that include public benefit. An example would be if rebels collected taxes from inhabitants, after getting back the rule the Muslim state does not recollect the tax.³

Because Hanafi scholars are of the view that the Muslim state does not have the rule of power over the *dar al-Baghy* (land of rebellion) (like the *dar al-Harb*), they say that the crimes committed inside the borders of the *dar al-Baghy* (land of rebellion) cannot be punished after regaining ruling power.⁴ Hanbali, Shafi'i, and Maliki scholars do not accept this view, and they say that crimes, if

¹ Ali ibn Muhammad Mawardi (d. 450/1058), *Al-Ahkam al-Sultaniyah wa-al-Wilayat al-Diniyah*, 63-71, 1978

² Muhammad Hamidullah, *Muslim Conduct of State*, 175-188, Lahore, 1961

³ Qurtubi, Vol. XVI, 321; Ibn Qudamah, *Mughni*, Vol. VIII, 536

⁴ Ibn Abidin, Vol. VI, 417-421; Sarakhsi, Vol. IX, 204, Vol. X, 100, 130

conditions are formed, must be punished, the place where the crimes were committed is of importance.¹

d. Dar al-Sulh دار الصلح:

In Islamic law the basis of international relations depends upon peace and reciprocity. The following verse mentions the possibility and the need of peace which affects the relationship with Muslim countries:

عَسَى اللَّهُ أَنْ يَجْعَلَ بَيْنَكُمْ وَبَيْنَ الَّذِينَ عَادَيْتُمْ مِنْهُمْ مَوْدَّةً وَاللَّهُ قَدِيرٌ
وَاللَّهُ غَفُورٌ رَحِيمٌ {7} لَا يَنْهَاكُمُ اللَّهُ عَنِ الَّذِينَ لَمْ يُقَاتِلُوكُمْ فِي الدِّينِ
وَلَمْ يُخْرِجُوكُمْ مِنْ دِيَارِكُمْ أَنْ تَبَرُّوهُمْ وَتُقْسِطُوا إِلَيْهِمْ إِنَّ اللَّهَ يُحِبُّ
الْمُقْسِطِينَ {8} إِنَّمَا يَنْهَاكُمُ اللَّهُ عَنِ الَّذِينَ قَاتَلُوكُمْ فِي الدِّينِ
وَآخَرَجُوكُمْ مِنْ دِيَارِكُمْ وَظَاهَرُوا عَلَى إِخْرَاجِكُمْ أَنْ تَوَلَّوهُمْ وَمَنْ
يَتَوَلَّهُمْ فَأُولَئِكَ هُمُ الظَّالِمُونَ

Perhaps Allah will make friendship between you and those whom you hold as enemies. And Allah has power (over all things), and Allah is Oft-Forgiving, Most Merciful. Allah does not forbid you to deal justly and kindly with those who fought not against you on account of religion and did not drive you out of your homes. Verily, Allah loves those who deal with equity. It is only as regards those who fought against you on account

¹ Ibn Qudamah, *Mughni*, Vol. VIII, 537

of religion, and have driven you out of your homes, and helped to drive you out, that Allah forbids you to befriend them. And whosoever will befriend them, then such are the *Zalimûn* (wrong-doers those who disobey Allah).¹

The term *Dar al-Sulh* literally means the land-or abode-of truce. It is used for lands that are not conquered by Muslim troops but in which there is a truce with the Muslim state.² If the treaty signed by Muslims is a temporary agreement, it can be with or without paying of the *jizya* (poll tax), as is seen in the definition of truce made by Ibn Qudamah (d. 622/1223):

It is a contract that is signed between Muslims and enemies in order to cease the war for a certain period with or without payment of something.³

If the treaty is a permanent type of agreement, it can be signed on the condition that the *jizya* (poll tax) be taken from the non-Muslims they are made to obey the rules of the Muslim state.⁴ Breaking these kinds of agreements is not lawful.⁵

¹ The Noble Qur'ân 60: 7-9

² D. B. Macdonald (A. Abel) "Dar al-Sulh" *Encyclopaedia of Islam*, Leiden Brill, 1993

³ Ibn Qudamah, *al-Muqni*, Vol. I, 520; Ibn Qudamah, *Mughni*, Vol. IX, 285

⁴ Shafi'i, *al-Umm* Vol. IV, 104, 118, 127

⁵ Kasani, Vol. VII, 109

The Prophet (pbuh) concluded a peace agreement with the Christian population of Najran, guaranteeing their security in return for imposing some obligations upon them.¹ The *Dar al-Sulh* (abode of peace) is also called the *dar al-Saleem* (abode of peace) and the *dar al-Ahd*.

¹ D. B. Macdonald (A. Abel) "Dar al-Sulh" *Encyclopaedia of Islam*; For more information and the full version the treaty see Muhammad Hamidullah, *Majmu'at al-Wasa'iq al-Siyasiyah lil-'ahd al-Nabawi wa-al-Khilafah al-Rashidah*, 173-9, Beirut, 1985

CHAPTER TWO

Muslim Minorities in the dar al-Harb

In this chapter we will deal with the question of *hijra* or immigration, and its relationship to the applicability of Islamic law in the *dar al-Harb*. In discussing this issue, Muslim scholars have focused upon two main aspects. The first question is whether or not Muslims can travel from the *dar al-Islam* to the *dar al-Harb* voluntarily. The second question is whether it is permissible for them to reside within the *dar al-Harb* or would it be obligatory for them to migrate to the *dar al-Islam*. The first problem is discussed in the next chapter, since it is a contemporary problem, and in today's world for several reasons, many of them having to do with economic opportunities in the West, Muslims have voluntarily traveled or migrated to non-Muslim lands. In this chapter we will examine the situation of Muslims who reside involuntarily in the *dar al-Harb*, and whether they have to migrate to the *dar al-Islam*.

The term *hijra* or migration is mentioned several times in the Qur'an. In some of the verses, it is used to mean to "abandon unpleasant things", and also to "migrate from one place to another". It is used to mean the act of ending one's residence in a country

governed by infidels, and migrating to a country governed by Muslims.¹

There are contradictory traditions reported from the Prophet (pbuh) about *hijra* (immigration). In one *hadith* (tradition of the prophet):

لا تنقطع الهجرة حتى تنقطع التوبة و لا تنقطع التوبة حتى تطلع الشمس من مغربها

Migration will not cease until repentance ends, and repentance will not end until the sun rises in the west.²

قال رسول الله صلى الله عليه وسلم يوم فتح مكة: لا هجرة ولكن جهد ونية اذا استنفرتم فانفروا

There is no migration (after the conquest of Makkah but only *jihad* (striving in the path of Allah) and some intention. So when you are summoned to go forth (for *jihad*), go forth.¹

Those traditions can be reconciled in two ways. First, migration was obligatory in the early days of Islam. But it is no longer mandatory for Muslims after the conquest of Makkah. Second, although the migration from Makkah to Madinah is not

¹ Jurjani, 'Ali ibn Muhammad, al-Sayyid al-Sharif, *al-Ta'rifat*, al-Qahirah, 1991

² Abu Da'ud Sulayman ibn al-Ash'ath al-Sijistani, *Sunan Abu Dawud*, Kitab al-Jihad, 2479, 1970

required of Muslims any longer, the commandment to migrate from the *dar al-Harb* to the *dar al-Islam* is still if living in the *dar al-Harb* would prevent the Muslim from living according to the rulings of Islam.²

There are two important types of *hijra* (immigration) in Islamic history: the first one is migration from one place to another in search of justice and freedom. The best example of this type is the migration of Prophet's (pbuh) followers to Abyssinia in order to seek protection from the persecution of polytheists of Makkah. The second type is the migration from the *dar al-Harb* to the *dar al-Islam* i.e. the migration of the Prophet from Makkah to Yathrib, (Madinah). These two cases form the basis of our later discussion. Those who migrated to Yathrib with the Prophet (pbuh) are called *Muhajirun* or immigrants. In modern times, Muslims who migrated from secular India to Pakistan and Afghanistan in the last century have also been called *muhajirun*.³

¹ Abu Da'ud, Ibid., Kitab al-Jihad, 2480; Tirmidhi, Muhammad ibn 'Isa (d. 279/829), *Sunan al-Tirmidhi wa-huwa al-Jami' al-Sahih*, Vol. III, Abwab al-Siyar, 74, 1638 al-Madinah al-Munawwarah, 1965-1967

² Ahmad Hasan, *Sunan Abu Dawud, English Translation with explanatory notes*, Vol. II, 685, Lahore, 1984

³ Lewis Bernard "Legal and Historical Reflections on the Position of the Muslim Populations under non-Muslim rule", Vol. XIII, 1-16, *Journal Institute of Muslim Minority Affairs*, 1992

As we have mentioned above Muslim scholars agree on the application of Islamic law regardless of where the Muslim is may reside, although they disagree about the extent of application required un various conditions. It is also commonly accepted that if Muslims who live in the *dar al-Harb* have difficulty and are unable to live according to the precepts of Islamic law, and have a chance to migrate, it is an obligation for them.¹

According to Imam Shafi'i the migration from the *dar al-Harb* to the *dar al-Islam* is still obligatory for all Muslims except for the Muslims who cannot migrate because of illness or a similar condition. However a Muslim can reside in the *dar al-Harb* if religious freedom exists. Take for example Abbas, the uncle of the Prophet (pbuh), who stayed in Makkah, because his family guaranteed him protection, thus he was able to practice Islam.² The Hanbali scholar Ibn Qudamah agrees with Imam Shafi'i. He argues that although Muslims can stay in the *dar al-Harb*, if they are able to practice Islam, migration to *dar al-Islam* is preferable, since Muslims can join the Muslim community, and make the community stronger

¹ Ibn Qudamah, *al-Muqni*, Vol. I, 485; Ramli, *Nihayat al-Muhtaj*, Vol. VII, 82

² Shafi'i, *al-Umm* Vol. IV, 161

in *jihad*. Another example of a scholar with this viewpoint is Nuaym al-Nahham. Like Abbas, the Prophet (pbuh) let him stay with his tribe, and said to Nuaym: "My family excluded me and wanted to fight against me, and your family protected you and wanted you to stay". Abbas responded: "Your family expelled you towards the obedience of God and jihad against his enemies, but my family retained me from the migration and from the obedience of God".¹

Another case of immigration is the situation of Andalusian Muslims after the conquest of Spain by Christians. Maliki scholars and the Zahiri scholar Ibn Hazm who lived in Spain dealt with this specific case. Ibn Hazm and al-Wansharisi agree that Andalusian Muslims must migrate to the *dar al-Islam*. In one of his *fatwas* (legal judgment), al-Wansharisi criticizes Muslims who ask him about staying in Spain in order to help the Muslims who reside there. Wansharisi describes those Muslim minorities as *dhimmis* and *Mudajjan*. In Arabic the word *dajn* is used for a tamed or domestic animal as opposed to a free or wild animal. Later *mudajjan* or *ahl al-Dajn* became a phrase used for the Muslims who stayed voluntarily, to benefit by paying a tribute to the Christians. The *mudajjan* were

¹ Ibn Qudamah, *Mughni*, Vol. IX, 283

despised by those who emigrated and by those who had not been conquered. The *mudajjan* became known in the Spanish language as *mudéjar*.¹ Al-Wansharissi believed that Muslims are obliged to migrate from *dar al-Kufr*, (land of infidelity) in order to preserve their faith, and that the support of "disobedient *Mudejjans*" is not an appropriate reason to delay migration. Remaining under the authority of infidels means tacit approval of the superiority of the infidels over Muslims. According to verse 5:58 infidels would mock Muslims and laugh at them. These Muslims also would not be able to fulfill the duty of the legal alms (*zakat*), because the *zakat* must be paid to the ruler of the *dar al-Islam*. Performing other Islamic obligations would also difficult for Muslims living under Christian rule. Adults may be able to avoid assimilation, but children, and other weak people may not be so successful. For them assimilation, that is adopting the clothes, culture and language of the Christians would always be a potential danger. He says, for example, that if a Muslim forgets the Arabic language, he cannot pray properly.²

¹ Lewis Bernard "Legal and Historical Reflections on the Position of the Muslim Populations under non-Muslim rule", Vol. XIII, 1-16, *Journal Institute of Muslim Minority Affairs*, 1992

² Wansharisi, 137-141

Al-Wansharisi issued another *fatwa* (legal judgment) about the Muslims who migrated from Spain. Since they had left their property in Spain, they fell into a bad financial situation in Morocco, thus they regretted leaving Spain, and wished go back to the *dar al-Harb*. Al-Wansharisi says that although the *hijra* (migration) from Makkah to Medina ended after the conquest of Makkah, the *hijra* (migration) from the *dar al-Kufr* to the *dar al-Islam* remains obligatory until the end of the world. If a Muslim cannot find a just place, he should reside in the best one available to him. He quotes the verse 97 of surah al-Nisa as evidence:

إِنَّ الَّذِينَ تَوَقَّاهُمُ الْمَلَائِكَةُ ظَالِمِي أَنْفُسِهِمْ قَالُوا فِيمَ كُنْتُمْ قَالُوا كُنَّا مُسْتَضْعَفِينَ فِي الْأَرْضِ قَالُوا أَلَمْ تَكُنْ أَرْضُ اللَّهِ وَاسِعَةً فَتُهَاجِرُوا فِيهَا فَأُولَئِكَ مَأْوَاهُمْ جَهَنَّمُ وَسَاءَتْ مَصِيرًا

Verily! As for those whom the angels take (in death) while they are wronging themselves (as they stayed among the disbelievers even though emigration was obligatory for them), they (angels) say (to them): "In what (condition) were you?" They reply: "We were weak and oppressed on earth." They (angels) say: "Was not the earth of Allah spacious enough for you to emigrate therein?" Such men will find their abode in Hell - What an evil destination.

Then he says according to verse 98, the only exception to this rule is for Muslims who are weak or not able to find a way for immigrate:

إِلَّا الْمُسْتَضْعِفِينَ مِنَ الرِّجَالِ وَالنِّسَاءِ وَالْوِلْدَانِ لَا يَسْتَطِيعُونَ حِيلَةً وَلَا يَهْتَدُونَ سَبِيلًا فَأُولَئِكَ عَسَى اللَّهُ أَنْ يَعْفُوَ عَنْهُمْ وَكَانَ اللَّهُ عَفْوًا غَفُورًا

Except the weak ones among men, women and children who cannot devise a plan, nor are they able to direct their way. For these there is hope that Allah will forgive them, and Allah is Ever Oft Pardoning, Oft-Forgiving

He then quotes several verses that prohibit alliances with the infidels. He also gives examples from the opinions of past scholars, such as Ibn Rushd (d. 520/1126)¹, and Ibn al-Arabi (d. 543/1147).² Then he mentions a *hadith* of the Prophet (pbuh) prohibiting Muslims to live under the authority of non-Muslims.

انا برئ من كل مسلم مقيم مع المشركين

¹ Abu al-Walid Muhammad Ibn Ahmad Ibn Rushd al-Maliki known as Ibn Rushd al-Jadd

² Abu Bakr Muhammad Ibn Abdullah Ibn Arabi al-Maliki

I consider myself under no obligation to any Muslim who live among the polytheists¹

According to al-Wansharisi poverty is not a reason to regret having to migrate, and anyone who feels regret should overcome it by reassuming their faith and knowledge. He gives the example of companions who left their goods, their land, and even their families in order to migrate to Abyssinia, though they were strong and prosperous in Makkah. Therefore, the immigrants should not complain about poor living conditions or reject the obligation of emigration; Islam should be their supreme value.² He reminds them the verse 63:9:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تُلْهِكُمْ أَمْوَالُكُمْ وَلَا أَوْلَادُكُمْ عَنْ ذِكْرِ اللَّهِ وَمَنْ يَفْعَلْ ذَلِكَ فَأُولَٰئِكَ هُمُ الْخَاسِرُونَ

O you who believe! Let not your properties or your children divert you from the remembrance of Allah. And whosoever does that, then they are the losers.

¹ Tirmidhi, 80, *Abwab al-Siyar* 1654; Ibn Qudamah, *Mughni*, Vol. IX, 282

² Wansharisi, 119-35

The Shafi'i scholar Ramli (d. 957/1550) issued a different *fatwa* (legal judgment) from al-Wansharisi's. He was asked about the condition of Muslims living in Andalusia. The question states that they are not under persecution, they practice Islam, and even they have a mosque in return for paying the *kharaj* or land tax, and then asked whether they were under any obligation to migrate. Ramli replied that under these conditions migration is not an obligation for them. He cited as evidence the example of the Prophet (pbuh) who sent Uthman to Makkah during the negotiation of Hudaibiya pact, because Uthman was able to practice Islam in Makkah.¹

Another *fatwa* (legal judgment) was issued by Ibn Taymiyyah (d. 728/1328) concerning to the city of Mardin in Turkey. The question was based on what kind of the *dar* the city of Mardin is, is it a part of the *dar al-Sulh* (abode of peace) or of the *dar al-Harb*? When the inhabitants have a chance to migrate, should they migrate? Would the people of Mardin be sinful if they stayed there and gave physical and material support to the enemies? Is it

¹ Al Ramli, Shams al-din Muhammad (d. 957/1550), *Fatawa al Ramli*, Vol. IV, 52-54, in *al-Fatawa al-Kubra al-Fiqhiyah*, Ahmad ibn Muhammad Ibn Hajar al-Haythami, Beirut, Lubnan, 1983

possible to consider these Muslims to be hypocrites? Ibn Taymiyyah begins his *fatwa* (legal judgment) by explaining the illegality of attacking Muslims and their properties. He argues that Muslims must migrate if they cannot perform the requirements of their religion. Otherwise migration is not obligatory but it is still preferable. Calling them hypocrites is not possible, except for the ones who have the characteristics of hypocrites as explained in the Qur'an and the *Sunnah*. Regarding the city of Mardin, he says that it is neither part of the *dar al-Sulh* (*saleem*) (abode of peace) nor the *dar-Kufr*, but falls into another category altogether. Because Muslims live there, it cannot be accepted as being within the *dar al-Harb*. However because the inhabitants do not apply Islamic law, it cannot be considered part of the *dar al-Sulh* (abode of peace) either. The Muslims living there should be treated according to rules of Islamic law concerning to Muslims and the enemies of Islam should be treated according to the rules concerning to the enemies.¹

¹ Ibn Taymiyyah, Ahmad ibn 'Abd al-Halim, *Majmu'at fatawa Shaykh al-Islam Ahmad Ibn Taymiyyah*, Vol. XXVIII, 240-241, Beirut, 1997

Indian and Palestinian Muslims in the last century represent excellent examples of the same problems in the modern era. Muslims who migrated from the secular Indian state in order to protect their religion and to preserve their interests as Muslims in the last century are called *muhajirun*. There were two major waves of migration from India. The first one was to Afghanistan in 1920, and the second one was to Pakistan after the partition in 1947. In 1904, a *fatwa* (legal judgment) was issued by Abd al-Aziz Shah. According to this *fatwa*, British India was accepted as being part of the *dar al-Harb*, because Islamic rules were not the supreme legal authority in the land, even though Muslims were given freedom of worship. However, he did not rule that migration was obligatory, because of the insufficient conditions for *hijra* (migration).¹ Even if Shah did not believe that the *hijra* was mandatory, his *fatwa* (legal judgment) became the basis of migration from India to Afghanistan in 1920. According to Muhammad Khalid Masud, this migration was supported for political reasons, and the result was disastrous for the *muhajirun*.

¹ Khalid Masud, Muhammad "The obligation to migrate: the doctrine of *hijra* in Islamic law", 3-29 in *Muslim travelers: pilgrimage, migration, and the religious imagination* Edited by Dale F. Eickelman and James Piscatori, Berkeley, 1990

Afghanistan didn't prove to be the *dar al-Islam* for these *muhajirun*, who had volunteered to move there after disposing of all their possessions. Hundreds died on the way to and back from Afghanistan; others return to India destitute and frustrated.¹

The second major migration occurred after the partition of India and Pakistan. Amidst waves of communal violence and chaos, millions of Muslims and Hindus migrated from one part of the Indian subcontinent to another as part of one of the largest upheavals in the modern period. Millions of Muslims migrated to Pakistan because they were afraid that a secular state in which the dominant group was Hindus may not assure them a sense of equality or even of security. The migrations continued until the 1960's. More than 7 million people immigrated to Pakistan. However, like the case of the earlier migration to Afghanistan, the *muhajirun* were not always welcomed by local Pakistanis. Differences in language and culture were a major source of conflict, and mutual antipathy.²

¹ Ibid., 3-29 in *Muslim travelers: pilgrimage, migration, and the religious imagination* Edited by Dale F. Eickelman and James Piscatori, Berkeley, 1990

² Sarah Ansari, "Muhadjir", *Encyclopaedia of Islam*, Leiden Brill, 1993

The second modern example to be examined was related to the establishment of the modern state of Israel. 'Abd-Allah al-Qalqili, the mufti of Jordan, issued a *fatwa* (legal judgment) about Palestinian Muslims that differed from the classical view discussed above. In his *fatwa* he asked Muslims not to leave their country, which had been occupied by the Israelis because this would mean ceding all of this territory to the Israelis. He argued that Muslims must stay even if they have to suffer. He quoted the following verses:

يَا أَيُّهَا الَّذِينَ آمَنُوا اصْبِرُوا وَصَابِرُوا وَرَابِطُوا وَاتَّقُوا اللَّهَ لَعَلَّكُمْ
تُفْلِحُونَ

O you who believe! Endure, outdo all others in endurance, be ready, and observe your duty to Allah, in order that you may succeed.¹

For this reason, al-Qalqili criticized offers made by some Arab countries to receive a number of Palestinian refugees in their country. According to him this proposition was part of a plan to vacate Palestine for the Jewish immigrants who wanted to establish the modern state of Israel. He claimed that the Palestinians who

¹ The Noble Qur'ân 3:200

immigrate to America were also guilty because, they left their country to the enemy and gave up the *jihad*, which was directed at recovering their country.

Al-Qalqili said that migration from the *dar al-Harb* to the *dar al-Islam* is an obligation for two reasons:

- (1) In order to practice Islam,
- (2) In order to perform *jihad* with other Muslims.

He added that if someone had to migrate, he/she should choose a Muslim country in which he/she could perform his/her religious obligations and keep their family from the dangers of a foreign culture.¹

¹ Qalqili's Fatwa is quoted from the article written by Abu Sahlieh, Sami A. Aldeeb "The Islamic Conception of Migration past, present and future", 1995, <http://members.xoom.com/nonviolence/sami/Art-Index.html>

CHAPTER THREE

Contemporary Problems and the idea of *Dar*

In the modern period, Muslim jurists have been faced with a new set of problems related to the idea of *dar*. For example, Muslims have begun to emigrate voluntarily from countries with significant Muslim populations to the West, in which they have constituted a minority. In medieval works on Islamic law, the situation of new converts, Muslim traders, ambassadors, inhabitants of Muslim land conquered by non-Muslims, Muslim captives, temporary visitors was discussed, but voluntary immigration was not adequately discussed because it was not a pressing issue at the time.

Today there are two major problems caused by the idea of *dar*. First, what is the position of the West, primarily Europe and the United States? Is the West considered to be part of the *dar al-Harb* or the *dar al-Islam*? Second, if the former is the case, then is it permissible to voluntarily travel or migrate from the *dar al-Islam* to the *dar al-Harb*?

If we take the first question there are two opposing considerations. The first consideration has been suggested by two

prominent modern Muslim ideologues: Sayyid Abu al-Ala al-Mawdudi of the political/religious party called *Jama'at al-Islami* of Pakistan, and Sayyid Qutb, a member of the Muslim brotherhood in Egypt. Both scholars regarded the modern world as a modern *Jahiliyah* (condition of ignorance). They argued that secularism, capitalism, socialism, and westernization are all characteristics of a modern *jahiliyyah*. Their opinions were embraced by the Egyptian group *Jama'at al-Muslimin*, commonly known as *jama'at takfir wa al-Hijra* founded by Shukri Mustafa. They regarded Arab socialists, such as Jamal Abd al-Nasser and Anwar Sadat as modern pharaohs. They held the view that a *hijra* (migration) must take place, and they considered the western world and their own country, i.e. Egypt to be part of the *dar al-Harb*, and they interpreted the *hijra* as the isolation of Muslims from the secular community. According to their view, the "true" Muslims could perform a *hijra* by isolating themselves (within any country) from the "bad" Muslims.¹

The second approach explains a third category of the concept of *dar*: *dar al-Ahd*, or *dar al-Muwada'ah*, (abode of peace). For example, Wahbah Zuhayli states that the division of the world into

¹ Imtiyaz Yusuf, "Hijrah" *Oxford Encyclopedia of Modern Islamic World*, New York, 1995

dar al-Islam and *dar al-Harb* is not a commandment of Islam. Both definitions were created by Muslim scholars based on the religious and political conditions that existed in their times. He argues that conditions have changed, and international relations are able to achieve peace. For medieval scholars, on the other hand, international relations was based primarily upon military confrontation. Zuhayli says that a country becomes *dar al-Harb* if it is in a state of war. But if the war ends, the country is no longer a *dar al-Harb* but *dar al-'Ahd*. He adds that because of global pacts, non-Muslim countries must be considered as *dar al-Ahd*.¹

Abu-Zahrah shares a similar opinion with Wahbah Zuhayli. He says that the present world is a united organization whose members are forced to respect international laws. Islam requires loyalty to agreements. It is for this reason that countries that are members of world organizations, such as the United Nations, can no longer be considered as *dar al-Harb* but must be treated as *dar al-Ahd* (country of treaty).²

¹ Zuhayli, Mustafa Wahbah, *Athar al-Harb fi al-Fiqh al-Islami*, 130-138, Beirut 1966

² Abu Zahrah, Muhammad, *Alaqa al-Dawliyah fi al-Islam*, 53-57, 1964

Modern scholars have also discussed the situation of Muslim countries today. For instance Mawlawi poses the question; if the term *dar al-Islam* refers to a country where Islamic laws are totally applied, therefore which country can be considered as *dar al-Islam*? What is the position of countries that no longer apply these laws, although majority of the population are Muslim: is it still a Muslim country? If we accept the practice of the religious rituals as a criteria, then what do we say about some non-Muslim countries where the Muslims practice their rituals more freely than in a Muslim country? Mawlawi answers his own questions. He says that a non-Muslim country is not *dar al-Islam* just because of freedom of worship, but those which are not in war or which have treaties with the Muslim countries must be considered as *dar al-'Ahd* or *dar al-Da'wah* (land of mission).¹

With regard to the second question, contemporary Muslim scholars take two different approaches: One for the purpose of education, training, and employment; and second for religious freedom. Muslims migrate to western countries for both reasons.

¹ Mawlawi's *Fatwa* is quoted from the article written by Abu Sahlieh, Sami A. Aldeeb "The Islamic Conception of Migration past, present and future", 1995, <http://members.xoom.com/nonviolence/sami/Art-Index.html>

Certainly *jama'at al-Muslimin* and scholarly groups believe that the West is *dar al-Harb* do not approve of migration to the West. However, Abu Zahra, Wahbah Zuhayli, and Abd al-Qadir Awda, argue that for legal reasons migration to the *dar al-Harb* is permissible. They use three arguments for the basis of their opinions:

1. *Darura* or absolute necessity
2. Benefits to Muslim countries, such as trained personnel
3. *Tablig'* or the propagation of Islam

Because of the third point, some scholars have even ruled that migration to the *dar al-Harb* is an obligation for some Muslims.¹ In light of these arguments Muhammad Taqi al-Uthmani issued several *fatwas* (legal judgments) about the applicability of Islamic law and the problem of immigration to the *dar al-Harb*.²

The question is whether or not it is allowed to take the citizenship of a non-Muslim country? What is the situation of

¹ For the *fatwa's* of Abd al-Aziz Siddiq see Khalid Masud, Muhammad "The obligation to migrate: the doctrine of hijra in Islamic law", 3-29 in *Muslim travelers: pilgrimage, migration, and the religious imagination* Edited by Dale F. Eickelman and James Piscatori, Berkeley, 1990

² The following *fatwa* is taken from an article which is a response written by Muhammad Taqi al-Uthmani for the Majlis of Majma' al-Fiqh al-Islami, held in Amman, Jordan from 8-13 Safr, 1407 A.H. corresponding to 11-16 October, 1986 in response to the questions sent by the Islamic Center

Muslims who are forced to adopt the nationality of a non-Muslim country because of the persecution in their homelands? Another aspect of his *fatwa* is similar to Mawlawi's *fatwa*. When our own Muslim countries do not fully put into practice the principles of Islamic Law, (*ahkam al-Islam*), then what is the difference between a Muslim and a non-Muslim country? Both are equal as far as the implementation of Islamic law. But, in a non-Muslim country, Muslims have the right to live freely, gain wealth, and preserve their honor. Moreover, they are safer than in a Muslim country.

Al-Uthmani answered the question based on the above-mentioned arguments. He argues that accepting the right of permanent residence in a non-Muslim country, as its citizen is a subject whose ruling, (*hukm*) differs with the motivations, and intentions of those who seek citizenship. Then he gives examples for the different motivations of immigration. If a Muslim is not safe in his own country and he has no alternative for protecting himself from these injustices except taking residence in a non-Muslim country, then in this case it is permissible for him to take citizenship

without any objection, on the condition that he will be able to practice Islam in daily life and is able to guard against cultural assimilation. He cites the migration of the companions of the Prophet (pbuh) to Abyssinia as the evidence for his legal judgment. Abyssinia was under the control of Christians at that time. Some Companions continued to reside there after the migration of the Prophet (pbuh) to Madina. For instance Abu Musa al-'Ashari did not return till the expedition of Khaibar, that is in the seventh year after the *Hijra*.

The other reason might be financial hardship which cannot be resolved except by means of support in a non-Muslim country. He says that it is permissible for a person to migrate based on the conditions mentioned earlier. This is because earning a livelihood is a duty (*fard*), and it is not restricted to any one place. This is mentioned in the following verse:

هُوَ الَّذِي جَعَلَ لَكُمُ الْأَرْضَ ذَلُولًا فَامْشُوا فِي مَنَاكِبِهَا وَكُلُوا مِن رِّزْقِهِ
وَالِيهِ النُّشُورُ

He it is, Who has made the earth subservient to you, so walk in the path Thereof and eat of His provisions, and to Him will be the Resurrection.¹

Both of the first two reasons, i.e. necessity and benefit, are permissible because of the principle of *darura* (necessity). If a person becomes a citizen of a non-Muslim country in order to propagate Islam among its people or to teach Islam to the Muslims living there, then not only is it permissible, but he will be rewarded for it. He says that many Companions and *Tabi'in* have taken residence in the land of the unbelievers for this praiseworthy purpose.

The situation of a Muslim who has sufficient financial means in his homeland, but migrates to a non-Muslim country in order to raise his standard of living and to be able to live in luxury is objectionable (*makruh*). Al-Uthmani quotes some *ahadith*² which are against residing in a non-Muslim land.

According to him taking citizenship of foreign country to earn respect and honor, or to prefer alien citizenship to that of Muslim

¹ The Noble Qur'ân, 67: 15

² For instance, the *hadith* أنا بريء من كل مسلم مقيم مع المشركين I consider myself under no obligation to Muslim who lives among the polytheists

country, or to imitate them in daily life is absolutely *haram* (forbidden), which needs no evidence.

Al-Uthmani mentions the situation of Muslims traveling to the land of the unbelievers, and the ruling concerning tourism. His opinion notes three conditions that permit traveling to the land of the unbelievers: (1) The person has enough knowledge to repel doubts (2) If he/she is certain that he/she can prevent himself/herself from falling into immoralities. (3) If there is a need to travel.

If these conditions are not met he/she is not allowed to travel to the land of the unbelievers due to the *fitna* (temptations) or fear of *fitna* that exists there and the squandering of wealth that usually accompanies such visits. When a need arises, i.e. medical treatment or acquiring knowledge is not found in his land then it is permissible. As for traveling for tourism, he believes that there is no need for it, consequently it is not permissible.

Al-Uthmani also discusses the problem of temporary residence in non-Muslim country for ambassadors, traders, and students. Temporary residence in the land of the unbelievers has two conditions:

COND (1) The resident is secure about his/her faith in the sense that he/she has knowledge, faith, and a strong resolve such that he/she can be confident that he/she will remain firm on Islam, and cautious against deviation or misguidance.

(2) He/she must be able to practice Islam without any hindrance so there is no obstacle in establishing the prayer; there is no obstacle in (administering) *zakat* (obligatory almsgiving), fasting, *Hajj* (pilgrimage), and other requirements of Islam. If he/she is unable to do so, he/she is not allowed to reside and must return to his/her native country.

CONCLUSION:

After examining the theoretical and historical evidence we may conclude as follows:

(1) First, division of the world into different territories is not an order explicitly outlined in the Qur'an or the Sunnah. All discussions about the idea of *dar al-Islam* and *dar al-Harb* have resulted from interpretations of the *maqasid al-Shari'ah*, (Objectives of Islamic Law). These interpretations were made by Muslim scholars according to the religious and political conditions that existed in their respective times. Because conditions in modern times are different from the medieval conditions, the concept of *dar* has been revisited by modern Muslim scholars. Today Muslims cannot travel as freely even to perform the pilgrimage as in medieval times. For instance Saudi Arabia applies a quota which limits the pilgrims from other Muslim countries. A Muslim must also obtain a visa in order to perform the religious obligation of *haji* (pilgrimage). Contemporary Muslim scholars, such as Wahbah Zuhayli, Muhammad Abu Zahrah, have redefined the concept of *dar*. According to their interpretation, the concept of *dar al-Sulh* (abode of peace) has gained special importance.

(2) Second, Muslim scholars have discussed the concept of *dar* since the beginning of the eighth century. They established the division in light of their interpretations of the Qur'an and Sunnah in order to distinguish religious demographics. Although they differed from each other in their views under the influence of their cultural, political, and social surroundings, the primary concern they repeatedly raised in their fatwas (legal judgments) was the practice of Islam. If a Muslim can practice his religion in a place, they permit him/her to reside even in a non-Muslim country. If he/she cannot freely practice Islam, immigration to another place is considered an obligation. As a result of religious persecution, the Prophet (pbuh) permitted migration to Abyssinia. Migration to Abyssinia and his migration to Madina are the strongest evidences that support this view.

(3) Third, today there are new interpretations of the concept of *dar*, affected by the concept of *jihad*. In medieval times *jihad al-Sayf* was the most effective method of *jihad*, i.e. Striving in the way of Allah in modern times *jihad al-Qawl*, (Propagation of Islam) seems to have replaced it. We should mention that this does not mean *jihad al-Sayf*, (Fighting with the sword) has ended. In the case

of necessity, such as in Bosnia, and Chechnya, Muslims have resorted to *jihad al-Sayf*, (Fighting with the sword) to protect their lives and property.

Dar: House, building, society, state, area, land, and country

Dar al-Baghy: Land of rebellion

Dar al-Adl: Abode Of Justice

Dar al-Ahd: Land of covenant

Dar al-Ahkam: Land in which the principles of Islamic law govern

Dar al-Da'wah: Land of invitation to Islam

Dar al-Harb: Land of war, the lands under the ruling of non-Muslims

Dar al-Hijrah: Land of immigration

Dar al-Hind: Country of India

Dar al-Iman: Abode of faith

Dar al-Islam: The abode of Islam, land under the ruling of Muslims

Dar al-Jahr: Land of injustice

Dar al-Kufr or Dar al-Kuffar: Land of infidelity or Land of the

infidels

Dar al-Muhajirin: Land of immigrants

GLOSSARY¹

Ahl al-Baghy: Rebels

Aman: to grant protection, safeguarding

Bughat: Rebels

Dar: House, building, locality, abode, area, land, and country.

Dar al-Baghy: Land of rebellion

Dar al-Adl: Abode Of Justice

Dar al-Ahd: Land of covenant

Dar al-Ahkam: Land in which the principles of Islamic law governs

Dar al-Da'wah: Land of invitation to Islam

Dar al-Harb: Land of war, the lands under the ruling of non-Muslims

Dar al-Hijra: Land of immigration

Dar al-Hind: Country of India

Dar al-Iman: Abode of faith

Dar al-Islam: The abode of Islam, land under the ruling of Muslims

Dar al-Jawr: Land of injustice

Dar al-Kufr or dar al-Kuffar: Land of infidelity or Land of the infidels

Dar al-Muhajirin: Land of Immigrants

¹ References for glossary are Muhammad Rawwas Qal'aji, and Hamid Sadiq Qunaibi, *Mu'jam*

Dar al-Muslimin: Abode of the Muslims

Dar al-Muwada'ah: Abode of peace

Dar al-Saleem: Abode of peace

Dar al-Shirk: Land of polytheism

Dar al-Sulh: Abode of peace

Dar al-Tawhid: Abode of monotheism

Dar al-Atrak: Land of the Turks

Daruhum: Their land

Daruna: Our land

Darura: Absolute necessity

Dhimmi: A non-Muslim who is in the covenant of protection (dhimmah) with the Muslim state and has the right of permanent residence in the Muslim state provided that certain types of taxes are paid.

Fard: Divine command, obligation, and duty

Fasiq: Transgressor of the principles of Islam

Fatwa: A formal legal judgment or view of a Muslim authority

Fitna: Trial, temptation

Lughat al-Fuqaha, (Dictionary of Islamic Legal Terminology), Beirut, Lebanon, 1996 and Ian Richard Netton, A popular Dictionary of Islam, London, 1992

Hadd, pl. Hudud: A kind of punishment in Islamic law which is stipulated in the Qur'an and Sunnah

Hadith, pl. Ahadith: Traditions of the Prophet (pbuh), i.e. all records relating to the deeds and utterances of the Prophet (pbuh)

Hajj: Pilgrimage to Makkah which is one of the five pillars of Islam

Halal: That which is lawful

Haram: That which is unlawful

Harbi: A non-Muslim who is citizen of a country which does not have an agreement with Islamic state

Hijra: emigration

Hukm, pl. Ahkam: God's Law, judgment, principles of Islam

Ikhtilaf al-Dar: Differences between countries

Jahiliyyah: Ignorance

Jihad al-Qawl: Propagation of Islam

Jihad al-Sayf: Fighting with the sword

Jihad: Striving in the way of Allah

Jizya: Poll tax imposed on non-Muslims, especially who are ahl al-kitab, in areas ruled by Muslims

Kharaj: Land tax

Kitabiyyat: Scriptuary women

Maqasid al-Shari'ah: Objectives of Islamic Law

Makruh: Objectionable, reprehensible

Mubah: Lawful, permissible

Muhajirun: Emigrants, it is a proper name for those who migrated from Makkah to Madina with the Prophet (pbuh)

Musta'man: A non-Muslim who is temporary resident, and who has assurance of protection of Islamic state

Pbuh: Peace be upon him

Riba: Usury, the charging of interest on a loan

Sahaba: Companions of the Prophet (pbuh), the word is used for any Muslim who (pbuh) the Prophet while the latter was alive

Shari'ah: Islamic Law

Tabi'in: The generation comes after the *sahaba* or companions of the Prophet (pbuh)

Tablig': The propagation of Islam

Zakat: Obligatory almsgiving which constitutes one of the five pillars of Islam

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VITA

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