

THE MARRAKESH DECLARATION

On the Rights of Religious Minorities in
Muslim-Majority Lands

A Legal Framework
and a Call to Action



إعلان مراكش

Table of Contents

Foreword

3

The King's Speech: Message from His Majesty,
King Mohammed VI, King of Morocco

7

Religious Minorities in Muslim-Majority Lands:
A Legal Framework and a Call to Action

II

Remarks from His Excellency Ahmed Toufiq,
Minister of Endowments and Islamic Affairs of Morocco

43

The Marrakesh Declaration Concept Paper

47

The Constitution of Medina: The First Written
Constitution in Human History

51

The Marrakesh Declaration:
On the Rights of Religious Minorities in
Muslim-Majority Lands

61



IN THE NAME OF GOD, THE COMPASSIONATE, THE MERCIFUL

Foreword

THE PROVENANCE OF the Marrakesh Declaration can be traced back to the turmoil and tragedies unleashed by the protests and revolutionary fervor that spread across Arab lands in the past decade. The incendiary ethos of the movements represented a loss of reason, morality, and human dignity, and led to widespread chaos, confusion, and civil wars. And amidst all the death and devastation arose ideologies inimical to Islam and its teachings and values, especially in their persecution of religious minorities in predominantly Muslim countries.

These religious minorities had peacefully co-existed for centuries, and many had thrived in these lands under Muslim rule, and they now found their churches being destroyed, their women and children being harmed, and their properties turned to ruin, many at the hands of extremist groups, such as Daesh. These tragic occurrences prompted Shaykh Abdallah Bin Bayyah, perhaps the most highly regarded legal philosopher amongst the global Sunni Muslim community, to use his considerable influence to begin to address the problem.

In 2012, he convened a gathering of religious scholars and elders in Nouakchott, Mauritania, and later in Tunisia, to promote the prophetic example of ensuring the full enfranchisement of all citizens in Muslim societies. Soon, the conversation drew much support from influential figures, not the least of whom was His Excellency Ahmed Toufik, the Moroccan Minister of Endowments and Islamic Affairs. As the momentum continued to build, Shaykh Abdallah Bin Bayyah began to organize an international gathering of Muslim scholars and deliberate with them, convincing them of the necessity of a renewed approach to the problem of minority status.

In 2016, at the invitation of His Majesty, King Mohammed VI of Morocco, Shaykh Abdallah Bin Bayyah called together more than 250 of the world's most distinguished Islamic scholars representing over sixty countries for a groundbreaking summit: the Marrakesh Declaration Conference. More than a hundred religious leaders and heads of state as well as representatives from the United Nations and fifty senior leaders of other world religions saw the wisdom of the gathering and also joined in attendance. The conference was held in conjunction with the Forum for Promoting Peace in Muslim Societies, which is hosted and supported by the government of the United Arab Emir-

ates. The conference took place at Savoy le Grand Hotel in Marrakesh, Morocco from January 25 – 27, 2016.

The conference was designed to contribute to the broader legal discourse surrounding contractual citizenship and the protection of minorities in order to awaken the dynamism of Muslim societies and encourage the creation of a broad-based movement to protect religious minorities in Muslim lands. Shaykh Abdallah Bin Bayyah believed this to be the most appropriate approach as it is also consistent with the world community's current understanding of citizenship.

The Muslim scholars in attendance, both Sunni and Shia, drafted and signed the landmark Marrakesh Declaration, which calls for religious freedom for minority faith communities in majority-Muslim countries. The Declaration, grounded in the prophetic model, highlights the core concept of citizenship delineated in the historic Charter of Medina, an example of contractual citizenship codified in a treaty, and one that is in harmony with the modern international notion of citizenship reflected in the Universal Declaration of Human Rights, the United Nations Charter, and related documents.

The thrust of the message emanating from the Conference was to confront all forms of religious discrimination, vilification, and denigration of what people hold sacred, and to show how such erroneous actions defy the precious values of Islam, especially peace, forgiveness, and coexistence, which have been the defining trait of the religion's fourteen-hundred-year history.

The Marrakesh Declaration is a document of historical proportions that is rooted in the very inception of Islamic history. Shaykh Abdallah Bin Bayyah's idea was to take today's seemingly unsolvable problem of granting full enfranchisement to religious minorities and to locate its solution within the matrix of Islam itself, thus satisfying both the secularists as well as those committed to the traditions of the Qur'an and the Sunnah by working within that tradition and producing a sound argument for equality under the law and equal citizenship regardless of race, creed, or color.

The Marrakesh Declaration inspires and challenges a broad array of Muslim stakeholders, including educational institutions, politicians, and artists, to fight extremism. It affirms that religion should not be used to deny the rights of any religious minorities in Muslim countries and calls upon people of all religions to confront religious bigotry. The call is clear: only people of all faiths working together can build a culture of peace and transform the viciousness of today into the virtue of tomorrow.

The signatories of the Marrakesh Declaration all concur on three key assertions: that the oppression of religious minorities contradicts the values of Islam; that a religious and intellectual basis for coexistence and equal citizenship must be created, and that religious leaders must draw on their respective scriptures to affirm mutual respect and coexistence and to reject violence and expulsion; and that religious leaders from the Abrahamic faiths of Judaism, Christianity, and Islam should form a global "Alliance of Virtue" to help alleviate the pain of humanity, fight poverty, protect freedom, and call for an end to oppression so as to advance the common good for all.

To carry forward the promise of the Marrakesh Declaration is to reaffirm the truth and beauty of revelation, to refute the extremists, and to restore reason, morality, and the dignity of all human beings.

In conclusion, I believe, with absolute conviction, that the Marrakesh Declaration, along with its legal framework paper that brilliantly summarizes the methodology of the creative minority of Muslim jurists throughout Islamic history, represents perhaps the most important initiative taken in the Muslim world in our lifetime. I also believe that if Shaykh Abdallah Bin Bayyah's methodology – which is nothing other than the revival of normative Islam's methodology for over a thousand years applied creatively and intelligently to the current context – is understood properly by modern Muslim scholars and the educated among the Muslim masses, it will act as a catalyst for not only the revival of a sound Islam but for the preservation and promotion of coexistence among the various colors, creeds, and classes in the long history of Islam.

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HIS MAJESTY, KING MOHAMMED VI,
KING OF MOROCCO

The King's Speech

Message from His Majesty,
King Mohammed VI, King of Morocco

All praise is due to God.

May peace and blessings be upon all Prophets and Messengers.

Ladies and Gentlemen:

IT GIVES ME great pleasure to send this message to those attending this conference and to welcome you to Marrakesh, the city of interaction and cultural dialogue. I wish you a pleasant stay and pray that Almighty God grants you every success in your endeavors to bring the truth to light and to dispel unfounded opinions.

Under normal circumstances, there would be no need to address a theme such as the one chosen for this conference, "The Rights of Religious Minorities in Islamic Lands," given the unambiguous position and principles of Islam as well as its legacy in this regard. Nevertheless, recent events have rendered the discussion of such a theme necessary in the current circumstances, and Muslims must show that these events have no basis or justification in Islam's frame of reference. Muslims have to show that certain events that are happening under the guise of Islam are driven or prompted by considerations which have nothing to do with the religion.

I am therefore pleased to see that this conference has been convened, both to highlight the true values advocated by religions and to ensure that we uphold those values so that peace and solidarity may prevail for the benefit of humankind.

Furthermore, I have every reason to believe that this conference will be a success, as it has brought together a fine selection of international figures and decision makers representing various bodies and religious institutions, as well as influential thinkers and media experts.

I would like to take this opportunity to thank the Ministry of Endowments and Islamic Affairs for the organization and preparations made for this conference, which is being held under the ministry's patronage. I am pleased with the measures taken by the ministry to ensure this event's success. My thanks go also to the Forum for Promoting Peace in Muslim Societies, which is presided over by Shaykh Abdallah Bin Bayyah and is supported by the United Arab Emirates.

Ladies and gentlemen, we in the Kingdom of Morocco see no reason for denying religious minorities any of their rights. We do not tolerate a violation of this principle being

perpetrated in the name of Islam, nor do we tolerate any Muslim being involved in such an infringement. This firm belief is rooted in the proper understanding of religious principles, in our cultural heritage, and in the history of this time-honored kingdom, all of which explains the way Moroccan Muslims interact with each other and with followers of other religions.

The primary source underpinning the principles to which we are committed is the Qur'an, in which Almighty God says that He has honored man as a human being. Therefore, and as confirmation of this honor bestowed on humankind, it was the Almighty's will to create people who are as different in their religious beliefs as they are in the color of their skin, the languages they speak, and the ethnic groups to which they belong. For this reason, Muslims are naturally inclined to accept diversity.

There are many references in the Qur'an to the People of the Book (*ahl al-kitāb*). In fact, the Almighty instructed Muslims to believe in all Prophets and Messengers and to honor and respect them. He also said that the People of the Book were not to be aggressed upon and that Muslims were to engage with them only in ways that are best and most gracious. The Almighty also ordered that the People of the Book were to be treated fairly in all circumstances, and that hatred, which can influence the way one behaves towards them, was to be renounced. In this regard, Islam prescribed jihad [military struggle] only for self-defense or to protect sanctuaries, when necessary. In no way is such jihad authorized to compel people to embrace Islam.

The second source on which our principles are based is the Sunnah of my revered ancestor, the Prophet Muḥammad – God's peace and blessings upon him. His practical teachings exemplify the Qur'an. He practiced and taught that Jews and Christians were to be treated well, and that no monk, rabbi, or person found praying in a place of worship could be killed, even in a time of war. He entered into transactions with the Jews, laid the foundations for treaties and for the protection of churches, decreed that people believing in other faiths were not to be harassed, and authorized marriage with women who were of the People of the Book. The many facets of Islam's peaceful coexistence with believers in other faiths have had beneficial effects in all spheres, including business, trade, industry, and the exchange of ideas. Therefore, as far as Islam is concerned, peace and security are the basis for interaction between faiths.

The caliphs who came after the Prophet Muḥammad – God's peace and blessings upon him – remained committed to the same approach. Even with regard to the covenant tax (*jizyah*) – the amount of which was, most of the time, less than the zakat required of Muslims – it should be noted that the second caliph, 'Umar ibn al-Khaṭṭāb, exempted the needy from paying it, and even included among its recipients those in need who were not Muslim. This caliph also guaranteed Jews and Christians protection of their places of worship and of their money, assuring them that no Jew or Christian would be coerced into giving up his religion; this is in compliance with the words of Almighty God: "Let there be no compulsion in religion" (2:256). This caliph is famous for asking, "By what right do you enslave people born of their mothers in freedom!"

From these two sources, the Qur'an and the Sunnah, Muslims developed the shariah system, which addresses the way Muslims deal with believers in other faiths. It is on the basis of these provisions that religious minorities in Islamic lands have widely enjoyed their rights and the protection of their lives and their honor. In particular, they have enjoyed the right to practice their religion, along with the rites and rituals involved, and to comply with the requirements of their faith. These rights and entitlements are the result of Islam's equal treatment of Muslims and those who are not Muslim when it comes to the preservation of the sanctity of their lives and properties.

This is true not only regarding rights but also feelings, as empathy must be shown through proper behavior towards the People of the Book in the event of illness and death; compassion must be shown for those in need by means of either charity or endowment.

Ladies and gentlemen, Morocco has always been an outstanding model of cultural coexistence and of interaction between Islam and other religions, particularly Judaism and Christianity. One of the glorious pages in this history was the emergence of the Moroccan-Andalusian civilization, which brought together various communities and led to the development of trade, industry, and the arts, as well as to the fruitful exchange in the areas of knowledge, wisdom, philosophy, and science.

This was especially the case when large numbers of Muslims moved from Andalusia to Morocco in particularly difficult conditions. With them, there were also Jews, who joined the Jewish community that had existed in the country since the pre-Islamic era. Historically, the Jewish community of Morocco was not treated as a minority but was always regarded as Moroccan. Its members were involved in all fields of activity and were present at all levels of society. They contributed to shaping society, were entrusted with public sector jobs and missions, and were people of great culture. Had it not been for the serenity they enjoyed and the rights they had, they would never have been able to earn the reputation they still have today in the areas of religious studies and outstanding research on Jewish heritage worldwide.

Ladies and gentlemen, as Commander of the Faithful and Defender of the Faith, I am committed to protecting the rights of Muslims and those of other faiths alike. The religious rights of Muslims and those who are not Muslim are protected in accordance with the aforementioned immutable principles, and their rights as citizens are guaranteed by our Constitution: there is no difference or distinction as far as the ultimate goals are concerned. In doing so, I am following in the footsteps of my glorious ancestors. My great grandfather, Moulay El Hassan, for instance, donated the land in Tangier on which the Anglican Church was built and which still stands there to this day. My grandfather, His Late Majesty King Mohammed V, protected Moroccan Jews against the tyranny of the pro-Nazi Vichy regime. My father, His Late Majesty King Hassan II, received Pope John Paul II on what was his first visit to a Muslim country.

I am following the same approach and enabling Christians of all denominations, who reside legally in Morocco, to perform their religious rites according to the church to which they belong. Moroccan Jews enjoy the same constitutional rights as their fellow

Muslim citizens. They join political parties, participate in elections, set up associations, and play a key role in the economy. They are represented in my circle of advisors as well as in the diplomatic field. Moroccan Jews, even second-generation children of Jews who chose to migrate elsewhere in the world, have close bonds with the rest of our society.

Ladies and gentleman, Morocco has played a leading role in interfaith dialogue. Indeed, shortly after the country's independence in 1956, Morocco organized meetings in the summer in the Benedictine Monastery of Toumliline situated in the mountains in the Fes region. They were attended by renowned Christian and Muslim intellectuals, cultural figures, and scholars, like Louis Massignon. These are some of the facets of my country's legacy in this respect, which, I am sure, most of you already know. Hence, it is hardly surprising that you should feel a need to meet here, in this land, which has long been committed to the time-honored traditions of tolerance and openness, in order to adopt, by the grace of the Almighty, a strong declaration on the theme of your conference as well as on other equally important issues for the future.

Our management of the religious domain in Morocco focuses on preventing any distorted interpretation of the revealed texts, particularly what relates to jihad, a matter on which our scholars issued an unequivocal statement a few weeks ago.

The more I ponder the various crises threatening humanity, the more firmly I believe that interfaith cooperation is necessary, inevitable, and urgent. This cooperation between believers for the development of a common fundamental platform is not to be restricted to tolerance and respect only: it should also involve a commitment to the rights and freedoms that should be enshrined in and enforced by each country's laws. And it is not enough to lay down laws and codes of conduct: we need to adopt a civilized code of behavior that bans all forms of coercion, fanaticism, and arrogance.

The world we live in today needs religious values because they embody the virtues we should uphold before the Creator. We also need them because they consolidate our propensity for tolerance, love, and cooperation in promoting righteousness and piety. We need common values not just to nurture tolerance but also to derive from them the energy and fortitude that will enable human beings to take a long hard look at ourselves; we need them because they can help us to rally together to enjoy a life free from war, greed, extremism, and hatred – a life in which crises and human suffering can be reduced as a prelude to the elimination of the risk of religious conflict.

I wish your conference every success. I believe what people are expecting you to say, through your final declaration, is that religion must not be manipulated to justify any infringement or denial of the rights of religious minorities in Islamic countries.

Thank you.

And may the peace, mercy, and blessings of God be upon you.

IN THE NAME OF GOD, THE COMPASSIONATE, THE MERCIFUL

Religious Minorities in Muslim-Majority Lands

A Legal Framework and a Call to Action



SHAYKH ABDALLAH BIN BAYYAH

INTRODUCTION

PRAISE BE TO GOD Who made the religion of Islam a source of peace for the people of the earth, made His Messenger ﷺ a gifted source of mercy for all the worlds, and made the principles of this religion a basis for wisdom, mercy, justice, and universal benefit. Peace and benedictions be upon our authority Muḥammad and his brethren from amongst all the prophets and messengers, upon his family and companions, and upon those who bear the burden of humanity's guidance until the Day of Judgment.

Noble and Honorable Excellencies, we meet here today on this pure land, this ancient, deeply rooted place so rich in history; a land that has witnessed the most cherished forms of conviviality among people of various colors, creeds, and tongues; the land of the noble Moroccan kingdom, a land of tradition, culture, and creativity so beautifully embodied in this city of Marrakesh, which, in less than two decades, will be celebrating its millennial anniversary. We are gathered under the esteemed aegis of the Commander of the Faithful, His Majesty, King Mohammed VI, may God protect, help, and grant him success.

We are also gathered today in the dark shadow of the corrosive conditions currently afflicting the Muslim community, not to mention the specter of a fractured world. As hapless bystanders to a globally cascading violence, we are witness to the blood of innocent men, women, and children being spilt with impunity, the flames of hatred being fanned, and the tide of terror rising. We meet in the shadow of excruciating circumstances in the Arab and Muslim-majority worlds, a reality that perplexes and confounds even the most wise and intelligent among us. Across the world, we have been forced to suffer foolish ignoramuses brazenly bombing and destroying our sacred houses of worship and, more heinously, spilling the sanctified blood of God's creation.

To be clear, we have not gathered here to apologize to anyone for sins we did not commit nor for behavior that we do not condone. We do not meet here to defend anything or to sign a blank check for the aggressors and conspirators; nor have we gathered in the midst of this chaos and conflagration to prove the innocence of one wrongfully accused of a crime the accused did not commit. The innocent one I refer to here is the religion of Islam: a religion that derives its very name from the Arabic word for "peace."

Honorable scholars, I concur with the philosopher Nietzsche, who said, "When civilizations become diseased, their healers are the sages and philosophers." In other words, when civilizations fall ill, their doctors are the spiritual scholars and intellectuals. Hence, our reason for gathering here today is to discuss this crisis in order to diagnose the illness and develop treatment plans for the various calamities that result: the prevalence of excommunication (*takfir*), injustice, sectarianism, revenge killings, falsified histories and partial truths, claims against the unknown, and interpretations that foment nihilistic violence, albeit dressed in a veneer of "piety."

This crisis demands a serious discussion about the current state of civil strife. We have discussed this in the past and will continue to do so. However, at this gathering, we aim to focus on an issue that is an outgrowth of this crisis: the treatment of religious minorities living in Muslim-majority lands. Although we will focus on religious minorities, the harm falls upon everyone: in actuality, the majority group is afflicted more than the targeted minority.

In light of this situation, religious scholars must descend from their ivory towers, reach out to the people, impart sound solutions, correct misconceptions, and answer questions regarding the exceedingly complex context in which people now live. This is especially critical given the enfeebled spiritual leadership responsible for the guidance of our Muslim societies, the demonstrations against the political leadership, and the void it creates for certain so-called "pious" people to engage in the most heinous behaviors.

It is well known that religious behavior inheres instinctually in the human being along with seeking shelter, sustaining sustenance, and mating. However, fulfilling our natural appetites, if not tempered by both reason and the will to secure benefit – which, in their noblest forms, do not contradict religious and ethical values – will negate the very purpose and wisdom of the appetites, resulting in their opposite. For instance, in responding to the natural instinct for food, if a man does not employ his reason and the

desire to secure benefit, he may eat something that is poisonous and wind up killing himself.

Perhaps one of the most compelling challenges today concerns that of faith-based minorities in Muslim-majority lands. Taking on this challenge is one of the duties of our time, given that today's Muslim communities need a new reading of their social formations and the nature of their national fabric in the contemporary context and the sacred law of Islam, so it can be reconciled with international standards; all the while, we must be mindful of the compelling necessities from which the logic needed to address the crisis has arisen. The motivation for a renewed understanding stems from our obligation to fulfill the rights of others buttressed by the overarching objectives of the sacred law rooted in universal principles that are based upon benefit and wisdom, so they may secure peace and prevent injustice. Moreover, a new understanding rooted in tradition paves the way to examine the current conditions in light of which rulings are applied because the rationale for their application has been established, their conditions fulfilled, and the obstacles removed. Our current situation demands a methodology that takes into consideration predictive tools and utilizes a studied examination of the likely consequences and outcomes of any actions taken.

Our journey to address this question began when protests in the Arab world deviated from reason, human dignity, morality, and societal benefit. At our journey's outset, we were joined by a group of scholars and experienced elders in Nouakchott in 2012. At the vanguard of those responding to our call for action was his Excellency, the Moroccan Minister, Ahmed Toufiq, accompanied by a delegation of notable scholars from the Western region of Islamic lands. We continued the journey in the Tunisian Republic where we held another conference on the same issue later in the year. However, we were hoping for a larger conference that would include representatives from the various religions, schools, and minorities. So, when we were blessed with the Forum for Promoting Peace in Muslim Societies, which was founded in the United Arab Emirates, our resolve increased, and our bond with his Excellency, the Minister Ahmed Toufiq, continued to grow until His Majesty, the Commander of the Faithful, Mohammed the VI, issued a royal decree that the Moroccan kingdom would host this momentous event.

This paper, which discusses the issue of religious minorities from an Islamic perspective as embodied in the Charter of Medina, requires two prefatory introductions:

- The first examines the methodology of the paper and indeed that of all sound jurisprudential inquiries that deal with textual proofs and the intellectual heritage of Islam in general.
- The second lists the universally applicable scriptural proofs that formulate the basis of coexistence and make evident that the core principles of the religion are not contingent and therefore cannot be abrogated or altered. The Charter of Medina is a practical example of the application of these unalterable principles.

AN OVERVIEW OF ISLAMIC LEGAL METHODOLOGY

Our methodology uses the foundational principles of Islamic jurisprudence (*uṣūl*), views mercy as the overarching principle governing all particularized precepts, and sees the remedy for the maladies of the Muslim world necessarily coming from the apothecary of faith and reason. The solution for any challenges Muslims face must be drawn from the matrix of authentic religious sources with manifest proofs and clear arguments: this is our claim, thus our challenge.

This methodology takes into consideration that each textual proof of sacred law has both its place and context. Engaging these texts through reception, comprehension, and application is a serious matter and cannot be subject to the whims of individuals, groups, or the dictates of imaginary or misconceived interests. This approach derives from the methodology of our upright, erudite, and scholarly predecessors, of their thought that spanned the cosmos, and its existence both conceptual and actual. They established principles to govern the relationship of the different types of directives in sacred law, the domains of injunctions (both commands and prohibitions), the conditions of the one addressed by sacred law, and the varying degrees of legal accountability. They also took into consideration the dimensions of the time, place, and peoples in question. They weighed the benefits and harms, and considered the relationship between current context and the likely outcomes of a course of action. In doing so, they affirmed – based on an array of scriptural evidence and the biography of the Prophet ﷺ and his successors, as transmitted by reliable eyewitnesses and recorded in the prophetic biographies – that provisions of sacred law must indeed change to accommodate the changing times.

Our method begins with the premise that every human being has inherent dignity. It takes into account the historical, geographical, and social contexts of revelation and its application, with the understanding that the prevailing conditions must be considered when interpreting the texts, both linguistically and contextually. The prevailing conditions also affect applications in subsequent situations in the understanding of legal rulings, and the varied responses of the jurists. Hence, we must avoid any interpretation of the sacred law that does not take into account the relationship of the text within the given context of a specific time and place, or an interpretation that employs a rigid and narrow literalism that alienates the spirit of the law from its clearly intended objectives and desired social benefits. As Imam al-Qarāfī (d. 684 A.H./1285 C.E.) said, “Inflexibility concerning scripture is always misled and misleading.”

Our methodology entails situating texts within their original context, and, in the same spirit, setting texts into the various contemporary social contexts. Only in this way can the objectives of the sacred law, which promote human welfare, be realized: human welfare, as Imam al-Shāṭibī stated (d. 790 A.H./1388 C.E.), undergirds the very reason for the shariah. The inverse of this results in the opposite, contravening scripture and the essential aim of social welfare.

From this holistic perspective of the relationship of sacred law with people and their context, we deal with texts through the following precepts:

1. The entire sacred law treated as one cohesive text

We begin with the well-established principle that the various texts that comprise sacred law should, in reality, be treated as one cohesive text for the purpose of legal reasoning and derivation. Anyone without comprehensive knowledge of the texts or who fails to integrate its various aspects will invariably be unable to comprehend its meanings. In this regard, Abū ‘Alī al-Fārisī says,¹

The entire Qur’an is as a single chapter. Hence, something mentioned in one chapter of the Qur’an finds its response in another. For example, a verse says, “They say, ‘Receiver of this Qur’an! You are definitely mad’” (15:6), and its response comes in another chapter: “You are not, by your Lord’s grace, a madman” (68:2).

Imam al-Shāṭibī says, “Often you see the ignorant arguing their positions using erroneous proofs or using sound proofs while neglecting other proofs or failing to take into account others.” He continues,

The proper way of utilizing proof texts according to the master jurists is to regard the sacred law as one body in terms of its established universals and subsequent particulars, its general aspects as well as its specifics, its absolute statements and its qualifying ones, its ambiguous statements that are interpreted via its explicit statements, as well as other aspects of its various components. If an individual ruling emerges for the jurisprudent from its totality, it does so as a result of the total arrangement from which the ruling is being derived. Thus, the approach of the master jurist conceptualizes the shariah as an entirety in which some parts serve others like the limbs of the body that are arranged integrally.

The above passages reveal the vacuity of the extremists’ decontextualized “methodology” – if we can even call it that. This is only one of the many flaws of their warped mindset, the adherents of which deliberately conceal the totality of texts and legal proofs, which, if taken as an integrated whole, reduces their absurd assumptions and false claims to utter nonsense.

2. Linguistic analysis of text

In order to understand the interpretive possibilities and meanings conveyed by language that make interpretation and application possible, linguistic analysis is required. This entails interpreting some language as figurative as well as denoting terms and exhausting their connotations. Also, one may deem a linguistically unqualified term to be restricted in its use or interpret a general term to refer to a specific meaning. A jurist may interpret a grammatically imperative statement as a juristic recommendation rather than an obligation, or a prohibitory statement as implying preferred avoidance rather than

¹ *Mughnī al-labīb ‘an kutub al-a‘ārīb*, 328/1

proscription; jurists may include implicit statements in the analysis and other such principles.

3. Reconciling texts when apparent meanings appear contradictory

The attempt to reconcile texts is the first step taken by the *mujtahid* (an independent jurisprudent free of others' methodological constraints) before preferring one statement to another; this entails reconciling two apparently conflicting texts from the Qur'an, the Sunnah, or a combination of the two, or from differing statements of the same *mujtahid*. The reconciliation might be done by interpreting a general statement as a specific one, qualifying an unqualified statement with another, or interpreting a literal meaning from the two conflicting meanings figuratively that reconciles one with the other. Imam al-Rāzī mentions in his work *al-Maḥṣūl* that sometimes a reconciliation occurs by treating both texts as two particularized proofs, two separate rulings, or applying to two different conditions.

4. Maintaining the balance between the particular and the universal

A common failing in avoiding another type of de-contextualization is balance: deeming the particular sufficient while disregarding the universal, and not understanding the delicate interplay between the universal and the particular. The shariah cannot be reduced to one standard: it is not a collection of particular proofs, free-floating universal principles, or a set of abstract values. Therefore, one cannot consider the particular except through the universal, just as the universal cannot exist without its particulars. At the same time, if there appears to be a contradiction between them, neither the universal nor the particular are categorically given precedence. All of this is taken into account in the analysis of the *mujtahid*, who utilizes these schemata in the process of determining the appropriate setting to apply a ruling to a given context (*taḥqīq al-manāṭ*).

Our current circumstances bear witness that the sick ideology of the extremists causes them to prioritize particulars over universals, ignoring differing contexts, and residing in solipsistic silos of their own making: they issue fatwas with derivative "legal rulings" divorced from foundational legal principles and use particulars severed from the spirit of the shariah in its aims and objectives, thereby eschewing benefit and accruing harm. In doing so, they have created an atmosphere of ideological anarchy that has rapidly deteriorated into the shedding of blood despite its sanctity and the denigration of human dignity despite its inviolability.

A holistic method of examination can address crises, and today – more than ever – we need a profound perspective that encompasses the nuanced relationship between universals and particulars. We have particular conditions waiting to be subsumed under the appropriate universal, or, in some cases, we need to

derive a new universal due to contemporary interactions and transactions that result from the compelling demands specific to our current time and place. In other cases, a conditional universal that may have been obscured or absent over time now needs to be clarified and restored in order that interests of important considerations are not lost due to an inappropriate universal that has priority over a specific particular in both rank and position.

5. **Correlating scriptural injunctions (discourse of legal responsibility) with the environment in which they are to be applied (situational injunctions)**

This is one component of the jurisprudential process that determines the appropriate setting in which to apply a ruling and that classifies the texts related to that. There are two categories of discourse with legal weight: injunctions of responsibility (*khiṭāb al-taklīf*) and situational injunctions (*khiṭāb al-waḍʿ*). The first consists of legal rulings that, after their revelation, hinge upon a specific set of circumstances. These external circumstances reflect the complexity of the human experience with all its vastness and constriction, prosperity and poverty, needs and necessities, and developments and progressions. In this light, rulings have their unqualified meanings qualified and their generalities specified because of situational injunctions. Similarly, situational injunctions (legal causes, requisite conditions, restrictive impediments, licenses, resolute rulings, and suppositions) regulate the relationship between the text – injunctions of responsibility (commands, proscriptions, and permissions) – and the context, with all of its fluidities and demands.

Another way to frame this is that situational injunctions make up the jurisprudential environment to apply a ruling: they surround and protect the injunctions of responsibility. Hence, situational injunctions act as a safeguard for injunctions of responsibility, qualifying the unqualified and specifying the general. As a result, in the jurisprudential process, the presence of legal causes (*asbāb*) is insufficient without verifying the absence of impediments to application (*mawānī*). Likewise, we cannot ascertain validity or permissibility unless the requisite conditions are fulfilled, whether they are requisites of obligation, fulfillment, or validity. Therefore, it is necessary to determine the appropriate setting in which to apply a ruling in order to realize greater precision in the complementarity of both injunctions (that of liableness and conditionality) in all their various aspects.

6. **Re-examining the context of scripture**

Such a re-examination means updating many historical legal rulings so they can be applied to our times. This philosophy was present in the minds of the jurists among the Prophet's companions, may God be pleased with them. At times, they held opinions that differed from the apparent meaning (*ẓāhir*) of scripture. They strove to determine the appropriate setting in which to apply

a ruling based upon the principle of accruing benefit and deflecting harm. Furthermore, they understood that new realities emerge that may not be included in the generality or absoluteness of the language of the text of various rulings such that implementing those rulings could end up violating one of the axiomatic objectives of shariah, thereby opposing a universal precept of the shariah known through other texts.

In looking at extremist ideologies, we find this lack of re-examination coupled with a simplistic understanding of scripture that is void of any consideration of its general principles and specific contexts to be among their greatest pitfalls. This explains why they apply their pre-conceived notions about rulings now not only divorced from their original context entirely but applied to a completely different set of circumstances without any qualification or contextual consideration of the rulings' suitability. This is quite apparent in their so-called "jihad" and their levying a "jizyah tax" on previously honored religious minorities that they subjugated and humiliated in some Muslim-majority lands. In ignoring the prevailing conditions in which those verses were revealed, not to mention the occasions and reasons for their revelation, they utterly disregard the necessary principle of examining contexts for the suitability of rulings.

7. Considering the relationship between commands and prohibitions and weighing benefits and harms

One of the many shortcomings of the extremist discourse is neglecting the relationship between commands and prohibitions and the necessity of weighing benefits and harms contextually. This disregard directly opposes one of the principal values of the shariah: prudence. Discounting it perverts the shariah into a nihilistic discourse that nullifies its other core values: mercy, justice, and societal benefit. Such a discourse fuels animus toward the other and can result in senseless and heinous acts inflicted on the innocent by those that are dressed in false piety without any consideration for the relationship, as established by the shariah, between the matrix of commands and prohibitions on the one hand and the matrix of benefits and harms on the other. Imam al-Ghazālī's statement affirms this: "Know that whoever seeks literal interpretations will deviate and destroy himself, like one who turns his back to the west while looking for the sunset." Imam al-Shāṭibī refers to the same pitfall:

Linguistically, commands and prohibitions are all uniform in their indication of obligation. The distinction as to which of them entails a command of obligation or one of recommendation or which of them means it is prohibited rather than disliked cannot be known from the source texts themselves. Though sometimes that may be the case, most of the time it is not. We can determine the distinction among them only by analyzing the linguistic implications, weighing out the benefits entailed, looking at the

authoritative ranking of the proof text, and employing linguistic inference – not solely from the syntax and diction of the text. Otherwise, it would mean that all commands would be of one category in the sacred law, not multiple categories, and likewise for the prohibitions.

8. **Taking into account historical developments and the social and human context**
Developments and changes over time as well as contemporary societal realities present a set of circumstances that differ from those in which the particularized rulings were originally revealed. Social context remains the premise upon which we determine the suitability of a legal ruling's application. Hence, our context today demands a novel reading of sacred law in light of the foundational and universal building blocks of legislation. In addition, we must view all of this through the prism of what one might call the universal "zeitgeist" or the political, social, economic, scientific, and technological realities. Today, we have international accords, borders, weapons of mass destruction, and religious, cultural, as well as multi-ethnic communities in both Muslim-majority lands and those beyond. In our context today, social contracts have replaced tribal and religious allegiances, and, in the international domain, the domination of superpowers has been replaced by the interdependence of nations with international treaties and accords that, for all intents and purposes, hold up relatively well. Globalization has emerged as an ongoing reality of our world and not just a fleeting trend, and although it is framed in a way that allows one to take it or leave it, in reality, it compels itself on us all. This current context impacts not only the international institutions and laws but also the continued appropriateness of the sacred texts regardless of their original reasons and circumstances in which they were revealed.

In light of this, no room for romanticizing history remains. We must abandon all delusions of empire for the Muslim community and nostalgia for past military might and victory or what should have been done but was not. We must also abandon any and all aberrations and illusions that have currently framed the Muslim community as in opposition to humanity instead of remaining as it originally was: a contributor to the advancement and development of civilization.

Our world no longer identifies itself in religious terms; instead, it identifies itself through culture, personal and social interests, technologies, covenants, contracts, and treaties. But this does not mean that people are not devout and religious. Make no mistake about it – a mistaken diagnosis is fatal: the realities of our context today do not allow for the old categories of religion, as the world today is multicultural. Its contribution of pluralism, itself a virtue, provides immense opportunities for humanity to achieve a lasting and natural state of peace.

9. Considering outcomes and consequences

One way of assessing the context in which a ruling is to be applied is through the consideration of outcomes. It is one of the methods which allows us to predict the future result of a course of action, assuming one understands the landscape and variables of their context. It also ensures a balanced application of a legal ruling. By thoroughly examining the given facts at hand, both past and present, we can envision possible scenarios that, in a general sense, enable us to predict possible outcomes in the future. This reasonable forecasting is far from guesswork or simple prediction; while it invariably entails some degree of uncertainty, it also affords us – due to the statistical accuracy of probability models and the use of big data – an understanding of the context and the possible outcomes of our choices that affirms the relationship between legal rulings and the objectified circumstances. Such forecasting must not neglect any relational elements of both the context and scriptural proofs that will enable greater precision in applying both sides of the equation – either the universal or the particular.

One other mechanism of ensuring interpretive precision is considering the fluctuations and prevailing trends of the context in question and their impact upon the possible validity or invalidity of any given ruling such that if the ruling were indeed implemented, its consequences would be praiseworthy according to the higher objectives of the sacred law (*maqāsid al-sharīʿah*).

10. Viewing the primary sources in a manner consistent with the offices, purposes, and positions of the Prophet ﷺ

The Prophet ﷺ was a messenger, head of state, and military leader. These are just some of the titles and positions held by him that scholars, such as al-Qarāfī, noted. They are not specific to the Prophet Muḥammad ﷺ, but all prophets and messengers fulfill the various positions that their circumstances demand of them. Consequently, they held differing positions and offices. For example, Jesus ﷺ lived as one among his people, as did Noah ﷺ before him who preached to his people until he eventually imprecated against them. In contrast, Moses ﷺ became the leader of the Israelites after the Exodus. As a result, he assumed positions that previous prophets did not. The same applies to David ﷺ who fought Goliath and ruled over the Israelites.

In this manner also, the final prophet, Muḥammad ﷺ, while in Mecca, acted only as a preacher, but after migrating to Medina, where its people took him as a leader, he assumed the office of head of state.

II. Keeping both our human dimension and membership in the global community in mind

This principle comes from our shared origin and creation. God, the Exalted, says, “O people, We created you all from a single man and a single woman, and made you into nations and clans that you might know one another” (Qur’an 49:13). Thus, the basic principle among people should be that of cooperation and continuously working for both the restoration and sustainability of the earth. The Qur’an also says, “Do not corrupt the earth after it has been rectified” (7:56). Hence, humanity must work together for our shared prosperity instead of engaging in conflicts, as this only leads to mutual annihilation. Humanity now needs a global coalition to address our civilizational shortcomings and neglect from which stem such tribulations as terrorism and its horrendous effects. We need to curb the perils of arms production, in which both rational and irrational actors alike can now engage. The world needs people who possess constancy in prudence to save what we can before it is destroyed, right as many wrongs as possible, and restore the rights of others while demanding of ourselves the fulfillment of our respective responsibilities.

This is our methodology that we invite others to: it is a methodology born of the very matrix of Islam. It is an approach once widely applied within various contexts, even if it is now absent from our collective consciousness. We wish to see it restored as authoritative in the eyes of scholars and rulers, as it was in the past, when the only people to deviate from such an approach were sectarian isolationists who seceded from society and the community. They are those whose determination in the shariah is well known, and their particular characteristics by which a Muslim can know them are detailed in the relevant revealed sources.

Our methods and undertakings are based on this approach that relies upon the suitability of a ruling to a specific circumstance (*tahqīq al-manāt*) realized by examining the context and predicting the expected outcomes. The method also relies on establishing a basis for such efforts through decisive proofs and historical precedent. This can be seen in our work on the Charter of Medina, which we submit as evidence of our methods and undertakings. Over fourteen hundred years after it was written, it remains an applicable standard for the relationship between Muslims and the pluralistic societies in which they comprise a majority.

It is the same methodology that grounded our previous forums; it relies on an understanding of the legal rationale (*ta’līl*) we are able to derive from any given ruling coupled with the aims and objectives of the sacred law. Moreover, the process of applying any given rulings of sacred law remains contingent upon the understanding that context and outcomes can alter those same rulings: this methodology is derived from revealed proofs and juristic principles developed

over succeeding generations based upon their varying circumstances and relative to their differing contexts.

MISCONSTRUED CONCEPTS

Let us now address some concepts that this twisted ideology has decontextualized, diverted from their intended purposes, and obliterated any juristic conditions concerning them. They have duped individuals into joining them by using these concepts and their meanings to simply bypass all necessary elements of juristic methodology – a method we make no claim of having devised. Rather, as was stated at the outset, it was legitimately borne of the very matrix of Islam and its ethos.

I. Jihad

Jihad, in basic terms, is a polity's program for protecting the nation, its borders, and its freedoms, including the freedom of religion. Self-defense is a human principle, and Islam does not differ from the international accords concerning it; it has guidelines, rules, codes of conduct, and ethical standards. In Islam, war cannot be used to force religion onto people. This matter is addressed in an unequivocal verse that is not open to interpretation, abrogation, or specification: "There is no compulsion in religion" (Qur'an 2:256).

Islamic jurisprudence legislates licit self-defense known as "repelling hostility" (*ḍaḡ al-ṣā'il*), also known as "resistance" in international law and by social conventions. This concept is quite different from the nihilistic violence of the criminal groups and gangs that are categorized in the shariah as "brigands spreading corruption in the land" (*ahl al-ḥirābah al-muḡsidūn fil arḍ*) as well as from an armed rebellion termed "insurrection" (*baghī*) in the shariah.

As for secession from the entire Muslim community in the name of so-called "jihad," that is the way of the Khawārij, who, as Shaykh Taqī al-Dīn Ibn Taymiyyah showed, take over land and make it solely for themselves, erecting in it their own leader, making a community and country for themselves alone. After that, they call the lands of the Muslims "the Abode of Disbelief and War."

Jihad has two contexts associated with it, a general and a specific one. Its general context is the environment and conditions within which it was revealed; it was an environment in which martial force was necessary to ensure the freedom of religion and secure peace in the Arabian Peninsula. At the time, it consisted of tribes locked in internecine warfare that engaged in fighting, killing, and plundering. Therefore some degree of force was required to bring it to some semblance of stability and allow the message of Islam to reach others without coercion, in addition to the need to secure the borders that were threatened by the superpowers of the time.

As for the specific context for jihad, it relates to the circumstances surrounding the revelatory events. If we were to be completely objective and look specifically at the issue of jihad, we would find that the Qur’anic verses and hadiths related to jihad, each pertained to a very particular set of circumstances. The position that some scholars have held – claiming that the “verses of the sword” abrogate the “verses of forbearance” and thus the ability to enter into treaties, kind treatment, and engaging with other faith communities “in the best way”² – has no evidence to support it. Also, one cannot resort to holding a verse to be abrogated unless there is no possible way to reconcile (jam‘) the two verses in question. For this reason, the twelfth-century master exegete al-Zarkashī said,

The opinion, which some exegetes insist on, that the “verse of the sword” abrogates the verses that command gentleness, is a weak opinion, for it neglects the axiom that every command revealed must be obeyed at some point in time due to a legal rationale (‘illah) that makes that ruling an obligation. At another time, the ruling can change because that legal rationale has been altered, resulting in another ruling.

The relationship between the verses in question is not that of the annulment of one unqualified text by another unqualified text: rather, it is a relationship of deferment and abeyance so that the ruling derived from the first verse would be suspended until the appropriate circumstances arose. At the same time, this suspended verse continues to actively apply by playing a role in the jurist’s understanding of the universal values of the shariah and considerations of weighing of benefit and harm. The twentieth-century exegete, Imam Tāhir bin ‘Āshūr, said in his exegetical masterpiece *Revelation and Illumination* that there is more evidence to suggest that the verse, “There is no compulsion in faith” is the one that abrogates all rulings pertaining to religious fighting because of its strong language and the ubiquitous presence of its meaning in the Qur’an. The true nature of the invitation to Islam is that it is an invitation of having mercy for all humanity, to worship one God, and to shun idolatry. Its only acceptable means is through exhortation and admonishment through recitation of the Qur’an. There can be no deviation from this approach. However, in the case of the Arabian Peninsula in the seventh century, the hostile environment left no option other than to resort to arms to protect this invitation and keep the peace for whosoever sought it.

2. Protected minorities (dhimmah)

In its basic form, *dhimmah* entails a covenant, security, and custodianship, as well as rights and sanctity. These are all noble and splendid meanings that Islam selected to describe the relationship between Muslims and people of

² The phrase “bil-latī hiya aḥsan,” a guideline for how to engage people of other faiths, can be found in several verses in the Qur’an, including 16:125, 23:96, 29:46, and 41:34.

other faiths. The relationship is a contract and a covenant that can only be entered into by the political leader of the Muslims: it is a political contract that is the prerogative of the state authorities. This shows the sanctity of one under such a contract, as well as the covenant that both parties take on. The actual name is not important if the intended meaning is clear.

In spite of this, one can find cases in history that have led some researchers and historians to consider it a marker of inferiority or lowliness. Such cases historically led to stigmatization, straying far from the beautiful and noble spirit at the root of the institution. To be sure, there is nothing blameworthy about the institution itself, for designating an adherent of another faith as a protected minority is a type of veneration, for they are under the protection of God, His Messengers, and the political leaders of the Muslims, upholding and maintaining their affairs. It is understood to be simply procedural in nature, brought about by the need to secure the welfare of the citizens. For this reason, we find that Muslims are obligated to utilize their human, military, and financial resources to defend protected minorities and uphold the protection granted by God and His Messenger. Muslims must also expend their wealth to alleviate the financial hardship of these protected minorities, ensure the return of their captives, and insure their property. This is all a product of the foundation of the relationship built on kindness, mercy, justice, and wisdom.

3. Covenant Tax (jizyah)

Its linguistic origins are debated. There are some – such as al-Khawārizmī who states as much in his *Keys to the Sciences* – who believe “jizyah” to be a Persian word adopted by the Muslims and taken from the Persian system of governance in place at the time. It was a tax or levy initially imposed by the Persian government that was then legislated by Islam as a way of establishing an indemnified contract for people of other faiths alongside the institution of zakat for Muslim citizens.³ It is, therefore, the basis for a financial institution, similar to zakat, applied to part of the citizenry who were not Muslim.

Others held that its linguistic origins were from the Arabic word for “compensation,” meaning that it was set as an alternative to military enlistment for defending the borders, which was a requirement for Muslim citizens. Imposing the duty of defense upon citizens of other faiths was considered inappropriate because they could be put in the position of having to face their co-religionists in conflict. In light of this, they were to financially support national defense in the form of jizyah. And so, it was actually a source of revenue by which the citizens of the entire country benefit, whether Muslim or not.

As for Islam’s affirmation of this institution, that happened because Islam harmonizes with the context of the land into which it enters. Islam interacts

3 Zakat is a mandatory annual alms or tax in shariah on certain kinds of property and wealth.


with the context in three ways: first, it can affirm and uphold an aspect of the context in question, such as the virtuous character of pre-Islamic Arabia: Islam affirmed it and called upon people to embody it; second, it can repeal it altogether, such as in the case of worshipping idols, female infanticide, and so on; lastly, Islam can provide some adjustments to various aspects of the context.

Jizyah is an institution that belongs to this last category. It was something customary to previous nations, enacted by the Persians and Romans, for example. *Jizyah* in Islam took on a distinct character in that it was not established as a tax, in the typical sense; rather, it constituted a contractual relationship between the Muslim polity and those of other faiths under its rule, whether nation, community, or individual.

Jizyah is subject to all of the regulations that govern contracts in Islam, the most important of which is that it is binding and must always be honored, as the Qur'an states, "O believers, fulfill your agreements!" (5:1). Muslims have also been commanded to the good treatment of other faith communities: "God does not forbid you to deal kindly and justly with anyone who has not fought you for your faith or driven you out of your homes" (Qur'an 60:8). Therefore, the sanctity of protected minorities can never be compromised, their wealth can never be usurped, and they can never be excessively burdened. These precepts are all drawn directly from our Prophet's stern threat: "Whoever oppresses one protected by covenant (*mu'āhid*), does not fulfill their rights, burdens them excessively, or takes something from them against their will, let him know that I will be the protected one's advocate on the Day of Resurrection." The prohibition of any violence against them also comes directly from a prophetic hadith in which the Prophet Muḥammad ﷺ said, "Whoever kills one protected by covenant will not even smell Paradise."

Let it be noted: only legitimate state authority has the right to implement *jizyah*. This is because it is contractual, like that of a protected minority, requiring mutual consent by both parties. It is for these reasons that it varied from one region to another, and even from one person to another. The implications of it being a state institution are that it is founded on seeking society's welfare. That is why its application varied so greatly in the various regions of the Muslim world. In some regions, the amount was increased; in others, it was decreased; and in others still, it was repealed altogether. We can see from this that *jizyah* is therefore not a precondition for ceasefire – even if it is one of the options that can be exercised in seeking society's welfare – for all violence must be halted when peace is reached, as the Qur'an states, "If they incline towards peace, then you incline to it as well" (8:61). For these reasons, the jurists of Islam are all in agreement that truces, treaties, and conventions can either include the demand

for compensation or simply forgo it. This is an example of the adaptability and versatility found in Islamic institutions. And here again as well, if the meaning is clear, the particular name is unimportant.

A cursory examination of the precedent set by the caliphs in response to the events of their day will show that they did not believe in a rigid literalism that neglected the intended spirit of a matter. Rather, they often diverged from the literal application of an injunction in order to protect the interests of society or curb any potential harm. The judgments of the caliph ʿUmar  would often be in concordance with this veracious methodology. An ʿAdnānī tribe, Banū Taghlib, had declared, “We must be like our Arab cousins and pay zakat instead of the *jizyah*.” ʿUmar accepted this from them. Some scholars used this precedent as a basis for engagement with other conquered communities, such as the Christian Arabs of Jāhrāʾ and Tanūkh, the Jews of Ḥumayr, and the Magians of Tamīm.

The caliph ʿUmar felt that – given the culture of the Arabs and with the future of Islam in mind – it was in the interest and welfare of society to replace *jizyah* with zakat in this case. He understood that the scope of legal reasoning on this matter was quite broad, despite the fact that the term *jizyah* can be found directly in the Qurʾān: “Until they pay the tax (*jizyah*) and agree to submit” (9:29). He also understood that the options before him on any issue, like the issue of tribute here, were religiously justifiable as dictated by considerations of benefit and harm as well as expected outcomes. ʿUmar felt comfortable not strictly adhering to the literal meaning of scripture, so he could do what was most beneficial. This should show clearly that *jizyah* is simply one of many institutions at the disposal of the state to mediate relations with other faith communities. The state, in such a case, is then to assess the appropriate institution to employ based on securing the common good and demands of the context and setting.

As further proof of this, let us examine more examples and cases in Islamic history and its jurisprudential tradition as it pertains to state authority with respect to *jizyah*. Al-Kalāʾī and al-Balādhurī record that Abū ʿUbaydah, the commander of the Muslim forces in Greater Syria, ordered the leaders of his armies to give back the *jizyah* they collected in Homs after the Muslims were unable to uphold their end of the agreement because of the mobilization of large Byzantine forces against them. This happened as they prepared for the Battle of Yarmuk. Abū ʿUbaydah addressed the people of Homs saying,

We have returned your money to you because we have word that other forces are gathered against us, and you all have stipulated that we protect you, but we are unable to do so at this time. So, we are returning to you

what we have taken and will resume the agreement between us, as well as the stipulation placed, if God grants us victory against them.

The people of Homs in turn replied,

May God bring you back to us and grant you victory over them. If it were they who ruled over us, they would have never returned anything to us; they would have taken everything. Your rule and justice are more desirable to us than our previous state of oppression and tyranny.

Abū ʿUbaydah did the same with the people of Damascus when he was preparing for the Battle of Yarmuk.⁴

The historian al-Ṭabarī provides records that prove the rate of *jizyah* was not set to a specific value: rather, it was assigned according to what people were capable of paying. One example is that of Suwayd bin Muqarrin, a commander under the caliph ʿUmar, who wrote in a treaty with the people of Daghestan and Gorgan:

Protection is yours, and for us is the duty of defense on the condition that you must pay a sum annually in accordance with your means. Whosoever is asked to help us (in defense) will keep his payment for himself in return for his help. Such persons will still be granted security in their wealth, property, and houses of worship, with no alterations therein.

Another example of the variability in the value set for *jizyah* is that of ʿUtbah bin Farqad, another commander in the era of the caliph ʿUmar, who wrote to the people of Azerbaijan saying,

ʿUtbah bin Farqad, appointee of the Commander of the Faithful, ʿUmar bin al-Khaṭṭāb, guarantees the people of Azerbaijan, high and low, to its outmost parts, and all of the groups therein, safety and security for their persons, wealth, religious communities, and houses of worship if they give a sum in accordance with their means. Whoever among them is enlisted into our forces will be exempt from paying the *jizyah* for the year, and whoever doesn't, will pay what the others pay.

Surāqah bin ʿAmr, the appointee of ʿUmar bin al-Khaṭṭāb in Armenia, guaranteed the personal safety of the citizens of Armenia, the security of their wealth and religious communities from any harm, and that the Muslims would not go back on their treaty. He told the Armenian people and al-Abwāb, the inhabitants therein, whether visitors or residents, as well as those in the surrounding regions, that they should participate in any military expedition and carry out all orders of the governor deemed to be in the interest of society, whether given through a representative or directly. He then waived the *jizyah* for

4 *al-Iktifāʾ* and *Futūḥ al-buldān*

whoever responded to his call. As for those who were not needed for military service and remained inactive, they had to pay the same tribute as was levied in Azerbaijan. However, if they enlisted, they became exempt from it.

Evidence can even be found for a precedent that the *jizyah* was dropped altogether: Ḥabīb bin Maslamah waived the *jizyah* for the Mardaithes of Antioch when they entered into a treaty with him and asked for peace and security. The Mardaithes stipulated that the *jizyah* not be required for them and that this treaty apply to all of the inhabitants of the city without exception, whether a merchant or employee, whether a Nabataean or from surrounding villages. All of the subsequent Umayyad caliphs as well as the Abbasid caliphs for a long period honored this agreement until, much later, some of the appointees of the Abbasid caliph al-Wāthiq demanded it. However, when the Mardaithes complained to the caliph, he restored the agreement to its original standing.

There is also evidence that the institution of *jizyah* was adaptable, dependent upon, and corresponded to considerations of securing the common good. This can be found in the fact that the caliphs saw no problem in the various names for the state's revenue. They would use whatever name the other party preferred. Hence, when Banū Taghlib rejected the name of "*jizyah*" for what they paid, the caliph ʿUmar accepted their request. That was because the objective behind the payment, which was generating revenue to provide for all citizens of the state equally, whether Muslim or not, was still fulfilled. Just as the Muslims had to pay *zakat*, those who were not Muslim paid *jizyah* or a payment under any other name. This is yet another proof that it is an institution that is left to the discretion of the state, ensuring the dignity of the citizens who are not Muslim under an Islamic government in return for the government's provision of defense, security, and the protection of property and religious freedom.

To state it clearly, all of these issues fall under the category of what are called the "policies of Islamic government" (*al-siyāsah al-sharʿīyyah*),⁵ which gives rulers discretionary authority, as recorded throughout Islamic history.

Let us examine an example of tariffs that provides further proof for the maxim, "the legal ruling changes with changes in the context." Tariffs on goods, which have no relationship to an Islamic state, are among those institutions that are based on the principle of equitable treatment, as stated by Abū ʿUbayd in his book *al-Amwāl*. The caliph ʿUmar determined this principle after asking some of his employees in Iraq how much Muslim businesses were charged when

5 "Siyāsah Sharʿīyah is a broad doctrine of Islamic law which authorizes the ruler to determine the manner in which the Sharīʿah should be administered. The ruler may accordingly take discretionary measures, enact rules and initiate policies as he deems are in the interest of good government, provided that no substantive principle of Sharīʿah is violated thereby" (Mohamed Hashim Kamali, "Siyāsah Sharʿīyah or the Policies of Islamic Government," *The American Journal of Islamic Social Sciences*, vol. 6, No. 1, 1989).

they went to neighboring countries. They told him they were charged one-tenth as tariff, so ʿUmar also set the tariff for Muslim lands at one-tenth. The great hadith master Ibn Rajab (d. 1392 CE) said about this,

Know that this issue is a matter of jurisprudence about which people were in disagreement: can that which was implemented by some of the Four Righteous Caliphs be nullified by those after them? An example of this is the treaty with Banū Taghlib, where a tribute was paid in place of *jizyah*. On this, the scholars have two positions. The dominant position is that it cannot be nullified because it is sound and precise legal reasoning. Such a position is founded upon the maxim that the actions a leader takes represent his judgment on the matter (although, there is a difference of opinion on this matter as well). Ibn ʿAqīl held that one could contravene the ruling of the Four Caliphs as a result of the process of legal reasoning. He argued that interests vary with the variance of time and place.

Some scholars held that there was an exception to the position that it could not be nullified: if it is known that the caliph enacted a policy for a particular reason, then that policy would be repealed if that reason were no longer applicable. One example is ʿUmar's setting the tax at a rate according to the ability of the citizenry, for this ability changes with time. Ḥalwānī and others mention this.⁶

Based on this and other legal principles in Islam – such as equality between all citizens in terms of rights and responsibilities, as established by the Charter of Medina – we can view the policies of governments, whether they apply to the taxation of its citizens or any other contractual relationship, from the perspective of the Charter of Medina. Based on this Charter, we can develop a framework in sacred law for a citizenship of the highest order. Such a framework grants all members safety and peace, with all of them defending their nation together, contributing towards its expenditures with full freedom of religion for each and every group within the nation.

Correcting and restoring these misconstrued concepts within the sound methodology of our juristic tradition are the most important undertakings of the Forum for Promoting Peace in Muslim Societies based in Abu Dhabi in the United Arab Emirates. The generous government here has granted us the space to invite others to the table of peace and prosperity. We strive to change mindsets and correct misconceptions so that they may again become peace-oriented. We work to provide models of peace in Islamic history as a way to redress rigid and erroneous readings of history centered only on war. For this

⁶ Ibn Rajab al-Ḥanbali, *al-Istikhrāj*, 138.

reason, we established the Imam al-Ḥasan bin ʿAlī Award, named after the grandson of the Prophet Muḥammad ﷺ.⁷

In addition to this jurisprudential undertaking, the Forum for Promoting Peace strives to provide a platform to promote prudence and reflection. Such a platform allows for all good voices, including those of any ethical believers committed to humanity's shared virtues. The Forum works to restore the primacy of peace and its place as the only path to securing other rights.

THE CHARTER OF MEDINA: A FRAMEWORK INTRODUCTION

1. The Principles and Values Upon Which the Charter of Medina Was Based

The life of Prophet Muḥammad ﷺ serves as an exemplary model of observing covenants and adhering to their provisions accordingly. Consistent with the values of Islam's sacred law – which can be summarized as mercy, wisdom, justice, and a strong commitment to the commonweal – the scripture explicitly proclaims dignity for every human being, affirms divine mercy for every creature, declares justice to be a right of every person, and considers forgiveness a complement to justice.

The Charter of Medina affirms that to the extent people commit to shared ethical values, they will find harmony, cooperation, and positive outcomes. Contrariwise, to the extent that they do not adopt such values, and therefore have no transcendent view of life, their ability to interact with others will suffer – the obvious reasons being that either their interactions will be based on selfish considerations, or they will adopt a negative worldview based on absolutes and unconsciously deem themselves an absolute source of authority. Such a person has no scriptural qualifiers to regulate his actions, or any specific exceptions to general principles, or any ability to weigh benefits and harms, and no understanding of the universal objectives of sacred law and its maxims to lead him to sound conclusions. Hence, such a person can wage war without restraint. This is what happens when fundamentalism, no matter what religious mask it wears or the beliefs that it touts, manifests itself among members of violent groups with a rhetoric that spews out animosity, bigotry, and xenophobia.

The values of reason, justice, balance, and moderation give life to our shared humanity and engender love among us. We must revive the values of reconciliation and forgiveness, and reject conflict and subjugation; we must embrace peace and harmony, and shun discord and dissonance.

Confrontations and conflict are not Islamic values, even though some people attempt to camouflage such qualities with a cloak of “piety.” Rather, confrontations and conflict as “values” is a Hegelian concept that originated in Europe. It was Hegel who

7 Al-Ḥasan bin ʿAlī (d. 670 C.E.) was a grandson of the Prophet Muḥammad ﷺ. He became the fifth Rightly Guided Caliph, succeeding his father, ʿAlī. After several months, he famously abdicated his position to a less worthy challenger, despite having more right to the position, for the sake of peace and reconciliation within the community.

believed that destruction of the old must precede construction of the new, that a cycle of thesis-antithesis dialectic of conflict brings about new syntheses that further man's development towards some illusive utopian future.

As for Islam's universal principles and values, they teach that engendering trust and love are the basis for the common good. The Charter of Medina includes the most central values and is, in fact, an illustration of them. The principles of the sacred law and scripture bear witness that in the Charter of Medina, the Prophet ﷺ stipulated responsibilities and secured rights for each demographic in Medina. Thus, the Charter still remains a fitting authoritative reference for envisioning relations between Muslims and those with differing religious commitments, for its contents neither contravene scripture nor contradict the objectives of the sacred law. Every article it contains is merciful to creation, reaffirms wisdom, calls for justice, or secures the commonweal for all – not only for Muslims but for every citizen therein, regardless of religion or race. It prevents the ills of animosity and bloodshed, and safeguards life, property, and freedom – particularly freedom of religion for all peoples.

THE SOCIAL VALUES OF ISLAM

1. Gentleness and Benevolence

The Qur'an says, "He does not forbid you to deal gently and justly with anyone who has not fought you for your faith nor driven you out of your homes: God loves the just" (60:8).

2. Dignity

Ontological dignity has a divine origin and is a heavenly gift that every single person is born with.

"We have dignified the children of Adam and carried them by land and sea; We have provided good sustenance for them and favored them specially above many of those We have created" (Qur'an 17:70).

3. Cooperation, Solidarity, and Rectification

"Help one another to do what is right and good; do not help one another towards sin and hostility" (Qur'an 5:2). "Do not corrupt the earth after it has been set right" (Qur'an 7:56). "Do not seek to spread corruption in the land, for God does not love those who do this" (Qur'an 28:77). "God knows those who spoil things and those who improve them" (Qur'an 2:220).

4. Reconciliation

"Make things right between you" (Qur'an 8:1).

5. Human Solidarity and Interaction

"People, We created you all from a single man and a single woman, and made you into races and tribes so that you should get to know one another. In God's

eyes, the most honored of you are the ones most mindful of Him; God is all-knowing, all-aware” (Qur’an 49:13).

This is the basis of interaction between peoples, not dominance as is found in the Hegelian dialectic that is predicated upon perpetual dominance based on the “master/slave” theory.

6. Wisdom

“Whoever is given wisdom has truly been given much good, but only those with insight bear this in mind” (Qur’an 2:269).

7. Commonweal

“We will not deny those who work for rectitude their just rewards” (Qur’an 7:170).

8. Being Just with Others

“God commands justice, doing good, and generosity toward relatives, and He forbids what is shameful, blameworthy, and oppressive. He teaches you so that you may take heed” (Qur’an 16:90).

9. Mercy

“It was only as a mercy that We sent you (Prophet) to all people” (Qur’an 21:107). “My mercy encompasses everything” (Qur’an 7:156).

10. Peace

Peace, an even higher principle and value, remains lofty, and, in reality, is the ultimate objective and goal of all the values listed here. “O you who believe, enter wholeheartedly into a state of peace through submission, and do not follow Satan’s footsteps, for he is your sworn enemy” (Qur’an 2:208). “But if those who oppose you incline towards peace, you (Prophet) must also incline towards it” (Qur’an 8:61).

11. Covenants

Fulfilling treaties and covenants is considered a sign of true faith. It is the basis of harmony, trust, and coexistence between individuals and societies, irrespective of people’s beliefs or socioeconomic status. “O you who believe, fulfill your obligations” (Qur’an 5:1). “If they seek help from you against religious persecution, it is your duty to help them, except against people with whom you have a treaty; God sees all that you do” (Qur’an 8:72).

2. The Authenticity of the Charter of Medina

Early historians⁸ agree that the Charter of Medina was drafted by the Prophet ﷺ upon his arrival in Medina, before the Battle of Badr. The Charter incorporated all segments

8 These historians include Ibn Ishāq, Ibn Hishām, al-Wāqidī, Abū ‘Ubayd al-Qāsim bin Salām, Ibn Zanjawayh, al-Balādhurī, and others.

of society that, according to historic records, were present in Yathrib, which would later be known as Medina. Some hold that the Charter was drafted in two phases: the first was upon the Prophet's arrival in Medina when all the Jews pledged their allegiance to him, and the second phase was after the Battle of Badr. Some contemporary historians posit that it was drafted in several stages. The first position, we believe, is the correct one, and God knows best.

In any case, for our purposes, the document is authentic in its origin and verified in the books of hadith, biographical literature of the Prophet ﷺ, and history. Imam al-Shāfi'ī said, "I do not know of a single biographical historian who does not hold it to be a fact that the Prophet ﷺ made peace with the Jews without levying a covenant tax." Ibn al-Qayyim said,

It is just as al-Shāfi'ī said, and that is because around Medina there were three major Jewish tribes: Banu Qaynuqā', Banu al-Navīr, and Banu Qurayzah. The tribe of Banu Qaynuqā' and Banu Navīr were allies of the Khazraj clan of Medina, while the Banu Qurayzah tribe was an ally of the Aws clan of Medina. So, when the Prophet ﷺ arrived in Medina, he made a treaty with them and others as a reaffirmation of their pre-existing alliances, just as he did for the other alliances already in place with other polytheists around Medina. His treaty with the Jews additionally included their military aid in the case of war.

Ibn Ishāq said,

Upon his arrival in Medina, the Prophet ﷺ composed a treaty along with the Migrants and the Helpers, which secured peace with the Jews and ensured their religious freedom and economic independence. This treaty placed conditions upon them, and in it the Jews stipulated conditions upon the Muslims as well.

Ibn Ishāq also said, "Uthmān b. Muḥammad b. al-Akhnas b. Shurayq told me, 'I took this document from the family of 'Umar b. al-Khaṭṭāb [the second caliph of Islam] along with his book of charity wherein 'Umar maintained records for laborers.'"

Al-Wāqidī said,

'Abd Allāh b. Ja'far b. al-Hārith b. Fuvayl told me that Muḥammad b. Ka'b al-Qurazī [i.e. from the tribe of Banū Qurayzah] related to him that when the Prophet ﷺ arrived in Medina, all the Jews of Medina made a pact with him, and a scribe penned the document. The Prophet ﷺ eventually entered into a treaty with every group and its respective allies. In doing so, he established security between them and set conditions for the treaty, one of which was, "They will not display any sign of insurrection." Ibn Ka'b thus corroborates the contents of the document and shows that the Prophet ﷺ entered into a

treaty with all of the Jewish tribes. This is what all biographical historians agree upon, and whoever studies the prophetic history and hadith literature will, without a doubt, be aware of this.

3, The Historical Context Surrounding the Charter of Medina

The Jews in Medina lived alongside the tribes of al-Aws and al-Khazraj, who descend from the Qaḥṭānī branch of Ghassān, which was originally from Yemen but lived in al-Sham (the land to the north of the Arabian Peninsula). This illustrates that the home of the first Muslim community was, according to historical records, a diverse society. To illustrate this, we may look to the example of Qays bin Shammās, a companion of the Prophet ﷺ. A narration from al-Khallāl records that when his Christian mother passed away, the Prophet ﷺ granted him permission to attend her funeral services, riding at the head of the procession. Also, there is the example of Abū Wā'il, who sought the same permission from the caliph 'Umar when his own Christian mother died, and he was given the same response. Furthermore, 'Abd Allāh bin Rabī'ah, whose mother was also a Christian, asked the great companion of the Prophet ﷺ, 'Abd Allāh bin 'Umar, what to do after she died, and he was told to honor his mother and shroud her but not to stand at the grave in order not to crowd her fellow Christians in attendance, who would stand around her grave, wailing in mourning. There was also a man who, when his Christian father died, asked Ibn 'Abbās what to do and was instructed to attend the funeral and participate in the burial. Finally, there is the case of the Mother of the Believers, Ṣafīyyah, who left some of her estate to her Jewish brother.

Qāḍī Abū Ya'la and Abū al-Khaṭṭāb al-Kalwadhānī said, "The ruling for one who converts to Christianity from Tanūkh and Bahrā', one who converts to Judaism from Kinānah and Ḥumayr, or one who becomes a Magian from Tamīm is the same as the ruling for Banī Taghlib. This ruling is consistent with the school of al-Shafī'ī."

These narrations show that many religions were present on the Arabian Peninsula and within the various tribes of Arabia, and they demonstrate that the first Muslim society was a multi-religious one.

Such was the situation the Prophet Muḥammad ﷺ found in Medina, after thirteen years of preaching in Mecca, where he endured much hardship and persecution. This situation was quite different than that of Mecca, which was a town inhabited by only one tribe, the Quraysh, all from the same bloodline, though from different branches. Moreover, they had only one religion – they were all idolaters. Medina, on the other hand, was home to many different tribes, ethnicities, lineages, and religions, including Judaism as well as a variety of pre-Islamic practices. These circumstances required a unifying agreement to bring these various contingents together and bring order and safety between them, for, before Islam, they had been locked in vicious cycles of violence for many years. So, the Prophet ﷺ drafted the Charter of Medina to curtail the conflict and strife between the old groups and the newcomers who joined the social

fabric of Medina. It was a document that explicitly declared the pluralism and freedom of religion of that society, and further built upon that pluralism – to prevent some of the problems that may come with it – by establishing the values of common good, security, and cooperation in the form of granting rights and responsibilities for all parties.

Each article of the Charter of Medina affirms its historical uniqueness. Four aspects illustrate this best:

1. The Prophet ﷺ was persecuted in Mecca and not granted the religious freedom to say, “God is my Lord,” so the first thing he affirmed upon migrating was the freedom of belief for all people, in accordance with the principles of sacred law.
2. It created order for governing the affairs of a diverse society.
3. It was not preceded by, nor the result of, religious or ethnic war. The historic tensions between the Aws and the Khazraj would have remained had the new faith not swiftly lifted them.
4. The document does not speak of the “majority” and the “minorities”; rather, the articles and statements it contains, upon which justice was established, rendered those terms without meaning or impact.

All of the above is in addition to the fact that it is comprised of two parts, one that governed relations between the original inhabitants and the immigrants, and one that structured the relationship between the Muslims and the other segments of society, which had different faiths. As such, this demonstrates Islam’s practicality in dealing with the circumstances and the various communities therein, as well as its protection of and consideration for these communities.

4. Pluralism in the Charter of Medina

The Charter of Medina is an example of contractual citizenship governed by a treaty or constitution, as is evident from Articles 25 and 37. Article 25 states, “The Jews of Banī ‘Awf are a community alongside the believers. The Jews have their religion, and the Muslims theirs.” Article 37 states, “The Jews are responsible for their own financial needs, and the Muslims are responsible for their own financial needs. They will join together to fight against anyone who attacks the people under this charter.” Thus, this document is the foundation for an inclusive multicultural, multi-religious society in which all individuals enjoy the same rights and shoulder the same responsibilities, which are outlined in a just constitution, confirming that they are indeed one nation.

If the first two edicts⁹ – that of subduing the polytheists of the Arabian Peninsula

9 There are various edicts that inform Muslim interaction with other communities. One is a hadith that is specific to the polytheists in the sacred precinct of Mecca and states that the Prophet ﷺ was commanded to fight them. The second edict scholars discuss is the verse in the

and that of *jizyah* for those who do not choose Islam – exclusively become the subject of juristic study utilizing historical case studies very different contexts and circumstances (in time, place, and type of people), the result is likely to be conflict and war. However, the third edict – the Charter of Medina – guarantees the community’s unity, religious freedom, and pluralism, yet it has not been the subject of much study despite its precedent and deep importance. Its crucial significance owes to the fact that it reveals the original state of affairs for the Muslim community and relates to an intrinsically multi-faith society in which every group freely chose its own religion.

As we have previously discussed, our methodology entails compiling all relevant source texts before declaring one to be more reliable and another to be abrogated or unsubstantiated. This compilation of source texts, which is the first step of the jurist’s process before any weighing thereof, can be illustrated in the attempt to reconcile two source texts (whether both from the Qur’an, or both from the Prophet’s Sunnah, or one from each, or from the works of any master jurist independent in his juristic reasoning). This can be by way of specifying a general edict, qualifying an unqualified statement, or interpreting figuratively the literal meaning in order to reconcile the meaning of one with the other. It is for this reason that compiling all of the relevant source texts must precede any process of interpretation, for each text may be for a particular situation.

Today, applying the third edict is the most suitable course of action for addressing the condition of faith-based minorities in Muslim-majority lands. We propose to put forth a new contract with old roots that will respect the private lives of the minorities and under which they can enjoy the freedom to practice their faiths. In this manner, they can cooperate in managing the affairs of their society, in accordance with rights and duties outlined by a reasonable constitution that seeks harmonious living, the rule of law, and redressing political grievances with fairness and equity.

5. The Spirit of the Medina Charter in the Historical Record of Relations Between Muslims and Other Faith Communities in Muslim-Majority Societies

We are not claiming that Islamic history, in all its periods, is without blemish. While we take pride in its glorious achievements, we also know that it is human history that is subject to the frailties of human nature. There are golden periods and periods of darkness, times of strength and times of weakness, periods of advancements and periods of regression.

At the same time, we would contend that there is no religion or civilization in human history with a record of more religious pluralism than Islam. The reason for this is that the spirit and values of the Charter of Medina were present in the actions of the Prophet’s companions – may God be pleased with them – as they interacted with the various nations around them according to what the context of that time demanded. But, whether the context of interaction was one of peace or one that resorted to war, it

Qur’an, which instructs the Muslims to levy the covenant tax (*jizyah*) on the Byzantines. The third edict for scholarly consideration is the Charter of Medina.

led to the development of shariah based institutions, such as *jizyah*, for example, which was a financial process that was not applied to Muslims, who were alone subject to the mandatory *zakat*.

When we discuss religious freedom, it is in part a discussion of the question of houses of worship, both preserving old ones and building new ones as the need grows. The Prophet ﷺ and the Rightly Guided Caliphs never destroyed a church, a synagogue, or a Magian temple. This fact is undeniable, even if some scholars distinguish between old territories and new ones, and lands conquered by force and lands that entered into the polity through treaty. Suffice it to say that a newly established contract supersedes any treaty. Here, the following statement of Imam al-Juwaynī applies. He said in his *The End of the Pursuit* (*Nihāyat al-maṭlab*),

If it is stipulated that the centers and institutions of the land remain under the control of [the Christians], they are permitted to ring church bells, consume wine and pork in such a land, for it is under their own laws. If Muslims interact with them, they cannot object, for the land, both in general and down to the particulars, has the rank of “a contractually protected home” (*dār al-dhimmi*) within the lands of Islam. Clearly, this means that not only are Muslims not obligated to investigate what transpires in the privacy of their homes, they are explicitly prohibited to do so. As the author of *Drawing Near* (*al-Taqrīb*) stated, “They cannot be asked to dress identifiably in a land such as we have described. It is as stated already. Many lands in Greater Syria surrendered and entered into treaties stipulating that those lands remained in control of its inhabitants. They openly rang church bells in the reign of Mu‘āwiyah, and there is a well known story about that.

Also worth noting is that the caliph ‘Umar declined the offer to pray in the Church of the Holy Sepulchre out of fear that it would set a precedent for Muslims praying there and that others would eventually try to usurp it from the Christians. Also, the great jurist Imam Layth bin Sa‘d objected to the destruction of churches at the hands of the governor of Egypt. He wrote a letter to the caliph requesting that the governor be removed from office for breaching the command of the Prophet ﷺ to treat the Copts of Egypt well. In response, the caliph dismissed the governor and ordered that the churches be rebuilt. Imam Layth also notes that most of the churches in Egypt at that time were built during the reign of Islam. It should also be noted that when the Prophet’s companions entered Egypt they affirmed the right of its people to maintain their houses of worship and their religious symbols.

In light of this evidence, this principle, as applied to houses of worship, grants all religious liberties without any compromise or difficulty. That is why some Mālikī scholars held that building many mosques is disliked, so much so that a new mosque

that was built for no real purpose should be demolished, for it is considered a false mosque. The record also reflects that Andalusian Mālikī scholars permitted Christians to construct new churches.

There is no doubt that history has seen tragedies suffered by minorities. These are a result of conflicts that led to some scholars issuing harsh rulings against minorities. But with respect to Muslims, these are exceptions that do not disprove the general rule of tolerance. Further, even these exceptions found scholars in that age who, strongly, resolutely, and at the risk of their own lives, defended religious minorities from any acts of aggression. Examples include that of the great Imam al-Awzā'ī, who protected the Christians of Lebanon in the second century A.H.; Imam Zarrūq and his teacher, Shaykh al-Qūrī, who worked to protect the Jewish minority communities in Morocco just before the fall of the Banī Marīn state; and Imam al-ʿIzz bin ʿAbd al-Salām who protected the Copts of Egypt in the days of the Crusades.

6. The Charter of Medina, Contemporary Values, and the Concept of Citizenship

We have already illustrated above that context plays a role in developing a ruling in sacred law. The context today demands that we examine it anew and take into account those values that are the building blocks of deriving law by maintaining the relationship between the universals of the sacred law and our faith, and the particular circumstances of the context and age in which we live. This is so that, by ensuring the appropriate methods for seeking justice, we can find common values and standards that will decrease discord and bring about social harmony.

Today, citizenship is, for all intents and purposes, a universally accepted norm. Its basis stems from two sets of accords that form the dictates of our context: there is an internal accord, the constitution of the country, which has the effect of a contract between all citizens, as well as an international accord, i.e., the Charter of the United Nations and its Amendments, which include a declaration of human rights and international treaties. The constitution that we have mentioned previously is a just constitution, one that prevents oppression against minorities and does not deprive the majority of its right to live in accordance with its values based upon the principle, “There is to be no harm and no reciprocation of harm.” It is a constitution that has a human dimension that is confirmed by the religion of Islam, acknowledged by reason, and also has an ethical dimension.

This citizenship has taken on a contractual form within a pluralistic frame, what the philosopher Jurgen Habermas calls, “National Constitutionalism.” This is a novel concept that describes equitable relationships among individuals within a group that live on the same land. This group is not necessarily bound by a shared ethnicity, historical narrative, or religion. Their framework is their constitution, shared values, and a system and laws that outline the responsibilities and rights of its citizens. It is a cooperative society comprised of individuals who are united by a contractual agreement in such a manner that even the newest member obtains the same rights and responsibilities as its

oldest member. It is a citizenship that rises above factionalism without negating each group's respective rights. This is so they may live in harmony and conviviality, thereby enabling collective prosperity.

The contemporary context, with its eventual universality, calls for us to reflect for a moment to confront many realities, including the following:

- Islamic states are no longer imperial; rather, they have also entered into the framework known as the “nation states.”
- Allegiances are no longer religious in nature; rather, they are compound and complex allegiances that are controlled by interdependent factors, each of which cannot be separated from the others.
- Individualism and the dissolution of collective associations have become so widespread that the group no longer frames the actions of the individual, who now deems himself independent of the group. As a result, new issues have emerged affecting the family, economics, and even politics.
- International law, agreements, and treaties now frame the relationship with “the other.”
- As a result of globalization, multicultural, ethnic, and religious societies now exist in every country. This has resulted in there being no other option, despite the apparent freedom of choice, than to engage “the other” contractually, culturally, ideologically, economically, and politically.
- The culture of freedom exists as an effective and influential factor in our world today.
- The establishment of a system of human rights exists as a mechanism for the peaceful existence of minorities among majorities.

All of the above mentioned realities speak to the Charter of Medina as the best model for contractual citizenship in Muslim societies. It is clearly the best choice because the values it embodies concur with those of the times that we are in now, as it contains the same values with which we engage the universals of our time in order to actualize our shared humanity. Hence, it will marginalize the elements of alienation and expulsion. The Charter is an agreement that was reached without war, fighting, violence, or compulsion; it is an agreement that all of its parties arrived at voluntarily due to their commitment to the shared principles contained therein, within the sphere of positive cooperation, the context of their conditions, and the various elements of the Medinan society. It was a step towards the realization of social peace based upon their mutual recognition of rights and responsibilities and of accepting the demands of their diversity, their various religious affiliations, benefits, and lifestyles. This was coupled with the existence of a judicial system that all of them could refer back to in order to redress disputes and disagreements.

The Charter of Medina established a historically unprecedented model that displaced the tribalism that the Arabs held sacrosanct. It established an integrationist philosophy within the context of a state that had been previously unknown to the Arabian Peninsula. Although the concept of a state did exist in the minds of many of the rulers on the Peninsula, it was not a very mature concept and had been influenced by the form it took within the two great powers of that time, Byzantine and Persia.

The Charter of Medina guaranteed the rights of citizenship for everyone living in Medina. This meant that simply residing in the land was one of the foundations of citizenship. This was in addition to allegiance, which can be looked at as circles and ranks that can communicate and cooperate instead of clashing and fighting.

Among the most important aspects of human rights within the Charter were the recognition of diversity and the establishment of freedom of religion by asserting the rights of each group irrespective of their faiths. The Charter also established the principle of equality in rights and responsibilities in the civic life of Medinan society, clearly delineating the components of society, both human and tribal, declaring their equality within the framework that enabled the perpetuity of society. In this way, every segment of society was equal to the other segments, and equity was established among them whenever possible. It thus left no place for a philosophy of subjects and sovereigns. The Charter also clarified the obligations of every segment of society. First and foremost were the obligations in relation to its own constituents. Second, it defined the obligations towards the rest of that community in general, within a framework of justice and the commonweal, whether in times of peace or war. Finally, it clarified obligations toward neighboring groups, utilizing the values of the Charter pertaining to religious, ethnic, and tribal diversity within the context of two interrelated principles: the principle of justice, forming the minimum with respect to engagement, and the principle of benevolence, the highest calling within the context of human interaction. The requirement concerning justice is that the concept of a minority be absent from the discourse; rather, all discourse would pertain solely to a united nation.

Conclusion

In conclusion, we would like to state the following to the world:

1. We have had enough of bloodshed and fighting one another for survival, as that will lead only to annihilation; instead, let us all cooperate for survival.
2. The accusation that Islam oppresses minorities has no basis in sacred law or in history. History itself testifies that there was no religion except that minorities experienced calamities living amongst them at some point in history and in some place on the earth. That lesson necessitates that all of us work together and that we should all be members of the “majority,” for if jus-

tice reigns, equality is guaranteed, and mercy spreads, then the concepts of majority and minority will no longer have any significance.

3. The tragedies that have afflicted minority communities have also afflicted the majority communities without discrimination in the harm caused, whether by killing, displacement, conflagration, or expulsion. So let us not debate about it because these are the actions of criminal groups that have stolen the name of Islam, the term “caliphate,” and the identity of the Muslim community (um-mah). All of these terms are falsely used by them, and falsehood was built upon them. In actuality, their real name should simply be “the terrorist organization.”
4. The Eastern Christians exist to remain, and they were born to live. They are one of the oldest roots of the Middle Eastern tree. They are so deeply rooted that they cannot be uprooted, no matter how strong the winds blow or how misguided the passions flow.
5. We are working to collaborate with academics and scholars of various faiths on developing a historical charter that may serve as a basis for contemporary conceptualizations of citizenship.
6. We want to say that constitutional citizenship, which has no concept of majority or minority that would lead to infringing upon the rights of others, is a citizenship committed to a mutuality that ensures freedom and guarantees societal peace. Such is a sound foundation accepted by both religion and the pursuit of the commonweal.
7. We want to say to peoples of all faiths: let us establish an alliance for peace – spiritual and psychological peace, the kind that inspires us to do good in the world. The theologian, Hans Küng, spoke the truth when he said, “There can be no peace in this world without peace among the religions.”
8. We want to improve the conditions of people everywhere.
9. We want to end killings and atrocities, and to declare in no uncertain terms, “No!” to warmongering and terrorism.
10. We want aggression and oppression to stop, and we want the people’s consciences to awaken so that people can be given their rights and have their grievances redressed.

- II. We want to express our immense sense of gratitude to the Emir al-Muminīn, the Prince of Believers, His Majesty, King Muhammad VI, may God exalt and protect him, and may God maintain the Kingdom of Morocco as an exemplar of peace and joyful conviviality.

*Lastly, long live harmony, and may God's peace,
mercy, and blessings be upon you all.*

IN THE NAME OF GOD, THE COMPASSIONATE, THE MERCIFUL

Remarks from His Excellency Ahmed Toufiq

Minister of Endowments and Islamic Affairs of Morocco



Ladies and Gentlemen:

MUSLIM SCHOLARS HAVE always taken great interest in the “circumstances of the revelatory event,” not only regarding the Qur’anic verses revealed but also with regard to the contingent incidents themselves. The meaning of “circumstances of the revelatory event” relates to the impetuses and causes, or the substantive context, of what the jurists call “the revelatory event” to take place. The motivation for such interest in the circumstances of revelation is to ensure proper understanding as well as correct judgment based upon those events because both proper understanding and correctness in judgment are deeply tied to context. Drawing inspiration from this method, we include in the program of this meeting these remarks, which we call a framework address. By these remarks, we mean to briefly highlight some of the “circumstances of the event” for this meeting so that it may not be misunderstood or misjudged by the fair-minded.

The meeting can be framed in three complementary dimensions: religious, organizational, and political.

First is the religious dimension, which distinguishes the nature and specificity of this meeting from other meetings: this dimension is based on three orientations in the Islamic tradition derived from hadith texts, which are well known to scholars and which establish three truths: religion and knowledge are correlated; justice and moderation

are prerequisites for religious authority; and proper religion is contingent upon advice to rulers, on one hand, and to the general public, on the other.

From these guidelines, it becomes clear that only scholars can interpret sacred texts because such texts, to which religious people adhere, can be used either to establish rights or, on the contrary, to erode them. In fact, the texts can also be misused to commit crimes in the name of religion, while, in reality, being in direct contradiction to the religion. The distortion of religious texts, as has been established in the Islamic tradition since the time of the Prophet ﷺ, is caused by three calamitous pitfalls: ignorance, imposture, and extremism. Therefore, it is no surprise that the initiative of organizing this meeting comes from religious scholars. Their duty to teach suffers greatly from the aforementioned pitfalls. Thus, it is the scholars who must set these concepts aright, for they have a role, especially in the issue of rights, even if people today are accustomed to seeing it discussed by other groups.

Just as religious scholars were interested in the circumstances of the revelatory events, they also strove to verify the authenticity of transmitted reports and established criteria to evaluate the reliability of a transmitter. This issue is of paramount importance, especially in our age of advanced communication technologies through which suicide bombers are recruited from among the zealous youth by uneducated people posing as religious scholars. It is worth noting that the seventeenth-century Egyptian religious scholar and jurist, al-Munāwī, in his explanation of the hadith on imposture, quotes the Bible, which says about such a scenario, “Can the blind lead the blind? Shall they not both fall into the ditch?”

This is the religious dimension of this meeting, which is to ensure proper understandings.

Second is the organizational dimension, which is also a methodological one. The issue here is the reasons that prompted this meeting and the vision behind it; they are five in number:

1. the initiative taken by various Islamic scholars to raise this issue for the first time and to discuss it in a meeting of this level: this is an achievement worthy of recognition in and of itself;
2. preparation for this meeting through workshops among the organizational parties during the past two years;
3. considering the duty of elucidation and advice a collective one because striving for good cannot be monopolized by anyone: therefore, there is no reason to question the representation of this meeting’s organizers; the discourse is an open one, and it is only to remind people of the principles on which there is consensus – not about interest-based negotiations, issues that entail legal differences of opinion, or particulars, which lend themselves to debate;
4. the incorporation of academic studies into the agenda of the meeting that

recount various historical and intellectual contexts: these studies have been included for an elucidatory purpose, and for no other reason, knowing that their meaningful significance can be understood only in the proper context; these studies have been incorporated to provide supporting evidence for the underlying principle, not to start a useless historical argument, considering that the desired result for all religions today is coexistence and solidarity; and

5. inviting representatives of other religions, which have minorities [in Muslim communities], to participate in this meeting: the justification for this invitation is a shared present and future; the purpose is that the guests be witnesses to this declaration, to hear this call, and to move together with Muslim scholars in the direction of better understanding and to avoid making generalizations which lead to negative judgments of religions, which can lead only to discord and deviation from the path of wisdom and salvation.

Third is the political dimension, which outlines the limits of the impact of the meeting. This dimension becomes clear by the nature of the mission of religious scholars because their sole duty is to propagate and elucidate the principles and values, and to advise [governing authorities] and call for the implementation of these values. This explains the invitation extended to a number of political stakeholders to attend this meeting. Politicians are expected to guarantee rights and to regulate laws at the level of each country, as mentioned in the Royal Letter; there are many provisions related to the issue of minorities, and to the acquisition and exercise of rights as they pertain to minorities. This meeting is not the place to discuss such details, because what is required is establishing and committing to these principles, and absolving religion from violating them. For the sake of clarification, we point out that other minorities, i.e. Muslim minorities in non-Muslim countries, enjoy rights to varying degrees, depending on the country, ranging from total denial of their rights, to neutrality, to varying degrees of empowerment, to equality in terms of civic rights, guaranteed by virtue of citizenship in some countries.

However, the scholars organizing this meeting rely on two other things beside politicians: first is their ability as preachers to persuade the Muslim majority to use its legal and legitimate voice to win this issue of minority rights, and second is to mobilize the press around the fundamental issue made clear by the Royal Letter, namely that no one is allowed to claim that religion permits them to harm the rights of religious minorities in Muslim majority countries.

This framework address may be concluded by something only those obsessed with particular historical events would argue against – that religions genuinely came to promote goodness, which is based on justice and moderation, and to encourage competition in embodying good, not through sectarian conflict. As we can see, in its current journey, the world today has experienced different lifestyles and modes of thought and

behavior, yet it is facing crises that threaten it. And it seems that the silver lining of these crises is that they could push humanity to take new interest, on a greater scale, in the meaning and purpose of life and existence. In this new interest, humanity will need the help of religions to provide it with answers; yet there will be no answers if the religions themselves do not shun discord and aggression.

The Marrakesh Declaration

Concept Paper

INTRODUCTION

IN RECENT YEARS, several predominantly Muslim countries have witnessed brutal atrocities inflicted upon longstanding religious minorities. These minorities have been victims of murder, enslavement, forced exile, intimidation, starvation, and other affronts to their basic human dignity. Such heinous acts have absolutely no relation whatsoever to the noble religion of Islam, regardless of the fact that the perpetrators have used Islam to justify their actions: such aggression is a slander against God ﷻ and His Messenger of Mercy ﷺ as well as a betrayal of the faith of over one billion Muslims. At the same time, in these lands where the government's central authority is feeble, fading, or failing, the Muslim majority, in reality, is often not much better off than the religious minorities. In countries where the Muslims are a majority and the authorities are aggressive, the Muslims are obligated to protect the minorities, their religions, their places of worship, and their rights. This situation also demands that Muslim jurists, philosophers, and intellectuals conduct serious studies using sound and methodical scholarship that examine the reasons for such egregious departures from normative Islam. Such scholarly endeavors must deconstruct extremist discourse and avoid the typical responses, which to date are invariably superficial, generalized, and, on the one hand, are simply vague condemnations, or, on the other hand, are limited to the sphere of debates over the particularized legal proofs.

It goes without saying that the Islamic tradition is based on revealed scripture, informed by the actions of the Rightly Guided Caliphs and inspired by the noble aims of the sacred law. Islam's religious scholars produced a vast, unprecedented cultural and legislative body of work concerning religious minorities, which have been, and which continue to be, part of the fabric of Muslim societies since the advent of Islam. Muslim societies of the past were stunning examples of diversity encompassing sundry sects, creeds, opinions, and worldviews. More often than not, they coexisted within an environment of tolerance, brotherhood, and mutual understanding of the other. History has recorded these details, and objective historians from various backgrounds confirm this.

Of late, the world has experienced dramatic changes. Among the most striking of them involved the inhabitants of postcolonial Muslim nations adopting a new paradigm

toward their minority religious communities: contractual citizenship in which all people are equal, both in their rights and responsibilities, and with respect to their private religious affiliations, with no legal religious bias on the part of the government. Global accords, international law, and commercial systems of goods and services became a part of the local systems. These changes were codified into the new constitutions that would become the founding documents of these newly emerged nation states. All of these changes are aspects of the phenomenon now referred to as “globalization,” which has led to the dissolution of many of the cultural and political barriers and boundaries between societies and hence an increase in the phenomenon of the intermixing of ethnicities, cultures, and religions. In addition, we have witnessed a rise in international migration in search of economic opportunities or refuge from the fires of ethnic cleansing, religious oppression, and political exile.

BACKGROUND

These radical changes beg the question: in light of these recent developments, what paradigm concerning religious minorities can the Muslim scholars, intellectuals, and philosophers advance in today’s world as an ideal goal? This paper presents the following points for consideration and scholarly discussion on this topic:

1. Examination and study of the primary sources of Islamic law, employing a holistic methodology – inclusive of all that it contains, bearing in mind the context of their revelation, the situational injunctions (*khiṭāb al-waḍīʿ*), weighing the benefits and harms, and using the example of the Rightly Guided Caliphs – which provides two primary modalities of relations between Muslims and other faith communities, one in the context of peace and another in the context of conflict, whether actual or anticipated.
2. In distinguishing between the realm of legal rulings regulated by situational injunctions, the role of context, weighing the benefits and harms, and the realm of Islamic values and the higher objectives of Islamic law, we find that rulings which promote peace have both primacy and supremacy over other considerations, given that such rulings embody the core values and objectives that Islam asserts and confirm the primary mission of the Prophet ﷺ: to perfect and exemplify the elevated ethics of revealed religion – values, such as the brotherhood of humanity that unites all the children of the Prophet Adam and Eve, the mutual understanding between various peoples, the command to aid and comfort all people with virtue and piety irrespective of their religion or perspectives, the prohibition of impeding justice for those who have been wronged, and other such principles that cannot be justifiably violated by appealing to rulings with circumstantial and contingent particularities or understandings based on events from a different historical context and place which involved different people, from a time that had as its most identifiable trait the predominance of the culture of war.

3. Medina was a multi-ethnic and multi-religious society that was not founded as the result of conquest or peaceful surrender. There, the Prophet ﷺ composed a document governing the relations between the Muslims and other religious communities that would come to be known as the Charter of Medina. This document was, for all intents and purposes, a just constitution that established a type of contractual citizenship. It affirmed that those who were governed by it were one cohesive unified polity with all citizens enjoying equal rights and having the same duties. This document affirmed the unity of the society in terms of religious pluralism and freedom of religion, but, despite its obvious importance, it has not garnered much study. The main reason for this is that it relates to the founding of the community and deals with a society that was, by its very nature, multi-religious; that is, one in which each segment of society freely chose its religious affiliation.

4. Contemporary circumstances, including, tragically, those of religious minorities in some predominantly Muslim lands, highlight the renewed need for the Charter of Medina to serve as the basis for an authentic model of citizenship. This model would provide religious minorities with a new, historic, contractual status rooted in prophetic tradition and Islamic history. It would respect their private lives, protect their right to practice their religion and include all citizens in the management of the society's affairs in a manner consistent with the duties and rights as outlined in the constitution. Such a constitution would also guarantee equality, the right to pursue happiness, the primacy of the rule of law, and provide the means to resolve political differences equitably and justly.

CONFERENCE SCOPE AND OBJECTIVES

In order to examine more deeply what entails the rights of religious minorities in Muslim lands, both in theory and practice, His Highness, King Mohammed VI of Morocco, hosted a conference in Marrakesh. The Ministry of Endowments and Islamic Affairs of the Kingdom of Morocco and the Forum for Promoting Peace in Muslim Societies, based in the United Arab Emirates, jointly organized the conference, which was held from 25th – 27th January of 2016 (15th – 17th Rabīʿ al-Thānī 1437). A large number of ministers, muftis, religious scholars, and academics from various backgrounds and schools of thought participated in this conference. In attendance were representatives from various religions, including those pertinent to the discussion, from the Muslim world and beyond, as well as from various international Islamic associations and organizations. The conference discussions and research focused on the following areas:

1. matters concerning religious minorities in Muslim lands in sacred law utilizing its general principles, objectives, and adjudicative methodology;
2. the historical dimensions and contexts related to the issue; and
3. the impact of domestic and international rights.

The aim of this conference, with God's help and providence, was to begin the historic revival of the objectives of the Charter of Medina, taking into account global and international treaties and utilizing enlightening, innovative case studies that are good examples of working towards pluralism. The conference also aimed to contribute to the broader legal discourse surrounding contractual citizenship and the protection of minorities to awaken the dynamism of Muslim societies and to help create a broad-based movement of protecting religious minorities in Muslim lands, and to innovate positive initiatives to strengthen the bridges of understanding between the various religious communities inhabiting the Muslim world. For these reasons, the historic Marrakesh Declaration may, God willing, in practical terms, serve as a catalyst for the revival of the Charter of Medina. And God is the Granter of success and the Guide to the straight path.

ABDALLAH BIN BAYYAH

President, Forum for Promoting Peace in Muslim Societies
President, Council of Scholars, Marrakesh Declaration Conference



The Constitution of Medina

The First Written Constitution in Human History¹

Article 1

Constitutional Document:

This is a constitutional document given by Muḥammad, the Prophet, Messenger of God ﷺ.

Article 2

Constitutional Subjects of the State:

(This shall be a pact) between the Muslims of Quraysh, the people of Yathrib (the Citizens of Medina) and those who shall follow them and become attached to them (politically) and fight along with them. (All these communities shall be the constitutional subjects of the state.)

Article 3

Formation of the Constitutional Nationality:

The aforementioned communities shall formulate a Constitutional Unity as distinct from (other) people.

¹ Translation adapted from the book, *Constitutional Analysis of the Constitution of Medina*, by Dr. Muhammad Tahir-ul-Qadri.

Article 4

Validation and enforcement of the former tribal laws of blood money for the emigrant Quraysh:

The emigrants from Quraysh shall be responsible for their ward, and they shall, according to their former approved practice, jointly pay the blood money in mutual collaboration, and every group shall secure the release of their prisoners by paying the ransom. Moreover, the deal among the believers shall be in accordance with the recognized principals of law and justice.

Article 5

Validation of the former laws of blood money for Banū ʿAwf:

And the emigrants from Banū ʿAwf shall be responsible for their ward, and they shall, according to their former approved practice, jointly pay the blood money in mutual collaboration, and every group shall secure the release of their prisoners by paying the ransom. Moreover, the deal among the believers shall be in accordance with the recognized principles of law and justice.

Article 6

Validation of the former laws of blood money for Banū Ḥārith:

And the emigrants from Banū Ḥārith shall be responsible for their ward, and they shall, according to their former approved practice, jointly pay the blood money in mutual collaboration, and every group shall secure the release of their prisoners by paying the ransom. Moreover, the deal among the believers shall be in accordance with the recognized principles of law and justice.

Article 7

Validation of the former laws of blood money for Banū Sāʿidah:

And the emigrants from Banū Sāʿidah shall be responsible for their ward, and they shall, according to their former approved practice, jointly pay the blood money in mutual collaboration, and every group shall secure the release of their prisoners by paying the ransom. Moreover, the deal among the believers shall be in accordance with the recognized principles of law and justice.

Article 8

Validation of the former laws of blood money for Banū Jusham:

And the emigrants from Banū Jusham shall be responsible for their ward, and they shall, according to their former approved practice, jointly pay the blood money in mutual collaboration, and every group shall secure the release of their prisoners by paying the ransom. Moreover, the deal among the believers shall be in accordance with the recognized principles of law and justice.

Article 9

Validation of the former laws of blood money for Banū Najjār:

And the emigrants from Banū Najjār shall be responsible for their ward, and they

shall, according to their former approved practice, jointly pay the blood money in mutual collaboration, and every group shall secure the release of their prisoners by paying the ransom. Moreover, the deal among the believers shall be in accordance with the recognized principles of law and justice.

Article 10

Validation of the former laws of blood money for Banū ‘Amr:

And the emigrants from Banū ‘Amr shall be responsible for their ward, and they shall, according to their former approved practice, jointly pay the blood money in mutual collaboration, and every group shall secure the release of their prisoners by paying the ransom. Moreover, the deal among the believers shall be in accordance with the recognized principles of law and justice.

Article 11

Validation of the former laws of blood money for Banū Nabīṭ:

And the emigrants from Banū Nabīṭ shall be responsible for their ward, and they shall, according to their former approved practice, jointly pay the blood money in mutual collaboration, and every group shall secure the release of their prisoners by paying the ransom. Moreover, the deal among the believers shall be in accordance with the recognized principles of law and justice.

Article 12

Validation of the former laws of blood money for Banū Aws:

And the emigrants from Banū Aws shall be responsible for their ward, and they shall, according to their former approved practice, jointly pay the blood money in mutual collaboration, and every group shall secure the release of their prisoners by paying the ransom. Moreover, the deal among the believers shall be in accordance with the recognized principles of law and justice.

Article 13

Indiscriminate rule of law and justice for all the communities:

Every group shall secure the release of its captives ensuring that an indiscriminate rule of law and justice is applied among the believers.

Article 14

Prohibition of relaxation in execution of law:

The believers shall not leave a debtor among them but shall help him in paying his ransom, according to what shall be considered fair.

Article 15

Prohibition of unjust favoritism:

A believer shall not form an alliance with the associate of (another) believer without the (latter's) consent.

Article 16

Collective resistances against injustice, tyranny, and mischief:

There shall be collective resistance by the believers against any individual who rises in rebellion, attempts to acquire anything by force, violates any pledge, or attempts to spread mischief amongst the believers. Such collective resistance against the perpetrator shall occur even if he is the son of any one of them.

Article 17

Prohibition of killing of a Muslim by a Muslim:

A believer shall not kill (another) believer (in retaliation) for an unbeliever, nor help an unbeliever against a believer.

Article 18

Guarantee of equal right of life protection for all the Muslims:

The security of God (granted under this constitution) is one. This protection can be granted even by the humblest of the believers (that would be equally binding on all).

Article 19

Distinctive identity of the Muslims against other constitutional communities:

The believers shall be the associates of one another against all other people (of the world).

Article 20

Faith-based minorities (Jews) have the same right of life protection (like Muslims):

A Jew, who obeys us (the state), shall enjoy the same right of life protection (as the believers do), so long as they (the believers) are not wronged by him (the Jew) and he does not help (others) against them.

Article 21

Guarantee of peace and security for all the Muslims based on equality and justice:

And verily the peace granted by the believers shall be one. If there is any war in the way of God, no believer shall make any treaty of peace apart from with other believers, unless it is based on equality and fairness among all.

Article 22

Law of relief for war allies:

Every war ally of ours shall receive relief turns (at riding) at all military duties.

Article 23

Law of vengeance for the Muslims in case of bloodshed in the way of God:

The believers shall execute vengeance for one another for bloodshed in the way of God.

Article 24

Islam is the best code of life:

All the God-fearing believers are under the best and most correct guidance of Islam.

Article 25

Prohibition of providing security of life and property to the enemy:

No idolater (or any disbeliever among the clans of Medina) shall give protection for property and life to (any of the) Quraysh (because of their being hostile to the state of Medina) nor intervene on his behalf against any believer.

Article 26

Execution of the law of retaliation for a Muslim murder:

When anyone intentionally kills a believer, and the evidence is clear, he shall be killed in retaliation, unless the heirs of the victim are satisfied with the blood money. All the believers shall solidly stand against the murderer, and nothing will be lawful for them except opposing him.

Article 27

No protection or concession for the doer of mischief and subversion against the constitution:

One who believes in God and in the Hereafter and agrees to the contents of this document shall not provide any protection or concession to those who engage in mischief and subversion against this Constitution. Those who do so shall face the curse and wrath of God on the Day of Resurrection. Furthermore, nothing shall be accepted from them as compensation or restitution (in the Hereafter).

Article 28

The final and absolute authority in the disputes vests in almighty God and the Prophet Muḥammad ﷺ:

When anyone among you differs about anything, the dispute shall be referred to Almighty God and to the Prophet Muḥammad ﷺ (as all final and absolute authority is vested in them).

Article 29

Proportionate liability of citizens other faiths (the Jews) in bearing the war expenses:

The Jews (and other faith-based minorities) will be subjected to a proportionate liability of the war expenses along with the believers so long as they continue to fight in conjunction with them.

Article 30

Guarantee of freedom of religion for both the Muslims and faith-based minorities:

The Jews of Banū ʿAwf (and other faith-based minorities) shall be considered a community along with the believers. They shall be guaranteed the right of religious freedom along with the Muslims. The right shall be conferred on their associates as well as themselves except those who are guilty of oppression or the violators of treaties. They will bring evil only upon themselves and their families.

Article 31

Equality of rights for the Jews of Banū Najjār with the Jews of Banū ʿAwf:

The Jews of Banū Najjār shall enjoy the same rights as granted to the Jews of Banū ʿAwf.

Article 32

Equality of rights for the Jews of Banū Ḥārith with the Jews of Banū ʿAwf:

The Jews of Banū Ḥārith shall enjoy the same rights as granted to the Jews of Banū ʿAwf.

Article 33

Equality of rights for the Jews of Banū Sāʿidah with the Jews of Banū ʿAwf:

The Jews of Banū Sāʿidah shall enjoy the same rights as granted to the Jews of Banū ʿAwf.

Article 34

Equality of rights for the Jews of Banū Jusham with the Jews of Banū ʿAwf:

The Jews of Banū Jusham shall enjoy the same rights as granted to the Jews of Banū ʿAwf.

Article 35

Equality of rights for the Jews of Banū Aws with the Jews of Banū ʿAwf:

The Jews of Banū Aws shall enjoy the same rights as granted to the Jews of Banū ʿAwf.

Article 36

Equality of rights for the Jews of Banū Thaʿlabah with the Jews of Banū ʿAwf:

The Jews of Banū Thaʿlabah shall enjoy the same rights as granted to the Jews of Banū ʿAwf except those who are guilty of oppression or who violate treaties – they will only bring evil on themselves and their family.

Article 37

Equality of rights for Jafna, the branch of Banū Thaʿlabah, with the Jews of Banū ʿAwf:

Jafna, a branch of Banū Thaʿlabah, shall enjoy the same rights as granted to Banū Thaʿlabah.

Article 38

Equality of rights for the Jews of Banū Shuṭaybah with the Jews of Banū ʿAwf:

The Jews of Banū Shuṭaybah shall enjoy the same rights as granted to the Jews of Banū ʿAwf. There shall be complete compliance (with this constitution) and no violation (of its clauses).

Article 39

Equality of rights for all the associates of the tribe, Thaʿlabah:

All the associates of Banū Thaʿlabah shall enjoy the same rights as granted to Banū Thaʿlabah.

Article 40

Equality of rights for all branches of the Jews:

All sub-branches of the Jews shall enjoy the same rights as granted to them (the Jews).

Article 41

Final command and authority in military expeditions vests in the Prophet Muḥammad ﷺ:

Verily, none among the allies shall advance (on a military expedition) without the prior permission of the Prophet Muḥammad ﷺ (in whom vests the final command and authority).

Article 42

No exception from the law of retaliation:

There shall be no impediment on anyone who wishes to avenge a wound.

Article 43

Responsibility of unlawful killing:

Whoever commits an unlawful killing shall be responsible for it himself with his family members, but he is exempted in the case of self-defense. Verily, God (the Trusted Helper) supports those who adhere completely to this constitution.

Article 44

Separate liability of war expenses:

The Jews and the Muslims shall bear their own war expenses separately.

Article 45

Compulsory mutual help to one another in case of war:

There shall be mutual help for one another against those engaged in war with the allies of this document.

Article 46

Mutual consultation and honorable dealing:

There shall be mutual consultation and honorable dealing between the allies, and there shall be fulfillment, not violation, of all pledges.

Article 47

Law of prohibition of treachery and help of the oppressed:

No one shall violate the pledge due to his ally, and, verily, help shall be given to the oppressed.

Article 48

The Jews (non-Muslim minorities) shall also extend financial support to the state during periods of war:

The Jews (non-Muslims minorities) along with the believers shall extend financial support to the state during periods of war.

Article 49

Prohibition of fighting and bloodshed among the various communities of the state:

The valley of Yathrib (Medina) is sacred, and there shall be no fighting or bloodshed among the various communities of the state.

Article 50

Equal right of life protection shall be granted to everyone who has been given the constitutional shelter:

A person given constitutional shelter shall be granted an equal right of life protection as long as he commits no harm and does not act treacherously.

Article 51

Law of asylum for women:

A woman shall not be given asylum without the consent of her family.

Article 52

Authority of God and the Prophet Muḥammad ﷺ shall be final and absolute authority in all disputes instigating any quarrel:

And verily if any dispute arises among the parties to this document from which any quarrel may be feared, it shall be referred to God and to Muḥammad ﷺ, the Messenger of God, for the final and absolute decision. Verily, God is the guarantee for the faithful observance of the contents of this constitution (which shall be enforced by the state).

Article 53

No refuge for the enemies of the state nor for their allies:

There shall be no refuge for the Quraysh (the enemies of the state) nor for their allies.

Article 54

Joint responsibility of defense in case of an attack on the state:

The Muslims and the Jews shall be jointly responsible to defend (the state of) Medina against any outside attack.

Article 55

Incumbency of observance of the treaty of peace for every ally:

It shall be incumbent upon the Jews to observe and adhere to any peace treaty they are invited, and to which they are a party. Likewise, it shall also be incumbent upon the Muslims to observe and adhere to any peace treaty they are invited to and which they are a party of.

Article 56

No treaty shall suspend or negate the responsibility of the protection of religion:

(Likewise, it shall be incumbent upon the Muslims also to observe and adhere to any peace treaty that they are invited to), but no treaty will restrain them from fighting for the protection of their religion.

Article 57

Every party to the treaty shall be responsible for the defense of its facing direction:

Every party to the treaty shall be responsible for the measures and arrangements of the defense of its facing direction.

Article 58

The basic constituent members of this document and their associates shall possess the equal constitutional status:

The Jews of Aws (one of the basic constituent members of this document) and their allies shall possess the same constitutional status as the other parties to this document, with the condition that they should be thoroughly sincere and honest in their dealing with the parties.

Article 59

No party shall have any right of violation of the constitution:

No party shall have the right to violate the constitution. Every person who is guilty of a crime shall be held responsible for his act alone.

Article 60

Favor of Almighty God will be subject to the observance of the constitution:

Verily, God is the guarantee for the faithful observance of the contents of this constitution (which shall be enforced by the state).

Article 61

No traitor or oppressor shall have the right of protection under this document:

Verily, this constitutional document shall not protect any traitor or oppressor.

Article 62

All peaceful citizens would be in a safe and secure protection:

Verily, whoever goes out (on a military expedition) shall be provided with security, and whoever stays in Medina shall have (likewise), except those who commit oppression and violate the contents of this constitution.

Article 63

God and His Prophet Muḥammad ﷺ are the protectors of the peaceful citizens of Medina who abide by the constitution:

Verily, God and the Prophet Muḥammad, the Messenger of God ﷺ, are the protectors of good citizens and of those who fear God.

IN THE NAME OF GOD, THE COMPASSIONATE, THE MERCIFUL.

*All praise is for God, Lord of the worlds.
May God's peace and blessings be upon our master,
Muhammad, the Trustworthy Prophet,
and upon all Prophets and Messengers.*



The Marrakesh Declaration On the Rights of Religious Minorities in Muslim-Majority Lands

WHEREAS conditions in various parts of the Muslim world have deteriorated dangerously due to the use of violence and armed struggle as a tool for resolving conflicts and imposing one's point of view on others;

WHEREAS this situation has weakened the authority of legitimate governments and enabled criminal groups to issue edicts attributed to Islam, but in reality alarmingly distort fundamental Islamic principles in ways that have seriously harmed the population as a whole.

WHEREAS due to these conditions, religious minorities have been subject to killing, enslavement, displacement, intimidation, and humiliation despite having lived for centuries as part of the fabric of Muslim societies and under protection of the leadership in an atmosphere of tolerance, mutual understanding, and fraternity as has been documented historically and acknowledged by objective historians of other civilizations;

WHEREAS these crimes are being perpetrated in the name of Islam and its sacred law, which is a lie against God Almighty and the Prophet of Mercy ﷺ, thus betraying over a billion people, and making Muslims targets of scorn, repulsion, and enmity, even while many Muslims themselves are also victimized by such horrific crimes;

WHEREAS particularly in this crucial juncture in the history of our community, God has placed upon religious scholars the responsibility of protecting the sanctity of life and human dignity, of remaining steadfast on the path to achieving peace for humanity, and of calling upon people to fulfill their obligations, we must do this so that we may restore religion to its true standing and warn people of the negative consequences of these crimes – dressed in the guise of religion – upon our unity, stability, and interests, both short and long term; and

WHEREAS we commemorate over 1,400 years since the establishment of the “Charter of Medina” at this conference held under the auspices of His Majesty, King Mohammed VI of Morocco, a country that has been and continues to be, in both its leadership and its people, an inspiring example of the protection of the rights of religious minorities, and a country with a history that is replete with evidence of tolerance, coexistence, and cohesion between Muslims and members of other faith communities, whether they originated from this land or immigrated fleeing religious persecution or social injustice; and whereas this conference is a joint effort between the Ministry of Endowment and Islamic Affairs in the Kingdom of Morocco and the Forum for Promoting Peace in Muslim Societies based in the United Arab Emirates, assembling hundreds of Muslim scholars and intellectuals from over 120 countries alongside religious leaders from other faiths, both those communities who are directly affected by the circumstances and those who are not, from both within and outside Muslim majority lands, and these leaders met with representatives of Islamic and international organizations, and all the parties involved know well that this is both a noble effort and a grave situation;

THEREFORE, be it resolved that after thorough deliberation and discussion, the convened Muslim scholars and intellectuals, in conjunction with their brothers and sisters from other faith traditions, hereby declare as “The Marrakesh Declaration on the Rights of Religious Minorities in Predominantly Muslim Lands,” the following:

1) INVOKING THE UNIVERSAL PRINCIPLES AND COMPREHENSIVE VALUES OF ISLAM:

1. God bestowed dignity on all human beings regardless of their race, color, language, or belief, for God breathed His spirit into their forefather, Adam, peace be upon him. The Qur’an says, “We have dignified the children of Adam” (17:70).
2. This dignity requires that human beings must be granted freedom of choice. The Qur’an says, “There is no compulsion in religion” (2:256), and “Had your Lord willed, all the people on earth would have believed. So can you [Prophet], compel them to believe?” (10:99).
3. All people – regardless of their different natures, societies, and worldviews – share the bonds of brotherhood and sisterhood in humanity. The Qur’an says, “O people! We created you from a single man and a single woman, and made you into nations and clans so that you should recognize one another” (49:13).

4. God established the heavens and the earth on the basis of justice and made such justice the standard for all human interaction in order to ward off resentment and enmity, and He encouraged benevolence between people in order to nurture love and harmony. The Qur'an says, "God commands justice, doing good, and generosity toward relatives, and He forbids what is shameful, blameworthy, and oppressive. He teaches you so that you may take heed" (16:90).
5. Peace is the hallmark of Islam and the primary purpose of sacred law for society. The Qur'an says, "O you who believe, enter wholeheartedly into a state of peace" (2:208), and "If they incline towards peace, you must also incline towards it, and place your trust in God" (8:61).
6. God Almighty sent the Prophet Muḥammad ﷺ as a mercy to the worlds. The Qur'an says, "We sent you not but as a Mercy for all of creation" (21:107).
7. Islam calls for treating others kindly, regardless of whether they share the same beliefs or not. The Qur'an says, "God does not forbid you to deal kindly and justly with anyone who has not fought you for your faith or driven you out of your homes. God loves the just" (60:8).
8. Islamic sacred law strongly emphasizes honoring contracts, covenants, and conventions, for that ensures peace and coexistence between peoples. The Qur'an says, "O you who have believed, fulfill [all] contracts" (5:1), and "Fulfill any pledge you make in God's name, and do not break oaths after you have sworn them" (16:91). The Prophet Muḥammad ﷺ said, "Any covenant made before Islam is only more resolutely affirmed with Islam" (authenticated by Imam Muslim).

II) CONSIDERING THE "CHARTER OF MEDINA" AS THE BASIS AND FOUNDATION FOR ENSURING THE RIGHTS OF RELIGIOUS MINORITIES IN PREDOMINANTLY MUSLIM LANDS:

9. The "Charter of Medina," which was affirmed by the Prophet Muḥammad ﷺ as the constitution for an ethnically and religiously diverse society, embodies the primary Qur'anic and Islamic values.
10. The notable scholars of the Muslim community have declared the "Charter of Medina" a standing document that was neither repealed nor abrogated.
11. The "Charter of Medina" was unprecedented in both Islamic and human history as a result of the following:
 - a) Its ontological position that the human being is an ennobled and honored being. The charter does not use terms such as "minority" or "majority"; rather, it refers to different constituents that together form a single nation, i.e., citizens.
 - b) The Charter was not borne of war or conflict; rather, it was the result of a contract between groups that were already living together peacefully.

12. It was universally accepted and embodies the highest objectives and values of the sacred law of Islam. Each article in the Charter is an expression of wisdom, mercy, justice, or the commonweal.

13. For Muslims, the contemporary societal context makes the “Charter of Medina” the ideal foundation for the institution of citizenship. It provides contractual citizenship and is a just constitution that serves as a model for any society with multiple ethnicities, religions, and languages. It guarantees equal rights for all members of society, whereby all individuals, despite their differences, also bear the same responsibilities, thus forging national unity.

14. Setting the “Charter of Medina” as the precedent and basis for addressing our contemporary needs does not mean that other governing systems or agreements were unjust in the contexts of their time.

15. The clauses of the “Charter of Medina” included many of the principles of contractual citizenship, such as freedom of religion, freedom of movement, freedom to own property, the principles of social solidarity and mutual defense, and justice and equality before the law. For example, it states the following:

The Jews of Banū ‘Awf are a community alongside the Believers; the Jews have their religion, and the Muslims theirs. This applies to both of them and their allies, unless one wrongs others or commits a crime, for doing so will only bring destruction upon themselves.

Moreover, the Jews are responsible for their own expenses only, and the Muslims for theirs. Each will aid the other against anyone who wages war on the signatories of this Charter. There will be good will, sincerity, and counsel between them. There will be no harming against an ally in this Charter, and help is to be given to the oppressed.

16. The objectives of the “Charter of Medina” are a suitable framework for constitutions of predominantly Muslim nations today. They align well with the Charter of the United Nations and its addenda, such as the Human Rights Declaration, and help to engender and preserve public order.

III) CORRECTING MISUNDERSTANDINGS AND CLARIFYING THE METHODOLOGICAL PRINCIPLES OF THE ISLAMIC LEGAL POSITION ON THE RIGHTS OF MINORITIES:

17. The Islamic legal position on this issue relies on a variety of methodological principles, the ignorance or neglect of which causes confusion and a distorted understanding. These methodological principles include the following:

- a) The consideration of the universal values of sacred law, such as wisdom, mercy, justice, and the commonweal.

- b) The adoption of a comprehensive approach that takes into account all of the religious texts, correlating them to one another, but in a manner that does not lose sight of the individual texts that make up the whole.
- c) The consideration of perspectives and contexts from which individual legal rulings of the past were issued, as well as the contemporary context, noting the similarities and differences between them in order to adapt the rulings accordingly and put each in its proper place so the understandings are not distorted and their objectives are not undermined.
- d) The consideration of the link between religious ordainments and their contextual modifiers, i.e., to look at religious obligations in conjunction with the environments – both material and social – in which they are to be applied in order to know how it is that one should actually fulfill such obligations. It is for this reason that the jurists of Islam established the maxim, “Changes in legal rulings are not censured due to changes in circumstances of time or place.”
- e) The evaluation of religious commands and prohibitions within a framework of benefit and harm, for all commands and prohibitions in Islam have the ultimate purpose of accruing benefit or preventing harm.

18. Previously derived legal rulings concerning religious minorities developed in eras dominated by war and conflict. Those previous circumstances differ vastly from the current state of the world.

19. The more we contemplate the various crises that threaten humanity, the more convinced we are of the need for peoples of all faiths to cooperate. The need for such cooperation is both dire and urgent. This cooperation cannot be based on mutual tolerance or respect alone; the laws of each country must also guarantee the rights and freedoms to all its members. Declarations of such needs do not suffice: each of us must commit to a culture that excludes all types of coercion, intolerance, and arrogance.

Based on the above, the conferees call upon the following:

- ❖ Muslim scholars and intellectuals around the world to develop a jurisprudence of the concept of “citizenship,” which is inclusive of diverse groups. Such jurisprudence shall be both rooted in Islamic tradition and its principles, as well as be mindful of global changes and dynamics today.
- ❖ Muslim educational institutions and religious authorities to courageously conduct a critical review of educational curricula that addresses, honestly and effectively, any material that instigates aggression and extremism, leads to war and chaos, and results in the destruction of our shared societies.
- ❖ Politicians and policymakers to take the political and legal steps necessary to establish a constitutional contractual relationship for its citizenry and to support all institutions and initiatives that aim to strengthen relationships and understanding between the various religious groups in predominantly Muslim lands.

- ❖ Intellectuals, creative thinkers, and private social organizations to establish a broad movement for the just treatment of religious minorities in Muslim countries in order to raise awareness of their rights, and to work together to ensure the success of these efforts.
- ❖ The various religious groups bound by the same national fabric to address their mutual state of selective amnesia, caused by focusing solely on cycles of mutual oppression, that has led them to forget centuries of living together harmoniously on the same land. We call upon them to restore the foundations of the past through a renovation of the tradition of conviviality and a restoration of the mutual trust that has been eroded by extremists using acts of terror and aggression.
- ❖ Representatives of the various religions, sects, and denominations to prevent and counter any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence.

AND FINALLY, WE AFFIRM that it is unconscionable to use religion as a false justification to aggress upon the rights of religious minorities in predominantly Muslim lands.

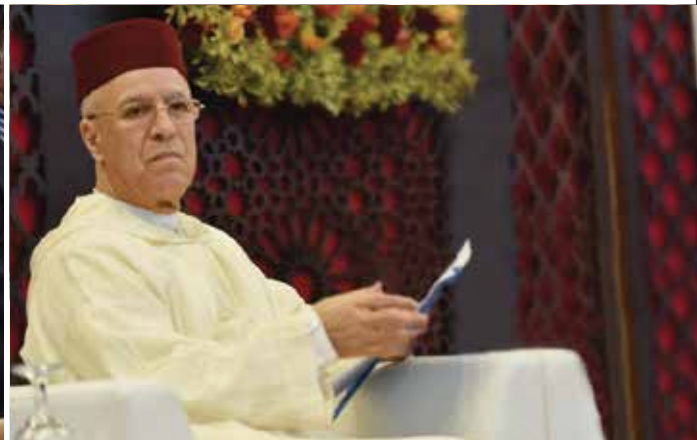
Praise be to God, by whose Grace good works are completed.

Marrakesh
January 27th, 2016



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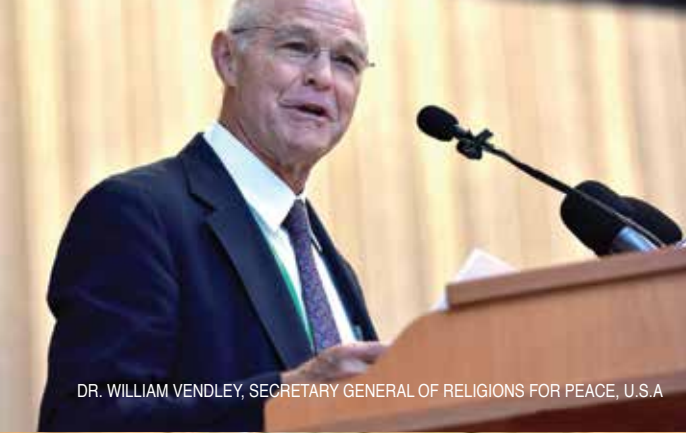
HADI BABASHEIK, REPRESENTATIVE OF THE YAZIDIS



SERGE BERDUGO, REPRESENTATIVE OF THE JEWISH COMMUNITY



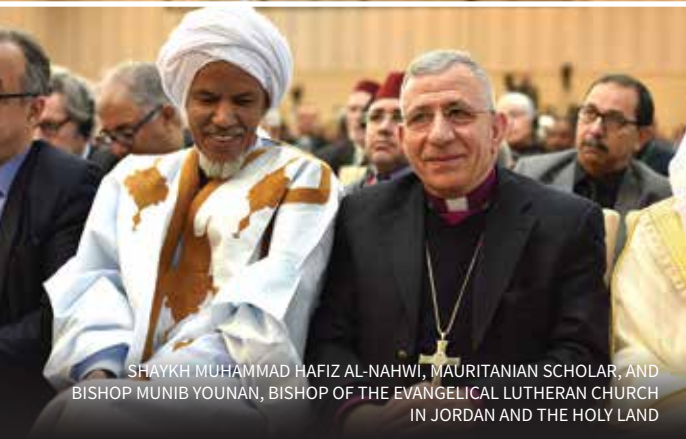
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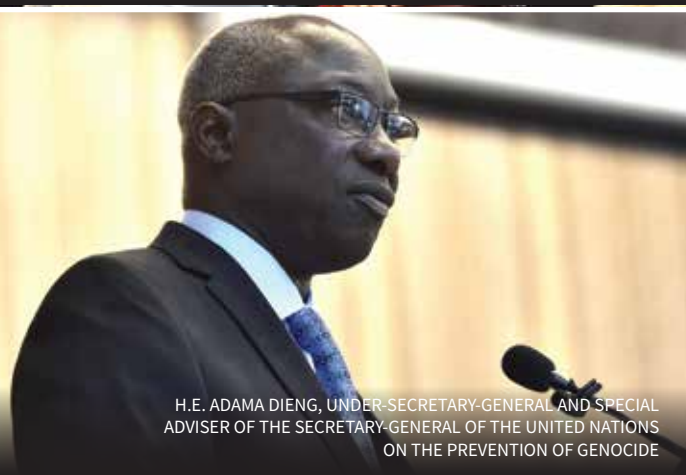
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