

Series of Questions Addressed to Scholar Sheikh Ata Bin Khalil Abu Al-Rashtah,
Ameer of Hizb ut Tahrir through his Facebook Page (Fiqhi)

Answers to Questions:

1. **Justice is a Condition for the Khaleefah**
2. **The Punishment in this World that Constitutes a Kaffara (Expiation) in the Hereafter**
3. **Seeking Assistance from the Disbelievers**

To: Ubada Ash-Shami
(Translated)

Question:

Our honorable Sheikh, may Allah give you victory and support you, Assalamu Alaikum wa Rahmatullahi wa Barakatuh,

1- It was mentioned in the dossier of "Removing the Dust" on the verdict of the usurper dominant ruler the following: "The ruling of usurping the authority is to fight the usurper with an armed continuous fight until he is deposed or killed." We know that one of the conditions of the Khaleefah is justice and that whoever killed and shed blood and usurped the Sultan (authority) from the nation lacks justice. Is there a contradiction between the above and the Answer to Question entitled (The Legislative (Shari') Method of Establishing the Khilafah and the Dominant Sultan)? If there is no contradiction, do we have a new understanding of the dominant Sultan that eliminates the old understanding ...? Please explain.

2- Today we see the application of the legal punishments (Hudood) on the Muslims by the ISIS. Will a person who is a legal punishment (Hadd) has been applied on him by the ISIS or by some states that might apply some Hudood, be acquitted of his sin before Allah on the Day of Resurrection and will not be held accountable ...? Please explain.

3- Is it allowed for the Khilafah State, the coming soon by the permission of Allah (swt), to seek friends from Kafir states and to ally itself with some Kafir States, even if they are practically belligerent states, such as Germany, for the sake of convergence of interests so that the Khilafah can weaken and conquer some countries. Or is this only allowed with states which are legally considered to be belligerent states like Venezuela. Is it allowed to measure the permissibility of the alliance with the actually belligerent states on what the Prophet did of concluding peace treaty with the Quraysh who were practically belligerent in the treaty of Al-Hudaybiyah?

And Allah bless you.

Answer:

Wa Alaikum Assalam wa Rahmatullahi wa Barakatuh,

1- As for what is mentioned in the dossier, it is no different from what is stated in the answer to question. It appears that your copy of the dossier is an old version that did not have the ruling on the dominant ruler, but the version in our hands it has the ruling of the dominant ruler ...

The ruling of the dominant ruler is also found in the book of the Ruling System p. 57 (p. 64 English edition) ...

Thus, there is no contradiction between what is stated in the answer to the question and what is stated in the dossier.

As for justice being a condition for the Khaleefah, this is true. The dominant Sultan is not given Bayah unless he repents and reforms his matter, and people are convinced of his righteousness

and give him Bayah. In other words, justice is achieved before the Bayah. As you know, whoever repents and corrects and reverts from his bad deeds then he is just and justice is achieved by him... It seems that you had some confusion on the issue as you thought that he would be given Bayah despite his domination and oppression. And you asked how would he be given a Bayah and he is not just, but the issue is not so. The Bayah for Khilafah is not given to him unless he repents and reforms, and people are convinced of him being just, and justice [fairness] is achieved in him then they pledge Bayah to him.

I hope this is clear.

2- The application of punishments expiates sins if it is from a state that rules by Allah's laws. We have already answered this question on 22/01/2014 and I re-write the text here for you:

"With regards to the second question: Does the punishment expiate the sin on the Day of Resurrection? This is true **if it is a legitimate punishment from an Islamic state, i.e a state that rules by Allah's laws**, and not by man-made laws. The explanation of that is as follow:

- Muslim reported that Ubada bin As-Samit said: The Messenger of Allah (saw) said to us while we were in a gathering: «تَبَايَعُونِي عَلَى أَنْ لَا تُشْرِكُوا بِاللَّهِ شَيْئًا، وَلَا تَزْنُوا، وَلَا تَسْرِقُوا، وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ، فَمَنْ وَفَى مِنْكُمْ فَأَجْرُهُ عَلَى اللَّهِ، وَمَنْ أَصَابَ شَيْئًا مِنْ ذَلِكَ فَعُوقِبَ بِهِ فَهُوَ كَفَّارَةٌ لَهُ، وَمَنْ أَصَابَ شَيْئًا مِنْ ذَلِكَ فَسَتَرَهُ اللَّهُ عَلَيْهِ، «Give me the oath (Bayah) for: Not to join anything in worship along with Allah, not to commit illegal sexual intercourse (zina), not to steal, and not to kill life that Allah has forbidden except for a just cause. Whoever amongst you fulfils his pledge, his reward will be with Allah, and whoever commits any of those sins and receives the legal punishment in this world for that sin then that punishment will be expiation for that sin. And whoever commits any of those sins and Allah does not expose him, then it is up to Allah if He wishes He will punish him or if He wishes, He will forgive him.»

So, the Hadith shows that whoever is punished in this world, his punishment expiates him on the Day of Resurrection, and he will not be punished for that sin in the Hereafter. It is clear from Hadith as well that the punishment that constitutes a Kaffara (expiation) is a punishment from an Islamic state, in which a Bayah is pledged to a Khaleefah to rule by Islam. Thus, the Prophet (saw) began the Hadith by saying: «تَبَايَعُونِي... فَمَنْ وَفَى مِنْكُمْ فَأَجْرُهُ عَلَى اللَّهِ، وَمَنْ أَصَابَ شَيْئًا مِنْ ذَلِكَ فَعُوقِبَ بِهِ فَهُوَ كَفَّارَةٌ لَهُ» "Give me the oath (Bayah) Whoever amongst you fulfils his pledge, his reward will be with Allah, and whoever commits any of those sins and receives the legal punishment in this world for that sin then that punishment will be expiation for that sin."

Therefore, the punishment that constitutes expiation depends on the existence of Bayah, and the Bayah is given only to the ruler who rules by Islam. **Hence the punishment that constitutes a Kaffara (expiation) of sin in the Hereafter is the punishment from the state that rules by Islam, and Allah knows Best and He is The Wisest**) End.

3 - Your question about the alliance with Kafir states in the sense of seeking their assistance ... It is not allowed according to the Islamic rule:

A – This is explained in the book, *Shakhsiyya, Islamic Personality* Volume II, section "Seeking assistance from the disbelievers". It mentioned:

"The evidence that it is not allowed to seek assistance from the disbelievers in their capacity as an independent State. This is due to what was Ahmad and An-Nasai narrated from Anas who said: The Messenger of Allah (saw) said: «لا تستضيئوا بنار المشركين» "Do not seek light by the fire of the polytheists."

The fire of a people is a metaphoric expression for their entity in war as an independent tribe or State. Al-Baihaqi said: The authentic is what Al-Hafiz Abu Abdullah informed us via a chain leading to Abu Hameed al-Sa'idi who said:

«خرج رسول الله ﷺ حتى إذا خلف ثنية الوداع إذا كتيبة قال: من هؤلاء؟ قالوا بني قينقاع وهو رهط عبد الله بن سلام قال: وأسلموا؟ قالوا: لا، بل هم على دينهم، قال: قولوا لهم فليرجعوا، فإنا لا نستعين بالمشركين»

“The Messenger of Allah (saw) went out until he passed Thaniyya al-Wada' when there was a squadron. He said: ‘Who are these?’ They said: ‘Banu Qaynuqa and they are the company of Abdullah bin Salam.’ He said: ‘Have they embraced Islam?’ They said: ‘Rather they are on their deen.’ He said: ‘Tell them to return for we do not seek assistance from the polytheists.”

The Messenger (saw) returned the company of Abdullah bin Salam of Banu Qaynuqa since they came as a nation united in a Kafir squadron, and they came under their flag in their capacity as being from Banu Qaynuqa between whom and the Messenger (saw) were treaties. Due to this he refused them. This rejection was due to their coming under their flag and with their State, by the evidence of his (saw) accepting the assistance of the Jews in Khyber when they came as individuals. This hadith of Abu Hameed al-Sa'idi includes the Shari'ah reason (illah), so if it exists the rule exists, and if it is absent the rule is absent. The reason in the hadith is clear in the hadith's text where it says: «إذا كتبية قال: من هؤلاء قالوا: بني قينقاع وهو رهط عبد الله بن سلام.» **“when there was a squadron. He said: ‘Who are these?’ They said: ‘Banu Qaynuqa and they are the company of Abdullah bin Salam.”**

The meaning of their being a squadron is that they are an independent army with an independent flag, since for every squadron there is a flag. So, they were a Kafir squadron with an independent flag and from the Jewish of Banu Qaynuqa who were from the ranks of a State between whom and the Messenger (saw) were treaties. This was the reason for rejecting them, not merely because they were disbelievers with the evidence that he commanded them to return based upon this and their rejection of Islam not due to their rejection of Islam alone. This is strengthened by the hadith of Anas: «لا تستضيئوا بنار المشركين» **“Do not seek light by the fire of polytheists.”**

As it is directed on the entity. And is strengthened by the Messenger's accepting assistance from Quzman in the same place of the event of Uhud, although he was a polytheist. The meaning of this is rejecting the assistance of disbelievers in their capacity as an entity and accepting their assistance in their capacity as individuals. Therefore, seeking assistance of disbelievers as a Kafir nation or Kafir tribe or Kafir State, and under their own flag, and as part of their State is absolutely not allowed in any case. As for Khuza'ah going out together with the Prophet (saw) against the Quraysh the year of conquest, and it was an independent tribe, this does not indicate the permissibility of seeking assistance of a nation with an independent entity because Khuza'ah was present in the year of Hdaybiyah when the peace treaty between the Quraysh and the Muslims was written. When it came in the text of the treaty: «وإنه من أحب أن يدخل في عقد محمد وعهده دخل فيه، ومن أحب أن يدخل في عقد قریش وعهدهم دخل فيه» **“Whoever would like to enter into the contract of Mohammed and his pledge can enter into it, and whoever would like to enter into the contract of the Quraysh and their pledge can enter into it”** Narrated by Ahmad. Based upon this text Khuza'ah leaped and said: We are in the contract of Muhammad and his pledge, and Banu Bakr leaped and said: We are in the contract Quraysh and their pledge. So, Khuza'ah came together with the Muslims in this treaty which was between the Quraysh and the Muslims, and the Messenger (saw) entered them under his protection as a group in his state according to the contract. Therefore, it fought as a tribe under the Muslims' flag and as a part of the Islamic State, not like an independent state, so they were like individuals, not like an entity. As for what some imagine of Khuza'ah having an alliance or a treaty with the Messenger (saw), this is not true. For the treaty was between the Messenger (saw) and the Quraysh and not between the Messenger (saw) and Khuza'ah ...”

Therefore, it is not allowed to ally with any Kafir state or to seek their assistance, but it is permitted for the disbelievers of the people of Dhimah who are citizens in the Islamic state to be in its army.

B - This is also explained in Article No. 190 of the Draft Constitution, which states as follows:

“Article 190. All military treaties and pacts, of whatever type, are absolutely forbidden. This includes political treaties and agreements covering the leasing of military bases and airfields. It is permitted to conclude good neighboring, economic, commercial, financial, and cultural and armistice treaties.” End.

It was explained that:

“The definition of: “treaties” is that they are agreements that States conclude between themselves with the goal of organizing a specific relationship and defining the rules and conditions which that relationship submits to. The Islamic jurists used the term: “Al-Muwada’at”... however it is a precondition for the validity of the contracting of the treaty that the subject that the contract was upon was something that the Shari’ah had permitted. There are various types of treaties...

As for military treaties, they are forbidden due to the words of the Prophet (saw): «لَا تَسْتَضِيئُوا بِنَارِ الْمُشْرِكِينَ» **“Do not seek light by the fire of polytheists”** (reported by Ahmad and Al-Nasa’i), and the fire of a people is a metaphor for their structure in war. It is also forbidden due to his words: «فَلَنْ أَسْتَعِينَ بِمُشْرِكٍ» **“I do not seek help from a polytheist (Mushrik)”** (reported by Muslim from Aisha (ra)). And from Aisha(ra) in Abu Dawud and Ibn Maja: «إِنَّا لَا نَسْتَعِينُ بِمُشْرِكٍ» **“We do not want any help from a polytheist (Mushrik)”** and his words: «لَا نَسْتَعِينُ بِالْكَفَّارِ عَلَى الْمُشْرِكِينَ» **“We do not seek help from the disbelievers against the polytheists”** (reported by Ibn Abi Shayba from Sa’id b. Al- Mundhir)...

Therefore, it is forbidden to seek the assistance of the disbelievers (Mushrikeen) as a state or to have alliance with them for the above-mentioned evidences.

C - As for the issue of the Hudaibiyah Treaty between the Messenger (saw) and the Quraysh, it is not an alliance, because the alliance means fighting together and so on. But what happened was a truce for a specific period between the Messenger (saw) and the belligerent disbelievers (Kuffar) on their land before it was conquered. It is permitted to conclude a truce between us and the practically belligerent disbelievers if their entity is established on their land before it is conquered. However, if their entity is entirely on a land they occupied from the Muslims, it is not permitted to enter into any agreement with them because it means recognition of their occupation of our land, which is forbidden by the Shara’, and this applies to the Jewish entity which is entirely established on a land conquered by the Muslims. This was stated in article 189 under the fourth paragraph, which read:

“**Article 189:** The relationship of the State with other states present in the world is built upon four considerations.

.....

Fourth: States that are actually belligerent states, such as Israel for example, a state of war must be taken as the basis for all dealings with them. They must be dealt with as if a real war existed between us – irrespective of whether an armistice exists between us or not - and all their subjects are prevented from entering the State.” End.

It explained the following:

"... It is not permitted to have a permanent peace treaty with these countries that were practically belligerent, in other words, a permanent cessation of fighting, or permanent truce, since this prevents Jihad which continues until the Day of Judgment, just as a permanent truce prevents the spread of Islam until Allah (swt) makes it dominant over all other religions. Allah (swt) says: ﴿وَقَاتِلُوهُمْ حَتَّى لَا تَكُونَ فِتْنَةً وَيَكُونَ الدِّينُ كُلُّهُ لِلَّهِ﴾ **“And fight them until there is no fitnah and [until] the religion, all of it, is for Allah (swt).”** [Al-Anfal: 39] And the Messenger (pbuh) said: «وَالْجِهَادُ مَاضٍ مُنْذُ بَعَثَنِي اللَّهُ إِلَى أَنْ يُقَاتِلَ آخِرُ أُمَّتِي الدَّجَالَ» **“And jihad will be performed continuously since the day Allah (swt) sent me as a Prophet until the day the last member of my community will fight with the Dajjal (Antichrist).”** (reported by Abu Dawud from Anas (ra)).

As for a temporary treaty with these countries, and a temporary cessation of the war, it is looked at as follows:

*- If the State, which is in the actual war against us, has land which is not Islamic land upon which its entity is formed, then it is permitted to have a temporary truce with it, in other words, to stop the war with it for a temporary time, if the pause is in the interest of Islam and the Muslims, and according to the conditions that the Shari’ah confirmed.

The evidence for this is the Treaty of Al-Hudaybiyah, which was between the Islamic State which the Messenger (pbuh) had established in Madinah and the Qurayshi state which was established upon the land which Islam had not yet conquered, in other words, it was not established upon Islamic land.

*- If the State which was at war with us, was established as an entity in its entirety upon Islamic land, in other words, the entity did not have any land connected to it which had not been conquered by the Muslims, such as Israel – the Jewish state which has stolen Palestine – then it is not permitted to have a treaty with it, since the establishment of this State was invalid according to the Shari’ah, and since a treaty with it would mean to give up Islamic land to it, which is prohibited and a crime against Islam. Rather, the situation of actual war has to remain with it, irrespective if there was a truce which was contracted with it by illegitimate rulers in the Muslim lands, or not.

And so accordingly any treaty with the Jewish state, even over a handspan of the land, is prohibited by the Shari’ah because it is usurping and occupying and its whole entity is established on Muslim land and it is a surrender of Islamic land to it, and an establishment of its control over the Muslims there, which is not permitted according to the Shari’ah. Islam requires that all of the Muslims fight against it, and so their armies must be sent to fight, and all those capable of fighting be gathered as soldiers in the army, and for this to continue until the Jewish state is finished and the Muslim lands are rescued from it. Allah (swt) says: ﴿وَلَنْ يَجْعَلَ اللَّهُ لِلْكَافِرِينَ عَلَى الْمُؤْمِنِينَ سَبِيلًا﴾ “**And never will Allah (swt) give the disbelievers over the believers a way [to overcome them].**” (TMQ 4:141) And His (swt) words: ﴿فَمَنْ اِغْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اِغْتَدَى عَلَيْكُمْ﴾ “**So whoever has assaulted you, then assault him in the same way that he has assaulted you.**” (TMQ 2:194) And: ﴿وَاُخْرِجُوهُمْ﴾ “**And expel them from wherever they have expelled you.**” (TMQ 2:191)). End.

Thus, the Hudaybiyah Treaty is not an alliance; it is a temporary truce between the Islamic State and the entity of the Quraysh which existed on their land before it was conquered. It is applied on the permissibility of establishing a truce between the Islamic State and any Kaffir state whose entity exists on its territory, whether all or part of the entity, provided that it is a temporary truce and to be in the interest of Islam and Muslims. However, if the entity of that Kaffir state in its entirety established on Islamic land, then no peace treaty with them is allowed as described above.

Your brother,

Ata Bin Khalil Abu Al-Rashtah

26th Rajab 1438 AH

23/04/2017 CE

The link to the answer from the Ameer’s Facebook page:

<https://web.facebook.com/AmeerhtAtabinKhalil/photos/a.122855544578192.1073741828.122848424578904/623187114545030/?type=3&theater>

The link to the answer from the Ameer’s Google Plus page:

<https://plus.google.com/u/0/b/100431756357007517653/100431756357007517653/posts/TJiCjTpMLGo>

The link to the answer from the Ameer’s Twitter page:

<https://twitter.com/ataabualrashtah/status/859468692865896448>