



Is There a Need to Establish an Islamic Legal (*Fiqhi*) Foundation for Global Peace and Harmony?

1. The view that Muslims should have a default attitude of enmity towards non-Muslims, and that infidels (sing. *kafir*, pl. *kuffar*) should be subject to discrimination, is well established within *turats al-fiqh* (the tradition of Islamic jurisprudence, or *fiqh*).
2. This fundamental view underlies and animates various Islamic norms of engagement with infidels, ranging from segregation and discrimination in social life to hostile interaction, including both defensive and offensive *jihad*. Even the concept of defensive *jihad* includes the idea of preemptive attack.
3. This view was relevant in the context of the socio-political reality we may call the imperial (caliphal) civilization, from the early days of Islam to the abolition of the Ottoman Caliphate (1924 CE / 1342).
4. Today, the era of imperial civilization has virtually ended, and the Islamic world, including Muslims everywhere, face two choices:
 - a. To retain the set of established *fiqh* views regarding *kuffar* and normative Muslim conduct in engaging with infidels; or
 - b. Revise Islamic jurisprudence regarding the status of infidels and change the norms that govern Muslim engagement with non-Muslims, as well as the normative views that Muslims generally hold regarding infidels.
5. If, in accordance with point 4.a. above, the established view and norms regarding Muslims' engagement with non-Muslims are retained:
 - a. It is necessary to acknowledge that a socio-political construct (or imperium) capable of operationalizing these normative views across the Muslim world no longer exists, following the dissolution of the Ottoman Caliphate a century ago.
 - b. As a consequence of choosing to retain the established *fiqh* view and norms associated therewith, it would automatically be a religious duty incumbent upon Muslims to revive the imperium. This, in turn, would necessarily entail dissolving any and all existing nation states, under whose governance Muslims currently live.
 - c. Retaining the set of established *fiqh* views regarding *kuffar* and normative Muslim conduct in engaging with infidels would lead to global disaster. Seeking to implement the established *fiqh* views regarding *kuffar* without a powerful authoritative actor—that is, without an imperium, or caliphate—would lead to chaos, where anyone can regard anyone else as enemies and thus subject to destruction, in accordance with established *fiqh*.
 - d. Furthermore, if Muslims seek to revive the imperium, this will inevitably produce chaos prior to the possible emergence of a new imperium, since the process itself will require the dissolution of nation states and all the chaos associated therewith.



6. If Muslims choose to retain the set of established *fiqh* views regarding *kuffar* and normative Muslim conduct in engaging with infidels, the inevitable consequences thereof will not serve the purposes of *shari'ah* (*maqashid al-shari'ah*): i.e., the protection of religion, of human life, of sound reasoning, of family, and of property. In fact, these consequences would be directly counter to the purposes of *shari'ah*, because they would entail the widespread destruction of religious institutions and places of worship, of human life, of rational behavior, of families and of property.
7. If choosing to retain the set of established *fiqh* views regarding *kuffar* and normative Muslim conduct in engaging with infidels does not serve the purposes of *shari'ah* (*maqashid al-shari'ah*), then it is not a legitimate choice from the perspective of *shari'ah* itself.
8. Alternatively, if Muslims choose to alter the set of established *fiqh* views regarding *kuffar* and normative Muslim conduct towards infidels (in accordance with point 4.b. above), a valid and legitimate *fiqh* argument is required to support this choice.
9. It is an established principle of *fiqh* that laws are created due to *ratio legis*, i.e., due to a specific underlying purpose addressed by the provisions and norms in question (“*Al-hukmu yaduru ma'a illatihi wujudan wa adaman.*”) Based on this principle, altering established *fiqh* views regarding *kuffar* and normative Muslim conduct towards infidels requires a jurisprudentially legitimate argument to support such change.
10. Altering the established *fiqh* view regarding *kuffar* does not merely entail changing the principle of enmity towards non-Muslims. It also entails changing various norms [sing. *hukm*, pl. *ahkam*] that arise from this principle. These norms include how Muslims should treat individual non-Muslims whom they encounter in daily life, and how Muslims — including those who dwell in non-Muslim-majority societies — should view the legitimacy of the nations and societies in which they live and the governments thereof.
11. It is a fact that conflicts between Muslims and non-Muslims continue to exist up to the present day, for a variety of reasons. There is always the potential that such conflicts may grow and spread, either spontaneously or due to self-interested political actors, to become a global conflict between identities.
12. The Charter of the United Nations, if seen as a valid agreement between nations, may be positioned as the foundation for a new *fiqh*.
13. Yet several questions exist related to the United Nations Charter itself:
 - a. Considering the mechanics through which the UN Charter emerged, as an international agreement between nation states, can the UN Charter be considered legitimate and valid from the perspective of *fiqh*?
 - b. Since the signatories of the UN Charter were heads of government, there exists a question regarding the legitimacy of those heads of government and whether, when accepting the UN Charter, they had the authority to bind the populations of their respective countries, Muslims and non-Muslims alike. For example, when India acceded to the United Nations and agreed to accept the terms of the UN Charter, may the Prime Minister of India at the time be viewed as having been a legitimate representative of the Muslim citizens of India?
 - c. Questions 13(a) and 13(b) may be rephrased as follows: “Is the UN Charter legitimate from a *shari'ah* point of view; i.e., is it legally binding upon nations that have agreed to abide by the UN Charter, and upon the inhabitants (including

Muslims) that dwell in these nations?” If the answers to both of these questions are “yes,” then the Charter of the United Nations should bind both the nation states that have agreed to the UN Charter and their inhabitants.

14. The UN Charter and the United Nations Organization are not perfect, and, indeed, remain problematic to the present day. However, the UN Charter was intended to end the once systemic and chaotic conflicts that characterized international relations throughout human history, and prevent further chaos, including wars and the attendant human suffering. Given the reality that the contents and implementation of the UN Charter are imperfect, what obligations do Muslim actors – both state and non-state – have, as a consequence of regarding the UN Charter as a valid agreement, from the perspective of *fiqh*? What moral duties are incumbent upon Muslims, in light of these circumstances?
15. The fundamental view of enmity towards non-Muslims, and that infidels are subject to discrimination, was historically operationalized under the assumption that there existed a legitimate ruler (*caliph*) to serve as the authoritative representative of the Muslim community (*ummah*) worldwide.
16. Although no truly unitary imperium, or caliphate, has ruled all Muslims worldwide since the collapse of the Umayyad dynasty, the established *fiqh* view has assumed that the unification of all Muslims into a single unitary state must be an ultimate ideal and objective to be pursued by Muslims worldwide.
17. In light of these facts, does there need to be a new ideal and objective that Muslims everywhere should support and pursue? If so, can the UN Charter serve as a basis for this effort?