بِسَمِ ٱللهِ ٱلرَّحْمَنِ ٱلرَّحِيمِ

Series of Questions Addressed to Eminent Scholar Ata Bin Khalil Abu Al-Rashtah

Ameer of Hizb ut Tahrir through his Facebook Fiqhi Page

Answer to Question

Ambassadors in Islam

To: Abdullah Ibn Al-Mufakkir

(Translated)

Question:

Assalamu Alaikum Wa Rahmatullahi Wa Barakatuhu our dear Shaikh

I ask Allah to strengthen you, give you long lasting health and age and allow you to witness the return of the Khilafah and lead us, Ameen.

I have a question regarding the Hizb's draft constitution. In article 7 clause F it states: "The State will implement the rest of the Shari'ah rules and all the Islamic Shari'ah matters, such as transactions, penal codes, testimonies, ruling systems and economics among others equally upon the Muslims and non-Muslims. The State will also implement the same upon those with a covenant, the asylum seekers and all those under the authority of Islam in the same way. It implements them upon all members of society except for the ambassadors, consuls, and similar for they have diplomatic immunity".

My question is regarding the point about Ambassadors. The reality is that sometimes there are temporary ambassadors who only stay for an amount of time then return to their countries and permanent ambassadors who stay in the Khilafah permanently. Does this article apply to both types of ambassadors?

Also, if either of the ambassadors commits a crime or undertakes an illegal activity beyond their remit as an ambassador, are they both judged and punished accordingly by the Khilafah? Or are temporary and permanent ambassadors treated differently in this matter.

Jazakumullahu Khairan.

From: Saifudeen Abdullah

Answer:

Wa Alaikum Assalam Wa Rahmatullah Wa Barakatuh

Barak Allah Feek for your kind du'a for me, I also ask Allah to grant you the good.

1- With regard to your question about permanent and temporary ambassadors. There is no difference from a Shariah point of view between them, so as long as the meaning of the word (messenger) applies to the person, he enjoys diplomatic immunity during his stay in the Khilafah (Caliphate) state, with no difference... Previously, during the time of the Prophet (saw), the Companions and the subsequent eras, there were no permanent and residing ambassadors. Rather, messengers were sent to convey a message and then return to their country, i.e., they were, according to your expression (temporary ambassadors / temporary messengers) ... Then permanent ambassadors and embassies in the world were introduced due to the complexity of relations and the need for permanent communication between countries and the presence of citizens of the embassy of the state in those countries. So, states began to accept the opening of permanent embassies of other countries in their lands and accept the accreditation of ambassadors of those countries residing in them... In the past, an ambassador or a messenger used to go only once to deliver a specific message... This is what is understood from the noble Hadith regarding messengers, as Ahmad narrated on the authority of Ibn «جَاءَ ابْنُ ٱلنَّوَاحَةِ وَابْنُ أَثَالٍ، رَسُولاً مُسَيَّلِمَةً إِلَى النَّبِيَ ﷺ، فَقَالُ لَهُمَا: أَتَشْهَدَانِ أَنِّي رَسُولُ اللَّهِ؟ قَالاً: نَشْهَدُ أَنَّ مُسَيَّلِمَةً : Masoud who said: رَسُولُ اللَّهِ؟ قَالاً: نَشْهَدُ أَنَّ مُسَيَّلِمَةً : Ibn رَسُولُ اللَّهِ؟ قَالاً: نَشْهَدُ أَنَّ مُسَيَّلِمَةً أَنَّ الرُّسُلَ لَا تُقْتَلُ Nawwaha and Ibn Uthal came to the Messenger of Allah as Musaylima envoys - the liar - and the Messenger of Allah said to them "Do you bear witness that I am the Messenger of Allah?" They said, "We bear witness that Musaylima is the Messenger of Allah." Upon this the Messenger of Allah said: I believe in Allan and His Messengers. "I give you security by Allah and His Messenger. If I were to kill an envoy I would have killed the two of you." Abdullah said: the precedent of the sunna is that envoys are not killed." (reported by Ahmad and declared Hasan by Al-Haythami).

It is clear from this hadith that the speech is about two messengers who were sent once from Musaylamah, the liar.

2- As for your inquiry about the punishment of ambassadors and messengers, its answer is found in the explanation of item "and" of Article 7 in the book, Introduction to the Draft Constitution, and this is its text:

As for Clause F, the evidence with respect to the implementation of all the rules of Islam is derived from all what has just been mentioned that the disbeliever is obligated to abide by the foundations and the branches, thus, he is commanded to submit to all the rules of Islam. This is general, and it includes the Dhimmi and the non-Dhimmi from among those who live under the authority of Islam. Hence, all the disbelievers who enter Dar Al-Islam must be subjected to the rules of Islam except the 'Ageedah matters, the rules related to 'Ageedah matters and any action which the Messenger of Allah allowed them to do whether these disbelievers were Dhimmi, under covenant or asylum seekers. However, the ambassadors and their likes are excluded from this and the rules of Islam would not be implemented upon them for they would be given what is known as diplomatic immunity. This is so because Ahmed «جَاءَ ابْنُ النَّوَّاحَةِ وَابْنُ أَثَّال، رَسُولاً مُسَيْئِمَة إِلَى النَّبِيَّ ﷺ، فَقَالَ لَهُمَا: reported on the authority of Ibn Masoud who said: أَنَسْهَدَانِ أَنِّي رَسُولُ الله؟ قَالاً: نَسْهُدُ أَنَّ مُسَبِّلْمَةَ رَسُولُ الله، فَقَالَ النَّبِيُّ عه: آمَنْتُ بالله وَرُسُله، لَوْ كُنْتُ قَاتِلاً رَسُولاً لَقَتَلْتُكُمَا، قَالَ عَبْدُ الله: قَالَ: Ibn Nawwaha and Ibn Uthal came to the Messenger of Allah as Musaylima" فَمَضَتِ السُنَّةُ أَنَّ الرُّسُلَ لاَ تُقْتَلُ» envoys - the liar - and the Messenger of Allah said to them "Do you bear witness that I am the Messenger of Allah?" They said "We bear witness that Musaylima is the Messenger of Allah." Upon this the Messenger of Allah said: I believe in Allan and His Messengers. "I give you security by Allah and His Messenger. If I were to kill an envoy I would have killed the two of you" Abdullah said: the precedent of the sunna is that envoys are not killed." (reported by Ahmad and declared Hasan by AlHaythami). So, this narration indicates that it is not permitted to kill the envoys of the disbelievers and nor to apply the punishments (Ugubat) upon them. However, this is exclusively applicable upon those who have the capacity of an envoy such as the ambassador and the "Chargé d'affaires" and the like. As for those upon whom the capacity of an envoy does not apply such as the Consul and the Commercial Attaché and the like, they would not have any immunity for they do not have the capacity of an envoy. This matter should be referred to the international convention because it is a terminological expression whose reality should be understood by way of looking into the convention and it is part of establishing the Manat (reality); in other words, establishing whether they are considered envoys or not] End Quote from the explanation from the book, The Draft Constitution.

The prohibition of imposing the death penalty and other penalties applies to the permanent ambassador, to the temporary ambassador and messenger as long as the reality of the "messenger" applies to them. There is no difference in the issue of not applying punishment to the permanent ambassador and to the temporary ambassador, as both are messengers to which the rules of the messenger apply to them in the matter of punishment.

As for the last part of your question: (Also, if either of the ambassadors commits a crime or undertakes an illegal activity beyond their remit as an ambassador, are they both judged and punished accordingly by the Khilafah? Or are temporary and permanent ambassadors treated differently in this matter.)

We did not detail the reality of the penalties that are included under the immunity and those that are not included, but we will detail this in the executive regulations of the articles of the constitution that we started with, and we ask Allah for help in completing them at the appropriate time, Allah willing.

I hope that this is sufficient, and Allah is All-Knowing and Most Wise.

Your Brother, Ata Bin Khalil Abu Al-Rashtah 6 Safar Al-Khair 1445 AH 22/8/2023 CE

The link to the answer from the Ameer's Facebook page: https://www.facebook.com/HT.AtaabuAlrashtah/posts/851098296577541