

# FIQH FOR MILITARY SERVICE: Guidance for the Muslim Minority in Australia

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## ABSTRACT

The term 'Muslim Minority' is used to refer to those Muslims that form an Islamic community in countries where Muslims are neither the majority, nor form the governing polity i.e. non-Muslim lands. This paper introduces Islamic Law and *Fiqh*, before discussing the rights and obligations of the Muslim Minority in military service. This paper then discusses the relevant *'ibadah* rulings (literally meaning religious rituals such as prayer, fasting) and how these may be practically applied in the context of service as a loyal and effective sailor, soldier or airman. The Muslim minority and their military service in Australia will be used throughout the paper as an illustrative case study.

## ABSTRAK

Istilah 'Muslim minoritas' digunakan untuk merujuk kepada orang-orang Muslim yang membentuk komunitas Islam di negara-negara di mana Muslim bukan mayoritas, atau membentuk pemerintahan yang mengatur seperti tanah non-Muslim. Makalah ini memperkenalkan Hukum dan Fiqih Islam, sebelum membahas hak dan kewajiban Minoritas Muslim dalam dinas militer. Makalah ini kemudian membahas putusan ibadah yang relevan (secara harfiah berarti ritual keagamaan seperti shalat, puasa) dan bagaimana ini dapat diterapkan secara praktis dalam konteks pelayanan sebagai seorang pelaut yang loyal, tentara atau pilot efektif. Minoritas Muslim dan layanan militer di Australia akan menjadi kasus studi ilustratif untuk menggambarkan masalah tersebut dalam artikel ini.

## Introduction

Sayyidina Ali ibn Abi Talib (k.w) said:

*"The man who possesses real knowledge is he who does not make man despair from the mercy of Allah and does not make them feel safe from Allah's punishment and does not provide them with concessions in which lies disobedience to Allah. There is no goodness in worship which is devoid of knowledge. There is no goodness in knowledge without understanding and nor is there goodness in a recital (of the Qur'an) that is devoid of reflection".<sup>1</sup>*

This quote elegantly proposes that worship without knowledge is a hollow ritual. In examining *fiqh* (the science of Islamic law)-(Laldin, 2011: 3) in relation to military service, this paper will outline the moral, legal and practical challenges faced by a Muslim Minority undertaking military service, and discuss the relevant Islamic 'knowledge' that may assist in reconciling these issues. The term 'Muslim Minority' is used to refer to those Muslims that form an Islamic community in

countries where Muslims are neither the majority, nor form the governing polity i.e. non-Muslim lands.<sup>2</sup> This paper will commence with an introduction to Islamic Law and *Fiqh*, before discussing the rights and obligations of the Muslim Minority in military service. This paper will then discuss the relevant *ibadah* rulings (literally meaning religious rituals such as prayer, fasting) and how these may be practically applied in the context of service as a loyal and effective sailor, soldier or airman. The Muslim minority and their military service in Australia will be used throughout the paper as an illustrative case study.

Given that a significant number of Muslims live outside the political jurisdictions of the Muslim world in non-Muslim states and societies (Abdein, 1996: 72), this is an important topic. There is a dire need for guidance in countries such as Australia, where members of the Muslim Minority wish to serve, without compromise to their religious beliefs: to be both a loyal soldier and a God-fearing Muslim. Knowledge is the key to empowering Muslims to fulfill their Islamic obligations during military service. Empowered by that knowledge, there need be no contradictions in observing Islam while undertaking military service.

### Islamic Law and Fiqh

In discussing Islamic law and *fiqh* (*Shariah*), including the views of the respective Islamic Schools (*Mazhabs*), it is important to outline the meaning of these concepts. Islamic law, generally, is derived from four main sources: the Holy Qur'an, the *Sunna*, *Ijma*, and *Qiyas* (Rahman, 1979: 69). Comprised of the interpretation of these principle sources via a process known as *fiqh*, the *Shariah* is a complete code of regulations for Muslims in all aspects of their lives; a canon of obligations (Laldin, 2011: 3). Thus, in addition to the Qur'an and the *Sunna*, the sources of Islamic international law include treaties made between Muslims, publicly issued orders to commanders in the field by the early Caliphs, and the opinions and interpretations of great Muslim jurists (Bennoune, 1994).

*Mazhabs* are the major schools of legal thought in Islam and provide differing perspectives into the rulings from the Qur'an and *Sunna*. The formation of the *Mazhabs*, a crystallization of the accumulation of legal opinions, generally occurred in the major centers of Islam in 8-9<sup>th</sup> centuries (CE)-(Rahman, 1979: 81). The differences between the schools stem entirely from the different weights each attach to various Qur'anic verses, and the degree of validity they assign to various prophetic traditions (Hoodbhoy, 2006: 154). In matters concerning *fiqh*, the source of the *Mazhab* is an important factor in understanding the basis for that particular ruling. A brief explanation of the major schools of thought is therefore appropriate.

The Jafari school is the major school with Shi'a theology. It's founder was Imam Ja'far al-Sadiq (d.765), a direct descendent of the Prophet. Imam Jafari taught both Abu Hanifa and Malik ibn Anas, who were his faithful students. This fact may explain the mutual respect and relative peace that has often existed between the Hanafi and Maliki Sunnis, on one hand, and the Shias on the other. The Jafari school of thought utilizes *ijtihad* (independent reasoning) by adopting reasoned argumentation in finding the laws of Islam.<sup>3</sup>

Abu Hanifa (d.767) founded the Hanafi school in Iraq, and was favored by the Abbasids. The Hanafi school is characterized by the exercise of free opinion, and was the object of 'bitter invectives' of the Hadith movement, given its strenuous rejection of free opinion (Rahman, 1979: 82). This school is predominant in Western Asia, lower Egypt, and Pakistan and India.

Malik ibn Anas (d.795) founded the Maliki school in Medina. This school placed their reliance on the 'living tradition (*Sunna*) of Medina'. It also used Hadith to support this living tradition. Malik collected a body of legal traditions, which he compared with the living practice in Medina, and

developed a system of juridical opinion called *al-Muwatta* (the levelled path)-(Rahman, 1979: 82). The Maliki school holds sway in North and West Africa, including Upper Egypt.

Idris al-Shafi'i (d.809) was a pupil of Malik, who formulated the principles of Islamic jurisprudence where the verbal tradition was regarded as the sole vehicle of the Prophetic Sunna.<sup>4</sup> In the Shafi'i school, *Ijtihad* was discarded from *Ijma* (Rahman, 1979: 82). This school is prevalent in South East Asia, namely Malaysia, Indonesia, Singapore, Philippines and Thailand.

The Hanbali school continued to push the al-Shafi'i's insistence on Hadith in law, and was an orthodox opponent of the rationalist school. Its founder, the arch-traditionalist Ahmad ibn Hanbal (d.241), has been championed by 'puritanical movements in the Arabian peninsula' such as the Wahabis (Rahman, 1979: 82).

Fiqh itself can be divided into two main categories:

- (a) *Fiqh al-Ibadah* (rituals), encompass the rulings that govern the relationship between man and God. This category is divided into four sections pertaining to rulings on prayer (*solat*), fasting (*sawm*), zakat and hajj. Relevant to military service of Muslim Minorities are the first two elements, in particular the requirement to observe fasting during Ramadan. According to Tariq Ramadan, this category is very detailed and precise, and 'only the text is to be relied upon for deciding what is allowed in terms of ritual practice' (Ramadan, 2005: 145). The *hukum* (rulings) in relation to prayer detail the entire spectrum from the prerequisites of prayer through to what will invalidate prayer (Laldin, 2011: 9). The *hukum* in relation to fasting includes all the obligations of fasting in the month of Ramadan and other types of optional fasting, including restrictions on fasting (Laldin, 2011: 9).
- (b) *Fiqh al-mu'amalah* (or al-adah), covers the rulings that govern the relationship between man and man, and other creatures of God. This part of Islamic law concerns how man should respect the rights of one another. This category is general and provides 'guidance in a certain direction, rather fixing a restricting framework'. Ramadan states that the scope of methodology in this area is 'very wide when it comes to social affairs, which are limited only by the infrequent prohibitions found in scriptural sources' (Ramadan, 2005: 145). Muslims must decide their commitment using their reason, intellect, freedom and 'more broadly, their imagination'(Ramadan, 2005: 145).

While not a formal aspect of classical *al-'adah*, *fiqh al-aqalliyat* (or Fiqh of the Minorities) was coined in response to the changing reality of the times. This is confirmed by the fact that the fiqh related to Muslim minority groups is qualitative in nature and concerns the conditions of a specific group living in a specific place in specific circumstances, where what is suitable for them may not be applicable to others. The former Mufti of Egypt, Sheikh Ali Gomaa states that the 'spatial circumstances of these minority groups affords them, in many instances, exigent justifications compelling a mufti to issue a *fatwa* (legal verdict) that is contrary to the established opinion of his school of jurisprudence, contrary to the opinion he deems dominant due to its evidences, or contrary to the *fatwas* of other muftis in areas where Muslims are the majority'.<sup>5</sup> Sheikh Gomaa argues that the fiqh of the minorities can help Muslim minority communities integrate into their wider community 'without any dissonance between the rulings of their faith and the exigencies of life and in a manner that precludes any distress, hardships or oppression' which are rejected by the Shariah.<sup>6</sup> As proclaimed in the Holy Qur'an:

"Allah doth not wish to place you in a difficulty" [Qur'an 5: 6] and "He .... Imposed no difficulties on you in religion" [Qur'an 22: 78].

## *Muslims in Australia*

Australia is a democracy with a multi-ethnic, multi-faith population in which Muslims are a distinct minority group: roughly 3% in Australia. Australia was former colony of Great Britain and consequentially has institutions and processes inherent in the common law tradition. Australia's approximately 500,000 Muslims<sup>7</sup>, originate from over 70 countries: Europe (e.g. Albania, Bosnia, Turkey), Africa, Asia (including Central Asia, South Asia, South East Asia), Pacific Islands, and North and South America.<sup>8</sup> Australia's Muslim population is not as homogeneous as say Singapore, where Malay ethnicity, language and culture and the Shafi'i school dominate. In Australia, all the *Mazhabs* have some support, including the extremely Salafi.<sup>9</sup> This diversity supports the notion of 'Islams' rather than one Islam (Black, 2008: 214).

Given this diversity, which school of thought should be applied? There is an argument that as Australia's closest Muslim neighbor and region, Indonesia and South East Asia, utilize the Shafi school, so should Australian Muslims. Another view is that the closest in proximity or practice of any school that has been recognized under Australian law has been Malay custom, which again would mean the Shafi school.<sup>10</sup> The view of the European Council of Fatwa and Research (ECFR) is particularly instructive in discussing the practice of reverts. If we can conceptualize Australia as newly acquainted with Islam (which belies the long trading history between Indigenous Australians and Muslims in South East Asia<sup>11</sup>), one possible framework would be to look to the guidance the ECFR gave Muslims in terms of the obligation to follow a particular *Mazhab*. The ECFR led by Sheikh Yusuf Al-Qaradawi stated that following a particular *Mazhab* was not obligatory, and that following the common *Mazhab* of a particular country where a Muslim lives, was permissible.<sup>12</sup> Given the vacuum in Australia of any one dominant *Mazhab*, first principles from *Shariah* would place the onus on the individual ("*no compulsion in religion*"),<sup>13</sup> and the other consideration would be that "*Allah...imposed no difficulties on you in religion*" (Qur'an 22:78).

## **Fiqh of the Muslim Citizen as a Minority**

Classical scholarship described Islamic law as dividing the world into three distinct spheres of territories, *dar al-Harb* (abode of war), *dar al-Islam* (abode of peace) and *dar al-Aman* (abode of safe conduct). *Dar al-Harb* referred to the regions where Islam did not dominate, where divine will was not observed, and therefore where continuing strife was the norm. By contrast, *dar al-Islam* encompassed those dominions where Islam ruled, where submission to God was observed, and where peace and tranquility reigned.<sup>14</sup> The position of Muslim minorities residing in non-Muslim territory is problematic because they fall outside of this traditional dichotomy between *dar al-Islam* and *dar al-Harb*. The Maliki view was that Muslim minorities would be forced to submit to non-Muslim law (El-Fadl, 1994: 146). In practice, the continued existence of Muslim minorities living outside *dar al-Islam* challenged this dichotomous understanding (El-Fadl, 1994: 141).

The Shafi view was based on a tradition of the Prophet, where he allowed nomadic tribes that converted to Islam to remain outside the domains of the lands of Islam (El-Fadl, 1994: 147). The Jafari view arose when someone reportedly asked Imam Ja'far if he would die an unbeliever if he entered the lands of unbelief, the answer was that he might in fact be able to better serve Islam in the non-Muslim place ((El-Fadl, 1994: 148). Thus, these views contended that a Muslim is permitted to reside in non-Muslim lands provided they are able to manifest their religion, but that *hijra* (migration) from non-Muslim areas is obligatory if a person fears the loss of their religion (El-Fadl, 1994: 154).

The Maliki position, which predominated in al-Andalusia (Spain) and Sicily, was heavily influenced by its own historical experience: Muslims would lose their mastery over the Arabic language and would be influenced by non-Muslim mores, habits and fashions. Non-Muslim authorities would unfailingly impose unfair taxes on Muslims, and Muslims would not have the chance to question or challenge these levies. Muslims would inevitably be reduced to subjugation and invariably end up losing their culture and religion (El-Fadl, 1994: 155-156).

For the Hanafis, a territory may be ruled and controlled by non-Muslims and yet still be classified as a part of *dar al-Islam*. According to the Hanafi school, a territory is considered to be part of *dar al-Islam* if the laws of Islam are applied (El-Fadl, 1994: 161). Thus, a summary of the early jurists was that:

“...a Muslim should reside among Muslims in a place in which religion could be learned and practiced. But those who chose to reside in non-Muslim territory were not necessarily considered to be immoral or un-Islamic.” (El-Fadl, 1994: 163)

Early Muslim jurists assumed that a Muslim sojourning or residing in non-Muslim territory could do so under an agreement of safe-conduct (*aman* or *dar al-Aman*), according to which a Muslim is promised protection and in return he or she promises not to take action that is detrimental to the host state and to obey the commands of the host state. All jurists agreed that a Muslim must abide by the terms of the *aman*. Consequently, a Muslim must not commit acts of treachery, betrayal, deceit or fraud, and may not violate the honor or property of non-Muslims. The existence of an explicit *aman* is irrelevant because it is implied by the grant of permission to reside or enter non-Muslim territory (El-Fadl, 1994: 175). The condition for remaining in such lands was that Muslims must be allowed to practice their religion freely.<sup>15</sup> Paraphrasing Imam Dr Zijad Delic, Australia cannot be conceived as *dar al-Islam* and inconceivably classed as *dar al-Harb*: these legal concepts ‘being wholly irrelevant in the context of [Australia] and its citizens of Muslim faith’.<sup>16</sup>

Imam Dr Zelic argues that Muslims who immigrate into non-Muslim countries, as well as those who were born in those very same countries, are all qualified to be citizens, sharing with all other citizens the identical social obligations. Imam Dr Zelic states: ‘Islam commands its followers to obey the laws of the land they live in, even if its rulers and dominant powers are from other religious traditions’.<sup>17</sup> Muslim jurists consider citizenship (or the granting of visa rights) to be a covenant (*ahd*) held between the citizen (or visa holder) and the state; one, which guarantees security and peace (*sulh*) in exchange for certain obligations, such as obeying the laws of the land. Imam Dr Zelic concludes that covenants and/or contracts between a non-Muslim country such as Australia, and its citizens of the Muslim faith are considered sacred and binding in Islam. The rationales are two fold: (i) without the mutual fulfillment of a communal shared rights and obligations, society would dissolve into chaos, and rampant injustices would destroy the fabric of peaceful human co-existence, making it impossible for people to live together as contributing members of society, and (ii) Islamic formative principles demand from Muslims that they faithfully abide by the contracts (promises) they make.<sup>18</sup>

Naturalized citizens of Australia enter into a contractual agreement with the Federal Government when they declare the citizenship pledge, as follows:

“From this time forward /(under God), I pledge my loyalty to Australia and its people, whose democratic beliefs I share, whose rights and liberties I respect, and whose laws I will uphold and obey”.<sup>19</sup>

Muslims are indebted to keep their word as a religious principle; therefore the above pledge becomes religiously binding upon them. Australian-born citizens do not declare any such pledge, so they fall under the second category describe in Islamic law, where the covenant of security is considered a customary understanding, in the sense that even though they did not physically affirm the pledge or sign a document of loyalty, it is understood that there exists between the citizen and the government a covenant of security.<sup>20</sup>

The reality of the 21<sup>st</sup> Century is that presently, more than one third of the world's Muslims are living as minorities in non-Muslim countries.<sup>21</sup> This re-conceptualization manifested most significantly in North America, where Sheikh Taha Jabir al-Qaradawi, Chairman of the North American Fiqh Council, was perhaps the first to use the term *fiqh al-aqalliyat* (in 1994) in his fatwa about Muslim participation in American secular politics. Some Muslims in America hesitated to participate in American politics because it meant an alliance with non-Muslims, division of the Muslim community and submission to a non-Islamic system of politics as well as giving up the hope of the United States becoming part of *dar al-Islam*.<sup>22</sup> Sheikh Taha in his *fatwa* dismissed these objections and argued that the American secular system was faith-neutral, not irreligious. He distinguishes conditions in countries that have Muslim majorities from those where Muslims are a minority. The two contexts are quite different and entail different obligations:

*"While Muslims in Muslim countries are obliged to uphold the Islamic law of their state, Muslim minorities in the United States are not required either by Islamic law or rationality to uphold Islamic symbols of faith in a secular state, except to the extent permissible within that state."* (Ramadan, 2005: 163)

In addition, if we hold as an analogy the view of contemporary reformist scholars of political involvement vis-à-vis military service, which is legitimate and even a duty for Muslims in the West, then we could extrapolate that military service in a non-Muslim country is also acceptable. This is because non-Muslim countries would indeed be more Islamic than Muslims countries in their actual practices, and substance rather than mere form. This argument resonates even further if we look into the *Islamacity* of the world's countries. In a landmark study in 2010, Professors' Rehman and Askari examined not only how Islamic (*Islamacity*) were the 68 Islamic countries (Muslim majority), but all 208 of the world's countries. The *Islamacity* analysis used four indices to assess *Islamacity* regardless of national religious orientation: Economic, Legal and Governance, Human and Political Rights and International Rights. The factors examined included absence of violence, rule of law, control of corruption, government effectiveness, accountability and political stability, arguably all traits of good Islamic behavior, and fundamental to the achievement of the Islamic worldview. The upshot of the study was that New Zealand led the *Islamacity* index, Australia was 9<sup>th</sup>, and the highest Muslim country was Malaysia at 38<sup>th</sup> (Rehman & Askari, 2010).

Tariq Ramadan cites the orthodox fiqh methodology to argue that the exceptional circumstance of Muslims outside a Muslim majority society points towards the irresistible conclusion that in being socially and politically active in the West, Muslims are actually bearing witness to their spirituality and adapting their presence to their ethics. In this regard, Tariq Ramadan states that Muslims have a duty to limit injustice and evil, be part of solutions to ease the lives of fellow man, and to work in stages (Ramadan, 2005: 164). All this is only possible with active participation. The parable of Prophet Yusuf (Joseph) is instructive here, where he was asked by the polytheist Governor of Egypt to be responsible for the national treasury. Prophet Yusuf had a:

*"political responsibility under a non-Muslim political authority, which he carried out with dignity, morality and faithfulness"* (Ramadan, 2005: 164).

Sheikh Ali Gomaa cites a fundamental lesson from the early history of Islam to support his view that Muslims travelling to, and obtaining full citizenship in non-Muslim countries was a fact of history. The life of the nascent Muslim community and of Rasul presents tangible examples for coexistence and living in harmony with the other, referencing the Abyssinia scheme under which the early Muslims were forced to migrate. In so doing, Sheikh Gomaa notes that they applied one method that has been used by so many Prophets of Allah who preceded Prophet Muhammad. The Holy Qur'an mentions in many verses, how numerous prophets who were sent to other communities before Rasul himself resorted to migration along with their followers, to escape the abuse and torture they faced at the hands of the disbelievers in Makkah.<sup>23</sup>

Similar to Makkah, Abyssinia was not a Muslim society; however, it preserved the rights of the Muslim minority, granting it protection and freedom of faith. Abyssinia was an umbrella of justice and protection. This is what encouraged the Prophet to reassure Muslims to migrate to Abyssinia. The Scheme of Abyssinia served a situation where Muslims lived in a society as a minority, yet enjoyed a safe environment that preserved their rights and freedoms within a non-Islamic state.<sup>24</sup>

Nafi states forcefully that the division of the world divided into three spheres, is essentially an 'Islamic *calque* of the Byzantine division of the world into Byzantine, Latin and other, and not a textually derived principle, as many Muslims believe' (Nafi, 2004: 107). This view of the world is superseded; the contemporary world is one world of 'ahd and peaceful coexistence.

### **The Muslim Combatant in a Non-Muslim Military**

Turning to the issue of military cooperation or participation between resident minority Muslims and the host polity. As a general rule, the early jurist posited that Muslims should not contribute to the military strength of non-Muslims. Muslims residing in non-Muslim territory should remain neutral in any military conflict engaged in by their host polity, especially if it involves other Muslims. The primary reason for this position is that if resident Muslims support other Muslims in conflict with the host non-Muslim polity that would constitute a betrayal of their *aman*, which is strictly forbidden. If the non-Muslim territory is attacked, resident Muslims should remain neutral unless they fear for their lives or for their homes, in which case they may join in defense of the territory (El-Fadl, 1994: 179).

However, referring to source material, when one examines the *Scheme of Abyssinia*, it is instructive to note that the Muslim émigré had no hesitation fighting on behalf of Emperor Negus, the non-Muslim ruler who offered them protection and freedom to practice Islam. Muslims offered Negus to join his army in fighting his cousin who was seeking to usurp his throne, but Negus refused the offer of the Muslims. Despite this initial victory, Sheikh Gomaa notes that soon the enemies were back to fight the Emperor and his people, and then 'Muslims insisted on joining his army and aid his fight. And so they did, willingly. Even though they were fighting along a Non-Muslim army and for a Non-Muslim leader, it was the common responsibility towards the homeland they were living in that compelled them join the army and fight along with Negus'.<sup>25</sup>

Dr Christian Bleuer in his article about Muslim soldiers in Non-Muslim Militaries at war in Muslim countries, examined the performance of Muslim soldiers. The three case studies he examined were of the Soviet Red Army in Afghanistan, the ongoing American military involvement in various conflicts dating to 1991, and the Indian military at home and in disputed areas such as Kashmir. Despite the diverse nature of these conflicts and military service, Dr Bleuer concluded that Muslim soldiers overwhelmingly choose to 'fight for the country of their citizenship over and above any potential complicating ties of Muslim solidarity' (Bleuer, 2012: 492).

Dr Bleuer cites a number of examples such as of Dutch Muslim soldiers deployed to Bosnia and Afghanistan, as well as Bedouin and Palestinian Muslims in the Israeli military. He also cites the example of Thailand's overwhelmingly Buddhist military deploying units that included Thai Muslim soldiers to the country's Muslim-populated south to combat the local insurgency. Additionally, the Thai General tasked to command troops in the Muslim south, Sonthi Boonyaratglin, is himself a Muslim (Bleuer, 2012: 492).

In the US context, post-9/11 many Muslim Americans, including those in the military, felt compelled or motivated to declare their loyalty as American citizens. However, one Muslim military chaplain (Captain Muhammad Abdur-Rashid), anticipating a mobilization and further deployment of the US forces to Muslim countries sought advice from a prominent American Muslim scholar who in turn brought the issue to a Qatar-based Islamic scholar, Sheikh al-Qaradawi. The reply came in the form of a *fatwa* that approved of Muslim Americans participating in the impending campaign. The fatwa, signed by al-Qaradawi and four others, gave permission to American Muslim soldiers to participate in the American military efforts against the perpetrators of the 9/11 attacks, even if that involved the declaration of war against a Muslim country. By giving such permission, the fatwa specified that the principle allegiance of the American Muslim soldier is to his own country, especially in a situation of war (Bleuer, 2012: 497).

The fatwa dealt swiftly with one source of the uneasiness that American Muslim military men and women may have had in fighting other Muslims, originating from an authentic saying (*Hadith*) by the Prophet: *'When two Muslims face each other in fighting and one kills the other, then both the killer and the killed are in hell-fire'*. Someone said: *'[W]e understand that the killer is in hell, why then the one who is being killed?'* The Prophet said: *'[B]ecause he wanted to kill the other person.'* (Narrated by Bukhari and Muslim)-(Bleuer, 2012: 497).

According to the fatwa, the Hadith above referred only to the situation in which the Muslim is in charge of their own affairs, namely when they are capable of fighting or not fighting. The fatwa clarified that the Hadith did not address the situation where a Muslim is a citizen of a state and a member of a regular military. In such a situation, the fatwa declared that they had 'no choice' but to follow orders, else their allegiance and loyalty to their country would have been challenged. Consequently, this would have subjected the Muslim sailor, soldier or airman to greater detriment since the enjoyment of the privileges of citizenship were consequent on the performance of the obligations. This detriment would have been suffered beyond him/her, and even extend to the Muslim community in that country. The fatwa made it clear that even if fighting produced spiritual or psychological discomfort, this 'personal hardship' must be endured for sake of the greater public good.<sup>26</sup>

*"The Muslim [soldier] must perform his duty in this fight despite the feeling of uneasiness of 'fighting without discriminating.' His intention (niyya) must be to fight for enjoining the truth and defeating falsehood."<sup>27</sup>*

The fatwa ended emphatically:

*"To sum up, it is considered acceptable-God willing-for Muslim American military personnel to participate in the fighting in the upcoming battles, against whomever their country decides has perpetrated terrorism against them, keeping in mind to have the proper intention, as explained earlier, so that no doubts will be raised about their loyalty to their country, or to prevent harm from befalling them, as might be expected."<sup>28</sup>*

Of course, there were dissenting opinions elsewhere, notably by one Saudi Islamic scholar who stated that all Muslims must support the Taliban. Later, in 2003 and with regards to Iraq, the ECFR, of which al-Qaradawi is President issued a fatwa prohibiting Muslim soldiers in the British,



American and Australian militaries from participating in the Iraq War. However, this negative fatwa was ignored by Muslim soldiers serving in these militaries, and that fatwa seems to be no longer on the ECFR web page (Bleuer, 2012: 497).

Nafi states that the issuers of the fatwa based their opinion on two recognized legal principles: the choosing of the less harmful of two harms (*aqallal-dararayn*), and the nature of intent. From the fatwa's perspective, even if the American Muslim military personnel's involvement in a war against another Muslim country was likely to cause harm to other Muslims, their refusal to participate would have resulted in the dismissal of a large number of Muslims from the American military and the labelling of Muslim military personnel as unpatriotic and disloyal; this would have a negative effect on the position of the American Muslim community as a whole, which is a greater harm (*darar*). This principle of preferential differentiation between two harms is regarded by Muslim jurists as one of the secondary rules of Islamic legal theory (Nafi, 2004: 94).

### *Fiqh of al-Ibadah in the Military Setting*

The main issues concerning Islamic religious ritual observance in military service relate to prayer, fasting and the consummation of *halal* food. In discussing these issues, the views of the *Mazhabs* will be examined, specifically those rulings which provide the greatest ease for those in military service.

#### *Shalat*

In Islam, prayer means not only preparing for prayer but the actual prayer itself. The times for prayer can be found in the annual prayer timetables issued by the peak Muslim bodies in any given jurisdiction, as well in various mobile phone applications such as Pray.<sup>29</sup> Other matters that impact upon preparing for prayer includes direction, attire, state of purity or ablution, direction of *Qibla* (Makkah) and place of prayer. Each of these will be dealt in turn in relation to military service.

In terms of dress for prayer, the direction of *Qibla* and the place of prayer, these matters can be readily dealt with. The minimum standard of dress for Muslim men is to cover the *aurah*, which is from the navel to the knees. Generally this is not an issue in the various stages of battle dress, or with a sarong packed in a battle pouch, or even using the poncho to cover this region. Covering the head is not a mandatory requirement for prayer (Perduas, 2000: 24). The direction of *Qibla* is easily dispensed with, as sailors, soldiers and airmen can carry a compass in their battle field-pack or attached to their watches (Perdua, 2000: 25).

The whole earth is considered a mosque in Islam<sup>30</sup>, thus prayers may be offered anywhere, individually or in congregation, and accordingly no consecration of the mosque is necessary. The only caveat is that the ground ought to be clean. Prayers may be said even in a non-Muslim house of worship, if certain conditions are met.<sup>31</sup> The Holy Qur'an states:

"And to Allah belongs the east and the west. So wherever you [might] turn, there is the Face of Allah. Indeed, Allah is all-Encompassing and Knowing." [Qur'an 2: 115].

*Tayammum* refers to the act of wiping one's face and hands with 'purifying dust' in a specified manner when there is no or limited water to perform the ablution to attain ritual purity for prayer (Al-Jaziri, 2009: 185). If water is available, then normal *wudhu* (ablution prior to prayer), ought to be undertaken. However, it is possible to perform a 'smart wudhu' and only wash the necessary parts of the body (ie face, arms, head and feet), or even use wet wipes (Perduas, 2000: 28). In addition, it is permissible to wipe over one's combat boots without even having to wash the feet. The conditions for this dispensation are that the boots must be put on while in a state of purity, the boots must be waterproof and reach up the ankles, and must be in a good state of repair, and the

duration of the wiping is one day and one night as a resident, and three days and three nights as a traveller (in accordance with the Shaf'i school)-(Perdua, 2000: 30).

It is obligatory for Muslims to pray 5 times a day (Kamaruzaman, 2007: 177), which should be performed at dawn (*Fajr*), noon (*Zuhr*), in the mid afternoon (*Asr*), at sunset (*Magrib*) and at night (*Isha*). Islam allows the prayer to be performed in a position appropriate for a particular situation. Thus, if one cannot stand, one may pray sitting down, or even pray while lying down (Perduas, 2000: 52). The advantages of this concession in prayers is manifested while in a confined space, such as in an aircraft, tank or other type of vehicle, as well as manning a trench or gun pit. The performance of the physical postures of prayer have been laid out as follows:

- If upright standing is not possible, then any standing posture,
- Sitting: Bowing is by bringing down the chin closer to the knee or the prostrating place,
- Lying down on the right side with body facing the direction of *Qibla*,
- Lying flat,
- Using the eyelid as an indicator of the changing of postures in prayer,
- Imagining the sequence of prayer.<sup>32</sup>

If a Muslim is unable to pray at the scheduled time, or misses a prayer, Islam allows for the shortening of prayer so prayer is performed on time, which is known as the prayer of the traveller or *Qasar*, or to perform the *Jama*, which is to combine two prayers from different specified times. It is also possible to pray after the appointed time, that is *Qada*, but this should not be intentionally undertaken (Perduas, 2000: 49), as the Holy Qur'an states:

*"Indeed, prayer has been decreed upon the believers a decree of specified times."* [Qur'an 4: 103].

The Qur'an, the Sunna and the consensus of the Muslim community confirm the legitimacy of *Qasar* (Al-Jaziri, 2009: 627). The Noble Qur'an states:

*"And when you travel throughout the land, there is no blame upon you for shortening the prayer, [especially] if you fear that those who disbelieve may disrupt [or attack] you."* [Qur'an 4: 101].

This verse indicates the imperative to shorten the prayer when in a combat state. However, only those prayers that consist of 4 *rak'ats* (cycles), namely *Zuhr*, *Asr* and *Isha*, can be shortened to 2 *rak'ats*. One condition, which must be met for travellers, is the minimum distance that the person must travel: approx. 81 kilometers (Al-Jaziri, 2009: 628).

*Jama*, as mentioned, permits the combining of two consecutive prayers (namely *Zuhr* and *Asr*, *Magrib* and *Isha*), either by performing the both at an earlier time or at the later time. *Fajr* is never combined with any other prayer. The basis for this dispensation is that Islam lays no undue burden on the faithful, thus allowing 'ritual prayers to be performed at other than their originally designated times in situations where performing them on time would create hardship for the person concerned'. The reasons and conditions associated with this ruling differ in detail amongst the Mazhabs (Al-Jaziri, 2009: 642).

The Friday noon prayer is known as *shalat al-juma't*, and is a congregational prayer, which is preceded by a sermon (Kamaruzaman, 2007: 181). It is half the normal noon prayer, however if someone misses the Friday prayer for operational reasons, they must perform the normal length of the noon prayer (Al-Jaziri, 2009: 491). According to the Shaf'is, the Hanafis and the Hanbalis, the Friday congregational prayer can be validly be performed outdoors (Al-Jaziri, 2009: 509). The Hanafis permit the quorum for Friday congregational prayer at 3 people including the Imam, even if they do not all attend the sermon, which is the most flexible of the Mazhabs (Al-Jaziri, 2009: 510).

## *Sawm*

Fasting in Islam is a ritual obligation in the month of Ramadan, amongst other situations where fasting is mentioned. It is a pillar of Islam, and an individual obligation on every Muslim who is capable of fasting (Al-Jaziri, 2009: 727). The obligation to fast in Ramadan is explained in the Holy Qur'an:

"O ye who believe! Fasting is prescribed to you as it was prescribed to those before you, that ye may (learn) self-restraint...Ramadan is the (month) in which was sent down the Qur'an, as a guide to mankind, also clear (Signs) for guidance and judgment (between right and wrong). So every one of you who is present (at his home) during that month should spend it in fasting..." [Qur'an 4: 183 and 185].

The precedent for Muslim sailors, soldiers and airman is that of the Prophet during Battle of Badr (624 CE), which fell during Ramadan, where the Prophet fasted during this armed conflict (Perduas, 2000, 58). However, those who are temporarily unable to fast must make up the missed days at another time or feed the poor an average full meal or its value per person per day.<sup>33</sup>

## *Halal*

*Halal* is an Arabic word meaning lawful or permitted. It is the standard of conduct for Muslims, prescribed in the Qur'an. The opposite of *halal* is *haram*, meaning unlawful or prohibited. *Halal* and *haram* apply to all facets of life. They are commonly used to describe cosmetics, pharmaceuticals, food products, ingredients and food preparation materials. Alcohol is *haram*, as is any pork produce. All foods are considered *halal* except the following (which are *haram*) non-exhaustive list:

- Alcoholic drinks and intoxicants
- Any type of Pig products including Bacon, Ham, Salami etc.
- Carnivorous animals, birds of prey and certain other animals
- Foods contaminated with any of the above products<sup>34</sup>

The 'Guideline of Performing *Ibadah* at the International Space Station' provides a very simple sentence on *halal* food: "If there is doubt on whether the food served on ISS it is *halal* or not, it is then permissible to eat the food on the basis of not to starve".<sup>35</sup> This Guideline was drafted when Malaysia's space agency, Angkasa, convened a conference of 150 Islamic scientists and scholars in 2006 to struggle with these and other questions, and approved by Malaysia's National Fatwa Council in 2007.<sup>36</sup> However, a person must only eat enough food that is not *halal* 'to alleviate hunger when no other food other than the prohibited food is available' (Perduas, 2000, 63).

## **Conclusion.**

As nicely captured by Khaled Abou El Fadl, the:

*"Essentialist and dogmatic conclusions fail to capture the dynamics of Islamic jurisprudence. Islamic law frequently distinguishes between a moral rule and a legal rule, and the fact that Muslim jurists insist on the unity of all Muslims at the theological and moral level does not entail that all legal rules must follow accordingly. The divergence between the moral imperative and the legal rule points to the tensions that permeate a legal system that emanates from a universal theology."* (El-Fadl, 1994: 171).

Dr Bleuer also concludes that the overwhelming majority of Muslim soldiers in non-Muslim militaries have clearly been able to reconcile multiple identities while supporting and even directly participating in the fight against fellow Muslims as reliable nationals of their country of citizenship (Bleuer, 2012: 506). The quest for an Islamic way of life ought not be conditioned upon living in a country that applies the Shariah, and countries that historically were regarded as outside of Islam

(Nafi, 2004: 107). Implicit in this refocusing of the Islamic worldview is an invitation for Muslim minorities living in non-Muslim countries to adhere to Islamic commitments and injunctions and to uphold the values of their religion insofar as the situation allows: to enjoin good and forbid evil for all of humanity.

## Endnotes

<sup>1</sup> Accessed at <http://www.azizahchishty.com/portal/content/publication-reliance-believer-ramadhan> dated 21 May 2013

<sup>2</sup> See for instance Ali Gomaa, 'An Introduction to the Fiqh of Muslim Minorities', at [http://www.ali-gomaa.com/?page=scholarly-output&so\\_details=216](http://www.ali-gomaa.com/?page=scholarly-output&so_details=216) accessed 19 May 2013.

<sup>3</sup> [http://en.wikipedia.org/wiki/Ja%27fari\\_jurisprudence](http://en.wikipedia.org/wiki/Ja%27fari_jurisprudence) accessed 16 May 2013

<sup>4</sup> [http://en.wikipedia.org/wiki/Malik\\_ibn\\_Anas](http://en.wikipedia.org/wiki/Malik_ibn_Anas) accessed 15 May 2013

<sup>5</sup> Ali Gomaa, 'An Introduction to the Fiqh of Muslim Minorities', at [http://www.ali-gomaa.com/?page=scholarly-output&so\\_details=216](http://www.ali-gomaa.com/?page=scholarly-output&so_details=216) accessed 17 May 2013

<sup>6</sup> Ali Gomaa, 'An Introduction to the Fiqh of Muslim Minorities', at [http://www.ali-gomaa.com/?page=scholarly-output&so\\_details=216](http://www.ali-gomaa.com/?page=scholarly-output&so_details=216) accessed 17 May 2013

<sup>7</sup> The precise number of Muslims is not known because many do not declare their religious status for census purposes. It is believed this is an under-representation and that there has been considerable growth in the Muslim demographic over the last five years. See generally "Australian Government Department of Foreign Affairs and Trade: about Muslims," online: <[http://www.dfat.gov.au/facts/muslims\\_in\\_Australia.html](http://www.dfat.gov.au/facts/muslims_in_Australia.html)>.

<sup>8</sup> Islamic Council of Victoria, 'FAQ: Ramadan' at <http://www.icv.org.au/index.php/background-info/ramadan> accessed 21 May 2013

<sup>9</sup> Ann Black, "Lessons from Singapore: An Evaluation of the Singapore Model of Legal Pluralism", *ASLI Working Paper, No. 026*, July 2012, [www.law.nus.sg/asli/pub/wps.htm](http://www.law.nus.sg/asli/pub/wps.htm).

<sup>10</sup> Hyder Gulam (2012), 'The Historical Application of Shariah in Australia', *Al Wasat Newspaper* (October 2012), at <http://hyderg.wordpress.com/2013/05/19/al-wasat-october-2012-the-historical-application-of-shariah-law-in-australia/> accessed 15 May 2013

<sup>11</sup> [http://en.wikipedia.org/wiki/Makassan\\_contact\\_with\\_Australia](http://en.wikipedia.org/wiki/Makassan_contact_with_Australia) accessed 19 May 2013 and see also 'Ancient Discovery set to rewrite Australian history', *The Age* 19 May 2013 at <http://www.theage.com.au/national/ancient-discovery-set-to-rewrite-australian-history-20130519-2juck.html> accessed 21 May 2013

<sup>12</sup> European Council of Fatwa and Research at [www.e-cfr.org/data/cat30072008113814.doc](http://www.e-cfr.org/data/cat30072008113814.doc) (Fatwa Number 5, p.7) dated 19 May 2013

<sup>13</sup> "There is no compulsion in religion. Verily, the Right Path has become distinct from the wrong path. Whoever disbelieves in *Tâghû* and believes in Allah, then he has grasped the most trustworthy handhold that will never break. And God is All-Hearer, All-Knower" (Qur'an 2:256)

<sup>14</sup> Hyder Gulam (2006), 'Islam, Law and War', *University of New England Law Journal* Vol.3, <http://www.une.edu.au/law/journal/pdfs/2006-3-gulam.pdf>, p.91, accessed 16 May 2013

<sup>15</sup> Zijad Delic (December 2009), 'Muslims & Citizenship: The Social Contract, Backed by Faith', *Canadian Islamic Congress Friday Bulletin* at [http://www.canadianislamiccongress.com/fb/friday\\_bulletin.php?fbdate=2009-12-25](http://www.canadianislamiccongress.com/fb/friday_bulletin.php?fbdate=2009-12-25)

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> The Holy Qur'an commands the following in regard to contracts: "And fulfill every covenant. Verily, you will be held accountable with regard to the covenants." (Qur'an, 17:34)

Additionally, God instructs believers: "O you who believe! Fully discharge (the obligations arising through) contracts." (Qur'an, 5:1) And those who are blessed in God's sight are "...those who truly care for their trusts (left by others in their care) and their covenants." (Qur'an, 23:8).

Moreover, the Qur'an condemns those who break covenants, describing them as untrue to their faith: "It is not the case that every time they make a covenant, some party among them throws it aside. Nay! The truth is most of them believe not." (Qur'an, 2:100)

<sup>19</sup> Australian Department of Immigration at <http://www.citizenship.gov.au/ceremonies/pledge/> accessed 19 May 2013

<sup>20</sup> Zijad Delic (December 2009), 'Muslims & Citizenship: The Social Contract, Backed by Faith', *Canadian Islamic Congress Friday Bulletin* at [http://www.canadianislamiccongress.com/fb/friday\\_bulletin.php?fbdate=2009-12-25](http://www.canadianislamiccongress.com/fb/friday_bulletin.php?fbdate=2009-12-25)

<sup>21</sup> Muhammad Khalid Masud, 'Islamic Law and Muslim Minorities', at [http://www.academia.edu/732749/Islamic\\_law\\_and\\_Muslim\\_minorities](http://www.academia.edu/732749/Islamic_law_and_Muslim_minorities) accessed 16 May 2013

<sup>22</sup> *Ibid.*

<sup>23</sup> Ali Gomaa, 'Obtaining citizenship of non Muslim countries: an Act of Polytheism?', at [http://www.ali-gomaa.com/?page=scholarly-output&so\\_details=217](http://www.ali-gomaa.com/?page=scholarly-output&so_details=217) accessed 17 May 2013

<sup>24</sup> *Ibid.*

<sup>25</sup> Ali Gomaa, 'Obtaining citizenship of non Muslim countries: an Act of Polytheism?', at [http://www.ali-gomaa.com/?page=scholarly-output&so\\_details=217](http://www.ali-gomaa.com/?page=scholarly-output&so_details=217) accessed 17 May 2013

<sup>26</sup> *Ibid.*, p.81

<sup>27</sup> *Ibid.*, pp.81-82

<sup>28</sup> *Ibid.*, p.82

<sup>29</sup> <https://itunes.apple.com/en/app/ipray-prayer-times-qibla-compass/id288054534?mt=8> accessed 21 May 2013

<sup>30</sup> Jābir reported that, The Prophet (pbub), said: "I have been granted five things which were not granted to any one before me: and for me the earth has been made a mosque and a means of purification; therefore, if prayer overtakes any person of my community, he should say his prayers (wherever he is)..."

<sup>31</sup> which are no idols or pictures – see A Manual of Hadith, 'Mosques', at <http://www.sacred-texts.com/isl/hadith/had08.htm> accessed 22 May 2013

<sup>32</sup> 'Guideline of Performing Ibadah (*worship*) at the International Space Station (ISS)' at [http://makkah.files.wordpress.com/2007/10/a\\_guideline\\_ibadah\\_at\\_iss.pdf](http://makkah.files.wordpress.com/2007/10/a_guideline_ibadah_at_iss.pdf) accessed 20 May 2013 and 'Abd al-Rahman al-Jaziri, *Islamic Jurisprudence According to the Four Sunni Schools: Al-Fiqh 'Ala al-Madhahib al-Arba 'ah-Volume I Acts of Worship*, (Fons Vitae, 2009), p.666

<sup>33</sup> Islamic Council of Victoria, 'FAQ: Ramadan' at <http://www.icv.org.au/index.php/background-info/ramadan> accessed 21 May 2013

<sup>34</sup> Islamic Council of Victoria, 'What is Halal?', at [www.icv.org.au/icvdocs/whatishalal.pdf](http://www.icv.org.au/icvdocs/whatishalal.pdf) accessed 21 May 2013

<sup>35</sup> 'Guideline of Performing Ibadah (*worship*) at the International Space Station (ISS)' at [http://makkah.files.wordpress.com/2007/10/a\\_guideline\\_ibadah\\_at\\_iss.pdf](http://makkah.files.wordpress.com/2007/10/a_guideline_ibadah_at_iss.pdf) accessed 20 May 2013

<sup>36</sup> Patrick di Justo, 'A Muslim Astronaut's Dilemma: How to Face Mecca From Space' at [http://www.wired.com/science/space/news/2007/09/mecca\\_in\\_orbit](http://www.wired.com/science/space/news/2007/09/mecca_in_orbit) from *Wired*, dated 26 September 2007 accessed 20 May 2013

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