

Heavenly Recommendations about Moderation towards Humanity: Imām Al-Awzā'ī as a Model

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Abstract

The severe crises of the Middle East have undoubtedly spawned an environment of deep-seated resentment, in which extremists' views have flourished. Terrorist groups such as al-Qaeda and ISIS have portrayed themselves as the saviours of the Islamic Umma (nation) and the guardians of Islam. They have taken advantage of Muslim grievances as a vehicle to justify a call for violence. Moreover, they have exploited the religion through selective reading and interpretation of sacred texts, relying on the power of the literal meaning that conceals many interpretations and objectives. Their textual approach that relies on a strict adherence to the scriptures neglects Fiqh Ma'ālāt al-Af'āl (the results of actions), Fiqh al-Muwāzanāt (jurisprudence of balances), Fiqh al-Awlawiyyāt (jurisprudence of priorities), and Maqasid al-Sharī'ah (higher objectives of Islamic law). Moreover, they have rejected Islamic laws and regulations regarding al-Jihād, al-Amān (safe-conduct), promoting righteousness and purging evil, rebellion against Muslim rulers, and the sanctity of human life (Al-Hmoud, 2013; Al-Hmad, 2022).

1. Introduction

The severe crises of the Middle East have undoubtedly spawned an environment of deep-seated resentment, in which extremists' views have flourished. Terrorist groups such as al-Qaeda and ISIS have portrayed themselves as the saviours of the Islamic Umma (nation) and the guardians of Islam. They have taken advantage of Muslim grievances as a vehicle to justify a call for violence. Moreover, they have exploited the religion through selective reading and interpretation of sacred texts, relying on the power of the literal meaning that conceals many interpretations and objectives. Their

textual approach that relies on a strict adherence to the scriptures neglects *Fiqh Ma'ālāt al-Af'āl* (the results of actions), *Fiqh al-Muwāzanāt* (jurisprudence of balances), *Fiqh al-Awlawiyyāt* (jurisprudence of priorities), and *Maqasid al-Sharī'ah* (higher objectives of Islamic law). Moreover, they have rejected Islamic laws and regulations regarding *al-Jihād*, *al-Amān* (safe-conduct), promoting righteousness and purging evil, rebellion against Muslim rulers, and the sanctity of human life (Al-Hmoud, 2013; Al-Ḥmad, 2022).

ISIS's members consider themselves the sole representatives of Islam and that waging war on them constitutes waging war on (God and His Messenger) (Al-Manṣūrī, 2018). Consequently, in their view, anyone who is not aligned with them is considered a *murtad* (apostate); (Al-Adnani, 2013; Al-Shahrānī, 2021) anyone who is neutral is *munāfiq* (hypocrite), and Muslim rulers are *tāwaghīt* (tyrants/idolaters) (Dabiq, 2015). They have even declared other violent extremist groups such as *al-Qaeda*, and *al-Nuṣra* as apostates (Dabiq, 2015; 'Abd Allah, 2021).

Their ruthless acts have sustained the general perception in the West that Islam is, indeed, an intolerant religious tradition. However, these acts have sparked a significant debate among Muslim clerics, scholars and university professors to counter the theological basis of this radical ideology. ISIS claims that it reflects the authentic *Sharī'ah* and the way of *al-Salaf al-Ṣāliḥ* (pious predecessors).

Aims of the Study: although the vast majority of people who ISIS has killed are Muslims (Alexander, 2015), the concern of this study is ISIS's heinous crimes against non-Muslim citizens in the Middle East. It strives to prove the superficiality of ISIS's claims with a different approach, based on recalling the human heritage of Imam Al-Awzā'ī, including his legal rules regarding *Ahl al-Dhimma* and his practical interaction. The main reasons for selecting al-Awzā'ī for this approach are first, his opinions, as Joseph Schacht (d. 1969) noted, represent one of the oldest schools of Islamic jurisprudence (Schacht, 1986), which makes him closer to the era of pious predecessors. Second, he was conversant in *Fiqh* and *Sunna* and named "the *Imām* in *fiqh* of the people of *Bilād Al-Shām*" (Al-Ṣafadī, 2000), and he was described as "the most knowledgeable jurist of the *Sunna* in *Al-Shām*" (Al-Shirāzi, 1983; Al-Mizzī, 1984). Third, his juristic approach was closer to the school of *hadīth* than the school of opinion, as he said "we turn with the *Sunna* wherever it turns" (Ibn 'Asakir, 1995, Vol. 35, p. 190) and this aspect put him closer to the *Silafis* approach, which terrorist groups claim to follow (Wagemakers, 2012). Fourth, similar to ISIS, *Imām Al-Awzā'ī* lived in the *Bilād Al-Shām* region in an era that faced serious internal and external threats. Finally, he was not only a religious jurist but also, as will be shown later, a *Mujāhid* who lived practically and experienced *jihād* rules. All of these factors emphasized

the authenticity of his jurisprudence and put him on the path of al-Salaf al-Ṣāliḥ.

Scope and Limitations: This study is devoted to exploring Imām Al-Awzā'ī human heritage of thought and revealing the most essential human principles and stances towards non-Muslim citizens. Hence, it is not within the scope of this paper to trace all the legal aspects regarding non-Muslims' status in Islamic law. The study presents only a brief summary of the related arguments wherein Al-Awzā'ī's opinions be presented.

Research Methodology: This study is library-based research and the material studied here is mainly books and articles. The study has used a historical and analytical descriptive approach to trace and analyze the legal juristic aspects of this topic.

Literature Review: This study focuses on three key elements: al-Awzā'ī, ISIS, and the rights of Dhimmīs. Each of them had its own share of previous studies. Some of the major contributions related to al-Imām al-Awzā'ī, which provide a solid contribution on the subject:

-“Al-Awzā'ī Wa Ta'āleemuhu Al-Insāniyya” by Subḥī Mahmassani, published in Beirut in 1978. This book represents a comprehensive and sympathetic work of al-Awzā'ī's life and thoughts.

- Abdallāh al-Jaboūrī's Ph.D. thesis “Fiqh al-Imām al-Awzā'ī”, published in Baghdad in 1977. This thesis provides a comparative analysis of al-Awzā'ī's jurisprudence compared to the four major Sunni jurists.

-“The Encyclopaedia of Fiqh ‘Abd al-Rahman al-Awzā'ī” by Muḥammad Rawas Qala'je, published in Beirut in 2008. Another work that attempts to collect the scattered opinions of al-Awzā'ī's from the scripts of comparative jurisprudence and Qur'anic exegesis.

As for the studies regarding ISIS, the following studies offer an excellent contribution:

- “Ideas, Ideology, and the Roots of the Islamic State,” by Mohammad Fadel, an article published in 2019. In this article Fadel emphasizes that the ideals that gave rise to ISIS are not related to pre-modern Sunni Islam, rather they are the ideals that post-colonial Arab states have propagated since the collapse of the Ottoman Empire.

- “The Islamic State Organization: The Sunni Crisis and the Struggle of Global Jihadism” by Muḥammad Abū Rummān und Hassan Abū Hanīeh, published in Amman in 2015. This book clarifies the main pillars of the ideology of the "Islamic State" organization and analyses the stages and transformations IS underwent in the course of its development, including the factors behind its previous retreat and behind its recent re-emergence. Further, it explains IS' rapid expansion

and military victories in Iraq and Syria. In addition, the book examines the similarities and differences between IS and the central Al-Qaeda organization and the Jihadi Salafist current in general.

-“The Rise of Islamic State: ISIS and the new Sunni Revolution” by Patrick Cockburn, published in New York in 2015. A short and clear account of events in Iraq and Syria that led up to the present state of affairs along with a powerful critique of Western policy in Iraq and Syria and an unsparing analysis of Shia politics in Baghdad.

-“Islamic State: The Digital Caliphate” by Abdel Bari Atwan. This book traces the common lines of thought lineage of IS, its ideological differences with al Qaeda, and the deadly rivalry that has emerged between their leaders. It also shows how the group's rapid growth has been facilitated by its masterful command of social media platforms.

One of the earliest scripts on the subject of the rights of non-Muslims is “Aḥkām Ahl al-Dhimma” by Ibn Qayyim al-Jawzīyah (d.751/1350), published in Dammam in 1997. It covers most of the topics pertaining to the dhimmi such as jizyah, kharāj, 'ushr as well as many aspects of law and social relationships between Muslims and Non-Muslims. More recently, “Aḥkām al-Dhimmīyīn wa-al-Musta'minīn fī Dār al-Islām” by 'Abd al-Karīm Zaydān, published in Baghdad in 1976. The work was originally a Ph.D. thesis submitted to the Faculty of Law, Cairo University, in 1962. It is a comprehensive work on the subject with detailed notes and explanations of each concept. Indeed, it is a valuable reference on the subject.

Finally, the earliest work in English on this subject is “The Caliphs and Their non-Muslim Subjects: A Critical Study of the Covenant of 'Umar” by A.S. Tritton, first published in London, in 1930. The book has been translated to Arabic by Hasan Habshi entitled: Ahl al-Dhimmah fi al-Islam, and first appeared in Cairo, in 1949. The treatise gives some accounts of the dhimmi's social condition under Muslim rulers. The legal position of dhimmi is hardly discussed except incidentally. It is a descriptive or rather anecdotal account of dhimmi's social condition under Muslim rulers.

Research Plan: The study presents a review of the life of Imām Al-Awzā'ī. Next, it explores his thoughts on the Dhimma contract. Finally, the treatment of non-Muslims by Imām al-Awzā'ī and by ISIS are compared.

2. Al-Awzā'ī: His Life and Works

Al-Awzā'ī's full name was Abū 'Abd ar-Rahmān bin 'Amr ibn Muhammad. His ancestors were from the Humyar tribe, who were likely to have migrated from Yemen to Bilād al-Shām (Al-Mizzī, 1984).

He was born in Ba'albik in 88/707 in Lebanon (Ibn Sa'd, 1997). He grew up with his mother as an orphan and moved with her to Karak in Al-Biqā' Valley; later, he moved to Beirut, which became his home until his death in 157/776 (Al-Dhahabī, 1994). He received his religious education first from the judge of Damascus, Namir bin Aws Al-Ash'arī (d. 120/783). Later, Al-Awzā'ī was appointed to the Diwān Al-Khrāj (treasury department) in Yamāma, a town in modern Saudi Arabia, where he met Yaḥyā Ibn Kathīr (d. 129/746), who became his mentor (Al-Shaikh, 2006). At that time, Al-Awzā'ī dedicated himself to Islamic Sharia Law, touring different cities such as Jerusalem, Makkah and Basra in Iraq for further study (Mahmassani, 1978). As a result, he attained the status of a leading jurist Mujtāhid and eponymous founder of his own school of Islamic Jurisprudence (Al-Dhahabī, 1993). Moreover, he was considered to be one of four leading Ulama' (Islamic religious scholars) in his time: Abū Hanīfah (d. 150/767), Mālik (d. 179/795), ath-Thawri (d. 97/161), and Al-Awzā'ī (Al-Khaṭīb, 1933).

Al-Awzā'ī's school was followed by jurists of Al-Shām and Andalusia for about two centuries (Ibn Kathīr, 1988). However, the disappearance of his school can be attributed to factors that do not dismiss his status or knowledge. His students did not work hard to collect or publish his works. In addition, Beirut was not a religious destination such as Madinah or Baghdad that enjoyed political influence in the Abbasid period (Al-Shabānāt, 2011; Saffaār, 1967). His records can be classified into the following groups:

- Books including what he quoted from his mentors. For example, he wrote an estimated 14 books that embodied everything he had heard from his mentor Yaḥyā ibn Kathīr, which were all destroyed in a fire due to a severe earthquake that hit Al-Shām in 130/747 (Al-Dhahabī, 1994).
- His letters to some caliphs and politicians to tackle Muslims' needs in his time. These consisted of preaching and jurisprudential opinions and are available in biographies and books of impugment and validation/ Al-Jarh wal-Ta'dīl (Ibn abī Hātim, 1952).
- His own classifications. These have not survived, but they are referenced by other documents. It is reported that Al-Awzā'ī wrote two books: Al-Sunan in 'ilm Al-Hadīth' (the science of hadīth) and Al-Masā'il Al-Fiqhīyah/ Islamic jurisprudence (Ibn Al-Nadīm, 1978). He was also reported to have collected trustworthy Prophetic traditions in his book: Musnad Al-Awzā'ī (Khalīfah, 1941), from which he deduced Islamic legal rulings (aḥkām) according to his own eponymous doctrine including Musnad Al-Awzā'ī (Tadmūrī, 1984); however, all have been lost.

- Many of his jurisprudential opinions available in the books of jurisprudential disagreement among the jurists, such as *Ikhtilāf Al-Fuqahā* for Al-Tabarī and *Ikhtilāf Al-Fuqahā* for Al-Ṭahāwī, books of comparative jurisprudence such as *Al-Mughnī* for Ibn Qudāmah and *Bidāyah Al-Mujtahid* for Ibn Rushd, and Qur’anic exegesis such as *Tafsir Al-Qurtubī* and *Ahkām Al-Qur’ān* for Al-Jassās (‘Abd al-Wahhāb, 2021; Al-Khaṭīb, 2019). There were attempts to collect these opinions and rulings by Al-Jaboūrī in his dissertation “*Fiqh Al-Imām Al-Awzā’ī*” (Al-Jaboūrī, 1977) and by Muhammad Qala’je in his Encyclopaedia “*Fiqh ‘Abd Al-Rahman Al-Awzā’ī*” (Qala’je, 2008).
- Dealings with the Islamic Law of Nations (*Al-Siyar*) as an independent subject. As a pioneer in this area, he wrote *Kitāb Siyar Al-Awzā’ī*, which was devoted to respond to the opinions expressed in *Kitāb al-Siyar al-Saghīr* by Abū Hanīfah including 35 points of disagreement (Al-Jaboūrī, 1977) and survived through *Kitāb Al-Siyar* by Al-Fazārī (d.188/804) and *Kitāb Ar-Radd ‘Ala Siyar Al-Awzā’ī* by Al-Imām Abū Yūsuf (d.182/798) (Abū Yūsuf, 1990). In addition to the narration of Al-Imām Al-Shāfi’ī about *Siyar Al-Awzā’ī*, was discussed in his book, *Al-Umm* (Al-Shāfi’ī, 1990).

3. Al-Awzā’ī Thoughts Regarding Non-Muslim Citizens

Non-Muslims who lived in *Dār al-Islām* under Muslim rule were commonly referred to as *Ahl al-Dhimma*. Linguistically, the word *dhimma* means pledge (‘ahd), sanctity (*hūrma*), guarantee (*kafalā*) and safety (*amān*) (Ibn Manẓūr, 1993). In pre-Islamic Arabia, this term was used as a social principle of honour, illustrated in the tribal custom of protection and asylum (*jiwār*) (Abū-Sulaymān, 1988). However, in the beginnings of Islam, the most common expression was “*dhimmat Allāh*” (the protection of God), which insured under the Constitution of Medina (Bosworth, 1982) that all people of different faiths as a single community (*umma wahida*); each sect had its own affairs, and all united against whoever fought them (Hoyland, 2013). *Ahl al-dhimma* as a legal term defines the beneficiaries of the permanent *Dhimma Contract*, “through which the Muslim community accords hospitality and protection to members of other revealed religions, on condition of their acknowledgement of the domination of Islam” (Cahen, 1965), and payment of a certain tax called *Jizya* did not appear before the tenth century (Ayoub, 1983).

The Arabic term *Jizya* appears in verse 9:29 of the Qur’an. This verse, as Muhammad Abdel Haleem proved, aims to enforce payment of what is due to the state (Abdel Haleem, 2012). It allows the Muslim state to fight those who refuse to pay *Jizya* (*mani’i al-Jizya*) in the same way that Abū Bakr aṣ-Ṣiddīq (d. 13/634), the first caliph of the Muslim

state, fought with those Muslims who refused to pay zakat/ mani'i al-zakat (Muslim, 1999).

In the pre-Islamic era, poll taxes were common practice among the Byzantines, Assyrians and Persians, and the Arab tribes of Mesopotamia paid a poll tax to the Persian Empire, as did the Arab tribes of Syria to the Byzantine Empire (Griffith-Jones, 2013; Abou El-Fadl, 2014). However, this tax under Islam has been subjected to substantial changes. The Jizya obligation, according to al-Awzā'i and the other Islamic jurists (Al-Ṭabarī, 1933), was confined to a specific category. It was levied only on the adult, free, sane men among non-Muslims who could fight, with the exception of clerics and anyone who could not afford to pay (Ibn Rushd, 2002). This limitation is because Jizya, according to many jurists, is a substitute for military service, or Khalaf Al-Nuṣrah as Hanafis call it (Al-Sarkhasī, 1993; Al-'Aynī, 2000). Those disqualified for army service did not have to pay Jizya (Cohen, 1994). In the same logic, as historical precedents have shown, non-Muslims who participated in battle with Muslims were exempt from paying Jizya, and if the state failed to protect them, the Jizya was to be refunded (Arnold, 1913). Shāfi'i jurists considered Jizya as ('Ujrat Sukná al-Dār) fees in exchange for non-Muslims' residence in the Islamic state with its assisted living facilities (Ibn al-Farrā'; Al-Bujayrimī, 1995). Other jurists, such as Ibn Qayyim al-Jawziyya (d. 691/1350), considered Jizya as a penalty imposed upon Dhimmīs because of their refusal to embrace Islam (Ibn al-Qayyim, 1997). Because of this meaning, Banu Taghlaib, the Arabian Christian tribe in Mesopotamia, refused to pay Jizya and preferred instead to pay a double amount under the name of ṣadaqa (charity) (Al-Balādhurī, 1916).

Jizya, as Anver Emon (2012) clarified, has a complex social function in Islam. Islamic history has shown the possibility of accepting other arrangements not involving Jizya (Arnold, 1913). Still, Jizya used to be considered as the ideal sign of non-Muslims' commitment to the Islamic state and their submission to the sovereignty of Islamic laws. In addition, there is an indirect role of Jizya in preaching Islam (Da'wa); this role was highlighted by Fakhr al-Din al-Rāzī (d. 606/1209). According to him, Jizya gave non-Muslims an opportunity to experience the virtues of Islam in hope that they might consider conversion (Al-Rāzī, 1999). Finally, Jizya provided tax revenue for the Islamic state. Ibn al-'Arabī (d.543/1148) said in this regard, "Jizya is a financial aid to Muslims and a bounty given to them by Allāh" (Ibn al-'Arabī, 2003, Vol. 2, p. 482). Considering that the financial aspect of Jizya was not the aim, Imām al-Juwaynī (d. 478/1085) elucidated, "it is inconsistent with the virtues of Sharī'ah to consider sacrificing lives as a mean for material gain" (Al-Juwaynī, 1979, p. 207).

Similarly, Imām Al-Awzā’ī and Malik both stated that Jizya is accepted from any non-Muslim (Al-Nawawī, 1972). The Holy Prophet accepted Jizya from the Zoroastrians of Bahrain, saying, “Treat them according to the rule of the people of the book” (Al-Bukhārī, 1983). Imam Aḥmad in one of his opinions said that it is acceptable from everyone except Arab pagans (Ibn Qudāmāh, 1984). Abū Ḥanīfah, Al-Shāfi’ī, and the probable opinion of Aḥmad considered it acceptable only from People of the Book and the Zoroastrians (Ibn Rushd, 2002). Al-Awzā’ī and Malik’s views are in harmony with Islam’s ultimate objective to bring guidance to humankind not annihilation.

Once the Jizya is paid, non-Muslims enjoy the status of dhimmi. This is based on several permanent obligations, initially the duty to defend their lives and protect their property from internal and external threats. These obligations are usually referred to in the Hadiths, caliphs’ instructions, and juristic legal texts, which ordered Muslims to lay down their own lives, if necessary, to secure this protection. This aspect, according to al-Qarāfi (d. 684/1285), received ijma’ al-Umma/unanimity of the whole Umma (Al-Qarāfi, 2003). In this regard, Mark Cohen commented, “This principle was not always upheld, but it remained a steadfast cornerstone of Islamic policy towards the non-Muslims even into late medieval and early modern times” (1994, p. 69).

The second obligation is to respect the Dhimmīs’ right to practice their own faith and follow it with no fear of being killed or forced to convert, even by their Muslim parents. In this account, al-Imām al-Awzā’ī gave a fatwa that “If a dhimmī converted to Islam, and his children hold their faith, they should be under the custody of a guardian, who has a similar faith to the children” (Al-Naysābūrī, 2004).

Under this right, Dhimmīs could practise their religious rituals properly in their towns with certain restrictions on public ceremonies in mixed towns (Abū Yūsuf, 1979). Further, they were entitled to select their religious leaders and retain their own religious organizations. Regarding houses of worship, they had a limited right for building and rebuilding these houses. According to Islamic jurists, churches, synagogues, or monasteries should not exist in the cities that were newly established by Muslims (Al-Ṭabarī, 1933). However, according to certain opinions, they may be built outside such cities (Ibn Qudāmāh, 1984). In reality, as Norman Stillman (2006) noted, many of the new cities founded by Arab conquerors came to have Dhimmī inhabitants with churches and synagogues. Similarly, in the case of the territories acquired by force, Ibn Qudāmāh (d. 620/1223) (1984) explained that there are two juristic opinions: one does not allow these buildings’ existence, and the other does. He supported the latter opinion, which was based on reality, where many holy places still

existed in the areas acquired by force. As no one objected, Ibn Qudāmah (1984) considered it to be a general unanimity. In the regions that had been opened through agreements of *Ṣulḥ*, non-Muslims could keep houses of worship according to the terms of their agreement (Ibn Qudāmah, 1984). Tritton stated that according to Nestorian patriarch Bar Hebraeus, as one of the terms of agreement with the Arabs, the Arabs were required to help the Nestorians repair their old churches (Tritton, 1930; Tritton, 1931). Another reference, in one of the letters of the East Syrian Catholic Išo'yahb III (d. 659), stated: "they [Muslims]...givers of aid to churches and monasteries" (Penn, 2015, p. 60).

Furthermore, under Islamic Law, Dhimmīs can live their daily lives according to their concept of right and wrong, even though it may contradict Islam. For instance, al-Imām al-Awzā'ī, in agreement with the rest of the Islamic jurists, stated that the Islamic state cannot prevent Dhimmīs from consuming alcohol or pork (Al-Ṭabarī, 1933) or trading in these goods within their towns (Al-Sarakhsī, 1997). Because personal affairs are closely related to faith, Islam respected this delicate aspect and did not try to impose one identical law on all local communities. Thus, full right was given to Dhimmīs to conduct their marriage, divorce, inheritance, custody, and other family matters within their own customs (Khan & Ramadan, 2011).

In their internal affairs and commercial disputes, Dhimmīs enjoyed judicial autonomy under their own courts, judges, and laws; however, they could bring their cases before a Muslim judge. If they chose to do so, then Muslim judges were bound to address their cases (according to the Hanafis), except for cases related to marriage. Abu Hanīfa stipulated that non-Muslim litigants must expressly consent to receive judgement by a Muslim judge (Al-Jaṣāṣ, 2010). For al-Awzā'ī, the consent of litigants is enough if the case is related to marriage or finance (Al-Jaṣāṣ, 1997). According to Malik, Al-Shāfi'ī, and Aḥmad, judges should either judge between the litigants or send the litigants back to non-Muslim courts (Ibn Rushd al-Jadd, 1988). Ibn al-Qasim (d. 191/806), Malik's most prominent student, raised an interesting point of view. He suggested that the Muslim judge could not hear the case of Dhimmīs unless two conditions are met: the consent of both litigants and the consent of their bishops ('Abd al-Barr, 2000).

Despite Dhimmīs' right to resort to their own jurisdiction system, studies of Ottoman court records confirm that they made frequent appearances before Islamic courts (Al-Qattan, 1999; Cohen, 1984; Cicek, 1992). These Dhimmīs were unconcerned with the severe injunctions issued in many cases by their religious leaders against litigating personal matters in Muslim courts (Shmuelevitz, 1984). These studies illustrate that Islamic jurisprudential views were not

always translated into practice. In some cases, non-Muslims were allowed to testify in Muslim courts in contradiction to the accepted notion that testimony from non-Muslims was not accepted (Cohen, 1984). Instead, it was said that the law should treat the Christians and Jews in the same ways as it treats Muslims (Al-Qattan, 2002). This included matrimonial and inheritance arrangements, weighing evidence, and accepting testimony (Castellino & Cavanaugh, 2013). Moreover, non-Muslims were integrated into the economy and commerce of society. There were no restrictions on Dhimmīs' right to work in areas of industry, agriculture, trade, or finance. However, in mutual trade between Muslims and Dhimmi, both parties must avoid ribā (usury), as in the treaty of the Prophet with the Christians of Najrān (Al-Sarakhsī, 1997). However, in the traditional doctrine of the Islamic legists, including the opinions of al-Awzā'ī (Grafton, 2003), Dhimmis have no access to public offices that involve religious implications, as in the positions of caliph, army commander, or judge (Al-Qardawi, 1977).

In spite of these legal restrictions, historical facts sometimes contradict with these rules. As stated by Mark Cohen, “for centuries throughout the Muslim world, even during the period of decline after the twelfth century, effective administration continued to depend on Christian, Jewish, and in Persia, Zoroastrian bureaucrats” (Yarbrough, 2012; Sirry, 2011). Some of them were even able to hold what al-Māwardī (d. 463/1072) calls “the vizierate of delegation” (Al-Māwardī, 1989).

As for the duties of Dhimmīs, in addition to financial obligations such as Jizya, Kharāj/ land tax (Orhanlu, 1990) and 'Ushur/ tax on foreign trade (Ibn Qudāmah, 1984), they had nonfinancial duties, which, according to al-Awzā'ī, included the following: not to offend Islam, the Holy Prophet, or the Qur'an (Ibn Ḥajar, 1960), not to fight Muslims, and not to give aid to Muslim enemies (Al-Nīsābūrī, 2010). If any dhimmī became a spy, the walī (ruler) had the right to kill him (Al-Nawawī, 1972). In addition, dhimmīs were required to provide three days' accommodation to Muslims passing through their towns, and in return the amount of Jizya would be reduced (Abū 'Ubayd, 1989).

4. Non-Muslims between Al-Awzā'ī and ISIS

In 2003, based on unfounded allegations, the U.S. invaded Iraq, causing immense human costs (Knight, 2012). It unleashed chaos by disbanding Iraq's army. As part of their strategy to control Iraq, which was based on “identity policies”, Baathists were excluded from public life, and Iraqi Shiite segments were courted at the expense of Sunnis. Moreover, a false democracy was installed based on sectarianism

following Bremer's laws, which led to Iranian domination over pro-Tehran Shiite political forces (O'Leary, 2011; Abū Hanīyah & Abū Rummān, 2015). All of these policies turned Iraq into a fertile ground into which fundamentalist groups such as ISIS and Shia militias rooted themselves.

The first seeds of ISIS were planted by Abū Mus'ab al-Zarqawi (formerly Ahmed al-Khalayleh; d. 2006). He was able to use this situation to gain "a social incubator" in the Sunni community which was growing increasingly apprehensive of ongoing developments ((Ingram, Whiteside & Winter, 2020); Abū Hanīyah & Abū Rummān, 2015). Although he was the rising star of al-Qaeda in Iraq and adhered to the joint basis of all jihadism movements (Ali, 2016), he had a different approach to the problems of the Islamic world. He believed that the true faith must be purged from the apostate agents of occupation for the Umma to reign supreme (Kazimī, 2006). He relied on two books, the first called "The Management of Savagery" by Abu Bakr Naji (Muhammad al-Hakaymah d. 2008) and the intellectual reference of al-Zarqawi's violent strategic choices of merciless military operations (Alazreg, 2016; Al-'Ammshani, 2022). The second book is the *Masā'il Fī Fiqh al-Jihād* (Issues in the Jurisprudence of Jihad), or the Jurisprudence of the Blood by Abu Abdullah Al-Muhajir (Muhammad al-Saghir d. 2016), who was considered the Al-Zarqawi group's mufti. This book had a strong impact on the building of Al-Zarqawi's radical doctrine. It provided him with theological justification in matters related to the priority of fighting apostates, suicide bombings, kidnapping, assassinations, beheadings, and the tactics of violence and terror (Abū Hanīyah & Abū Rummān, 2015).

Under the influence of this ideology, al-Zarqawi waged a ruthless suicide bombing campaign against Shiites, the Trojan horse used by the enemies of the nation as he called them (ABC news, 6 Apr 2004), along with members of the Sunni tribal-based Awakening Movement (al-Şahawat), and anyone who collaborated with the new Iraqi Shi'a-led regime (Choucair, 2014; al-Zu'bī, 2022). He also instigated the kidnapping of Westerners and videotaping of their beheading (Brisard & Martinez, 2005). He was accused of the 2004 Iraq church attacks (CNN, August 2, 2004), although he did not claim responsibility. These actions drew criticism from his former mentor Abū Muhammad al-Maqdisī, who sent a message in 2004 accusing him of overstepping the boundaries of legitimate jihad, cautioning him that "the hands of the Jihad fighters must remain clean" (Brooke, 2006, p. 52), and asserting that blowing up churches is not in the interest of Islam and Muslims (Al-Jazeera, 10 July 2005). In his defence, al-Zarqawi declared that he did not see [Arab] Christians, Sabeans, and Yazidi and other civilians as targets because they do not play "the base role played by the Shiites" (Yehoshua, 2005). However, the leadership has not

adhered to this attitude since his death. They ignored his opinion in this regard and committed several attacks against churches. Their attack on “Our Lady of Salvation Church” in 2010, in which 58 were killed and 78 were wounded, has been marked as the worst massacre of Iraqi Christians (Mockaitis, 2012). After it proclaimed its own caliphate in Iraq and Syria in June 2014, ISIS’s violations against the rights of religious minorities accelerated in a way that was recognized as genocide (Schmermund, 2017).

These actions indicated that ISIS turned the world into battlefield *Dār Harb*, where they, as the true believers, were allowed to shed the blood of infidels and seize their properties. Al-Muhajir, ISIS’s “jurist”, who is opposed by mainstream Islamic scholars, begins his book by discussing the classical Islamic division of the world and presenting a statement that reflects his extremism. He asserts that this division, the realm of war and realm of Islam, is considered one of the decisive matters in Islam, and denying (or arguing) that it turns a Muslim into an infidel (Al-Muhājir, n.d). However, there is no decisive script in the Qur’ān or hadīth in this regard, and classical Muslim jurists disagreed on the number of realms (Al-H’āj, 2006) and their definitions. (Al-Kāsānī, 1986; Al-Shawkānī, 1993). The Islamic law developed by Muslim jurists included the first division in “the first three centuries of Islam, which was an extremely harsh and violent environment, where the use of force in intercommunal relations was the unquestioned norm” (An-Na’im, 2002, p. 166). Further, the disagreement of classical jurists gives legitimacy for contemporary reviews, and the majority of Muslim scholars today consider this division as one imposed by historical events that no longer exist (Al-Khaṭīb, 2015).

Hypothetically assuming that al-Muhajir is correct and the whole world except the ISIS ‘State’ has become a realm of war, why did ISIS’s members not honour “God’s Word”, which they claim they want to rule by it? Their actions fail to meet acceptable Islamic standards when they choose not to obey the Islamic regulations that govern the state of war in Islam.

Islamic Sharī’ah is the first legal system to have laid foundations for the distinction between combatants and non-combatants. It legislated law that can prevent targeting women, children, aged, clerics, and al-‘Asīf (hired labour) during battle by hadīths. In addition, protection also were given to the blind, patients, incapacitated, insane, farmers, craftsmen, and traders by analogy (Al-Dawoody, 2011). Moreover, some jurists stated that these groups should be given a share of their possessions sufficient to live on (Ibn Rushd, 2002).

Al-Awzā’ī, who spent his life as a jurist and *Murābiṭ* (The one who performs the guard duty at a frontier outpost to defend *Dār Al-Islam*) in Beirut, lived and experienced practically *jihād* rules (Khalilieh, 1999;

Al-Dhahabī, 1994; Gazī, 1998). Additionally, he was the most prominent public figure to whom people would resort when they had disputes with the state. In this regard, Yaḥyā bin Maʿīn (d. 233/848) said “al-Awzāʿī was the most prominent public figure in al-Shām and his opinion was received more importantly than the sultan's” (Al-Ziriklī, 2002). He issued fatwas that prevent Muslims from targeting civilians who are protected by the Islamic Law (Ibn Qudāmah, 1984). Moreover, He maintained that Muslims are forbidden to inflict any unnecessary damage in times of war (Ibn Rushd, 2002). He did not allow killing enemies’ animals (Abū Yūsuf, 1990), cutting or burning trees, nor ruining a village or breaking mills (Al-Ṭaḥāwī, 1996).

In contrast, ISIS has killed countless innocents who were neither combatants nor armed. The Holy Prophet did not permit killing the *munāfiqūn* ‘hypocrites’ who disagreed with him, saying, “so that people do not say that Muhammad killed his companions” (Al-Bukhārī, 1983, Hadith no. 4907; Muslim, 1999, Hadith no. 2584). On the contrary, ISIS has killed countless people merely because they disagree with their opinions, considering them infidels (Al-Adnani, 2015). Further, al-Awzāʿī prevented killing hostages or prisoners (Ibn Rushd, 2002), following the deeds of the Holy Prophet who only killed three captives in the Battle of Badr because they were war criminals (Al-Bayhaqī, 1994, Vol. 6, Hadīth No. 12643), while ISIS has killed approximately 2000 prisoners (Jalal, 2022). Similarly, Islam respects the international norm pertinent to the immunity of emissaries, as Ibn Masʿūd stated, “the Sunna continues that emissaries are never killed” (Ibn Hanbal, 1995). This protection achieved complete unanimity in the scholarly community (Al-Shawkānī, 2004). The concept of emissaries is not limited to diplomatic emissaries; it includes every person sent on a noble mission (The Open Letter, 2014, p. 10). ISIS’s members have ruthlessly killed the journalists James Foley and Steven Sotloff and the aid worker David Haines. Moreover, al-Awzāʿī did not allow ruining churches or killing clerics (Al-Ṭaḥāwī, 1996), as Ibn ʿAbbas narrated that when the Holy Prophet sent armies, he said, “do not kill people of hermitages.” (Al-Bayhaqī, 1994). Moreover, Abu Bakr in his farewell commanded the armies’ leaders heading to the Levant, “you will find people who have devoted themselves to monasteries; leave them to their devotions” (Ibn Abī Shaybah, 1989). Hence, in Iraq and Syria, several churches, monasteries, and synagogues survived through the 14th century of Islam. However, sadly they have not survived two years of ISIS control, which have witnessed mass destruction of religious cultural heritage carried out by ISIS (Heing, 2017).

In the same vein, al-Awzāʿī’s *Fatāwā* reflected a great flexibility in giving al-Amān (safe conduct). He permitted giving Amān by every adult Muslim, male or female, free or slave, who fought or did not fight

with the army (Ibn Qudāmah, 1984). Dhimmīs were also allowed, according to him, to give Amān to non-Muslims if the Caliph approved and to fight with Muslims and take a share of the spoils (Al-'Aynī, 2001; al-Fazārī, 1987). Al-Amān, according to him, could be given to any emissaries, to any group of soldiers who did not flee nor drew their weapons (Ibn Qudāmah, 1984), to any ship hit by a storm and run aground on Beirut coast (Ibn al-Mundzir, 2004), and any group captured with trade inside Muslim's territories (Al-Ṭabarī, 1933). In all these cases, his answer was, "they are safe". "Safe" means that their lives and property are protected. He also stated that if any of them died during the state of Amān, their inheritance had to be sent to their heirs in Dār Al-Harb (Ibn al-Mundzir, 2004).

In contrast, al-Amān is not in the interests of Al-Muhajir, ISIS's "jurist", who was eager to legitimate bloodshed. In every controversial issue, he chooses the most severe opinion, which contradicts the methodology of the Holy Prophet: "whenever faced by more than one choice, the Prophet always chose the easiest one" (Muslim, 1999, Hadith No. 3560). His way of gathering selective raw texts of the Qur'an and Sunna and matching traditions to problematic factual situations in a mechanical process cannot be called Ijtihad (innovation) (Abou El Fadl, 2001). The genuine methodology of Ijtihad requires an intellectual effort to consider the variables imposed by the fluctuating circumstances of society (Al-'Alwānī, 1993). In this way, Muslim scholars have often reached different edicts and solutions despite quoting the same texts.

Based on al-Muhajir's methodology, it is natural that ISIS's history does not reflect any forms of amān, except in the statement of al-Zarqawi, mentioned earlier, that he does not see non-Muslims as targets. This statement under Islamic jurisprudence imposed a requirement of amān not only on Zarqawi but also on his entire group. Muslim jurists consider al-Amān to be effective by any word or sign that suggests safety to non-Muslims even if they misunderstand it or if the Muslim does not intend it (Malik, 2004).

Ultimately, ISIS does not respect al-Zarqawi's Amān to non-Muslims or their old amān, which was preserved for nearly 1400 years. After the self-proclaimed Khilāfah in 2014, ISIS gave Arab Christians three choices: Jizya, the sword, or conversion to Islam. They marked Christians' houses with the Arabic letter 'N', the first letter of the word 'Nasara', which means 'Christian' in Arabic, then killed some, forced others to convert to Islam, and pushed the rest to flee without their property (Otten, Al-Jazeera English, 22 Jul 2014). Muslim scholars confirmed, in their open letter to Abū Bakr al-Baghdadi, the leaders of the Islamic State said that, "these Christians are not combatants against Islam or transgressors against it, indeed they are friends,

neighbours and co-citizens...the native peoples of these lands from pre-Islamic times; they are not enemies but friends. For the past 1400 years they have defended their countries against the Crusaders, colonialists, Israel and other wars, how, then, can you treat them as enemies?" (The Open Letter, 2014, p. 17). In addition, the classical contract of Jizya was based on providing protection to non-Muslims, and ISIS cannot protect its followers itself. ISIS prevents civilians from leaving its territories and uses their presence to protect itself against strikes of the international coalition against it.

The greatest atrocity ISIS has committed was against Yazidis. They killed hundreds of them and gave the rest two choices: the sword or Islam because they do not follow scripture. Although al-Awzā'ī and Mālik stated that they are similar to the Majūs Zoroastrians, and although they have been living in Iraq since the beginning of Islam, in their journal, ISIS unashamedly stated, "Yazidis [is] a pagan minority existent for ages in [the] regions of Iraq and Sham... their continual existence to this day is a matter that Muslims should question, as they will be asked about it on Judgement Day" (Dabiq, 2014, No. 4, p. 14). This quotation reveals that ISIS's members consider themselves more sincere to Allāh than 'Umar bin al-Khattāb and the rest of the righteous caliphs. Yazidi women were taken by ISIS as slaves, Sabī, neglecting the fact that the greatest way to please God is to free slaves and that "for over a century, Muslims, and indeed the entire world, have been united in the prohibition and criminalization of slavery, which was a milestone in human history when it was finally achieved" (The Open Letter, 2014, p. 18).

ISIS members choose to acknowledge a text when it is in their favour; otherwise, they reject it, arguing that reality is different. When al-Maqdisī criticized al-Zarqawi for targeting Shiites and clarified to him that Ibn Taymiyya did not allow the declaration of Shia laypeople as unbelievers. Al-Zarqawi, in his defence, argued that, "he who knows their situation in Iraq would surely realize that they are no longer laypeople...they have become soldiers for the unbeliever occupiers...and it is unjust to cite a fatwa from Ibn Taymiyyeh's era and have it apply to the reprobates today without judging the differences between the two eras" (Muhammadin, 2016, p. 123; Kazimī, 2005, p. 59). Why did his followers not use the same methodology to prevent slavery in the view that it used to be a common war custom, contrary to the present time? In addition, certain stipulations in the Qur'an are no longer applied as conditions change, such as the distribution of charity to those "whose hearts are to be reconciled," (Q 9:60). 'Umar bin al-Khattāb nullified it because, as he said, "Allah has strengthened Islam and made us no longer need them" (Kattanī, 1996, p. 201). Further, ISIS's followers did not realize that by reopening this door, they were gambling with the lives of Muslim women around the world.

ISIS's treatment of the Yazidi people and other non-Muslims lacks any kind of justice, which is considered to be the central value of the Qur'an. According to Fakhr ad-Dīn al-Rāzī (1999), the whole Qur'an is a commentary and explanation of one verse that is "BEHOLD, God enjoins justice and the doing of good" (Q, 16: 90). Meanwhile, the justifications given by ISIS for its attack on "Our Lady of Salvation Church" in 2010 (Mockaitis, 2012) and the "beheading of 21 Copts" in Libya in 2015 (Moubayed, 2015) were that these acts were revenge for the two female Muslims who were allegedly being held in Coptic Christian monasteries in Egypt (The Telegraph, 08 May 2011). Upon these allegations, ISIS simply decided to target Copts everywhere, including the Catholic Christians of Baghdad and every single Christian in the world (Dabiq, 2015, p. 30; Lia & Aarseth, 2022), unconcerned that such acts lack reason or humanity and contradict the most basic meanings of justice. Additionally, they contradict with the way of Muslim jurists. The biography of al-Imām al-Awzā'ī documented his solid Fatāwā against Muslim governors, defending the rights of non-Muslims. One of these Fatāwā was against the 'Abbasid governor, 'Alī ibn Sāliḥ, (96-151h) and the actions he took against the Christian community in mount Lebanon. Enraged by tax impositions, a group of them led by an agitator called Theodore rebelled, plundered some villages in Al-Biqā', and killed their Muslim inhabitants, declaring an insurgence against the state ('Alī, 1983; Hitti, 2004).

Simultaneously, "the Byzantines attacked Tripoli. Given that Theodore fled to the Byzantine landing force, the naval raid was probably synchronized" (Harris, 2012, p. 39). Because of the security situation and the nature of Lebanon's open geography to the Byzantine Empire, 'Alī ibn Sāliḥ decided to drive the Christians out of Lebanon to prevent them from communicating with the Byzantines. He did not distinguish between those who had committed violence and those who had not, which contradicted the principle of individual responsibility in cases of criminal offences (Al-Kilanī, 1997). Accordingly, Al-Imām Al-Awzā'ī gave a Fatwa that denies the governor's act and wrote him a detailed letter asking, "how can all of these people be punished and driven out from their lands and properties because of some individual transgressors? Allah says: "That no bearer of burdens will bear the burden of another" (Q, 53:38). They are not slaves to be transferred from place to place" (Abū 'Ubayd, 1989, p.263). Under this Fatwa, the governor succumbed to Al-Awzā'ī's demands, and the displaced people returned to their villages. In another case, Al-Awzā'ī received letters from soldiers who operated under the command of Abū Balj, another governor, informing him about the governor's aggressive policy towards non-Muslims and questioning the legitimacy of conducting raids with such an army. Al-Awzā'ī sent him an extremely stiff letter, accusing him of violating Allah's commandments by

committing mass torture coupled with unjust killings and waste of property and money. The letter further included a final warning to inform the Caliph of what had occurred and the grave consequences of Abū Balj's criminal behaviour (Ibn Abī Hātim, 1952; Awang, 1988).

Finally, non-Muslims used to resort to Al-Awzā'ī to help them flee oppression and ease their financial burdens, such as Jizya and Kharāj. He used to contact Muslim authorities on their behalf and solve these matters (Ibn 'Asakir, 1995). These humane attitudes made Al-Awzā'ī an Imām of high status to Dhimmīs. When he died, people of all sects and religions attended his funeral; Muslims carried the shroud while Jews and Christians surrounded it (Ibn Abī Hātim, 1952). With the crusaders' conquest of Beirut in 1110, they destroyed all mosques and Zawāyā (places of worship). However, Lebanese Christians saved Al-Awzā'ī's house, where he used to give lectures (Al-Walī, 1973). Ibn Khallikān (d. 681h/1211) wrote that people in his time referred to Al-Awzā'ī's shrine, saying, "here is a man upon whom light descends." (1994). For ISIS, future generations will only read of the atrocity of their crimes and the bitter curses of their victims.

5. Conclusion

In summary, this study reviewed the life of Al-Imām Al-Awzā'ī along with his human and scientific heritage. It showed his nobility demonstrated in his brotherly feelings towards non-Muslims, whom he advocated and fought for against rulers who oppressed them. In contrast, ISIS's ruthless actions against Muslims and non-Muslims has turned the world into a battlefield. Therefore, the comparison between Al-Awzā'ī's opinions and attitudes towards non-Muslims and ISIS's treatment clearly shows that ISIS's allegations are false. The relation between ISIS and Islam can be illustrated by the statement of William Shakespeare, "the Devil can cite scripture for his purpose" (Shakespeare, 2014, p.7).

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