

The background of the cover is a photograph of a stone wall overlooking the ocean. The wall is made of dark, rectangular stones and runs along the edge of a cliff. The ocean is dark blue with white waves crashing against the base of the wall. In the foreground, there is a blurred, out-of-focus figure of a person, possibly a soldier or a warrior, wearing a dark uniform and a helmet. The lighting is dramatic, with a bright light source from the top left, creating a strong contrast between the dark foreground and the bright sky.

A TREATISE

ON

THE LEGAL STATUS OF
USING WEAPONS OF
MASS DESTRUCTION
AGAINST INFIDELS

BY

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Introduction

Praise be to Allah, and blessings and peace upon the Messenger of Allah.

To proceed: A certain learned brother -- may Allah grant him success -- someone who writes over the internet and styles himself "*Brother of the One Who Obeyed Allah,*" has asked me about the legal status of using weapons of mass destruction. The following is the text of the question along with the response.

[Question]:

Peace be with you and Allah's mercy and blessings!

Everyone knows what has been published in the media about al-Qa'ida's intention to strike America with weapons of mass destruction. Perhaps the so-called weapons of mass destruction are calamities of modern times. We have found no contemporary who has spoken about them.

What then is the legal ruling on their use by Muslims engaged in jihad? If one upholds their permissibility, are they permissible unconditionally?

Or are they permissible for compelling necessity? -- for example, if the enemy's evil can be repelled only by their means, or there is fear that the enemy will use them if the Muslims engaged in jihad do not strike them first with them. Are such weapons antithetical to humanity's purpose of making the earth prosper?

Do such weapons fall under Allah's pronouncement: "[And when he turns his back, he hastens about the earth,] to do corruption there and to destroy the tillage and the stock."

(Qur'an 2:205). Or is the verse wrongly brought to bear upon the action, like the verses that occur condemning killing and the like?

Answer

Peace be with you and Allah's mercy and blessings!

The question that you have raised, noble brother, is one that deserves a full treatise that gathers up scholarly arguments and pronouncements; a treatise in which one records positions about questions such as the abode of war, ways of repelling assailants, the jihad of defense, the meaning in law of "destroying the tillage and the stock," and other matters. Perhaps, Allah willing, I can gather together what is at hand.

Know, generous brother, that the phrase "weapons of mass destruction" is inexact. By it they mean nuclear, chemical, or biological weapons, and no others. If anyone should use any of these weapons and kill a thousand people, they would launch accusations and media wars against him, saying that he had used "internationally banned weapons." If he had used high explosive bombs weighing seven tons apiece and killed three thousand or more because of them, he would have used internationally permitted weapons.

Surely, the effect of several kilograms of TNT can be considered mass destruction if you compare it to the effect of a catapult stone of old. An RPG or mortar projectile can be considered mass destruction if you compare it to the shooting of arrows of old. Certainly, the infidels of our time have made these so-called weapons of mass destruction (deterrence weapons) only to frighten others. America's threat to Iraq to use these weapons should Iraq attack Israel is not remote from us. What, then, allows them to America and the infidels and forbids them

to Muslims? If a Muslim group should assault life or honor and could be repelled only by killing all its members, it would be permissible to kill them, as scholars have mentioned in chapters on repelling an assailant. How much more permissible is it when it comes to an infidel assailing the faith, life, honor, the intellect, and the homeland!

If the infidels can be repelled from the Muslims only by using such weapons, their use is permissible, even if you kill them without exception and destroy their tillage and stock.

All this has its foundation in the Prophet's biography, the Prophet's sayings about jihad, and the pronouncements of scholars, may Allah have mercy on them.

I shall mention the proofs of this in detail in the treatise I have mentioned, Allah willing. And Allah is the most wise!

End of the question and the response.

I have compiled this brief treatise on this question. In it I shall discuss the legal status of using these weapons in four chapters:

Chapter One: Important Preliminaries

Chapter Two: Arguments for the Permissibility of Using These Weapons

Chapter Three: Scholars' Pronouncements on This Subject

Chapter Four: Specious Arguments and Their Refutations

I ask Allah to make my compilation useful and sincerely devoted to Him. May Allah bless our Prophet Muhammad.

CHAPTER ONE IMPORTANT PRELIMINARIES

Here I shall mention three short preliminaries as the point of entry to this treatise.

First Preliminary

That Proscription Belongs to Allah Almighty, and to None Other Than He, Such as Humans

Allah has said: *“And do not say, as to what your tongues falsely describe, ‘This is lawful, and this is forbidden,’ so that you may forge against Allah falsehood; surely those who forge against Allah falsehood shall not prosper.”* (Qur’an 16:116).

Ibn Kathir says (2:591): “Allah Almighty has forbidden following the path of the polytheists, who declared lawful or unlawful merely because they described something and gave a term to it by their own judgment, such as the *bahirah*, the *sa’ibah*, the *wasilah*, the *hami* [classes of cattle liberated in honor of idols and revered by the pagan Arabs], and other things that were law for them and that they invented in their time of ignorance.”

I hold that things in the infidels’ laws today belong to the same category. For example, they call something “internationally banned,” “contrary to legitimate international authority,” “forbidden by international law,” “in violation of the Charter of Human Rights,” or “in violation of the Geneva Convention,” and so forth. The subject of this treatise belongs to the same category, insofar as they use the term, “internationally banned weapons.”

All these terms have no standing in Islamic law, because Allah Almighty has reserved judgment and legislation to Himself. As He has said: ***“Judgment belongs only to Allah; He has commanded that you shall not serve any but Him.”*** (Qur’an 12:40). Allah has said: ***“Or have they associates who have laid down for them as religion that for which Allah gave not leave?”*** (Qur’an 42:21). And Allah has said: ***“Verily, His are the creation and the command.”*** (Qur’an 7:54).

This is a matter so obvious to Muslims that it needs no demonstration.

This having been established, you will realize that their words “internationally banned weapons” have no value. In judging these weapons one looks only to the Qur’an, the Sunnah, and the statements of Muslim scholars. I would call attention here to two points.

Point One: When they say “weapons of mass destruction,” they mean nuclear, biological, and chemical weapons. They hold that using any of these weapons is a violation of international law. If one state should strike another with tons of “conventional” bombs, killing tens of thousands, this use of weapons would be allowed internationally. If another state should use a small number of so-called weapons of mass destruction, killing only a few hundred, this use of weapons would be forbidden internationally. Thus it is evident that they do not wish to protect humanity by these terms, as they assert; rather, they want to protect themselves and monopolize such weapons on the pretext of “banning them internationally.”

Point Two: Those who speak so pretentiously about combating the spread of weapons of mass destruction,

America and Britain for example, were the first to have used these weapons: Britain used chemical weapons against the Iraqis in the World War I; America used nuclear weapons against Japan in World War II; and their arsenals -- and those of the Jews -- are full of such weapons!

Second Preliminary

That the Basic Rule in Killing is To Do It in a Good Manner

An authentic tradition in the *Sahih* from Shaddad ibn Aws, a Companion of the Prophet, says: “Allah has enjoined benevolence on everything. If you kill, kill in a good manner. If you slaughter animals, slaughter in a good manner; let the slaughterer sharpen his blade and put his victim at ease.”

Al-Nawawi said in his commentary on the *Sahih* of Muslim (13/107): “The Prophet’s words, ‘Kill in a good manner,’ include every animal slaughtered, every killing in retaliation or execution, and similar things. This *hadith* is one that sums up the foundations of Islam.”

Ibn Rajab said in *Jami’ al-’Ulum wa-al-Hikam*, p. 152: “Doing good with regard to such humans and animals as may lawfully be killed is to take the life as swiftly, easily, and desirably as possible, without inflicting excessive pain. The easiest way to kill a human being is by striking the neck. Allah has said, referring to unbelievers, ‘**When you meet the unbelievers, smite their necks.**’ (Qur’an 47:4). And He has said: ‘**I shall cast into the unbelievers’ hearts terror; so smite above the necks, and smite every finger of them.**’ (Qur’an 8:12).”

It has been established that whenever the Prophet sent out a raiding party, he said to them: “**Do not mutilate, and do not kill a young child.**” Both Abu Dawud and Ibn Majah transmit a

hadith from Ibn Mas'ud, a Companion of the Prophet, that the Prophet said: **“The most restrained people in killing are the people of faith.”** Al-Bukhari transmits as part of a *hadith* from 'Abdallah ibn Yazid, a Companion of the Prophet, that the Prophet said: **“Mutilation has been forbidden.”** The traditions concerning this are many. All indicate that the basic rule is to kill in a good manner any such as may lawfully be killed and not to be excessive. However, this basic rule has exceptions. These exceptions are the subject of the third preliminary consideration.

T h i r d P r e l i m i n a r y

Distinguishing Between the Possible and the Impossible

An established rule in Islamic law is to distinguish between the possible and the impossible. This is indicated by Allah's words: **“So fear Allah as far as you are able.”** (Qur'an 64:16). This is a constant throughout the topics of Islamic law, whether in matters of worship or, in matters of interpersonal relations. A well-established tradition transmitted in the *Sahih* from Abu Hurayrah, a Companion of the Prophet, is that the Prophet said: **“If I give you a command, perform it as far as you are able.”** Al-Nawawi commented on the *hadith* as follows (*Sharh Sahih Muslim*, 9/102): “This is one of the important foundations of Islam and one of the comprehensive maxims that were given to the Prophet. Innumerable judgments fall under it. Prayer, for example, in all its kinds: if one cannot fulfill some of its principles or conditions, one fulfills the remaining ones. If one cannot wash all the limbs in the ablutions or in the full washing of the body, one washes what one can.”

Scholars have deduced from these and similar texts the rule that there is no obligation when there is inability; there is no prohibited thing when there is necessity.

The relevance of this rule here is that any obligations that fall under the category of jihad depend on ability. Any obligation that is impossible lapses, as in any other category.

1. One kills in a good manner only when one can. If those engaged in jihad cannot do so, for example when they are forced to bomb, destroy, burn, or flood, it is permissible.
2. One avoids killing women and children only when one can distinguish them. If one cannot do so, as when the infidels make a night attack or invade, they may be killed as collateral to the fighters.
3. Similarly, killing a Muslim is forbidden and not permitted; but if those engaged in jihad are forced to kill him because they cannot repel the infidels or fight them otherwise, it is permitted, as when the Muslim is being used as a living shield.

It is the same with most questions of jihad. Further clarification will be made in the following chapters, Allah willing.

C H A P T E R T W O

ARGUMENTS FOR THE PERMISSIBILITY OF USING WEAPONS OF MASS DESTRUCTION

Introduction

I mentioned in the previous section that the rule is to kill in a good manner, that killing infidels falls under this rule, but that this can take place only when one has the ability to do so. The infidels might be in such a position that they cannot be resisted or repelled from Islamic territory and Muslims be spared their violence unless they are bombed with what are called weapons of mass destruction, as people with experience in jihad affirm. If people of authority engaged in jihad determine that the evil of the infidels can be repelled only by their means, they may be used. The weapons of mass destruction will kill any of the infidels on whom they fall, regardless of whether they are fighters, women, or children. They will destroy and burn the land. The arguments for the permissibility of this in this case are many. They fall into two divisions.

First Division: Arguments relating to a particular time period and a particular enemy. For example, with regard to America at this time, the matter of striking her with these weapons is permissible without mentioning the arguments of the second section (arguments of general legitimacy). This is because Allah has said: *“And if you chastise, chastise even as you have been chastised.”* (Qur’an 16:126). Allah says: *“Whoso commits aggression against you, do you commit aggression against him like as he has committed against you.”* (Qur’an 2:194). And Allah says: *“And the recompense of evil is evil the like of it.”* (Qur’an 42:40) Anyone who considers America’s aggressions against Muslims and their lands during the past decades will conclude that striking her is permissible merely on the basis of

the rule of treating as one has been treated. No other arguments need be mentioned. Some brothers have totaled the number of Muslims killed directly or indirectly by their weapons and come up with a figure of nearly ten million. As for the lands that their bombs, explosives, and missiles have burned, only Allah can compute them. The most recent events we have witnessed are those in Afghanistan and Iraq, and this is in addition to the uprooting that their wars have caused for many Muslims. If a bomb that killed ten million of them and burned as much of their land as they have burned Muslims' land were dropped on them, it would be permissible, with no need to mention any other argument. We might need other arguments if we wanted to annihilate more than this number of them!

Second Division: General arguments for the legitimacy of this action universally if required by jihad in the way of Allah. These are texts that indicate the permissibility of using such weapons if those engaged in jihad decide that there is benefit in using them. The arguments for this are many. I shall mention three of them.

First Argument

Texts Proving the Permissibility of Attacking the Polytheists by Night, Even If Their Children Are Injured

Among them is a hadith transmitted in both *Sahihs* from al-Sa'b ibn Jaththamah, a Companion of the Prophet, who said that the Prophet was asked about some Muslims who had raided the polytheists at night, wounding some of their women and children. He replied, *"They are of them."* Also in both *Sahihs* is a hadith from Ibn 'Umar, a Companion of the Prophet, that says: *"The Prophet, may Allah bless him and grant him peace, attacked the Banu al-Mustaliq while they were off guard among their cattle. He killed the fighters and took the children captive."*

Also, Ahmad [ibn Hanbal] and Abu Dawud relate a hadith from Salamah ibn al-Akwa', who said: "*The Messenger of Allah, may Allah bless him and grant him peace, appointed Abu Bakr to be our commander, and we raided a group of polytheists. We lay wait for them at night to kill them. Our slogan that night was 'Kill! Kill!' With my own hand that night I killed seven high-ranking polytheists.*"¹

It has been established that the Prophet forbade the killing of women and children.²

However, if you put these hadiths together, it will become apparent that the prohibition is against killing them intentionally. If they are killed collaterally, as in the case of a night attack or invasion when one cannot distinguish them, there is nothing wrong with it. Jihad is not to be halted because of the presence of infidel women and children.

Al-Bayhaqi devoted a chapter of *al-Sunan al-Kubra* (9/78) to al-Sa'b's hadith, entitling it: "On Unintentionally Killing Women and Children in a Night Raid or Attack, Hadiths Transmitted Permitting Night Attacks."³ He cites this hadith and then quotes al-Shafi'i, who said, "In our view, and Allah alone knows best, the meaning of the prohibition on killing women and children is

¹ Ibn Hibban and al-Hakim considered the *hadith* sound and its chain of transmission good in the version that was transmitted by 'Ikrimah ibn 'Ammar, from Iyas ibn Salamah, from his father. This is according to the criteria laid down by Muslim.

² This prohibition has as its legal reason the fact that they do not fight. If a woman or a child fights along with the infidels, they are to be fought, as the generality of scholars hold.

³ Al-Bayhaqi cites in this chapter a number of hadiths other than the above that sanction night attacks. They include the hadith about the raid on Khaybar, the story of the killing of Ibn Abi alHuqayq, and Ka'b ibn al-Ashraf. All of them are in the *Sahih*. Al-Shafi'i also argued from them in the *Kitab al-Umm*, 4:239.

on intentionally seeking to kill them when they can be recognized and distinguished from those who have been ordered to be killed. The meaning of the Prophet's words, '*They are of them,*' is that they unite two traits: they do not have the legal factor of faith, which spares one's blood, nor do they live in an abode of faith, which prevents an attack on that abode.'⁴

Imam Ahmad [Ibn Hanbal] said, as stated in *al-Mughni* (9/230): "There is nothing wrong with night attacks. The attack on the Byzantines was nothing but a night attack. We know of no one who finds it reprehensible to attack the enemy by night."

Al-Tahawi mentions the reports relevant to the prohibition on killing women and children. Then he mentions the hadith of al-Sa'b ibn Jaththamah about the night raid and says (*Sharh Ma'ani alAthar*, 3/222): "Since the Messenger of Allah, may Allah bless him and grant him peace, had not yet forbidden them from incursions, and in them they used to injure children and women whose intentional killing is forbidden, this indicates that what he permitted in these traditions was for some other reason that the one for which he forbade what he forbade in the first traditions; that what he forbade in the first traditions was the intent to kill women and children; and that what he allowed was the intent against polytheists, even if that involved harm to others whom it is not allowed to harm intentionally. In this way, these traditions related from the prophet are sound and do not contradict each other. The Messenger of Allah commanded an attack on the enemy. In many traditions he attacked others -- these we have mentioned in the chapter on prayer before fighting. He was not prevented from this by what we know, namely that he knew that children and women would not be safe from harm. He allowed the attack because the intent of the attackers was not to harm them. This agrees with my

⁴ See al-Shafi'i, *Risalah*, p. 299.

interpretation of the hadith of al-Sa'b. Thus, he has enjoined us to fight the enemy, but he has forbidden us to kill their women and children. It is a sin for us to intend to do what he has forbidden us to do, but it is permitted for us to intend to do what has been permitted for us, even if it involves harming others whom we have been forbidden to harm and for whom we are not responsible.”

Thus the situation in this regard is that if those engaged in jihad establish that the evil of the infidels can be repelled only by attacking them at night with weapons of mass destruction, they may be used even if they annihilate all the infidels.

Second Argument

Texts Proving the Permissibility of Burning the Enemy's Lands

We read in both *Sahihs* from Ibn ‘Umar, a Companion of the Prophet: “*The Messenger of Allah, may Allah bless him and grant him peace, burned and cut down the date palms of the Banu al-Nadir.*” Concerning this, Allah said: “***Whatever palm-trees you cut down, or left standing upon their roots, that was by Allah’s leave.***” (Qur’an 59:5). In some traditions related by the two shaykhs [Muslim and al-Bukhari] one reads that the name of the land set afire was al-Buwayrah. Concerning this, the poet Hassan ibn Thabit said:

*The nobles of the Banu Lu’ayy took lightly
The great conflagration in al-Buwayrah.*

Ahmad [ibn Hanbal], Abu Dawood, and Ibn Majah transmit a hadith from Usamah ibn Zayd, a Companion of the Prophet, that the Prophet sent him to a country called Ubna (some give the name as Yubna) and said, “*Come upon them at dawn, and then*

set it afire.” There is some doubt about the chain of transmission.⁵

The first hadith is one of the basic texts indicating the permissibility of setting fires in enemy territory. Al-Bukhari devoted a chapter to it, entitled, “On Burning Houses and Palm-Trees.” Most of the other hadith scholars who included it also devoted a chapter to it.⁶ Al-Tirmidhi cites the hadith and then says: “This is a good and sound hadith. Many scholars have held this opinion and have seen nothing wrong in cutting down trees and laying waste to strongholds. On the other hand, some have judged it to be reprehensible: such was the opinion of al-Awza’i. He said that Abu Bakr al-Siddiq forbade Yazid to cut down fruit trees or devastate cultivated land and that later Muslims adhered to this prohibition.⁷ Al-Shafi’i said there was nothing wrong

⁵ Salih ibn Abi al-Akhdar, who is weak, appears in the chain of transmitters. He was followed in what he related from al-Zuhri, as one sees in al-Shafi’i, *Kitab al-Umm*, 4/252, but the following of him is weak. Sa’id ibn Mansur included the tradition in his *Sunan* on the authority of Sulayman ibn Yasar, but with a one-generation gap in the chain of transmission. Al-Bazzar includes it (7/20), but with the comment: “This hadith was transmitted by an unsound transmitter, from alZuhri, from ‘Urwah, with a gap of a generation. A sound transmitter gave it its chain of transmitters. We do not know of its being transmitted with this exact wording except from Usamah.”

⁶ Abu Dawud devoted a chapter to it entitled, “On Burning in Enemy Territory.” Al-Tirmidhi has a chapter, “On Burning and Laying Waste.” Ibn Majah’s chapter is entitled, “Setting Fires in Enemy Territory.” Al-Bayhaqi’s chapter is entitled, “On Cutting Down Trees and Burning Houses.”

⁷ Al-Shafi’i discussed al-Awza’i’s position in the *Kitab al-Umm*, 4/259: “One can assume that Abu Bakr, having heard the Prophet mention the conquest of Syria, was certain that it would take place. He therefore commanded that cultivated land should not be devastated and fruit trees not be cut down, so that they might belong to the Muslims, not because he considered it forbidden. In fact, he had been present when the Prophet set fires at al-Nadir, Khaybar, and al-Ta’if. So perhaps the scholars attributed a motive to him that was not his real motive. The proof is what Allah revealed about what the Prophet had done.” The question is also discussed by others, such as al-Tabari, al-Hafiz Ibn Hajar, Ibn al-’Arabi, and al-Shawkani.

with setting fires in enemy territory and cutting down trees and crops. Ahmad [ibn Hanbal] said that one might find oneself in situations where there was no alternative, but one should not burn wantonly. Ishaq said that setting fire was Sunnah if it would cause damage to them.”

Al-Hafiz [Ibn Hajar] commented as on the hadith of Ibn ‘Umar in *Fath al Bari*, 6/155 as follows:

“The great mass of scholars held the view that burning and devastating are permissible in enemy territory. Those who held it reprehensible were al-Awza’i, al-Layth, and Abu Thawr. They argued from Abu Bakr’s instructions to his armies not to do anything of the sort. Al-Tabari replied that the prohibition should be taken to mean intent to do so, not if such damage was done in the course of fighting, as happened when the catapult was used against al-Ta’if. He replied similarly about the prohibition on killing women and children. Most scholars held the same view, including death by drowning. Another scholar said that Abu Bakr prohibited his armies from doing these things because he knew that these countries would be conquered, so he wanted to preserve them for the Muslims. Only Allah knows which view is correct.”

Al-’Ayni said in *‘Umdat al-Qari*, 14/270:

“Ibn ‘Umar’s hadith proves that Muslims may employ any stratagems that will sap their polytheist enemy’s strength, weaken their cunning, and facilitate victory over them. They may cut down their crops, divert their water, and besiege them. Those who permitted this were the Kufans, Malik, alShafi’i, Ahmad [ibn Hanbal], Ishaq, al-Thawri, and Ibn al-Qasim. The Kufans said that their trees could be cut down, their lands devastated, and their cattle slaughtered or hamstrung if they could not be dislodged.”

This hadith is clear in its indication that setting fire to enemy territory is permissible if the fighting requires it.

Third Argument

Texts Proving the Permissibility of Striking the Enemy With Catapults and Similar Weapons That Cause General Destruction

Abu Dawud and others transmit the following hadith with a broken chain of transmission: that the Prophet, may Allah bless him and grant him peace, set up a catapult to attack the people of al-Ta'if.⁸

Al-Bayhaqi and others relate that 'Amr ibn al-'As, a Companion of the Prophet, set up a catapult to attack the people of Alexandria.

Al-Bayhaqi also relates that Yazid ibn Abi Habib reported that at the conquest of Caesaria in the days of 'Umar ibn al-Khattab they bombarded the city every day with sixty catapults.

That was how the Muslims conducted their military campaigns. Sa'id ibn Mansur related from Safwan ibn 'Amr that Junadah ibn Abi Umayyah al-Azdi, 'Abdallah ibn Qays al-Fazari, and other sea captains and their men -- it was in the time of Mu'awiyah -- would bombard the Byzantines and other enemies with fire and burn them, with each side doing it to the other. He said that Muslims never ceased doing so.

⁸ It is transmitted with an unbroken chain of transmission by al-'Uqayli, al-Bayhaqi, and others, but there are doubts about the chain. Majd-al-Din Ibn Taymiyah devoted a chapter in his *Ahkam* to, "The Permissibility of Attacking Infidels by Night and Bombarding Them With Catapults, Even If It Leads Collaterally to Killing Their Children."

Sa'id ibn Mansur also related from 'Alqamah that they attacked during the days of Mu'awiyah and used a catapult during their attack.

Scholars have agreed that it is permissible to bombard the enemy with a catapult and similar things.

As everyone knows, a catapult stone does not distinguish between women, children, and others; it destroys anything that it hits, buildings or otherwise.

This proves that the principle of destroying the infidels' lands and killing them if the jihad requires it and those in authority over the jihad decide so is legitimate; for the Muslims bombarded these countries with catapults until they were conquered. No one reports that they ceased for fear of annihilating the infidels or for fear of destroying their territory. Allah alone knows best.

CHAPTER THREE

SCHOLARS' PRONOUNCEMENTS ON THIS SUBJECT

Introduction

I shall cite in this section a number of pronouncements by scholars of various legal schools indicating the permissibility of setting fire to enemy lands and destroying their homes if the jihad requires it. But I wish to call attention to some things before citing these pronouncements.

First, the discussions by these scholars only concern the jihad of pursuit (*jihad al-talab*). It is well-known that what is established as permissible in a jihad of pursuit is established *a fortiori* as permissible in the jihad of repulsion (*jihad al-daf*); for the jihad of repulsion, according to scholars, is uncontestedly more imperative and obligatory.

Second, the arguments of scholars regardless of their legal school show clearly that defeatism has come only with modern times; Islam's religious law is free of it, and the scholars of Islam are free of it. You will find in their language no attempt to gain the affection of the infidels, harmonize the religious law of Islam with what they pretend to call "the rights of man," or talk about "the peace-loving peoples." Consider their pronouncements: "There is nothing wrong with setting fire to the fortresses of the polytheists, flooding them with water, poisoning their water, or devastating and destroying their habitations," and other expressions over which the opportunists choke.

Third, these arguments by scholars were intended to allow the weapons of mass destruction that existed in their times and that would kill the infidels with their children. Al-Suyuti, a Shafi'i,

explicitly said so: “The hadith, ‘He set up a catapult against them,’ has been transmitted by alBayhaqi. The analogy extends to the permissibility of similar weapons that cause general destruction.” Such language has been confirmed by many Shafi’i scholars, as will be documented below. As Ibn Hajar al-Haytami said, “He killed them with something whose effect was general.” He might have been speaking explicitly about our subject.

Fourth, the arguments of these scholars also prove the permissibility of so-called biological weapons. Some of them explicitly permit bombarding the infidels with snakes and scorpions and poisoning their water.

Fifth, scholars have agreed unanimously on the preceding points, although they sometimes disagree on details. If they disagree on some things, it is only in the jihad of pursuit, when there is a choice; when the necessity of jihad demands it, there ought to be no disagreement.

1. Pronouncements of the Hanafis

1. Al-Sarakhsi, citing Muhammad ibn al-Hasan (*Sharh al-Siyar al-Kabir*, 4/1467): “He said that there was nothing wrong with the Muslims’ burning the polytheists’ strongholds or flooding them with water; setting up catapults against them; cutting off their water; or putting blood, dung, or poison in their water to befoul it for them. This is because we have been commanded to subdue them and break their strength. All these things are military tactics that will cause their strength to break; they derive from obedience, not disobedience to what has been commanded. Furthermore, all these things damage the enemy, which is a cause for the acquisition of reward. Allah has said, *‘Nor gain they from any enemy, but a righteous deed is*

thereby written to their account.' (Qur'an 9:120). One abstains from none of this while there are Muslim prisoners of war or Muslims with safe-conduct, young or old, men or women, among them, even if we know about it; for there is no way to avoid striking them while still obeying the commandment to subdue the polytheists. What cannot be avoided, must be pardoned."

2. Al-Sarakhsi (*al-Mabsut*, 10/65): "There is nothing wrong with releasing water into the enemy's city, burning them with fire, or bombarding them with the catapult, even if there are children or Muslim prisoners of war or traders among them."

3. Al-Kasani (*Badayi' al-Sanayi'*, 7/101): "There is nothing wrong with burning their strongholds, flooding them with water, devastating them and destroying them on top of them, or setting up a catapult against them. Allah has said, '***They destroy their houses with their own hands, and the hands of the believers.***' (Qur'an 59:2). All of this belongs to war, with its implicit overcoming, subduing, and enraging of the enemy. The immunity of possessions derives from the immunity of their possessors, and the latter have no immunity even from death. How then could their possessions be immune?"

4. Al-'Ibadi (*al-Jawharah al-Nayyirah*, 2/258): "'If they refuse, they ask Allah Almighty to help against them,' because He is the Helper of His friends and the destroyer of His enemies. The author's words, 'They set up catapults against them,' means that they set them up against their strongholds and destroy them, as the Prophet, may Allah bless him and grant him peace, set them up against the people of al-Ta'if. The author said, 'And burned them,' because the Prophet burned al-Buwayrah, a place with date-palms near Medina. He said, 'They released water against them, cut down their trees, and ruined their crops,' because that

will break their strength and disrupt then unity. It has been reliably handed down that the Prophet ‘besieged the Banu al-Nadir and commanded that their date-palms be cut down, and he besieged the people of al-Ta’if and commanded that their vineyards be cut down.’ The author said, ‘There is nothing wrong with bombarding them even if there is a Muslim prisoner of war or trader among them,’ meaning bombarding them with arrows, stones, or catapults; for by bombarding one repels general harm by defending the Muslim community, while killing the trader and prisoner of war are individual harm.”

2. Pronouncements of the Malikis

1. Ibn al-’Arabi (*Ahkam al-Qur’an*, 4/176): “Authorities have differed about devastating and burning enemy territory and cutting down their crops. There are two opinions⁹. The first is that it is permissible. [Malik] said so in *al-Mudawwanah*. The second is that if the Muslims know that these things will be theirs, they do not do it; if they have no such hope, they do it. [Malik] said this in *al-Wadihah*, and the Shafi’is dispute with him about this. The correct opinion is the first. The Messenger of Allah, may Allah bless him and grant him peace, knew that the date-palms of the Banu al-Nadir would be his, yet he cut them down and burned them so as to damage and weaken the Banu al-Nadir and induce them to depart. Destroying some property for the sake of the rest is permitted by religious law and approved by reason.”

2. Ibn Farhun (*Tabssirat al-Hukkam*, 2/95): “The enemy is fought by every means, even by fire if there is nothing else and

⁹ The holders of both opinions agree that if the land is not going to return to the Muslims, this is permissible. Those who hold the first opinion unconditionally sanction devastating enemy territory. Those who hold the second opinion, forbid it if the territory is going to return to the Muslims.

one is afraid of him. If the enemy is not feared, there are two opinions. There is no disagreement about bombarding their ships and their strongholds by means of catapults, even if Muslims are present in them.”

3. Al-Mawwaq (*Al-Taj wa-al-Iklil*, 4/544): “‘By cutting off water and by a machine.’ Ibn al-Qasim said [this means] that there is nothing wrong with bombarding their strongholds by means of the catapult and cutting off their provisions and water, even if there are Muslims and children among them. Ashhab also said this. [Malik] said in *al-Mudawwanah* that there is nothing wrong with burning their villages and strongholds, flooding them with water, plundering them, cutting down fruit trees, and so forth, because Allah has said, **‘Neither tread they any tread enraging the unbelievers, nor gain any gain from any enemy, but a righteous deed is thereby written to their account.’** (Qur’an 9:120). The Prophet cut down and burned the date-palms of the Banu al-Nadir.”

4. Al-Kharashi (*Sharh Khalil*, 3/113): “One may fight the enemy with all means of warfare if they do not accept the summons [to Islam]. One may cut off their water so that they die of thirst; one may divert water against them so that they die of drowning, according to common usage; or they may be killed by implements, such as by striking with the sword, piercing with the spear, bombardment by catapult, or any similar implements of war.”

3. Pronouncements of the Shafi’is

1. Al-Shafi’i (*Kitab al-Umm*, 4/257): “If the enemy fortifies himself on a hill, by a stronghold, by entrenchment, or by scattering caltrops, or any kind of fortification, they may be bombarded with catapults, siege engines, fire, scorpions, snakes, and anything hateful to them. The fighters may divert water

against them to drown them or so that they become bogged down in mud. All this may be done whether or not there are children, women, and monks with them –because the abode has not become immune by profession of Islam or treaty. Similarly, there is nothing wrong with burning their fruit trees and other trees and devastating their cultivated land and any of their inanimate possessions.”

2. Al-Hafiz Ibn Hajar al-’Asqalani (*Fath al-Bari*, 6/155): “The majority of scholars have held it permissible to burn and devastate in enemy territory. Al-Awza’i, al-Layth, and Abu Thawr considered it reprehensible, arguing on the basis of Abu Bakr’s advice to his armies that they should do nothing of the sort. Al-Tabari replied that the prohibition is predicated on intention, rather than if they do so in the course of the fighting, as happened when the catapult was set up against al-Ta’if. He replied similarly with regard to the prohibition on killing women and children. Most scholars have held this opinion. Killing by drowning is a similar case. Others have said that Abu Bakr forbade his armies to do these things only because he knew that those lands would be conquered and therefore wanted to preserve them for the Muslims. Allah knows best.”

3. Ibn Hajar al-Haytami (*Tuhfat al-Muhtaj*, 9/242): “One may besiege the infidels in towns, citadels, and elsewhere; one may send water against them or cut it off from them; one may bombard them with fire and by catapult. These things may be done even if there are women and children among them, and even if we have strength to prevail against them without doing so -- so held al-Bandaniji, though al-Zarkashi appears to have said otherwise. This is because Allah has said, **‘Take them, and confine them.’** (Qur’an 9:5). Also, the Prophet confined the people of al-Ta’if and bombarded them with the catapult, as al-Bayhaqi and others have related. This is permitted even if there are one or more Muslims among them, such as merchants or

prisoners of war. They may be besieged and killed by means that have a general effect. They may be subjected to surprise attack at night, even if it is known that Muslims will be killed thereby, although one should guard against this as far as possible. According to the doctrine of the legal school, this is so that the enemy cannot force us to abandon jihad by imprisoning a Muslim among them. Yes, this is odious when one is not forced to do it, as when victory can take place by no other means. Otherwise, one should be on guard as much as possible against harming a Muslim or a protected non-Muslim (*dhimmi*). Nevertheless, no liability is incurred by the killing, because the assumption is that the eye did not know it.”

4. Al-Suyuti (*Asna al-Matalib*, 4/191) cited Zakariya al-Ansari: “They may be destroying by water or fire. Allah has said, **‘Take them, and confine them.’** (Qur’an 9:5). The Prophet besieged the people of al-Ta’if, as related by both Muslim and al-Bukhari, and according to al-Bayhaqi he set up a catapult against them. Judge by analogy to this anything that causes general destruction.¹⁰

4. Pronouncements of the Hanbalis

1. Ibn Qudamah (*al-Mughni*, 9/230): “Al-Khiraqi said, ‘When the enemy is fought, they are not burnt with fire.’ When one has power over the enemy, one may not burn him with fire. We know of no disagreement about this. Abu Bakr al-Siddiq, may Allah be pleased with him, used to order that the people who apostatized after the Prophet’s death should be fought with fire, and Khalid ibn al-Walid did this at his command. Today,

¹⁰ This expression, “Judge by analogy to this anything that causes general destruction,” applied to our subject is frequently repeated and approved of by Shafi’i jurists. Cf. *Tuhfat al-Muhtaj*, 9:242; *Mughni al-Muhtaj*, 6:31; *Futuh al-Wahhab*, 5:195; and *al-Tajrid*, 4:254.

however, .I know of no disagreement among scholars concerning this. As for bombarding them with fire before taking them: if they can be taken without fire, one may not bombard them with it, because they fall under the category of those over whom one has power. However, if one is powerless against them without fire, one may do so, according to what most scholars hold. So said al-Thawri, al-Awza'i, and al-Shafi'i. The same holds for opening the floodgates against them to drown them: if they can be overcome without it, it is not permissible, since this involves annihilating women and children, whom it is forbidden to annihilate intentionally. However, if they cannot be overcome otherwise, it is permissible. Night raids that involve this are also permissible, and one may set up a catapult against them. The plain sense of the words of Ahmad [ibn Hanbal] is that it is permissible both when there is need and when there is not.”

2. Al-Buhuti (*Kashshaf al-Qina'*, 3/49): “‘Likewise they may be bombarded,’ viz., the infidels, ‘with fire, snakes, and scorpions shot from catapults. They may be smoked out of underground dens; watercourses may be opened to drown them; and their strongholds and cultivated lands may be conquered,’ i.e., destroyed, because that comes under the same heading as night raids. ‘If one has power over them, one must not burn them.’ This is because of the hadith: *‘Allah has enjoined benevolence on everything. If you kill, kill in a good manner. If you slaughter animals, slaughter in a good manner.’* And the Prophet, may Allah bless him and grant him peace, said, *‘Only Allah, the master of fire, punishes with fire.’* (Abu Dawud transmitted the hadith.) However, Abu Bakr commanded that the people who apostatized after the Prophet’s death should be fought with fire, and Khalid ibn al-Walid did this at his command.”

3. He also said (*Sharh Muntaha al-Iradat*, 1/623): “‘Also,’ it is permitted ‘to bombard them’ viz., the infidels, ‘with a catapult.’

This is explicit, because the Prophet ‘set up a catapult against al-Ta’if.’ The report is transmitted by al-Tirmidhi with a gap in the chain of transmission. Also, ‘Amr ibn al-’As set up catapults against Alexandria. The plain sense of the words of Ahmad [ibn Hanbal] is that it is permissible both when there is need and when there is not. ‘Also’ it is permissible to bombard them ‘with fire, and’ it is permissible ‘to cut off the road,’ i.e., the highway, ‘and’ cut off ‘water’ from them, ‘or open it to drown them. And’ it is permitted ‘to destroy their cultivated land,’ even if it includes annihilating some women and children, because it falls under the same rule as night raids.”

4. Al-Rahibani (*Matalib Uli al-Nuha*, 2/516): “‘Also’ it is permitted ‘to bombard them with the catapult.’ This is explicit, ‘because the Prophet set up a catapult against al-Ta’if.’ Al-Tirmidhi transmitted the report with a gap in the chain of transmission. Also, ‘Amr ibn al-’As set up catapults against Alexandria. The plain sense of the words of Ahmad [ibn Hanbal] is that it is permissible both when there is need and when there is none. ‘Also’ they may be bombarded with ‘fire and things like scorpions,’ such as adders. ‘They may be smoked out of underground dens,’ i.e., excavations in the ground, as defined in the dictionary *al-Qamus*. ‘Also’ it is permitted ‘to cut off the road,’ i.e., their highway, ‘and’ to cut off ‘the water’ from them, ‘or open it to drown them. And’ it is permitted ‘to destroy their cultivated land,’ even if it includes annihilating some women and children unintentionally, because it falls under the same rule as night raids.”

5. Pronouncements of the Zahiris

1. Ibn Hazm (*al-Muhalla*, 5/346): “It is permitted to burn and destroy the polytheists’ trees, foods, crops, and houses. Allah has said, ‘**Whatever palm-trees you cut down, or left standing upon**

their roots, that was by Allah's leave, and that He might degrade the ungodly.' (Qur'an 59:5). Allah also has said: *'Neither tread they any tread enraging the unbelievers, nor gain any gain from any enemy, but a righteous deed is thereby written to their account.'* (Qur'an 9:120). The Messenger of Allah, may Allah bless him and grant him peace, burned the date-palms of the Banu al-Nadir which stood beside the houses of Medina, although he knew that they would become the Muslim's some day."

6. Pronouncements of Other Jurists

1. Al-San'ani (*Subul al-Salam*, 4/51): From Ibn 'Umar, a Companion of the Prophet: "*The Messenger of Allah, may Allah bless him and grant him peace, burned and cut the date-palms of the Banu al-Nadir.*" The hadith is generally accepted. It proves that it is permitted to spoil the possessions of belligerents by burning and cutting for a benefit. The following Qur'anic verse was revealed regarding this: ***Whatever palm-trees you cut down....***' (Qur'an 59:5). The polytheists said, 'You prohibit corruption in the earth. What about cutting down and burning trees?' The majority have held that it is permitted to burn and despoil in enemy territory. Al-Awza'i and Abu Thawr considered it reprehensible, arguing that Abu Bakr, the Prophet's companion, ordered his armies not to do it. The response is that he saw benefit in their remaining because he knew that they would become the Muslims', so he wanted them to remain for them; thus it depends on the perception of benefit."

2. Al-Shawkani (*Nayl al-Awtar*, 8/78): Having cited a series of hadiths, including the aforementioned hadith of Ibn 'Umar, he says: "In these hadiths there is proof that burning is permitted in enemy territory, as al-Hafiz [Ibn Hajar al-'Asqalani] said in

Fath al-Bari.” He cites approvingly the passage mentioned above, and then says, “It is obvious that what was done by Abu Bakr is not sufficient to invalidate what the Prophet is known to have done, since by agreement the words of a companion are not a conclusive argument [against the Prophet].”

3. He also said (*al-Sayl al-Jarrar*, 4/534): “Allah has commanded that the polytheists should be killed. He did not specify the manner in which it should be done, nor did he obligate us to do it in a certain manner. Therefore there is nothing to prevent their being killed by every cause of death: shooting, piercing, drowning, razing, casting from a cliff, and so forth.”¹¹

¹¹ Al-Shawkani then discusses the prohibition on burning in particular. If those engaged in jihad are not compelled to it, a group of scholars forbid it; however, if they are compelled, so that the jihad cannot take place without it, scholars are agreed that it is permissible, as mentioned above.

CHAPTER FOUR SPECIOUS ARGUMENTS AND THEIR REFUTATIONS

Introduction

Perhaps the most prominent specious arguments to be refuted in this chapter are:

1. The Ban on Killing Women and Children,
2. The Ban on Sowing Corruption in the Land,
3. That These Weapons Will Kill Some Muslims. I shall reply briefly to each of these arguments.

Specious Argument One: The Ban on Killing Women and Children

Argument: Both *Sahihs* contain an authentic tradition attributed to Ibn ‘Umar, a Companion of the Prophet: “A woman was found slain on one of the Prophet’s military expeditions. The Messenger of Allah, may Allah bless him and grant him peace, thereupon condemned the killing of women and children.” In the *Sahih* of Muslim there is an authentic tradition from Buraydah ibn al-Husayb, a companion of the Prophet, who said: “Whenever the Messenger of Allah, may Allah bless him and grant him peace, appointed a commander over an army or expedition, he urged him to fear Allah and take good care of the Muslims who were with him. Then he would say: *‘Attack in the Name of Allah and in Allah’s Path. Fight anyone who denies Allah. Attack, but do not exceed the bounds. Do not act treacherously, do not mutilate, and do not kill a child.’*” There are other texts also, and all indicate that killing women and children is prohibited. The use of such weapons will kill them.

Reply to this argument: Other authentic texts prove that it is

permitted to kill women and children in the case of a night attack or invasion. There is the tradition from Sa'b ibn Jaththamah, a Companion of the Prophet. Putting these texts together, scholars concluded that the prohibition applies to cases when women and children can be distinguished from others; when they cannot be distinguished from others, it is permitted to kill them collaterally with the others. We have cited the scholars' opinions in the two preceding chapters. They specifically allowed the killing of women and children when they cannot be distinguished. We have cited al-Shafi'i's pronouncement in *al-Risalah*, p. 299: "In our view, and Allah alone knows best, the meaning of the prohibition on killing women and children is on intentionally seeking to kill them when they can be recognized and distinguished from those who have been ordered to be killed. The meaning of the Prophet's words, '*They are of them,*' is that they unite two traits: they do not have the legal factor of faith, which spares one's blood, nor do they live in an abode of faith, which prevents an attack on that abode."¹²

They cannot be distinguished when they are hit by these weapons, and so the legal ruling is like the one that applies to night attacks, bombardment by catapult, and the like. Some scholars, cited in the preceding chapter, said that by analogy the ruling applicable to the catapult applies to anything else that causes general destruction. Al-Shafi'i, for example, said, "Judge analogously whatever belongs to the same category of causing general destruction."

¹² Cf. the scholars' arguments cited in the first section of Chapter Two and in Chapter Three. They explicitly permitted the killing of women and children in cases of a night attack, invasion, bombardment by catapult, or the like.

Specious Argument Two The Ban on Sowing Corruption in the Land

Argument: Using such weapons will sow corruption in the land and destroy the tillage and the stock, and Allah has forbidden that. Allah has said: “*Do not corruption in the land, after it has been set right.*” (Qur’an 7:56). Allah has also said: “*And when he turns his back, he hastens about the earth, to do corruption there and to destroy the tillage and the stock; and Allah loves not corruption.*” (Qur’an 2:205).

Two replies to this argument:

1. This specious argument was used first by the Jews, and Allah replied to it in the Qur’an. In his biography of the Prophet, Ibn Ishaq transmits a report from Yazid ibn Ruman (Abu Dawud transmits it with a broken chain of transmitters from ‘Abdallah ibn Abi Bakr, and it is reported by others, too) that when the Messenger of Allah attacked the Banu al-Nadir, they retreated to their fortress. The Messenger of Allah then cut down their date-palms and set fires. When they saw the date-palms being cut down and burned, they cried out: “*Muhammad, you used to prohibit corruption! How can you cut down and burn date-palms?*” Allah then revealed the verse, “*Whatever palm-trees you cut down....*” (Qur’an 59:5).¹³

2. Whenever two causes of corruption conflict, it is agreed that one averts the greater by committing the lesser. The corruption caused by the infidels’ remaining in their state of unbelief and not entering the rule of Islam is greater than the corruption caused by devastating and destroying their territory.

¹³ Cf. the scholarly arguments I have cited and the chapters that hadith scholars have devoted to the subject of the burning of the date-palms of the Banu al-Nadir in the second section of Chapter Two.

This is by common agreement of jurists, and so their pronouncements agree that if those engaged in jihad can overcome the infidels only by such means as cause the death of their women and children, they may do so, even though killing women and children is in principle forbidden. All of this applies to the jihad of pursuit. The scholars' arguments on the subject have been cited in the course of Chapter Three.

If the infidels' mere persistence in their unbelief is more of a corruption than devastation of their territory, how much more a corruption must it be if their persistence in unbelief will threaten Muslim lands, religion, honor, lives, and property?

The jihad of repelling is universally considered a greater obligation. What is permitted in the jihad of pursuit is permitted *a fortiori* in the jihad of repelling.

The Shaykh al-Islam Ibn Taymiyah said (*al-Fatawi al-Kubra*, 4/520): "Fighting to repel the enemy is the strongest means of keeping the attacker away from family and faith. It is universally considered an obligation. Nothing is a greater duty, after faith itself, than repelling an enemy attacker who sows corruption to religion and the world. No conditions limit this: one repels the enemy however one can. Our fellow scholars and others have said so explicitly."

Specious Argument Three That These Weapons Will Kill Some Muslims

Argument: There are Muslims in the lands of the infidels: traders, tourists, residents, and so forth. Using such weapons will kill them. Muslim lives are universally considered sacred. Allah has said: "*If it had not been for certain men believers and certain women believers whom you knew not, lest you*

should trample them, and there befall you guilt unwittingly on their account (that Allah may admit into His mercy whom He will), had they been separated clearly, then We would have chastised the unbelievers among them with a painful chastisement.” (Qur’an 48:25). Allah turned the Prophet away from Mecca out of concern for the Muslims who were mixed with the unbelievers.

Three replies to this argument:

1. Al-Awza’i and others deduced from this verse that one should desist from the unbelievers if there are Muslims among them out of concern for the latter in the jihad of pursuit. However, as is evident, there is nothing in this verse indicating prohibition. A number of scholars have refuted Such a deduction.

Abu Yusuf (*al-Radd ‘ala Siyar al-Awza’i*, pp. 66 ff.): “Al-Awza’i misinterpreted this verse. If bombarding and fighting the polytheists when they have Muslim children with them were forbidden, it would also be forbidden to do it to them when they have their own children and women with them; for the Messenger of Allah forbade killing women, children, and young people. Yet the Messenger of Allah besieged the people of al-Ta’if and of Khaybar, and the Banu Qurayzah and al-Nadir. According to the reports that have reached us, the Muslims used the strongest weapons they could bring against them. We have reports that the Prophet set up a catapult against the people of al-Ta’if. If the Muslims had a duty to desist from the polytheists if they had children in their midst, the Messenger of Allah would have forbidden killing them as long as they did not fight, for their settlements were not lacking in children, women, the aged and infirm, minors, prisoners, and traders. What happened at al-Ta’if has been preserved and is well known as being the practice of the Messenger of Allah. Muslims from the earliest times, pious Companions of the Prophet, continued the practice before

us with regard to the fortresses of the Persians. No reports have reached us that any of them desisted from bombarding or using any other force against a stronghold because of the presence of women and children or anyone else whose killing would be forbidden to the victors.”

Al-Shafi'i mentions al-Awza'i's position and follows it with Abu Yusuf's reply that we have just quoted. Then he says: “What al-Awza'i interpreted bears the interpretation he gave it. It is possible that he desisted from them because of previous knowledge that a group of them had voluntarily become Muslims. We prefer al-Awza'i's position if we have no compelling necessity to fight the people of the stronghold. Desisting from them if there are Muslims among them is more magnanimous and more likely to avoid harming the Muslims among them. However, if we have compelling necessity to fear for our lives if we desist from fighting them, we should fight them, but not intending to kill any Muslims. If we do harm any, we should make expiation.¹⁴ Whenever there is no such compelling necessity, desisting from fighting them is the safer course and preferable in my view.”

Al-Jassas said (*Ahkam al-Qur'an*, 3/589): “As for the argument of those who cite the verse, ***‘If it had not been for certain men believers and certain women believers...’*** (Qur'an 48:25), as ground for prohibiting bombarding the infidels because of the Muslims in their midst, the verse cannot be used to prove the point of contention. That is because the most the verse says is that Allah turned the Muslims away from them because among

¹⁴ The question of expiation (*kaffarah*) in this situation is controversial. There are three positions: (1) Both blood-money (*diyah*) and expiation (*kaffarah*) are obligatory. This is the position of the Malikis and Shafi'is. (2) Expiation is obligatory, but not blood-money. This is the position of the Hanbalis, and is the position of al-Thawri. (3) Neither expiation nor blood-money are required. This is the position of the Hanafis.

them were some Muslims that the Prophet's companions were in danger of harming if they entered Mecca with the sword. This only proves that it is *permitted* to eschew bombarding them and advancing on them. It does not prove that it is *forbidden* to advance against them with the knowledge that there are Muslims among them. It might permit desisting from them for the sake of the Muslims, and it also might permit advancing as an option. Thus it contains no proof that advancing is forbidden. Someone might say that the import of the verse implies prohibition, because it says, 'Whom you knew not, lest you should trample them, and there befall you *guilt* unwittingly on their account,' and, but for the prohibition, no *guilt* of murdering them by striking them would have befallen them. The reply is that interpreters have differed over the meaning of 'guilt (*ma'arrah*)' here. Ibn Ishaq interpreted it as meaning the fine of blood-money (*diyah*); others interpreted it as meaning expiation (*kaffarah*); others interpreted it as grief (*ghamm*) at having occasioned a Muslim's death, because a believer would be grieved at this even if he had not done it intentionally. Others interpreted it as meaning disgrace ('ayb). One interpreter is reported to have said that *ma'arrah* meant sin (*ithm*), but this is false, because Allah said that had it happened, it would have happened without our knowledge: '***Whom you knew not, lest you should trample them, and there befall you ma'arrah unwittingly on their account,***' and one incurs no sin for what one does not know and of which Allah has given no indication. For Allah says: ***There is no fault in you if you make mistakes, but only in what your hearts premeditate.***' (Qur'an 33:5). Thus we know that *ma'arrah* does not mean sin.... It's being established, as we have mentioned, that it is permitted to advance against the infidels with the knowledge that there are Muslims among them, the like must be permitted if they use Muslims as human shields. In both cases, the intent is to strike the infidels, not the Muslims. Neither blood-money nor expiation are required for any who are struck. Similarly, no blood-money or expiation are necessary for

any Muslims in an infidel stronghold who are hit by the bombardment. We have been given permission to shoot although we know that Muslims are in that direction; and so their legal status is of those whom it is allowed to kill. Nothing is required in return. The *ma'arrah* mentioned in the verse is neither blood-money nor expiation; neither the word itself nor anything else imply as much. The likeliest interpretation is the grief and distress one would feel at having occasioned the death of a believer, as usually happens to someone at whose hand this happens. The interpretation that it means disgrace is also possible, because a person usually is disgraced if someone is mistakenly killed at his hands, even if the disgrace does not take the form of legal punishment.”

2. If we accept the argument unrestrictedly, we should entirely suspend jihad; for no infidel land is devoid of Muslims. As long as jihad has been commanded (and there are definite proofs that it is obligatory), and Muslims have continuously acted on that basis, and it can be carried out only in this way, it is permitted.

Muhammad ibn al-Hasan al-Shaybani (*Sharh al-Siyar al-Kabir*, 4/1467): “One abstains from none of this while there are Muslim prisoners, Muslims with a safe-conduct, young or old, men or women among them, even if we know this; **for there is no way to guard against harming them while obeying the command to subdue the polytheists. What cannot be avoided, must be pardoned.**”

Al-'Ibadi al-Hanafi (*al-Jawharah al-Nayyirah*, 2/258): “The author’s words, ‘There is nothing wrong with bombarding them even if there is a Muslim prisoner of war or trader among them,’ refer to bombarding them with arrows, stones, or catapults; **for by bombarding one repels general harm by defending the Muslim community, while killing the trader and prisoner of**

war are individual harm.”¹⁵

Ibn Hajar al-Haytami al-Shafi’i (*Tuhfat al-Muhtaj*, 9/242): “This is permissible even if there are one or more Muslims among them, such as merchants or prisoners of war. They may be besieged and killed by means that have a general effect. They may be subjected to surprise attack at night, even if it is known that Muslims will be killed thereby, although one should guard against this as far as possible. According to the doctrine of the legal school, **this is so that the enemy cannot force us to abandon jihad by imprisoning a Muslim among them.**”

3. If we grant the argument, it would be in the jihad of pursuit. In the jihad to repel, it is unrestrictedly permitted if the enemy cannot be repelled otherwise. This ought to be a point of agreement among jurists. We have already cited the words of al-Shafi’i: “However, if we have compelling necessity to fear for our lives if we desist from fighting them, we should fight them, but not intending to kill any Muslims.” It is exactly like the question of using human shields, for scholars have agreed that infidels may be killed even if they use Muslims as shields, if there is compelling necessity.

The Shaykh al-Islam Ibn Taymiyah (*al-Fatawi*, 28/546) said: “Scholars have agreed that if the infidel army use their Muslim prisoners as human shields and the Muslims stand to be harmed if they do not fight, they fight, even if it leads to the killing of the Muslims whom they used as shields.”

Here ends the treatise.

We ask Allah who is praised to make what I have compiled of benefit. May He make my work sincere in its dedication to Him. May Allah bless our Prophet, his family, and all his companions

¹⁵ This could be another way of refuting this specious argument.