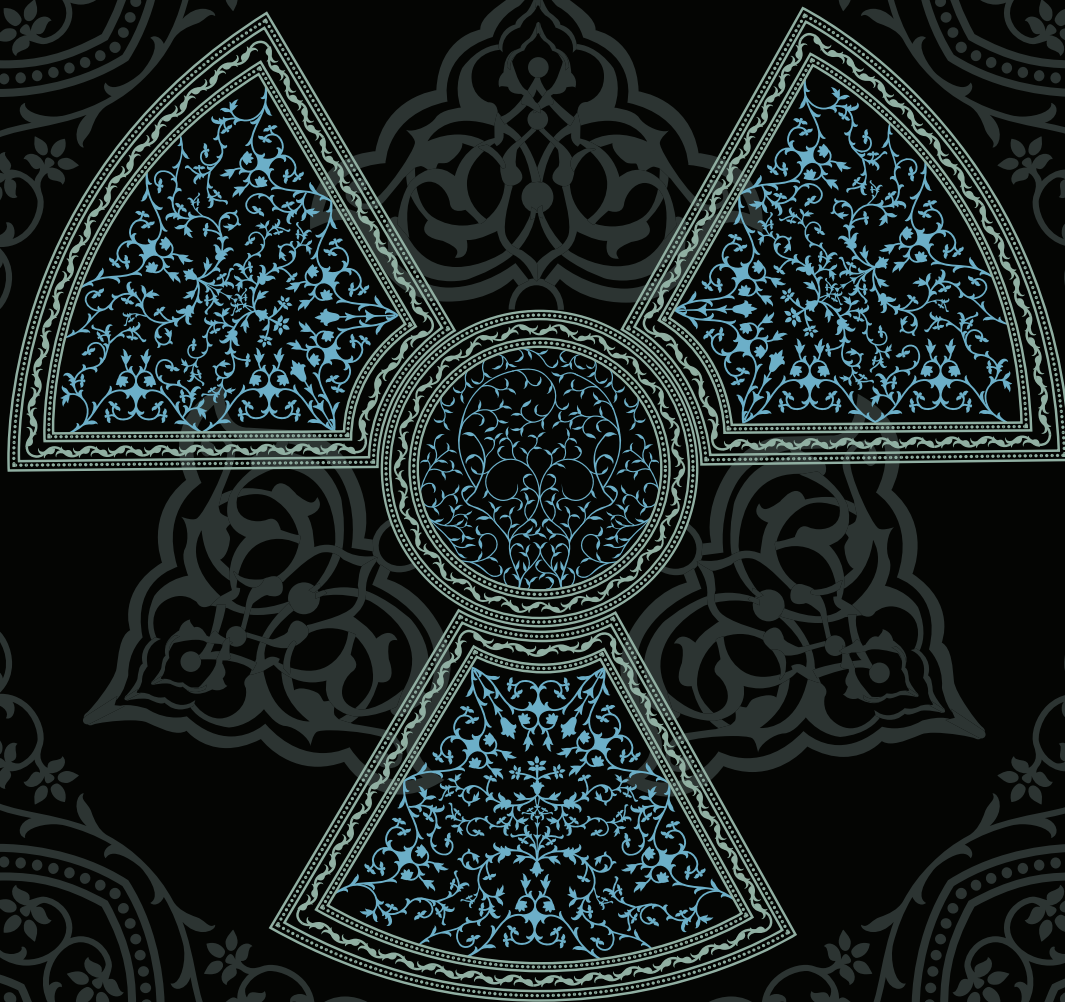


# ISLAM AND THE BOMB

## RELIGIOUS JUSTIFICATION FOR AND AGAINST NUCLEAR WEAPONS

ROLF MOWATT-LARSEN



**HARVARD Kennedy School**

**BELFER CENTER** for Science and International Affairs

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**Belfer Center for Science and International Affairs**

Harvard Kennedy School

79 JFK Street

Cambridge, MA 02138

Fax: (617) 495-8963

Email: [belfer\\_center@harvard.edu](mailto:belfer_center@harvard.edu)

Website: <http://belfercenter.org>

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*In Memoriam*

**Kenneth A. Moskow**

Died on 19 September, 2008, on the summit of  
Mount Kilimanjaro, Tanzania, Africa

A colleague and friend, a  
husband, father, son, and brother.

Ken was the CIA's point man on nuclear terrorism after 9/11. There is no one who understood the nuclear terrorism threat better than Ken. One of Harvard's own, he inspired all who knew him with his great passion, deep commitment, boundless energy, and zest for life. Like so many quiet heroes of intelligence, Ken did more to protect his country than anyone will ever know.

He is sorely missed.

## AUTHOR'S NOTE

Threats cannot be fully appreciated without an understanding of the circumstances that give rise to them. Identifying and eliminating threats starts with an insider's understanding of the enemy's plans and intentions. Chinese military philosopher Sun Tzu said it best: "Know your enemy, and know yourself, and you will fight a hundred battles without catastrophe."<sup>1</sup>

When I began this project, my goal was to develop insight into the deeper thought process behind al-Qaeda's nuclear intent. I expected to find evidence that their interest is strong, perhaps unshakable, but hinges on capability, i.e., they will use weapons of mass destruction if they are able to acquire them. Specifically, I set out to examine the impact al-Qaeda's apparent frustration in acquiring WMD has had on the group's intent; perhaps their interest has waned in recent years, or has been overtaken by global events.

I was surprised to discover that al-Qaeda's WMD ambitions are stronger than ever. This intent no longer feels theoretical, but operational. I believe al-Qaeda is laying the groundwork for a large scale attack on the United States, possibly in the next year or two. The attack may or may not involve the use of WMD, but there are signs that al-Qaeda is working on an event on a larger scale than the 9/11 attack.

When al-Qaeda number two Ayman Zawahiri published his book "*Exoneration*" in 2008, I dismissed it as the ranting of a leadership that is increasingly detached from reality. Reading various book reviews confirmed my impressions; terrorism experts dismissed "*Exoneration*" as a rather desperate, defensive reaction to a harsh critique of al-Qaeda by an imprisoned former associate.

So, I didn't bother to read the book. I only picked it up again this summer because I was searching for clues on the current status of the aborted WMD religious ruling (fatwa) that al-Qaeda issued in May 2003; I was informed that the author of that fatwa, radical Saudi cleric Nasir al Fahd, was cited in "*Exoneration*."

As I read the text closely, in the broader context of al-Qaeda's past, my concerns grew that Zawahiri has written this treatise to play a part in the ritualistic process of preparing for an impending attack. As Osama bin Laden's fatwa in 1998 foreshadowed the 9/11 attack, Ayman Zawahiri's fatwa in 2008 may have started the clock ticking for al-Qaeda's next large scale strike on America. If the pattern of al-Qaeda's modus operandi holds true, we are in the middle of an attack cycle.

Even if this theory proves to be wrong, it is better to overestimate the enemy than to underestimate him. Conventional wisdom holds that al-Qaeda is spent—that they are incapable of carrying out another 9/11. Leaving aside whether this view is correct, for which I harbor grave doubts, we will surely miss the signs of the next attack if we continue to overestimate our own successes, and dismiss what terrorists remain capable of accomplishing when they put their minds to it.

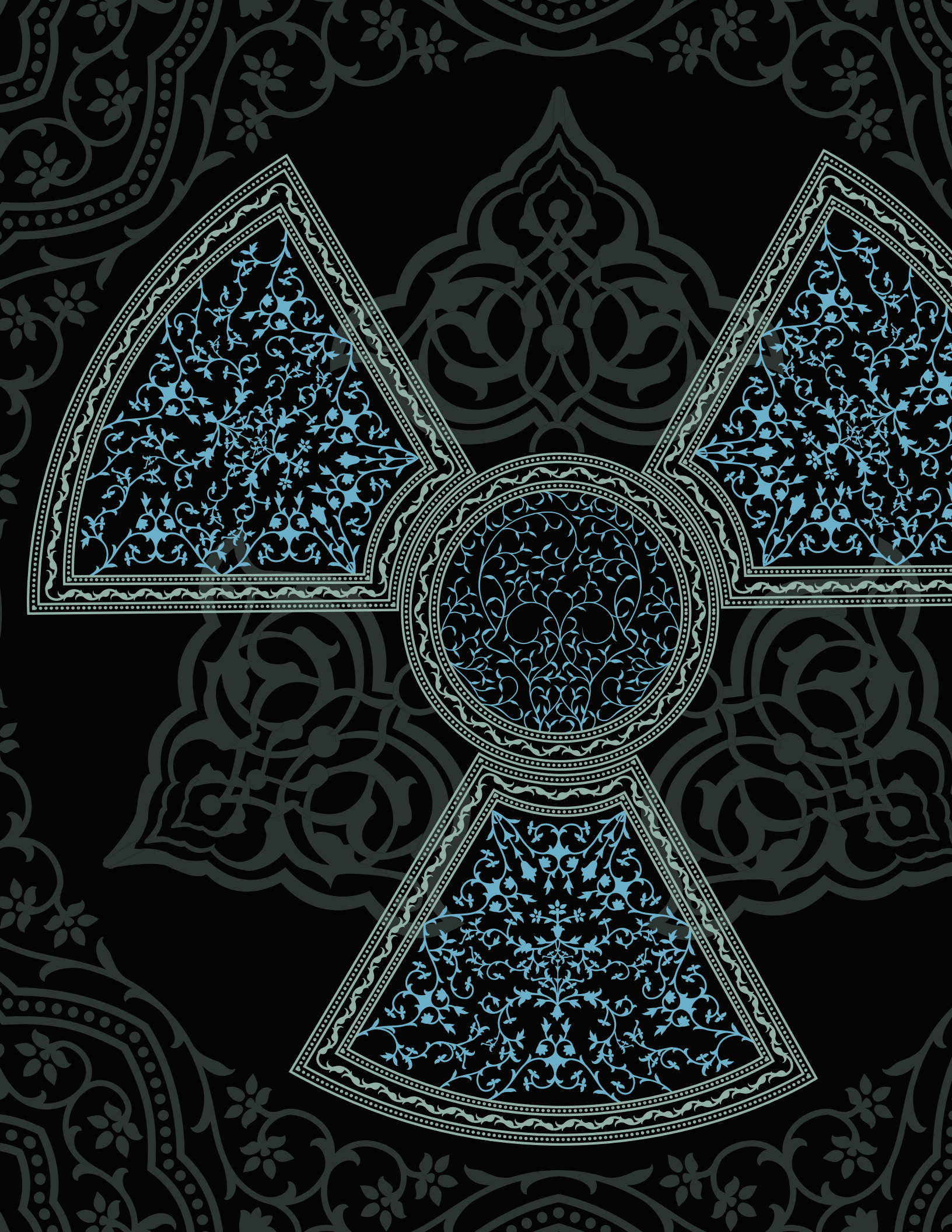
Rolf Mowatt-Larssen

January 12, 2011

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## FOREWORD

It has been almost ten years since I was first charged with assessing the threat posed by terrorist use of weapons of mass destruction (WMD). I vividly recall the day, not long after 9/11, when the CIA received unequivocal intelligence that al-Qaeda was seeking the bomb. At the time, I took solace in the assumption that it was probably too difficult for them to get their hands on a nuclear weapon. I was wrong. We can not exclude the possibility of nuclear terrorism. It is not tomorrow's threat; it is with us here today. The game changing impact of a single mushroom cloud could destabilize the world order and raise fundamental doubts about the ability of governments to continue to provide security for their people.

For years, I chased leads to al-Qaeda's efforts to acquire weapons of mass destruction (WMD), without finding the answers to fundamental questions. Yes, it is clear that al-Qaeda is seeking high-end WMD, specifically nuclear and biological weapons capable of causing mass casualties. But why has al-Qaeda set their sights so high? Isn't a "dirty bomb" or a chemical device a more probable threat, since such weapons are much easier to obtain? What is al-Qaeda's justification for using WMD—how much of a factor is religion in their thinking? What can terrorists hope to achieve by indiscriminately killing people on a mass scale?

In the absence of hard data, there are few facts and too many assumptions being made about terrorist WMD plans and intentions. As an intelligence officer at heart, I try to keep an open mind when analyzing a problem, but I must confess I find it hard to shake the intuitive logic of the troubling observation of Harvard's Graham Allison in the movie, *Countdown to Zero*: "*You can't kill four million Americans by flying airplanes into buildings.*"<sup>2</sup>

Sub-state actors are the latest players on the nuclear scene, but the aspirations of states remain of high concern as well. Over many years of tracking Iran's nuclear program, I remain uncertain about the Iranian leadership's real intentions—is their quest for nuclear energy merely a cunning cover for develop-

ing nuclear weapons? Has a decision already been made to build a bomb? If so, who has made this decision, and on what basis? How important is the religious case, for or against nuclear weapons, in an Islamic theocracy? Are conflicting statements concerning the status of nuclear weapons issued by clerics and scholars signs of dissension between religious and secular authorities in Iran?

Understanding Iran's nuclear intentions assumes the added dimension of if and when Iran gets the bomb. A nuclear-armed Iran will pose new proliferation risks surrounding the possible transfer of nuclear capability and know-how from state to sub-state actors, such as Hezbollah and Hamas. Scant attention has been paid to the nuclear intent of surrogate groups and their collusion with Iranian insiders with access to nuclear facilities.

Considering the daunting challenge of divining what lies in someone's mind, my modest objective is to present a framework for analyzing key factors that impact on the religious justification under Islam for and against nuclear weapons. Al-Qaeda (Sunni extremism) and Iran (Shia theocracy) are offered as two case studies in this regard, because their potential acquisition of nuclear weapons is of greatest contemporary concern. Presenting them side by side will invite a comparison of the respective arguments of a state and sub-state actor, in both houses of Islam. However, their inclusion together in this project should not be construed as an effort to compare or equate al-Qaeda and Iran with one another, either their motivations, or in moral terms.

The sections of this report represent a compilation of the various arguments that are being made in the Islamic community today. I have endeavored to faithfully represent the views of key voices in the Muslim world, scholars, and extremists, whether they are for or against nuclear weapons—and to put their testimony on the record. For this reason, the paper contains a large number of quotes and excerpts of key lines of reasoning for and against the bomb.

I was surprised to learn that there is a lack of basic research on the issues that sit at the crossroads of nuclear proliferation, terrorism and religion. Perhaps this is due to the fact there are many experts in each of these domains, but very few experts in all three. Moreover, a nuclear attack has not happened in over half a century, perhaps reinforcing an unfortunate misperception that the dangerous interplay between states and sub-state actors in the nuclear arena is still a theoretical problem.

This report is written for expert and layperson alike. It is meant to stimulate thought, provoke questions, and most importantly, broaden public awareness concerning the threat posed

by nuclear weapons. After years of working on the problem, I have come to believe that eliminating the appeal of possessing nuclear weapons must come from people of all backgrounds and beliefs who are willing to speak out against the corrosive moral effects of these weapons of mass destruction. There is a growing global consciousness that the use of nuclear weapons can never be justified for any reason. We must nurture this feeling; rogue states and terrorists can ignore that reality, but they are not going to change it.

Despite the intrinsically depressing nature of nuclear catastrophe, I remain an inveterate optimist. We can prevent WMD terrorism and eliminate the threat. From this project, I have learned that in the Muslim world, the debate over nuclear weapons is being held in earnest, fed by a yearning for social justice and human rights, and based on sincere religious convictions. The West must fearlessly join the discourse by showcasing its values and beliefs, because we are all in this together. Truth, itself, is at stake, and in the end, it will prevail.

“There can be no peace among nations without peace among religions”

Hans Kung<sup>3</sup>



## NUCLEAR WEAPONS IN THE 21<sup>ST</sup> CENTURY LIVING IN AN AGE OF THE SUPER-ENABLED INDIVIDUAL

“To me, it was a weapon of war, and artillery weapon. We faced half a million casualties trying to take Japan by land. It was either that or the atom bomb, I didn’t hesitate a minute, and I never lost any sleep over it since.”<sup>4</sup>

US President Harry S. Truman

It was probably not his intention in making this remark, but President Truman offered a two part justification for using a nuclear weapon to destroy two Japanese cities. First, he judged that a nuclear weapon is no different than any other weapon of war—he characterized it as an “artillery weapon.” Second, he decided that its use was necessary to win a war that had cost millions of people their lives and had wreaked utter devastation upon the world.

The consequences of unleashing the nuclear genie are still playing out. A costly and dangerous nuclear arms race that dominated events in the 20<sup>th</sup> century ended in a stalemate of mutually assured destruction between states—so called “rational actors”—who had come to realize that these weapons simply cannot be used. In the 21<sup>st</sup> century, we no longer live in the twisted comfort of deterrence and mutually assured destruction. Today, terrorists are actively seeking to buy, steal or build a single bomb that could destroy any city—and we must not exclude the possibility that one day, they may succeed.

“Just as we stood for freedom in the 20<sup>th</sup> century, we must stand together for the right of people everywhere to live free from fear in the 21<sup>st</sup> century. And as nuclear power—as a nuclear power, as the only nuclear power to have used a nuclear weapon, the United States has a moral responsibility to act. We cannot succeed in this endeavor alone, but we can lead it, we can start it.

So today, I state clearly and with conviction America’s commitment to seek the peace and security of a world without nuclear weapons.

I'm not naive. This goal will not be reached quickly—perhaps not in my lifetime. It will take patience and persistence. But now we, too, must ignore the voices who tell us that the world cannot change. We have to insist, “Yes, we can.”<sup>5</sup>

President Barack Obama, Prague, April, 2009

The world has turned full circle. Paradoxically, in this age of the super enabled individual, the world may confront a greater likelihood of nuclear catastrophe than during the Cold War. In addition to the destabilizing prospect of new states that are secretly developing nuclear weapons, a growing number of states are developing nuclear technologies and materials for weapons or peaceful purposes.<sup>6</sup> This global expansion of nuclear-related activity is spawning new and unpredictable pathways to a bomb. Taking into account the increasing probability of dynamic, opportunistic interactions between states and sub-state actors, adequate foresight and early warning of nuclear threats can not be assured. Indeed, it may be inherently impossible to assess and mitigate the nuclear threats of the 21<sup>st</sup> century with the same doctrine and approaches that served the world so well in the latter half of the 20<sup>th</sup> century.

In this second nuclear age, nuclear actors straddle a single spectrum of risks, consisting of states possessing the most advanced nuclear arsenals on one end, to terrorist groups wielding a single crude improvised nuclear device on the other end. The complex transactions between states, states and groups, and groups with other groups must be identified and interpreted in order to identify any clandestine nuclear weapons-related activity that is taking place.

Nuclear threats will emanate from non obvious relationships and non-linear combinations of actors. For example, a prospective nuclear weapons-armed Iran—with the witting or unwitting involvement of the government—could become a source of proliferation to surrogate groups such as Hezbollah or Hamas. A future nuclear crisis between Iran and Israel could be precipitated by the deliberate transfer or accidental loss of control of a single Iranian bomb into the arms of a terrorist group.

Future rogue nuclear supplier networks, similar to the global network run by the father of the Pakistan nuclear weapons program, AQ Khan, might serve as a source of nuclear capabilities to a broader range of customers, including terrorist groups. In the aftermath of North Korea's clandestine effort to provide a bomb-producing nuclear facility to Syria, for example, the world should question whether there are any limits in North Korean leader Kim Jong-Il's willingness to provide nuclear weapons capabilities to other states, and even to terrorist groups.

## **THE ALLURE OF NUCLEAR WEAPONS**

The stability of nuclear stalemate is predicated on an assumption that no rational actor will use nuclear weapons against an adversary who has the capacity to retaliate in kind. The resulting doctrine of “mutually assured destruction” might seem like madness, but it has lowered the risks of making serious miscalculations that could unleash a nuclear holocaust. States are not deterred from using nuclear weapons because of moral or ethical concerns; decision-makers make cold, hard calculations of self interest and have concluded that they cannot achieve their goals by using nuclear arsenals.

The nuclear play book needs to be re-written to take into account the emerging features of nuclear threats resulting from such broader trends as globalization, extremism, and energy demands. Calculations based on national interest will no longer constitute a sufficient basis for sustaining a viable nuclear order. Some measure of moral and ethical standards must enter into the equation, in order for a consensus to emerge among nations that must increasingly work together to mitigate nuclear-related risks.

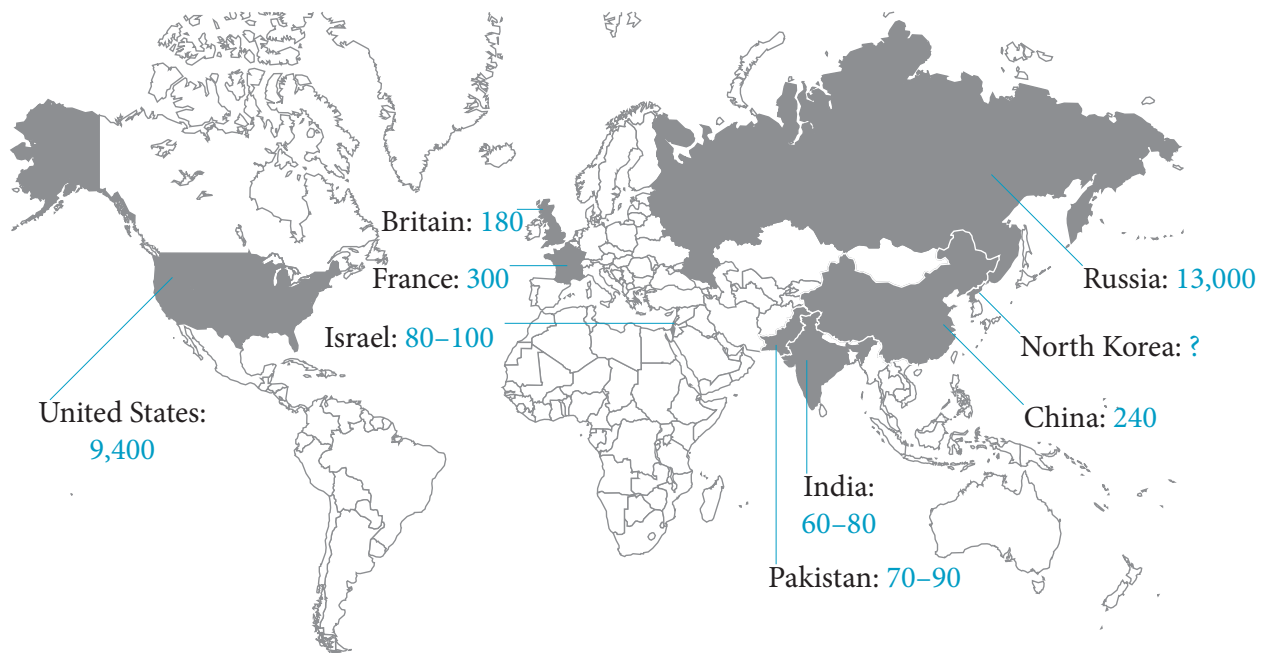
In a world brimming with the stuff of a nuclear Armageddon, can we assign different moral standards in assessing the behavior of states and sub-state actors? What does nuclear accountability and responsibility mean in the event a state were to wittingly or unwittingly provide nuclear capabilities to terrorists? Does deterrence have any meaning in influencing the nuclear ambitions of a terrorist group?

If, as President Truman suggested, the bomb is just another weapon, and its use is deemed to be the best means of achieving victory, then however unpalatable as it may sound, we must be prepared for others to use the same reasoning against us. Al-Qaeda has offered a detailed argument that the use of nuclear weapons is justifiable to win a war they declared with the “Pearl Harbor” attack on 9/11.<sup>7</sup> They have challenged the world to refute them, on moral and ethical terms. Based on their statements, the al-Qaeda core is hoping they will not be joined on this field of battle, because they are convinced their enemies are reluctant to defend their moral position.

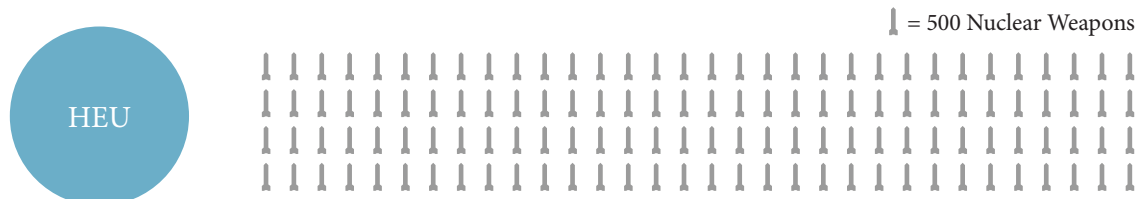
## **RELIGION, IDEOLOGY AND SECULARITY**

“There has always been a sensitivity that we do not want to do or say anything that will allow our efforts to be mischaracterized credibly as a war against Islam.... People in the administration should be making a clear distinction between Islam, which is a religion and which is not our enemy, and extremist Islam, which is a political ideology and our enemy...The fact is our enemies fly the banner of

Estimated Global Nuclear Weapons Inventory in 2009: ~23,360<sup>8</sup>



In mid-2009, the global stockpile of highly enriched uranium (HEU) was about 1,600,000 kg, enough for more than 60,000 nuclear weapons.<sup>9</sup>



In 2009, the global stockpile of separated plutonium (Pu) was about 500,000 kg. Since the critical mass of plutonium is about one third that of HEU, however, the global stockpile of plutonium also is sufficient for more than 60,000 first-generation nuclear weapons.<sup>10</sup>



Only 25 kg of HEU or 8 kg of Pu are required to create one crude nuclear bomb.<sup>11</sup>



There are currently 1,131 nuclear facilities worldwide under IAEA Safeguards.<sup>12</sup>

Worldwide there are hundreds of locations holding nuclear weapons or weapons-usable material,<sup>13</sup> but due to the secret nature of these facilities the exact number is unknown.

Islam. They claim to represent the religion. There are other people who say they don't. What we need is to be clear about this; our enemy has an extremist political ideology. They describe the ideology as the true religion. And there is no way we can deal with this phenomenon without confronting the fact that the enemy political ideology is rooted in religion.”<sup>14</sup>

Douglas Feith

Assumptions concerning the intent to use weapons of mass destruction are often based on superficial impressions of terrorists and their cause. There is a popular notion that terrorists enjoy killing for killing's sake, that they are bloodthirsty and hateful. While at some level this may be true, making such assumptions tends to hype the threat and distort a more reliable, unemotional analysis of the problem. To be sure, nothing is scarier than the image of a mad terrorist wielding a nuke, ready to blow himself up in the name of God. Such an image, however, is a fictional embodiment of the threat. A dispassionate distinction must be drawn between the theological, ideological and secular motivations of terrorists to use WMD, and their relationship to mainstream religious views and expressions.

At the outset of such an undertaking, the extreme interpretation of Islam must be recognized as being at sharp variance from broadly accepted tenets of the Muslim faith. As Islamic religious scholar Yusuf Qaradawi noted, equating Islam with terrorism is analogous to describing the Oklahoma City bombing as being the handiwork of Christianity. Bomber Timothy McVeigh's motivation to kill hundreds of people in the name of God should not be identified with Christianity, as a religion, any more than al-Qaeda's 9/11 attack should be attributed to Islam.<sup>15</sup>

Falling prey to stereotypes about religion also trivializes militant Islam's frightening sense of purpose, which might represent the most profound danger it poses to the world. For militant Islamists, the problem is defined by religion, the conflict flows from religion, and the solution is derived from religion. In their view, the root of the problem is essentially mankind's alienation from God, the need to be reconciled with God, and Islam's role in bringing mankind back to God's good graces.

According to this religious-based analysis of history, the pervasive influence of secularity—the separation of church and state—has shrouded the world in moral and ethical darkness. The “*people of the book*” (Jews and Christians) have replaced God with mammon. Christianity has committed the unforgivable sin of polytheism by elevating Jesus Christ to the status of God (through the doctrine of Trinity). Islam itself must be revitalized; so-called “apostate” (secular) Muslim states have failed to properly implement Islamic law and tradition, depriving people of the freedom to practice the faith as God would have them practice it.

The resulting plan of action gives rise to a liberation ideology, of sorts. Individual Muslims must return to the original teachings of the Quran. Muslim lands must be restored from foreign domination. Apostate states must be replaced by implementing Islamic law and tradition. Finally, people must be liberated in all corners of the earth so they are free to embrace Islam. A vanguard of true believers, instructed in a deeper understanding of the problem, its causes, and solution, must lead the call to action. Ironically, like their arch enemy, atheist communism, militant extremists recognize that many people may not perceive what is in their best interests until they are suitably enlightened.

The ideology of militant Islamists is extreme, but it is not irrational; it is a well-reasoned, well-developed *weltanschauung*, or world view. Thus, the rational actor model can be applied to militant Islamists, who possess an internally consistent belief system. The motivation to possess and use WMD flows logically from an extreme, but very rational set of concrete goals that are based on a certain interpretation of history and religion.

The basic factors affecting a terrorist group's risk-gain assessment for using a nuclear weapon can be arrayed in a chart consisting of five broad levels of interest, motivation and justification for WMD.

Five Stages of Justification	Risks, Benefits, and Constraints
As military weapon—wield the effects of a super bomb	Is there such a limit in the means of terrorist violence that their constituency will support?
Achieve state status in power and prestige—fulfill aspirations of a state or group	Does holding state-like powers create new responsibilities and constraints on behavior?
To control events, rectify perceived grievances, and change the course of history	Would a nuclear attack work weaken one's enemies in the long run, or escalate the stakes and make them stronger?
Acquisition of nuclear weapons is a religious duty, to achieve specific ends	Can nuclear weapons be justified in the name of a religion – in the name of God? Is the argument accepted as legitimate?
Participate in religious prophecy by dispensing judgment; bring about “end of times”	Once the nuclear Pandora's box is opened, are subsequent developments predictably advantageous, or is “faith” in “God's Will” so strong it does not matter?

In applying this hierarchy of motivations to a group like al-Qaeda, it should be noted that terrorists have drawn a distinction between possession and use, at least theoretically. In 1998, for instance, Osama bin Laden said it was his Islamic duty to *possess* WMD as a means of *deterrence*. It has been assumed that if he wants such weapons, it is to use them; he has never explicitly stated that he will use them; such is assumed. Groups with a global aperture have a pronounced tendency to undertake a deliberate decision-making process to set precedent-setting events in motion, and as a result, they carefully study the consequences that their actions are likely to have on the world.

## APOCALYPTIC JIHAD

“It would be nice to think that, in the war against terror, our side, too, speaks of deep philosophical ideas—it would be nice to think that someone is arguing with the terrorists and with the readers of Sayyid Qutb. But here I have my worries. The followers of Qutb speak, in their wild fashion, of enormous human problems, and they urge one another to death and to murder. But the enemies of these people speak of what? The political leaders speak of United Nations resolutions, of unilateralism, of multilateralism, of weapons inspectors, of coercion and non-coercion. This is no answer to the terrorists. The terrorists speak insanely of deep things. The antiterrorists had better speak sanely of equally deep things. Presidents will not do this. Presidents will dispatch armies, or decline to dispatch armies, for better and for worse.”<sup>16</sup>

Paul Berman

Sayyid Qutb, a devout Muslim who memorized the Quran by the time he was ten, was one of the deepest thinkers of all Sunni extremist philosophers. His ideas had a profound impact on Osama bin Laden and Ayman Zawahiri, and heavily influenced the theological and ideological underpinnings of the al-Qaeda movement.

Qutb’s provocative historical analysis, based entirely on his reading of the Quran, concluded that man can be liberated from oppression and social injustice only through Islam; and that man can achieve his full potential only through submission to God through Islam. Qutb exhorted Muslims to jihad, to serve God through action, to fix what is wrong with the world. The Egyptian radical defined the higher purpose of militant Islam: “This religion is not merely a declaration of the freedom of Arabs, nor is its message confined to Arabs. It addresses itself to the whole of mankind, and its sphere of work is the whole world.”<sup>17</sup>

In an effort to determine the limits terrorists are willing to go, to achieve their aims, it is

worth pondering what Qutb, if he lived today, would make of al-Qaeda's global jihad. In his prolific writings, Qutb described a utopian world that had resolved the contradictions of human nature and modern life, had harmonized the secular with the sacred, and existed to exalt God. To fulfill his vision, he advocated terrorist violence to overthrow the morally bankrupt global status quo. Would the "martyred" activist approve of nuclear holocaust as an instrument of fulfilling his vision of man's higher purpose?

In the shadow of Qutb's thoughts, the religious basis for using weapons of mass destruction resonates deeply with some rejectionist Islamists, probably because these weapons offer the prospect of scaling otherwise insurmountable summits. For apocalyptic thinkers such as Osama bin Laden, Ayman Zawahiri and Aum Shinryko cult leader Shogo Asahara, nuclear weapons represent the enabling element in waging a struggle in which ordinary rules of conduct do not apply. In such terms the religious pre-justification of WMD is required as part of a ritualistic process for introducing new rules into the conflict. Apocalyptic jihadists hope a nuclear attack would be seen by their constituency as a clear sign that "God is on our side" — victory is at hand.

When nuclear weapons are sought in the name of a higher purpose, it is no longer possible to mask the intention to obtain and use them, even for the sake of preserving secrecy and an element of surprise for an attack. Shogo Asahara announced his intentions in advance by prophesying that nuclear weapons would spark an Armageddon that would destroy a corrupt world order. He settled on using chemical weapons only after all efforts to buy or build a nuclear bomb had failed.<sup>18</sup> The Japanese cult leader explained why using nuclear weapons would be morally cleansing: "...if the persons killed are scoundrels, or enmeshed in social systems so evil that their further existence in this life will result in even greater Karmic debt, then those who kill are doing their victims a kind of favor by enabling them to die early. Their early deaths would be a kind of mercy killing, allowing their souls to move to a higher level than they otherwise would have been allowed to achieve."<sup>19</sup>

For Osama bin Laden, one bomb would represent a symbolic and credible fulfillment of his promise to destroy the US economy. To that end, the al-Qaeda leader considered it a moral duty to pre-justify a mass casualty attack that will kill men, women and children indiscriminately. Al-Qaeda's serial warnings of impending attacks arise from the group's obligation to give ample opportunity for the target audience to convert to Islam. The al-Qaeda leader makes this point clear in his ominous warning to all Americans in 2007. "I invite you to embrace Islam, for the greatest mistake one can make in this world and one which is uncorrectable is to die without surrendering to Allah."<sup>20</sup>

## THE COURT OF PUBLIC OPINION

“Conventional wisdom holds that organizations such as al-Qaeda can not be deterred because they are not focused on self preservation, do not value human life as most state leadership do, do not have territory over whose sovereignty they wish to preside, and live as parasites on relatively innocent bodies of host communities that cannot be justified to be targeted for massive reprisal. However, this assumption should be questioned logically and empirically....Terrorist organizations, including al-Qaeda and Hezbollah evince a strong commitment to justice as they perceive it. Wanting others to see the justice of their cause requires some constraint on behavior so as to win sympathy with their constituencies and with those in the international community that they are trying to influence.”<sup>21</sup>

Andrea Phlebani

Extreme religious views deeply influence nuclear intent, but terrorists also have pragmatic goals to consider. Like states, Islamist extremists seek sovereignty, status, and prestige. They seek to deter their enemies from attacking them. They aspire to hold territory, and to govern.

Ayman Zawahiri has repeatedly stressed that in order for al-Qaeda to flourish, the movement must develop a vanguard of believers and build popular support for its ideology.<sup>22</sup> Presumably, such considerations also introduce constraints in employing weapons that may well change the game in ways that are inimical to their objectives.

Yet, the leadership’s unwavering commitment to WMD suggests that they have taken all these considerations into account, and have determined that the benefits of WMD outweigh the risks. The evidence of al-Qaeda’s efforts to acquire WMD for over a decade overwhelmingly suggests that the senior leadership’s intent is focused on developing high end WMD, not chemical weapons or “dirty bombs” that lack the game changing qualities of nuclear or biological weapons. In this context, a possible explanation of Zawahiri’s puzzling cancellation of a small scale chemical attack on the New York City subway in 2003 is that it simply wasn’t worth doing.<sup>23</sup>

Or, perhaps Zawahiri recalled the impatience of Shogo Asahara, who failed to fulfill his prophecy to bring down the Japanese government by launching a hastily planned chemical attack on the Tokyo subway.<sup>24</sup> Al-Qaeda is not likely to make the same mistake. Pakistani journalist Hamid Mir hinted as much when he noted that whatever one thinks of al-Qaeda, “they always do what they say they are going to do”.<sup>25</sup> Mir, who has interviewed Osama bin Laden and Zawahiri, added that the al-Qaeda leader’s favorite Quranic verse is: “I will be patient until patience is outworn by patience.”<sup>26</sup>

Yet, it is quite conceivable that al-Qaeda is seriously underestimating the likelihood of negative popular reaction to a WMD attack. The group's leadership has made such mistakes in the past. For instance, al-Qaeda leader in Iraq, Abu Musab al-Zarqawi, launched a campaign to incite civil war between Sunni and Shia in Iraq that was so excessively violent that it turned the Iraqi population against al-Qaeda. After Zarqawi was killed by US forces in 2006, the senseless violence tapered off, but Al-Qaeda never recovered its former position.<sup>27</sup>

Ayman Zawahiri's efforts to convince al-Zarqawi that violence had become counter-productive might have been drawn from his own experiences in Egypt, where he suffered a similar dissociation from the people's mood. As the author Lawrence Wright explained:

The Luxor Massacre took place on 17 November 1997 in Luxor, Egypt. Ayman Zawahiri, Mustafa Hamza, the new emir of the Islamic Group, and Rifai Ahmed Taha, the military leader of the Islamic Group, all hoped a massive terror attack would devastate the Egyptian economy and provoke the government into repression that would kill the initiative and strengthen support for anti-government terrorism.

The massacre, however, marked a decisive drop in Islamic terrorists' fortunes in Egypt by turning Egyptian public opinion overwhelmingly against them. Organizers and supporters of the attack reacted with denial. The day after the attack, Rifai Taha claimed the attackers intended only to take the tourists hostage, despite the evidence of the immediate and systematic nature of the slaughter. Others denied Islamist involvement completely. Ayman Zawahiri maintained the Egyptian police had done it.<sup>28</sup>

Zawahiri's misreading of the public's appetite for violence played a significant role in the diminution of his group's influence in Egypt. Today, the Egyptian Muslim Brotherhood is vying for power through the electoral process. Not surprisingly, Zawahiri has denounced this decision in the course of an acrimonious series of public exchanges with his old colleagues.<sup>29</sup> For the old Egyptian terrorist leader, the new position adopted by the Muslim Brotherhood, explicit or implied, is tantamount to a rejection of al-Qaeda's strategy and tactics; as such, it represents a potential foreshadowing of al-Qaeda's waning influence globally.

Such concerns about their future as a global movement may help explain why the al-Qaeda core leadership seems more determined than ever to ratchet up the level of violence as far as it will go. Al-Qaeda's core statements and actions that endorse ever increasing levels of violence do not appear to be resonating with the Muslim street. Given such a state of mind, free of the distractions of running a large organization, what kind of decisions are two fading, self-radicalized, and isolated figures likely to make?

A vertical decorative border on the left side of the page, featuring intricate Islamic geometric and floral patterns in shades of blue, green, and gold on a dark background.

## THE QURAN AND WEAPONS OF MASS DESTRUCTION

*Appendix A provides background information on the Quran and Islamic tradition from the Oxford Dictionary of Islam.*

Although there were no nuclear weapons in the 7<sup>th</sup> century, when the Prophet Muhammad received the Quran (“recitation”), it provided an absolute standard for Muslims to judge the morality of these modern weapons as a potential means of waging war, and by extension, their use as an instrument of terrorist violence.

Proponents and opponents alike largely agree on the fundamental concepts and relevant legal precedents for weighing the permissibility of possessing and using WMD. Both sides tend to cite the same references in the Quran, and associated hadiths, often drawing opposite conclusions in their interpretation of their meaning. There can be no contradiction in God, so the problem must lie in the selective use of verses to argue a case, specifically when the text is taken out of context and loses its true meaning.

For example, in the second surah, or chapter, of the Quran, two verses appear to stand in marked contrast to one another. In the first, God encourages the Muslims to “*fight them until there is no persecution and the religion is Allah’s*.”<sup>30</sup> In the other, God tells the Prophet Muhammad not to impose Islam by force, because “*there is no compulsion in religion*.” Various hadiths and legal rulings handed down over centuries have clarified the meaning of such verses in ways that reflect the internal consistency of the Quran.

Like the Holy Bible, and Torah, the Quran must be read and interpreted holistically, for its Truth to be revealed.

## NONCOMBATANT IMMUNITY

In Islamic law, the legitimacy of a target in war is typically determined by the capacity of the target country or individual to fight against Muslims. This includes enemy soldiers and leaders, as well as advisers to the military and the enemy leadership, even civilian advisers. The vast majority of civilians, however, are excluded from target lists because they are not actively engaged in battle, especially women, children and the elderly, whose capacity to fight is considered minimal in most cases. On the basis of the Quran and the Sunnah (Way of the Prophet), rules have been enunciated to forbid Muslims to kill noncombatants.<sup>31</sup> For example, the Quran has, at minimum, acknowledged the notion of limits during the conduct of conflict.

“Fight in the cause of Allah those who fight you, but do not transgress limits; for Allah loveth not transgressors.” (2:190)

In addition, the Quran makes clear that believers are not ever to be purposefully killed.

“If a man kills a believer intentionally, his recompense is Hell, to abide therein (For ever): And the wrath and the curse of Allah are upon him, and a dreadful penalty is prepared for him.” (4:93)

Military engagements must distinguish between the innocent and the guilty, while applying a minimum of force to achieve the objective.<sup>32</sup> Moreover, the hadiths note that the Prophet relayed specific instructions on sparing the lives of noncombatants.

‘Do not kill a decrepit old man, or a young infant, or a woman ...’<sup>33</sup>

Eminent jurist Muhammad ibn al-Hasan al-Shaybani in his *Kitab al-Siyar* (book of conduct), drawing on a number of hadith, wrote that the Prophet forbade treachery, mutilation, and the killing of women and children.

‘He (of the enemy) who has reached puberty should be killed, but he who has not should be spared ... You may kill the adults of the unbelievers, but spare the minors—the youth ... The Apostle of God prohibited the killing of women ... nor should you mutilate or kill children, women, or old men.’<sup>34</sup>

The first Caliph (successor to the Prophet Muhammad), Abu Bakr, referenced this principle in the delivery of a speech to the Muslim armies assembled for the invasion of Syria in 632.

“Do not commit treachery or deviate from the right path. You must not mutilate dead bodies. Neither kill a child, nor a woman, nor an aged man. Bring no harm to the trees, nor burn them with fire ... Slay not any of the enemy’s flock, save for food. You are likely to pass by people who have devoted their lives to monastic services, leave them alone.”<sup>35</sup>

In the following centuries, some interpretations drew distinctions between the innocent and the guilty through the lens of those who were polytheists and those who were not, and, for example, interpreting the application of the Prophet’s prohibition on the killing of women and children as one only applying to Jews and Christians.<sup>36</sup> As the tradition developed, Muslim scholars had occasion to confront a variety of questions raised by battlefield experience. They knew, for example, about “collateral damage,” about killings covered by the rule of double effect and other categories familiar from the just war tradition. Their treatments of these suggest that the best way to understand the prophetic sayings is as follows: No one fighting in an Islamic cause should ever directly and intentionally target noncombatants.<sup>37</sup> The earlier reports of the Prophet and Islamic traditions, however, form the foundation for Islamic reasoning about particular issues regarding appropriate conduct in times of conflict.

## **PROPORTIONALITY**

According to the Quran, the notion of proportionality is a recognized principle in Islam. A criminal is dealt a punishment equal to the crime committed. While equal retaliation is sanctioned, showing patience is considered the better course of action. Those who follow such restraints will be aided by Allah.

O ye who believe! the law of equality is prescribed to you in cases of murder: the free for the free, the slave for the slave, the woman for the woman. But if any remission is made by the brother of the slain, then grant any reasonable demand, and compensate him with handsome gratitude, this is a concession and a Mercy from your Lord. After this whoever exceeds the limits shall be in grave penalty. (2:178)

The recompense for an injury is an injury equal thereto (in degree): but if a person forgives and makes reconciliation, his reward is due from Allah.

“for (Allah) loveth not those who do wrong.” (42:40)

“And if ye do catch them out, catch them out no worse than they catch you out:  
But if ye show patience, that is indeed the best (course) for those who are patient”.  
(16:126)

For Allah is with those who restrain themselves, and those who do good. (16:128)

And if one has retaliated to no greater extent than the injury he received, and is again set upon inordinately, Allah will help him: for Allah is One that blots out (sins) and forgives (again and again). (22:60)

## **DETERRENCE**

The Quran may also instruct Muslims to develop a deterrent to war, by amassing the strength in numbers and/or arms to have such an effect on their enemies:

“Against them make ready your strength to the utmost of your power, including steeds of war, to strike terror into (the hearts of) the enemies, of Allah and your enemies, and others besides, whom ye may not know, but whom Allah doth know. Whatever ye shall spend in the cause of Allah, shall be repaid unto you, and ye shall not be treated unjustly.” (8:60)

If one were to subscribe to the hadith mentioned above and the words of Abu Bakr, one would find it hard to make a case to use a weapon of war that causes general destruction, whereby the killing of women, children, the elderly, even believers, would be inevitable. The sayings and deeds as transmitted through early reports have been reinterpreted over and over for centuries to the point where al-Qaeda is now claiming that religious considerations trump the idea of collateral damage; *unintentional* harm allows for the killing of all those mentioned above; and there is considerable leeway and discretion underpinning the idea of military necessity. In this context al-Qaeda interprets the story of the Prophet using a catapult against the village of Ta'if—which, by design, is incapable of distinguishing the guilty from the innocent. This story has been reiterated by scholar after scholar and in fatwa after fatwa, including

both Saudi radical cleric Nasir al-Fahd and Ayman Zawahiri, and it seems to be one of the only examples they cite when justifying such general destruction.

Thus, Islamist militants consider retaliation, and like-for-like, as being both broadly acceptable and encouraged under the Quran, but only in a strictly “defensive manner.” The argument boils down, then, to a definition of what constitutes “defensive” action. The Quran has a clear injunction against taking offensive action; one can, and perhaps should, only punish them the way in which they have punished you.

This implies that WMD simply cannot be used as a first-strike engagement, but it can potentially be used in retaliation for use in kind. This seeming allowance for WMD, however, begins to blur in the light of the Quran’s clear injunctions against killing the aged, women and children; how can one retaliate with a weapon that will inevitably cause such damage? Questions over what sort of guidance trumps another form of guidance will inevitably spark discussion. You cannot be for both rules given their contradiction, especially in the context of WMD. It is clear where al-Qaeda stands on the rule they have chosen, but it’s hard to find a Quranic justification for using WMD as a first-strike weapon, even before one decides whether or not noncombatant immunity applies.

There has also been some discussion on 8:60 and its interpretation as one that characterizes the notion of deterrence. If this is the case, possession of WMD does not equal use, though it may certainly be allowed to possess. That being said, even if one does possess such weapons, one can only seem to use them in retaliation if they were attacked with the same weapon. This, however, is a fragment of a much larger discussion on which considerations trump others in the context of war. Also, the statement by Abu Bakr to his Muslim armies before invading Syria, makes clear note that it is not permissible to burn trees, destroy agriculture, and in another translation (perhaps a longer one) not even harm animals of any kind—this can certainly be applied to the WMD context, for such a weapon is bound to cause exactly this kind of damage, in addition to killing noncombatants.

## **RELIGIOUS RULINGS (FATWA)**

An Islamic legal ruling, or “fatwa,” has a special importance in the debate for and against WMD. It is accepted in the Islamic community that only religious authorities can rule on

moral and ethical matters. This is salient in defining rules of war. Militant Islamists feel a compunction to seek legal rulings (fatwa) to support their argument that that they are engaged not in terrorism, but in war; that it is a just war because the enemy is the aggressor; and that their means of waging war are justified under Islam. Called “Usul al-fiqh” (Principles of Jurisprudence), a fatwa is binding when these four conditions are satisfied:

- It is in line with relevant legal proofs, deduced from Quranic verses and Hadiths;
- It is issued by a person (or a board) having due knowledge and sincerity of heart;
- It is free from individual opportunism, and not depending on political servitude;
- It is adequate with the needs of the contemporary world.<sup>38</sup>



## AL-QAEDA'S RELIGIOUS JUSTIFICATION OF NUCLEAR TERRORISM

“This vanguard constitutes the solid base [qaeda in Arabic] for the hoped-for society ... We shall continue the jihad no matter how long the way, until the last breath and the last beat of the pulse—or until we see the Islamic state established.”<sup>39</sup>

Abdullah Azzam

When legendary jihadist Abdullah Azzam was assassinated under mysterious circumstances in November 1989, suspects in his murder included Osama bin Laden and Egyptian Islamic Jihad (EIJ) leader Ayman Zawahiri. After the Soviets were expelled from Afghanistan, Azzam sought to shift jihad to his homeland, Palestine. Zawahiri sought to focus the jihad on Egypt and the other secular Muslim states, in hopes of restoring the caliphate, the rule of Islamic clerics, which had ended after the dissolution of the Ottoman Empire in 1924. After Islamic rule had been re-established in the Islamic world, Zawahiri wrote, “then history would make a new turn, God willing, in the opposite direction against the empire of the United States and the world’s Jewish government.”<sup>40</sup>

It is not clear who killed Azzam, but his departure from the scene played into Osama bin Laden’s hands, by shifting the target of the jihad not to Israel or to Egypt, but to the United States. When bin Laden formed al-Qaeda a year earlier, Zawahiri was convinced to throw in his lot with this “heaven-sent man,”<sup>41</sup> as Azzam had characterized bin Laden, principally because Zawahiri felt stymied in fulfilling his lifelong dream of overthrowing the Egyptian regime.

Bin Laden would develop an idea that would breathe life back into Zawahiri’s dreams: the United States must become the target of the jihad. If the Americans could be provoked into war, they could be defeated like the Soviets, and expelled from Muslim lands for good. The fall of the US superpower would lead to the overthrow of secular Arab states. This insight led to successive al-Qaeda

strikes against the US, including the unsuccessful bombing of the World Trade Center (1993), bombings of two US Embassies in East Africa (1998), and the bombing of the USS Cole (2000). It was not evident at the time, but the road to 9/11 began on the day al-Qaeda was formed.

It was with a grim mood of impending confrontation with the United States that the two al-Qaeda leaders shared an interest in acquiring weapons of mass destruction. By 1992, al-Qaeda was already dabbling in the nuclear black market. Undaunted by a series of scams by hustlers and con men, Bin Laden and Zawahiri remained alert to opportunities to buy, steal, or build a bomb. After al-Qaeda was expelled from Sudan in 1994, Ayman Zawahiri mysteriously dropped out of sight. For two years, the Egyptian doctor and two of his top lieutenants traveled extensively to Russia, Yemen, Malaysia, Singapore and China. The purpose of their travels has never been established, but Zawahiri's associations during his travels, and own statements suggest that he and his cohorts may have been hunting for WMD.<sup>42</sup>

It is no coincidence that 1998 was the year that Osama bin Laden openly declared war on the US, publicly stated that it was his Islamic duty to acquire WMD, and secretly launched the operational plan for the 9/11 attack. Bin Laden privately expressed frustration that two brazen assaults against US government interests abroad had failed to provoke the US into invading Afghanistan.<sup>43</sup> He formalized an agreement within al-Qaeda to attack the “far enemy,” the US, before the “near enemy,” the Muslim states. The al-Qaeda high command secretly initiated the operational planning that would culminate in the 9/11 attack. They began chemical, biological and nuclear programs under the direct supervision of Zawahiri and senior al-Qaeda members. At around this time, Zawahiri also began piecing together two separate Pakistani and Malaysian-based networks to develop an anthrax weapon for use in the United States.<sup>44</sup>

### **OSAMA BIN LADEN 1998 “FATWA”**

“All these crimes and sins committed by the Americans are a clear declaration of war on God, his messenger, and Muslims. And ulema have throughout Islamic history unanimously agreed that the jihad is an individual duty if the enemy destroys the Muslim countries. This was revealed by Imam Bin-Qadamah in “Al-Mughni,” Imam al-Kisa’i in “Al-Bada’i,” al-Qurtubi in his interpretation, and the shaykh of al-Islam in his books, where he said: “As for the fighting to repulse [an enemy], it is aimed at defending sanctity and religion, and it is a duty as agreed [by the ulema]. Nothing is more sacred than belief except repulsing an enemy who is attacking religion and life.”

On that basis, and in compliance with God's order, we issue the following fatwa to all Muslims: The ruling to kill the Americans and their allies—civilians and military—is an individual duty for every Muslim who can do it in any country in which it is possible to do it, in order to liberate the al-Aqsa Mosque and the holy mosque [Mecca] from their grip, and in order for their armies to move out of all the lands of Islam, defeated and unable to threaten any Muslim. This is in accordance with the words of Almighty God, “and fight the pagans all together as they fight you all together,” and “fight them until there is no more tumult or oppression, and there prevail justice and faith in God.”<sup>45</sup>

Issuing this fatwa served several objectives. First, Osama bin Laden became the unquestioned leader of a global jihad, and the mastermind behind the movement's decision to declare war on America. Although Osama bin Laden had no authority to issue a fatwa, he embraced an opportunity to seek “God's approval” for the decision to escalate the conflict to the next stage. By authoring the fatwa himself, bin Laden also assumed a role as chief cleric in charge of translating Islamist extremist theology and ideology into action. This positioned him to anticipate and preempt interference from Sunni clerics who were opposed to al-Qaeda.

By declaring it to be his “*Islamic duty*” to acquire WMD, the al-Qaeda leader envisioned the introduction of WMD (by either side) in the atmosphere of all out war that was sure to follow 9/11; he pre-justified their use on religious grounds. Finally, bin Laden made it a religious duty for his followers to pursue WMD. Henceforth, Ayman Zawahiri made it his mission to develop the religious case for using WMD, in parallel with his efforts to acquire operational capability for future attacks against the US.

## **ZAWAHIRI'S PROJECT**

Ayman Zawahiri on video tape, commenting on the 9/11 attack, in presence of Osama bin Laden and unidentified Saudi cleric.

“This great victory was possible only by the grace of God,” he says with quiet pride.

“This was not just a human achievement—it *was a holy act*. (emphasis added)

These nineteen brave men who gave their lives for the cause of God will be well taken care of. God granted them the strength to do what they did. There's no

comparison between the power of these nineteen men and the power of America, and there's no comparison between the destruction these nineteen men caused and the destruction America caused.”<sup>46</sup>

Not long after 9/11, the al-Qaeda core began taking steps to substantiate the use of WMD on religious grounds. In mid summer 2002, the group had begun making probes to quietly obtain a fatwa from clerics in Saudi Arabia to support what appeared to be a significant shift in tactics, based on intelligence that was available at the time. Al-Qaeda seniors in Saudi Arabia approached unnamed clerics who had endorsed the 9/11 attack, but were apparently rebuffed. At the time, there was a question as to whether senior clerics in the desert Kingdom were willing to accept the obvious implications of raising the stakes to such a scale.<sup>47</sup>

In late fall 2002, a terrorist cell associated with al-Qaeda completed planning for a chemical attack on the New York City subway, utilizing a cyanide gas dispersal device called the ‘mob-taker.’ Operatives sought permission from the al-Qaeda core to carry out the attack. Ayman Zawahiri, who was unaware of the plan in its earlier planning stages, called off the attack because he had “*something better*” in mind.<sup>48</sup>

Around the same time, Al-Qaeda’s chief in Saudi Arabia, Abu Bakr al-Azdi, was in communication with senior al-Qaeda in Iran regarding the potential purchase of “three Russian nuclear devices.” This small group, reportedly under house arrest in Iran at the time, included an assortment of key, WMD-associated seniors, including Sayf al Adl, Abd al Aziz al Masri, and Sulayman Abu Ghayth al Libi. Former Egyptian Army officer Sayf al Adl was in the very top tier of the al-Qaeda core leadership<sup>49</sup>; Abd al Aziz al Masri, a dedicated nuclear operative, had conducted nuclear-related experiments in the Afghanistan desert in the late 1990’s; and Abu Ghyath, al-Qaeda’s press spokesman, had publicly stated in June 2002 that it was justifiable to kill four million Americans.<sup>50</sup>

Based on a series of exchanges in a three way communication between Saudi operatives, al-Qaeda seniors in Iran, and Osama bin Laden and Ayman Zawahiri, Abu Bakr was directed by Sayf al Adl to purchase the three devices, provided that a Pakistan (nuclear) specialist was able to verify the goods.<sup>51</sup> Al-Qaeda was cautiously and deliberately proceeding with their plans to purchase the three alleged “nuclear devices.”

At the same time, operational preparations were nearing completion for al-Qaeda bomb-

ings of US and Saudi targets in the Kingdom. Intelligence reporting produced growing signs of terrorist plotting that indicated al-Qaeda had decided to raise the stakes by undertaking attacks against the Saudi Royal family. There were also signs they were considering the use of some form of WMD against US and possibly UK targets, either inside or outside the Gulf region.

In parallel to operational planning, Al-Qaeda continued to prepare to unveil a fatwa authorizing the use of weapons of mass destruction. Radical Saudi clerics Nasir Sheik al-Fahd, Ali al-Khudayr and Ahmed al-Khaldi had drawn up and co-signed a religious ruling (fatwa) authorizing the use of WMD against the US and the UK. Nasir al-Fahd, a senior Muslim cleric who is closely associated with al-Qaida, has written dozens of books and publications containing religious edicts against the US and anyone cooperating with it. Among his well-known pronouncements is that “anyone assisting the Americans is an infidel.” His treatises incite animosity towards the West, toward Christianity, and particularly towards Americans.

Following the terrorist attacks in Riyadh on May 12, 2003, Saudi security forces launched an extensive manhunt for the three radical clerics. In a panic, Nasir al Fahd posted the fatwa on May 21, 2003, just before he was captured by Saudi security forces in the city of Medina.<sup>52</sup>

Al Fahd offered three central arguments for using WMD in his fatwa:<sup>53</sup>

“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.”

“One avoids killing women and children only when one can distinguish them. If one cannot do so, as when infidels make a night attack or invade, they may be killed as collateral to the fighters.”

“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.”

The arrest of the three clerics created a backlash and led to rumors that two of the clerics—Al-Khudayr and al-Khaldi—were killed during an arrest attempt. The rumors of their death aroused an outcry and calls for revenge surfaced on many web sites associated with al-Qaeda.<sup>54</sup> Figures close to bin Laden reported that news that the two clerics had been killed greatly affected bin Laden, who pledged to avenge their death by harming the al-Saud family

*“in a way never before seen in the past.”*<sup>55</sup> Saudi Interior Minister Prince Bin Nayyif confirmed that the three clerics were in custody, but denied any of them had died.<sup>56</sup>

Throughout the summer of 2003, Saudi security forces conducted a series of raids that decimated the al-Qaeda organization in Saudi Arabia. In June, senior al-Qaeda leader Yusef al-Ayeri was killed at a roadblock in a shootout with Saudi security forces.<sup>57</sup> Saudi security officials responded decisively to arrest and interrogate anyone having any connection to the WMD fatwa.

While under detention, Nasir al-Fahd recanted several of his fatwas on Saudi television—he referred to his previous views as being a “grave mistake.” It is unclear whether the WMD fatwa was among them.<sup>58</sup> In retrospect, the ambiguity of al Fahd’s recantation was purposeful. He subsequently wrote a letter from prison in which he asked his associates to spread the word that his recantation was coerced by Saudi authorities.

The text of Nasir al-Fahd’s letter from prison is as follows:

‘Shawwāl, 1425 H

In the name of Allah, the Beneficent, the Merciful

“Praise be to Allāh, and may peace and blessings be upon the Messenger of Allāh, to proceed:

Springing from Allāh’s saying:

“But they never lost heart for that which did befall them in Allah’s Way, nor did they weaken nor degrade themselves. And Allah loves As-Sabirin.

I write these words, and I declare before that, that I have dug a grave in my cell, and divorced this world thrice and have cut any link between it and me; and after this I say, and rely upon Allāh and seek His help...”

“And may Allah reward all those who help spread, print and publish this on the internet and media channels.”<sup>59</sup>

The al-Qaeda fatwa story drifted into obscurity after al Fahd’s letter from prison. Did the fatwa continue to have the endorsement of the al-Qaeda leadership? Was Zawahiri’s involvement in commissioning a WMD fatwa related exclusively to the nuclear deal, or did it serve a broader purpose in al-Qaeda’s future plans? Would the fatwa be required to justify a future WMD attack? If so, it would be vital to clarify such questions to ensure there is a widely accepted understanding that the case has already been made to justify the use of WMD, explain that the fatwa remains valid.

In November, 2007, Sayid Imam Abdel-Aziz Al Sharif, also known as Doctor Fadl, issued from his prison cell in Cairo, with the approval and encouragement of Egyptian authorities, a 111-page document entitled “*Rationalizing Jihadist Action in Egypt and the World*.” This document rejected his influential jihadist manifestos from 1988. Al-Sharif showed the document he wrote to the imprisoned leaders of al-Jihad for approval. The Islamic Research Academy at al-Azhar approved it and recommended that it be published. According to al-Sharif, he wrote his searing condemnation of al-Qaeda in an effort to put a stop to an ideology of violence and terrorism. From his perspective, he believed al-Qaeda had distorted the true meaning of jihad.<sup>60</sup>

### **AYMAN ZAWAHIRI’S BOOK “EXONERATION”**

In March, 2008, Ayman Zawahiri responded directly to Dr Fadl with a book of his own that was posted on the internet, entitled “Exoneration.” Zawahiri goes to great lengths to refute, essentially thought by thought, Dr. Fadl’s text. And perhaps convincingly to any reader, he instills a canyon of doubt into the independence of the authorship, and whether or not it was written under duress. It looks as though he is genuinely dismayed by how critical the text was against him, al-Qaeda and their tactics, but understands the prisoner’s dilemma, and outlines a number of scenarios that may have occurred—leaning on one: the version of Dr. Fadl’s text is one which is both coerced and tailored to American and State Security interests as to clamp down on the “*disturbing of public order*.”<sup>61</sup>

Zawahiri devotes roughly the first half of the book to refute Dr. Fadl’s thoughts and assertions by targeting them line by line and citing scholar by scholar and cleric by cleric. In the middle, he apologizes for going off on a tangent, and plunges into an analysis of every one of al-Qaeda’s beliefs and tactics, celebrates his fallen and captured colleagues, and outlines why the ‘war’ has been fought a certain way and will continue to be fought a certain way, with America as the No. 1 enemy of Islam.

Refuting Dr Fadl’s text and justifying WMD has the ability to serve two purposes: address al-Qaeda’s past actions, and vigorously defend them, while at the same time, justify and explain the reasons and goals for the group’s future attacks. It therefore has the potential to be both looking backward and looking forward.

## ZAWAHIRI'S WMD FATWA

“Shaykh Nasir Bin-Hamad al-Fahd....According to reports he is still in jail clinging firmly to righteousness. We know for certain that he has recanted what he said on a television show during which he was questioned by A'id al-Qarni. Regarding that show, the shaykh and his colleagues said that they were coerced and found interpretations of Shari'ah that they could say what the government wanted them to say because it promised to release them afterward. It did not release them. He said: If I had known what was going to happen, I would not have surrendered to the police detectives but would have fought until I was killed. He sent several messages out of his jail that show he is still firm on the path of righteousness. We pray to God to give him and all Muslims firmness in righteousness and a good end.”<sup>62</sup>

With these words, Ayman Zawahiri resurrects Nasir al Fahd from the obscurity of prison, answers the questions surrounding al Fahd's recantation, breathes life back into the dormant fatwa, and gives it a contemporary purpose. In so doing, Zawahiri makes the fatwa his and al-Qaeda's own.

Nasir al-Fahd's 2003 fatwa is built in its entirety into *Exoneration*: the same ideas, thoughts, examples and scholars to justify equal retaliation—“repaying like for like”. The similarities between the two texts are nothing short of striking. Virtually every single cleric, scholar, and example used by al-Fahd to justify the use of WMD has been resurrected in near-symmetry throughout “*Exoneration*”. While a handful of the same individuals were cited by both al-Fahd and Zawahiri to justify different issues, nearly 30 authors were identically sourced with correlating content. Indeed, Zawahiri tended to expand on the thoughts and ideas of al-Fahd by diving into a more comprehensive justification with even further citations.

Zawahiri raises key Quranic themes to justify the use of WMD to include: the legality of killing women, children, and the elderly, the use of Muslim shields, the inevitability of environmental destruction, notions of retaliatory use and deterrence, attacking in the night and unintentionally harming noncombatants, among other such issues. Indeed, not only are the same scholars, clerics and quotations recounted in “*Exoneration*”, but many of the same examples are used nearly verbatim, including the Prophet's reported sayings in the context of night raids and the harming of noncombatants, as well as the Prophet's attack on the village of al-Ta'if using a catapult—thereby permitting the use of weapons of “general destruction” incapable of distinguishing between innocent civilians and combatants.<sup>63</sup>

He offers a meticulously researched case to support the argument that using weapons of mass destruction should be judged on intent rather than on results. The same reasoning is applied in a detailed expository on such matters as loyalty to the State, contracts, obligations and treaties, the permissibility of espionage, and deception and trickery. For example, on the topic of Muslims killed in combat unintentionally, in the fight against infidels: “*When Muslims fight non-believers, any Muslim who is killed is a martyr.*”<sup>64</sup>

### SYMMETRY BETWEEN 2003 WMD FATWA AND 2008 “EXONERATION”

There is no compelling need for Zawahiri to duplicate and expand on, albeit under the cloak of another purpose, the very same ideas of al-Fahd in vivid detail and similarity, often expanding on the issues to provide further legitimacy. While it appears these issues can be bifurcated throughout his text into different themes without any reference to the 2003 WMD fatwa, a large portion of the text is indeed not only similar in many respects, but provides more ‘proof’ of its validity. Only four months had elapsed from Dr Fadl’s book to completing “Exoneration,” raising the distinct possibility Zawahiri was focused on the subject of WMD for reasons unrelated to the publication of Dr Fadl’s critique.

Nasir Al-Fahd (2003)	Ayman Zawahiri (2008)
Justifying the Unintentional Killing of Noncombatants during Night Raids and General Destruction—including Women, Children and the Elderly	
Al-Sa’b ibn Jaththamah	Al-Sa’b Bin-Jaththamah
Ibn Qudamah	Ibn Qudamah
Ahmad ibn Hanbal	Ahmad ibn Hanbal
Al-Tahawi	Al-Tahawi
Salamah ibn al-Akwa	Salamah ibn al-Akwa
Al-Rahibani	Al-Nawawi
Al-Tabari	Al-Bukhari
Al-Bayhaqi	Imam al-Shirazi
Abu Dawud	Malik
	Al-Shafi’I
	Abu Hanifa
	Ibn Abd al-Birr
	Abu Bakr al-Jassas

Justifying Environmental Destruction, Burning, Flooding, and Agricultural Harm	
<b>Ahmad ibn Hanbal</b> <b>Abu Dawud</b> <b>Usamah ibn Zayd</b> <b>Malik</b> <b>Ibn al-Qasim</b> <b>Al-Sahfi'I</b> <b>Ishaq</b> <b>Al-Thawri</b> Al-Tirmidhi Al-San'ani Al-Mawwaq Ashhab Ibn Majah Al-Bukhari Al-'Ayni Ibn 'Umar	<b>Ahmad ibn Hanbal</b> <b>Abu Dawud</b> <b>Usama Ibn Zayd</b> <b>Malik</b> <b>Ibn al-Qasim</b> <b>Al-Shafi'i</b> <b>Ishaq</b> <b>Al-Thawri</b> Nafi' Abu Hanifa Ibn Taymiyyah Al-Zuhari Yahya Ibn Yahya Muhammad Ibn Rumh Al-Layth Qutaybah Ibn Sa'id Imam al-Kasani
Justifying the Unintentional Killing of Muslims used as Human Shields—under the Principle of Necessity—to Defeat an Enemy	
<b>Ibn Taymiyah</b> <b>Al-Shafi'I</b> <b>Al-Sarakhsi</b> Abu Bakr al-Jassas Al-Mawwaq Ashhab Al-Shaybani	<b>Ibn-Taymiyyah</b> <b>Al-Shafi'I</b> <b>Al-Sarakhsi</b> Ibn Qudamah Al-Awza'I Abu Hanifah Al-Thawri Ibn-Qasim Abu al-Layth Al-San'ani Imam al-Kasani

## ZAWAHIRI'S THREE OPERATIONAL MESSAGES

For al-Qaeda, procuring a fatwa is part of a ritual process for an impending attack. The 1998 fatwa was issued in support of 9/11. The 2003 fatwa was published to accompany concrete operational planning that was underway at that time. In 2008, Zawahiri's purpose is to issue a warning of an impending attack.

In "Exoneration," Zawahiri's words soar beyond the scale of Dr Fadl's critique of al-Qaeda. The al-Qaeda leader is not simply addressing alleged past mistakes in course of rebutting an argument made by an imprisoned former associate: he is pre-justifying a future, unprecedented attack capable of producing mass casualties. He takes pains to ensure he cannot be seen to be approaching this task lightly. His tone is somber and weighty; he acknowledges that causing mass casualties requires special justification—to his evident satisfaction, he provides it.

Zawahiri's effort to strengthen al Fahd's WMD fatwa is much more concrete than the theological orientation with which the 2003 fatwa was written. As a cleric, al Fahd likely did not know the operational intent that rested behind his legal argument. However, like bin Laden's 1998 fatwa, Zawahiri serves as both cleric and operational planner—he knows the specific purpose for which the fatwa is being issued. Zawahiri is making his case on both religious and operational levels.

### FIRST MESSAGE: AMERICA IS THE TARGET

In making a meticulous religious justification for using WMD, Zawahiri explicitly names the US as the intended target of a mass casualty attack. He quotes al-Fahd with respect to the legitimacy of waging jihad outside of Iraq: *"There is no doubt that the greatest enemy of Islam and Muslims at this time is the Americans."*<sup>65</sup>

Zawahiri goes on to explain why he considers the United States to be a *"single juridical entity"* under Islam.<sup>66</sup> The implications are chilling: it means all Americans are valid targets, whether they are men, women, or children. His careful word choice reflects a seriousness of purpose; he takes the responsibility for justifying mass casualties very seriously. In quoting the Quran and Hadiths on this matter, he cites various view points, some of which support his judgments, some of which do not. At times, he dramatically prefaces his conclusion with *"I say..."* to signify his judgments that digress from the views held by some Islamic scholars.<sup>67</sup> His use of the first person also signifies the authority he seeks for himself as an arbiter on Islamic law.

First quoting that *"artillery bombardment is permissible when the jihad needs or requires it,"*<sup>68</sup> Zawahiri quotes Nasir al Fahd's fatwa:

“If a bomb were dropped on them, destroying 10 million of them and burning as much of their land as they have burned of Muslim land that would be permissible without any need to mention any other proof. We might need other proofs if we wanted to destroy more than this number of them!”<sup>69</sup>

Harkening to the use of the term “artillery” from Truman to justify the bombing of Hiroshima, it certainly is an interesting coincidence that Zawahiri’s text uses the phrase “*artillery bombardments*” in the context of general destruction. It very well could be, for him, just another weapon that cannot distinguish, such as the often-mentioned catapult, and thus justifies the use of such a weapon identically in the modern era.

That said, Zawahiri’s argument leads to his view that the introduction of the means of mass destruction has become a necessary means of confronting a stubborn superpower.

## **SECOND MESSAGE: THE USE OF WMD IS NECESSARY**

Zawahiri’s complex reasons for redefining the rules of waging war as the West understands them include a strong ideological component, perhaps best expressed by his mentor, Sayyid Qutb, in his book “Milestones.”

“The Islamic Jihad has no relationship to modern warfare, either in its causes or in the way it is conducted.”

“(Islam) is a practical movement which progresses stage by stage, and at every stage it provides resources according to the practical needs of the situation and prepares the ground for the next one. It does not face practical problems with abstract theories, nor does it confront various stages with unchangeable means. Those who talk about Jihad in Islam and quote Quranic verses do not take into account this aspect, nor do they understand the nature of the various stages through which this movement develops, or the relationship of the verses revealed at various occasions with each stage. Thus, when they speak about Jihad, they speak clumsily and mix up the various stages distorting the whole concept of Jihad and deriving from the Quranic verses final principles and generalities for which there is no justification. This is because they regard every verse in the Quran as it were a final principle in this religion.”

“This group of thinkers, who are a product of the present Muslim generation, have nothing but the label of Islam and have laid down their spiritual and rational arms in defeat. They say, “Islam has prescribed a defensive war!” And think that

they have done good for their religion by depriving it of their method, which is to abolish all injustice from the earth, to bring people to the worship of God alone, and to bring them out of servitude to others to into the servants of the Lord. Islam does not force people to accept its belief, but it wants to provide a free environment in which they will have choice of beliefs. What it wants is to abolish those oppressive political systems under which people are prevented from expressing their freedom to choose whatever beliefs they want, and after that it gives them complete freedom to decide whether they will accept Islam or not.”<sup>70</sup>

In the terms of examining al-Qaeda’s many declarations over the years, each stage of the “global jihad” serves to take the movement one step further on the path to its ultimate objective—to challenge world order and create conditions more conducive to the spread of the ideology of Islamist extremism. The 9/11 attack against the US heralded a new stage in the struggle.

Zawahiri explains why the next stage in this conflict is at hand, historically, ideologically, and practically speaking; this next stage may require al-Qaeda to kill not merely thousands of people, but millions of people.

But the Egyptian Doctor extends his argument—al-Qaeda must choose a means of attack commensurate with their goals. His argument flows between making the case for causing general destruction, on the one hand, to reaffirming the continuing importance of the US as the central target of jihad, on the other hand.

To drive home the connection between using WMD and al-Qaeda’s concrete objectives and current plans, Zawahiri once again quotes Nasir al Fahd to unambiguously associate al-Qaeda’s “success” in the past with its prospects for the future.

“Someone might say: Where is the victory that this attack (9/11) brought? The answer is: If the attack only turned upside down their history, power balances, strategic and military doctrines, and global order, that is enough of a victory. The raid was a momentous historical junction that caused many ideas and studies to be reconsidered.”

“The event’s greatness is evident in five aspects.”

“One: It restored Islam to the forefront in the wars against the infidels whereas formerly nationalist and ethnic factors and interests were the primary factors in provoking wars and conflicts. It thus brought out the crusader hostile spirit from its concealment and forced it into action.”

“Two: It gave prominence to the great role of jihad in overturning global balances.”

“Third: It ended the idea that “national states” control “politics” and declare “peace” or “war.” The management of the conflict is not in the hands of persons of a particular national affiliation but is in the hands of people spread—as the Americans say—over more than 60 countries who are joined by nothing else except salafi jihadist Islam or what they call “Wahabi” Islam. Indeed the four brigades that struck America were commanded by four men of four different nationalities. One was from Egypt, the second from the Gulf, the third from Syria, and the fourth from Al-Hijaz.”

“Four: It irreversibly ended the era when the United States could attack the Muslims with impunity, God Willing.”

“Five: It was the beginning of the collapse of the “New World Order,” which the Americans enjoyed for a few years only and it marked the beginning of America’s total collapse, God willing.”

“The cycle of terror continues. We believe that this is in fulfillment of the oath made by Abu-Abdallah [bin Laden], may God give him victory, that the Americans would never know security.”<sup>71</sup>

### **THIRD MESSAGE: AL-QAEDA’S BEST IS YET TO COME**

“...one hour in the path of jihad is worth more than 70 years of praying at home”<sup>72</sup>

Abdullah Azzam

Zawahiri is a man of action, not of contemplation. His tone leaves little question that he believes the notion of exoneration is premature. He is confident that the final chapter has not been written in terms of judging al-Qaeda’s actions, and in assessing their impact on history. This feeling of incompleteness is palpable; he reflects his own doubts, acknowledges mistakes, and reminisces about the past. He exudes a reflective, expectant mood as he pays tribute to al-Qaeda’s past successes and conducts a nostalgic roll call of prominent jihadists and clerics—at times, it reads like his personal martyr document.

Moreover, Zawahiri appears to have used his book as a means of engaging in a bit of deception and misdirection; he has not repeated Nasir al Fahd’s mistake in openly declaring his 2003 WMD fatwa as such, lest it betray al-Qaeda’s attack planning that may be underway. Instead, Zawahiri has hidden his fatwa and operational messages in plain sight of writing a rebuttal to Dr Fadl.

Because the document was written to respond to Dr. Fadl personally, one might imagine Zawahiri's apology to Dr Fadl along the lines of this imaginary tribute—"this is the hardest thing I've ever had to write, using you Dr. Fadl, as a ploy, and degrading your thoughts and ideas despite their release under clear duress, but I am doing so to cloak an even larger strike, and for that you must forgive me, and understand my true intentions. In the same spirit, we, al-Qaeda have cut jihadists loose to plan attacks like the Christmas day flight and Times Square bombing—in the hope they will distract the infidels from a main event that is something altogether different."

The aging jihadist provides a hint of what he has in mind, when he refers to the need to correct the "people's mood."

"Chiefly, that they spoiled the Muslim people's mood because they were so great and powerful causing people to stop showing interest in lesser jihadist actions. For example if what happened in Indonesia had happened before the jihadist acts in America, they would have had a greater effect on the people, who would have rejoiced more. The people showed less attention to them because the image of the collapse of the two New York towers was something like a dream causing many other actions to appear smaller for a long time. This is the bad aspect, that it spoiled our mood and the people's mood. Our mood will not be corrected until the United States vanishes and is followed by the Jewish state."<sup>73</sup>

Near the end of "Exoneration," Zawahiri outlines a prediction:

"Read the history books well and use them to forecast the future. America has been broken in Iraq and Afghanistan and it is now gathering her belongings and picking up the pieces of what is left to her before departing. The Muslim nation and her jihadist pathfinders, on the other hand, are increasing in capabilities and power as time passes. This is the historical timeline which is clear to any comprehending mind."<sup>74</sup>

Making good on this wistful vision of the future is the exoneration that Zawahiri seeks. By noting that jihadist capabilities and power are increasing, he hints at the notion of future strikes. Just as Osama bin Laden issued a fatwa to declare war on the United States in 1998, Ayman Zawahiri issued a fatwa a decade later to announce the impending transition to the next stage of conflict. The 9/11 attack transformed Osama bin Laden into a figure of mythi-

cal proportions. After lifelong humiliation, disappointment, and questions concerning his effectiveness as a leader and operational planner, Zawahiri is desperately seeking an opportunity to become the architect of his movement's future, and the master of his own destiny.

#### **RADICAL CLERICS IN SUPPORT OF AL-QAEDA (SOURCE: EXONERATION)**

Atiyatallah	Mujahid Scholar
Nasir Bin-Hamad al-Fahd	Saudi Cleric*
Abu-al-Walid al-Filastini	Mujahid, battlefront fighter, mufti and judge of mujahidin
Abd-al-Hakim Hassan	
Abu-Yahya al-Libi	Libyan Teacher**
Husayn Umar Bin-Mahfuz	Yemeni scholar
Abu-al-Hasan al Masri	
Abu-Abdallah al-Muhajir	Teacher
Abu-Hafs al-Muritani (a.k.a. Dr. Mahfouz Oueld el Oueld)	Scholar, poet, mujahid, author and educator
Abu-al-Hasan al-Qari	Mujahidin's Quranic reciter and imam
Abu-al-Mundhir al-Sa'idi	Notable of the Libyan Fighting Group
Abu Musab al-Suri	Syrian Mujahid Preacher
Abdullah Zakiri	No official position

\*Last report, in Saudi custody

\*\* Currently in US custody

Note: Only two passing references are made to Osama bin Laden in "Exoneration." Zawahiri invokes Nasir al Fahd repeatedly. In the book, Zawahiri also names 14 clerics who reputedly support al-Qaeda, offering a brief description of each one. In the event questions arise in the future concerning Zawahiri's authority to issue a fatwa, this list of clerics is likely intended to demonstrate al-Qaeda's support from Islamic clerics and scholars. As always, Zawahiri has thought through his case to the last detail.

A vertical decorative border on the left side of the page, featuring intricate Islamic geometric and floral patterns in shades of blue, green, and gold on a dark background.

## SUNNI VOICES

# REJECTION OF TERRORIST VIOLENCE

It is widely recognized in the Islamic community that nuclear weapons are not just super-bombs used by armies as a weapon of war, but that they pose unique and fundamental religious and moral issues that must be resolved by religious authorities. Fortunately, this consciousness introduces an additional level of scrutiny over the wisdom of the use of WMD in the Islamic world that does not exist in secular states that are under no obligation to seek any form of religious or moral authorization for their use.

Thousands of Islamic clerics and scholars have repudiated al-Qaeda's justification of terrorism, in some cases explicitly extending their prohibitions on resorting to violence to the use of weapons of mass destruction. Their voices are growing louder over time. Most notably, Pakistani Shaykh Muhammad Tahir-ul-Qadri recently issued a fatwa that arguably represents the most comprehensive Islamic ruling against terrorism, in all its forms, in the Sunni world.

A number of prominent clerics and scholars have renounced the use of nuclear weapons as being un-Islamic. Grand Mufti of Egypt Ali Gomaa has written a comprehensive anti-WMD fatwa that dismantles, point by point, the arguments made by al-Qaeda in its WMD fatwa. Sunni authorities such as the Grand Mufti vastly exceed, in the weight of their authority and reach, the radical clerics who support al-Qaeda today. Indeed the number of al-Qaeda associated clerics appears to have dwindled since 9/11.

While they strongly support prohibitions of terrorism under Islam, many clerics and scholars continue to harshly criticize US presence in Muslim lands. Many support, or are ambivalent, on attacks against US forces in Iraq. Many condone terrorist violence in Israel, including attacks that may kill innocent women and children.

Controversial Egyptian scholar Yusuf al-Qaradawi has explicitly stated on numerous occasions that all Israeli civilians are legitimate targets for suicide attacks. At the same time, he has criticized al-Qaeda's 9/11 attack and sharply rejected the group's definition of jihad.<sup>75</sup>

Al-Qaradawi has specifically warned about the perils of the extreme adaptation of ideas. He describes four symptoms in this regard: bigotry & intolerance, leading to lack of concern for others; a pattern of stubborn and coercive behavior; religious excessiveness and overburdening of others, i.e. when applying Islamic principles to people in non-Muslim countries or to people who have only recently converted to Islam, as well as to newly committed Muslims; and treating people harshly, roughness in the manner of approach, and crudeness in calling people to Islam, all which are contrary to the teachings of the Quran.<sup>76</sup>

The counter weight to ever-escalating levels of terrorist violence also comes from the ranks of disillusioned radicals. Prominent Saudi militant Salman Al-Odeh and imprisoned Egyptian extremist Sayid Imam Abdel-Aziz Al Sharif have recently condemned al-Qaeda for having corrupted the concept of jihad and sown great destruction on the Islamic community.<sup>77</sup>

On the other end of the spectrum, liberal scholars offer a broader perspective with which to address WMD than the narrow prism of war, jihad and killing. Gamal al-Banna and Tariq Ramadan emphasize Islamic teaching on tolerance and freedom of religion. Gamal al-Banna, the anti-authoritarian brother of Muslim Brotherhood founder Hassan al-Banna, believes that every Muslim has to think for herself/himself, and that critical ideas about Islam should be fought "*by words and not by confrontation, terrorism or takfir - passing anathema on someone by pronouncing them an infidel.*"<sup>78</sup>

Gamal al-Banna is a fervent proponent of freedom of religion, often citing the Quranic verse: "*There is no compulsion in religion*" (*al-Baqara, The Cow, II, 256*).<sup>79</sup>

An Islamic scholar who wrote his master's thesis on the German philosopher Friedrich Nietzsche during his studies in Switzerland, Tariq Ramadan speaks to "*the responsibilities of Muslims in the West to think beyond their own grievances.*"<sup>80</sup> He is an advocate for the co-existence of Islam and secular democracy. He notes that the Quran's meaning is contextual and therefore it must be interpreted as the world evolves over time. Ramadan has aroused controversy for his alleged ties to terrorists, which he vehemently denied in an open letter to President Bush.<sup>81</sup>

## CHRONOLOGY OF SUNNI VOICES AGAINST AL-QAEDA

See *Appendix E* for short biographies on this sampling of Sunni clerics.

The objective of this section is to show a timeline of broad, representative statements against al-Qaeda's desire to resort to violence on the scale of WMD.

### June 2003

Yusuf al-Qaradawi rejected al-Qaeda's killing of innocents.

"Islam, the religion of tolerance, holds the human soul in high esteem, and considers the attack against innocent human beings a grave sin, this is backed by the Qur'anic verse which reads: Who so ever kills a human being for other than manslaughter or corruption in the earth, it shall be as if he has killed all mankind, and who so ever saves the life of one, it shall be as if he had saved the life of all mankind," (Al-Ma'dah:32).

"The Prophet, peace and blessings be upon him, is reported to have said, 'A believer remains within the scope of his religion as long as he doesn't kill another person illegally...even in times of war, Muslims are not allowed to kill anybody save the one who is indulged in face-to-face confrontation with them. They are not allowed to kill women, old persons, children, or even a monk in his religious seclusion.'" <sup>82</sup>

Qaradawi also rejected all terrorist attacks outside of Israel.

"I have been asked several questions on TV programs and on public lectures about the martyr operations outside the Palestinian territories, and I always answer that I do agree with those who do not allow such martyr operations to be carried out outside the Palestinian territories." Instead we should concentrate on facing the occupying enemy directly. It is not permissible, as far as Islam is concerned, to shift confrontation outside the Palestinian territories. This is backed by the Qur'anic verse that reads: "Fight in the way of Allah against those who fight against you, but begin not hostilities. Lo! Allah loves not, aggressors".<sup>83</sup>

### 2005

Shaykh Muhammad Tahir-ul-Qadri was among the 170 Islamic scholars from various sects who signed an antiterrorist fatwa in Amman in 2005.<sup>84</sup>

## 2007

Former militant cleric Salman Al-Odeh warned Osama bin Laden that if he did not relinquish the path of terror he would find himself responsible for the deaths of millions, for which he would ultimately have to answer to Allah.<sup>85</sup>

## 2008

6,000 Indian Muslim clerics endorsed an anti-terror fatwa.<sup>86</sup>

## 2009

Saudi newspaper quoted prominent Saudi cleric al-Obeikan's condemnation of al-Qaeda. *"Affiliation with the so-called al-Qaeda group is haram" (banned), adding "It is strictly prohibited to legitimize the shedding of blood of other Muslims without having the right to do so."*<sup>87</sup>

## 2009

Egyptian Grand Mufti Gomaa outlined a ten point, detailed legal ruling (fatwa) that using WMD is banned (impermissible) under Islam:

- An individual or group cannot declare war
- The use of WMD is a breach of international agreements and treaties
- Using WMDs involves killing people and taking them by surprise
- Killing and harming women and children is forbidden
- Killing and harming Muslim residents of the target countries is forbidden
- Ramifications of using WMDs will bring about catastrophe for the entire world
- Consequences of using WMD will damage individual and public properties
- Permission to enter a country is considered a non-verbal security agreement not to cause corruption in the host country.
- It is invalid to base the permissibility of using WMDs on analogy [Ar.qiyās] to tabyīt, using the catapult, or tahrīq
- It is not permissible to use human shields

*Note: See Appendix D for relevant sections of the fatwa*

## REACTIONS TO THE ANTI-WMD FATWA

Dr Ibrahim Negm highlighted the importance of issuing a counter-WMD ruling: “This fatwa is the first one we issued on this topic and comes in response to the wave of uninformed opinions from various groups.”<sup>88</sup>

Dr. Taha Jabir al-Alwani, president of the Graduate School of Islamic and Social Sciences and the Fiqh Council, supported the anti-WMD fatwa because mass destruction does not distinguish the innocent from the criminal and therefore is prohibited under Islam.<sup>89</sup>

Sheikh Faysal Mawlawi, deputy chairman of the European Council for Fatwa and Research, noted a self-defense exception: “[I]n case these nuclear weapons are used against Muslims, it becomes permissible for Muslims to defend themselves using the same weapon.”<sup>90</sup>

### September 2009

Former militant cleric Salman Al-Odeh urged Al-Qaeda deputy leader Ayman Al-Zawahiri to stop killing Muslims, noting that Al-Qaeda had killed more Muslims than non-Muslims, and that the Muslim world was “*being roasted on the flames of Al-Qaeda*” and exposed to violent events and bombings.

“Muslims are the only nation whose sons kill each other; there is no other nation in the world—not the Jews, not the Christians, not the Buddhists, not the pagans—whose sons do this... “How long will people cling to weapons as if they were the only means of achieving their goals?”<sup>91</sup>

Al-Odeh added that people who had accepted Al-Qaeda’s ideology of *takfir* and bombings were motivated not by religious or rational conviction, but by emotional distress, frustration, and an inner sense of discrimination.

“I have called on, and will continue to call on our loyal clerics and preachers to call things by their true name, and to remove the divine and holy epithet ‘jihad’ from the operations carried out by murderous organizations that kill innocent people and undermine security in Islamic countries, or other countries with which we have agreements... It is important to explicitly condemn the evil crimes perpetrated worldwide in the name of Islam or of jihad, and to remove the disguise that their names provide for them—whether that name is ‘Al-Qaeda,’ or ‘jihad organizations,’ or ‘military or combat organizations,’ or ‘the Islamic state.’

“I command myself, and my fellow preachers, and the speakers and the writers, to condemn in the clearest possible terms this perversion, which includes bloodshed, destruction of society, corruption of the image of Islam, hindrance of growth, [dissemination] of and contempt for the essential foundations of Islamic law and of humanism, wickedness worldwide, and aggression against human life...”

“I [re]iterate sincerely and loudly: Allah will not lend success to the deeds of the corrupt and the traitors... nor to those who kill Muslims in the name of Islam or in the name of implementing shari’a. They will never succeed; Allah’s punishment will overtake them and they will become an object of mockery for their fellows unless they repent.”<sup>92</sup>

## December 2009

Shaykh Muhammad Tahir-ul-Qadri issued the most detailed antiterrorist fatwa ever written, an exhaustive, 600 page theological and legal studies of the Islamic teachings on the use of force and armed resistance. His fatwa: terrorism is at all times, in all conditions, against Islam. The murders terrorists commit will send them, not to paradise in the company of virgins, as often claimed, but to hell.<sup>93</sup> “[Terrorists] are the heroes of hellfire.”<sup>94</sup>

Drawing extensively on Islamic texts Qadri declared: “Islam does not permit, under any circumstances, the massacre of innocent citizens, terrorist explosions and suicide bombings” which according to Islamic law are unacceptable violations of human rights and constitute kufr, (unbelief).<sup>95</sup>

“This is an absolute, unconditional, unqualified condemnation of terrorism, without any kind of exception or excuse...No context; no discussion of foreign policy of a certain country, no occupation ... can create a pretext for the people to take up arms.”<sup>96</sup>

The solution, said Qadri, is not violence, but democratic dissent, achieved through political channels, petitions, lawful activism and peaceful protest.<sup>97</sup>



## SHIA VOICES

### IRAN AND THE BOMB

Following the Iranian revolution of 1979, Supreme Leader Ayatollah Khomeini is said to have issued a fatwa against nuclear weapons—some now claim he never uttered such words, while others claim his statement mysteriously disappeared. Iran's current Supreme Leader, Ayatollah Khamenei, issued an anti-nuclear fatwa in September 2004.<sup>98</sup> While sourced by a variety of Iranian authorities, the fatwa itself has yet to be officially released or found. But in light of the many references, it would seem that Khamenei's fatwa is legitimate and absolute. Is the issue then not clear, from a religious point of view? It is not so simple, as the testimony of the following voices from within Iran will attest.

The range of opinion on this matter is far-reaching, with the overwhelming majority of religious voices taking a stand against nuclear weapons. Individuals in opposition include current and former Supreme Leaders of Iran, the former Deputy Supreme Leader, the former Secretary of the Supreme National Security Council, the Chairman of Parliament of Iran, Iran's Ambassador to Pakistan, and the Grand Marja of Shia Islam, among others. Those in favor of possession, including on a conditional basis as a deterrent and in the context of equal retaliation, include a member of the Iranian Parliament's Judicial Commission, a member of Iran's Assembly of Experts, and two middle-ranking clerics. It is also important to note that Hezbollah's Secretary-General, Sayyed Nasrallah, recently announced the right to possess any weapon, and as such, the Iran-Hezbollah nexus cannot be ignored if in fact Iran were to realize nuclear weapons capabilities.<sup>99</sup>

As one will recognize from the analysis below, there is a serious internal debate on this issue within the religious community regarding: acquiring such a weapon that cannot distinguish between combatants and non-combatants; the use of WMD as a retaliatory measure if attacked by the same weapon; possessing such a weapon as a deterrent measure; among other issues. Surprisingly, justifying the acquisition of WMD either for equalizing or defensive purposes has rarely if ever been mentioned in the context of any regional threat, including that of Israel.

In producing this survey of Shi'a voices in Iran, no assumptions have been made as to whether or not Iran is indeed pursuing nuclear weapons. By compiling numerous comments made by a range of religious clerics, scholars and authorities over the last several years, the goal is to assess the substance and significance of the religious discourse concerning Shi'a Islam and the permissibility or impermissibility of WMD acquisition, possession and use.

## **SHIA CLERICS AGAINST NUCLEAR WEAPONS**

“The Islamic Republic of Iran, based on its fundamental religious and legal beliefs, would never resort to the use of weapons of mass destruction... In contrast to the propaganda of our enemies, fundamentally we are against any production of weapons of mass destruction in any form.”

Ayatollah Khomeini  
Supreme Leader of Iran

“There is complete consensus on this issue. It is self-evident in Islam that it is prohibited to have nuclear bombs. It is eternal law, because the basic function of these weapons is to kill innocent people. This cannot be reversed.”

Grand Ayatollah Yusef Saanei  
Grand Marja of Shia Islam, Iranian Scholar

“Those in Iran who clandestinely believed they could develop nuclear weapons have now been forced to admit that is forbidden under Islam.”

Hussein Shariamadari  
Managing Editor of Kayhan, an Iranian newspaper

“In light of the scope of death and destruction they bring, and in light of the fact that such weapons cannot be used solely against an army of aggression but will invariably sacrifice the lives of innocent people, even if these innocent lives are those of future generations nuclear weapons are not permitted according to reason or Sharia.”

Grand Ayatollah Hussein-Ali Montazeri (Died 12 December, 2009)  
Former Deputy Supreme Leader of Iran, Iranian Scholar

“The decree by Khamenei “prohibit[s] the development and use of nuclear weapons”

Mohammad Javad Zarif

Former Ambassador of Iran to the United Nations

“When the Iranian leader issues such a fatwa, then we have given a political, religious and ideological guarantee that we are not pursuing the production of nuclear weapons.”

Hassan Rowhani

Former Secretary of Supreme National Security Council

A Turkish diplomat, describing a visit in May by Ali Larijani, said that Larijani made the religious roots of the proscription clear. “I was in the meeting,” said the diplomat, who spoke on condition of anonymity. “He said there is even a fatwa, a religious ruling, since the time of Khomeini, that Iran will not produce any nuclear weapons.”

Ali Larijani

Chairman of Parliament of Iran

Nuclear weapons as well as the atom bomb are haram (prohibited) according to the laws of Islam, a private television channel quoted Iran’s Ambassador to Pakistan as saying.

Khazali Mashallah Shakiri

Iran’s Ambassador to Pakistan

While evidence suggests Khomeini indeed barred Iranian forces from unconventional weapons during the 1980-88 war with Iraq, the religious underpinning for such a ban is regarded as less than absolute.

Ayatollah Ruholla Khomeini (Died 3 June, 1989)

Former Supreme Leader of Iran

“According to Islamic teachings, there’s the principle that the goals never justify the means... It has not been supported in Islam that you can do whatever you want to

defend yourself. You are not allowed to gather weapons that are not allowed by Islam, even against your enemies.”

Kazem Mosavi Bojnoordi  
Chief editor of Iran’s Center for the Great Islamic Encyclopedia

Announced that Supreme Leader Ayatollah Seyyed Ali Khamenei, in a message to the Tehran conference on April 17, declared “Iran regards utilizing nuclear weapons as haram (forbidden in Islam) and it is incumbent on everyone to safeguard humanity from such weapons.”

Mohammad Khazaee  
Current Permanent Representative of the Islamic  
Republic of Iran to the United Nations

## SHIA CLERICS FOR NUCLEAR WEAPONS

“There are no Shari’a [religious law] or legal restrictions on having such weapons as a deterrent.”

Hojatoleslam Mohammad Taghi Rahbar  
Iranian Legislator, Member of Parliament’s Judicial Commission

“We have to produce the most advanced weapon inside the country, even if our enemies don’t like it. There is no reason that they have the right to produce a certain special type of weapon, but that other countries not have that right.”

Ayatollah Mohammad Taghi Mesbah-Yazdi  
Iranian Cleric, Member of Iran’s Assembly of Experts

It is “only natural” to have nuclear bombs as a “countermeasure” against other nuclear powers. “When the entire world is armed with nuclear weapons, it is permissible to use these weapons as a counter-measure. According to Sharia too, only the goal is important.”

Mohsen Gharavian (*Conditional*)  
Iranian Cleric, Disciple of Ayatollah Mesbah-Yazdi

“From all I can see, it’s not forbidden, but it’s hard to say it’s allowed. In jurisprudence these terms are different. If your enemies have these bombs, it’s not forbidden to have them. Don’t forget that Israel has these bombs. It’s outside the Non-Proliferation Treaty.”

Mohsen Kadivar (*Conditional*),  
Iranian Cleric, Faculty Member of the Department of  
Islamic Philosophy at the Iranian Institute of Philosophy

## UNCLEAR

“They have supplied vast quantities of weapons of mass destruction and unconventional weapons to Israel. They have permitted it to have them and they have shut their eyes to what is going on. They have nuclear, chemical and biological weapons and long-range missiles and suchlike.<sup>100</sup> Of course, that is very important. If one day, the Islamic world is also equipped with weapons like those that Israel possesses now, then the imperialists’ strategy will reach a standstill because the use of even one nuclear bomb inside Israel will destroy everything. However, it will only harm the Islamic world. It is not irrational to contemplate such an eventuality. Of course, you can see that the Americans have kept their eyes peeled and they are carefully looking for even the slightest hint that technological advances are being made by an independent Islamic country. If an independent Islamic country is thinking about acquiring other kinds of weaponry, then they will do their utmost to prevent it from acquiring them. Well, that is something that almost the entire world is discussing right now.”<sup>101</sup>

Akbar Hashemi Rafsanjani, (March 1997)  
Chairman of the Assembly of Experts, Former President of Iran

“No, we’re not willing to suspend. But we’re ready to provide greater assurances to the world that we won’t move from peaceful nuclear technology to military technology.”

Akbar Hashemi Rafsanjani, (June 2005)  
Chairman of the Assembly of Experts, Former President of Iran

Asked whether the ayatollahs could simply rip up their fatwa one day and issue a new ruling blessing the development of nuclear weapons, Fazal Miboudi, a mullah who is professor

of political science at Mofid University in Qom, said any reversal of such a high-profile issue would require years of awkward theological maneuvering.

“There is room for maneuver in Islam. Things can be haram (forbidden) one day and halal (acceptable) later on. But this takes time...”

Fazal Miboudi,  
Professor of Political Science at Mofid University in Qom

Iran’s former president, Mohammed Khatami, has dismissed as a “*satanic conspiracy*” claims the Islamic republic was secretly developing nuclear weapons during a wide-ranging address in Australia.<sup>102</sup>

Mohammad Khatami  
Former President of Iran

“This question is ambiguous...taking weapons of mass destruction as a whole, I’m against it...” But in the context of deterrence and self-defense, “It’s not clear.”

Jalal al Din Taheri  
Former Member of the Assembly of Experts in Iran, Iranian Scholar

## CHRONOLOGY OF SHIA VOICES ON NUCLEAR WEAPONS

See *Appendix F* for short biographies on Shia clerics and scholars cited in this chronology.

### October 2003

Led by Ayatollah Ali Khamenei, the nation’s supreme leader, Iranian clerics repeatedly declared that Islam forbids the development and use of all weapons of mass destruction. “The Islamic Republic of Iran, based on its religious beliefs, would never resort to the use of weapons of mass destruction,” Khamenei said recently. “*In contrast to the propaganda of our enemies, fundamentally we are against any production of weapons of mass destruction in any form.*”<sup>103</sup>

“Those in Iran who clandestinely believed they could develop nuclear weapons have now been forced to admit that is forbidden under Islam,”<sup>104</sup> said Hussein Shariatmadari, who is

president of the Kayhan chain of newspapers, controlled by Khamenei, and an unofficial spokesman for the supreme leader.

Grand Ayatollah Yusef Saanei, one of the highest-ranking clerics in Iran, said in an interview: “There is complete consensus on this issue. It is self-evident in Islam that it is prohibited to have nuclear bombs. It is eternal law, because the basic function of these weapons is to kill innocent people. This cannot be reversed.”<sup>105</sup>

Saanei said clerical authorities had expressed opposition to the development of weapons of mass destruction for many years, and he described it as the reason that Iran never retaliated with chemical weapons when Saddam Hussein used them to kill Iranian troops and Iran-backed Kurds during the 1980-1988 Iran-Iraq war. “You cannot deliberately kill innocent people,” he said.<sup>106</sup>

Asked whether the ayatollahs could issue a new ruling blessing the development of nuclear weapons, Fazal Miboudi, a mullah who is professor of political science at Mofid University in Qom, said any reversal of such a high-profile issue would require years of awkward theological maneuvering. “There is room for maneuver in Islam. “Things can be haram (forbidden) one day and halal (acceptable) later on. But this takes time,” he said.<sup>107</sup>

#### **September 2004**

The country’s Supreme Leader, Ayatollah Ali Khamenei, issued a fatwa in 2004 describing the use of nuclear weapons as immoral. In a subsequent sermon, he declared that “developing, producing or stockpiling nuclear weapons is forbidden under Islam.”<sup>108</sup>

#### **November 2004**

According to Javad Zarif, the Iranian ambassador to the UN, the decree by Khamenei “prohibit[s] the development and use of nuclear weapons”<sup>109</sup>

Iranian legislator Hojatoleslam Mohammad Taqi Rahbar said on November 9, 2004, that, “There are no Shari’a [religious law] or legal restrictions on having such weapons as a deterrent.”<sup>110</sup>

#### **February 2005**

Hasan Rowhani, Secretary of Iran’s Supreme National Security Council stated: “When the Iranian leader issues such a fatwa, then we have given a political, religious and ideological guarantee that we are not pursuing the production of nuclear weapons.”<sup>111</sup>

#### **June 2005**

Rafsanjani said, “No, we’re not willing to suspend. But we’re ready to provide greater assurances to the world that we won’t move from peaceful nuclear technology to military technology.”<sup>112</sup>

#### **June 2005**

Before the presidential elections, Mesbah Yazdi published a book called *The Islamic Revolution—Surges in Political Changes in History*.

Some of the sections of the book deal with seeking to acquire technology, because, according to Mesbah Yazdi, Iran must acquire “a certain kind of special weapon.”<sup>113</sup>

“We cannot know with certainty when the wolf-like elements in many countries which hold power will disappear and be wiped off the face of the earth, or when they will change their murderous ways. Therefore, we should not be indifferent to defensive policy and must strengthen our internal forces ... Experience shows that such an [indifferent] attitude is incorrect and we must always strive to strengthen the country’s military and defense systems.”<sup>114</sup>

“We have to produce the most advanced weapon inside the country, even if our enemies don’t like it. There is no reason that they have the right to produce a certain special type of weapon, but that other countries not have that right.”<sup>115</sup>

#### **August 2005**

According to the official Iranian statement to the International Atomic Energy Agency (IAEA) on August 9, 2005: “The Leader of the Islamic Republic of Iran, Ayatollah Ali Khamenei, has issued the fatwa that the production, stockpiling, and use of nuclear weapons are forbidden under Islam and that the Islamic Republic of Iran shall never acquire these weapons,”<sup>116</sup>

Iran’s Ayatollah Ali Khamenei issued a fatwa in 2005 forbidding the production of WMDs as “un-Islamic” and said that “developing, producing or stockpiling nuclear weapons is forbidden under Islam.”<sup>117</sup>

#### **February 2006**

Iran’s hardline spiritual leaders have issued a new fatwa, sanctioning the use of atomic weapons against its enemies. Mohsen Gharavian, a disciple of the ultra-conservative

Ayatollah Mohammad Taghi Mesbah-Yazdi, who is widely regarded as the cleric closest to Iran's new president, Mahmoud Ahmadinejad, stated that it is "*only natural*" to have nuclear bombs as a "*countermeasure*" against other nuclear powers, thought to be a reference to America and Israel.<sup>118</sup>

According to internal Iranian reporting, he added: "When the entire world is armed with nuclear weapons, it is permissible to use these weapons as a counter-measure. According to Sharia too, only the goal is important."<sup>119</sup>

Comment: This first public statement by the Yazdi clerical cabal on the nuclear issue appears to be part of an effort by the country's religious hardliners to begin preparing a theological justification for the ownership—and possible use—of atomic bombs. Gharavian did not specify what kinds of "goals" would justify a nuclear strike, but it is likely that military intervention by the United States would be considered sufficient grounds. Ayatollah Yazdi has previously justified use of suicide bombers against "*enemies of Islam*" and believes that America is bent on destroying the Islamic republic and its values.<sup>120</sup>

## June 2006

A Turkish diplomat, describing a visit in May 2006 by the chief Iranian nuclear negotiator Ali Larijani, said. "I was in the meeting," said the diplomat, who spoke on condition of anonymity. "He said there is even a fatwa, a religious ruling, since the time of Khomeini, that Iran will not produce any nuclear weapons."<sup>121</sup>

That said, interviews with a range of clerics and other students of Islamic teachings indicate that although Grand Ayatollah Ruhollah Khomeini barred Iranian forces from unconventional weapons during the 1980-88 war with Iraq does not necessarily preclude a future religious basis for possessing WMD might be found.

"This question is ambiguous," said Grand Ayatollah Jalalodine Taheri, who was a leading figure in the Iranian government before becoming a critic. Taheri, 80, said during an interview at his bedside in the central Iranian city of Isfahan that "taking weapons of mass destruction as a whole, I'm against it." But he added that religious texts might offer avenues that would allow stockpiling such weapons in the name of deterrence or self-defense. "It's not clear..."<sup>122</sup>

Mohsen Gharavian asserted: "Producing and using WMD is forbidden, just as producing deadly poison or harmful drugs, ... I think there is no ambiguity here .... I have not seen any

other type of interpretation among religious scholars. But I have got to add something to this: If any other nation has produced this WMD and has used it against a second nation, the second nation in the name of defending itself has the right to have it and to use WMD.”<sup>123</sup>

“I believe this is the logic of Islamic morals,” Gharavian said, professing himself “100 percent sure” that Khomeini and Iran’s current supreme leader, Ayatollah Ali Khamenei, “based on Islamic principles, have the same logic: Islam does not allow anyone to initiate harming a human being.”

The same caveat about self-defense was offered by an influential cleric aligned with Iran’s reformers, members of the relatively liberal movement recently sidelined by hard-line conservatives.

“In the time of the prophet, we didn’t have nuclear bombs, so there’s not a verse about it in the Quran,” said Mohsen Kadivar, who like Gharavian is a middle-ranking cleric. “But we have some verses which say we can’t kill anyone who hasn’t committed a crime. It’s very, very clear.”

The faith does accept the concept of retaliation, however, so long as it stops short of injuring innocents. Kadivar said that proviso appears to proscribe actual use of weapons of mass destruction, as would scriptures warning against damaging the environment.

“From all I can see, it’s not forbidden, but it’s hard to say it’s allowed. In jurisprudence these terms are different. If your enemies have these bombs, it’s not forbidden to have them. Don’t forget that Israel has these bombs. It’s outside the Non-Proliferation Treaty.”

“In the eight-year war with Iraq, this was a very hot debate among all the Islamic teachers, because Iranian cities were being bombarded,” said Kazem Mosavi Bojnoordi, who sat on the defense committee of Iran’s parliament during part of the war. “The conclusion was that it’s not allowed. Never during those eight years do we have one example of Iran bombarding cities.”

Bojnoordi recalled that after the first salvos from Iraq, a senior Iranian commander declared, “Now we will flatten Baghdad.” The comment brought an immediate rebuke from Khomeini, whose fatwa closed the matter for the balance of the war.

“According to Islamic teachings, there’s the principle that the goals never justify the means,” said Bojnoordi, whose father was a grand ayatollah. “It has not been supported in Islam that

you can do whatever you want to defend yourself. You are not allowed to gather weapons that are not allowed by Islam, even against your enemies.”

Note: If Iran is indeed working to produce nuclear weapons, experts say the program would surely be entrusted to the Islamic Revolutionary Guard Corps. Formed in 1979 by clerics who did not trust Iran’s existing army, the Revolutionary Guards have grown into a major force in Iran’s economy and political offices. Their insignia, one analyst noted, includes a passage from the Quran that reads, “Prepare any strength you can muster against them, and any cavalry with which you can overawe God’s enemy and your own enemy as well, plus others besides them whom you do not know.”<sup>124</sup>

### **March 2007**

Ayatollah Ali Khamenei: “*The Iranian nation needs nuclear energy for life, not weapons.*”—Insisting that Iran’s commitment to uranium enrichment was born out of a desire to harness nuclear technology for peaceful purposes; the use of nuclear weapons would violate Islamic law.<sup>125</sup>

### **June 2008**

Iran’s supreme leader said that “*no wise nation*” would pursue nuclear weapons but his country will continue to develop its nuclear program for peaceful purposes. Ayatollah Ali Khamenei appeared to be reacting to suggestions by the International Atomic Energy Agency that Tehran may be withholding information on secret attempts to make nuclear weapons.

“Iran is after the peaceful use of nuclear energy and we will strongly pursue and reach it despite the envy of our enemies,” Khamenei said at a ceremony honoring the founder of the Islamic Republic, Ayatollah Ruhollah Khomeini.

He also warned against nuclear terrorism, saying that one day “*world terrorists could attain nuclear weapons and take peace away from all the people in the world.*”<sup>126</sup>

### **March 2009**

Iran’s former president, Mohammed Khatami, dismissed as a “*satanic conspiracy*” claims the Islamic republic was secretly developing nuclear weapons during a wide-ranging address in Australia.<sup>127</sup>

### **September 2009**

Iran’s Supreme Leader Ayatollah Ali Khamenei stated that the US and its allies: “...falsely

accuse the Islamic republic of producing nuclear weapons. We fundamentally reject nuclear weapons and prohibit the production and the use of nuclear weapons... They know themselves that it's not true... but it is part of Iran-phobia policy that controls the behavior of these arrogant governments today.”<sup>128</sup>

### **October 2009**

Grand Ayatollah Hussein-Ali Montazeri offered the following fatwa: “In light of the scope of death and destruction they bring, and in light of the fact that such weapons cannot be used solely against an army of aggression but will invariably sacrifice the lives of innocent people, even if these innocent lives are those of future generations nuclear weapons are not permitted according to reason or Sharia. Anyway, humanity, particularly Muslims who follow the Sharia of the Seal of Prophets, and the Prophet, Praise be Upon Him, must take the lead in banning legally and practically all such weapons for all countries and in soliciting the help of respectable and dependable international organizations in guaranteeing such ban.”<sup>129</sup>

### **February 2010**

Ayatollah Ali Khamenei asserted claim that Islam is “opposed to nuclear weapons,” insisting that Tehran is not trying to build them. Iran’s ambassador to the International Atomic Energy Agency is also calling a leaked report that Tehran is working to build a nuclear warhead baseless.

Ayatollah Ali Khamenei issued the fatwa against nuclear weapons while addressing a crowd of military commanders after a ship-inaugurating ceremony.

“Islam is opposed to nuclear weapons and that Tehran is not working to build them... We have said time and again that our religious beliefs and fundamentals consider nuclear weapons as a symbol of annihilation of generations, thus our religion forbids them. Accordingly we do not believe in acquiring nuclear arms.”<sup>130</sup>

The threadbare and vain claims that nuclear arms are being made in Iran indicate that enemies of the nation have resorted to repetition even in the field of propaganda out of extreme helplessness.<sup>131</sup>

“In response to such vain claims, the Islamic Republic of Iran will not fall into emotions because we have repeatedly said that our religious ideas and beliefs consider such weapons, which are the symbols of mankind degeneration, forbidden and “Haram” (religiously prohibited).”<sup>132</sup>

Comment: For additional information, see “Supreme Leader: Iran has no belief in atom bombs”<sup>133</sup> and “Iran's Supreme Leader Khamenei Says Islam Opposes Nuclear Weapons”<sup>134</sup>

#### **April 2010**

Iran's permanent envoy to the UN, Mohammad Khazaee, announced that Supreme Leader Ayatollah Seyyed Ali Khamenei, in a message to the Tehran conference on April 17, declared: “Iran regards utilizing nuclear weapons as haram (forbidden in Islam) and it is incumbent on everyone to safeguard humanity from such weapons.”<sup>135</sup>

Hezbollah leader Sayyed Nasrallah stressed that the resistance party, “has the right to possess any weapon, but its policy implies that it abstains from denying or confirming any information about the type of weapons it has; and if someone announced that Hezbollah has nuclear weapons, Hezbollah would not deny that.”<sup>136</sup>

#### **June 2010**

Nuclear weapons are haram (prohibited) according to the laws of Islam, a private television channel quoted Iran's Ambassador to Pakistan Mashallah Shakiri.<sup>137</sup>

#### **July 2010**

Ali Larijani, in Switzerland to attend the 3rd World Conference of the Speakers of Parliament, stated: “Producing nuclear weapons has no place in Iran's defense doctrine and like all NPT (Non-Proliferation Treaty) members Iran has a right to use the peaceful nuclear energy.”<sup>138</sup>





## APPENDICES

### APPENDIX A – BACKGROUND ON THE QURAN

The book of Islamic revelation; scripture. The term means “recitation.” The Quran is believed to be the word of God transmitted through the Prophet Muhammad. The Quran proclaims God’s existence and will and is the ultimate source of religious knowledge for Muslims. The Quran serves as both record and guide for the Muslim community, transcending time and space. Muslims have dedicated their best minds and talents to the exegesis and recitation of the Quran. Because the Quran is the criterion by which everything else is to be judged, all movements, whether of radical reform or of moderate change, whether originating at the center or at the periphery of the Islamic world, have grounded their programs in the Quran and used it as a support.

Revelation of the Quran to Muhammad began in 610 with the first five verses of surah 96. No further revelations followed for a period of up to two years, at which point Muhammad received reassurance that the revelation was from God, not the devil. Thereafter, revelation continued without interruption until his death in 632, at which time the Quran was considered complete. Partial collections of the Quran were made during Muhammad’s lifetime by his wives, companions, and scribes. The final, authoritative version was completed and fixed under the direction of the third caliph, Uthman, within twenty years after Muhammad’s death. The Quran consists of 114 surahs (chapters), varying in length from 3 to 286 ayat (verses). Surahs are arranged by length, with the latest and longest surahs at the beginning and the earliest and shortest surahs at the end. Very early commentators classified these chapters into Meccan surahs (received while Muhammad lived in Mecca) and Medinan surahs (received after the hijrah, when Muhammad and his followers moved to Medina).

The fundamental message of the Quran may be summarized in the term *tawhid*, the oneness of God. Both men and women are held to be rational and ethically responsible creatures whose duty is to submit to the divine truth expressed in revelation. This act separates Islam, surrender and submission to the one God, from *kufr*, disbelief. Men and women who trust in God and live moral lives in thought, word, and deed become God’s stewards, responsible

for caring for the rest of God's creatures on earth. The society composed of such witnesses to the truth appears in history as the community created by Muhammad and his Companions in Medina in 622–32.<sup>139</sup>

### **Hadith**

Report of the words and deeds of Muhammad and other early Muslims; considered an authoritative source of revelation, second only to the Quran (sometimes referred to as sayings of the Prophet). Hadith (pl. ahadith; hadith is used as a singular or a collective term in English) were collected, transmitted, and taught orally for two centuries after Muhammad's death and then began to be collected in written form and codified. They serve as a source of biographical material for Muhammad, contextualization of Quranic revelations, and Islamic law. A list of authoritative transmitters is usually included in collections. Compilers were careful to record hadith exactly as received from recognized transmission specialists. The six most authoritative collections are those of al-Bukhari, Muslim, al-Tirmidhi, Abu Daud al-Sijistani, al-Nasai, and al-Qazwini. The collections of Malik ibn Anas and Ahmad ibn Hanbal are also important. Shiis also use these collections but recognize only some Companions as valid authorities; they consider hadith reports from descendants of Muhammad through Ali and Fatimah as fully authoritative. Other important Shii collections are those of al-Kulayni, al-Qummi, and al-Tusi. The science of hadith criticism was developed to determine authenticity and preserve the corpus from alteration or fabrication. Chains of authority and transmission were verified as far back as possible, often to Muhammad himself. Chains of transmission were assessed by the number and credibility of the transmitters and the continuity of the chains (isnad). The nature of the text was also examined. Reports that were illogical, exaggerated, fantastic, or repulsive or that contradicted the Quran were considered suspect. Awareness of fabrication and false teaching has long existed but became a major issue in academic circles in the twentieth century due to early reliance on oral, rather than written, transmission. Traditionally, the body of authentic hadith reports is considered to embody the Sunnah of the Prophet Muhammad. Muslim reformers encourage Muslims to be more discerning in acceptance of hadith.<sup>140</sup>

### **Sunnah**

Established custom, normative precedent, conduct, and cumulative tradition, typically based on Muhammad's example. The actions and sayings of Muhammad are believed to complement the divinely revealed message of the Quran, constituting a source for establishing norms for Muslim conduct and making it a primary source of Islamic law. In the legal field, Sunnah complements and stands alongside the Quran, giving precision to its precepts. Sunnah encompasses knowledge believed to have been passed down from previous generations and representing an authoritative, valued, and continuing corpus of beliefs and customs.

Early Muslim scholars developed and elaborated the concept of Prophetic Sunnah in order to capture as complete a picture of Muhammad's exemplary life as they could authenticate on the basis of hadith reports. The quest to memorialize Muhammad's life and ground it in historically verifiable process led to the biographical tradition known as *sirah*. This literature informed and inspired Muslim communities' interpretations of Islam as they sought to ground their own juridical, doctrinal, and historical identities in what they perceived to be normative Sunnah. Sunnah serves as a common template for Muslim groups and individuals, permitting them to represent a connection with the beginnings of Islam and acting as a common referent in the religious discourse of community formation and identity. It fosters self-identity and enhances the private moral lives of Muslims.<sup>141</sup>

### **Sunni Islam**

The Sunnis are the largest branch of the Muslim community, at least 85 percent of the world's 1.2 billion Muslims. The name is derived from the Sunnah, the exemplary behavior of the Prophet Muhammad. All Muslims are guided by the Sunnah, but Sunnis stress it, as well as consensus (*ijma*; the full name of Sunnis is *Ahl al-Sunnah wa'l-Ijma*, people of the Sunnah and consensus). The other branch of Islam, the Shiis, are guided as well by the wisdom of Muhammad's descendants, but through his son-in-law Ali.

Sunni life is guided by four schools of legal thought—Hanafi, Maliki, Shafii, and Hanbali—each of which strives to develop practical applications of revelation and the Prophet's example.

Although Sunni Islam comprises a variety of theological and legal schools, attitudes, and outlooks conditioned by historical setting, locale, and culture, Sunnis around the world share some common points: acceptance of the legitimacy of the first four successors of Muhammad (Abu Bakr, Umar, Uthman, and Ali), and the belief that other Islamic sects have introduced innovations (*bidah*), departing from majority belief.

Sunni Islamic institutions developed out of struggles in early Islam over leadership of the Muslim community. Political and religious positions, articulated by scholars, arose out of disputes over the definition of "true" belief, the status of those who profess Islam but commit a great sin, freedom, and determinism. Sunnis tend to reject excessive rationalism or intellectualism, focusing instead on the spirit and intent of the Quran.

Reform movements within Sunni Islam began to appear during the eighteenth century in the works of scholars seeking to revive the dynamism of Islamic thought and life in order to meet the demands of the modern world. These movements gained momentum with the imposition of European colonial control throughout the Muslim world. The nineteenth and

twentieth centuries witnessed the revival of Quranic studies as well as renewed commitment to science and education as the path to independence and development within the context of Islamic values and identity. Sunni thought of the eighteenth through twentieth centuries has also reexamined traditional Islamic law. Many modern reformers believe that fiqh (jurisprudence), as a human interpretation of divine law, should be open to reinterpretation in accordance with present circumstances and community needs. Almost all twentieth-century Muslim countries are debating the role of Islamic law and civil codes in modern society and the implications for constitutional law and the organization of the state.

Many Islamic thinkers reject the notion that Islam requires a particular form of state and government, looking instead to Quranic principles such as shura (consultation) for guidance. Some believe that religion and the state are intended to be separate entities, while others, such as the Muslim Brotherhood and Jamaat-i Islami, believe that an Islamic state is necessary to the development of an Islamic social order. Many thinkers have studied in the West and are open to dialogue with the West and commitment to a common struggle for the causes of humanity. They have examined the impact of European imperialism, Western neocolonialism, exploitation by socialist-bloc countries, the Cold War, the displacement of Palestinians, the lack of democracy in the Muslim world, and other crisis factors. Most Muslim thinkers today stress the importance of justice, especially social justice, in Islam. A Universal Islamic Declaration of Human Rights has been propounded, next to that of the United Nations. Increasing attention is also being given to subjects such as women and gender, the family, religious freedom, pluralism, the status of minorities, and religious tolerance. Islam is increasingly emphasized as a total way of life, encompassing both religious and worldly issues. Human beings are seen as God's stewards on earth, and the Muslim community is intended to reflect God's will. In this view, secularism is often rejected as being antithetical to religious values. Instead, Islam is presented as perfectly suited for human society, individually and collectively.<sup>142</sup>

### **Shia Islam**

Shii Muslims, the followers or party of Ali, believe that Muhammad's religious leadership, spiritual authority, and divine guidance were passed on to his descendants, beginning with his son-in-law and cousin, Ali ibn Abi Talib, his daughter, Fatimah, and their sons, Hasan and Husayn. The defining event of Shiism was the martyrdom of Husayn, his male family members, and many companions at Karbala (Iraq) in 681 by the Umayyads, granting an element of passion and pathos to Shiism.

There are three main branches of Shiis today: the Zaydis, the Ismailis (Seveners), and the Ithna Asharis (Twelvers or Imamis). The Zaydis (followers of Zayd ibn Ali ibn al-Husayn) are

located in Yemen, Iraq, and parts of Africa. They represent the activist groups who believe that the imam ought to fight for his rights and be a ruler of state. The Ismailis (Seveners) are named after the seventh imam, Ismail. They founded the Fatimid Empire (909–1171) and represent esoteric Shiism. The Ithna Asharis (Twelvers or Imamis) are the largest and most moderate group. They believe in twelve imams, beginning with Ali and ending with Muhammad al-Mahdi, who went into occultation and is expected to return at the end of time as the messianic imam who will restore justice and equity on earth. He is therefore referred to as the imam al-muntazar, the expected or awaited imam.

Shii political thought entered its modern phase during the Iranian Constitutional Revolution of 1905–11, when Shiis were divided between the forces of constitutionalism, modernism, reason, and secularism, on one hand, and more traditional interpretations of faith, religious law, and the role of clerics, on the other. The clerical establishment ultimately joined with secular revolutionaries in opposing European colonialism. By the 1940s and 1950s Shii political thought was addressing issues such as Communism and nationalism, often presenting Shiism as an alternative. During the 1960s the institutional bases for the propagation of modern Shii political thought were formed through Quranic schools and voluntary associations of Muslim university students and professionals. Informal gatherings led by clerics and intellectuals also promoted Shii political mobilization. The most important event of the 1960s was the 1963 uprising led by Ayatollah Ruhollah Khomeini (d. 1989), who called for the ouster of the shah.

The most effective ideologue of modern Shiism was Ali Shariati (d. 1977). In the late 1960s and 1970s Shariati combined Islam with Third Worldism and revolution into an activist political ideology. He identified Western imperialism, cultural colonialism, social injustice, and political repression as the greatest contemporary challenges. In contrast to the passive, suffering role typically assumed by Shiis, Shariati cast Shiism as activist, radical, revolutionary, classless, and opposed to tyranny and repression. Shariati inspired the Iranian cleric Ayatollah Khomeini, who emerged at the head of the Iranian Islamic revolution, and Imam Musa al-Sadr (d. 1978), who encouraged the Shiis of Lebanon to take an activist role in struggling for better socioeconomic conditions and political representation.

Khomeini was the most rhetorically successful revolutionary Shii. Opposed to the increasing secularization of Pahlavi society and American domination of Iranian political, social, economic, and cultural life, Khomeini introduced the principle of *vilayat-i faqih* as the foundation for Islamic government. According to this principle, in the absence of an imam, the leadership of Muslim nations is to be entrusted to Shii jurists, who are to rule by virtue of their knowledge of sacred law and their ability to regulate the daily affairs of Muslims. The

resultant Islamic revolution of 1979 and constitution of the Islamic Republic of Iran represent the ideological institutionalization of modern Shii political ideas. In the post-revolutionary period, such reformist thinkers as Abd al-Karim Soroush have tried to move ideological debates beyond factionalism toward serious engagement of the consequences of the success of the Islamic revolution.<sup>143</sup>

### **Takfir**

Pronouncement that someone is an unbeliever (kafir) and no longer Muslim. Takfir is used in the modern era for sanctioning violence against leaders of Islamic states who are deemed insufficiently religious. It has become a central ideology of militant groups such as those in Egypt, which reflect the ideas of Sayyid Qutb, Mawdudi, Ibn Taymiyyah, and Ibn Kathir. Mainstream Muslims and Islamist groups reject the concept as a doctrinal deviation. Leaders such as Hasan al-Hudaybi (d. 1977) and Yusuf al-Qaradawi reject takfir as un-Islamic and marked by bigotry and zealotry.<sup>144</sup>

### **Fatwa**

Authoritative legal opinion given by a mufti (legal scholar) in response to a question posed by an individual or a court of law. A fatwa is typically requested in cases not covered by the fiqh literature and is neither binding nor enforceable. Its authority is based on the mufti's education and status within the community. If the inquirer is not persuaded by the fatwa, he is free to go to another mufti and obtain another opinion; but once he finds a convincing opinion, he should obey it. Theoretically, muftis should be capable of exercising legal reasoning independently of schools of law (ijtihād), although followers of tradition (muqallids) are also allowed to issue fatwas. Historically, fatwas were independent of the judicial system, although some muftis were officially attached to various courts. In the Ottoman and Mughal political systems, the chief mufti was designated shaykh al-Islam. Other muftis were appointed to positions as market inspectors, guardians of public morals, and advisers to government on religious affairs. Under colonial rule, madrasas took over the role of religious guides, and special institutions were established to issue fatwas. In modern times, print and electronic media have reinforced the role and impact of fatwas by making them instantly available to the public. Present-day Muslim states have tried to control fatwas through official consultative/advisory organizations within religious ministries.<sup>145</sup>

## APPENDIX B: AL-QAEDA NUCLEAR PLAYERS

**Name:** Sayf al Aadi



**Title:** Al-Qaeda Chief of Operations

**Nationality:** Egyptian

**Status (2010):** Unknown - reportedly in Iran

**Name:** Bahsiruddin Mahmood



**Title:** Associate of Al-Qaeda/Headed UTN

**Nationality:** Pakistani

**Status (2010):** Lives in Islamabad, cannot leave Pakistan

**Name:** Abu Bakr (al-Ghamdi)



**Title:** Al-Qaeda Chief in Saudi Arabia

**Nationality:** Saudi

**Status (2010):** Surrendered to Saudis - in custody

**Name:** Abd al Aziz al-Masri



**Title:** Al-Qaeda nuclear CEO

**Nationality:** Egyptian

**Status (2010):** Unknown; as of 2005, reportedly in Iran

**Name:** Abu Khabab



**Title:** CBRN expert, headed al-Qaeda nuclear efforts 2003-2008

**Nationality:** Egyptian

**Status (2010):** Killed July 28, 2008

**Name:** Abu Hamza al-Muhajir



**Title:** Senior aide to Zarqawi

**Nationality:** Egyptian

**Status (2010):** Killed by Iraqi and US forces in Iraq

**Name:** Osama bin Laden



**Title:** Head of Al-Qaeda

**Nationality:** Saudi

**Status (2010):** Unknown

**Name:** Abdul Majid



**Title:** UTN principal, Nuclear engineer

**Nationality:** Pakistani

**Status (2010):** In Pakistan

**Name: Abu Musan  
al-Suri aka Mustafa**



**Sitmaryam**

Title: Member of Al-Qaeda;  
proficient writer  
Nationality: Syrian  
Status (2010): US claims in  
custody- location classified

**Name: Sulayman Abu  
Ghayth al-Libi**



Title: Al-Qaeda Press Chief  
Nationality: Libyan  
Status (2010): Unknown -  
reportedly in Iran

**Name: Ayman  
al-Zawahiri**



Title: Operational and  
strategic commander of Al-Qaeda  
Nationality: Egyptian  
Status (2010): Unknown

**Name: Adnan  
el-Shkurijumah  
aka Jaffar al-Tayyar (“the  
Pilot”)**



Title: Cased US targets before  
9/11- of nuclear interest  
Nationality: Saudi  
Status (2010): External operations  
chief, located in Pakistan/  
Afghanistan

**Name: General  
Hamid Gul**



Title: Former Chief of  
Pakistani Intelligence, on  
UTN board  
Nationality: Pakistani  
Status (2010): In Pakistan

**Name: Abu Rida  
al-Suri aka Mohammed  
Luay Bayazid**



Title: Nuclear physicist, al-Qaeda  
inner circle  
Nationality: Syrian  
Status (2010): In Sudan

## APPENDIX C: EVENTS FROM 2003–2010 - NUCLEAR TIMELINE UPDATE\*

(\*Nuclear-related supplement to 2009 Al-Qaeda WMD Threat: Hype or Reality?)

*Note: Although these events do not relate specifically to the story line of al-Qaeda leadership's justification of nuclear terrorism, they help contextualize bin Laden and Zawahiri's thinking over time.*

### March 2003

Khaled Shaykh Muhammed captured in Pakistan. Confirms existence of al-Qaeda's nuclear program. Provides information on key operatives involved.<sup>146</sup>

### Late October 2005

Capture of Abu Musab al Suri aka Mustafa Sitmaryam. In December 2004, he published the manuscript, "The International Islamic Resistance Call."<sup>147</sup> In this 1,600-page global jihadi blueprint and in his "Letter of Reply to the U.S. State Department," al-Suri enthusiastically argues that weapons of mass destruction should be used against the United States and criticizes Osama bin Laden for not using weapons of mass destruction in the 9/11 attacks. He states:

"If I were consulted in the case of that operation I would advise the use of planes in flights from outside the U.S. that would carry WMD. Hitting the U.S. with WMD was and is still very complicated. Yet, it is possible after all, with Allah's help, and more important than being possible—it is vital."<sup>148</sup>

"The ultimate choice is the destruction of the United States by operations of strategic symmetry through weapons of mass destruction, namely nuclear, chemical, or biological means, if the Muhajidin can achieve it with the help of those who possess them or through buying them."<sup>149</sup>

He argues that acquiring WMD should be a foremost priority of the global jihadi community and is more important than attacking American troops in Iraq. Al-Suri calls on the militants to create special elite squads that would carry out strategic operations and should consist of highly trained operatives who possess advanced WMD knowledge and receive ample financial support, "*when there is a need to counter attack or to achieve strategic symmetry with the United States.*"<sup>150</sup>

### October 10, 2006

Abu Hamza al-Muhajir, then the leader of al-Qaeda in Iraq, called for nuclear scientists and

explosive experts to help his organization in making biological and radioactive weapons. That same year, British citizen Dhiren Barot pleaded guilty to conspiring to detonate a radioactive dirty bomb. He planned to target underground parking garages in the U.K. and U.S. institutions such as the International Monetary Fund, the World Bank, the New York Stock Exchange, and offices belonging to Citigroup and Prudential Financial.<sup>151</sup>

#### **January 18 2006**

Predator strike—Abu Khabab is killed. At the time of his death, Abu Khabab was reportedly continuing his decade long effort to develop chemical, biological and nuclear weapons for al-Qaeda.<sup>152</sup>

#### **November 27, 2008**

Zawahiri interview. Many of the questions dealt with Egypt, the history of the Islamic Group and the Al Jihad Group, and the political situation in that country. Some of his responses were quite cryptic; responding to the question when will there be a wing of the organization in Egypt? Zawahiri said: *“the days will reveal to you what you didn’t know, And news will come to you from those who didn’t have it”*<sup>153</sup>

#### **July 23, 2009**

Bashiruddin Mahmud strongly endorses Pakistan’s nuclear program in a wide ranging interview. The former UTN chief, who has been under a form of house arrest and other restrictions for years, asserted that nuclear weapons belong to the whole “ummah” (Islamic community).<sup>154</sup> Mahmood, who held a fireside chat with Osama bin Laden to discuss the al-Qaeda leaders interest in nuclear weapons before 9/11, may have been motivated to assist terrorists in obtaining a bomb because he shared their goal of fulfilling Islamic prophecy, as he sees it. In his writings, he predicts that the period from 2007 to 2014 would be of great turmoil and destruction in the world: “At the international level, terrorism will rule; and in this scenario use of mass destruction weapons cannot be ruled out. Millions, by 2002, may die through mass destruction weapons, hunger, disease, street violence, terrorist attacks, and suicide.”<sup>155</sup>

Mahmood has advocated sharing Pakistan’s nuclear weapons technology with other Islamic nations which he believed would give rise to Muslim dominance in the world.

He is fascinated “with the role sunspots played in triggering the French and Russian Revolutions, World War II and assorted anti-colonial uprisings.”

In his book “Cosmology and Human Destiny” Mahmood argued that sunspots have influenced major human events, including the French Revolution, the Russian Revolution, and World War II. He asserted that governments across the world “are already being subjected to great emotional aggression under the catalytic effect of the abnormally high sunspot activity under which they are most likely to adapt aggression as the natural solution for their problems.”<sup>156</sup>

#### **July 15, 2009**

Ayman Zawahiri warned in an audio message that the US intends to seize Pakistan’s nuclear arsenal. Zawahiri implied that Pakistani insiders at nuclear facilities should choose their loyalties carefully.<sup>157</sup>

#### **July 2010**

Adnan el-Shukrijumah, an American citizen on the FBI’s most-wanted list for his unresolved WMD and possible 9/11-related connections, was named as an accomplice in the New York subway bomb plot with Najibullah Zazi.<sup>158</sup> Shukrijumah is reportedly named chief of external operations for al-Qaeda, giving him responsibility for coordinating attacks against western interests, including in the US.

## APPENDIX D: EXCERPTS OF GRAND MUFTI GOMAA’S ANTI-WMD FATWA

Recently, various sects and groups issued several publications asserting the permissibility of using weapons of mass destruction against non-Islamic countries claiming that their allegations conform to Islamic law. They substantiate their claims with proof from some juristic texts, and on analogy to turs [En. human shield], tabyīt [En. surprising the enemy at night] and tahrīq [En. killing with fire] mentioned in some books of Islamic jurisprudence.

Possessing these kinds of weapons to deter enemies is a requirement of Islamic law. This is evidenced by the words of Allah: “And prepare against them whatever you are able of power and steeds of war by which you may terrify the enemy of Allah and your enemy”

In his interpretation of the verse, the luminary, al-Alusi, said: “*Anything that can be used as a deterrence in war*” [10/24 Dar al-Turath al-Arabi]. In the previous verse Allah commands Muslims to deter their enemies who may be inclined to attack Muslims. Apart from being a principle of Islamic law that factors in punishments and disciplinary actions, deterrence is also a legitimate political principle sanctioned by states in their defense policies and established in military strategies.

It is well known that acquiring and possessing WMDs creates strategic and military balance between states and serves to deter any state that is tempted to launch a hostile attack against a Muslim country therefore preventing them from being dragged into an undesired war. This applies to acquiring WMDs and using them to deter enemies and oppressors. There is a difference between acquiring these weapons to deter potential aggressors and between initiating their use.

The scenario of initiating the use of WMDs which is based on the personal reasoning and opinions of individual sects, factions, and groups is prohibited by Islamic law. Any opinion that maintains its permissibility or attributes it to Islamic law and its scholars is a false claim and accusation against [sacred] law and religion. This is substantiated by the following:

### **The decision to declare war**

The principle in war is that it should be launched with the authorization of the Muslim ruler; it is imperative that the decision to declare war be based on his own reasoning and his subjects must obey him. A ruler is authorized to declare war due to his knowledge of evident

and hidden matters, the consequences of actions and the interest of his people. For this reason, a ruler is authorized to declare wars and hold domestic or international treaties as soon as he assumes office. In turn, he does not issue decisions based on [personal] whims. He declares a war only after consulting specialists in every relevant field such as technical specialists, military personnel, and political consultants who are indispensable in the military strategy.

A person or persons who independently determine the use of WMDs not only impose their opinion on their rulers but on the entire [Muslim] community. They give themselves the right to make decisions relating to the destiny of the entire community without recourse to ahl al-hall wal-'aqd [En. those who are qualified to elect or dispose of a ruler on behalf of the Muslim community] in matters that expose the country or people to great dangers.

### **Breach of international agreements and treaties**

Islamic states must abide by the agreements and treaties that they acknowledged and entered into on their own accord; standing firmly with the international community towards achieving global peace and security [only] to the extent of the commitment of the signatory countries.

### **Using WMDs involves killing people and taking them by surprise**

Abu Hurairra (may Allah be pleased with him) narrated that the Messenger of Allah (peace and blessings be upon him) said: “A *believer is not to kill [others]. Faith is a deterrent to killing*”. Ibn al-Athir said: “*Killing [here] means taking others by surprise and killing them while they are unprepared*” [Al-Nihaya fi Gharib al-Hadith wa al-Athar 3/775]. The hadith means that faith is a deterrent to attacking others suddenly while they are unprepared. The Prophet’s words: “A *believer is not to attack [others] by surprise*” is a clear prohibition since it involves deception. Khubayb al-Ansarī (may Allah be pleased with him) was captured by the polytheists and sold in Mecca to Banī al-Hārith ibn ‘Amir ibn Nawfal ibn abd Manāf. It was Khubayb who killed al-Hārith ibn ‘Amir in the battle of Badr. He remained a prisoner with them for some time. Once, he asked the daughter of al-Harith for a razor to shave and placed her son on his lap. When she came upon this scene and saw Khubayb holding the razor in his hand and her son on his lap, she became scared. Thereupon, Khubayb said to her: “*Are you afraid that I might kill him? I will never do that.*” She said: “*I never saw a captive better than Khubayb.*” This is an example of a Muslim imprisoned by his enemies who plotted to kill him. In spite of being on the verge of death, he refrained from killing their son when he had the opportunity to do so. The manners of a Muslim are free from deception and killing others by surprise.

### **Killing and harming women and children**

Al-Bukhari and Muslim reported through Abdullah ibn Umar (may Allah be pleased with them both) that a woman was found dead in one of the battles fought by the Prophet. Thereupon he condemned killing women and children. Another phrasing of the hadith states: *“The messenger of Allah forbade killing women and children.”* Imam al-Nawawi said: *“There is a scholarly consensus on putting this hadith in practice as long as the women and children do not fight [the Muslims]. If they do, the majority of scholars maintain that they should be killed”* [Sharh Muslim 12/48].

### **Killing and harming Muslim residents of the target countries**

Targeting other countries with WMDs will endanger the lives of Muslims residents, natives or visitors. The noble Shari’ah honors the life of Muslims and warns against shedding their blood without right. Allah Almighty says: “But whoever kills a believer intentionally—his recompense is Hell, wherein he will abide eternally, and Allah has become angry with him and has cursed him and has prepared for him a great punishment.” [Al-Nisa’]

On that account: We ordained for the children of Israel that if any one kills a person—unless it be for murder or for spreading mischief in the land—it would be as if he killed the whole people, and if anyone saved a life, it would be as if he saved the life of all people [Al-Maeda. Abdullah ibn ‘Amr (may Allah be pleased with them both) narrated that the Prophet said: *“The perishing of this world is easier in the sight of Allah than taking a Muslim’s life”* [Sunan al-Nassa’i].

### **The ramifications of using WMDs**

Such a foolish act will bring about catastrophes not only upon Muslims but upon the entire world because the countries under attack may retaliate either in kind or in a more brutal manner. Moreover, the destructive effects of some of these weapons may exceed the targeted area and spread by wind to other countries not involved in the conflict. Hence, the immediate and far reaching evils of WMDs are greater than the benefits, if any. It is worthy to mention at this point that preventing harm is among the principles of Islamic law. This is based on legal maxim, *“Preventing harm takes precedence over gaining benefit.”*

### **Consequences of using WMD**

Some of these weapons damage individual and public properties, wasting wealth which is forbidden by Islamic law. The prohibition is greater if the wasted wealth belongs to the op-

pressed. Thus, this prohibition lies in violating Islamic law on the one hand and the rights of others on the other.

**The use of some of these weapons may require the perpetrator to enter the target**

Permission to enter a country is considered a non-verbal security agreement not to cause corruption in the host country.

Imam al-Khurqī said in his Mukhtasr: “*Whoever enters enemy lands in safety is not allowed to cheat them of their money.*” Commenting on this statement, Ibn Qudāma said that it is prohibited to betray them [non-Muslims in non-Muslim countries] because there is an unspoken covenant to enter in safety on the condition that the person who seeks permission to enter a foreign country does not betray or oppress them. So whoever enters our lands in safety and betrays us violates this security agreement. This is prohibited because it involves treachery which is forbidden in our religion. [Al-Mughni 9/237].

The legal and juristic texts used as evidence to spread this extreme idea are taken out of context. Using these texts in such a manner disturbs peace, ignoring the differences between states of war and peace, and the special rulings pertaining to each of them. This is a compelling difference that is inconsistent with using WMDs weapons based on textual evidence on the permissibility of tabīt and ramy al turs. It is a grave mistake to make this analogy even though they are valid in themselves within the context cited by the authors of these texts. It is dangerous to take these rulings from their context and apply them to different situations. Moreover, it is impermissible to derive a ruling permitting the use of WMDs against an oppressor based on analogy since it is established that there is a difference between the rulings for repelling an aggressor and those of jihad [En. fighting for the cause of Allah]. These include repelling the aggressor by the least violent means. If it is possible to resolve the conflict in a peaceful manner, it is prohibited to use weapons against the aggressor. Using WMDs against others is not consistent with Islamic values.

**It is invalid to base the permissibility of using WMDs on analogy [Ar.qiyās] to tabyīt, using the catapult, or tahrīq**

There are great and manifest differences between the two situations. The prophetic traditions mentioned on tahrīq, tabyīn, and the catapult were narrated in a state of war; there is a difference between a state of war and peace. There is a great difference in the effects of throwing stones at the enemy using the catapult and between using WMDs. The effects of the catapult are relatively restricted as compared to the effects of WMDs. The above methods of warfare

mentioned in the prophetic traditions were conducted with the approval of rulers. Giving a person, [other than a ruler], the right to declare war is a crime against the [Islamic] community and its rulers under the pretext of jihad.

Even if we assume the authenticity of these prophetic traditions, we must note that they refer to specific incidents and cannot be put into general practice. For this reason, some scholars maintained that the principle [in war] is to avoid *tabyīt*, *tahrīq*, and destruction; they base their opinion on the general religious texts which discuss the ethics of war.

Our opinion is that WMDs that cause fires must not be used due to the prohibition of burning. After ordering his troops to use fire, the prophet forbade its implementation as a weapon even though the Muslims were in a state of war. Abū Hurayrah narrated that the prophet [pbuh] said: “Allah alone has the right to punish with fire” [Bukhārī]. It is known that many WMDs cause huge fires, therefore it is better to ban their use even in a state of war.

It is a mistake to base the issue of the use of WMDs on *tabyit* because scholars restricted its permissibility by the following: It must be implemented in a state of war. The enemy must be from among those whom Muslims are permitted to fight as compared to the enemy with whom Muslims have a truce. It is impermissible to attack the enemy under the cover of night because it is a violation of the security pact between them in terms of lives, wealth, and honor. If it is prohibited to attack under the cover of darkness the enemy with whom Muslims have a security pact, then it is even more prohibited to use such lethal weapons against them.

### **Human Shields**

It is impermissible to use human shields save in state of war and under specific conditions detailed by jurists. [Bahr Ra`iq 80\5, Hashiyat ibn ‘Abī Dīn 223\3, Rawdat al Tablibīn 239\10, Mughnī al Muhtāj 223\4, Mughni ibn Qudāma 449\8, 386/10].

## APPENDIX E: SUNNI BIOGRAPHIES

**Dr. Taha Jabir al-Alwani** is President of Cordoba University. He also holds the Imam Al-Shafi'i Chair in Islamic Legal Theory at The Graduate School of Islamic and Social Sciences at Cordoba University. Alalwani concentrates on the fields of Islamic legal theory, jurisprudence (fiqh), and usul al-fiqh. Alalwani emigrated from Saudi Arabia to the United States in 1983. Alwani has written about the Islamization of Knowledge, the need for Ijtihad, and is the founder together with Dr. Qaradawi of fiqh al-aqalliyyat (Muslim minority jurisprudence) which stands for making fiqh easy.<sup>159</sup>

**Gamal al-Banna.** With his rationalistic, progressive interpretation of Islam, the youngest brother of the founder of the Muslim brotherhood in Egypt, Hassan al-Banna, has called for an Islamic revival (al-ihya' al-islami) based on the Quran and reason. In this context, he considers the Quran to be the authentic word of God, but warns that some hadiths (reports on Messenger Muhammad's statements and acts) have been falsified; thus, Muslims should trust only the Sunna (prophetic tradition) which does not contradict the true meaning of the Quran.<sup>160</sup>

He wrote a preface in 1991 in "A Disrupted World" that exhorted Islam to fill the moral void that he perceived exists in the world: "The collapse of Marxism doesn't mean that capitalism will succeed. Rather, this means that the mistakes of Marxism were bigger than the mistakes of capitalism. Islam replaces the class system with its elitist barriers and dead ends by the general equality of the people, the highest ranks or the strata of notables by the declaration of absolute equality among the people, without any difference between black and white, male and female, rich and poor, base and noble. What was new was the spirit of freedom, the principles of justice and equality that Islam let shine. Today Islam is called upon to fulfill this role a second time."<sup>161</sup>

**Grand Mufti of Egypt Ali Gomaa** began memorizing the Quran at the age of ten and, although he did not go to religious schools, by the time he graduated from high school he had studied the six canonical collections of hadith as well as Maliki jurisprudence. In course of his studies, he memorized many of the foundational texts in jurisprudence, Arabic grammar, Quranic recitation, and hadith methodology.<sup>162</sup>

In 2003, Shaykh Gomaa was appointed Grand Mufti of Egypt. Since taking on the position he has revolutionized the process of issuing fatwas in Egypt transforming Dar al-Ifta from an institution that was the extension of one individual (the Grand Mufti) to a modern institution with a fatwa council and a system of checks and balances.<sup>163</sup>

In addition to his WMD fatwa, the grand mufti has also stated that it is not allowed for Muslims to kill civilians even during a declared war.<sup>164</sup>

**Faysal Mawlawi** is Deputy Chairman of the European Council on Fatwa and Research (Current or Former). The Jamaa al-Islamiya (Lebanese branch of the Muslim Brotherhood elected Ibrahim al-Masri as secretary general to replace Sheikh Faisal al-Mawlawi who is suffering from a chronic disease in 2008.<sup>165</sup>

**Ibrahim Negm** was as an intellectual at an early age, the Egyptian cleric earned distinguished scholarship to pursue Islamic studies at Al Azhar University. He has taught and studied at many prestigious institutions in the United States, including Harvard. Sheikh Negm is currently serving as a representative of Sheikh Ali Goma, and is currently teaching at al-Azhar University in Egypt.<sup>166</sup>

**Abdul Mohsen al-Obeikan** is a top religious scholar and an advisor in the court of Saudi King Abdullah. He has asserted that Muslims who join al-Qaeda and engage in terrorist operations are deviating from the right path of Islam.<sup>167</sup>

**Salman Al-Odeh**, The Saudi cleric who was a leader of the extremist Saudi Sahwa movement. He spent 1994–1999 in prison because of his opposition to Saudi government policy during the first Gulf War (1990–1991). In November 2004, Al-Odeh was one of 26 clerics who signed a fatwa supporting jihad against U.S. forces in Iraq. In recent years, Al-Odeh has tempered his views, and has publicly criticized Osama bin Laden, though he continued to support resistance against coalition forces in Iraq.<sup>168</sup>

**Muhammad Tahir-ul-Qadri** was trained both in traditional madrasas and at Punjab University where in 1972 he earned an MA and PhD in Islamic Studies. Qadri appeals to Islamic traditionalists as well as to those that appreciate his integration of traditional Islamic sciences with modern disciplines. Though he studied in Saudi Arabia, Qadri is a vocal critic of Wahabi and Salafi Islam's extremist and violent tendencies.<sup>169</sup>

**Yusuf al-Qaradawi** was once a close associate of Egyptian Muslim Brotherhood leader Hassan al Banna. Qaradawi has denounced the attacks against civilians in the U.S. and encouraged Muslims to donate blood to the victims of the attack: "Our hearts bleed for the attacks that has targeted the World Trade Center, as well as other institutions in the United States

despite our strong oppositions to the American biased policy towards Israel on the military, political and economic fronts”<sup>170</sup>

However, Qaradawi makes a sharp distinction in the case of Israel. Qaradawi supports suicide attacks on all Israelis, including women and children since he views the Israeli society as a “*completely military*” society that did not include any civilians. He also considers pregnant women and their unborn babies to be valid targets on the ground that the babies could grow up to join the Israeli Army.<sup>171</sup>

**Tariq Ramadan** is considered to be a liberal, progressive bridge-builder between Islam and the west. As a young man, Ramadan took his French wife and his children to Egypt, where he embarked on an intense, 20-month study of Islam, and his family studied both Islam and Arabic. His purpose: “I now meant to stand up for my religion, explain it, and, above all, show that we have so much in common with Judaism and Christianity but also with the values advocated by humanists, atheists, and agnostics. I meant to question prejudices, to question false constructions of Europe’s past, and of course, help open the way to confidently living together in harmony as our common future requires.”<sup>172</sup>

As Ramadan’s profile grew, he was accused by some “of being a ‘prince of doublespeak’: essentially, saying one thing in French and another in Arabic.”<sup>173</sup> The mistrust with which Ramadan is viewed in the United States relates to his familial connections to his uncle, the founder of the Muslim Brotherhood in Egypt, and to alleged meetings he is said to have arranged with terrorists, including Ayman al-Zawahiri and Omar Abdel Rahman. He has denied meeting either man.<sup>174</sup>

**Imam Abdulaziz al-Sharif** is the imprisoned founder of the Egyptian Jihad organization and a prominent jihad theoretician better known as “Doctor Fadl.” His work, called *Tarshid al-amal al-jihadi fi misr wa al-alam* (*Rationalizing the Jihadi Action in Egypt and the World*), harshly criticized Salafi-jihadist extremism.<sup>175</sup> Ayman Zawahiri attempted to rebut his critique in his own book “*Exoneration*” (2008). Dr Fadl wrote a sequel in response to “*Exoneration*” in 2010.

## APPENDIX F: SHIA BIOGRAPHIES

**Kazem Mosavi Bojnoordi** sat on the defense committee of Iran's parliament during part of the war and is now chief editor of Iran's Center for the Great Islamic Encyclopedia.<sup>176</sup>

**Mohsen Gharavian** is a disciple of the ultra-conservative Ayatollah Mohammad Taghi Mesbah-Yazdi, who is widely regarded as the cleric closest to Iran's new president, Mahmoud Ahmadinejad. He is a lecturer based in a religious school in the holy city of Qom.<sup>177</sup>

**Ayatollah Mohsen Kadivar** is an Iranian philosopher, University lecturer, cleric and activist. A political dissident, Kadivar has been a vocal critic of the doctrine of clerical rule, also known as Velayat-e Faqih (Guardianship of the Islamic Jurist), and a strong advocate of democratic and liberal reforms in Iran. In 1999, he became the first intellectual jailed in a crackdown on Iran's democracy movement. As a student, in the religious city of Qom, he was taught by prominent teachers like Ayatollah Hossein-Ali Montazeri. Kadivar taught fiqh and Islamic philosophy at Qom Seminary. Kadivar has written a detailed critique of Ayatollah's Khomeini's theory of Islamic government as rule by Shia clerics.<sup>178</sup>

**Grand Ayatollah Ali Hoseyni Khāmene'i** is the head of the Muslim conservative establishment in Iran and Twelver shi'a marja. He was president of Iran from 1981 to 1989, and has been Supreme Leader of Iran since June 1989 when the Assembly of Experts selected him to succeed Ayatollah Ruhollah Khomeini. He has been described as one of only three people having "important influences" on the Islamic Republic of Iran (the other two being the founder of the republic, Ayatollah Ruhollah Khomeini, and the president of Iran for much of the 1990s, Ayatollah Akbar Hashemi Rafsanjani).<sup>179</sup>

**Seyed Mohammad Khātāmī** is an Iranian scholar and politician. He served as the fifth President of Iran from August 2, 1997 to August 3, 2005. Khatami attracted global attention during his first election to the presidency when, as "a little known cleric, he captured almost 70% of the vote." Khatami had run on a platform of liberalization and reform. During his two terms as president, Khatami advocated freedom of expression, tolerance and civil society, constructive diplomatic relations with other states including those in the Asia and European Union, and an economic policy that supported a free market and foreign investment.<sup>180</sup>

**Mohammad Khazaei** is the current Permanent Representative of the Islamic Republic of Iran

to the United Nations. He presented his credentials to the United Nations Secretary-General Ban Ki-moon on July, 2007. Khazaei has a B.A. in Business Administration from the University of Guilan, and master's degree from George Mason University in the United States. Khazaei has taught macroeconomics and philosophy at Tehran's Allameh Tabataba'i University.<sup>181</sup>

**Syed Ruhollah Moosavi Khomeini** (24 September 1900–3 June 1989) was an Iranian religious leader and politician, and leader of the 1979 Iranian Revolution which saw the overthrow of Mohammad Reza Pahlavi, the Shah of Iran. Following the revolution and a national referendum, Khomeini became the country's Supreme Leader—a position created in the constitution as the highest-ranking political and religious authority of the nation—until his death. Khomeini was a marja ("source of emulation", also known as a Grand Ayatollah) in Twelver Shi'a Islam, but is most famous for his political role. In his writings and preachings he expanded the Shi'a Usuli theory of velayat-e faqih, the "guardianship of the jurisconsult (clerical authority)" to include theocratic political rule by Islamic jurists.<sup>182</sup>

**Ali Larijani** is an Iranian politician and the chairman/speaker of the Iranian parliament. Larijani was the secretary of the Supreme National Security Council from August 15, 2005 to October 20, 2007. In his post as secretary he functioned as a top negotiator on issues of national security, including Iran's nuclear program.<sup>183</sup>

**Fazal Miboudi** is a pro-reform mullah who is a professor of political science at Mofid University in Esfahan.<sup>184</sup>

**Grand Ayatollah Hussein-Ali Montazeri** (1922–19 December 2009) was a prominent Iranian scholar, Islamic theologian, democracy advocate, writer and human rights activist. He was one of the leaders of the Iranian Revolution in 1979. He was once the designated successor to the revolution's Supreme Leader Ayatollah Khomeini, with whom he had a falling out in 1989 over government policies that Montazeri claimed had infringed on people's freedom and denied them their rights. Montazeri was essentially exiled in his later years to the holy city of Qom, where he remained influential to the reformist movement. He was widely known as one of the most knowledgeable senior Islamic scholars in Iran and a Grand Marja (religious authority) of Shi'ite Islam.<sup>185</sup>

**Hassan Rowhani** is an Iranian politician and cleric, and as of March 2007, a member of the

Supreme National Security Council. He served as chief negotiator with UK, France, and Germany on Iran's nuclear program. Under his supervision, his team agreed to unconditionally suspend nuclear enrichment. He was subsequently replaced, and enrichment was resumed. Rowhani has previously been a Deputy Speaker of Majlis, as a representative from Tehran and is currently member of the Expediency Discernment Council. On August 14, 2005, Rowhani was replaced by Ali Larijani as the secretary of the council.<sup>186</sup>

**Grand Ayatollah Yousef Sanei** is a scholar, theologian and Islamic philosopher who has called for radical reform. Born in Isfahan in 1937, Sanei retired from the Guardian Council in 1983 and has not held any political office since that time. Sanei has been considered the successor of Grand Ayatollah Hussein-Ali Montazeri as the spiritual leader of the opposition movement.<sup>187</sup>

**Mashallah Shakiri** is the Iranian ambassador to Pakistan.<sup>188</sup>

**Hossein Shariatmadari** is the managing editor of *Kayhan*, a conservative Iranian newspaper. A supporter of President Mahmoud Ahmadinejad, he has been described as being a close confidant of Iran's supreme leader Ali Khamenei. He reportedly has inks to Iran's intelligence services. On February 12, 2009, he wrote a controversial article suggesting that former President Khatami might be assassinated if he ran again for President.<sup>189</sup>

**Ayatollah Jalal Al-Din Taheri Esfahani** is an Iranian scholar, theologian and Islamic Philosopher. Taheri was a member of Assembly of Experts and representative of Ayatollah Khomeini in Isfahan province. In 2002, Taheri resigned after 30 years as prayer leader in Isfahan. Taheri's resignation letter complained of "*generalized corruption of religious power in Iran.*" He is a critic of Islamic extremism and supreme leader of Iran. In 30 June 2009, Taheri wrote an open letter in which he called Mahmoud Ahmadinejad's election to President illegitimate.<sup>190</sup>

**Mohammad Taghi Mesbah Yazdi** is a hardline Iranian Twelver Shi'i cleric and politician who is widely seen as Iranian President Mahmoud Ahmadinejad's spiritual advisor. He is also a member of Iran's Assembly of Experts, the body responsible for choosing the Supreme Leader, where he heads a minority ultraconservative faction. He has been called "the most conservative" and the most "powerful" and "influential ... clerical oligarch" in Iran's leading center of religious learning, the city of Qom. Mesbah Yazdi advocates Islamic phi-

losophy and in particular Sadra Muta'hillin's Transcendent School of Philosophy (Hikmat-e Muta`aliya). He believes Iran has strayed from the values of the 1979 Iranian revolution and strongly opposes democratic rule and the Reformist movement in Iran.<sup>191</sup>

**Dr. Mohammad Javad Zarif** is a former Permanent Representative of the Islamic Republic of Iran to the United Nations. He presented his credentials to the United Nations Secretary-General on August 5, 2002. He attended the Graduate School of International Studies at the University of Denver and obtained a Ph.D. in International Law and Policy. He also attended San Francisco State University as a graduate student in the Department of International Relations. Zarif currently teaches at Iran's School of International Relations in Tehran.<sup>192</sup>

## APPENDIX G: SAME AUTHOR CORRELATION BY TEXT AND PAGE NUMBER

### Referencing Al-Nawawi

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#### Al-Fahd: Page 6, 7

Killing in a good manner; distinguishing the possible from the impossible, fulfilling God's command as you are able.

#### Zawahiri: Page 26, 41, 72, 80, 81, 108, 110, 167, 168, 170, 173, 176, 211, 244

Obligation to depose rulers' who show signs of non-belief and try to alter Shari'ah—they should depose him only if they are able to do so; appeasing this ruler is a sin; a true Muslim should live in another land to safeguard the religion if they are unable to do anything.

In the context of killing women, children, young boys and old men: "Old men among infidels should be killed if they are men of counsel."

"Someone trying to change vice to virtue has the right to use all possible means...he also has the right to retrieve any possession from a person who has forcibly taken it from another."

"If the infidels enter a Muslim city or are deployed in a place overlooking it, jihad becomes the duty of every single Muslim even if they do not enter the city."

In the context of night attacks and the inability to distinguish women and children, the Prophet has been quoted as saying "They are of them"—With regard to the rule governing children of non-believers attacked during the night, the children belong to the parents, and thus it is permissible; so long as they are not targeted intentionally without necessity, it is permissible; with regard to this hadith concerning the killing of women and children, one cannot distinguish in the night and this hadith contains proof of the permissibility to attack at night.

In the context of permissibility to kill non-believers with a catapult, and by analogy, other kinds of weapons such as artillery, tanks and war planes—justifying the cutting and burning of "date palms" and "palm-trees."

"If he murders by the sword, vengeance is exacted from him only by the sword, on the basis of God's word: 'Whoso commits aggression against you, do you commit aggression against him like as he has committed against you; If the murderer burned his victim, drowned him, stoned him, threw him from a cliff, hit him with a piece of wood, locked him up and de-

nied him food and drink until he died, the next-of-kin may take vengeance in the same way, on the basis of God's word: 'And if you chastise, chastise even as you have been chastised' [Quranic verse; al-Nahl 16:126]. This is also based on what al-Bara' related, that the prophet said: 'Whoever burns, we burn him; whoever drowns, we drown him.'"

### Referencing Abu Dawud

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#### Al-Fahd: Page 6, 9, 10, 11, 16, 20

In the context of the Prophets orders on raids to not mutilate or kill a child, citing the basic rule of killing in a good manner those who are lawful targets without being excessive, then describes all the exceptions to this rule, starting with the notion of distinguishing the possible from the impossible re: necessity, women and children, killing Muslims, and Muslim shields.

"Ahmad [ibn Hanbal] and Abu Dawud relate a hadith from Salamah ibn al-Akwa', who said "The Messenger of God, may God 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.""

"Ahmad [ibn Hanbal], Abu Dawud, 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 and said "Come upon them at dawn, and then set it afire"—justifying setting enemy territory on fire, cutting down trees and crops."

Citing a hadith describing the Prophet's action of setting up a catapult to attack the people of al-Ta'if—"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. God alone knows best."

Abu Dawud is quoted as transmitting a hadith that has the Prophecy saying "Only God, the master of fire, punishes with fire." He is also quoted as transmitting a story of the Prophet where "The Messenger of God 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 pro-

hibit corruption! How can you cut down and burn date-palms?” God then revealed the verse, “Whatever palm-trees you cut down...” (Quran 59:5).”

**Zawahiri: Page 35, 83, 85, 86, 89, 90, 103, 136, 141, 142, 169, 172, 203, 239**

Quoting a hadith transmitted by Abu Dawud: “He who is killed defending his property is a martyr, he who is killed defending his life is a martyr, he who is killed defending his religion is a martyr, and he who is killed defending his kinfolk is a martyr.”

In the context of: “God has said: ‘Whoso commits aggression against you, do you commit aggression against him like as he has committed against you’ [Quranic verse; al-Baqarah 2:194]. And also: ‘And if you chastise, chastise even as you have been chastised’ [Quranic verse; al-Nahl 16:126-127].”

“They said that this is a general rule in all things. They supported it by the fact that the prophet (may God bless him and grant him peace) confined the broken bowl to the tent of the woman who broke it and handed over the whole one, saying, ‘Vessel for vessel, and food for food.’ The tradition is included by Abu Dawud.”

Abu Dawud narrated about Al-Zuhari that Irwah said: “So Usama told me that the prophet, prayers and peace of God be upon him, had entrusted him with it saying ‘attack Ubna in the morning and destroy it by fire.’

### **Referencing Al-Bukhari**

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**Al-Fahd: Page 6, 10, 16**

“Mutilation has been forbidden”

In the context of setting fire to enemy territory, burning trees and crops: “Al Bukhari devoted a chapter to it, entitled, “On Burning Houses and Palm-Trees.”

“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.”

**Zawahiri: Page 5, 8, 25, 26, 50, 59, 70, 101, 102, 133, 134, 140, 143, 167, 173, 204, 217**

Al-Bukhari writes: “From al-Sa’b Ibn Jaththamah: “The prophet (may God bless him and grant him peace) passed by me at al-Abwa or Waddan, and was asked whether it was permissible to attack non-believer tribesmen at night, in such wise as their women and children might be hit. The prophet replied, ‘They are of them.’ I also heard him say, ‘There is no sacred enclosure (hima) except for God and His Messenger.’””

### **Referencing al-Sa’b ibn Jaththamah / al Sa’b ibn Jathama**

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**Al-Fahd: Page 9, 10, 19**

“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.””

“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.”

“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... This agrees with my interpretation of the hadith of al-Sa’b. Thus, he has enjoined us to fight the enemy, but he has forbidden us to kill 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.”

“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.”

**Zawahiri: Page 39, 158, 159, 167, 169, 184, 186, 209**

“The second ambiguity: They say that among the dead were innocent people who had

done nothing wrong. The answer to this ambiguity is this:

First: Al-Sa'b Bin-Jathamah, may his soul find favor with God, recounted that the prophet was asked what rule pertained to the worshipers of idols who are attacked at night and then find that their women and children had been killed. He replied: "They are of them."

This Hadith shows that women and young boys, that is, those who may not be killed separately, may be killed if they are mixed with others and it is not possible to distinguish between one and the other. The Muslims were asking about night raids, when it is not possible to distinguish one person from another. The prophet permitted this because an act that follows another as a consequence is permitted even if it is not permitted separately.

Second: Muslim commanders used catapults in their wars with the infidels. It is known that a catapult cannot differentiate among those whom it hits. It might hit those so-called innocent people. Yet the Muslim custom in their wars was to use catapults. They used them against Al-Ta'if's inhabitants."

"They say that there are innocent people who have done no wrong among those who were killed, and the answer to this accusation has a number of aspects:

First aspect: Al-Sa'b Ibn Jathama, may God be content with him, narrated about the prophet, prayers and peace of God be upon him, that he was asked about the nonbelievers in the lands who were attacked by night and their women and children were harmed, so he said: "They are of them," Hadith.

This Hadith proves that women and children and those whose killing is not permissible as individuals can be killed when mixed with others and could not be singled out, because they asked the prophet, prayers and peace of God be upon him, about the night raids which is killing by night, for in night raids it is not possible to differentiate. Thus, what is permitted as a consequence of [circumstances] is not permitted independently of [the circumstances].

"Al-Zuhri related from Ubaydallah Ibn Abdallah, who related from Ibn Abbas, who related from al-Sa'b Ibn Jaththamah, who said: "The prophet (may God bless him and grant him peace) was asked about the polytheist tribesmen who were being attacked by night and some of whose children and women were being hit. He said that the latter were of them."

“As everyone knows, whoever attacks such people cannot help hitting their children and women whom it is forbidden to kill. Similarly, if there are Muslims among them, that must not prevent the launching of an attack on them and shooting them with arrows and other things, even if there is fear of hitting a Muslim.”

“Someone might argue that the only reason for this is that the children of polytheists are of them, as the prophet (may God bless him and grant him peace) said in the Hadith of al-Sa’b Ibn Jaththamah. The answer would be that the prophet could not have intended to say about their children that they were of them in non-belief, since minors cannot actually be non-believers, nor can they deserve to be killed or punished for the deeds of their parents in terms of the cancellation of blood money and expiation.”

From al-Sa’b Ibn Jaththamah: “The prophet (may God bless him and grant him peace) passed by me at al-Abwa or Waddan, and was asked whether it was permissible to attack non-believer tribesmen at night, in such wise as their women and children might be hit. The prophet replied, ‘They are of them.’ I also heard him say, ‘There is no sacred enclosure (*hima*) except for God and His Messenger.’”

“Sufyan recited the following tradition to him on the authority of al-Zuhri, who had it from Abdallah, who had it from Ibn Abbas, who had it from al-Sa’b Ibn Jaththamah, who said: ‘I heard the messenger of God (may God bless him and grant him peace) being asked about the polytheist tribesmen, whether we should attack them by night and hit some of their women and children. He said that the latter were of them.’

The Imam al-Shirazi (may God have mercy on him) said: “Chapter: If he erects a catapult against them or attacks them by night when there are women and children among them, this is permissible on the basis of what Ali (may God honor him) transmitted: that the prophet (may God bless him and grant him peace) erected a catapult against the people of al-Ta’if although the city was not devoid of women and children. Also, al-Sa’b Ibn Jaththamah related: ‘I asked the prophet (may God bless him and grant him peace) about the children of non-believers who are attacked by night and their women and children are hit. He said the latter were of them.’ This is because the non-believers are not devoid of women and children, and if we abstained from shooting at them for the sake of the women and children, jihad would cease.”

Abu Bakr al-Jassas (may God have mercy on him) said: “Al-Zuhri related from Ubaydallah Ibn Abdallah, who related from Ibn Abbas, who related from al-Sa’b Ibn Jaththamah, who

said: ‘The prophet (may God bless him and grant him peace) was asked about the polytheist tribesmen who were being attacked by night and some of whose children and women were being hit. He said that the latter were of them.’”

### Referencing Ahmad ibn Hanbal

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Al-Fahd: Page 9, 10, 11, 16, 17

“Ahmad [ibn Hanbal] and Abu Dawud relate a hadith from Salamah ibn al-Akwa’ who said “The Messenger of God, may God 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.””

“The 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.”

“Ahmad [ibn Hanbal], Abu Dawud, 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 and said “Come upon them at dawn, and then set it afire”—justifying setting enemy territory on fire, cutting down trees and crops.”

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 permitted this were the Kufans, Malik, al-Sahfi’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.”

“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 God be pleased with him, used to order that the people who apostatized after the Prophethood’s death should be

fought with fire, and Khalid ibn al-Walid did this at his command. Today, 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 setup 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."

"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 of 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.

**Zawahiri: Page 33, 40, 61, 71, 79, 88, 89, 90, 91, 124, 136, 141, 142, 151, 165, 168, 169, 170, 175, 176, 177, 183, 211**

"First class: They might be those who do not fight alongside the countries they live in and do not help them with their persons, wealth, counsel, or other types of assistance. These may not be killed but on condition that they hold themselves separately from the others. If they are not separated from the others, it is permitted to kill them including old people, women, young boys, sick persons, incapacitated persons, and unworldly monks. Ibn-Qudamah said: Women and children may be killed during a night raid on condition that they are not killed intentionally and separately. It is permitted to kill their riding animals and livestock if this helps the Muslims to kill them. There is no disagreement on this point. He added: It is permitted to carry out

a night raid on the enemy. Ibn-Hanbal said night raids were permitted especially against the Byzantines. We will not discourage anyone from carrying out night raids.”

“Chapter: The ruling is similar regarding opening the floodgates on them to drown them: if they can be overcome in another way, it is not permissible—if that entails the destruction of women and children, whose intentional destruction is forbidden. If they can be overcome only in that way, it is permissible, as night attacks entailing the same things are permissible, and it is permissible to erect a catapult against them. The plain sense of Ahmad [Ibn Hanbal] is that it is permissible when need is present and when it is absent. This is because the prophet (may God bless him and grant him peace) erected a catapult against the people of al-Ta’if. Among those who hold this opinion are al-Thawri, al-Awza’i, al-Shafi’i, and the masters of opinion. Ibn al-Mundhir said that a tradition from the prophet states that he set up a catapult against the people of al-Ta’if and one from Amr Ibn al-As states that he set up a catapult against the people of Alexandria. Also: because fighting by such means is customary and like shooting arrows.”

“Ahmad [Ibn Hanbal] said there was nothing wrong with attacking by night. ‘Are the attacks of the Byzantines anything but night attacks? We know of no one who disapproves of attacking the enemy by night.’

“Sufyan recited the following tradition to him on the authority of al-Zuhri, who had it from Abdallah, who had it from Ibn Abbas, who had it from al-Sa’b Ibn Jaththamah, who said: ‘I heard the messenger of God (may God bless him and grant him peace) being asked about the polytheist tribesmen, whether we should attack them by night and hit some of their women and children. He said that the latter were of them.’

“He [Ibn Hanbal] said that the chain of transmitters was good.”

“Someone might object that the prophet forbade the killing of women and children.”

“We would say that it refers to killing them intentionally.”

“Ahmad [Ibn Hanbal] said, ‘If he intends to kill them, then it is not permissible.’”

The Imam al-Nawawi (may God have mercy on him) said: “3288: Yahya Ibn Yahya and Muhammad Ibn Rumh reported to us that they had been told by al-Layth; and Qutaybah Ibn

Sa'id reported to us that al-Layth also reported to him from Nafi', who had it from Abdallah, that the messenger of God (may God bless him and grant him peace) set fire to the date palms of the Banu al-Nadir at al-Buwayrah and cut them down. Qutaybah and Ibn Rumb added in their report that God revealed the following verse on this occasion: 'Whatever palm-tress you cut down, or left standing upon their roots, that was by God's leave, and that He might degrade the ungodly.' [Quranic verse; al-Hashr 59:5].

"In this Hadith there is permission to cut down and burn the trees of the non-believers. This was held by Abd-al-Rahman Ibn al-Qasim, Nafi' the *mawla* of Ibn Umar, Malik, al-Thawri, Abu Hanifah, al-Shafi'i, Ahmad [Ibn Hanbal], Ishaq, and the great majority. However, there is a tradition from Abu Bakr al-Siddiq, al-Layth Ibn Sa'd, Abu Thawr, and al-Awza'i (may God be pleased with him) that it is not permitted."

"God allowed the Muslims to mutilate the non-believers if the latter mutilated them, even though mutilation is forbidden. God has said: 'And if you chastise, chastise even as you have been chastised' [Quranic verse; Al-Nahl 16:126]. This indicates that punishment by cutting off the nose or the ear, ripping open the belly, and the like, is punishment in kind, not aggression, and that equivalence is justice.

"As for the prohibition of mutilation, it is based on the Hadith that Ahmad [Ibn Hanbal] included in his *Musnad* on the authority of Samurah Ibn Jundub and Imran Ibn al-Husayn: 'Never did the messenger of God (may God bless him and grant him peace) preach a sermon to us but that he commanded us to charity and forbade us to mutilate.'"

Ibn Muflih (may God have mercy on him) said: "Ahmad [Ibn Hanbal] said that they ought not to torture him. He also said that if they mutilated, they can be mutilated. Abu Bakr mentioned this." Ibn Taymiyyah (may God have mercy on him) has said:

"For this reason, scholars have agreed on the permissibility of destroying trees and crops belonging to the non-believers if they have done the same to us or if they can be overcome only by these means. About its permissibility short of such circumstances there is a well-known controversy. There are two accounts related on the authority of Ahmad [Ibn Hanbal]. Permitting it is the doctrine of al-Shafi'i and others."

"What do you mean by the innocent?"

Those whose answers are not void of three cases: First case: “That they would not be of those who fought with their countries nor had been hired by them physically, financially, by opinion, consultation nor otherwise, for it is not permissible to attack this type on condition that they be outstanding and not having mixed with others. But if they mixed with others and were not distinguishable then their killing would be permissible in conformity and subject to those such as the aged, women, children, sick people, the handicapped, and the dedicated monks. Ibn Qudamah [al-Maqdisi] narrated: and it is possible to unintentionally kill women and children in night attacks and burial places, if not intentionally individually killed. It is permissible to kill their cattle leading to their killing and defeat, and there is no dispute about that (meaning and elaboration 10/503). And he said: it is permissible to attack the enemy by night. Ahmad Ibn Hanbal said there is no harm in attacking by night, for the conquest of the West is but by night, and he said and we know not anyone who disliked the attacks by night.”

### **Referencing Salamah ibn al-Akwa**

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#### **Al-Fahd: Page 9**

“Ahmad [ibn Hanbal] and Abu Dawud relate a hadith from Salamah ibn al-Akwa, who said “The Messenger of God, may God 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.””

#### **Zawahiri: Page 168**

In the context of night-raids and intentional/unintentional killing of women and children: “From Salamah Ibn al-Akwa (may God be pleased with him): “Our battle cry the night we attacked Hawazin with Abu Bakr al-Siddiq—the prophet had made him our commander—was ‘Kill! Kill!’ I killed with my own hands that night seven prominent people.”

### **Referencing ibn Umar**

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#### **Al-Fahd: Page 9, 10, 11**

“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 God bless him and grant him peace, attacked the Banu-Mustaliq while they were off guard among their cattle. He killed the fighters and took the children captive.”

“We read in both Sahihs from Ibn ‘Umar, a Companion of the Prophet: “The Messenger of God, may God bless him and grant him peace, burned and cut down the date palms of the Banu al-Nadir.” Concerning this, God said: “Whatever palm-trees you cut down, or left standing upon their roots, that was by God’s leave.” (Quran 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.

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 permitted this were the Kufans, Malik, al-Sahfi’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.”

#### **Zawahiri: Page 170**

The Imam al-Nawawi (may God have mercy on him) said: “3288: Yahya Ibn Yahya and Muhammad Ibn Rumh reported to us that they had been told by al-Layth; and Qutaybah Ibn Sa’id reported to us that al-Layth also reported to him from Nafi’, who had it from Abdallah, that the messenger of God (may God bless him and grant him peace) set fire to the date palms of the Banu al-Nadir at al-Buwayrah and cut them down. Qutaybah and Ibn Rumh added in their report that God revealed the following verse on this occasion: ‘Whatever palm-tress you cut down, or left standing upon their roots, that was by God’s leave, and that He might degrade the ungodly.’ [Quranic verse; al-Hashr 59:5].

“In this Hadith there is permission to cut down and burn the trees of the non-believers. This was held by Abd-al-Rahman Ibn al-Qasim, Nafi’ the mawla of Ibn Umar, Malik, al-Thawri, Abu Hanifah, al-Shafi’i, Ahmad [Ibn Hanbal], Ishaq, and the great majority. However, there is a tradition from Abu Bakr al-Siddiq, al-Layth Ibn Sa’d, Abu Thawr, and al-Awza’i (may God be pleased with him) that it is not permitted.”

### Al-Fahd: Page 10

“Ahmad [ibn Hanbal], Abu Dawud, 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 and said “Come upon them at dawn, and then set it afire”—justifying setting enemy territory on fire, cutting down trees and crops.”

### Zawahiri: Page 8, 159, 168, 184, 203

“The prophet, prayers and peace of God be upon him, sent Usama Ibn Zayd to Abani in Palestine and commanded him to attack and set it on fire. This was during the time of the prophecy and before the conquest of the Levante.

Abu Dawud narrated about Al-Zuhari that Irwah said: “So Usama told me that the prophet, prayers and peace of God be upon him, had entrusted him with it saying ‘attack Ubna in the morning and destroy it by fire.’”

“Al-Zuhri related from Ubaydallah Ibn Abdallah, who related from Ibn Abbas, who related from al-Sa’b Ibn Jaththamah, who said: “The prophet (may God bless him and grant him peace) was asked about the polytheist tribesmen who were being attacked by night and some of whose children and women were being hit. He said that the latter were of them.”

“The prophet (may God bless him and grant him peace) once sent Usama bin Zayd and said to him, ‘Attack Ubna<sup>195</sup> in the morning and burn it.’ He used to order the expeditions to wait for those they were attacking and to refrain from them if they gave the call to prayer; if they heard no call, they were to attack. The well-guided caliphs continued this policy.

“As everyone knows, whoever attacks such people cannot help hitting their children and women whom it is forbidden to kill. Similarly, if there are Muslims among them, that must not prevent the launching of an attack on them and shooting them with arrows and other things, even if there is fear of hitting a Muslim.”

The Imam al-Jassas (may God have mercy on him) said: “The prophet (may God bless him and grant him peace) once sent Usama bin Zayd and said to him, ‘Attack Ubna<sup>212</sup> in the morning and burn it.’ He used to order the expeditions to wait for those they were attacking

and to refrain from them if they gave the call to prayer; if they heard no call, they were to attack. The well guided caliphs continued this policy.”

“It is common knowledge that anyone who attacks such people cannot avoid hitting their children and women who are forbidden to be killed; similarly, if there are Muslims among them. This must not prevent the launching of the raid against them and shooting at them with arrows and other things, even if there is danger of hitting the Muslim.””

“Abu Bakr al-Jassas (may God have mercy on him) said: “Al-Zuhri related from Ubaydallah Ibn Abdallah, who related from Ibn Abbas, who related from al-Sa’b Ibn Jaththamah, who said: ‘The prophet (may God bless him and grant him peace) was asked about the polytheist tribesmen who were being attacked by night and some of whose children and women were being hit. He said that the latter were of them.’

“The prophet (may God bless him and grant him peace) once sent Usama bin Zayd and said to him, ‘Attack Ubna<sup>195</sup> in the morning and burn it.’ He used to order the expeditions to wait for those they were attacking and to refrain from them if they gave the call to prayer; if they heard no call, they were to attack. The well-guided caliphs continued this policy.

“As everyone knows, whoever attacks such people cannot help hitting their children and women whom it is forbidden to kill. Similarly, if there are Muslims among them, that must not prevent the launching of an attack on them and shooting them with arrows and other things, even if there is fear of hitting a Muslim.””

“The prophet, prayers and peace of God be upon him, sent Usama Ibn Zayd to Abani in Palestine and commanded him to attack and set it on fire. This was during the time of the prophecy and before the conquest of the Levante.”

### **Referencing Al-Tirmidhi**

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**Al-Fahd: Page 10, 17**

“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 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.”

“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.

### **Zawahiri: Page 161**

Regarding his saying, “by erecting catapults,” i.e., it is against their forts because the prophet erected them against Al-Ta’if. Al-Tirmidhi transmitted this.

### **Referencing Al-Awza’i**

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#### **Al-Fahd: Page 10, 15, 16, 17, 21**

“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.”

“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.”

“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 God be pleased with him, used to order that the people who apostatized after the Prophethood’s death should be fought with fire, and Khalid ibn al-Walid did this at his command. Today, 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 setup 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.”

“The following Quranic verse was revealed regarding this: ‘Whatever palm-trees you cut down...’ (Quran 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.”

**Zawahiri: Page 156, 165, 166, 170, 185, 207**

“Ibn Qudamah the Hanbali (may God have mercy on him) said: “Chapter: The ruling is similar regarding opening the floodgates on them to drown them: if they can be overcome in another way, it is not permissible—if that entails the destruction of women and children, whose intentional destruction is forbidden. If they can be overcome only in that way, it is permissible, as night attacks entailing the same things are permissible, and it is permissible to erect a catapult against them. The plain sense of Ahmad [Ibn Hanbal] is that it is permissible when need is present and when it is absent. This is because the prophet (may God bless him and grant him peace) erected a catapult against the people of al-Ta’if. Among those who hold this opinion are al-Thawri, al-Awza’i, al-Shafi’i, and the masters of opinion. Ibn al-Mundhir said that a tradition from the prophet states that he set up a catapult against the people of al-Ta’if and one from Amr Ibn al-As states that he set up a catapult against the people of Alexandria. Also: because fighting by such means is customary and like shooting arrows.”

“Ibn Qudamah also said: “Chapter: If they take a Muslim as a shield and necessity does not call for shooting at them due to the war’s not being ongoing, or because they can be overcome without it, or because one feels safe from their evil, it is not permissible to shoot at them; and so if he shoots at them and hits a Muslim, he bears liability for him. However, if necessity calls for shooting at them because of fear for the Muslims, shooting at them is permissible because it is a case of necessity and so the non-believers are targeted. If there is no fear for the Muslims, but the enemy can be overcome only by shooting, al-Awza’i and al-Layth say that shooting at them is not permissible, on the basis of the Quranic verse: ‘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...’ [Quranic verse; Al-Fath 48:25].

“Having cited the scholarly positions available to us from the various legal schools on the question of shooting at non-believers when they are mixed with Muslims or when they take

them as human shields or take as shields people who may not be killed, such as women, children, protected minorities (*dhimmis*), or people with safe-conduct, we say in summary: Prohibition: This is the position cited from Malik and al-Awza'i."

"The Imam al-Nawawi (may God have mercy on him) said: "3288: Yahya Ibn Yahya and Muhammad Ibn Rumh reported to us that they had been told by al-Layth; and Qutaybah Ibn Sa'id reported to us that al-Layth also reported to him from Nafi', who had it from Abdallah, that the messenger of God (may God bless him and grant him peace) set fire to the date palms of the Banu al-Nadir at al-Buwayrah and cut them down. Qutaybah and Ibn Rumh added in their report that God revealed the following verse on this occasion: 'Whatever palm-trees you cut down, or left standing upon their roots, that was by God's leave, and that He might degrade the ungodly.' [Quranic verse; al-Hashr 59:5].

"In this Hadith there is permission to cut down and burn the trees of the non-believers. This was held by Abd-al-Rahman Ibn al-Qasim, Nafi' the *mawla* of Ibn Umar, Malik, al-Thawri, Abu Hanifah, al-Shafi'i, Ahmad [Ibn Hanbal], Ishaq, and the great majority. However, there is a tradition from Abu Bakr al-Siddiq, al-Layth Ibn Sa'd, Abu Thawr, and al-Awza'i (may God be pleased with him) that it is not permitted."

"Ibn Qudamah also said: "Chapter: If they take a Muslim as a shield and necessity does not call for shooting at them due to the war's not being ongoing, or because they can be overcome without it, or because one feels safe from their evil, it is not permissible to shoot at them; and so if he shoots at them and hits a Muslim, he bears liability for him. However, if necessity calls for shooting at them because of fear for the Muslims, shooting at them is permissible because it is a case of necessity and the non-believers are targeted. If there is no fear for the Muslims, but the enemy can be overcome only by shooting, al-Awza'i and al-Layth say that shooting at them is not permissible, on the basis of the Quranic verse: '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'

### Referencing Al-Shafi'i

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Al-Fahd: Page 10, 11, 15, 16, 19, 21, 23

"Al-Shafi'i said there was nothing wrong with setting fires in enemy territory and cutting down trees and crops."

“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 permitted this were the Kufans, Malik, al-Sahfi’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.”

“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.”

“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.”

in al-Risalah, p.299: “In our view, and God alone knows best, the meaning of the prohibition of 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.”

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."

Al-Shafi'i says: "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. Whenever there is no such compelling necessity, desisting from fighting them is the safer course and preferable in my view."

"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.

**Zawahiri: Page 29, 32, 35, 103, 108, 110, 130, 131, 148, 157, 158, 162, 163, 164, 165, 166, 170, 172, 177, 184, 185, 186**

"I say: "As for Ibn al-Arabi's saying about al-Shafi'i, 'Al-Shafi'i held our position': if he meant prohibiting shooting at polytheists if they use Muslims as human shields—and I think that is what he meant, based on what he says afterward, i.e., 'This is evident; for it is not permitted to reach a permitted end by forbidden means, especially by means of the life of a Muslim; and so there is no position except the one held by Malik (may God be pleased with him)'—then he is at variance with the facts. Al-Shafi'i in fact allowed shooting at polytheists if Muslims are mixed with them, whether they have taken them as human shields or not, as will be discussed later, God willing."

"If he meant that al-Shafi'i made someone who shot a Muslim amid the polytheists liable to paying blood money, the fact is that al-Shafi'i (may God have mercy on him) distinguished in the matter between someone who shot and hit a Muslim unwittingly—he must perform expiation, but not pay blood money—but if he knew the person to be a Muslim and shot when he was forced to shoot, he is liable both to blood money and to expiation, as will be discussed later, God willing."

C. The third position on the issue is that it is permissible to shoot at the non-believers, along with at any Muslims mixed in with them and any non-believers whose killing has been specifically prohibited.

Al-Shafi'i (may God have mercy on him) says: "Someone might object, saying, 'How have you permitted bombardment by catapult and fire of a group of non-believers among whom there are children and women that it is prohibited to kill?' The answer is that we have permitted it in the way we have described and because the prophet (may God bless him and grant him peace) launched an attack on the Banu al-Mustaliq, taking them by surprise, and ordering a night attack and burning, knowing all the while that there were children and women among them. The principle was that the tribe was a tribe of polytheism and not forbidden.

"He only forbade intentionally killing women and children, when their killer knows them individually. This is because of the report from the prophet (may God bless him and grant him peace) and that the prophet took them captive and made them property. He has written this before this. If there are Muslim captives or merchants with safe-conduct among the tribe, I dislike exposing them to the general burning and drowning, but I do not clearly forbid it. This is because if the tribe is a permissible target, it is not clear that it becomes prohibited by there being a Muslim whose blood is forbidden in it. I only dislike it as a precaution and because it is permitted to us, were there no Muslim in it, to pass it by and not fight it; and if we fight it, we fight it by means that are not all-encompassing, such as burning and drowning. However, if the Muslims or some of them are in close combat and they think that they can harm those fighting them by drowning or burning them, I think that they should do it and do not dislike it for them. That is because they receive two rewards: one for defending themselves, the other for harming their enemy not in close combat. So shield yourselves with the children of the polytheists. It has been said that they do not protect themselves and those of them that use a human shield are struck, but that the child is not intended. It has been said that one desists from the person being used as a shield. If they should use a Muslim as a shield, I think that one should desist from the person they are using as a shield, except if the Muslims are in close combat; then one does not desist from the person using the shield: one strikes at the polytheist and protects the Muslim as far as possible. If in any of these cases one strikes a Muslim, one frees a slave [as expiation]."

Al-Shafi'i also says (may God have mercy on him): "If he shoots into enemy territory and hits a Muslim with a safe-conduct or captive, or an non-believer who has converted to Islam, and

did not shoot at them intentionally and did not see them, he should free a slave [as expiation], but there is no blood money for the victim. However, if he saw the person, knew his status, and shot being forced to do so, and killed him, he must pay blood money and perform expiation. If he shot intentionally, knowing the person to be a Muslim, he is subject to retribution (*qisas*) if he shot him without necessity or error and intended to kill him. If a non-believer uses the person as a human shield and he knows him to be a Muslim and the man grapples with him, so that he thinks he can save himself only by striking the Muslim, he should strike him intending to kill the non-believer. If he strikes the Muslim, we shield him from retribution, but impose blood money on him. All of this is if he is in the land of non-believers or in their ranks. However, if he frees himself from the non-believers and is between the lines of the Muslims and the non-believers, that is a place where there might be Muslims and non-believers. So if a man kills a man and says, 'I thought he was a non-believer, but then I found him to be a Muslim,' this was the result of error. He pays a fine for bloodshed (*aql*); if the man's next-of-kin are suspicious, he swears to them that he did not know he was a Muslim when he killed him."

Al-Shafi'i also says (may God have mercy on him): "If the enemy shuts up women, children, and captives in their forts, should the forts be bombarded by catapults?"

"The answer is that if there are women, children, and Muslim captives in the fort, it is not wrong to set up the catapult against the fort, to the exclusion of the houses in which there are residents. However, if the Muslims grapple close to the fort, it is not wrong to shoot at its houses and walls. If there are fighters entrenched in the fort, the houses and the fort are shot at. If they shield themselves with Muslim or non-Muslim children and the Muslims are in close combat, it is not wrong to target the fighters to the exclusion of the Muslims and children. If they are not in close combat, I would prefer that he desist from them until he can fight them when they are not using human shields. It is similar if they bring them out and say, 'If you shoot at us and fight us, we will kill them.' Naphtha and fire are like the catapult, and likewise water and smoke."

"Chapter: The ruling is similar regarding opening the floodgates on them to drown them: if they can be overcome in another way, it is not permissible—if that entails the destruction of women and children, whose intentional destruction is forbidden. If they can be overcome only in that way, it is permissible, as night attacks entailing the same things are permissible, and it is permissible to erect a catapult against them. The plain sense of Ahmad [Ibn Hanbal] is that it is permissible when need is present and when it is absent. This is because

the prophet (may God bless him and grant him peace) erected a catapult against the people of al-Ta'if. Among those who hold this opinion are al-Thawri, al-Awza'i, al-Shafi'i, and the masters of opinion. Ibn al-Mundhir said that a tradition from the prophet states that he set up a catapult against the people of al-Ta'if and one from Amr Ibn al-As states that he set up a catapult against the people of Alexandria. Also: because fighting by such means is customary and like shooting arrows."

Al-Layth said that abstaining from the conquest of a fort that could be conquered was better than wrongly killing a Muslim. Al-Awza'i said: 'How are they to shoot when they do not see? They would only be shooting at the children of Muslims.' Al-Qadi and al-Shafi'i said that they may be shot at when the war is ongoing, because not doing so would lead to halting jihad. Two texts are offered in support of this view, that if he kills a Muslim, he is liable to expiation and blood money.

The Imam al-Nawawi (may God have mercy on him) said: "3288: Yahya Ibn Yahya and Muhammad Ibn Rumh reported to us that they had been told by al-Layth; and Qutaybah Ibn Sa'id reported to us that al-Layth also reported to him from Nafi', who had it from Abdallah, that the messenger of God (may God bless him and grant him peace) set fire to the date palms of the Banu al-Nadir at al-Buwayrah and cut them down. Qutaybah and Ibn Rumh added in their report that God revealed the following verse on this occasion: 'Whatever palm-tress you cut down, or left standing upon their roots, that was by God's leave, and that He might degrade the ungodly.' [Quranic verse; al-Hashr 59:5].

"In this Hadith there is permission to cut down and burn the trees of the non-believers. This was held by Abd-al-Rahman Ibn al-Qasim, Nafi' the *mawla* of Ibn Umar, Malik, al-Thawri, Abu Hanifah, al-Shafi'i, Ahmad [Ibn Hanbal], Ishaq, and the great majority. However, there is a tradition from Abu Bakr al-Siddiq, al-Layth Ibn Sa'd, Abu Thawr, and al-Awza'i (may God be pleased with him) that it is not permitted."

The Imam al-Qurtubi (may God have mercy on him) said: "Scholars differ regarding someone who destroys or spoils any animals or wares that have not been measured or weighed. Al-Shafi'i, Abu Hanifah, their colleagues, and one group of scholars say that the person is liable to the like, and one does not turn toward the value except in the absence of the like. This is because God has said: 'Whoso commits aggression against you, do you commit aggression against him like as he has committed against you' [Quranic verse; al-Baqarah 2:194]. And also: 'And if you chastise, chastise even as you have been chastised' [Quranic verse; al-Nahl 16:126-127].

Ibn Taymiyyah (may God have mercy on him) has said: “For this reason, scholars have agreed on the permissibility of destroying trees and crops belonging to the non-believers if they have done the same to us or if they can be overcome only by these means. About its permissibility short of such circumstances there is a well-known controversy. There are two accounts related on the authority of Ahmad [Ibn Hanbal]. Permitting it is the doctrine of al-Shafi’i and others.”

Al-Shafi’i (may God have mercy on him) said: “Someone might object, saying, ‘How have you permitted bombardment by catapult and fire of a group of non-believers among whom there are children and women that it is prohibited to kill?’ The answer is that we have permitted it in the way we have described and because the prophet (may God bless him and grant him peace) launched an attack on the Banu al-Mustaliq, taking them by surprise, and ordering a night attack and burning, knowing all the while that there were children and women among them. The principle was that the tribe was a tribe of polytheism and not forbidden.

“He only forbade intentionally killing women and children, when their killer knows them individually. This is because of the report from the prophet (may God bless him and grant him peace) and that the prophet took them captive and made them property. This has been written previously. If there are Muslim captives or merchants with safe-conduct among the tribe, I dislike exposing them to the general burning and drowning, but I do not clearly forbid it. This is because if the tribe is permissible, it is not clear that it becomes prohibited by there being a Muslim whose blood is forbidden in it. I only dislike it as a precaution and because it is permitted to us, were there no Muslim in it, to pass it by and not fight it; and if we fight it, we fight it by means that are not all-encompassing, such as burning and drowning. However, if the Muslims or some of them are in close combat and they think that they can harm those fighting them by drowning or burning them, I think that they should do it and do not dislike it for them. That is because they receive two rewards: one for defending themselves, the other for harming their enemy.”

## Referencing Ishaq

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**Al-Fahd: Page 10, 11, 20, 22**

“Ishaq said that setting fire was Sunnah if it would cause damage to them.”

“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 permitted this were the Kufans, Malik, al-Sahfi'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."

Ibn Ishaq transmits a report that when The Messenger of God 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?" God then revealed the verse, "Whatever palm-trees you cut down..." (Quran 59:5)."

Al Jassas said (Akham 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...' (Quran 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 God turned Muslims away from them because among 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'arraḥ)' here. Ibn Ishaq interpreted it as meaning the fine of blood money (diyyah); 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'arraḥ meant sin (ithm), but this is false, because God said that it had happened, it would have happened without our knowledge: 'Whom you knew not, lest you should trample them, and there befall you ma'arraḥ unwittingly or their account, and one incurs no sin for what one does not know and of which God has given no indication. For God says 'There is no fault in you if you make mistakes, but only in what your hearts premeditate.' (Quran 33:5). Thus we know that ma'arraḥ does not mean sin..."

“As for the argument of those who cite the verse, ‘If it had not been for certain men believers and certain women believers whom you knew not, lest you should trample them...’ [Quranic verse; Al-Fath 48:25] as prohibiting shooting at non-believers for the sake of the Muslims among them, the verse contains no evidence regarding the point at issue. The most that it says is that God restrained the Muslims from them because there were Muslims among them whom the Companions of the prophet (may God bless him and grant him peace) feared they would smite if they entered Mecca by the sword. This merely shows that it is permissible to abstain from shooting and attacking them, given that one knows the presence of Muslims among them. It is permissible to allow desisting from them for the sake of the Muslims, and it is also permissible to allow attacking as an option. Therefore, there is no indication in the verse of a prohibition of an attack. Someone might argue that something in the tenor of the verse indicates prohibition, namely the words, ‘Whom you knew not, lest you should trample them, and there befall you guilt unwittingly on their account.’ Were it not for the prohibition, no guilt would have befallen them from killing them by hitting them. The reply to him is that the commentators have disagreed about the meaning of ‘guilt’ (*ma’arraḥ*) here. “Ibn Ishaq is reported to have said that *ma’arraḥ* means the payment of blood money. Someone else said it means expiation. A third person said it means grief because of the slaying of a Muslim at his hands, as a believer will be grieved by this, even if he did not intend it. Others said it means shame. Someone is reported to have said that *ma’arraḥ* means sin, but that must be false, since God says, ‘Whom you knew not, lest you should trample them, and there befall you *ma’arraḥ* unwittingly on their account,’ and no sin is incurred where there is no knowledge—God never indicated that. God has said, ‘There is no fault in you if you make mistakes, but only in what your hearts premeditate’ [Quranic verse; al-Ahzab 33:5]. Thus we learn that He did not mean sin.”

“The Imam al-Nawawi (may God have mercy on him) said: “3288: Yahya Ibn Yahya and Muhammad Ibn Rumh reported to us that they had been told by al-Layth; and Qutaybah Ibn Sa’id reported to us that al-Layth also reported to him from Nafi’, who had it from Abdallah, that the messenger of God (may God bless him and grant him peace) set fire to the date palms of the Banu al-Nadir at al-Buwayrah and cut them down. Qutaybah and Ibn Rumh added in their report that God revealed the following verse on this occasion: ‘Whatever palm-tress you cut down, or left standing upon their roots, that was by God’s leave, and that He might degrade the ungodly’ [Quranic verse; al-Hashr 59:5].

“In this Hadith there is permission to cut down and burn the trees of the non-believers. This was held by Abd-al-Rahman Ibn al-Qasim, Nafi’ the *mawla* of Ibn Umar, Malik, al-Thawri, Abu Hanifah, al-Shafi’i, Ahmad [Ibn Hanbal], Ishaq, and the great majority. However, there is a tradition from Abu Bakr al-Siddiq, al-Layth Ibn Sa’d, Abu Thawr, and al-Awza’i (may God be pleased with him) that it is not permitted.”

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#### **Referencing Al-Hafiz ibn Hajar al-Asqalani / al-Askalani**

**Al-Fahd: Page 10, 15, 18**

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 for the Muslims. Only God knows which view is correct.”

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].”

**Zawahiri: Page 134, 135, 140, 143, 167, 177, 205**

Ibn Hajar (may God have mercy on him) says: “The word *bayat*, as used in the Hadith, means that the non-believers are attacked at night, so that one cannot distinguish among them as individuals.”

“The phrase, ‘They are of them,’ means that it is so in that case. It does not mean that they may be killed by aiming at them; the meaning is that if the parents can be reached only by

trampling the children, who, if hit, are hit because they were mixed with the former, the latter may be killed.”

Ibn Hajar (may God have mercy on him) said: “One of the lessons to be derived from this Hadith... is that equivalence in retaliation is not the kind of mutilation that has been forbidden.”

## Referencing Al-Layth

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### Al-Fahd: Page 10, 15

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 for the Muslims. Only God knows which view is correct.”

### Zawahiri: Page 78, 161, 166, 170, 183, 185

However, if necessity calls for shooting at them because of fear for the Muslims, shooting at them is permissible because it is a case of necessity and so the non-believers are targeted. If there is no fear for the Muslims, but the enemy can be overcome only by shooting, al-Awza’i and al-Layth say that shooting at them is not permissible, on the basis of the Quranic verse: ‘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...’ [Quranic verse; Al-Fath 48:25]. Al-Layth said that abstaining from the conquest of a fort that could be conquered was better than wrongly killing a Muslim. Al-Awza’i said: ‘How are they to shoot when they do not see? They would only be shooting at the children of Muslims.’ Al-Qadi and al-Shafi’i said that they may be shot at when the war is ongoing, because not doing so would lead to halting jihad. Two texts are offered in support of this view, that if he kills a Muslim, he is liable to expiation and blood money.

The Imam al-Nawawi (may God have mercy on him) said: “3288: Yahya Ibn Yahya and Muhammad Ibn Rumh reported to us that they had been told by al-Layth; and Qutaybah Ibn Sa’id reported to us that al-Layth also reported to him from Nafi’, who had it from Abdallah, that the messenger of God (may God bless him and grant him peace) set fire to the date palms of the Banu al-Nadir at al-Buwayrah and cut them down. Qutaybah and Ibn Rumh added in their report that God revealed the following verse on this occasion: ‘Whatever palm-tress you cut down, or left standing upon their roots, that was by God’s leave, and that He might degrade the ungodly’ [Quranic verse; al-Hashr 59:5]. “In this Hadith there is permission to cut down and burn the trees of the non-believers. This was held by Abd-al-Rahman Ibn al-Qasim, Nafi’ the *mawla* of Ibn Umar, Malik, al-Thawri, Abu Hanifah, al-Shafi’i, Ahmad [Ibn Hanbal], Ishaq, and the great majority. However, there is a tradition from Abu Bakr al-Siddiq, al-Layth Ibn Sa’d, Abu Thawr, and al-Awza’i (may God be pleased with him) that it is not permitted.”

Ibn Qudamah also said: “Chapter: If they take a Muslim as a shield and necessity does not call for shooting at them due to the war’s not being ongoing, or because they can be overcome without it, or because one feels safe from their evil, it is not permissible to shoot at them; and so if he shoots at them and hits a Muslim, he bears liability for him. However, if necessity calls for shooting at them because of fear for the Muslims, shooting at them is permissible because it is a case of necessity and the non-believers are targeted. If there is no fear for the Muslims, but the enemy can be overcome only by shooting, al-Awza’i and al-Layth say that shooting at them is not permissible, on the basis of the Quranic verse: ‘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’ [Quranic verse; Al-Fath 48:25].

Al-Layth said that abstaining from the conquest of a fort that could be conquered was better than wrongly killing a Muslim. Al-Awza’i said: ‘How are they to shoot when they do not see? They would only be shooting at the children of Muslims.’ Al-Qadi and al-Shafi’i said that they may be shot at when the war is ongoing, because not doing so would lead to halting jihad.”

### Referencing Abu Thawr

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Al-Fahd: Page 10, 15, 17

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 permis-

sible 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 for the Muslims. Only God knows which view is correct."

Al-San'ani (Subl al-Salam, 4:51): From Ibn 'Umar, a Companion of the Prophet: "The Messenger of God, may God 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 Quranic verse was revealed regarding this: "Whatever palm-trees you cut down..." (Quran 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.

#### **Zawahiri: Page 170**

"3288: Yahya Ibn Yahya and Muhammad Ibn Rumh reported to us that they had been told by al-Layth; and Qutaybah Ibn Sa'id reported to us that al-Layth also reported to him from Nafi', who had it from Abdallah, that the messenger of God (may God bless him and grant him peace) set fire to the date palms of the Banu al-Nadir at al-Buwayrah and cut them down. Qutaybah and Ibn Rumh added in their report that God revealed the following verse on this occasion: 'Whatever palm-tree you cut down, or left standing upon their roots, that was by God's leave, and that He might degrade the ungodly' [Quranic verse; al-Hashr 59:5].

"In this Hadith there is permission to cut down and burn the trees of the non-believers. This was held by Abd-al-Rahman Ibn al-Qasim, Nafi' the *mawla* of Ibn Umar, Malik, al-Thawri, Abu Hanifah, al-Shafi'i, Ahmad [Ibn Hanbal], Ishaq, and the great majority. However, there is a tradition from Abu Bakr al-Siddiq, al-Layth Ibn Sa'd, Abu Thawr, and al-Awza'i (may God be pleased with him) that it is not permitted."

## Referencing Al-Ayni

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### Al-Fahd: Page 11

“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 permitted this were the Kufans, Malik, al-Sahfi’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.”

### Zawahiri: Page 161

Regarding his saying, “by erecting catapults,” i.e., it is against their forts because the prophet erected them against Al-Ta’if. Al-Tirmidhi transmitted this. The word *majaniq* (catapults) is the plural of *manjaniq* (so vocalized by most), which is a loan-word from Persian, sometimes treated as masculine, but better as feminine. It is a device for hurling large stones. It is no longer used today as it is not needed because of modern cannons. His words, “*burning them*,” refer to burning their homes and possessions. Al-Ayni said: “The outward sense is burning their persons by means of catapults. Now if it is licit to make war on them by burning them, their possessions can be burnt with greater reason.”

## Referencing Malik

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### Al-Fahd: Page 11, 14, 15

“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 permitted this were the Kufans, Malik, al-Sahfi’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.”

“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 opinions. The first is that it is permissible, [Malik] said so in al-Mudawwanah. The second is that 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 God, may God 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 rest is permitted by religious law and approved by reason.”

“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 God 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.’ (Quran 9:120). The Prophet cut down and burned the date-palms of the Banu al-Nadir.”

**Zawahiri: Page 108, 156, 157, 158, 166, 167, 170, 172, 191, 207, 211, 244**

Chapter Eight: The Legal Judgment on Shooting at Non-Believers if Muslims or Persons Who May Not Be Killed Are Mixed With Them

A. The first position is to forbid shooting at the non-believers if Muslims are mixed with them. This position is reported to have been that of Malik and al-Awza’i, though later members of the Maliki school disagreed, as will be seen later, God willing.

“Abu Zayd said, ‘I asked Ibn al-Qasim what his opinion would be if the people of Islam besieged some polytheists in a fort of theirs while they were holding Muslim captives—should this fort be burned or not?’ He said: ‘I heard Malik when he was asked about some non-believers in their boats, whether we should hurl fire at their boats when they had captives on

board with them. Malik said that he did not think it was right to do so, on the basis of God's word regarding the people of Mecca: 'Had they been separated clearly, then We would have chastised the non-believers among them with a painful chastisement.'

"Malik also said: 'We had besieged the city of the Greeks and cut off their water. They would send down captives to draw water for them, and no one could shoot arrows at them. So water reached them without our choice.'

"Al-Shafi'i held our position. This is evident; for it is not permitted to reach a permitted end by forbidden means, especially by means of the life of a Muslim; and so there is no position except the one held by Malik (may God be pleased with him). And God is most knowledgeable."

"As for Ibn al-Arabi's saying about al-Shafi'i, 'Al-Shafi'i held our position': if he meant prohibiting shooting at polytheists if they use Muslims as human shields—and I think that is what he meant, based on what he says afterward, i.e., 'This is evident; for it is not permitted to reach a permitted end by forbidden means, especially by means of the life of a Muslim; and so there is no position except the one held by Malik (may God be pleased with him)'—then he is at variance with the facts. Al-Shafi'i in fact allowed shooting at polytheists if Muslims are mixed with them, whether they have taken them as human shields or not, as will be discussed later, God willing."

In what he says, Al-Qurtubi was trying to reconcile allowing shooting at the human shield and the argument of Imam Malik. He therefore set severe restrictions that I do not think can be met in reality: one of these being that if the non-believers are not shot at, they will kill the human shield and take control of the whole nation!

Having cited the scholarly positions available to us from the various legal schools on the question of shooting at non-believers when they are mixed with Muslims or when they take them as human shields or take as shields people who may not be killed, such as women, children, protected minorities (*dhimmis*), or people with safe-conduct, we say in summary:

The jurists' positions can be divided into three:

A. Prohibition: This is the position cited from Malik and al-Awza'i.

B. Unconditional permission, with cancellation of blood money and expiation: This is the

position of the Hanafis and the later Malikis who agree with them.

C. Distinction: This is the position of the Shafi'is and Hanbalis. They do not prohibit shooting, as long as there is necessity or need for the Muslims to do so. Muslims are not aimed at except in cases of necessity, because omitting to do so would lead to halting the jihad. They disagree about any Muslims killed, whether the slayer has no liability, whether he is liable for blood money along with expiation, or whether he is liable for expiation only, as we have mentioned. And God is most knowing!

Al-Nawawi says: "Its implied meaning: He was asked about the rule governing the children of nonbelievers who are attacked while they are spending the night, and so some of their women and children are mortally wounded. He said that the children belong to their parents; in other words, there is nothing wrong with doing so. The legal status of their parents applies to them in inheritance, marriage, retaliation, bloodwit, and other matters. The meaning also is if they are not intentionally targeted without necessity.

"As for the previous Hadith, concerning the prohibition on killing women and children, the intention is if they can be distinguished. This Hadith that we have just mentioned, concerning the permissibility of attacking them by night and killing women and children in the night raid, is our doctrine and the doctrine of Malik, Abu Hanifah, and the majority.

"The Imam al-Nawawi (may God have mercy on him) said: "3288: Yahya Ibn Yahya and Muhammad Ibn Rumh reported to us that they had been told by al-Layth; and Qutaybah Ibn Sa'id reported to us that al-Layth also reported to him from Nafi', who had it from Abdallah, that the messenger of God (may God bless him and grant him peace) set fire to the date palms of the Banu al-Nadir at al-Buwayrah and cut them down. Qutaybah and Ibn Rumh added in their report that God revealed the following verse on this occasion: 'Whatever palm-tress you cut down, or left standing upon their roots, that was by God's leave, and that He might degrade the ungodly' [Quranic verse; al-Hashr 59:5].

"In this Hadith there is permission to cut down and burn the trees of the non-believers. This was held by Abd-al-Rahman Ibn al-Qasim, Nafi' the *mawla* of Ibn Umar, Malik, al-Thawri, Abu Hanifah, al-Shafi'i, Ahmad [Ibn Hanbal], Ishaq, and the great majority. However, there is a tradition from Abu Bakr al-Siddiq, al-Layth Ibn Sa'd, Abu Thawr, and al-Awza'i (may God be pleased with him) that it is not permitted."

“They said that this is a general rule in all things. They supported it by the fact that the prophet (may God bless him and grant him peace) confined the broken bowl to the tent of the woman who broke it and handed over the whole one, saying, ‘Vessel for vessel, and food for food.’ The tradition is included by Abu Dawud.

“Malik and his colleagues say that in the case of animals or wares that have not been measured or weighed, the person is liable for the value, not for the replacement.

“There is no disagreement among the scholars that this verse is the basic rule with regard to similarity in matters of retribution. For example, someone who murders with something is killed by the same thing by means of which he murdered. This is the opinion of the great majority—unless he murdered his victim by means of such depravity as homosexual intercourse or giving alcohol to drink, in which case he is killed by the sword.

“The position of the Shafi’is is that he is to be killed in the same way. A stick of the same description is taken and driven up his anus until he dies, or he is made to drink wine until he dies.”

It is here that many scholars prohibit the killing of Muslim human shields along with non-believers, except in case of necessity maintained by unquestionable fear of eradication of Muslims at large and not merely out of necessity or benefit. Of the scholars who strictly endorsed this is Imam Malik [Imam Malik Ibn Anas, one of the most highly respected scholars of jurisprudence in Sunni Islam], may God have mercy on him.

### Referencing Al-Thawri

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#### Al-Fahd: Page 11, 16

“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 permitted this were the Kufans, Malik, al-Sahfi’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.”

“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 God be pleased with him, used to order that the people who apostatized after the Prophety’s death should be fought with fire, and Khalid ibn al-Walid did this at his command. Today, 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 setup 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.”

**Zawahiri: Page 157, 165, 170**

“Abu Hanifah, his colleagues, and Al-Thawri permitted shooting into the forts of polytheists even if there were Muslim prisoners and their children among them. Even if a non-believer uses a Muslim child to shield himself, the polytheist is shot at; and if a Muslim is hit, there is no blood money or expiation for him.”

“Al-Thawri said that there is expiation, but not blood money.”

“Al-Shafi’i held our position. This is evident; for it is not permitted to reach a permitted end by forbidden means, especially by means of the life of a Muslim; and so there is no position except the one held by Malik (may God be pleased with him). And God is most knowledgeable.”

Ibn Qudamah the Hanbali (may God have mercy on him) said: “Chapter: The ruling is similar regarding opening the floodgates on them to drown them: if they can be overcome in another way, it is not permissible—if that entails the destruction of women and children, whose intentional destruction is forbidden. If they can be overcome only in that way, it is permissible, as night attacks entailing the same things are permissible, and it is permissible to erect a catapult against them. The plain sense of Ahmad [Ibn Hanbal] is that it is permissible when need is present and when it is absent. This is because the prophet (may God bless him and grant him peace) erected a catapult against the people of al-Ta’if. Among those who hold this opinion are al-Thawri, al-Awza’i, al-Shafi’i, and the masters of opinion. Ibn al-Mundhir said

that a tradition from the prophet states that he set up a catapult against the people of al-Ta'if and one from Amr Ibn al-As states that he set up a catapult against the people of Alexandria. Also: because fighting by such means is customary and like shooting arrows.”

“The Imam al-Nawawi (may God have mercy on him) said: “3288: Yahya Ibn Yahya and Muhammad Ibn Rumh reported to us that they had been told by al-Layth; and Qutaybah Ibn Sa'id reported to us that al-Layth also reported to him from Nafi', who had it from Abdallah, that the messenger of God (may God bless him and grant him peace) set fire to the date palms of the Banu al-Nadir at al-Buwayrah and cut them down. Qutaybah and Ibn Rumh added in their report that God revealed the following verse on this occasion: ‘Whatever palm-tress you cut down, or left standing upon their roots, that was by God’s leave, and that He might degrade the ungodly’ [Quranic verse; al-Hashr 59:5].

“In this Hadith there is permission to cut down and burn the trees of the non-believers. This was held by Abd-al-Rahman Ibn al-Qasim, Nafi' the *mawla* of Ibn Umar, Malik, al-Thawri, Abu Hanifah, al-Shafi'i, Ahmad [Ibn Hanbal], Ishaq, and the great majority. However, there is a tradition from Abu Bakr al-Siddiq, al-Layth Ibn Sa'd, Abu Thawr, and al-Awza'i (may God be pleased with him) that it is not permitted.”

### Referencing Ibn al-Qasim

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#### Al-Fahd: Page 11, 15

“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 permitted this were the Kufans, Malik, al-Sahfi'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.”

“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 God 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.’ (Quran 9:120). The Prophet cut down and burned the date-palms of the Banu al-Nadir.”

**Zawahiri: Page 38, 39, 41, 156, 170**

Second: Muslim commanders used catapults in their wars with the infidels. It is known that a catapult cannot differentiate among those whom it hits. It might hit those so-called innocent people. Yet the Muslim custom in their wars was to use catapults. They used them against Al-Ta’if’s inhabitants.

Ibn-Qudamah, may he rest in peace, said: Using catapults is permitted because the prophet, may God’s prayers and peace be upon him, used catapults against Al-Ta’if’s inhabitants and Amru Bin-al-As used catapults against the people of Alexandria. Ibn-Qasim says in his commentary: It is permitted to use catapults against the infidels even if young boys, women, old people, and monks are killed along with the others because it is permitted to attack them collectively. Ibn-Rushud, may he rest in peace, said: Collective attacks against all types of idolaters are permitted.

Third: Muslim jurists permitted killing Muslims used as human shields by the enemy after they fall captive into the infidels’ hands. If the infidels use Muslim captives to protect themselves from the Muslims’ arrows, they may be killed although they are faultless. Ibn-Taymiyyah, may he rest in peace, said: The ulema have agreed that if the infidel army uses captive Muslims as human shields and there is fear for the Muslims’ lives if they do not fight, they should attack even if this leads to killing the human shields. Ibn-Qasim, may he rest in peace, said: If they use a Muslim as a human shield, it is not permitted to fire arrows at them unless we fear for the Muslim army’s safety.

“Abu Zayd said, ‘I asked Ibn al-Qasim what his opinion would be if the people of Islam besieged some polytheists in a fort of theirs while they were holding Muslim captives—should this fort be burned or not?’ He said: ‘I heard Malik when he was asked about some non-believers in their boats, whether we should hurl fire at their boats when they had captives on board with them. Malik said that he did not think it was right to do so, on the basis of God’s word regarding the people of Mecca: ‘Had they been separated clearly, then We would have chastised the non-believers among them with a painful chastisement.’

“Similarly, if an non-believer uses a Muslim as a human shield, it is not permissible to shoot at him. If someone does so and annihilates a Muslim, he must pay blood money(*diyyah*) and perform expiation (*kaffarah*). If the person did not know, he is liable neither to blood money nor to expiation. If they knew, they should not have shot; and if they did, they became unintentional homicides, and their fellow tribesmen (*aqilah*) became liable for the blood money. However, if they did not know, they could shoot; and if they permitted the deed, it is not allowed for consequence of it to remain against them.

“The Imam al-Nawawi (may God have mercy on him) said: “3288: Yahya Ibn Yahya and Muhammad Ibn Rumh reported to us that they had been told by al-Layth; and Qutaybah Ibn Sa’id reported to us that al-Layth also reported to him from Nafi’, who had it from Abdallah, that the messenger of God (may God bless him and grant him peace) set fire to the date palms of the Banu al-Nadir at al-Buwayrah and cut them down. Qutaybah and Ibn Rumh added in their report that God revealed the following verse on this occasion: ‘Whatever palm-tress you cut down, or left standing upon their roots, that was by God’s leave, and that He might degrade the ungodly’ [Quranic verse; al-Hashr 59:5].

“In this Hadith there is permission to cut down and burn the trees of the non-believers. This was held by Abd-al-Rahman Ibn al-Qasim, Nafi’ the *mawla* of Ibn Umar, Malik, al-Thawri, Abu Hanifah, al-Shafi’i, Ahmad [Ibn Hanbal], Ishaq, and the great majority. However, there is a tradition from Abu Bakr al-Siddiq, al-Layth Ibn Sa’d, Abu Thawr, and al-Awza’i (may God be pleased with him) that it is not permitted.”

### Referencing Amr Ibn al-As

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#### Al-Fahd: Page 11, 17

“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.”

“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.”

**Zawahiri: Page 39, 124, 165, 208, 210**

Ibn-Qudamah, may he rest in peace, said: Using catapults is permitted because the prophet, may God’s prayers and peace be upon him, used catapults against Al-Ta’if’s inhabitants and Amru Bin-al-As used catapults against the people of Alexandria. Ibn-Qasim says in his commentary: It is permitted to use catapults against the infidels even if young boys, women, old people, and monks are killed along with the others because it is permitted to attack them collectively. Ibn-Rushud, may he rest in peace, said: c collective attacks against all types of idolaters are permitted.

Ibn Qudamah the Hanbali (may God have mercy on him) said: “Chapter: The ruling is similar regarding opening the floodgates on them to drown them: if they can be overcome in another way, it is not permissible—if that entails the destruction of women and children, whose intentional destruction is forbidden. If they can be overcome only in that way, it is permissible, as night attacks entailing the same things are permissible, and it is permissible to erect a catapult against them. The plain sense of Ahmad [Ibn Hanbal] is that it is permissible when need is present and when it is absent. This is because the prophet (may God bless him and grant him peace) erected a catapult against the people of al-Ta’if. Among those who hold this opinion are al-Thawri, al-Awza’i, al-Shafi’i, and the masters of opinion. Ibn al-Mundhir said that a tradition from the prophet states that he set up a catapult against the people of al-Ta’if and one from Amr Ibn al-As states that he set up a catapult against the people of Alexandria. Also: because fighting by such means is customary and like shooting arrows.”

Public opinion varied between permitting killing and restraining it according to necessity, as I explained in detail in Chapter Eight.

b. Public opinion did not confine the killing of human shields to jihad of defense but permitted it in all operations of jihad, and drew upon the Sunnah of the prophet, prayers and peace be upon him, in his exasperated labor against the people of Al-Ta’if and his brigades which raided the non-believers, among whom were women and children. The prophet, prayers and peace of God be upon him, and his companions were not, in these cases in jihad of defense, yet the siege of Al-Ta’if was after the conquest of Mecca. Ibn Qudamah [Al-Maqdisi - Islamic scholar of the Hanbali madhhab] said in Al-Mughni [a well-known Hanbali book of fiqh] that Amr Ibn al-As [Muslim conqueror of Egypt in 641-642 Hijri] had installed the catapult against the people of Alexandria [Egypt].<sup>266</sup> This was jihad al-talab [jihad of oppression].

The second aspect: Muslim leaders used catapults in fighting the non-believers. It is known that catapults if used, do not differentiate between one fighter and the other. They can strike those who are called innocent; nevertheless, the Muslim tradition was that it was used in wars. Ibn Qudamah, may God have mercy upon him, said: Using catapults is permissible because the prophet, prayers and peace of God be upon him, used them against the people of Al-Ta'if and Amr Ibn al-As used them against the people of Alexandria (Al-Mughni and Al-Sharh 10/503). Ibn Qassim, may God have mercy upon him, said in Al-Hashiyyah: 'It is permissible to use catapults against the non-believers even if children, women, old men and monks are killed inadvertently, because crushing the enemy is allowed according to the consensus of the scholars. [Abu al Walid Mohammad] Ibn Rushud [Muslim scholar, philosopher and physician of 12th century Al-Andalus], said: "Crushing the enemy is permissible according to the consensus of scholars and against any type of polytheist" (Al-Hashiyah ala' Ar-Raudh, vol. 4, p 271).

### Referencing Al-Sarakhsi

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#### Al-Fahd: Page 13, 14

"Al-Sarakhsi, citing Muhammad ibn al-Hasan [al-Shaybani] (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. God has said, 'Nor gain they from any enemy, but a righteous deed is thereby written to their account.' (Quran 9:120). One abstains from none of this while there are Muslim prisoners of war or Muslims with a 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."

"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."

**Zawahiri: Page 149, 161**

“The prophet was asked about this” (he transmitted this in al-Nahr from Abu al-Layth) i.e. in our saying to him, “Shall we shoot or not,” and we follow what he says. He did not mention if it is not possible to ask him. “Any of them who are hit”: i.e., if we aim at the non-believers and hit one of the Muslims whom the non-believers are using as a human shield, we are not liable for him. Al-Sarakhsi says that credence is given to the shooter’s oath that he aimed for the nonbeliever, not to the slain Muslim’s next-of-kin that killed him intentionally. “Because duties are not coupled with fines,” it is as if someone subject to the prescribed punishment of scourging or amputation were to die.

**Referencing Al-Kasani**

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**Al-Fahd: Page 14**

Al-Kasani (Baday’ 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. God has said ‘They destroy their houses with their own hands, and the hands of the believers.’ (Quran 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?”

**Zawahiri: Page 106, 168, 170, 171, 186**

Imam Al-Kasani said: “If general mobilization is declared after an enemy attacks the country, then it becomes the individual duty of every single able-bodied Muslim to join the battle, based on God Almighty’s command: ‘Go ye forth, whether lightly or heavily equipped’ [Quranic verse; the Repentance 9:41]. The Muslims used to say, I joined the battle in response to the general call.”

The Imam al-Kasani (may God have mercy on him) said: “There is nothing wrong with raiding them and attacking them by night.”

The Imam al-Kasani (may God have mercy on him) said: “There is nothing wrong with cutting down their fruit trees and other trees and ruining their crops, based on the Quranic verse: ‘Whatever palm-tree you cut down, or left standing upon their roots, that was by God’s leave, and that He might degrade the ungodly’ [Quranic verse; al-Hashr 59:5]. At the

beginning of the verse, God gives permission to cut down the palm trees; at the end of it He indicates that this is to crush and demoralize the enemy—‘that He might degrade the ungodly.’

“There is nothing wrong with burning their forts with fire or drowning them with water, with destroying them and razing them on top of them, or with erecting a catapult against them. God has said, ‘As they destroyed their houses with their own hands, and the hands of the believers’ [Quranic verse; al-Hashr 59:2]. All of this falls under the heading of fighting, because of the compulsion, crushing, and demoralization in it. The inviolability of property derives from the inviolability of its owners; when the owners have no inviolability and can be killed, how much more so their property! There is nothing wrong with shooting them with arrows, even if Muslim prisoners and merchants are known to be among them, due to necessity; for rarely are the forts of non-believers devoid of Muslim captives or merchants. Giving consideration to them would lead to closing the door of jihad. However, in all this one targets the non-believers, not the Muslims, because there is no necessity for intending to kill Muslims wrongfully.

“Likewise, if they use Muslim children as human shields, there is nothing wrong with shooting at them, because of the necessity of carrying out one’s religious duty, but one aims at the non-believers, rather than the children. If they shoot at them and a Muslim is hit, there is neither blood money nor expiation.”

(Same 3 paragraphs above quoted again several pages later)

### Referencing Ibn Qudamah

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#### Al-Fahd: Page 16

“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 God be pleased with him, used to order that the people who apostatized after the Prophety’s death should be fought with fire, and Khalid ibn al-Walid did this at his command. Today, 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 setup 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.”

**Zawahiri: Page 28, 39, 40, 108, 131, 152, 165, 166, 168, 169, 185, 186, 208, 210, 211**

Ibn-Qudamah, may he rest in peace, said: Using catapults is permitted because the prophet, may God’s prayers and peace be upon him, used catapults against Al-Ta’if’s inhabitants and Amru Bin-al-As used catapults against the people of Alexandria. Ibn- Qasim says in his commentary: It is permitted to use catapults against the infidels even if young boys, women, old people, and monks are killed along with the others because it is permitted to attack them collectively. Ibn-Rushud, may he rest in peace, said: Collective attacks against all types of idolaters are permitted.

What do you mean by innocent people? They come in three classes: First class: They might be those who do not fight alongside the countries they live in and do not help them with their persons, wealth, counsel, or other types of assistance. These may not be killed but on condition that they hold themselves separately from the others. If they are not separated from the others, it is permitted to kill them including old people, women, young boys, sick persons, incapacitated persons, and unworldly monks. Ibn-Qudamah said: Women and children may be killed during a night raid on condition that they are not killed intentionally and separately. It is permitted to kill their riding animals and livestock if this helps the Muslims to kill them. There is no disagreement on this point. He added: It is permitted to carry out a night raid on the enemy. Ibn-Hanbal said night raids were permitted especially against the Byzantines. We will not discourage anyone from carrying out night raids.

Second class: Some do not go forth in their own persons to fight alongside their belligerent countries but they assist them with money or counsel. These are not called innocent persons because they support the troops. Ibn-Abd-al-Birr, may he rest in peace, said: The ulema never disagreed that the Muslims are permitted to kill women and children if they fight and also young boys able to fight and who do so. Ibn-Qudamah reported a consensus among the ulema that it is permitted to kill women, young boys, and the old and infirm if they help their people in battle. Ibn-Abd-al-Birr said: They all recounted that the prophet killed Durayd Bin-al-Sammah in the Battle of Hunayn because he gave clever counsel to his people in war. All ulema agree that an old man of this type should be killed in war. Al-Nawawi, citing the

book “Consensus on Matters of Jihad,” said that old men among the infidels should be killed if they are men of counsel. Ibn-Qasim, may he rest in peace, wrote in his commentary: The unanimous opinion is that those who support the troops should be killed. Ibn-Taymiyyah cited this unanimous opinion. He also said that those who give any kind of aid to the sect that refuses to accept Islam should suffer the same fate.

Ibn Qudamah the Hanbali (may God have mercy on him) said: “Chapter: The ruling is similar regarding opening the floodgates on them to drown them: if they can be overcome in another way, it is not permissible—if that entails the destruction of women and children, whose intentional destruction is forbidden. If they can be overcome only in that way, it is permissible, as night attacks entailing the same things are permissible, and it is permissible to erect a catapult against them. The plain sense of Ahmad [Ibn Hanbal] is that it is permissible when need is present and when it is absent. This is because the prophet (may God bless him and grant him peace) erected a catapult against the people of al-Ta’if. Among those who hold this opinion are al-Thawri, al-Awza’i, al-Shafi’i, and the masters of opinion. Ibn al-Mundhir said that a tradition from the prophet states that he set up a catapult against the people of al-Ta’if and one from Amr Ibn al-As states that he set up a catapult against the people of Alexandria. Also: because fighting by such means is customary and like shooting arrows.”

Ibn Qudamah also said (may God have mercy on him): “(7577) Chapter: If in war they use their women and children as shields, it is permissible to shoot at them, but one aims at the fighters. This is because the prophet (may God bless him and grant him peace) shot at them with the catapult when there were women and children with them. It is also because the Muslim’s abstaining from them would lead to the halting of jihad; for when the enemy found out, they would take them as shields whenever they were afraid, and so jihad would halt.

“It is the same regardless of whether the fighting is at close quarters or not, because the prophet (may God bless him and grant him peace) did not delay shooting when the fighting was at close quarters.”

Ibn Qudamah also said: “Chapter: If they take a Muslim as a shield and necessity does not call for shooting at them due to the war’s not being ongoing, or because they can be overcome without it, or because one feels safe from their evil, it is not permissible to shoot at them; and so if he shoots at them and hits a Muslim, he bears liability for him. However, if necessity calls for shooting at them because of fear for the Muslims, shooting at them is permissible because it is a case of necessity and so the non-believers are targeted. If there is

no fear for the Muslims, but the enemy can be overcome only by shooting, al-Awza'i and al-Layth say that shooting at them is not permissible, on the basis of the Quranic verse: '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...' [Quranic verse; Al-Fath 48:25]. Al-Layth said that abstaining from the conquest of a fort that could be conquered was better than wrongly killing a Muslim. Al-Awza'i said: 'How are they to shoot when they do not see? They would only be shooting at the children of Muslims.' Al-Qadi and al-Shafi'i said that they may be shot at when the war is ongoing, because not doing so would lead to halting jihad. Two texts are offered in support of this view, that if he kills a Muslim, he is liable to expiation and blood money.

"One of them is that it is obligatory because he killed a believer in error, so it falls under the provisions of the verse: 'If any slays a believer by error, then let him set free a believing slave, and bloodwit is to be paid to his family' [Quranic verse; al-Nisa' 4:92].

"The second is that there is no blood money because he was killed in enemy territory (*dar al-harb*) by permissible shooting, so he falls under the provisions of the verse: 'If he belong to a people at enmity with you and is a believer, let the slayer set free a believing slave' [Quranic verse; al-Nisa' 4:92], which mentions no blood money.

"Abu Hanifah said he is liable neither to blood money nor to expiation because the shooting was permitted although the situation was known; and so it rendered nothing incumbent, even as the shooting of someone whose life may be taken. "Our view is based on the cited verse, on the fact that he has killed someone protected by faith, and that the slayer is a person who bears liability; so it is similar to if he had not been taken as a human shield."

Ibn Qudamah al-Maqdisi (may God have mercy on him) said: "Section: There is nothing wrong with attacking the non-believers by night, i.e., raiding them by night and killing them when they are unprepared.

Ibn Qudamah (may God have mercy on him) said: "(7577) Chapter: If in war they use their women and children as shields, it is permissible to shoot at them, and he should aim at the fighters. This is because the prophet (may God bless him and grant him peace) shot at them with the catapult when there were women and children with them. It is also because the Muslim's abstaining from them would lead to the halting of jihad; for when the enemy found out, they would take them as shields whenever they were afraid, and so jihad would halt."

Ibn Qudamah also said: “Chapter: If they take a Muslim as a shield and necessity does not call for shooting at them due to the war’s not being ongoing, or because they can be overcome without it, or because one feels safe from their evil, it is not permissible to shoot at them; and so if he shoots at them and hits a Muslim, he bears liability for him. However, if necessity calls for shooting at them because of fear for the Muslims, shooting at them is permissible because it is a case of necessity and the non-believers are targeted. If there is no fear for the Muslims, but the enemy can be overcome only by shooting, al-Awza’i and al-Layth say that shooting at them is not permissible, on the basis of the Quranic verse: ‘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’ [Quranic verse; Al-Fath 48:25]. Al-Layth said that abstaining from the conquest of a fort that could be conquered was better than wrongly killing a Muslim. Al-Awza’i said: ‘How are they to shoot when they do not see? They would only be shooting at the children of Muslims.’ Al-Qadi and al-Shafi’i said that they may be shot at when the war is ongoing, because not doing so would lead to halting jihad.”

Public opinion did not confine the killing of human shields to jihad of defense but permitted it in all operations of jihad, and drew upon the Sunnah of the prophet, prayers and peace be upon him, in his exasperated labor against the people of Al-Ta’if and his brigades which raided the non-believers, among whom were women and children. The prophet, prayers and peace of God be upon him, and his companions were not, in these cases in jihad of defense, yet the siege of Al-Ta’if was after the conquest of Mecca. Ibn Qudamah [Al-Maqdisi - Islamic scholar of the Hanbali madhhab] said in Al-Mughni [a well-known Hanbali book of fiqh] that Amr Ibn al-’As [Muslim conqueror of Egypt in 641-642 Hijri] had installed the catapult against the people of Alexandria [Egypt].<sup>266</sup> This was jihad al-talab [jihad of oppression].

The second aspect: Muslim leaders used catapults in fighting the non-believers. It is known that catapults if used, do not differentiate between one fighter and the other. They can strike those who are called innocent; nevertheless, the Muslim tradition was that it was used in wars. Ibn Qudamah, may God have mercy upon him, said: Using catapults is permissible because the prophet, prayers and peace of God be upon him, used them against the people of Al-Ta’if and Amr Ibn al-As used them against the people of Alexandria (Al-Mughni and Al-Sharh 10/503). Ibn Qassim, may God have mercy upon him, said in Al-Hashiyyah: ‘It is permissible to use catapults against the non-believers even if children, women, old men and monks are killed inadvertently, because crushing the enemy is allowed according to the

consensus of the scholars. [Abu al Walid Mohammad] Ibn Rushud [Muslim scholar, philosopher and physician of 12th century Al-Andalus], said: “Crushing the enemy is permissible according to the consensus of scholars and against any type of polytheist” (Al-Hashiyah ala’ Ar-Raudh, vol. 4, p 271).

That they would not be of those who fought with their countries nor had been hired by them physically, financially, by opinion, consultation nor otherwise, for it is not permissible to attack this type on condition that they be outstanding and not having mixed with others. But if they mixed with others and were not distinguishable then their killing would be permissible in conformity and subject to those such as the aged, women, children, sick people, the handicapped, and the dedicated monks. Ibn Qudamah [al- Maqdisi] narrated: and it is possible to unintentionally kill women and children in night attacks and burial places, if not intentionally individually killed. It is permissible to kill their cattle leading to their killing and defeat, and there is no dispute about that (meaning and elaboration 10/503). And he said: it is permissible to attack the enemy by night. Ahmad Ibn Hanbal said there is no harm in attacking by night, for the conquest of the West is but by night, and he said and we know not anyone who disliked the attacks by night.

Or they are of those who have not embarked upon fighting with their countries which are in war, but are hired by them for money or opinion. Those are not considered innocent, but are fighters and apostates (that is the hired and the supporter). Ibn Abd al-Bir [al Maliki], may God have mercy upon him, said in Al-Istithkar: Scholars have not disagreed about those women and old people who have fought for it is permissible to kill them. It is permissible to kill children who were capable of fighting and did fight (Al-Istithkar, 14/74). The consensus also cited Ibn Qudamah, may God have mercy upon him, that he permitted the killing of women, children and old people if they helped their countries.

Ibn Abd al-Bir, may God have mercy upon him, said: consensus was that the prophet of God, may prayers and peace of God be upon him, killed Durid Ibn al-Samma on Hanin day because he had attitude and intrigue in warfare. So, he of the shaykhs who was like that was to be killed in the opinion of all (Al-Tamhid (16/142)). Al-Nawawi, may God have mercy upon him, cited in Sharh Muslim in Book of Al-Jihad the consensus that if any of the shaykhs of non-believers had an attitude they would be killed. Ibn Qasim, may God have mercy upon him, cited in Al-Hashiyah, that consensus was that the rule concerning him who supports or assists [in war] is a straightforward rule in jihad. Ibn Taymiyyah, may God have mercy upon him, was quoted that this was a consensus, and he [Ibn Taymiyyah] was also quoted as saying that supporters of inactive factions and their supporters are from them and like them.

### Al-Fahd: Page 17

Al-San'ani (Subl al-Salam, 4:51): From Ibn 'Umar, a Companion of the Prophet: "The Messenger of God, may God 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 Quranic verse was revealed regarding this: "Whatever palm-trees you cut down..." (Quran 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.

### Zawahiri: Page 155, 158, 169, 170

(One of the citations for the following quote): "Sometimes it is permitted to kill a human shield. About this there will be no disagreement, God willing. This happens when the benefit to be gained is necessary, universal, and definite. Its being necessary means that the non-believers can be reached only by killing the human shield. Its being universal means that it extends to the entire nation, with all Muslims receiving benefit from the killing of the human shield, and with the non-believers killing the human shield and taking control of the entire nation if it is not done. Its being definite means that the benefit in question will definitely come about from the killing of the human shield. Our scholars have said: There should be no disagreement about taking account of this benefit with these restrictions. The assumption is that the human shield will definitely be killed, either by the enemy, whereupon the great evil of the enemy's taking control of all Muslims will occur, or by the Muslims, whereupon the enemy will perish and the Muslims all be saved. No reasonable man would think of saying that the human shield should in no wise be killed under these circumstances, for that would entail the destruction of the human shield, Islam, and the Muslims. However, since this benefit is not devoid of attendant evil, the mind of anyone who has not considered the matter very carefully is repelled. However, the evil, compared to what results from it, is nothing or as nothing. And God is most knowledgeable."

Al-Amir al-San'ani (may God have mercy on him) said: "From Makhul (may God be pleased

with him): ‘The prophet (may God bless him and grant him peace) erected a catapult against the people of Al-Ta’if.’ ‘Abu Dawud included it among traditions with an incomplete chain of transmission not going all the way back to the prophet, though its links were trustworthy. Al-Uqayli traced it back to the prophet, though with a weak chain of transmission, from Ali (may God be pleased with him) ‘The Hadith contains evidence that it is permitted to kill fortified non-believers with a catapult and, by analogy, other kinds of artillery and the like.’

### Referencing Al-Shawkani

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#### Al-Fahd: Page 18

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].”

He also said (al-Sayl al-Jarrar, 4:534): “God 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.”

#### Zawahiri: Page 15, 101, 130, 132, 142

(One of the citations for the following quote): “Islamic law assumes that the lives and property of non-believers are legitimate targets, except by virtue of a peace treaty (*sulh*), a safe-conduct (*aman*), or a covenant of protection (*dhimmah*); for the land of the enemy is a land of fighting, plunder, and legitimate targets.”

### Referencing Buraydah ibn al-Husayb

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#### Al-Fahd: Page 19

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 God, may God bless him and grant him peace, appointed a commander over an army or expedition, he urged him to fear God and take good care of the Muslims who were with him. Then he would say: ‘Attack

in the Name of God and in God's Path. Fight anyone who denies God. 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.

(Followed by a rebuttal of this argument justifying the killing of women and children)

#### **Zawahiri: Page 175**

We read in the *Sahih* of Muslim, on the authority of Buraydah Ibn al-Husayb, that whenever the prophet sent out a commander over a detachment or an army or on some mission of his, he would especially exhort him to fear God and to be good to the Muslims who were with him. He would say: ‘Fight in the name of God and in the way of God. Fight against those who disbelieve in God. Do not exceed the bounds, do not act treacherously, do not mutilate, and do not kill children.’

(Followed by a justification of like-for-like mutilation and vengeance)

#### **Referencing Ibn Taymiyah / Ibn Taymiyyah**

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##### **Al-Fahd: Page 20, 23**

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.

The Shaykh al-Islam Ibn Taymiyah (al-Fatawi, 28:546 said: “Scholars have agreed that if the infidel army uses 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 Muslims whom they used as shields.”

Here ends the treatise.

Zawahiri: Page 27, 32, 36, 40, 41, 42, 43, 45, 46, 59, 74, 75, 76, 86, 92, 93, 95, 96, 97, 109, 135, 136, 137, 138, 139, 144, 145, 164, 165, 174, 175, 177, 187, 189, 190, 197, 210, 211, 212, 215, 245

Ibn-Taymiyyah said: “After the initial obligation to believe, there is no greater duty than to repulse a marauding enemy.”

In his collection of major fatwas, Ibn-Taymiyyah said: “In matters of jihad one should rely on the opinion of those who have a sound knowledge of religion and also experience of the world. Those ulema who do not delve deep into matters of religion and examine only the surface and those who have no experience of the world should not be consulted.”

Ibn-Taymiyyah, may he rest in peace, said: The ulema have agreed that if the infidel army uses captive Muslims as human shields and there is fear for the Muslims lives if they do not fight, they should attack even if this leads to killing the human shields.

Al-Nawawi, citing the book “Consensus on Matters of Jihad,” said that old men among the infidels should be killed if they are men of counsel. Ibn-Qasim, may he rest in peace, wrote in his commentary: The unanimous opinion is that those who support the troops should be killed. Ibn-Taymiyyah cited this unanimous opinion. He also said that those who give any kind of aid to the sect that refuses to accept Islam should suffer the same fate.

Ibn-Taymiyyah said: They have the right to mutilate their enemies’ bodies to avenge similar mutilation done to the Muslims. They can, if they want, abandon this custom and endure especially when mutilation is not a necessary part of their jihad and not carried out in vengeance for similar mutilation. If, however, mutilation is used to call the enemies to the Muslim faith or deter them from further aggression, it comes under the heading of meting out Shari’ah punishment and legitimate jihad. Ibn-Miflih cited this opinion by Ibn-Taymiyyah.

On this issue Shaykh al-Islam Ibn-Taymiyyah says: “Religion’s foundations are a book that guides and a sword that brings victory and God is a sufficient guide and bringer of victory.”

On matters of jihad we should accept the opinion of sound followers of the faith who also have experience of the world just as Ibn-Taymiyyah said: “On issues of jihad it is necessary to take the opinion of the followers of the true faith who also have experience of the world. The opinion of worldly people who understand religion only superficially should not be heeded nor the opinion of religious people who have no experience of the world.”

Ibn Taymiyyah (may God have mercy on him) says: “The scholars agree that if the infidel army uses its Muslim captives as human shields, and the Muslims are in danger if they do not fight, they fight even if that leads to the killing of the Muslims being used as shields. If there is no danger for the Muslims, there are two well-known positions taken by scholars on the permissibility of fighting that leads to the killing of these Muslims.

When such Muslims are killed, they are martyrs; and one does not desist from duty of jihad on account of those who are killed as martyrs. When Muslims fight non-believers, any Muslim who is killed is a martyr. Anyone undeserving of death killed while in the womb for the sake of the welfare of Islam is a martyr. It is established in the two *Sahih* books that the prophet (may God bless him and grant him peace) said: ‘An army of men will attack this house, and lo, while they are in the desert, the ground will swallow them up.’ Someone asked, ‘Messenger of God, there might be forced conscripts among them!’ He replied, ‘They will be resurrected according to their intentions.’ If God causes the chastisement that He inflicts on the army attacking the Muslims to fall on the forced conscript, how much more so with regard to the chastisement whereby God chastises them at the hands of the believers! As God has said: ‘Say: ‘Are you awaiting for aught to come to us but one of the two rewards most fair? We are awaiting in your case too, for God to visit you with chastisement from Him, or at our hands” [Quranic verse; Al-Tawbah 9:52].”

Ibn Taymiyyah (may God have mercy on him) says: “As for cruel and exemplary punishments or mutilation, it is not permissible except as retribution. Imran Ibn Husayn (may God be pleased with him and his father) said: ‘Never did the messenger of God (may God bless him and grant him peace) preach a sermon to us but that he commanded us to charity and forbade us to mutilate. Even when we killed non-believers, we did not mutilate them after killing them. We did not cut off their ears and noses or rip open their bellies, unless they had done that to us; and then we would do to them as they had done. However, abstaining from such things is better, as God has said: ‘And if you chastise, chastise even as you have been chastised; and yet assuredly if you are patient, better it is for those patient’ [Quranic verse; Al-Nahl 16:126]. And: ‘And be patient; yet is thy patience only with the help of God’ [Quranic verse; Al-Nahl 16:127].

Some say that the verse was revealed only because the polytheists mutilated Hamzah and other martyrs of the Battle of Uhud (may God be pleased with them); whereupon the prophet said, ‘If God gives me victory over them, I will mutilate them twice as much as they mu-

tilated us.' God then revealed this verse, although verses like the following had already been revealed in Mecca: 'They will question thee concerning the Spirit. Say: "The Spirit is of the bidding of my Lord"' [Quranic verse; Al-Isra' 17:85]. And: 'And perform the prayer at the two ends of the day and night of the night; surely the good deeds will drive away the evil deeds' [Quranic verse; Hud 11:114]. These and other verses were revealed in Mecca; then some occasion requiring addressing them arose in Medina, and so they were revealed a second time. So the prophet said, 'Rather, let us be patient.' We read in the *Sahih* of Muslim, on the authority of Buraydah Ibn al-Husayb, that whenever the prophet sent out a commander over a detachment or an army or on some mission of his, he would especially exhort him to fear God and to be good to the Muslims who were with him. He would say: 'Fight in the name of God and in the way of God. Fight against those who disbelieve in God. Do not exceed the bounds, do not act treacherously, do not mutilate, and do not kill children.'"

Ibn Taymiyyah (may God have mercy on him) also said: "If the non-believers mutilate Muslims, mutilation is the right of the latter: they have the right to do it to exact vengeance, but they may forego it; and patience is better. This is because the mutilation allowed to them involves nothing that would summon to faith and preserve them from aggression. In this case it belongs to the imposition of the prescribed hadd punishments and jihad. The case at Uhud was not like that, and therefore patience was better. When exemplary punishment is the right of God, patience is a duty, as it is when aiding oneself is not possible, and impatience is unlawful."

Ibn Taymiyyah (may God have mercy on him) has said: "For this reason, scholars have agreed on the permissibility of destroying trees and crops belonging to the non-believers if they have done the same to us or if they can be overcome only by these means. About its permissibility short of such circumstances there is a well-known controversy. There are two accounts related on the authority of Ahmad [Ibn Hanbal]. Permitting it is the doctrine of al-Shafi'i and others."

Ibn Taymiyyah (may God have mercy on him) says: "The scholars agree that if the infidel army uses its Muslim captives as human shields, and the Muslims are in danger if they do not fight, they fight even if that leads to the killing of the Muslims being used as shields. If there is no danger for the Muslims, there are two well-known positions taken by scholars on the permissibility of fighting that leads to the killing of these Muslims. When such Muslims are killed, they are martyrs; and one does not desist from duty of jihad on account of those who are killed as martyrs. When Muslims fight non-believers, any Muslim who is killed is

a martyr. Anyone undeserving of death killed while in the womb for the sake of the welfare of Islam is a martyr. It is established in the two *Sahih* books that the prophet (may God bless him and grant him peace) said: ‘An army of men will attack this house, and lo, while they are in the desert, the ground will swallow them up.’ Someone asked, ‘Messenger of God, there might be forced conscripts among them!’ He replied, ‘They will be resurrected according to their intentions.’ If God causes the chastisement that He inflicts on the army attacking the Muslims to fall on the forced conscript, how much more so with regard to the chastisement whereby God chastises them at the hands of the believers! As God has said: ‘Say: ‘Are you awaiting for aught to come to us but one of the two rewards most fair? We are awaiting in your case too, for God to visit you with chastisement from Him, or at our hands” [Quranic verse; Al-Tawbah 9:52].”

The third aspect: Muslim religious scholars allowed the killing of Muslim (human shields) if they were captives in the hands of non-believers who were going to use them as human shields to protect themselves from the darts of Muslims even though they have done nothing wrong, were innocent and their killing was not permissible. Ibn Taymiyyah, may God have mercy upon him, said: scholars agreed that if the army of non-believers took Muslim captives as human shields and there was fear that harm will befall the Muslims if they did not fight, then they should fight even if this led to the killing of Muslims who were used as human shields (Fatwas 28/537-546, section 20/52). Ibn Qasim [eighth Idrisi ruler and sultan of Morocco], may God have mercy upon him, said in Al-Hashiyyah: If they use a Muslim as a human shield then it is not permissible to attack them except that we fear for Muslims, so they attack them, meaning the nonbelievers, and this is without dispute (Al-Hashiyyah ‘ala Ar-Raudh 4/271)

Of the scholars sayings concerning the permissibility of revenge in the same way: Ibn Taymiyyah said: Treating them in the same way is their right, for they can do this to exact revenge. They can leave it, for patience is better. This is when torturing them does not add to jihad, nor is their exact punishment for the like. If punishment is a call for them to believe or is a restraint from aggression, then here it is for the establishment of limits and legitimate jihad, Ibn Miflih quoted Ibn Taymiyyah in the segments 6/218.

### **Referencing Abu Bakr Ahmad al-Razi al-Jassas**

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**Al-Fahd: Page 21, 22**

Al-Jassas said (Ahkam al-Qur’an, 3:389): “As for the argument of those who cite the verse, ‘If it had not been for certain men believers and certain women believers...’ (Quran 48:25), as

ground for prohibiting bombarding the infidels because of the Muslims in their midst, the verse cannot be used to prove of contention. That is because the most the verse says is that God turned the Muslims away from them because among 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'arraḥ)' 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'arraḥ meant sin (ithm), but this is false, because God 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'arraḥ unwittingly on their account,' and one incurs no sin for what one does not know and of which God has given no indication. For God says: 'There is no fault in you if you make mistakes, but only in what your hearts premeditate.' (Quran 33:5). Thus we know that ma'arraḥ does not mean sin... It 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 Muslim 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'arraḥ 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."

**Zawahiri: Page 35, 80, 82, 83, 87, 88, 92, 98, 158, 160, 168, 184**

According to Abu Bakr al-Jassas: "Scholars of the prophet's biography have transmitted that the prophet (may God bless him and grant him peace) besieged the people of Al-Ta'if and bombarded them by catapult, although he had prohibited the killing of women and children. He knew that he might hit them and that it was not permissible to kill them intentionally. This shows that the presence of Muslims among the belligerents does not prevent their being bombarded, since the intention was to hit the non-believers to the exclusion of the Muslims.

The Imam al-Jassas (may God have mercy on him) said: "The prophet (may God bless him and grant him peace) once sent Usama bin Zayd and said to him, 'Attack Ubna212 in the morning and burn it.' He used to order the expeditions to wait for those they were attacking and to refrain from them if they gave the call to prayer; if they heard no call, they were to attack. The well guided caliphs continued this policy."

"It is common knowledge that anyone who attacks such people cannot avoid hitting their children and women who are forbidden to be killed; similarly, if there are Muslims among them. This must not prevent the launching of the raid against them and shooting at them with arrows and other things, even if there is danger of hitting the Muslim."

Abu Bakr al-Jassas (may God have mercy on him) said: "Scholars of the prophet's biography have transmitted that the prophet (may God bless him and grant him peace) besieged the people of al-Ta'if and bombarded them by catapult, although he had prohibited the killing of women and children. He knew that he might hit them, although it was not permissible to kill them intentionally. This shows that the presence of Muslims among the belligerents does not prevent their being bombarded, since the intention was to hit the non-believers to the exclusion of the Muslims.

### **Referencing Muhammad ibn al-Hasan al-Shaybani**

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#### **Al-Fahd: Page 22**

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 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.”

**Zawahiri: Page 128, 129, 130, 132, 143, 151, 152, 153**

Imam Muhammad Ibn al-Hasan al-Shaybani (may God have mercy on him) says the following about prisoners of war to whom the non-believers grant a safe-conduct but whom they then treat perfidiously:

“784. If some people from among them meet the captives and ask them, ‘Who are you?’ and they reply, ‘We are merchants who entered with a safe-conduct from your comrades’; or, ‘We are emissaries of the caliph’; it does not behoove them afterward to kill any of them; for they have manifested what is an indication of seeking safe-conduct. It is to be deemed a seeking of safe-conduct by them, and so they may not treat them perfidiously afterward, so long as the inhabitants of the land of war do not harass them.

“785. If the inhabitants of the land of war find out that they are captives and so take them, but then they escape from them, it is permissible for them to fight them and take their property, because the status of having sought safe-conduct is lifted from them by virtue of what they have done.

“Do you not see that if the king of the inhabitants of the land of war acts perfidiously toward those who have sought safe-conduct, takes their property, and imprisons them, but then they escape, they may kill the inhabitants of the land of war and take their property? They may do so on the ground that that was a breaking of the treaty by their king.

“786. Likewise, if a man should do so at the command of their king or with his knowledge, and the king did not prevent him from doing so, then the maxim is: A fool not prohibited has been, as it were, commanded. However, if they acted without the prince’s knowledge or the knowledge of his party, the seekers of safe-conduct may not regard the foe’s women as fair game because of what he did to them.”

(Cited for the below quote):

“Islamic law assumes that the lives and property of non-believers are legitimate targets, except by virtue of a peace treaty (*sulh*), a safe-conduct (*aman*), or a covenant of protection (*dhimmah*); for the land of the enemy is a land of fighting, plunder, and legitimate targets.”

Similar to this is what Muhammad Ibn al-Hasan al-Shaybani (may God have mercy on him) says in [*Kitab*] *al-Siyar al-Kabir* about a Muslim captive in the hands of nonbelievers, who tricks them and kills them when they feel safe from him: “If the captive says to them, ‘I know medicine,’ and they ask him to give them a dose of medicine and he gives them poison and it kills them: if he gives it to their *men*, he is not to be blamed, as it was a way of harming them. However, I disapprove of his giving it to *children* and *women*, just as I disapprove of his killing them—unless one of their women has done him harm, and then there is nothing wrong with his giving her a dose of it, just as there is nothing wrong with his killing her if can.”

In the same chapter, Al-Shaybani discusses others for whom it is permissible to kill and take the property of people of war by other tricks based on custom. Al-Shaybani (may God have mercy on him) says: “Suppose a group of Muslims comes to the frontier of the enemy and says, ‘We are emissaries of the caliph,’ and they produce a letter that resembles a letter of the caliph, or they do not produce one, this being a trick they are using against the polytheists. Suppose, furthermore, that the polytheists say to them, ‘Enter,’ and they enter the abode of war. It is not permissible for them to kill any of the people of war or take any of their property so long as they are in their territory.”

Then al-Shaybani (may God have mercy on him) says: “It is similar if they say, ‘We have come desiring to trade,’ their intention being to murder them unaware. Inasmuch as they, if they were really merchants as they claimed, would not be permitted to act treacherously against the people of war, they are similarly forbidden even if they only pretend to them that they are.”



## ENDNOTES

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## ABOUT THE AUTHOR

Prior to his appointment as a senior fellow at the Belfer Center, Mr. Rolf Mowatt-Larssen served over three years as the Director of Intelligence and Counterintelligence at the U.S. Department of Energy. Prior to this, he served for 23 years as a CIA intelligence officer in various domestic and international posts, to include Chief of the Europe Division in the Directorate of Operations, Chief of the Weapons of Mass Destruction Department, Counter-terrorist Center, and Deputy Associate Director of Central Intelligence for Military Support. His overseas assignments include Stockholm (1984-1987), Moscow (1988-1990, 1992-1994), Athens (1990-1992), Yerevan (1992), Zurich (1994-1996) and Oslo (1998-2000). Prior to his career in intelligence, Mr. Mowatt-Larssen served as an officer in the U.S. Army. He is a graduate of the United States Military Academy, West Point, NY. He is married to Roswitha and has three children. He is a recipient of the CIA Director's Award, the George W. Bush Award for Excellence in Counterterrorism, the Secretary of Energy's Exceptional Service Medal, the Distinguished Career Intelligence Medal, Secretary of Defense Civilian Distinguished Service Medal, and the National Intelligence Superior Performance Medal, among others.







**Belfer Center for Science and International Affairs**

Harvard Kennedy School

79 JFK Street

Cambridge, MA 02138

Fax: (617) 495-8963

Email: [belfer\\_center@harvard.edu](mailto:belfer_center@harvard.edu)

Website: <http://belfercenter.org>

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