



## 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 (ijtihad), 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 as 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 (*aqil*); 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.’

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### Referencing Al-Shawkani

#### 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.”

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### Referencing Buraydah ibn al-Husayb

#### 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 harm 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.”



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Author's Note: Jaffar al-Tayyar ("the pilot"), aka Adnan Shukrijumah, was one of the first core al-Qaeda operatives with confirmed CBRN interests that preceded the 9/11 attack. Press reports indicate he is now al-Qaeda's external operations chief; as such, he is responsible for planning attacks in the US.
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