

# The Prophet's Lessons on Conduct in War:

ḤADĪTHS ON JIHAD FROM THE ṢAḤĪḤ  
OF MUSLIM IBN ḤAJJĀJ

## Introduction

After the Koran, Muslims regard the words and deeds of the Prophet Mohammed as an authoritative source of religious law and doctrine. These words and deeds have been transmitted in the form of *ḥadīth*, a usually short account of these sayings or acts and sometimes the circumstances surrounding them, preceded by the names of the transmitters of this account, which guarantees its authenticity. To give an example:

Qutayba ibn Sa'īd has told us (= the compiler, al-Bukhārī): al-Layth has told us on the authority of Bukayr, on the authority of Sulaymān ibn Yasār on the authority of Abū Hurayra, may God be pleased with him, that he (= Abū Hurayra) said: "The Messenger of God, Peace be upon him, once sent us on an expedition and said: 'If you find so-and-so and so-and-so, burn them with fire.' Then, when we wanted to leave, the Messenger, Peace be upon him, said 'I have ordered you to burn so-and-so and so-and-so, but [I just realized that] only God may punish with fire [i.e. the fire of Hell], so if you find them both, just kill them.'"<sup>1</sup>

Such accounts were already circulating during the first century of Islam. They were passed on from generation to generation, but in the process many forgeries were introduced. Muslim scholars were aware of that and they tried to sift the vast material

<sup>1</sup>Bukhārī, *Ṣaḥīḥ* (Cairo, Dār Iḥyā' al-Turāth al-'Arabī, II), p. 172.

in order to weed out the false *ḥadīth*. The main criterion applied by them was the scrutiny of the reliability of the chains of transmitters. During the third/ninth century the traditions that had passed the test were collected in compilations that in the course of time were canonized. Whether the *ḥadīth* included in these collections really represent the Prophet's sayings and deeds is controversial. Many Western scholars have expressed skepticism and regard the bulk of the *ḥadīth* on legal topics as later forgeries. But be that as it may, these collections are of the greatest importance for the study of Islam as Muslims regard them as constituting the second source of Islam after the Koran.

The *ḥadīths* given here deal mainly with conduct during warfare. They are taken from the collection *al-Ṣaḥīḥ* (the Sound one) compiled by Muslim ibn Hajjāj al-Qushayrī al-Naysabūrī (d. 261/875) and presented in the translation of 'Abdul Hamīd Ṣiddīqī (*Ṣaḥīḥ Muslim*, rendered into English by 'Abdul Ḥamīd Ṣiddīqī. 4 vols. Lahore; Sh. Muhammad Ashraf, vol. III, pp. 942-947, 960-962 and 1001-1002). In this translation the chains of authorities have been omitted and only the person who heard the Prophet speak or saw him act is mentioned, and in some cases the person who transmitted the *ḥadīth* from him. The notes in the text are the translator's, but the numbering has been changed for editorial reasons.

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### **Regarding Permission to Make a Raid, Without an Ultimatum, Upon the Disbelievers Who Have Already Been Invited to Accept Islam**

(4292) Ibn 'Aun reported: I wrote to Nāfi' inquiring from him whether it was necessary to extend (to the disbelievers) an invitation to accept (Islam) before engaging them in fight. He wrote (in reply) to me that it was necessary in the early days of Islam. The Messenger of Allah (may peace be upon him) made a raid upon Banū Muṣṭaliq while they were unaware and their cattle were

having a drink at the water. He killed those who fought and imprisoned others.<sup>1</sup> On that very day, he captured Juwairiya bint al-Hārith. Nāfi' said that this tradition was related to him by 'Abdullah b. 'Umar who (himself) was among the raiding troops.

### **Appointment of the Leaders of Expeditions by the Imām and His Advice to Them on Etiquettes of War and Related Matters**

(4294) It has been reported from Sulaimān b. Buraid through his father that when the Messenger of Allah (may peace be upon him) appointed anyone as leader of an army or detachment<sup>2</sup> he would especially exhort him to fear Allah and to be good to the Muslims who were with him. He would say: Fight in the name of Allah and in the way of Allah. Fight against those who disbelieve in Allah. Make a holy war; do not embezzle the spoils; do not break your pledge; and do not mutilate (the dead) bodies; do not kill the children. When you meet your enemies who are polytheists, invite them to three courses of action. If they respond to any one of these, you also accept it and withhold yourself from doing them any harm. Invite them to (accept) Islam; if they respond to you, accept it from them and desist from fighting against them. Then invite them to migrate from their lands to the land of Muhājirs<sup>3</sup> and inform them that, if they do so, they shall have all the privileges and obligations of the Muhājirs. If they refuse to migrate, tell them that they will have the status of Bedouin Muslims and will be subjected to the Commands of Allah like other Muslims, but they will not get any share from the spoils of war or Fai<sup>4</sup> except when they actually fight with the Muslims (against the disbelievers). If they refuse to accept Islam, demand from them the Jizya.<sup>5</sup> If they agree to pay, accept it from them and hold off your hands. If they refuse to pay the tax, seek Allah's help and fight them. When you lay siege to a fort and the besieged appeal to you for protection in the name of Allah and His Prophet, do not accord to them the guarantee of Allah and His Prophet, but accord to them your own guarantee and the guarantee of your companions for it is a lesser sin that the security given

by you or your companions be disregarded than that the security granted in the name of Allah and His Prophet be violated. When you besiege a fort and the besieged want you to let them out in accordance with Allah's Command, do not let them come out in accordance with His Command, but do so at your (own) command, for you do not know whether or not you will be able to carry out Allah's behest with regard to them.

### **Justification for the Use of Stratagem in War**

(4311) It is narrated on the authority of Jābir that the Messenger of Allah (may peace be upon him) said: War is a stratagem.

### **One Should Not Desire an Encounter with the Enemy, but it is Essential to Show Patience During the Encounter**

(4313) It has been narrated on the authority of Abū Huraira that the Messenger of Allah (may peace be upon him) said: Do not desire an encounter with the enemy; but when you encounter them, be firm.

(4314) It is narrated by Abū Naḍr that he learnt from a letter sent by a man from the Aslam tribe, who was a Companion of the Holy Prophet (may peace be upon him) and whose name was ʿAbdullah b. Abū Aufā, to ʿUmar b. ʿUbaidullah when the latter marched upon Ḥarūrīyya (Khawārij) informing him that the Messenger of Allah (may peace be upon him) in one of those days when he was confronting the enemy waited until the sun had declined. Then he stood up (to address the people) and said: O ye men, do not wish for an encounter with the enemy. Pray to Allah to grant you security; (but) when you (have to) encounter them, exercise patience, and you should know that Paradise is under the shadows of the swords. Then the Messenger of Allah (may peace be upon him) stood up (again) and said: O Allah, Revealer of the Book, Disperser of the clouds, Defeater of the hordes, put our enemy to rout and help us against them.

### **Desirability of Praying for Victory at the Time of Confrontation with the Enemy**

(4315) It is narrated on the authority of Ibn Abū Aufā that the Messenger of Allah (may peace be upon him) cursed the tribes (who had marched upon Medina with a combined force in 5 H) and said: O Allah, Revealer of the Book, swift in (taking) account, put the tribes to rout. O Lord, defeat them and shake them.

(4318) It is narrated on the authority of Anas that the Messenger of Allah (may peace be upon him) said on the day of the Battle of Uḥud: O Allah, if Thou wilt (defeat Muslims), there will be none on the earth to worship Thee.

### **^ Prohibition of Killing Women and Children in War**

(4319) It is narrated on the authority of ʿAbdullah that a woman was found killed in one of the battles fought by the Messenger of Allah (may peace be upon him). He disapproved of the killing of women and children.

(4320) It is narrated by Ibn ʿUmar that a woman was found killed in one of these battles; so the Messenger of Allah (may peace be upon him) forbade the killing of women and children.

### **Permissibility of Killing Women and Children in the Night Raids, Provided it is not Deliberate**

(4321) It is reported on the authority of Ṣaʿb b. Jaththāma that the Prophet of Allah (may peace be upon him), when asked about the women and children of the polytheists being killed during the night raid, said: They are from them.<sup>6</sup>

### **^ Justification for Cutting Down the Trees and Burning Them**

(4324) It is narrated on the authority of ʿAbdullah that the Messenger of Allah (may peace be upon him) ordered the date-

palms of Banū Nadīr to be burnt and cut. These palms were at Buwaira. Qutaibah and Ibn Rumḥ in their versions of the tradition have added: So Allah, the Glorious and Exalted, revealed the verse: "Whatever trees you have cut down or left standing on their trunks, it was with the permission of Allah so that He may disgrace the evil-doers" (lix. 5).<sup>7</sup>

### **The Help with Angels in Badr and the Permissibility of the Spoils of War**

(4360) It has been narrated on the authority of ‘Umar b. al-Khaṭṭāb who said: When it was the day on which the Battle of Badr was fought, the Messenger of Allah (may peace be upon him) cast a glance at the infidels, and they were one thousand while his own Companions were three hundred and nineteen. The Holy Prophet (may peace be upon him) turned (his face) towards the Qibla. Then he stretched his hands and began his supplication to his Lord: "O Allah, accomplish for me what Thou hast promised to me. O Allah, bring about what Thou hast promised to me. O Allah, if this small band of Muslims is destroyed, Thou wilt not be worshipped on this earth."<sup>8</sup> He continued his supplication to his Lord, stretching his hands, facing the Qibla, until his mantle slipped down from his shoulders. So Abū Bakr came to him, picked up his mantle and put it on his shoulders. Then he embraced him from behind and said: Prophet of Allah, this prayer of yours to your Lord will suffice you, and He will fulfil for you what He has promised you. So Allah, the Glorious and Exalted, revealed (the Qur’ānic verse): "When ye appealed to your Lord for help, He responded to your call (saying): I will help you with one thousand angels coming in succession."<sup>9</sup> So Allah helped him with angels.

Abū Zūmail said that the ḥadīth was narrated to him by Ibn ‘Abbās who said: While on that day a Muslim was chasing a disbeliever who was going ahead of him, he heard over him the swishing of the whip and the voice of the rider saying: Go ahead, Ḥaizūm! He glanced at the polytheist who had (now) fallen down

on his back. When he looked at him (carefully he found that) there was a scar on his nose and his face was torn as if it had been lashed with a whip, and had turned green with its poison. An Anṣārī came to the Messenger of Allah (may peace be upon him) and related this (event) to him. He said: You have told the truth. This was the help from the third heaven. The Muslims that day (i.e. the day of the Battle of Badr) killed seventy persons and captured seventy. The Messenger of Allah (may peace be upon him) said to Abū Bakr and ʿUmar (Allah be pleased with them): What is your opinion about these captives? Abū Bakr said: They are our kith and kin. I think you should release them after getting from them a ransom. This will be a source of strength to us against the infidels. It is quite possible that Allah may guide them to Islam. Then the Messenger of Allah (may peace be upon him) said: What is your opinion, Ibn Khaṭṭāb? He said: Messenger of Allah, I do not hold the same opinion as Abū Bakr. I am of the opinion that you should hand them over to us so that we may cut off their heads. Hand over ʿAqīl to ʿAlī that he may cut off his head, and hand over such and such relative to me that I may cut off his head. They are leaders of the disbelievers and veterans among them. The Messenger of Allah (may peace be upon him) approved the opinion of Abū Bakr and did not approve what I said. The next day when I came to the Messenger of Allah (may peace be upon him), I found that both he and Abū Bakr were sitting shedding tears. I said: Messenger of Allah, why are you and your Companion shedding tears? Tell me the reason. For I will weep and, if not, I will at least pretend to weep in sympathy with you. The Messenger of Allah (may peace be upon him) said: I weep for what has happened to your companions for taking ransom (from the prisoners). I was shown the torture to which they were subjected. It was brought to me as close as this tree. (He pointed to a tree close to him.) Then God revealed the verse: "It is not befitting for a prophet that he should take prisoners until the force of the disbelievers has been crushed . . ." to the end of the verse: "so eat ye the spoils of war, (it is) lawful and pure. So Allah made booty lawful for them."<sup>10</sup>

### **Fighting of Women Side by Side With Men**

(4453) It has been narrated on the authority of Anas that, on the Day of Hunain, Umm Sulaim took out a dagger she had in her possession. Abū Ṭalḥa saw her and said: Messenger of Allah, this is Umm Sulaim. She is holding a dagger. The Messenger of Allah (may peace be upon him) asked (her): What for are you holding this dagger? She said: I took it up so that I may tear open the belly of a polytheist who comes near me. The Messenger of Allah (may peace be upon him) began to smile (at these words). She said: Messenger of Allah, kill all those people—other than us—whom thou hast declared to be free (on the day of the Conquest of Mecca). (They embraced Islam because) they were defeated at your hands (and as such their Islam is not dependable). The Messenger of Allah (may peace be upon him) said: Umm Sulaim, God is sufficient (against the mischief of the polytheists) and He will be kind to us (so you need not carry this dagger).

(4454) It has been narrated on the authority of Anas b. Mālīk who said that the Messenger of Allah (may peace be upon him) allowed Umm Sulaim and some other women of the Anṣār to accompany him when he went to war; they would give water (to the soldiers) and would treat the wounded.

(4455) It has been narrated on the authority of Anas b. Mālīk who said: On the Day of Uḥud some of the people, being defeated, left the Holy Prophet (may peace be upon him), but Abū Ṭalḥa stood before him covering him with a shield. Abū Ṭalḥa was a powerful archer who broke two or three bows that day. When a man would pass by carrying a quiver containing arrows, he would say: Spare them for Abū Ṭalḥa. Whenever the Holy Prophet (may peace be upon him) raised his head to look at the people, Abū Ṭalḥa would say: Prophet of Allah, may my father and my mother be thy ransom, do not raise your head lest you be struck by an arrow shot by the enemy. My neck is before your neck. The narrator said: I saw ʿĀ'isha bint Abū Bakr and Umm Sulaim. Both of them had tucked up their garments, so I could see the anklets on their feet. They were carrying water-skins on their backs and would pour water into the mouths of the people.



They would then go back (to the well), would fill them again and would return to pour water into the mouths of the soldiers. (On this day), Abū Ṭalḥa's sword dropped down from his hands twice or thrice because of drowsiness.

# The Legal Doctrine of Jihad:

THE CHAPTER ON JIHAD FROM AVERROES'  
LEGAL HANDBOOK *AL-BIDĀYA*

## Introduction

Averroes (Ar.: Abū al-Walīd Muḥammad Ibn Muḥammad Ibn Rushd) was born of a family of lawyers, in the then Arabic town of Córdoba, in 1126 A.D. His grandfather and namesake had written a number of works on Islamic law which enjoyed great popularity and it was as a matter of course that Averroes followed in the footsteps of his ancestors. He held the post of judge (*qāḍī*) in Sevilla and in his native town Córdoba, but he also became known as a physician—he was the court-physician of the Almohad prince Abū Yaʿqūb (who reigned from 1162 until 1184)—and as a philosopher. It is in this latter quality that he achieved fame in Europe, especially through his comments on the works of Aristotle. In the Islamic world, on the other hand, he remained famous chiefly as a lawyer. He died in Marrakesh (Morocco) in 1198.

His best known legal handbook is *Bidāyat al-Mujtahid wa-Nihāyat al-Muqtaṣid* (lit.: The beginning for him who interprets the sources independently and the end for him who wishes to limit himself). With the exception of the chapter on pilgrimage (*ḥadjj*), which he did not finish until 1188, he wrote the work around the year 1167, when he accepted the post of *qāḍī*. The book belongs to the genre of *ikhtilāf*-works. These are treatises in which the opinions of the different schools are juxtaposed and in which the controversies (*ikhtilāf*) between the early lawyers are discussed. Although traditional as far as contents are concerned, the manner of presentation of the *Bidāya* is original. In his treatment of each controversy, Averroes enters deeply into the different arguments underlying it. Usually, he reduces the controversy

to a disagreement about the question of how two conflicting Koran-verses or Traditions are related to each other. This often boils down to the question whether the one rule is a general one and the other an exception, or whether the one rule has abrogated the other. However ingenious these reasonings may be, it is to be kept well in mind that this is a matter of *hineininterpretieren*. The prescriptions of Islamic Law had already been formulated soon after Mohammed's death, the theoretical foundations with Koran-verses and Traditions followed later. Averroes was an adherent of the Malikite School, the ruling one in Islamic Spain. Nevertheless he juxtaposes the opinions of the different Schools with impartiality and refrains from passing judgements on the validity of the arguments brought forward. The only indication that he is a Malikite might be found in the fact that he sometimes expatiates a little longer on the controversies within this school.

For the translation of the *Bidāya* I used two nearly identical Cairo editions: Muṣṭafā al-Bābī al-Halabī, 1960 and Dār al-Fikr / Maktabat Khānjī, n.d. The points wherein they differ are of minor importance and mainly due to printing errors. The present translation appeared originally in *Jihad in Mediaeval and Modern Islam: The Chapter on Jihad from Averroes' Legal Handbook 'Bidāyat al-Mudjtahid' and the Treatise 'Koran and Fighting' by the Late Shaykh al-Azhar, Maḥmūd Shaltūt*. Translated and annotated by Rudolph Peters. Leiden: E. J. Brill, 1977, pp. 9–25, 80–84.

#### Literature:

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- L. Bercher, "Averroës "Bidāyat al-Mudjtahid," *Revue Tunisienne de Droit*, 1955, no. 3/4, pp. 34–37 (translation of the introduction to the *Bidāya*, in which Averroes expounds his method).
- R. Brunschvig, "Averroës juriste," in *Études d'Orientalisme, dédiées à la mémoire de Lévi-Provençal*. Paris: Maisonneuve, 1962. Vol. I, pp. 35–68.
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## The Jihad

The most important rules concerning this subject will be dealt with in two chapters. The first will contain the most important regulations as regards warfare, the second the rules pertaining to the enemy's property when it is captured by the Muslims.<sup>1</sup>

The first chapter consists of seven paragraphs:

1. The legal qualification (*ḥukm*) of this activity and the persons who are obliged to take part in it.
2. The enemy.
3. The damage allowed to be inflicted upon the different categories of enemies.
4. The prerequisites for warfare.
5. The maximum number of enemies against which one is obliged to stand one's ground.
6. Truce.
7. The aims of warfare.

### Par. 1. The Legal Qualification (*Ḥukm*) of this Activity and the Persons Obligated to Take Part in It.

Scholars agree that the jihad is a collective not a personal obligation. Only 'Abd Allāh Ibn al-Ḥasan<sup>2</sup> professed it to be a recommendable act. According to the majority of scholars, the compulsory nature of the jihad is founded on [2:216]: "*Prescribed for you is fighting, though it be hateful to you.*"<sup>3</sup> That this obligation is a collective and not a personal one, i.e. that the obligation, when it can be properly carried out by a limited number of individuals, is cancelled for the remaining Muslims, is founded on [9:122]: "*It is not for the believers to go forth totally,*"<sup>4</sup> on [4:95]: "*Yet to each God has promised the reward most fair*"<sup>5</sup> and, lastly, on the fact that the Prophet never went to battle without leaving some people behind. All this together implies that this activity is a collective obligation. The obligation to participate in the jihad applies to adult free men who have the means at their disposal to go to war and who are healthy, that is, not ill or suffering from

chronic diseases. There is absolutely no controversy about the latter restriction because of [48:17]: *"There is no fault in the blind, and there is no fault in the lame, and there is no fault in the sick"*<sup>6</sup> and because of [9:91]: *"There is no fault in the weak and the sick and those who find nothing to expend."*<sup>7</sup> Nor do I know of any dissentient views as regards the rule that this obligation applies only to free men. Nearly all scholars agree that this obligation is conditional on permission granted by the parents. Only in the case that the obligation has become a personal one, for instance because there is nobody else to carry it out, can this permission be dispensed with.<sup>8</sup> This prerequisite of permission is based on the following authentic Tradition: *"Once a man said to the Messenger of God: 'I wish to take part in the jihad.' The Messenger said to him: 'Are both your parents still alive?' When he answered in the affirmative, the Messenger said: 'Then perform the jihad for their sake.'"* Scholars are not agreed whether this permission is also required of parents who are polytheists. There is controversy, too, about the question whether the creditor's permission has to be asked when a person has run into debt. An argument in favour of this can be found in the following Tradition: *"A man said to the Prophet: 'Will God forgive me my sins if I shall sacrifice myself patiently and shall be killed in the way of God (i.e. by taking part in the jihad)?' The Prophet said: 'Yes, with the exception of your debts. This Jibrīl has told me before.'"*<sup>9</sup> The majority of scholars do not consider it obligatory, especially not when the debtor leaves enough behind to serve as payment for his debts.

## Par. 2. The Enemy.

Scholars agree that all polytheists should be fought. This is founded on [8:39]: *"Fight them until there is no persecution and the religion is God's entirely."*<sup>10</sup> However, it has been related by Mālik<sup>11</sup> that it would not be allowed to attack the Ethiopians and the Turks on the strength of the Tradition of the Prophet: *"Leave the Ethiopians in peace as long as they leave you in peace."* Questioned as to the authenticity of this Tradition, Mālik did not acknowledge it, but said: *"People still avoid attacking them."*

### Par. 3. The Damage Allowed to be Inflicted Upon the Different Categories of Enemies.

Damage inflicted upon the enemy may consist in damage to his property, injury to his person or violation of his personal liberty, i.e. that he is made a slave and is appropriated. This may be done, according to the *Consensus (ijmāʿ)* to all polytheists: men, women, young and old, important and unimportant. Only with regard to monks do opinions vary; for some take it that they must be left in peace and that they must not be captured, but allowed to go unscathed and that they may not be enslaved. In support of their opinion they bring forward the words of the Prophet: "Leave them in peace and also that to which they have dedicated themselves,"<sup>12</sup> as well as the practice of Abū Bakr.<sup>13</sup>

Most scholars are agreed that, in his dealings with captives, various policies are open to the Imam [head of the Islamic state, caliph]. He may pardon them, enslave them, kill them, or release them either on ransom or as *dhimmi* [non-Moslem subject of the Islamic state], in which latter case the released captive is obliged to pay poll-tax (*jizya*). Some scholars, however, have taught that captives may never be slain. According to al-Ḥasan Ibn Muḥammad al-Tamīmī,<sup>14</sup> this was even the *Consensus (ijmāʿ)* of the *Ṣaḥāba* [contemporaries of Mohammed that have known him]. This controversy has arisen because, firstly, the Koran-verses contradict each other in this respect; secondly, practice [of the Prophet and the first caliphs] was inconsistent; and lastly, the obvious interpretation of the Koran is at variance with the Prophet's deeds. The obvious interpretation of [47:4]: "When you meet the unbelievers, smite their necks, then, when you have made wide slaughter among them, tie fast the bonds"<sup>15</sup> is that the Imam is only entitled to pardon captives or to release them on ransom. On the other hand, [8:67]: "It is not for any Prophet to have prisoners until he make wide slaughter in the land,"<sup>16</sup> as well as the occasion when this verse was revealed [viz. the captives of Badr] would go to prove that it is better to slay captives than to enslave them. The Prophet himself would in some cases slay captives outside the field of battle, while he would pardon them in others. Women he used to enslave. Abū Ḥubayd<sup>17</sup> has related that the Prophet never enslaved male Arabs.

After him, the *Ṣahāba* reached unanimity about the rule that the People of the Book (*ahl al-kitāb*), both male and female, might be enslaved. Those who are of the opinion that the verse which prohibits slaying [K 47:4] abrogates the Prophet's example, maintain that captives may not be slain. Others profess, however, that this verse does not concern itself with the slaughter of captives and that it was by no means intended to restrict the number of policies possible with regard to captives. On the contrary, they say, the fact that the Prophet used to slay captives adds a supplementing rule to the verse in question [K 47:4] and thus removes the occasion for the complaint that he omitted to kill the captives of Badr. These, now, do profess that the killing of captives is allowed.

It is only allowed to slay the enemy on the condition that *amān* [safe-conduct] has not been granted. There is no dissension about this among the Muslims. There is controversy, however, concerning the question who is entitled to grant *amān*. Everyone is agreed that the Imam is entitled to this. The majority of scholars are of the opinion that free Muslim males are also entitled to grant it, but Ibn Mājishūn<sup>18</sup> maintains that in this case, it is subject to authorization by the Imam. Similarly, there is controversy concerning the *amān* granted by women and slaves. Ibn Mājishūn and Saḥnūn<sup>19</sup> hold that *amān* granted by a woman is also subject to authorization by the Imam. Abū Ḥarīfa<sup>20</sup> has taught that the *amān* granted by a slave is only valid when the slave is allowed to join in the fighting.<sup>21</sup> The source of the controversy is that a general rule is in conflict with the analogous interpretation of another rule. The general rule is founded on the words of the Prophet: "*The blood(money) of all Muslims is equal. Even the humblest strives for their protection. Together, they make up a unity against the others.*" These words, in their universality, imply that *amān* granted by a slave is valid. The conflicting analogy is that in order to be able to grant *amān*, full legal capacity is required. Now, a slave has only partial legal capacity by the very fact of his being a slave. By analogy, the fact that he is a slave should counteract the validity of his *amān*, as it does with regard to numerous other legal acts. The general rule, then, should be restricted by analogy.

The controversy about the validity of *amān* granted by a

woman owes its origin to two different readings of the words of the Prophet: "We grant protection to those to whom you have granted protection, Umm Hānī?" as well as to the question whether women are to be put on a par with men by analogy. Some read in the words of the Prophet an authorization of the *amān* granted by Umm Hānī, not a confirmation of its validity, and they infer that her *amān* would have had no legal effects had the Prophet not authorized it. Consequently, they maintain that *amān* granted by a woman is only valid when the Imam has authorized it. Others hold that the Prophet confirmed the *amān* granted by Umm Hānī in the sense that he approved something which already existed and had legal effects, not in the sense that the act was only validated by his authorization. Thus, the latter group maintains that a woman is entitled to grant valid *amān*. This view finds also favour with those who, in this respect, put women on a par with men and feel that there is no difference between them here. Others, who are of the opinion that a woman is inferior to a man, consider an *amān* granted by her invalid. Anyhow, *amān* does not afford protection against enslavement but only against death.<sup>22</sup> The controversy [about the validity of *amān* granted by women] might also be explained by the divergent opinions about the use of the male plural: does this include women or not? All this, of course, according to legal usage.

As regards injury to the person, that is, the slaying of the enemy, the Muslims agree that in times of war, all adult, able-bodied, unbelieving males may be slain. As to the question whether the enemy may also be slain after he has been captured, there is the above-mentioned controversy. There is no disagreement about the rule that it is forbidden to slay women and children, provided that they are not fighting, for then women, in any case, may be slain. This rule is founded on the fact that, according to authoritative Traditions, the Prophet prohibited the slaughter of women and children and once said about a woman who had been slain: "She was not one who would have fought."<sup>23</sup>

There is controversy about the question whether it is allowed to slay hermits who have retired from the world, the blind, the chronically ill and the insane, those who are old and unable to fight any longer, peasants, and serfs. Mālik professes that neither



the blind, nor the insane, nor hermits may be slain and that of their property not all may be carried off, but that enough should be left for them to be able to survive. Neither is it allowed, according to him, to slay the old and decrepit. Of the same opinion are Abū Ḥanīfa and his pupils. Thawrī<sup>24</sup> and Awzā'ī,<sup>25</sup> however, have taught that of these groups, only the aged may not be slain. On the other hand, Awzā'ī had also taught that this prohibition is also valid with regard to peasants. According to the most authoritative opinion of Shāfi'ī,<sup>26</sup> all of these categories may be slain. The source of this controversy is to be found in the fact that in a number of Traditions, rules are given which are at variance with the general rule from the Book [i.e. the Koran] as well as with the general rule of the authentic Tradition: "I have been commanded to fight the people until they say: 'There is no God but God.'" <sup>27</sup> [9:5]: "Then, when the sacred months are drawn away, slay the idolaters wherever you find them"<sup>28</sup> as well as the above-mentioned Tradition give as a general rule that every polytheist must be slain, whether he is a monk or not. Nevertheless, the following Traditions, among others, are brought forward in support of the prescription that the lives of the categories mentioned must be saved: 1. Dāwūd Ibn al-Ḥaṣīn<sup>29</sup> has related on the authority of 'Ikrima<sup>30</sup> on the authority of Ibn 'Abbās<sup>31</sup> that the Prophet used to say, whenever he sent out his armies: "Do not slay hermits." 2. On the authority of Anas Ibn Mālik<sup>32</sup> it has been related that the Prophet said: "Do not slay the old and decrepit, children, or women. Do not purloin what belongs to the spoils." Abū Dāwūd<sup>33</sup> included this Tradition in his compilation. 3. Mālik has related that Abū Bakr said: "You will find people who will profess that they have dedicated themselves entirely to God. Leave them in peace and also that to which they have dedicated themselves." 4. "Do not slay women, nor infants, nor those worn with age." However, it seems to me that the chief source for the controversy about this question is that [2:190]: "And fight in the way of God with those who fight you, but aggress not: God loves not the aggressors" is in conflict with [9:5]: "Then, when the sacred months are drawn away, slay the idolaters wherever you find them."<sup>34</sup> Some maintain that K 9:5 has abrogated K 2:190, because at the outset it was only allowed to slay people who were able-bodied.<sup>35</sup> Consequently, the latter take it that K 9:5 gives a rule without excep-

tions. Others are of the opinion that K 2:190 has not been abrogated and that it is valid with regard to all those categories which do not take part in the fighting. According to these, K 2:190 gives an exceptive regulation as regards K 9:5. Shāfiʿī, in support of his interpretation, argues that it has been related on the authority of Sumra<sup>36</sup> that the Prophet commanded: *"Slay the polytheists but spare their children."* The only motive why the enemy should be put to death, according to him, is their unbelief. This motive, then, goes for all unbelievers. Those who maintain that peasants are not to be slain argue that Zayd Ibn Wahb<sup>37</sup> has related: *"We received a letter from ʿUmar,<sup>38</sup> saying: Do not purloin what belongs to the spoils, do not act perfidiously, do not slay babies and be god-fearing with regard to peasants."*<sup>39</sup> The prohibition to slay polytheist serfs is based on the Tradition of Rabāḥ Ibn Rabīʿa: *"Once, when Rabāḥ Ibn Rabīʿa sallied forth with the Messenger of God, he and (the) companions of the Prophet passed by a woman who had been slain. The Messenger halted and said: 'She was not one who would have fought.' Thereupon he looked at the men and said to one of them: 'Run after Khālid Ibn al-Walīd (and tell him) that he must not slay children, serfs or women.'" Basically, however, the source of their controversy is to be found in their divergent views concerning the motive why the enemy may be slain. Those who think that this is because they are unbelieving do not make exceptions for any polytheist. Others, who are of the opinion that this motive consists in their capacity for fighting, in view of the prohibition to slay female unbelievers, do make an exception for those who are unable to fight or who are not as a rule inclined to fight, such as peasants and serfs. Enemies must not be tortured nor must their bodies be mutilated. The Muslims agree that they may be slain with weapons. Controversy exists, however, concerning the question whether it is allowed to burn them by fire. Some consider it reprehensible to burn or to assail them with fire. This is also the opinion of ʿUmar. It has been related that Mālik held a similar view. Sufyān al-Thawrī, on the other hand, considered it admissible. Others allow it only in case the enemy has started it. The source of this controversy is again in the fact that a general rule and a particular rule are at variance. The general rule is given by [9:5]: *"Slay the idolaters wherever you find them."*<sup>40</sup> This does not*

preclude any manner of slaying. The particular rule is founded on an authoritative Tradition, according to which the Prophet said to a certain man: *"If ye should seize him, then slay him, yet do not burn him. No one is free to punish by means of fire, save the Lord of the (Hell) fire (i.e. God)."* Most scholars agree that fortresses may be assailed with mangonels, no matter whether there are women and children within them or not. This is based on the fact that the Prophet used mangonels against the population of al-Ṭāʿif. Some, among whom is Awzāʿī, have taught that mangonels should not be resorted to when Muslim captives or children are within the [walls of the] fortress. Layth,<sup>41</sup> on the other hand, considered it admissible. The argument of those who do not allow it, reads [48:25]: *"Had they been separated clearly, then We would have chastised the unbelievers among them with a painful chastisement."*<sup>42</sup> Those who do allow it do so, as it were, with a view to the general interest. So much for the extent to which injury may be inflicted upon the person of the enemy.

Opinions vary as to the damage that may be inflicted on their property, such as buildings, cattle and crops. Mālik allowed the felling of trees, the picking of fruits and the demolishing of buildings, but not the slaughter of cattle and the burning of date-palms. Awzāʿī disapproved of the felling of fruit-trees and the demolishing of buildings, regardless of whether the buildings in question were churches or not. According to Shāfiʿī, dwellings and trees may be burnt as long as the enemy have the disposal of fortresses. When that is not the case, he considers it reprehensible to demolish buildings and to fell trees. The reason why there is this divergence of opinions is that the practice of Abū Bakr was at variance with that of the Prophet. According to an authoritative Tradition, the Prophet set fire to the palmtrees of Banū Naḍīr. On the other hand, it has been related as an irrefutable fact that Abū Bakr said: *"Do not fell trees and do not demolish buildings."* Some are of the opinion that Abū Bakr could only have spoken thus because he knew the practice of the Prophet to have been abrogated, since he would of course not have been at liberty to act in defiance of this practice had he known it. There are also those who take it that this policy of the prophet [did not give a general rule but] had reference only to Banū Naḍīr, since it was them who attacked

him. Those who bring forward all these arguments adhere to the view of Abū Bakr. Others, however, go entirely by the practice of the Prophet. They maintain that it is impossible that anybody's words or deeds could be put forward as an argument against his practice and they consider it lawful to burn trees. Mālik makes a distinction between cattle and trees. According to him, the slaughter of cattle is torture, which is prohibited. Moreover, the Prophet is not related ever to have slain animals. So much for the extent to which it is allowed to inflict damage to the lives and property of the unbelievers.

#### Par. 4. The Prerequisites for Warfare.

According to all scholars, the prerequisite for warfare is that the enemy must have heard the summons to Islam. This implies that it is not allowed to attack them before the summons has reached them. All Muslims are agreed about this because of [17:15]: "*We never chastise, until We send forth a Messenger.*"<sup>43</sup> However, there is controversy about the question whether the summons should be repeated when the war is resumed. Some hold that this is obligatory, others consider it merely recommendable, while according to a third group it is neither obligatory nor recommendable [and therefore a matter of indifference]. The source of this controversy is that the words and the deeds of the Prophet are at variance. According to an authoritative Tradition, the Prophet, when he sent out his armies, used to say to the leader: "*When ye will encounter your polytheist foes, then summon them to three things. Accept that which they consent to and refrain from [attacking] them. Summon them to conversion to Islam. If they consent to that, accept it and refrain from [attacking] them. Summon them thereupon to sally forth from their territory to the Abode of the Emigrants (muhājirūn) [i.e. Medina] and impart to them that, if they do so, they will have the same rights and duties as the Emigrants. If they are unwilling to do so, however, and prefer to remain in their own territory, impart to them thereupon that they will be like the converted Bedouins, who are subject to the same supreme authority of God as the [other] believers, but who are not entitled to a share in the spoils, unless they join the*

*Muslims in the war. If they refuse that, then summon them to the payment of poll-tax. If they consent to that, accept it and refrain from [attacking] them. But if they refuse it, then invoke the help of God and attack them.*" Nevertheless it has been related irrefutably that the Prophet repeatedly made sudden attacks upon the enemy at night or at dawn. Some, consequently, maintain, and they are in the majority, that the practice of the Prophet has abrogated his words. According to the latter, the relevant dictum dates back from an early period of Islam, before the summons had been propagated, because it contains a summons to emigration (*hijra*).<sup>44</sup> Others are of the opinion that more weight should be attached to the Prophet's words than to his deeds, because the latter are to be interpreted in the light of the particular circumstances. Those, lastly, who consider it recommendable, do so in order to reconcile both views.<sup>45</sup>

#### **Par. 5. The Maximum Number of Enemies Against Which One is Obligated to Stand One's Ground.**

The maximum number of enemies against which one is obliged to stand one's ground is twice the number [of one's own troops]. About this, everybody agrees on account of [8:66]: "*Now God has lightened it for you, knowing that there is weakness in you.*"<sup>46</sup> Ibn Mā'jishūn maintains, on the authority of Mālik, that the actual force, rather than the number, is to be considered and that it might be allowed for a single man to flee before another if the latter should possess a superior horse, superior weapons and superior physical strength.

#### **Par. 6. Truce.**

The conclusion of truce is considered by some to be permitted from the very outset and without an immediate occasion, provided that the Imam deems it in the interest of the Muslims. Others maintain that it is only allowed when the Muslims are pressed by sheer necessity, such as a civil war and the like. As a

condition for truce, it may be stipulated that the enemy pay a certain amount of money to the Muslims. This is not poll-tax (*jizya*), because for that it would be required that they come under Islamic rule [which is not the case here]. Such a stipulation [the payment of a tribute], however, is not obligatory. Awzā'ī even considered it admissible that the Imam should conclude a truce with the stipulation that the Muslims pay a certain amount to the enemy, should this be forced upon them by emergency, such as a civil war and the like. Shāfi'ī's opinion is that the Muslims may never give anything to the unbelievers, unless they are in mortal fear of being extinguished, on account of the enemy's superiority or because they are being harrassed by disasters. Among those who profess that the Imam is entitled to conclude a truce when he considers it in the interest [of the Muslims] are Mālik, Shāfi'ī and Abū Ḥanīfa. Shāfi'ī maintains that a truce may not be concluded for a period longer than that of the truce which the Prophet concluded with the unbelievers in the year of Ḥudaybiyya.<sup>47</sup> The controversy about the question whether the conclusion of truce is also allowed without a compulsive reason, is rooted in the fact that the obvious interpretation of [9:5]: "*Slay the idolaters wherever you find them,*"<sup>48</sup> and that of [9:29]: "*Fight those who believe not in God and the Last Day,*"<sup>49</sup> contradict that of [8:61]: "*And if they incline to peace, do thou incline to it.*"<sup>50</sup> Some hold that the verse which commands the Muslims to fight the polytheists until they have been converted or until they pay poll-tax (*jizya*) [K 9:29] abrogates the Peace-verse [K 8:61]. Consequently, they maintain that truce is only admissible in cases of necessity. Others are of the opinion that the Peace-verse [K 8:61] supplements the other two verses and they consider the concluding of truce allowed if the Imam deems it right. They also argue, in support of their view, that the Prophet acted accordingly, as the truce of Ḥudaybiyya had not been concluded from necessity. According to Shāfi'ī, the principle is that polytheists must be fought until they have been converted or until they are willing to pay poll-tax (*jizya*). The acts of the Prophet in the year of Ḥudaybiyya are an exception to this [principle]. Therefore, says Shāfi'ī, a truce may never exceed the period for which the Prophet concluded truce in the case of Ḥudaybiyya. Still, there is controversy about the duration of this

period. According to some it amounts to four years, but according to others three or ten years. Shāfi'ī opts for the latter. As to the view of some, that in cases of emergency such as civil war and the like, the Muslims may conclude a truce on the stipulation that they pay the enemy a certain amount of money, this is based on the Prophet's example, for it has been related that he was seriously contemplating to bestow a third of the date-harvest of Medina upon a group of polytheists belonging to the Confederates with a view to induce them to move off. However, before he had had time to reach an agreement on the basis of the quantity of dates he had been allowed [by the people of Medina] to give away, God granted him the victory.<sup>51</sup> The opinion of those who profess that a truce may only be concluded when the Muslims are in mortal fear of extinction, is founded on analogous application of the rule that Muslim captives may be ransomed; for when Muslims have been reduced to such a state they are in the position of captives.

#### Par. 7. The Aims of Warfare.

The Muslims are agreed that the aim of warfare against the People of the Book, with the exception of those belonging to the Quraysh-tribe and Arab Christians, is twofold: either conversion to Islam, or payment of poll-tax (*jizya*). This is based on [9:29]: "*Fight those who believe not in God and the Last Day and do not forbid what God and His Messenger have forbidden—such men as practise not the religion of truth, being of those who have been given the Book—until they pay the tribute out of hand and have been humbled.*" Most lawyers likewise agree that poll-tax (*jizya*) may also be collected from Zoroastrians (*madjūs*) on the strength of the words of the Prophet: "*Treat them like the People of the Book.*" There is, however, controversy with regard to polytheists who are not People of the Book: is it allowed to accept poll-tax (*jizya*) from them or not? Some, like Mālik, have taught that it may be collected from any polytheist. Others make an exception for the polytheist Arabs. Shāfi'ī, Abū Thawr<sup>52</sup> and a few others maintain that poll-tax (*jizya*) may only be accepted from People of the Book and Zoroastrians. The

controversy is again brought about by the fact that a general rule conflicts with a particular one. The general rule is derived from [2:193 and 8:39]: "Fight them until there is no persecution and the religion is God's (entirely),"<sup>53</sup> and from the Tradition: "I have been commanded to fight the people until they say: 'There is no god but God.' When they say that, then their lives and property are inviolable to me, except [in the case when] the [law of] Islam allows it [to take them]. They will be answerable to God." The particular rule is founded on the Tradition mentioned earlier,<sup>54</sup> viz. that Mohammed used to say to the leaders of troops which he sent out to the polytheist Arabs: "When ye will encounter your polytheist foes, then summon them to three things," etc. In this Tradition, poll-tax (*jizya*) is also mentioned. Now, some scholars hold that a general rule cancels a particular one if the general rule was revealed at a later date. These do not accept poll-tax (*jizya*) from others than People of the Book, since the verses prescribing, in general terms, to fight them are of a more recent date than the Tradition mentioned; for the general command to fight the polytheists is to be found in the *Sūrat Barā'a*<sup>55</sup> which was revealed in the year of the conquest of Mecca.<sup>56</sup> The Tradition in question, on the other hand, dates back from before the conquest of Mecca, in view of the fact that it contains a summons to emigration.<sup>57</sup> Others, however, maintain that general rules should always be interpreted in association with the particular rules, no matter whether the one is more recent than the other or whether this is unknown. The latter group, accordingly, accepts poll-tax (*jizya*) from any polytheist. The People of the Book are in an exceptional position with respect to the other polytheists because they have been excluded from the general rule just mentioned, on the strength of the particular rule given in [9:29]: ". . . being of those who have been given the Book—until they pay the tribute out of hand and have been humbled."<sup>58</sup> The poll-tax (*jizya*) itself and the rules related to it will be dealt with in the next chapter. So much for the principles of warfare. One famous question remains to be touched upon in this connection: that whether it is prohibited to march into hostile territory carrying a copy of the Koran. Most scholars do not consider it allowed because an authoritative rule to this effect has been handed down from the Prophet in an authentic Tradition. Abū





Great mosque in Córdoba (961-966 A.D.)

Ḥanīfa, on the other hand, has taught that it is allowed, provided that it is done under the protection of a strong and safe army. The source of this controversy is the question: was this prohibition put in general terms in order that it might hold good universally and without exceptions, or was the prohibition put in general terms while it was nevertheless intended as a particular rule?