

[Muhammad al-Shaybani](#) (754 - 811) - Famous Hanafi jurist, one of the most important disciples of Abu Hanifa (founder of the Hanafi school). Explains IS&J.

"Fight in the name of Allah and in the "path of Allah" [i.e. truth]. Combat [only] those who disbelieve in Allah. Whenever you meet you polytheist enemies, invite them [first] to adopt Islam. If they do so, accept it, and let them alone... If they refuse [to accept Islam], then call upon them to pay the jizya (poll tax); if they do, accept it and leave them alone. ... If you besiege the inhabitants of a fortress or a town and they try to get you to let them surrender on the basis of Allah's judgment, do not do so, since you do not know what Allah's judgment is, but make them surrender to your judgment and then decide their case according to your own views."

(Excerpted from Majid Khadduri, trans., *The Islamic Law of Nations: Shaybani's Siyar* (Baltimore: John Hopkins University Press, 1966), pp. 76-77, 87, 95-96, 100-101.)
(Andrew Bostom [Legacy of Jihad](#))

From [David Yerushalmie](#) [Selected Classical Sources](#):

"In the same legal text, Kitab al-Asl, Shaybani employs the common question and answer format of the jurists:

I asked: If male captives of war were taken from Dar al-Harb, do you think that the Imam should kill them all or divide them as slaves among the Muslims?

He replied: The Imam is entitled to a choice between taking them to Dar al-Islam to be divided [among the warriors] and killing them [while in Dar al-Harb].

I asked: Which is preferable?

He replied: [The Imam] should examine the situation and decide whatever he deems to be advantageous to the Muslims.

I asked: If killing them were advantageous to the Muslims, [do you think that the Imam] should order their killing?

He replied: Yes.

In the context of the debate over whether jihad-inspired terrorism allows for the murdering of innocent civilians, we find:

I asked: Do you think the blind, the crippled, the helpless insane, if taken as prisoners of war or captured by the warriors in a surprise attack, would be killed?

He replied: [No,] they should not be killed.

I asked: Would it be permissible to inundate a city in Dar al-Harb with water, to burn it with fire, or to attack [its people] with mangonels [a hurling machine] even though there may be slaves, women, old men, and children in it?

He replied: Yes, I would approve of doing all of that to them.

We have also often heard that Muslims were victims of 9-11 and other terrorist attacks on Western targets and this supposedly demonstrates that the acts of terror were wholly unlawful per Shariah. Shaybani answers these rather baseless claims as follows in the inquiries immediately following the one above:

I asked: Would the same be true if those people [unbelievers in Dar al-Harb] have among them Muslim prisoners of war or Muslim merchants?

He replied: Yes, even if they had among them [Muslims], there would be no harm to do all of that to them.

I asked: Why?

He replied: If the Muslims stopped attacking the inhabitants of Dar al-Harb for any of the reasons that you have stated, they would be unable to go to war at all, for there is no city in Dar al-Harb in which there is no one at all of these you have mentioned.

I asked: If the Muslims besieged a city, and its people [in their defense] from behind walls shielded themselves with Muslim children, would it be permissible for the Muslim [warriors] to attack them with arrows and mangonels?

He replied: Yes, but the warriors should aim at the inhabitants of Dar al-Harb and not the Muslim children.

I asked: Would it be permissible for the Muslims to attack them with swords and lances if the children were not intentionally aimed at?

He replied: Yes.

I asked: If the Muslim [warriors] attack [a place] with mangonels and arrows, flood it with water, and burn it with fire, thereby killing or wounding Muslim children or men, or enemy women, old men, blind, crippled, or lunatic persons, would the [Muslim warriors] be liable for the diya [blood money] or the kaffara [expiation or atonement]?

He replied: They would be liable for neither the diya nor for the kaffara.

In the context of an inquiry into whether Muslims can simply join a self-forming group to attack the unbelievers in Dar al-Harb and obtain private financing without the support of the Imam as the Muslim political leader of the region sponsoring the attack:

I asked: If a group of Muslims desired to attack the territory of war but did not have the [sufficient] force or the finances to do so, do you think that it would be lawful for them to help each other and the ones who would not go forth to battle to contribute [financial support and supplies] to those who take the field?

He replied: It would be lawful to do so in such a situation; but if the Imam had the wherewithal [financial] and the Muslim had the forces, I would neither approve of it nor should I permit it. However, if the Imam lacked the means, it would be lawful [for some to contribute to others who take the field]. . . .

I asked: If some of the inhabitants of Dar al-Harb asked the Muslims to make peace with them for a specified number of years [usually limited by law to 10 years] without paying jizya [tribute as a Dhimmi], do you think the Muslims should grant the request?

He replied: Yes, provided the Imam has considered the situation and has found that the inhabitants of Dar al-Harb are too strong for the Muslims to prevail against them and it would be better for the Muslims to make peace with them.

I asked: If [the Imam] made peace with them and found upon reconsideration it was disadvantageous for the Muslims since it was made without any tribute being paid to him, can he give them notice, abrogate the peace agreement, and attack them?

He replied: Yes."