

[Abu Al-Hasan Al-Mawardi](#) (972 - 1058) - Shafi'i jurist, Chief Justice in Baghdad, sociologist, considered as one of the most famous thinkers in political science in the middle ages before ibn Khaldun. Wrote several important books on Islamic governance, some translated into various languages.

"the caliph must "make jihad against those who resist Islam after having been called to it until they submit or accept to live as a protected dhimmi-community – so that Allah's rights, may He be exalted, be made uppermost above all [other] religion.

"...The mushrikun [infidels] of Dar al-Harb (the arena of battle) are of two types: First, those whom the call of Islam has reached, but they have refused it and have taken up arms. The amir of the army has the option of fighting them...in accordance with what he judges to be in the best interest of the Muslims and most harmful to the mushrikun... Second, those whom the invitation to Islam has not reached, although such persons are few nowadays since Allah has made manifest the call of his Messenger...it is forbidden to...begin an attack before explaining the invitation to Islam to them, informing them of the miracles of the Prophet and making plain the proofs so as to encourage acceptance on their part; if they still refuse to accept after this, war is waged against them and they are treated as those whom the call has reached...

"Moreover as continual perseverance in fighting is among the duties of jihad, it is binding until one of four things occur:

"First, they (the enemy) become Muslims, in which case they receive the same rights as us, become responsible for the same obligations as us and they are allowed to retain any land and property they possess. The Messenger of Allah, may the peace and blessings of Allah be upon him, said, "I have been commanded to fight people until they say, `No god but Allah.' If they say this, then their blood and their property are safe from me-except when there exists another legitimate reason." Their country becomes part of the Territory of Islam when they become Muslims during the battle-be they small or great in number-any land or wealth belonging to them in the battle-zone remains theirs. If the amir conquers the battle zone he cannot take the wealth of those who have accepted Islam.

"The second thing that might occur is that Allah gives victory over them but they remain mushrikun, in which case their women and children are taken prisoner, and their wealth is taken as booty, and those who are not made captive are put to death. As for the captives, the amir has the choice of taking the most beneficial action of four possibilities: the first, to put them to death by cutting their necks; the second, to enslave them and apply the laws of slavery regarding their sale or manumission; the third, to ransom them in exchange for goods or prisoners; and fourth, to show favor to them and pardon them. Allah, may He be exalted, says, "When you encounter those who deny the Truth] then strike [their] necks" (Qur'an [47.4](#)). There are two ways of understanding this: the first, that it refers to the striking of their necks while in battle. Then He says: "Then when you have weakened them" is wounding them, and "make the fetter tight" the taking of

prisoners. "Then either grace or ransom" (Qur'an [47.4](#)). Regarding "grace" there are two opinions: the first, that it means to pardon and setting free, just as the Messenger of Allah, may the peace and blessings of Allah be upon him, pardoned Thumamah ibn Uthal after having made him captive; the second, that it means manumission after being enslaved, and this is the opinion of Muqatil. As for "ransom": there are two opinions as to its meaning in this case: The first, that it refers to the purchase of the prisoner with wealth, or in return for the setting free of another prisoner, just as the Messenger bought back the prisoners of Badr for money, while on another battlefield he bought back one of his men for two enemy captives; the second, that it refers to the sale, and this is the opinion of Muqatil. "Until the war lays down its burdens" (Qur'an [47.4](#)). There are two interpretations of this: the first, that it refers to the submission of the burdens of kufr to Islam and the second, to a heavy load, meaning the weapons and instruments of war. If it is taken as meaning the laying down of weapons, it refers either to the Muslims laying down their arms after the victory, or to the mushrikun abandoning their arms after their defeat. There will be a further explanation of these four rules in the section dealing with booty below.

"The third possibility is that the enemy make a payment in return for peace and reconciliation. It is permitted to accept this payment and reconciliation with them in two ways:

- i. Payment is made immediately and is not treated as ongoing tribute. This payment is treated as booty as it has been taken as a result of riding out on horses and camels; it is shared amongst those entitled to the booty and it represents a guarantee that those paying it will no longer be fought during this jihad; it does, however, not prevent a jihad being carried out against them in the future;
- ii. They make a payment every year in which case it constitutes an ongoing tribute by which their security is established. What is taken from them in the first year is treated as booty and is shared amongst the people entitled to the fay. It is not permitted to resume the jihad against them as long as they make the payments. If one of them enters Dar al-Islam, this contract of reconciliation guarantees safety for himself and his wealth. If they refuse to make payment, however, the reconciliation ceases, their security is no longer guaranteed and war must be waged on them-like any other persons from the enemy camp. Abu Hanifah, however, says that their refusal to make the jizyah payment and that of reconciliation does not invalidate their guarantee of security, as this tax constitutes an ongoing claim against them but the contract is not broken by their nonpayment-just as in the case of contracts of debt.

"As for presents which the enemy offer before hostilities, their acceptance does not mean any arrangement has been made and it is permitted to make war on them after the offer-as any such arrangement was not the result of a contract;

"The fourth possibility is that the enemy request a guarantee of safety and a truce. It is permitted to make a truce of peace for a specific period with them if victory over them

and taking payment from them is too difficult to obtain-as long as the Imam has given him permission to undertake this or has delegated full authority to him. The Messenger of Allah, may the peace and blessings of Allah be upon him, made a ten-year truce with the Quraysh in the year of Hudaibiyyah. It should be as short as possible and not exceed ten years; if a truce is made with them for more than this, the period in excess of this is invalidated. Their security is guaranteed until the period come to an end, and jihad is not waged against them as long as they respect the agreement; if, however, they break it, then hostilities begin again and war is made against them without warning. The Quraysh broke the treaty of Hudaibiyyah and so the Messenger of Allah, may the peace and blessings of Allah be upon him, set out on a campaign against them in the year of the Victory and conquered Makkah-as a result of the peace treaty, according to Shafi'i, but by an act of war, according to Abu Hanifah....

(Al-Ahkam As-Sultaniyyah: The Laws of Islamic Governance, trans. Asadullah Yate (London: Ta-Ha, 1996), p. 28, 60) (Andrew Bostom [Legacy of Jihad](#))