



WMD under Islamic International Law

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Abstract

After the appearance of WMD in twentieth century, nothing could fundamentally jeopardize the human life as much as the weapons of mass destruction. The weapons that have this potential to completely destruct our planet for numerous times. Even though there are some limiting rules concerning WMD usage under the current international law which is mostly manifested in the framework of Non Proliferation Treaty, according to advisory opinion of International Court of Justice on 8 July 1996, there is no any certainty on illegality of threat or use of nuclear weapon in international law sources. On contrary, the legal regime governing on WMD under Islamic international law prescribes the different prescription. Through the descriptive approach, this article attempts to extract the precise position of Islamic international law concerning the issue of WMD. Results are indicating that there is a definitive prohibition on WMD utilization, insofar as all noted Islamic scholars including Shias and Sunnis have consensus on its proscription.

Keywords: WMD, international Islamic law, Quran, hadiths, Islamic scholars

1. Introduction

Regardless of the time of war or peace, Islam has a clear approach towards WMD. Every Muslim combatant is committed to target just his enemy. According to 190 verse of *Baqareh* chapter of Quran, God has required Muslim to battle just with militants and prohibit them from trespassing and killing civilians. All Shia and Sunni Scholars have consensus on prohibition of war against civilians. Regarding the nature of WMD, destruction of civilians including, innocent people and environment in case of WMD utilization is unavoidable. With regard to the same results of WMD utilization in present time and used weapons in Early Islam, it can be definitely concluded that the WMD usage is permanently forbidden under the Islamic law. For example in Early Islam Prophet has prohibited the combatant from cutting and burning the enemies' trees and farms. We know that the minimum damage of WMD usage- even for testing –is imposing the irreparable harms to environment such as destruction of farms and burning trees and harvests. Exactly there is the same story about the chemical weapon usage at present and poisoning the enemies' waters in Early Islam. According to the authentic sources- which will be broadly mentioned in the next parts- there was a definitive banning on enemies waters poisoning, because it can remarkably harm civilians on one side, and about the militants, its usage is unfair and accordingly forbidden. Presenting the Islamic prescriptions on WMD, this article tries to extract the tenets of Islamic law from the first-hand sources emanating from the leading scholars works.

In order to make religious inferences of the rule about the utilization of nuclear weapon, a *Faqih* must give priority to recognition of subject (Nuclear weapon). Because if someone doesn't know what a nuclear bomb is, how its destructive effects are, what its radius of the adverse and disastrous influences in length and width of human life is, what effects will it have on the next generations, and how many people annihilate in the time of explosion; basically cannot deduce and present a correct result from Islamic sources.

A nuclear weapon is different from conventional weapons; destructs environment and also has destructive effects on human life, human genetic and generation. Today, after years of Hiroshima nuclear explosion, it can be seen that its disastrous effect has still remained, and now we know that when uranium is used even in a weakened scale, it has lots of destructive effects, and generally the production of these weapons jeopardizes the international security. Hence, consideration of the human and moral principles in production of weapons -that is, how much destructive weapon can be produced? - are the issues that must be scrutinized by *Faqih* in issuance of Fatwa.

For the issuance of a Fatwa, a Mujtahid first must seek *Ijtidadi* reason to determine related rule governing on the subject, and in case of lack of *Ijtihadi* reason, and emergence of doubt has to seek the *Fiqhahati* reason including the principles: *Isteshab*, *Baraat*, *Ihtiyat* and *Takhyeer* (Sheikhe Ansari, 1989, p315). The issue of banning the use of nuclear weapons in terms of abundance of banning reasons in Islamic texts including: Quran, Hadiths, Sunnah and Consensus indicating the expressions of the infallible Imams, the subject has the verbal frequency in the sources i.e. there are too many reasons in the religious school of Sunnis and Shias collectively indicating the prohibition of the use of nuclear weapon. In this section a great number of those reasons will be analyzed and there is no any need to present the *Fiqhahati* principle and reasons.

Of course, having the power and enjoyment of divine possibilities in case of non-violating someone's right is permitted, and too much evidence indicate its permission under the tenets derived from Quran, Hadiths and Reason, like the verse stating: "He it is Who created for you all that is on earth. Then He Istawa (rose over) towards the heaven and made them seven heavens and He is the All-Knower of everything" (Baqarah, 28). The energy resources are for all human beings and this is the right of nations to utilize these God-given blessings, and in this respect, no one has to be

allowed by the other one. Also the other verses state that: "And surely, we gave you authority on the earth and appointed for you therein provisions (for your life). Little thanks do you give" (A'raf, 10) or "And has subjected to you all that is in the heavens and all that is in the earth; it is all as a favour and kindness from Him. Verily, in it are signs for a people who think deeply" (Jathiya, 13).

The issue of equipping a weapon for defending the country is rationally and religiously indispensable, and on this basis Imam Khomeini considers it as a state task (Khomeini, 1983, 23) and this Khomeini's view is supported by many Islamic tenets. For example based on the verse stating: "And make ready against them all you can of power, including steeds of war to threaten the enemy of Allah and your enemy, and others besides whom, you may not know but whom Allah does know" (Anfal, 60). All Muslims must appear powerful before enemies, but the content of this verse must be scrutinized to be specified on its limits. The purpose of having weapons is creating fear among the enemies and this is the subject of the aforementioned verse. The verse has not stated you can use any evilness and rascality to threaten your enemy. When we proved nuclear weapon is not from instances of power, rather instances of evilness and brutality, it does not turn to talk of having it. Such things like having nuclear, biological and chemical weapons are out of instances of this verse.

In Hadiths and under the Sunnah, emphasis on equipment and having science and power in favor of peaceful and divine purposes is because of encouraging them (enemies) to give up their evilness. Human is perfectionist inherently and enjoyment of material powers can be defined under this process. Hence, enjoying the peaceful nuclear energy under the international law provisions is legal and permitted.

1.2 The Reasons Study of Prohibition on WMD Use

1.2.1 Quran

1. The verses indicate the prohibition of homicide, such as: "Because of that We ordained for the Children of Israel that if anyone killed a person not in retaliation of murder, or (and) to spread mischief in the land - it would be as if he killed all mankind, and if anyone saved a life, it would be as if he saved the life of all mankind" (Ma'idah, 32) and "No person earns any (sin) except against himself (only), and no bearer of burdens shall bear the burden of another". (An'am, 164) The first verse indicates killing an innocent one before divine system is considered as killing all humans, so absolutely killing inhabitants of a city or country in which live many innocents is very heinous act before God. The second verse indicates no one must be victimized by other one's sin and everybody is responsible for his behaviors.
2. The verse introduces the destruction of generations and cities as the clear instances of corruption on the earth which is the minimum damage of nuclear armaments; "And when he turns away (from you "O Muhammad"), his effort in the land is to make mischief therein and to destroy the crops and the cattle, and Allah likes not mischief" (Baqarah, 205)
3. The verse that prohibits the absolute domination on atheists; "Except those who join a group, between you and whom there is a treaty (of peace), or those who approach you with their breasts restraining from fighting you as

well as fighting their own people. Had Allah willed, indeed He would have given them power over you, and they would have fought you. So if they withdraw from you, and fight not against you, and offer you peace, then Allah has opened no way for you against them" (Nisa', 90) expressing after ceasefire, Muslims do not have the right to re-fight against their enemy and take some concessions, hence when taking concessions from the enemy is invalid, how is it possible to kill innocent civilians who never interfered in war?

4. The verse that prohibits killing innocents; "and kill not anyone whom Allah has forbidden, except for a just cause" (An'am, 151).
5. The verse expressing the proportionality in punishments; "The sacred month is for the sacred month, and for the prohibited things, there is the Law of Equality (Qisas). Then whoever transgresses the prohibition against you, you transgress likewise against him. And fear Allah, and know that Allah is with Al-Muttaqun (the pious)" (Baqarah, 194).
6. The verse forbidding the committing evils; "he commands them for Al-Ma'ruf (i.e. Islamic Monotheism and all that Islam has ordained); and forbids them from Al-Munkar (i.e. disbelief, polytheism of all kinds, and all that Islam has forbidden)" (A'raf, 157). The clear example of "evil" which has been prohibited in verses and Hadiths obviously can be this one, and if supposed to be examples for "forbidding the evil", this one is definitely one of them.
7. The verse emphasizing on criminal justice and referring to principle of distinction; "And fight in the Way of Allah those who fight you, but transgress not the limits. Truly, Allah likes not the transgressors" (Baqarah, 190)

1.2.1.1 The Implication of the Verse of E'tedah on Banning the Use of nuclear weapons

The verse 190 the Sura of Baqarah is one of the most significant verses related to the prohibition of WMD use, because some principles and general rules of war are extractable by it, including:

A) Principle of Proportionality in War Armaments

When your enemy utilizes some strong or weak weapon, the opposite side must react proportionately, not utilize a very stronger weapon. But in retaliation against the nuclear weapon there is nothing for defending, and in case of retaliation the human generations will be jeopardized and will have many irreparable damages permanently.

b) The Principle of Distinction between Civilians and Combatants

The distinction between civilians and combatants includes: children, women, elderly, patients, wounded, service powers, animals, trees, farms and generally environment. Based on this verse, the use of any weapon that is the instance of transgress is a major sin and forbidden in Islam. Likewise, the extension of war beyond the war zone that causes the harassment, even if for animals and environment is a major sin. Because it seems that the proscription in "E'tedah verse" is unconditional and includes any transgression, even about the environment.

1.2.1.2 Comments of the Qur'an Commentators

Fortunately, lots of Islamic commentators such as Sunnis and Shias, in addition to what was mentioned about the Islamic prohibition concerning the use of weapons of mass destruction, have very useful and great comments, some of which were mentioned:

1. Ayatollah Tabatabai believes that the prohibition of war extension beyond the war zone is unconditional and includes all children and elderlies (Tabatabai, 1955, p87) ^[1] about the samples of "E'tedah verse" he expresses: if a war starts before the conciliation proposal, such war is religiously forbidden because it is the clear instance of the transgression.
2. Ayatollah Makaram states: based on the verse, in addition to the prohibition of war extension beyond the war zone, the utilization of poisonous materials to pollute the enemies water sources i.e. chemical and biological war is not permitted either. (Makarameshirazi, 1975, p9) ^[2].
3. Moqaddase Ardabili believes: some samples of transgressions which have been specified under Islamic tenets consists of the beginning of war before the enemy, killing the atheist which is under the contract with Muslims and illegal killing (Moqaddaseardabili, p306) ^[3]. The Sunni commentators, likewise the Shia commentators, have extracted the prohibition of WMD use from the E'tedah verse, for example:
4. Whba Zuhayli as a Sunni scholar in his exegesis (Almonir) states: the beginning of war, killing Muslims, war against civilians such as; children, elderlies, destruction of houses, tree felling and burning farms are the samples of transgression. (Zuhayli, 1997, p179) ^[4].

1.2.2 Hadiths

1. Imam Ali (A.s) states: let your heart be replete with people kind and do not be like brutal animals toward them...because people are dividable into two groups; either are your religious brother or one like you in creation. (Sayed Razi, 1994, p53) ^[5].
2. The Hadiths from the holy Prophet and the other Imams have generality on Islamic prohibition of houses destruction, burning farms, killing civilians and animals, spreading toxins into the enemy's dwelling place. In this respect, Toosi narrates: When holy prophet had to have a war against enemies, he used to gather his soldiers and tell them: move in the name of God, in favor of his way and because of his religion, do not transgress, fulfill your obligations, do not kill children and elderlies, do not dismember and do not cut down trees unless it is inevitable. (Toosi, 1986, p139) ^[6] Kolehini as well narrates that: When Prophet chooses a commandant for war, always advises him to observing the divine piety toward himself and the other soldiers and then say fight in the name of God and in favor of God and only kill people who are atheist but fulfill your obligation and do not overdo and do not kill children and do not dismember. (Kolehini, 1987, p30) ^[7] There are some Hadiths that have been narrated by Sunni scholars, for instant Abi Shabih says: "in the name of God and based on the divine religion, free the captives and do not kill children and women, do not indulge in order to increase your war spoils, be kind and do goodness because Allah loves them".(Abi Shabih, 1988, p654) Termezi also narrates

that: "When Prophet chooses a commandant for war always advise him on observing the divine piety toward himself and the other soldiers and then say fight in the name of God and on behalf of God and only kill people who are atheist but fulfill your obligation and do not overdo and do not kill children and do not dismember". (Al Termezi, 1983, p86) ^[8].

Each of the following principles which have been extracted from Quranic sources, can be argued for expressing the legal fundamentals of the use prohibition of unconventional nuclear and biological armaments:

- 1) Prohibition of action battle with the intention of revenge and bleeding
- 2) Prohibition of the beginning war before ultimatum and inviting to conciliation
- 3) Prohibition of dismemberment of enemy's casualties
- 4) Prohibition of breach of war agreements and treaties
- 5) Prohibition of cutting and burning trees and farms
- 6) Prohibition of captivating before ultimatum and inviting to conciliation
- 7) Prohibition of killing enemy's soldiers despite of the possibility of their captivation
- 8) Prohibition of killing animals
- 9) Prohibition of war after accepting islam by enemy
- 10) Prohibition of war against the *ahl al ketab* whereas they are ready for conciliation
- 11) Prohibition of extension of war after receiving the conciliation proposal by enemy
- 12) Prohibition of houses and towns destruction
- 13) Prohibition of water obstruction against the enemy
- 14) Prohibition of killing the escaping soldiers of enemy
- 15) Prohibition of killing the civilians including: children, women, elderlies, monastics, nurses, wounded, patients and messengers
- 16) Prohibition of killing the enemy's soldiers which have participated in war by duress
- 17) Prohibition of killing the hirelings
- 18) Prohibition of children participation in war
- 19) Prohibition of non-precision attacks in order to avoid unlawful damages
- 20) Prohibition of disabled use in process of war

1.2.2.1 Study of the Conceptual Indications of Some Hadiths on Prohibition of Production and Usage of Nuclear Weapons

A). Some *Nabavi* Hadiths in religious texts on prohibition of poisoning the enemy's dwelling; Holy Prophet has prohibited poisoning in polytheist's dwellings. (Toosi, 1986, p143) ^[6].

It seems that even though there is a prohibition on poisoning, it is not limited to poison and include all sorts of weapons of mass destruction, because there is no any difference among water, weather or land poisoning using the other unconventional weapons. Therefore, if there is the word of poison in Islamic texts, it refers to any weapon leading to the destruction of innocents out of war zones including, humans, animals, farms and environment. (Toosi, 1986, p143) ^[6].

1.2.2.2 Some Supporting Implications

- Firstly: definitive priority, because when there is a prohibition on the usage of poison harming a limited area, usage of nuclear weapon is absolutely prohibited under Islam.

- Secondly: In wordings of Hadiths there is no any specific emphasis on water, weather or land, rather there is a general banning that includes all sorts of WMD.
- Thirdly: In such rules; that there is a prohibition because of a damaging nature, it is evident that the weapons of mass destruction, in terms of having the same function, definitely are forbidden.
- Fourthly: any extension of war to civilian areas is forbidden, no matter it happens by poison or any other kind of unconventional or nuclear weapons.

Consequently; based on the indication of Hadiths on prohibition of poisoning in war and regarding the same function of WMD, it can be concluded, the use of nuclear weapon is religiously banned.

1.2.2.3 Comments of Islamic Scholars on the Prohibition of Poisoning During War

Based on these Hadiths, many scholars consider the poisoning on war and civilian areas unlawful, some of them include the followings:

- 1) Sheikheh-Toosi in his book (Al Nahayah) that in every legal case, expressing only the related Hadith, specifies the rule governing on the case by scrutinizing in "Hadith", instead of "argument", and expression of legal case - because the practice of Sheikh in this book is the issuance of the fatwa based on the wordings of Hadith- states: "indeed the poisoning on atheists dwelling is prohibited". (Toosi, 1979, p51)
- 2) Ibne Edris states: "killing the atheists is permitted, but that must be distinguished between fighters and civilians, also the use of poison is not acceptable, because poisoning in their dwelling is forbidden". (Helli, 1989, p7) ^[9].
- 3) Abolmakarem believes that: "the poisoning in atheistic towns is prohibited, and fighting in forbidden months is unlawful, of course about some of those who believe in this rule, unless they start the war and Muslims have to be the defender". (Abolmakarem, p201)
- 4) Karaki says: "if it is possible to be the winner without resorting to poisoning, use of poison in atheist realms is unlawful". (Karaki, 1993, p385) ^[10].
- 5) Shahid alavval believes that: "based on better comment, poisoning is prohibited". (Shahid alavval, 1996, p32) ^[11].
- 6) Shahid Thani in his book (masalek) states: "poisoning for killing innocent people is forbidden". (Shahid Thani, 1992, p24) ^[12].
- 7) Allamah Helli in his book (Ershad) States: "by various ways it is possible to fight against enemy but by resorting to poisoning, unless you have to do it". (Allamah Helli, 1990, p344)
- 8) Ayatollah Sadr, in addition to the fatwa on prohibition of poisoning the atheist dwellings, goes one step further and expresses: "even though in Sokoni's Hadith the title of poison has been utilized, but the poison undoubtedly does not have subjectivity, rather in terms of criterion includes any unconventional weapon". (Sadr, 1999, p384)
- 9) Grand Ayatollah Khoyi believes that: "based on Prophet's prohibition on poisoning the polytheists' realms, that is unlawful". (Khoyi, 1989, p371) ^[13].
- 10) Lots of contemporary sources of emulation have prohibited in their fatwas the use of unconventional armaments during war. Ayatollah Makaram says: in addition to the prohibition of war extension to the civilian

zones; elimination of jungle, farms and poisoning i.e. chemical and biological war is forbidden. (Makaram, 1974, p9) According to the authentic Hadiths and previous and contemporary religious Scholars fatwa, the use of unconventional weapons is prohibited by religion, because it is recognized as the "modern sample" of poisoning.

Some Hadiths Indicate the Prohibition of Using the Incendiary Weapons during War

- 1) Based on this Hadiths, holy Prophet "bans the dates burning". (Al Ameli, 1988, p43)
- 2) Toosi narrates from holy Prophet; "do not punish by burning, because only God of fire has the right to punish by fire". (Toosi, 1986, p143) ^[6].

1.2.2.4 Comments of Islamic Scholars on Incendiary Weapons

Many Scholars of the Islamic world, according to such Hadiths expressed: use of the incendiary weapons in the battle field is forbidden. Undoubtedly, part of the weapons of mass destruction is incendiary, hence they will be subject of these Fiqhi opinions. For example:

- 1) Mohagheghe Al Helli in Sharay'e believes that, any use of incendiary weapon is forbidden. (Mohaghegh, 1994, p66) ^[14].
- 2) Mohaghegh Al Thani also illegalizes the use of incendiary weapons, burning the trees, agricultural crops, animals and the innocent. (Karaki, 1987, p385)
- 3) Ibne Al Edris is one of those who has expressed; "fighting by incendiary weapons is not permitted". (Helli, 1989, p7) ^[9].

Conclusion: According to the valid Hadiths and fatwas, it can be concluded that, any use of unconventional armaments during a war is prohibited, because they can be recognized as the samples of incendiary weapons.

1.2.2.5 Islamic Scholars View about the Banning the Use of WMD

1.2.2.5.1 Shia Scholars

The Shia Scholars, based on the *E'tedah* verse and other valid Hadiths, believe that the use of weapons leading to mass destruction is prohibited and the principle of distinction and proportionality must be considered, nevertheless, WMD absolutely cannot cover such principles and lead to irreparable damages for nature and humanity. Some of them include the followings:

- 1) Do not let the polytheist wives help them in war against Muslims, but in case of coerce you can kill them. (Toosi, 1979, p292)
- 2) When there is no any necessity, you do not have right to kill women during war. (Alborraj, 1985, p303) ^[15].
- 3) In war against polytheists, when one of them obeyed you and accepted your logic, his killing is not permitted because he is your religious brother. If he is unruly, try to control him and if they are not combatant, their killing is not permitted. (Helli, 1912, p911)
- 4) During war; killing the insane, children and women of polytheists is not permitted unless there be a necessity. (Helli, 1992, p486)
- 5) Only in case of necessity, killing the insane, children and women in war against polytheists is permitted. (Helli, 2000, p80)

- 6) Do not kill elderlies, children and women. (Najafi, p73)^[16].
- 7) Holy Prophet has banned killing the children, elderlies and disabled in war against polytheists and atheists. (Miyajji, 1990, p91)^[17]

1.2.2.5.2 Sunni Scholars

The Sunni Scholars, like the Shia Scholars, based on the Verses and Hadiths have issued the Fatwas on prohibition of WMD and any action leading to the extension of war to civilian zones and destruction of houses, trees, farms, animals and environment, here I mention some of them:

1.2.2.5.2.1 Hanafi Scholars

- 1) In war against enemies of religion; insane, women, child, blind, cripple, hand-cut and disable elderlies must not be killed. (al hanafi, 1998, p128)
- 2) The basis of war against someone is his ability in fighting, hence the aforementioned people do not include this basis. (al shokani, 2001, p411)^[18].
- 3) The elderlies, children, disabled, women and civilians must not be damaged during war against enemy. (al enayah, p425)^[19].
- 4) When allah has said raise against people who have raised against you, we can conclude that there is no any permission for war against the disabled, because they cannot raise against anybody. (Sarakhsi, 1996, p450)^[20].

1.2.2.5.2.2 Shafe'i Scholars

- 1) Because of *Nabavi* prohibition, Muslims do not have the right to kill disabled and women, also killing the intersexes is not permissible, because in case of doubt about the gender of person, Muslims must treat with caution and let them be live. (Al Noovi, p295)^[21]
- 2) Shafei said: Holy Prophet has prohibited his soldiers from killing women and children. (Ibne Edris, 1983, p253)^[22].
- 3) Killing children, women, the insane and intersexes has been prohibited. (Al Sherbini, 1958, p223)^[23].
- 4) Majority of Scholars have expressed, if women and children raised against the Muslims in order to kill them, in this case killing them is permitted. (Al Noovi, 1999, p48)

1.2.2.5.2.3 Hanbali Scholars

- 1) Ibne Abbas in his comment on the verse 190 of Baqarah has said: killing women and children and elderlies is prohibited. (Ghodamah, p544)^[24].
- 2) Under the Islamic jurisprudence, not killing atheist women and children after Muslims domination is a well-established rule, especially when there is a Nabavi Hadiths in this respect. (Al Abdoalrahman, p400)

1.2.2.5.2.4 Maliki Scholars

- 1) There is an authentic Hadiths from holy Prophet proscribing killing women and children, accordingly that is forbidden under Islam. (Alazhari, p414)^[25].
- 2) Based on Quran and Sunnah, killing children, women, elderlies and hirelings has been banned. (Al Gharafi, 1994, p389)^[26].

2. Conclusions

According to all Islamic formal sects including Jafari, Maliki,

Hanafi, Shafei and Hanbali, using the unconventional chemical, biological, nuclear and even unknown weapons in all sorts is permanently forbidden. The verses of Quran explicitly prohibits the usage of WMD and considers the destruction of cities and societies like fighting against God. The tenets of respecting "just war" is extractable from the Hadiths sources. Accordingly, every Muslim has been prohibited from killing the civilians, home and farms destruction, animal killing, poisoning the enemies' water and expanding war zone to civilian areas. All of the aforementioned cases imply the definitive prohibition of WMD under the International Islamic law, since the damages of WMD usage is remarkably heavier than them. Almost in no issue like WMD usage, there is a strong consensus among the Muslim scholars on its ban. Shia and Sunni scholars unanimously proscribe the resorting to WMD. The manifest instance of this approach is the issuance of Nuclear Fatwa by grand Ayatollah Khamenei in prohibition of nuclear weapons which was registered in United Nations as an internationally formal act. According to the general principles of Islamic international law containing the "just war", "fulfillment of promise", "sustainable peace", "Not harming others", "proportionality" and "distinction" any resorting to WMD, regardless of its function, including destruction, testing or deterrent policy is everlasting prohibited.

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