

## Suicide attacks and Islamic law

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### **Abstract**

*Suicide attacks are a recurrent feature of many conflicts. Whereas warfare heroism and martyrdom are allowed in certain circumstances in times of war, a suicide bomber might be committing at least five crimes according to Islamic law, namely killing civilians, mutilating their bodies, violating the trust of enemy soldiers and civilians, committing suicide and destroying civilian objects or properties. The author examines such attacks from an Islamic *jus in bello* perspective.*

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One of the most disturbing developments in the history of warfare under Islamic law and international humanitarian law is the phenomenon of suicide attacks. These operations are carried out in many conflicts around the world, and have become a prominent feature in the present Iraq war<sup>1</sup> as well in the occupied Palestinian territories<sup>2</sup> and Afghanistan. In this article we shall focus on their use by Muslims from the perspective of Islamic *jus in bello* (rules governing the conduct of war). Historically, the first organized suicide attacks in Islam were carried out by the Nizari Isma‘ili, a Shiite community.<sup>3</sup> It was Hasan-e Sabbah who initiated an open revolt against the Seljuq emirs (Arabic *amīr* – “commander”, or “prince”) and laid down the foundations of an independent Nizari Isma‘ili state based on their fortress of Almut. The Seljuq vizir, Nizam al-

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Mulq, who was assassinated on 12 Ramadan AH 485 (16 October 1092), is thought to have been the first prominent victim of the Nizari devotees (*fiḍa'is*).<sup>4</sup>

There are many questions that need to be answered in this discussion. For instance, what is the position of Islamic law vis-à-vis suicide attacks? Are they martyrdom or perfidious acts? Are there circumstances in which such attacks are allowed? Can the heroism of the companions of the Prophet (PBUH) and Imam Husain on battlefields be considered as equivalent to suicide attacks? Who can carry out such attacks and against whom can they be carried out? Can women, children and civilians be the target of such attacks? These and other relevant questions that we have attempted to answer are complex rather than simple.

### Rulings of some Muslim scholars regarding suicide attacks

On 18 April 1983, the Lebanese Shiite organization Islamic Jihad (the precursor of Hezbollah<sup>5</sup> – the Party of God) carried out suicide attacks on the US embassy in West Beirut, killing sixty-three staff members. On 23 October the same year the

- 1 Up-to-date statistics are hard to come by in Iraq, but a report in the *Boston Globe* of 10 June 2005 quoted statements by US Defence Department officials (who asked to remain anonymous) that over 50 per cent of the seventy insurgency attacks a day (on average) were carried out by suicide bombers. Casualty levels fluctuate wildly, but average around twelve deaths per suicide attack. The majority of suicide attacks originate from Al Qaeda, and are carried out by zealous recruits from all over the Muslim world who are flooding into Iraq. Other organizations that have also carried out suicide attacks are the Salafi-jihadi umbrella group Jaish Ansar al-Sunnah (JAS) and the Shia cleric Moqtada al-Sadr's Mahdi Army. See A. B. Atwan, *The Secret History of Al-Qa'ida*, Saqi Books, London, 2006, p. 100.
- 2 In Palestine most resistance organizations now have a suicide wing. The most active since the outbreak of the second *intifada* have been Hamas, the Al-Aqsa Martyrs' Brigade (part of Fatah) and the Palestinian Islamic Jihad (PIJ). See Christoph Reuter, *My Life is a Weapon: A Modern History of Suicide Bombing*, trans. from German by Helena Ragg-Kirkby, Princeton University Press, Princeton N.J. and Oxford, 2004, repr. Manas Publications, Delhi, 2005, pp. 79–114.
- 3 After the death of the sixth imam, Ja'far al-Sadiq, in AH 148, the majority of Shia acknowledged Imam Musa Kazim as their seventh imam, whereas the minority upheld the claims of his elder brother Isma'il. After the foundation of the Fatimid state in Tunisia by 'Ubayd-Allah al-Mahdi (AH 297–322/AD 909–34), his descendant al-Mu'iz li-Din Allah (AH 341–65/ AD 953–75) established the Fatimid Caliphate in Egypt. Al-Mustansir, who was the eighth Fatimid caliph, died in AH 487, and one of his sons, al-Musta'li, became the ninth Fatimid caliph and was the imam of the western Isma'ilis, whereas his other son Nizar was the imam of the Nizaris or eastern Isma'ilis. Both types of Isma'ilis are found in India and Pakistan: the eastern Isma'ilis are the followers of the present Aga Khan, and the western Isma'ilis are popularly called Bohoras. The eastern Isma'ilis are also found in east Africa, central Asia, Persia, Syria and China. See *Adv.-General v. Muhammad Husen Huseni (Aga Khan case)*, (1886) 12 Bom. HCR 323, at 504–49; see also Asaf A. Fyzee, *Outlines of Muhammadan Law*, Oxford University Press, New Delhi, 1974, 2nd imp. 1999, pp. 39–43.
- 4 See Farouk Mitha, *Al-Ghazali and the Isma'ilis: A Debate on Reason and Authority in Medieval Islam*, Isma'ili Heritage Series, London, 2001, Vol. 5, p. 23. See also Farhad Daftari, "Hasan-i-Sabah and the origins of the Nizari movement", in Daftari (ed.), *Medieval Isma'ili History and Thought*, Cambridge University Press, Cambridge, 1998, p. 193; and Bernard Lewis, *The Assassins, A Radical Sect in Islam*, Weidenfeld and Nicolson, London, 1967.
- 5 It has rightly been pointed out by Donald Neff that, without anticipating it, and certainly without wanting it, the policy of Israel in Lebanon "created ... its own worst enemies" – the Hezbollah and (later and only indirectly) Hamas movements. See [www.wrmea.com/archives/november02/0211020.html](http://www.wrmea.com/archives/november02/0211020.html) (last visited 17 December 2007).

headquarters of the US and French forces in Beirut were attacked by suicide bombers, resulting in the death of 298 military men and women. According to Sa'ad-Ghorayeb, these suicide attacks took place because Khomeini, the supreme Shiite leader or *marja'a*,<sup>6</sup> authorized them. The “martyrs”, as he termed them, at the US Marines compound “saw nothing before them but God, and they defeated Israel and America for God. It was the *Imam* of the Nation [Khomeini] who showed them this path and instilled this spirit in them.”<sup>7</sup>

The leading figure among the Lebanese Shiite community, Sayyid Muhammad Hussayn Fadlallah, initially denied that he supported these attacks,<sup>8</sup> but eventually gave them his endorsement. He stated,

Sometimes you may find some situations where you have to take risks. When reality requires a shock, delivered with violence, so you can call upon all those things buried within, and expand all the horizons around you – as, for example, in the self-martyrdom operations, which some called suicide operations.

Fadlallah described the attacks as the “answer of the weak and oppressed to the powerful aggressors”.<sup>9</sup> He argued that in the absence of any other alternative, unconventional methods became admissible, and perhaps even necessary:

If an oppressed people does not have the means to confront the United States and Israel with the weapons in which they are superior, then they possess unfamiliar weapons ... Oppression makes the oppressed discover new weapons and new strength every day ... They must thus fight with special means of their own. [We] recognize the right of nations to use every unconventional method to fight these aggressor nations, and do not regard what oppressed Muslims of the world do with primitive and unconventional means to confront aggressor powers as terrorism. We view this as religiously lawful warfare against the world's imperialist and domineering powers.<sup>10</sup>

For Fadlallah there is no difference between setting out for battle knowing you will die after killing ten of the enemy, and setting out to the field to kill ten and knowing you will die while killing them.<sup>11</sup> Without suicide bombers/

6 Individual Shiites are bound to accept a *marja'a*'s opinion in *fiqh* (Muslim jurisprudence) matters without any dissent.

7 Sa'ad-Ghorayeb, *Amal, Hizbu'llah: Politics and Religion*, Pluto Press, London, 2002, p. 67; Martin Kramer, “Sacrifice and “self-martyrdom” in Shiite Lebanon”, *Terrorism and Political Violence*, Vol. 3 (3) (1991), pp. 30–40. See the revised version in Martin Kramer, *Arab Awakening and Islamic Revival*, Transaction Publishers, New Brunswick, 1996, pp. 231–43.

8 See Ghorayeb, above note 7, p. 6.

9 Judith Palmer Harik, *Hezbollah: The Changing Force of Terrorism*, I. B. Tauris, London and New York, 2004, pp. 65, 70.

10 See Martin Kramer, “The moral logic of Hizballah”, in Walter Reich (ed.), *Origins of Terrorism: Psychologies, Ideologies, Theologies, States of Mind*, Cambridge University Press, Cambridge, 1990, pp. 131–57, available at <http://www.geocities.com/martinkramerorg/MoralLogic.htm> (last visited 17 December 2007).

11 Martin Kramer, “The oracle of Hizbu'llah”, available at <http://www.geocities.com/martinkramerorg/Oracle2.htm> (last visited 17 December 2007).

martyrdom operations in Lebanon, “we wouldn’t have been able to win”, he asserted in 2000, “but we don’t need them any more”.

On 25 February 1994 Dr Baruch Goldstein, a Jewish settler, massacred 29 Muslim worshippers during *fajr* (dawn) congregational prayer in a Hebron mosque. In response, the Islamic resistance movement Hamas introduced suicide attacks into its conflict with Israel and started to strike at Israel’s heartland. The suicide attack on 13 April 1994 at the central bus station in Hadera was probably the first such attack by Hamas. Another took place on 25 February 1996 on bus no. 18 in Jerusalem.<sup>12</sup> Other Palestinian groups followed suit. Ramadhan Shellah, a leader of Islamic Jihad in the Occupied Territories, acknowledged that the tactic had been taken over from the Lebanese Hezbollah. In an interview given to *Al-Hayat* newspaper on 7 January 2003 he was asked whether the organization had borrowed the idea of “martyrdom operations” from Hezbollah. “Of course”, he said.<sup>13</sup>

In his interview, placed on his organization’s website,<sup>14</sup> Fadlallah strongly supported the use of such attacks by Palestinian groups. He explained,

[W]e know that the *mujahidin* are not targeting the civilians but the occupier in occupied Palestine. In addition, we don’t consider the settlers who occupy the Zionist settlements civilians, but they are an extension of occupation and they are not less aggressive and barbaric than the Zionist soldier. At the same time that we confirm the legitimacy of these operations, we regard them among the most prominent evidence of *jihad* in Allah’s way, and we consider any criticism, whether intentional or not, against this type of operation represents an offence against the confrontation movement led by the Palestinian people, including all parties, against the Israeli occupation.

On the other hand, he was one of the first high-ranking Shia scholars publicly to condemn the attacks on the United States of 11 September 2001, probably the most horrific example of suicide attacks. As we shall see later, the weakness of Fadlallah’s arguments is that he does not distinguish between suicide attacks by combatants (not pretending to be civilians) of either side during an ongoing war, and those against military objectives or civilians and civilian objects by persons pretending to be civilians.

The then Chief Mufti of Saudi Arabia, Sheikh ‘Abd al-‘Aziz ibn Baz, condemned suicide attacks, arguing that they might be regarded as self-murder and therefore be unlawful. He asserted that “such attacks are not part of the *jihad*, and I fear that they are just suicides plain and simple. Although the Qur’an allows, indeed demands, that the enemy be killed, this has to happen in such a way that it does not run contrary to the religious laws”.<sup>15</sup> Sheikh Yusuf al-Qaradawi, one of

12 This coincided with the date of Baruch Goldstein’s attack two years before on the Hebron mosque.

13 See “An interview with Secretary General of Islamic Jihad”, *Al-Hayat*, 7 January 2003, p. 10. Shellah asserted that the act was an inspirational one for Islamic Jihad.

14 See <http://english.bayynat.org.lb/islamicinsights/index.htm> (last visited 17 December 2007).

15 *Ash-Sharq Al-Awsat*, London, 21 April 2001; Shaul Mishal and Avraham Sela, *The Palestinian Hamas: Vision, Violence and Coexistence*, Columbia University Press, New York, 2000, p. 109.

the leaders of the Muslim Brotherhood, not only rebutted the fatwa of ibn Baz but also justified such attacks and called them “martyrdom operations”, as follows:

These operations are the supreme form of *jihad* for the sake of Allah, and a type of terrorism that is allowed by *Shari‘ah* ... the term “suicide operations” is an incorrect and misleading term, because these are heroic operations of martyrdom, and have nothing to do with suicide ... While someone who commits suicide has lost hope for himself and with the spirit of Allah, the *mujahid* is full of hope with regard to Allah’s spirit and mercy. He fights his enemy and the enemy of Allah with this new weapon, which destiny has put in the hands of the weak, so that they would fight against the evil of the strong and arrogant.<sup>16</sup>

Sheik Qaradawi also justified such operations when the targets were civilians, reasoning that

The Israeli society is militaristic in nature. Both men and women serve in the army and can be drafted at any moment. On the other hand, if a child or an elderly person is killed in such an operation, he is not killed on purpose, but by mistake, and as a result of military necessity. Necessity justifies the forbidden.<sup>17</sup>

He declared that “if everyone who defends his land, and dies defending his sacred symbols is considered a terrorist, then I wish to be at the forefront of terrorists”.<sup>18</sup> The Sheik, however, condemned the September 11 attacks against the United States.<sup>19</sup> He distinguished between the suicide operations in Israeli-occupied territory and the September 11 attacks by stating that in the former the bomber is defending his land, which is a legitimate purpose, whereas in the latter the suicide bombers “travelled from their home countries to attack a place with whom they had no problem”.<sup>20</sup> Surprisingly, he claims that scholars from around the world have agreed that the “martyrdom operations” carried out by the Palestinians are justified.<sup>21</sup> He continuously supports those operations.<sup>22</sup>

Other Sunni Muslim scholars of importance in this discussion are Sheik Tantawi, Grand Imam of al-Azhar in Egypt, and ‘Ali Guma’a, the current mufti of Egypt, who tried to draw a distinction between military and civilians with regard

16 See Yusuf al-Qardawi, “Shari‘ya al-‘Amaliyat al-Istishhadiya fi Filastin al-Muhtalla” [The legality of martyrdom operations in the Occupied Palestine], *al-Islah*, Vol. 375 (15–18 August 1997), p. 44; available at: <http://www.memri.org/bin/articles.cgi?Page=archives&Area=ia&ID=IA5301> (last visited 17 December 2007). Ibn Baz was severely criticized by Palestinian clerics and politicians, such as Sheikh Muhammad Isma‘il al-Jamal, Sheikh al-Bitawi and Dr ‘Abdulaziz al-Rantisi. See Reuter, above note 2, p. 123.

17 Ibid.

18 Ibid.

19 See [http://www.qaradawi.net/site/topics/index.asp?cu\\_no=2&temp\\_type=44](http://www.qaradawi.net/site/topics/index.asp?cu_no=2&temp_type=44) (last visited 17 December 2007).

20 Ibid.

21 Ibid.

22 As recently as 28 March 2007, he urged the Palestinians to continue carrying out “martyrdom operations”; see [http://www.qaradawi.net/site/topics/index.asp?cu\\_no=2&temp\\_type=44](http://www.qaradawi.net/site/topics/index.asp?cu_no=2&temp_type=44) (last visited 17 December 2007).

to “suicide operations”.<sup>23</sup> However, Sheikh Tantawi has been rather inconsistent: after initially issuing a fatwa supporting such attacks,<sup>24</sup> he changed his views several times and has recently said that there is no Islamic basis for martyrdom operations.<sup>25</sup> During a conference arranged by Al-Azhar University he severely criticized Sheikh Qaradawi (who was also present there) for his fatwa on suicide attacks that kill civilians.<sup>26</sup> Scholars at the al-Azhar Centre for Islamic Research have published their own ruling in support of suicide bombings.<sup>27</sup> They were clearer than the Grand Imam on the subject.

Other notable Sunni ulama (the learned of Islam) who endorse the views of Sheikh Qaradawi are Suleiman ibn Nasser al-‘Ulwan,<sup>28</sup> Salman ibn Fahd al-‘Awdah,<sup>29</sup> Nasser ibn Hamd Al-Fahd<sup>30</sup> and ‘Ajeel al-Nashami.<sup>31</sup> The first three are Saudis, while the fourth is from Kuwait. Some of the Saudi ulama have retracted

- 23 See Special Dispatch No. 580, 1 October 2003, available at <http://www.memri.org/> (last visited 17 December 2007). In his interview he supported suicide attacks by bombers in Palestine, Afghanistan and Iraq. He considers these attacks to be legal because the idea is to liberate the said countries from the enemy. See “Mufti Masr: al-‘Amaliyat fi Al-Iraq wa Filasteen wa Afghanistan Muqawama wa laisat Irhaban” [Egyptian mufti: Operations in Iraq, Palestine and Afghanistan are resistance and not terrorism], *Al-Sharq al-Awsath*, 26 April 2006.
- 24 See “Leading Egyptian government cleric calls “martyrdom attacks that strike horror into the hearts of the enemies of Allah””, Special Dispatch No. 363, 7 April 2002, available at <http://www.memri.org/> (last visited 17 December 2007).
- 25 “Cleric condemns suicide attacks”, *BBC*, 11 July 2003, available at [www.bbc.com](http://www.bbc.com) (last visited 17 December 2007).
- 26 See “Al-Tantawi laqqana Al-Qardawi darsan fi al-fatwa” [Tantawi gave a lesson to Qardawi regarding his fatwa], *Al-Sharq al-Awsath*, 17 April 2002. Tantawi asserted that the bombers are allowed to target Israeli army soldiers, but that it is not permissible to target civilians (ibid.). However, as we shall prove below, even the first type of attacks are not allowed under the Islamic *jus in bello*. When a bomber disguises him or herself whether s/he targets soldiers or civilians, a perfidious act, which is strictly prohibited in war under Islamic law, is committed. But if a soldier who does not disguise her- or himself commits a suicide attack to kill and maim many enemy soldiers, his or her act would be warfare heroism. The latter act is not prohibited in Islamic law. Sheikh Tantawi has blurred the distinction between these two types. i.e., perfidy and warfare heroism.
- 27 [www.memri.org/bin/articles.cgi?Page=archives&Area=ia&ID=IA5301](http://www.memri.org/bin/articles.cgi?Page=archives&Area=ia&ID=IA5301) (last visited 17 December 2007); see <http://www.media-review.net.com/default.htm> (last visited 17 December 2007).
- 28 In an interview with a Kuwaiti-based magazine he described suicide attacks carried out by the Palestinians as “the best cure” and opined that no peace treaty is allowed with the Jews. See “Al-‘Amaliyat al-Istishhadyia Khair ‘Ilaj” [Martyrdom operations are the best cure], *al-Mujtama’a*, No. 1422, 17 October 2000, p. 59.
- 29 See his “Al-Irhab wa al-‘Amaliyat al-Istishhadiyya” [Terrorism and the martyrdom operations], *al-D’awah*, No. 1838, 18 April 2002, p. 39. He gives examples of heroism in warfare to prove that the suicide operations carried out by the Palestinians are justified. But, as we shall see later, the analogy is wrong.
- 30 His justification is based on the principle of reciprocity (Qur’an 2:194 and 16:126), or rather his understanding of it. However, he forgets 16:127, which is what the Prophet (PBUH) himself followed. He also justified attacks with weapons of mass destruction (WMDs) on infidels. See his *Kuffar par ‘Aam Tabahi Musalath karne ki Shar’i Haisiat*, trans. Hafiz ‘Aamar Siddiqui as *Justification of Attacking Infidels with WMDs*, Dar-ul-Esha’at, Lahore, 2005, pp. 23–4. The Saudi authorities arrested him, but he was released in November 2003. He openly admitted that he had made mistakes in some of his previous fatwas. It is not clear which fatwa(s) he meant. He has not interacted with the media since then.
- 31 He expressed his views in an interview with the *Al-Rabitha* magazine of the Organization of the Islamic Conference (OIC). See “La Ba’sa bi Ikhtiyar Tariqat al-Mout fi Halatin Wahidah” [No problem in choosing to die in one situation], *Al-Rabithah*, No. 453, October, 2002, pp. 12–13. He, too, gives many examples of warfare heroism in Islam to prove that Palestinian suicide attacks are justified. The timing of both the above remarks is noticeable. Sheikh Salman’s article was published on 18 April, the date of the suicide attack on the US embassy in Beirut. Dr ‘Ajeel’s interview was published in the October issue of *Al-Rabitha*, the month when the headquarters of US and French forces were attacked by suicide bombers.

their earlier opinions in favour of suicide attacks. The latest Sunni scholar from the Middle East who, like Qaradawi, justifies suicide attacks by Palestinians against Israeli civilians is Faisal Maulawi from Lebanon. He gives more or less the same arguments as Qaradawi in support of his views;<sup>32</sup> a new argument he is using is his misinterpretation of the principle of reciprocity mentioned in the Qur'an 16:126. Sheikh Nasser al-Fahd has resorted to this principle to justify suicide attacks, including those of 11 September against the United States. Lieutenant-Colonel Jonathan Halevi – a researcher on the Middle East and radical Islam and an adviser on Arab affairs in the Israeli Foreign Minister's office – alleges that there are sixteen Muslim clerics from the Middle East who support suicide attacks in one way or another.<sup>33</sup>

Thorough research into the legal history of suicide attacks is conducted by Bernard Freamon.<sup>34</sup> He argues that Shia ulama, reinterpreting the martyrdom of Husayn as extreme self-sacrifice, have revived his example in a way that eventually led to self-annihilatory violent behaviour (suicide attacks). In his opinion this has fundamentally altered the Shia conception of the religious law of martyrdom. Asserting that the new discourse was led by Imam Khomeini and Syed Hussain Fadlallah,<sup>35</sup> he points out that this “transformation of religious doctrine, championed by the Shia ulama and emulated first by Hizbu'llah, then by the Palestinians and later by Al Qaeda, resulted in the appearance of a new norm of jihadist battlefield behaviour – self-annihilation – a norm that is now accepted as a valid discharge of religious obligation under the law of military jihad by a great many Muslim jurists, Sunni and Shia”.<sup>36</sup> His conclusion is swift. He remarks that “even though the logic of the new theology may be flawed, it is still undeniable that it has fundamentally altered the law of jihad in the entire Muslim world. What we now have is a new *fiqh* of the law of the military jihad”.<sup>37</sup> It is unfortunate that the author, in reaching his conclusion, does not analyse the arguments of the literalist clerics mentioned above, and surprising that he calls the rulings of these clerics – who jumped on the bandwagon to issue their fatwas – “a new *fiqh*” of the military jihad.

32 He has issued three *fatwas* on “martyrdom operations”. The first was serial no. 105, the second was no. 279 and the third was no. 593, issued on 18 March 2003. See his website <http://www.mawlawi.net/Fatwa.asp?fid=105&mask=العمليات%20الاستشهادية> (last visited 17 December 2007).

33 See Jonathan Halevi, “Al Qaida's intellectual legacy: New radical Islamic thinking justifying the genocide of infidels”, *Jerusalem Center for Public Affairs*, available at <http://www.jcpa.org/jl/vp508.htm> (last visited 17 December 2007). This report is translated into Arabic, copied and displayed by [www.aafaq.org](http://www.aafaq.org). However, the motives of both websites ([www.jcpa.org](http://www.jcpa.org) as well as [www.aafaq.org](http://www.aafaq.org)) are dubious. For example, the original report does not give authentic information, is selective in choosing clerics who take a stand on the topic, and does not mention the original fatwas issued by them; it lists scholars who are not mentioned by the jihadis and omits more radical militants such as Ayman Al Zawahiri or clerics such as Faisal Mawlawi and many others.

34 Bernard K. Freamon, “Martyrdom, suicide, and the Islamic law of war: a short legal history”, *Fordham International Law Journal*, Vol. 27, 2003, p. 299.

35 *Ibid.*, pp. 317–53.

36 *Ibid.*, p. 306.

37 *Ibid.*, p. 368.

In Pakistan it has been very rare for ulama to write or give rulings about suicide attacks carried out by either the Palestinians or other global jihadists. Suicide bombings, for which extremists on both sides have been blaming each other, have been used to target innocent Sunni as well as Shia worshippers. In this connection Mufti Muneeb-ur-Raham, a leading Barelvi scholar and chairman of the Central Moon Sighting Committee, has written a fatwa regarding the prohibition of “unjustified homicide” in such attacks<sup>38</sup> and stating that suicide attacks [carried out in Pakistan] are strictly forbidden.<sup>39</sup> The fatwa is endorsed by fifty-eight other ulama of different backgrounds.<sup>40</sup> However, it mentions that it is specific to the Pakistani context<sup>41</sup> and that the situation in occupied territories, such as Kashmir and Palestine, is different. The fatwa seems to allow, albeit implicitly, suicide attacks in Kashmir and Palestine.<sup>42</sup>

According to another mufti in Pakistan, Muhammad Isma‘il, the targeting of civilians in suicide attacks is not allowed, but suicide attacks as such are allowed during an ongoing war.<sup>43</sup> On 17 April 2007 a convention in Peshawar attended by more than 2,000 ulama issued a ruling regarding suicide attacks. They regarded such attacks as strictly illegal; however, they did not give legal arguments in support of their view.<sup>44</sup> These ulama were mainstream religious clerics representing some 1,000 seminaries.<sup>45</sup> The declaration does not give any detail. All these rulings, however, ignore the most necessary distinction between acts of perfidy and heroism in warfare, including suicide attacks.

The main points, explicit or presumed, of the opinions of the scholars considered above can be summarized as follows:

- authorization of suicide attacks in specific contexts, in particular by Palestinians in the Occupied Territories (Sheikh Fadlallah, Sheikh Qaradawi, and others);
- acceptance of killing and maiming civilians, and even women, children and the elderly, in militaristic societies such as Israel (Sheik Qaradawi);<sup>46</sup>

38 See Mufti Muneeb-ur-Rahman, *Qatl-i-Na Haq ka hukm* [Rule for unjustified homicide], n.d. Although the fatwa itself is undated, some of the muftis who signed it have put dates as well, ranging from December 2004 to March 2005. It was circulated in the press on 18 May 2005.

39 Ibid., p. 3.

40 There are four ulama from outside Pakistan. All the ulama have duly signed and stamped the fatwa.

41 The fatwa is designed to dispel the impression that such attacks are carried out by religious extremists who brainwash, instigate or encourage students in their seminaries. The most notable absentee is Mufti Taqī Usmani, who did not sign the fatwa despite the best efforts by the government. He is reported to have seen it in the global perspective instead of solely in the context of Pakistan. See [http://www.dailytimes.com.pk/default.asp?page=story\\_3-7-2004\\_pg7\\_25](http://www.dailytimes.com.pk/default.asp?page=story_3-7-2004_pg7_25) (last visited 17 December 2007).

42 The fatwa mentions that it had not been a crime to fight occupying forces to liberate one’s country, but without giving any details. Ibid., p. 3.

43 See his *Hawa ki Nam* [In the name of Hawa], Jami‘a Islamia, Rawalpindi, 2005, p. 409. The book is based on the rulings issued by the author, who avoids specifically mentioning whether he justifies such attacks in Palestine or elsewhere.

44 See “Ulama convention opposes “Sharia by force””, *Dawn*, 18 April, 2007, p. 1.

45 The convention was organized by the Jami‘at-i-‘Ulama-i-Islam, Fazal ur Rahman group. The Maulana (religious scholar) himself was the leader of the opposition in the Pakistan National Assembly at that time.

46 Qaradawi allows the killing of Israeli women directly and the killing of elderly and children collaterally under the doctrine of necessity.



- acceptance of the fact that the attackers pretend to be civilians when carrying out the bombings;
- acceptance of the killing of the victims of such attacks by blowing them up (since Islam does not allow even the mere killing of civilians in war, their killing by blowing them up is therefore strictly prohibited, as we shall explain below. Mutilation of dead bodies is strictly prohibited in Islam (see below) – the mutilation of living people is also strictly prohibited);
- acceptance of the destruction of civilian objects and property;
- equation of such suicide bombings with heroism in warfare.

These are some of the points analysed below from the perspective of Islamic *jus in bello*.

### Evaluation under Islamic *jus in bello*

One of the basic principles of Islamic law is that, just as the goal must be legitimate, so too must be the means through which that goal is reached. For this reason Islam not only encourages Muslims to defend their faith, but also tells them how war should be waged. A distinction is made between suicide attacks during a war that are carried out by soldiers not pretending to be civilians, and those carried out by civilians. No one can call for the killing of civilians, women, children and the elderly, or for the kidnapping and killing of persons who have no relation to a specific incident, a jihad.

#### The prohibition of suicide in Islam

Suicide is strictly illegal in Islam. The Prophet (PBUH) is reported to have said, “None amongst you should make a request for death, and do not call for it before it comes, for when any of you dies, he ceases [to do good] deeds and the life of the believer is not prolonged but for goodness.”<sup>47</sup> Suicide in Islamic law is intentional self-murder by the believer. There is a *hadith qudsi* – a statement of the Prophet (PBUH) ascribed to God himself – in which he says that a wounded man takes his own life. God then says, “My servant anticipated my action by taking his soul (life) in his own hand; therefore, he will not be admitted to paradise”.<sup>48</sup> In another saying of the Prophet (PBUH), he has given a stern warning to a person committing suicide, stating that the wrongdoer would be repeating the suicidal act endlessly in hell and would reside in hell for ever.<sup>49</sup> Any person carrying out a suicide attack should not forget that Allah has entrusted him with life and that it is not his personal possession to destroy as he pleases.

47 Muslim Ibn Al-Hajjaj, *Saheeh Muslim*, Dar Ehya Al-Turath Al-‘Arabi, 1955, Vol. 4, p. 2065, hadith no. 2682.

48 Isma‘eel Al-Bukhari, *Saheeh Bukhari*, Dar Sahnun, Istanbul, 1992, Vol. 3, p. 32.

49 Ibid., Vol. 3, p. 212.

## Martyrdom

Imam Muhammad ibn al-Hasan al-Shaybani – known as the father of Islamic international law – has articulated the concept of allowed suicide attacks in war in his *magnum opus* treatise as follows:

It is permissible for a person to plunge into a group of enemy forces, or to attack them in cases where he hopes that he will be saved in the end, or – if there is no such hope – in cases where he will inflict damage on the enemy, and demoralize them, or will encourage his own combatants, or due to an extraordinary power he might feel.<sup>50</sup>

A closer look at this ruling reveals that three conditions must be met for such an operation to be legitimate:

- (1) there must be an ongoing, active war between the Muslims and their adversaries;
- (2) the attacker might *not* die in the attack; and
- (3) if he does die, his death must be caused by the enemy.

If he is killed, he will be a *shaheed* (martyr) in every sense of the word. Such was the action taken by Bar'a ibn Malik – the companion of the Prophet (PBUH) – in the *riddah* (“apostasy”) wars. Similarly, Sheikh ibn Taymiyyah has stated that according to the four leading jurists of the Sunni schools of *fiqh*, it is allowed for a Muslim soldier to penetrate the enemy's lines even if he knows he will definitely be killed, provided that would be advantageous for the Muslim army.<sup>51</sup> Maliki jurists – Al-Qasam ibn Muhammad, ibn al-Majshoon and Ibn Kuwaiz – also allow such attacks.<sup>52</sup> These are incidents of warfare heroism that are allowed and encouraged in Islam, but they are not suicide attacks carried out by soldiers pretending to be civilians. The scholars surveyed above appear to have ignored this distinction. Even in the very exhaustive book by Shaybani, no reference can be found to suicide attacks carried out by civilians.

It is important at this point to note that the martyrdom of Imam Husayn cannot be termed a suicide attack. Some authors say that he knew he would be killed but still opted to die.<sup>53</sup> He died a martyr as he fought valiantly against the army of the Umayyid governor. It was not a suicide operation. Fighting and embracing martyrdom is different than feigning to be civilian, cheating innocent civilians and killing them ruthlessly.

50 M. Ibn Al-Hasan Al-Shaybani, *Syar Al-Kabir*, quoted in a commentary by Sarkhasi, Dar al-kutub ‘Elmiya, Beirut, 1997, Vol. 4, p. 250. Shaybani's original book is not available; the text is found only with Sarkhasi's commentary.

51 Ibn Taymiyah, *Majmu'a Fatawa Sheikh al-Islam*, Dar ‘Aalam Al-Kutub, Ryadh, Vol. 25, p. 540.

52 See Muhammad Tahir ibn ‘Ashoor, *Al-Tahreer wa al-Tanweer*, Dar Sahnun, Tunisia, Vol. 1, p. 215.

53 See ‘Ali Shari‘ati, *Martyrdom: Arise and Bear Witness*, trans. ‘Ali Asghar Ghassemy, Ministry of Islamic Guidance, Tehran, 1981, p. 144. He does not say explicitly that it was a suicide. He does say that Husayn had chosen *shahadat*. See his “A discussion of *Shaheed*”, in Gary Legenhausen and Mehdi Abedi (eds.), *Jihad and Shahadat: Struggle and Martyrdom in Islam*, Institute for Research and Islamic Studies, Houston, 1986, pp. 239–40.

What of Bar'a ibn Malik, the companion of the Prophet (PBUH)? Can his action be considered as a suicide operation or heroism? It occurred in a battle against an army led by Musaylimah (known as "Musaylimah the Liar"), a man who also claimed to be a prophet of God, during the "apostasy" wars after the death of the Prophet (PBUH). Garrisoned in a fort, the enemy was putting up fierce resistance and the Muslims were suffering heavy losses in vain attempts to gain entry. Bar'a, who had always desired to die as a martyr, volunteered to be catapulted over a parapet by the Muslim soldiers so as to open the gates to the fort and let them in. The plan succeeded miraculously; Bar'a was not martyred and managed to open the gates. He received numerous injuries but recovered from them.<sup>54</sup>

Another incident cited by Sheikh Qaradawi and other ulama took place during the attack on Constantinople, when Hisham ibn 'Aamir penetrated the enemy lines to kill as many enemy soldiers as possible. In surprise, other Muslim fighters exclaimed: "Praise be to Allah! And be not cast by your own hands to ruin."<sup>55</sup> Such incidents are heroic operations that are certainly allowed in warfare.

### Authorization in certain contexts?

Sheikh Qaradawi and other ulama quote these and other incidents to prove the legitimacy of suicide attacks carried out by the Palestinians. The analogy is, however, wrong. Because they were great acts of battlefield heroism that gave the Muslims decisive victories, they cannot be called suicide attacks. Even if they did qualify as suicide attacks, they would be allowed, because the persons who carried out those acts were soldiers (and did *not* pretend to be civilians).

It may be argued that the principle of "breach of trust" cannot be applied in the relationship between Palestinian groups and Israel, because there is no agreement on a cessation of hostilities between the two sides. This argument cannot be accepted, because only the head of the Muslim state concerned has the authority to declare war; individuals or groups are not authorized to do so.<sup>56</sup> The

54 See details of the incident in Al-Qurtubi, *al-Jami'a li Ahkam al-Qur'an*, Dar al-kutub al-Misryia, n.d., Vol. 2, pp. 362–363, and Ibn Jareer al-Tabary, *The History of al-Tabary: The Conquest of Arabia*, trans. Fred M. Donner, 1993, pp. 105–34.

55 The translation is taken from the English translation by Pickthall, above, unnumbered note. According to other commentators the verse is generally understood to outlaw suicide and other forms of self-harm. See *The Qur'an: A New Translation*, trans. Abdel Heleem, Oxford University Press, Oxford, 2004, repr. Oxford World's Classics series, 2005, p. 22. (The quotation in the text above is, however, taken from Pickthall, above, unnumbered note). See details of the incident in Tarmizi, *Sunnan*, hadith no. 2898, and Abi Dawood, *Sunnan*, hadith no. 2151. Abu Ayub al-Ansari, who was among those who witnessed this incident, stood and said, "How could you interpret this verse [2:195] in this way, which is revealed regarding the *Ansar*. Abu Ayub stated that when Islam became powerful, we told each other without informing the Prophet (PBUH) that since Islam has gained strength and has many allies; we seem to have neglected our businesses. Therefore, we should stay back to gain what is lost, when the verse [And be not cast by your own hands to ruin] revealed." Qur'an 2:195.

56 Imam Abu Yusuf, a senior Hanafi jurist and the Chief Justice of Haroon al-Rashid, formulated this principle in this way: "No expedition can be dispatched without the permission of the government." See Abu Yusuf, *Kitab al-Khiraj*, ed. M. Ibrahim al-Banna, Maktaba Farooqia, Peshawar, n.d., p. 385.

problem in Palestine is that there is an undeclared war between the state of Israel and Palestinian groups. Usually the Palestinian Authority urges restraint. It generally condemns every suicide attack on Israelis. Moreover, there cannot be any agreement between the Israeli government and any organization(s) within Palestine. Only a state is entitled to sign a treaty with other state(s), not individuals or organizations within a state.<sup>57</sup>

Sheikh Qaradawi's arguments that since the Israelis have occupied the land of the Muslims in Palestine and the Palestinians are militarily weaker, or that since the Israeli society is militaristic in nature, Muslims are allowed to carry out suicide attacks and women are legitimate targets for such attacks, are without foundation and thus unacceptable. For this would mean that Islamic *jus in bello* is applicable when Muslims invade or occupy an enemy's territory, but that Muslims are not bound by it when Muslim territory is invaded or occupied – in other words, that Islamic *jus in bello* is applicable only if Muslims are victorious, but not applicable if they lose the war. The implication is that we should follow one principle for situation one, because it suits us, but a different principle in situation two if the first principle is not to our benefit. If this were the case, then in Dworkin's parlance we would have no principles and no integrity at all.<sup>58</sup> On the contrary, under Islamic law Muslims have one and the same set of principles, whether they invade or occupy an enemy's land, whether they are weak or strong and whether they win or lose. The rules of Islamic *jus in bello* remain unchanged.

## Relevant principles of Islamic *jus in bello*

### The prohibition of treachery and perfidy

If a suicide bomber pretends to be a civilian or if a soldier feigns to surrender by waving a white flag, he will not be targeted by the armed forces he is approaching because he has non-combatant immunity. However, if that person then blows himself up to kill members of the enemy's armed forces, he commits treachery or perfidy<sup>59</sup> – an act which is strictly prohibited in Islamic law and in international humanitarian law.<sup>60</sup> He has violated the trust of the enemy, which in future may not trust genuine civilians or surrendering soldiers. Suicide attacks on civilians are likewise strictly prohibited, because of the immunity to which they are entitled in both bodies of law. However, if such attacks are carried out by soldiers against

57 A recognition by the state of Israel of a militant Palestinian group as the legitimate representative of the people of Palestine would mean the withdrawal of Israeli recognition from the current Palestinian Authority, which is the *de jure* government of the [future] state of Palestine. This would amount to a premature withdrawal of recognition, which is illegal in international law.

58 For discussion of Dworkin's theory, see my "How right is Dworkin's "right answer thesis" and his "law as integrity theory"?", *Journal of Social Sciences*, Vol. 2 (1) (August 2006), pp. 1–25.

59 The two words are used as synonymous in this work.

60 See Article 51 of 1977 Protocol I to the Geneva Conventions. See also Hans-Peter Gasser, "Acts of terror, "terrorism" and humanitarian law", *International Review of the Red Cross*, Vol. 84 (847) (September 2002), p. 555.

enemy soldiers without feigning civilian status, they are deemed to be a legitimate battle tactic.

The Prophet (PBUH) and his rightly guided successors have strictly prohibited treachery and perfidy. The Prophet (PBUH) is reported to have reiterated this ban on numerous occasions.<sup>61</sup> In the eighth year after his migration to Medina, he issued commands to his departing army and said,

Fight with the name of God and in the path of God. Combat those who disbelieve in God. Fight yet do not cheat, do not break trust, do not mutilate, do not kill minors.<sup>62</sup>

On another occasion, while instructing the army led by ‘Abd ar-Rahman ibn ‘Awf, he said,

O son of ‘Awf! Take it [the banner]. Fight you all in the path of God and combat those who do not believe in the path of God. Yet never commit breach of trust, nor treachery, nor mutilate anybody nor kill any minor or woman. This is the demand of God and the conduct of His Messenger for your guidance.<sup>63</sup>

Under Islamic law, if a Muslim commander or any of his soldiers give a pledge to an enemy soldier that he will be given quarter, then that pledge is binding on all Muslims and no derogation is possible. The Prophet (PBUH) strongly condemned anyone who broke his pledge and declared such a person to be a hypocrite. He also said that “on the day of resurrection anyone who has breached his pledge will be exposed by the hoisting of a flag and that the size of the flag will be according to his treachery. And remember that the biggest treachery is the one carried out by the leader of the nation”.<sup>64</sup>

At the time of ‘Umar I, the Second Caliph, during a war between the Islamic state and the Persian empire, a Persian soldier took shelter at the top of a tree. A Muslim soldier told him in Persian “*ma tars*” (don’t be afraid). His adversary thought that he was given a pledge and protection and came down. Sadly, he was killed by the Muslim soldier. The matter was reported to the Caliph, who issued a policy statement in which he used the same Persian words, declaring that anybody saying that to an enemy soldier and then killing him would be prosecuted for murder and sentenced to death.<sup>65</sup>

To cite another example, the Ummayyad Caliph Amir Mu‘awiyah was once preparing his army to march against the Roman Empire, although the peace treaty between the two was still in force, for he wanted to attack as soon as it had expired. A companion of the Prophet (PBUH), ‘Amr ibn ‘Anbasah, considered it treachery

61 ‘Abd al-Jalil, *Shu‘ab al-Iman* (MS. Bashir Agha, Istanbul, No. 366), p. 558.

62 Imam Shoukani, *Nail al-Awtar*, Ansar Al-Sunah Al-Muhammadiya, Lahore, n.d., Vol. 7, p. 246.

63 Abdul Malik ibn Hisham, *Al-Sirah Al-Nabawiyah*, ed. Mustafa Al-Saqa et al., Dar al-Ma‘rifah, Beirut, n.d., Vol. 2, p. 632.

64 Muslim, above note 47, Vol. 3, hadith no. 1738, p. 1361.

65 See Badruddin ‘Ayni, *‘Umdah Al-Qari Sharh Saheeh al-Bukhari*, Idarat Al-Taba‘at Al-Muneeriya, Cairo, n.d., Vol. XV, p. 94.

to prepare and dispatch the army to the frontier. He therefore hastened to the Caliph shouting, “God is great, God is great, we should fulfil the pledge, we should not contravene it.” The Caliph questioned him, whereupon he replied that he had heard the Prophet (PBUH) saying,

If someone has an agreement with another community then there should be no [unilateral] alteration or change in it till its time is over. And if there is risk of a breach by the other side then give them notice of termination of the agreement on reciprocal basis.<sup>66</sup>

This tradition supports the Qur’anic verse which says, “And if thou fearest treachery from any folk, then throw back to them (their treaty) fairly, Lo! Allah loveth not the treacherous.”<sup>67</sup>

So if there is the danger of a breach of trust by the enemy, it is possible to go ahead and openly proclaim to them that Muslims will not remain bound by the treaty. But this proclamation must be made in a manner that places Muslims and the other party on the same footing; no prior preparations should be made to confront the other party without warning, when they are caught unawares and unable to make counter-preparations for their defence.<sup>68</sup>

Islam is therefore redefining justice in the sense that the enemy’s rights are safeguarded, that restrictions are placed on Muslims rather than on their adversaries, and that Muslims cannot prepare to attack the enemy before declaring their intention to dispense with the treaty. The best case in point is that of Mu’awiyah described above. If a suicide bomber commits treachery, he acts against the teachings of the Holy Qur’an and the Sunnah, two of the fundamental sources of Islamic law (the third being *ijma*’).

### Non-combatant immunity

It is a well-established norm of Islamic *jus in bello* that civilians shall not be targeted or killed in war. Their immunity is evident from the Qur’an and many traditions of the Prophet (PBUH). As a general principle, in the event of war civilians must not be killed. The Holy Qur’an says, “Fight in the way of Allah against those who fight against you, but begin not hostilities. Lo! Allah loveth not aggressors.”<sup>69</sup>

The reservation “those who fight you” in the original text of the verse is of extreme importance, because the Arabic word *muqatil* (pl. *muqatileen*) means

66 Shaybani, above note 50, Vol. 1, p. 185. According to Sarakhasi, it means that any act that resembles treachery in letter or spirit must be avoided. See also Imam Termidhi, *Sunnan*, Dar Sahnun (Gagri, Yayinlari), Istanbul, n.d., Vol. 4, hadith no. 1580, p. 143.

67 Qur’an, 8:58.

68 The termination of a peace treaty or its expiry means that relations between the two communities become hostile.

69 Qur’an, 2:190. Pickthall’s translation of “*wa la ta’atadu*” differs from that of the majority of commentators (above, unnumbered note). For example, according to Mufti M. Taqi it means “and do not transgress. Verily Allah does not like the transgressors.” See his *The Meaning of the Noble Qur’an*, Maktab Ma’ariful Qur’an, Karachi, 2006, Vol. 1, p. 60.

combatant. Thus, non-combatants must not be fought against. According to Muhammad ibn al-Hasan al-Shaybani (d. AH 189), it is prohibited to kill them because the Qur'an says, "Fight those who fight you" and "they do not fight".<sup>70</sup> Moreover, in the above verse the Qur'an commands Muslims not to transgress by "killing non-combatants" and "behaving degradingly towards those who are defeated". As explained below, the Prophet (PUBH) has strictly prohibited the mutilation of bodies in war, and also *sabran* killings (tying up a person while still alive to use as target practice and aiming at that person with a variety of weapons until the person is dead).<sup>71</sup>

After the conquest of Mecca, the tribes of Hawazin and Thaqif called for war against Muslims. At the end of the battle at Hunayn, the Prophet (PBUH) saw the body of a slain woman among the pagan dead. "Who killed her?" he asked. Those who were present answered, "She was killed by the forces of Khalid ibn Walid". The Prophet (PBUH) said to one of them, "Run to Khalid! Tell him that the Messenger of God forbids him to kill children, women, and servants". One of those present said, "Dear Messenger of God! But are they not the children of the pagans?" The Prophet (PBUH) answered, "Were not the best of you, too, once the children of pagans? All children are born with their true nature and are innocent."<sup>72</sup> The Prophet (PBUH) is also reported to have prohibited, in the strongest possible words in the Arabic language, the killing of women: "Never, never kill a woman or a servant."<sup>73</sup> There is complete unanimity (*ijma'a*) among Muslim jurists that women and children must not be killed.<sup>74</sup>

There are only two exceptions to the general prohibition on the killing of women and children: if they participate in hostilities,<sup>75</sup> and when the killing is unintentional.<sup>76</sup>

The Prophet (PBUH) has issued instructions on many occasions that cannot be quoted here because of the focus of this analysis. However, the

70 Shaybani, above note 50, Vol. 4, p. 186.

71 Abu Dawood, *Sunnan*, Dar Sahnun, Istanbul, 1992, Vol. 3, p. 137, hadith no. 2687. For more details see my "Non-combatant immunity in Islamic law", in *Hamdard Islamicus*, forthcoming.

72 Al-Tabrezi, *Mishkat al-Masabih*, al-Maktab al-Islami, hadith no. 3955; Ibn Majah, *Sunnan*, Dar Ehya Al-Turath Al-'Arabi, Beirut, n. d., Vol. 2, p. 101. In some of the reports there is an addition: "that she was not capable of fighting." Abu Dawud, *Sunnan*, *ibid*, Vol. 3, p. 122, and Shoukani, *Nail al-Awtar*, above note, 62, Vol. 7, p. 261.

73 Ibn Majah, *Sunnan*, above note 72, Vol. 2, p. 948, hadith no. 2842; Imam al-Nasa'i, *al-Sunnan al-kubra*, Dar Al-Kotob Al-'Elmyia, Beirut, Vol. 5, p. 187, hadith nos. 8625 and 8626; Abu Bakr al-Baihaqi, *al-Sunnan al-kubra with al-Jawhar al-Naqi*, Dar al-Fikr, Beirut, n.d., Vol. 9, p. 83. This hadith is also quoted with slightly different wording in Abi Ja'far al-Tahwi's *Sharh Ma'ni al-Asa'r*, Dar Al-Kotob Al-'Ilmia, Beirut, Vol. 3, p. 222.

74 Abu Zakaryia Nawawi, *Sharh Saheeh Muslim*, Matba'at Mahmood Tofeeq, Vol. II, p. 48; see also Al-Qurtubi, *Ahkam al-Qur'an*, 1950, Vol. 1, p. 232.

75 This is in harmony with the general principles of Islamic law, such as, "What becomes lawful for a reason becomes unlawful when such reason disappears."

76 This is the situation of *tatarrus*, i.e. when the enemy uses Muslim prisoners, women and children, their own non-combatants, as human shields, then Muslims can attack the enemy but must take the utmost precautionary measures to protect the captives. See Abu Bakar Al-Sarkahsi, *al-Mabsut*, Dar Ehya Al-Turath Al-'Arabi, Beirut, 2002, Vol. 10, p. 154. The same applies to a night raid on the enemy. For further details, see my "Non-combatant immunity in Islamic law", above note 71.

instruction given by Abu Bakr – the first successor of the Prophet (PBUH) – is worth citing in full, as it is a mini-manual on Islamic *jus in bello*. When he ordered Yazid ibn Abi Sufyan to proceed to Syria, he accompanied him and instructed him as follows:

O Yazid! ... You will come across people who have secluded themselves in convents; leave them and their seclusion. But you will also come across people on whose heads the devil has taken his abode so strike their heads off. But do not kill any old man or woman or minor or sick person or monk. Do not devastate any population. Do not cut a tree except for some useful purpose. Do not burn a palm-tree nor inundate it. Do not commit treachery, do not mutilate [dead bodies], do not show cowardice, and do not cheat.<sup>77</sup>

Thus the killing of non-combatant civilians is strictly prohibited in Islamic law in all circumstances. Sheikh Qardawi's argument claiming that the militaristic nature of Israeli society justifies suicide attacks on Israeli women also is therefore unacceptable. The important point to note in these traditions is that at the time of the Prophet (PBUH) all able-bodied men used to take part in war because there was no regular army to fight the enemy, and society as a whole contributed to the war effort. This was true of both the Muslim and non-Muslim communities. It was during that time and in those very circumstances that the Prophet (PBUH) was urging Muslims not to kill women, children, servants and other civilians. The Prophet (PBUH) knew the situation, but he nonetheless commanded the Muslims to spare women and children.

## Reciprocity and reprisals

### *Reciprocity*

The principle of reciprocity is explained by the Holy Qur'an itself in 9:7, where Allah says, "So long as they are true to you, be true to them." Thus there must be reciprocity in relations between the two communities. This doctrine is raised to the status of a principle by Muslim jurists. Imam Sarakhsi of the Hanafi school of thought has put it this way: "Relations between us [the Muslims] and the non-Muslims are based on reciprocity."<sup>78</sup> The principle is also expressed in the Qur'anic verse 5:58 regarding the breach of a peace treaty discussed above.

77 'Ali al-Muttaqiy, *Kanz-ul-'Ummal*, Haiderabad Daccan, Vol. II, No. 6259, on the authority of al-Baihaqiy.

78 See Shaybani, above note 50, Vol. 5, pp. 285, 286. Here the context is interesting. Shaybani mentions that a tax collector at the time of 'Umar asked him about how much tax to charge to businessmen coming from *dar al-harb* – literally the abode of war but technically from outside the territorial jurisdiction of the Muslim state. (See for a very fine discussion of the technical meaning of *dar al-harb* Sarkahsi, *Al-Mabsut*, above note 76, Vol. 10, pp. 85–94, and Sayyid Maududi, *Suud* (Urdu), Islamic Publications, Lahore, 1973, pp. 312–13.) 'Umar advised him to charge exactly the same as Muslim businessmen were charged by them. Sarakhasi gives the reason for this ruling and cites the above maxim. He further argues that if our own businessmen were not charged any tax, we should not charge any; and if the others charged us 5 per cent we have to charge them 5 per cent. Similarly "their businessmen should be charged taxes only once every year even if they visited our land several times because they charge our businessmen only once a year; *because relations between us and them are based on reciprocity.*" See Shaybani, above note 50, Vol. 5, pp. 285–6.



A further instance is verse 2:194, which says, “The forbidden month for the forbidden month, and forbidden things in retaliation. And one who attacketh you, attack him in like manner as he attacked you. Observe your duty to Allah, and know that Allah is with those who ward off (evil).”

To understand this verse the context of its revelation is important. As is well known, the Prophet (PBUH) and his companions wanted to go to Mecca to perform ‘*Umrah* (literally, visit to Mecca, but technically the “minor pilgrimage” undertaken by Muslims whenever they enter Mecca) in the sixth year after *hijrah* (migration). When they arrived at Hudaibiyya outside Mecca they were stopped by the Meccan infidels. After some shuttle diplomacy both sides signed the famous peace treaty. They agreed, among other things, that Muslims could return that same year but should come the next year to perform ‘*Umrah*. It is reported that when the Muslims intended to do so the following year they were scared of betrayal, thinking that the infidels might not let them enter Mecca or might attack them in the sacred month,<sup>79</sup> a time when they would not be allowed to defend themselves. Therefore Allah explained to them that a sacred month is in exchange for a sacred month – that is, it is observed only on a mutual basis. Since the Muslims were in danger of being attacked by the Meccans in the sacred month of Zul-Qa‘da, they were allowed to apply reciprocity if necessary in that very season, as the sacredness of months is only reciprocal.<sup>80</sup> Another interpretation of this verse [a sacred month is in exchange for a sacred month] is that it was compensation for the previous year.<sup>81</sup>

### Reprisals

The meaning of verse 2:194 is now very clear, as it means that the Muslims are allowed to defend themselves if attacked in the sacred month. However, it never meant that they are allowed to kill innocent civilians in suicide attacks. Indeed, killing the enemy’s women and children in retaliation would be to kill innocent people intentionally, which is totally prohibited in Islam. In explaining this verse, Qurtubi (d. 1273) argues that if anyone is wronged he should get his due compensation from the one who harmed him, but this should not in any way harm that person’s parents, sons or relatives.<sup>82</sup> This is why only the accused is punished in retribution and none of his relatives can be punished directly for his wrongdoing.

The important question here is whether reciprocity is allowed in the form of retaliation, especially if it would mean doing something that is explicitly forbidden. Our answer is a resounding “No!” Muslim jurists, in response to a

79 The ancient Arabs held four months of the year – Muharram, Rajab, Zul-Qa‘ida, and Zul-Hijja – as sacred and thus considered it unlawful to wage war during those months.

80 Moulana ‘Abdul Majid, *Tafsir-ul-Qur’an*, Darul-Ishaat, Karachi, 1991, Vol. 1, p. 125; Muhammad Tahir ibn ‘Aashoor, *Al-Tahreer wa al-Tanweer*, Dar Sahnun, Tunis, n.d., Vol. 1, p. 210.

81 This is the opinion of ‘Abdullah ibn ‘Abbas, Qatadha, Dahak and Suddi. See Ibn ‘Aashor, above note 80, Vol. 1, p. 210.

82 Muhammad ibn Ahmad al-Qurtubi, *al-Jam‘i li Ahkam al-Qur’an*, Dar al-Kutub al-Misria, Vol. 1, p. 240.

similar question, argue that the killing of enemy hostages is forbidden even if people belonging to the Muslim state have been murdered by the enemy, and even if there is express agreement that hostages may be beheaded in retaliation.<sup>83</sup> Thus acts that are forbidden in war remain so and are not legitimized for purposes of retaliation. This leads us to conclude that the principle of reciprocity does not apply to prohibited acts.

It is argued by Faisal Mawlavi and Nasser al-Fahd, discussed above, that Qur'anic verses 2:194 and 16:126 justify suicide attacks on the basis of reciprocity. Faisal Mawlavi interprets these verses as justifying the targeting of civilians in Israel, while Nasser al-Fahd's interpretation is that Muslims have the justification for killing as many US civilians as the number of Muslim civilians killed by the United States. In their interpretation both clerics have distorted one of the most fundamental principles of Islamic international law and also of public international law.

Verse 16:126, which says, "If ye punish, then punish with the like of that wherewith ye were afflicted", was revealed when the Prophet (PBUH) saw that the dead body of his uncle Hamzah had been badly mutilated by the enemy in the battle of Uhd. It must be remembered that Uhd was the second battle fought after the migration of the Prophet (PBUH) to Medina and revelation was still coming to him. As mentioned above, the Prophet (PBUH) had strictly prohibited mutilation; 16:126 must therefore be understood in terms of his total prohibition of it. It follows that those who interpret this verse to justify the targeting of civilians must also be justifying the mutilation of dead bodies.

### Prohibition on destroying civilian objects and property

The destruction of civilian objects and property is banned in war because this would amount to *fasad fi al-ardh* (mischief in land). Allah says, "and do not act corruptly, making mischief in the earth".<sup>84</sup> Allah hates *fasad* and attributes it to a *munafiq* (hypocrite): "and when he turneth away (from thee) his effort in the land is to make mischief therein and to destroy the crops and the cattle; and Allah loveth not mischief".<sup>85</sup> The instructions of Abu Bakr cited above forbid the damaging and destruction of civilian objects and property.

### Conclusion

Under Islamic *jus in bello* perfidy or treachery is prohibited, the intentional killing or targeting of women, children and other civilians is strictly banned, the principle of reciprocity is not applicable when it would entail acts that are prohibited in Islam, and the destruction of civilian objects and property is not allowed.

83 Imam Mawardi, *Al-Ahkam al-Sultaniya*, Matba'at Mahmoodiyia, Cairo, n.d., p. 84.

84 Qur'an, 2:60.

85 Qur'an, 2:205.

However, heroism by individual combatants in warfare is allowed under certain conditions. Under Islamic law “martyrdom” attacks are allowed only if the following conditions are met:

- they may only take place during a war;
- they must be carried out by soldiers;
- the soldiers must not pretend to be non-combatants;
- the attacks must not harm civilians or civilian property; and
- the device used must not mutilate bodies.

When a suicide bomber targets civilians, he might be committing at least five crimes according to Islamic law, namely killing civilians, mutilating them by blowing them up, violating the trust of the enemy’s soldiers and civilians, committing suicide and, finally, destroying civilian objects or property. In my opinion, because of the crimes committed he – or she – is not a *shaheed* (martyr). Those who call such a person “*shaheed*” are simply ignoring the teachings of the Qur’an and the Sunnah with regard to the Islamic *jus in bello* and are making a mockery of God’s law.

A suicide mission is therefore contrary to the norms of Islamic *jus in bello* and has no place in Islamic legal thought. Such an act cannot be a norm of battlefield behaviour in Islam, for the established rules of Islamic *jus in bello* cannot be replaced by acts that are prohibited in war. The opinions of the ulama who endorse suicide attacks are their personal opinions; they are not binding on others. Their opinions have repeatedly tarnished the image of Islam and have given it a negative reputation. If they are accepted, then we shall have to revise the original treatises of our great doctors of Islamic law.