



MUSLIM SCHOLARS ON PERFIDY AND RUSES OF WAR

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Abstract

This paper examines the distinction between lawful ruses of war (*khud'ah*) and unlawful perfidy (*ghadr*) in Islamic law through a critical survey of major twentieth- and twenty-first-century Muslim scholars. It begins by highlighting the centrality of the principle of distinction between combatants and non-combatants and notes that contemporary asymmetric conflicts have blurred the boundary between legitimate military deception and prohibited treachery. Then, it mentions some fundamental Qur'anic injunctions, both from Makkan and Madinan periods, as well as some Prophetic traditions and, drawing upon them, the paper demonstrates that Islamic law places great emphasis on fulfilling promises, trusts and treaty obligations, and condemns all forms of perfidy. The article then analyzes the views of prominent scholars, including Abul A'la Mawdudi, Muhammad Hamidullah, Wahbah al-Zuhayli, Yusuf al-Qaradawi, contributors to the Fiqh Encyclopedia of Kuwait and Muhammad Mushtaq Ahmad. While these scholars generally agree that ruses are permissible and perfidy is prohibited, most do not provide a detailed framework for distinguishing between the two. The article concludes that a systematic exploration of the doctrines of *ghadr* and *khud'ah* is needed to clarify the legality of deception, disguise and wartime tactics in Islamic law and to contribute to contemporary debates in the law of armed conflict.

Key Words: Ruses, Perfidy, Trust, Armed Conflict.

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Introduction

Muslim jurists hold by a consensus that only combatants can be targeted during war and that non-combatants can be targeted only when they directly participate in hostilities.² However, the issue of distinction between combatants and non-combatants has become a contentious issue for contemporary Muslim scholars. One of the reasons for confusion on this issue is that the distinction between lawful ruses of war and unlawful acts of perfidy has been blurred in contemporary conflicts. The present study examines the views of some eminent Muslim scholars of the twentieth century on this distinction and how they explain the concepts of ruses and perfidy from the perspectives of Islamic law. Where necessary, a brief comparison may also be made with the provisions of the contemporary law of armed conflict.

Defining the Problem

The contemporary law of armed conflict puts four conditions for the combatant status: namely, responsible command, the use of distinctive emblem or uniform, carrying of arms openly and obeying the laws and customs of war.³ The purpose behind these conditions is to avoid perfidy and save civilians from being targeted during war.⁴ Perfidy is deemed a serious war crime and the law puts three essentials for an act of perfidy:

- to invite the confidence of the adverse party;
- with the intention to breach that trust; and
- actual breach of trust takes place.⁵

Examples of perfidy include, *inter alia*, feigning civilian status, feigning surrender, raising flag of truce and other similar acts. As opposed to perfidy, “ruses” of war are allowed.⁶ A classical example is camouflage.

In the contemporary world, where many “asymmetric conflicts”⁷ exist, the weaker party more often than not resorts to acts of perfidy which it deems war tactics or ruses. As is commonly observed, suicidal attacks are generally carried by those feigning civilian status.

² These rules have been derived from many verses of the Qur’an, Traditions of the Prophet peace be on him and precedents of the successors and the companions of the Prophet peace be on him. See for a detailed discussion on the verses of the Qur’an: Muhammad Ibn Jarir al-Tabari, *Jami’ al-Bayan* (Cairo: Matba’at Mustafa al-Babi, 1954), 2:189-190; Abu Bakr al-Jassas *Ahkam al-Qur’an*, ed. Muhammad al-Sadiq Qamhawi, (Beirut: Dar Ihya’s al-Turath al-‘Arabi, 1992), 1:319-327. See for some significant traditions: Muslim b. al-Hajjaj al-Qushayri, *Sahih*, Kitab al-Jihad wa ’l-Siyar, Bab Ta’mir al-Imam al-Umara’ ’ala al-Bu’uth wa Wasiyyatuh Iyyahum; Ibn Majah, *Sunan*, Kitab al-Jihad, Bab al-Gharah wa ’l-Bayat wa Qatl al-Nisa’ wa ’l-Sibyan; See for a detailed analysis of the juristic discussion: Abu Bakr Muhammad b. Sahal al-Sarakhsi, *al-Mabsut* (Beirut: Dar al-Kutub al-‘Imiyyah, 1997), 10:7; Muwaffaq al-Din ‘Abdullah b. Muhammad Ibn Qudamah al-Maqdisi, *al-Mughni ‘ala Mukhtasar al-Khiraqi* (Cairo: Dar al-Manar, 1367AH), 8:477; Muhammad Ibn ‘Ali al-Shawkani, *Nayl al-Awtar Sharh Muntaqa al-Akhbar* (Cairo: Idarath al-Tiba’ah al-Muniriyyah, 1934), 7:201. See also: Muhammad Munir, *Ahkam al-Madaniyyin fi ’l-Shari’ah al-Islamiyyah wa ’l-Qanun al-Dawli al-Insani: Dirasah Muqarinah*, (Unpublished Thesis of LLM Shariah and Law, Faculty of Shariah and Law, International Islamic University Islamabad, 1996).

³ Article 1 of the Hague Regulations IV, 1907; Article 4A of the Geneva Convention III, 1949.

⁴ Jean S Pictet (ed.), *Commentary on the Geneva Convention III* (Geneva: International Committee of the Red Cross, 1952), 52-61.

⁵ See Article 37 (1), Protocol I Additional to the Geneva Conventions of 1949 and relating to the Protection of Victims of International Armed Conflicts (hereinafter AP I). See for a detailed analysis of the concepts of perfidy and ruses of war in the contemporary law of armed conflict: Yves Sandoz et al. (eds.), *Commentary on the Additional Protocols* (Geneva: International Committee of the Red Cross, 1987), 429-445.

⁶ Hague Regulations IV; Article 37 (2) AP I.

⁷ Asymmetric conflicts denote conflicts between such parties in which one party is far stronger than the other party. Generally, rebels are much weaker than the state’s armed forces and that is the reason why they resort to acts of terrorism and guerilla tactics instead of conventional warfare. See for details: Bard E. O’Neill, *Insurgency and Terrorism: Inside Modern Revolutionary Warfare* (New York: Brassey’s (US), Inc., 1990). See for further details: Mao Tse-tung, *On Guerrilla Warfare* (New York: Fredrick A. Praeger, 1962); Edward E. Rice, *Wars of the Third Kind* (Berkeley: University of California Press, 1988); Bernard B. Fall, *Street without Joy* (Harrisburg:

Emphasis on Fulfilling Promises

The Qur'an and the *Sunnah* of the Prophet (peace be on him) lay great emphasis on fulfillment of promises and observance of contractual and treaty obligations. That is why the Muslim jurists elaborated in detail the concept of perfidy and declared unequivocally that all forms and manifestations of perfidy are prohibited.

The Qur'an mentions among the characteristic qualities of the believers that they "fulfill their trusts and covenants".⁸ Similarly, it stresses fulfilling promises and covenants:

"And fulfill the covenant which you have made with Allah and do not break your oaths after having firmly made them, and after having made Allah your witness. Surely Allah knows what you do... Do not make your oaths a means of deceiving one another or else your foot may slip after having been firm and you may suffer evil consequences because of hindering people from the way of Allah, and for you there shall be a mighty torment. Do not barter away the covenant of Allah for a paltry gain. Verily that which with Allah is far better for you, if you only know."⁹

At another place, it commands: "And fulfill the promise. Verily, the promise shall be questioned about."¹⁰ The verses of the Qur'an, which were revealed after migration of the Prophet to Madinah emphasize the observance of the treaty obligations even with enemy during war.¹¹ Even at the time the ultimatum was given to the pagan tribes in the Arabian Peninsula, the Qur'an ordered Muslims to observe the treaty obligations in letter and spirit.¹²

These Qur'anic commandments have been further elaborated by the *Sunnah* of the Prophet (peace be on him). Thus, he is reported to have said: "The one who breaches trust has no faith and the one who breaks promise has no religion."¹³ He mentioned it among the characteristics of the hypocrites that they break promises: "The hypocrite has three signs: when he speaks, he tells a lie; when he makes promise, he breaks it; and when he is given a trust, he breaches it."¹⁴ He also warned that breach of promise by a ruler is the most serious form of treachery: "Every person committing treachery will have a flag on the Day of Judgment which will be raised according to the extent of his treachery. And the most severe form of treachery is the one committed by the ruler of a community."¹⁵

The Prophet (peace be on him) further made it sure that Muslims must abide by their individual and collective promises with non-Muslims even if these promises are made during war. Thus, when Hudhayfa b. al-Yaman and his father (Allah be pleased with them) were captured by the pagans before the Battle of Badr and were released on the condition that they would not take part in war against them, the Prophet told them: "You shall not participate in war. We shall fulfill the promise we made with them and shall seek Allah's help against them."¹⁶ Although

Stackpole Books, 1963); Ted Robert Gurr, *Why Men Rebel?* (Princeton: Princeton University Press, 1988). See also: Shannon E French, "Criminals, Not Warriors: The Moral Distinction between Terrorists and Legitimate Fighters in Asymmetric Conflicts" in James P. Sterba (ed.), *Terrorism and International Justice* (New York: Oxford University Press, 2003), 31-46.

⁸ Qur'an, 70: 32.

⁹ Qur'an, 16: 91, 94-95.

¹⁰ Qur'an, 17: 34.

¹¹ Qur'an, 8: 58; 8: 72; 4: 89-90.

¹² Qur'an, 9: 1-6.

¹³ Ahmad Ibn Hanbal al-Shaybani, *Musnad*, Baqi Musnad al-Mukthirin, Musnad Anas b. Malik.

¹⁴ Bukhari, Kitab al-Iman, Bab 'Alamat al-Munafiq

¹⁵ Muslim, Kitab al-Jihad wa 'l-Siyar, Bab Tahrim al-Ghadr.

¹⁶ Muslim, Kitab al-Jihad wa 'l-Siyar, Bab Wafa' bi 'l-'Ahd.

the Prophet (peace be on him) allowed ruses of war (*khud'ah*), the jurists assert that if ruses amount to treachery, these are prohibited.¹⁷

This makes it important for Muslim scholars to clearly distinguish between these two concepts. Let us see how some eminent Muslim scholars of the twentieth century examined approached this issue.

Views of Mawlana Mawdudi

Sayyid Abu 'l-A'la Mawdudi (d. 1979), a great scholar of the fourteenth/twentieth century, in his *al-Jihad fi 'l-Islam* gave a detailed exposition of the doctrine of jihad in Islamic law.¹⁸ In the fifth chapter of this book entitled "Islamic Laws of War and Peace", he first describes the means and methods of warfare in the pre-Islamic Arabia as well as Roman and Persian empires.¹⁹ After this, he explains the reforms made by Islamic law in the means and methods of warfare.²⁰ Then, he gives an overview of the humanitarian aspect of the Islamic laws of war.²¹ In this context, he briefly mentions the prohibition of treachery.²² He also explains the provisions of Islamic law regarding fulfillment of treaty obligations.²³ However, he does not deal with the question of distinction between ruses and perfidy.

In the seventh chapter entitled "War in Modern Civilization", Mawdudi critically analysis the international law of armed conflict, particularly the Hague Regulations of 1907.²⁴ He also gives a brief description of the acts prohibited by these Regulations during war.²⁵ In this section, he deals with the issue of distinction between lawful ruses and unlawful perfidy.²⁶ Thus, he mentions that camouflage, war propaganda and keeping the actual destination and movement of troops secret from the enemy are examples of lawful ruses, while attack after raising white flags, using the protective emblems of hospitals for military installations and using women and children as shields are acts of perfidy.²⁷ He points out that this area of the law of war is not fully developed and that is why there are some contentious acts which are lawful ruses for some people and acts of perfidy for others. In this regard, he cites the example of the use of the enemy uniform. He mentions that this act is a lawful ruse in the opinion of scholars of international law, but military codes deem it perfidy.²⁸ He concludes that it is not possible to formulate a comprehensive code giving a complete list of lawful ruses and unlawful acts of perfidy. "This question relates to the war ethics of a nation and every nation decides about the prohibited and permitted acts keeping in view its own code of ethics and chivalry."²⁹ Mawdudi further concludes that the same is the position under Islamic law: "Islamic law also allows ruses of war but leaves the details for the jurists of each age to determine in the light of the obtaining realities of their age which acts are included in lawful ruses and which are not."³⁰

¹⁷ Abu Bakr Muhammad b. Sahal al-Sarakhsi, *Sharh Kitab al-Siyar al-Kabir* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1997), 2: 66-69.

¹⁸ Abu 'l-A'la Mawdudi, *al-Jihad fi 'l-Islam* (Lahore: Idara Tarjuman al-Qur'an, 2002).

¹⁹ *Ibid.*, 180-216.

²⁰ *Ibid.*, 216-238.

²¹ *Ibid.*, 238-301.

²² *Ibid.*, 232-233.

²³ *Ibid.*, 240-244.

²⁴ *Ibid.*, 499-527.

²⁵ *Ibid.*, 527-560.

²⁶ *Ibid.*, 557-558. Mawdudi calls ruses as *khad'* and perfidy as *dagha*.

²⁷ *Ibid.*, 557.

²⁸ *Ibid.*

²⁹ *Ibid.*, 558.

³⁰ *Ibid.*

The first edition of this book appeared in 1927 when the Geneva Convention and their Additional Protocols were not yet in sight, but it is true even today that no comprehensive list of ruses and acts of perfidy can be given. However, the issue is not of making a comprehensive list but of the legal principles distinguishing between ruses and perfidy. Is it a discretionary issue for jurists and military commanders? Or do we have some legal principles to guide and restrict this unbridled discretion? This should be main focus of Muslim scholars in the contemporary world.

Approach of Dr Hamidullah

Dr Muhammad Hamidullah (d. 2002), one of the pioneers in the field of Muslim international law in the modern world, divided his book *The Muslim Conduct of State* into four parts: introduction, peace, hostile relations and neutrality. Part III of this work titled “Hostile Relations” consists of 26 chapters.³¹ In these, the most important chapters for our purposes are chapter 13 “Acts Forbidden”,³² chapter 14 “Giving Quarter”³³ and chapter 17 “Acts Permitted”.³⁴ However, he only briefly refers to the prohibition of “treachery and perfidy” without elaborating the meaning and scope of these terms.³⁵ He devotes only a paragraph to the permissibility of ruses.³⁶ He also briefly deals with the permissibility of “assassination” and justifies it “on the ground that often it diminishes greater bloodshed and discord, and it is resorted to as the lesser of the two evils.”³⁷ He, however, does not analyze this issue from the perspective of permissibility of ruses and prohibition of treachery. Similarly, he also mentions propaganda among the permitted acts, but he does not relate it with the prohibition of telling a lie.

Position of Dr Wahbah al-Zuhayli

Athar al-Harb fi 'l-Fiqh al-Islami of Dr Wahbah al-Zuhayli (d. 2015), the famous Syrian jurist of the twentieth century, is a good exposition of the consequences of the state of war in Islamic law.³⁸ It, however, does not give a detailed analysis of the issue of distinction between ruses and perfidy despite the fact that the learned author tries to stress the ethical aspect of the Islamic law of armed conflict. Thus, he asserts that foremost among the fundamental values of this law is fulfillment of treaty obligation.³⁹ He briefly compares the Islamic doctrine of *aman* with the raising of white flag.⁴⁰ However, he gives a more detailed comparison of *aman* with the modern concepts of passport and visa.⁴¹ While discussing the legal provisions for a Muslim who falls into the hands of the enemy, Zuhayli briefly mentions that such prisoner is not allowed to disclose military and strategic secrets to the enemy. He also quotes the statement of the famous Syrian jurist al-Awza‘i that this act is prohibited even if the prisoner is killed and that there is

³¹ Muhammad Hamidullah, *The Muslim Conduct of State* (Lahore: Sh. Muhammad Ashraf, 1973), 165-290.

³² *Ibid.*, 212-215.

³³ *Ibid.*, 216-218.

³⁴ *Ibid.*, 230-239.

³⁵ *Ibid.*, 212.

³⁶ *Ibid.*, 231.

³⁷ *Ibid.*, 234. He cites the instances of the expeditions sent against Abu 'l Huqayq, Ka'b b. al-Ashraf, Abu Rafi' and Sufyan b. Anas.

³⁸ Wahbah al-Zuhayli, *Athar al-Harb fi 'l-Fiqh al-Islami* (Damascus: Dar al-Fikr, 1981).

³⁹ *Ibid.*, 141-143. The other values he mentions are: respect of human dignity, God-consciousness (*taqwa*) as the basis for international relations, mercy during war, absolute justice and reciprocity. *Ibid.*, 141-147.

⁴⁰ *Ibid.*, 266.

⁴¹ *Ibid.*, 266-269.

no exemption in it.⁴² He, however, does not analyze the issue of the legality of telling a lie in such a situation.

Fiqh Encyclopedia of Kuwait

The *Mawsu'ah Fiqhiyyah*, prepared by the Ministry of Religious Affairs, Kuwait, contains two entries directly relevant to the issue at hand: one is under the title of *khadi'ah* and the other is entitled *ghadr*. Unfortunately, these entries also do not go into sufficient details while distinguishing between ruses and perfidy.

Thus, the entry on *khadi'ah* defines this term as “to express something which is against that which one conceals.”⁴³ The entry mentions *ghadr*, *khiyanah* and *tawriyah* as terms relevant to *khadi'ah*, but only summarily deals with distinction between these terms. It defines *tawriyah* (equivocal statements) in similar terms to *khadi'ah* and asserts that *tawriyah* is a form of *khadi'ah*.⁴⁴

The entry defines *ghadr* as “not fulfilling a treaty obligation or breach of treaty”.⁴⁵ Almost the same definition is given for *khiyanah*.⁴⁶ Then, the two terms are distinguished from *khadi'ah* in the following words: “*Khadi'ah* sometimes involves breach of trust and at other times it does not involve breach of trust.”⁴⁷ In other words, *khadi'ah* is a general term which sometimes involves perfidy. The entry also notes that “when *khadi'ah* involves a breach of trust or a breach of treaty, it is prohibited. All Muslim scholars agree on this and the injunctions of the Qur'an and the Sunnah prohibiting it are well-known.”⁴⁸ The net conclusion is that those forms of *khadi'ah* (ruse) are permissible which do not amount to breach of trust or breach of treaty. The same is asserted in the entry on *ghadr*: “*khud'ah* is more general term than *ghadr* as the latter is always prohibited while the former is sometimes permissible.”⁴⁹

Exposition of Dr Yusuf al-Qaradawi

Dr Yusuf al-Qaradawi (d. 2022), a renowned scholar of Islamic law, recently came up with his *magnum opus* work on the Islamic law of armed conflict entitled *Fiqh al-Jihad: Dirasah Muqarinah li-Ahkamih wa Falsafatih fi Daw' al-Qur'an wa 'l-Sunnah*.⁵⁰ In this work he devotes a chapter to the “Ethical Code for War in Islam”.⁵¹ In this chapter, Qaradawi analyzes various provisions of Islamic law prohibiting different acts in war and identifies certain general ethical principles. He categorizes these principles into pre-war, during war and post-war stages.⁵² He identifies the following general principles:

1. Transgression (*'udwan*) is prohibited;⁵³
2. Only those among the adversaries can be targeted who participate in war;⁵⁴
3. Mutilation (*muthlah*) is prohibited;⁵⁵

⁴² Ibid., 468.

⁴³ Committee of Jurists, *al-Mawsu'ah al-Fiqhiyyah* (Kuwait: Ministry of Religious Affairs, 1983), 19:32.

⁴⁴ Ibid., 19:33.

⁴⁵ Ibid. 19:32.

⁴⁶ “*Khiyanah* is breach of treaty or trust.” Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid., 19:33.

⁴⁹ Ibid., 31:143.

⁵⁰ Yusuf al-Qaradawi, *Fiqh al-Jihad: Dirasah Muqarinah li-Ahkamih wa Falsafatih fi Daw' al-Qur'an wa 'l-Sunnah* (Doha: Qatar Foundation, 2008).

⁵¹ Ibid., 1:723-55.

⁵² Ibid., 1:725-28.

⁵³ Ibid., 1:728-30.

⁵⁴ Ibid., 1:730-36.

⁵⁵ Ibid., 1:736-39.

4. Breach of treaty (*ghadr*) and trust (*khiyanah*) is prohibited;⁵⁶
5. Wanton destruction is prohibited;⁵⁷ and
6. Looting (*nuhbah*) and misappropriation (*ghulul*) are prohibited.⁵⁸

After explaining these general principles, Qaradawi raises a question: “Is it allowed to tell a lie in war?”⁵⁹ He is of the opinion that the original rule (*al-Asl*), both in peace as well as war, is the prohibition of telling a lie, but it becomes permissible⁶⁰ and sometimes obligatory⁶¹ in state of necessity. As we will show in Part two of this study, none of the precedents quoted by Qaradawi can substantiate this claim. Rather, all these precedents show the use of equivocal and figurative terms.

Qaradawi, then, relates the permissibility of telling a lie to the prophetic injunction regarding the permissibility of ruses.⁶² Does it mean that Qaradawi allows breach of trust during war under the doctrine of ruses in the same way as he allows telling a lie during war under this doctrine? This is a corollary of his stance, although he condemns breach of trust in most severe terms and alleges that the Western nations act upon treaty provisions when they are in a weaker position and break treaty when they are in dominant position.⁶³ Moreover, he mentions fulfilling treaty obligations among the most fundamental commandments of Islamic law and mentions breach of treaty and trust among major sins and characteristics of hypocrisy.⁶⁴ However, in the same tone he mentions truthfulness as one of the most fundamental virtues in Islam and telling a lie as one of the major sins and characteristics of hypocrisy.⁶⁵ There seems logical inconsistency in Qaradawi’s position here. If one of these acts—telling a lie—becomes permissible, and even obligatory, in war, why not the other act – breach of treaty?

Views of Dr Mushtaq

“Prohibition of perfidy and permissibility of ruses of war” is the title of a chapter in *Jihad, Muzahamat awr Baghawat* written by Dr Muhammad Mushtaq Ahmad.⁶⁶ In this chapter, Dr Ahmad first mentions some of the texts of the Qur’an and the Sunnah prohibiting breach of treaty in all its forms.⁶⁷ After this, he analyzes the issues of legality or illegality of telling a lie during war and concludes that this is prohibited even in war and that Muslims have to use equivocal or figurative words for achieving their purpose without telling a lie.⁶⁸ Then, Professor Ahmad analyzes in detail the legality or illegality of war tactics involving breach of trust or breach of treaty.⁶⁹ This analysis contains very useful material on distinction between lawful ruses and unlawful perfidious acts and we will quote some of this material in the second and third part of this study.

Conclusions

⁵⁶ Ibid., 1:739-43.

⁵⁷ Ibid., 1:743-46.

⁵⁸ Ibid., 1:746-49.

⁵⁹ Ibid., 1:750.

⁶⁰ Ibid.

⁶¹ Ibid., 1:754.

⁶² Ibid., 1:754-55.

⁶³ Ibid., 1:741-43.

⁶⁴ Ibid., 1:724-25.

⁶⁵ Ibid.

⁶⁶ Muhammad Mushtaq Ahmad, *Jihad, Muzahamat awr Baghawat Islami Shariat awr Bayn al-Aqwami Qanun ki Roshni main* (Gujranwala: al-Shariah Academy, 2008), 417-429.

⁶⁷ Ibid., 418-19.

⁶⁸ Ibid., 419-22.

⁶⁹ Ibid., 422-28.

This overview of some of the important works on the Islamic law of armed conflict clearly establishes the point that scholars working on this area assert in general terms that ruses are permitted and perfidy is prohibited, but seldom go into detailed analysis of the two concepts. Hence, it is the need of the hour to identify the legal principles distinguishing between these concepts. Analyzing the various acts which Muslim jurists categorize as ruses or perfidy may be very helpful for this purpose. In particular, the meaning and scope of the doctrine of *ghadr* in Islamic law should be explored. This is closely linked with the issue of using war tactics that involve breach of a peace treaty. Analyzing the juristic discourse on such tactics may prove helpful in determining the parameters of doctrine of *khad'ah* the Islamic law with special focus on the legality or illegality of uttering false statements and using disguise. Finally, the principles of Islamic law in this area as expounded by Muslim jurists will prove beneficial in resolving some very complicated issues debated by the contemporary scholars of law of armed conflict regarding distinction between unlawful acts of perfidy and the lawful ruses of war.