Limits of deception in Islamic laws of war: the case of civilian disguises in suicide attacks

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Abstract
The suicide attack is an infamous method of warfare mostly associated with Islamic militant groups. While there are numerous aspects from which to discuss this method of warfare from a fiqh al-siyar (Islamic international law) perspective, this article specifically highlights suicide attacks when they disguise as civilians which they often do. Few contemporary jurists discuss this particular aspect of suicide attacks, and even those have mostly missed one issue: it might be an impermissible treasonous deception. This article explores whether suicide attacks disguising as civilians constitutes as an act of treason in fiqh al-siyar. It is found that such method of attack is not in itself treasonous therefore not in itself impermissible. However, suicide attacks disguising as civilians may become treasonous depending on the circumstances. Further, even when it is not treasonous it can be impermissible due to other reasons such as modern International Humanitarian Law (IHL), or ḥṣālaḥ.

Keywords: jihad, Islam, deception, siyar, international humanitarian law

Introduction
Since the two hijacked planes crashed into the twin towers of the World Trade Center in the United States of America in September 11, 2001, the world was not the same anymore. Suicide attacks became an infamous method associated with ‘Islamic extremism’, occurring in various places in the...
world such as the 2004 Bali Bombing\(^2\) and very recently in Syria in 2019.\(^3\) Surely, there are so much more cases such as in Palestine, Afghanistan, and many more.

Incidents like this specifically and the situation of armed conflict in many Muslim states generally are perhaps among the main reasons why there is a rising need for researches on the Islamic law (fiqh) on the conduct of armed conflict and how they relate to modern International Humanitarian Law.\(^4\) Additionally, as the Syrian and Yemen Civil War is showing, groups labelled as terrorists (like Al-Qaeda) have evolved from hidden cells within various nations into major military groups fighting in open war. When they claim to follow only Islamic law and denounce everything un-Islamic, it may be imperative to dwell in their own sources to truly understand and assess the issue.

From an Islamic law perspective, there are multiple aspects of suicide attacks which are subject to scholarly discourse. The first aspect is on rules related to the impermissibility of suicide, where jurists disagree on whether suicide attacks fall under the category of ‘\textit{amaliyyah istishhadiyyah}.’ Usually also referred to as ‘martyrdom operations,’ ‘\textit{amaliyyah istishhadiyyah}’ means daring attacks where the combatant does not expect to survive, and intends to inflict as much damage as possible to the enemy. For example, a combatant slipping into an enemy base and attack as much as possible without intention of retreating, until the enemy finally neutralises the combatant (hopefully, after causing much damage). ‘\textit{Amaliyyah istishhadiyyah}’ is a known and permissible method of attack in Islamic laws of war, but some jurists argue that suicide attacks in form of suicide bombing would fall under impermissible suicide instead of ‘\textit{amaliyyah istishhadiyyah}’.\(^5\)

The second aspect discussed by the scholars is the target of attacks. While some suicide attacks do target enemy military forces,\(^6\) but the aforementioned examples of the 9/11 and Bali Bombing targeted civilians. In discussing this issue, all jurists agree that civilians may not be attacked. These jurists either specifically


mention that civilians may not be targeted, or they say that the suicide bombings may be targeted only to enemy forces which essentially means the same thing. In fact, the Al-Qaeda leader Ayman al-Zawahiri has reprimanded (albeit softly) Abu Mus‘ab al-Zarqawi (former leader of Al-Qaeda in Iraq, who was killed in 2006) regarding killing laymen Shi‘a in Iraq.

However, Muhammad Munir pointed out an interesting aspect which is usually not discussed. Munir noted that numerous suicide bombing attacks are conducted by persons who are disguising themselves as civilians. He pointed out that such a manner of attack is a form of treachery which is impermissible in Islamic laws of war.

This article examines the Islamic laws of war i.e. fiqh al-jihad, particularly regarding deception and its limits. The permissibility of feigning as civilians is focused on, and the other aspects of the discourse on suicide attacks (i.e. classification as ‘amaliyyah istishhadiyyah, and target selection) are not discussed. The article will then see whether feigning as civilians is unlawful due to its alleged classification as unlawful treachery.

**Islamic law and international law**

Radical groups (e.g. Al-Qaeda, ISIS) can denounce international law to the extent that, according to the top Al-Qaeda theologian Abu Muhammad Al-Maqdisi, those who join the international law system under the United Nations are *kafirs* (disbelievers). However, likewise, mainstream international law has been criticized for ‘othering’ anything non-Western.

It is certainly interesting to note how radical Islamists and ‘Eurocentric’ lawyers may actually share similar mentality in some respects.

From an international law perspective, historically, Islamic law has positively contributed towards the development of modern international humanitarian law (IHL). As noted by Jean Pictet, it was long since the Muslim

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7 See: Al-Qardāwi, *Min Hadīyāt Al-Islām Fatāwā Al-Mu‘āshirah*, 3:503–5; Takruri, *Al-‘Amanīyyat Al-Istishhadiyyah Fi Al-Mizān Al-Fighiy*; Al-Munajjid, “Ruling on Blowing Oneself Up”; Desai, “Are What the Western Media Calls ‘Suicide Bombings’ Allowed in Islam?” Afifi Akiti, who does not approve suicide bombing due to suicide, also emphasized on the civilian targets as well in his fatwa: Al-Akiti, *Defending the Transgressed by Censuring the Reckless against the Killing of Civilians*, 20, see also the title which clearly emphasizes this aspect.


10 Al-Maqdisi was specifically explaining why Saudi Arabia is not an Islamic state, and rather it is a *kafir* state: Abu Muhammad Al-Maqdisi, *Saudī Di Mata Seorang Al Qaidah* (Solo: Jazera, 2005), 85–138.

armies had their code of war which included a ‘principle of distinction’, and the Muslims were more faithful and loyal to peace agreements.\(^\text{12}\) Even further, Khaled Bashir pointed out that the Grotius and the other European founders of international law have been outsmarted in terms of depth and width of coverage in international law literature generally and laws of war specifically by the Islamic civilizations centuries before Grotius came.\(^\text{13}\)

This is why we now have lawyers (Muslim or otherwise) calling for the recognition and inclusion of Islamic law traditions in the development of international law as one of the world’s big legal families.\(^\text{14}\) If Islamic law has historically influenced the development of international law, and is among the big legal families in the world, then more substantive and fair dialogue must be done for this purpose.

From an Islamic law perspective, international law is to some extent actually recognized as this section explains. One will find that, from an Islamic standpoint, following some parts of international law may actually be part of an Islamic obligation. It is therefore important to explore how international law and Islamic law interacts with each other in order to make a proportionate assessment of matters related to both laws.

When speaking of ‘Islamic law’ (fiqh), one speaks of hukum shar'i (rulings of the Shari‘ah) which has three elements: Al-Hakim (Lawgiver, i.e. Allah), mahkum fih (the act which the ruling operates to), and mahkum ‘alayh (the subject of law).\(^\text{15}\) Especially regarding the subject of law, in principle the central subject of Islamic law is only natural persons.\(^\text{16}\) This is because obedience is part of the obligation of worship in Islam, because the concept of ‘religion’ (Al-Din) in Islam encompasses

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\(^{13}\) Khaled Ramadan Bashir, Islamic International Law: Historical Foundations and Al-Shaybani’s Siyar (Cheltenham: Edward Elgar Publishing Ltd, 2018).


\(^{15}\) Imran Ahsan Khan Nyazee, Islamic Jurisprudence (Selangor: The Other Press, 2003), 45–46.

not only theology and ritual worship but also ‘obeying commands and heeding prohibitions’. Law, then, is an extension of that obedience to Allah.\(^\text{17}\)

Islamic law is binding on the individual Muslims, and this is regardless whether they are under the jurisdiction of an Islamic state. Such an Islamic state only take role to facilitate the administration and fulfillment of these laws.\(^\text{19}\) Meaning, even if there is no Islamic state to enforce the hudud (criminal sanctions specifically regulated in the Qur’an and Sunnah), the hudud crimes (inter alia theft, fornication, adultery, unfounded adultery accusation, rebellion, armed robbery, and apostasy)\(^\text{20}\) are still acts of major sin regardless and therefore still prohibited.

Another important aspect to understand also is that the primary sources of Islamic law are the Qur’ān and Sunnah as primary sources of law. Rejecting them (while putting other laws above the Qur’ān and Sunnah) would render a Muslim as a disbeliever.\(^\text{21}\) As Allah says in various places in the Qur’ān, \textit{inter alia} in Surah al-‘Idāh (5) verse 50:

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َۚ وَمَنْ أَحْسَنُ مِنَ اللَّهَ حُكْمًا لِقَوْمٍ يُوقِنُونَ
\]

“Then is it the judgement of [the time of] ignorance they desire? But who is better than Allah in judgement for a people who are certain [in faith].”

See also Surah al-Nisā (4) verse 59:

\[
ْۖ فَإِن تَنَازَعْتُمْ فِيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِِ الَْْمْرِ مِنكُمْ يْءٍ
\]

“O you who have believed, obey Allah and obey the Messenger and those in authority among you. And if you disagree over anything, refer it to Allah and the Messenger, if you should believe in Allah and the Last Day. That is the best [way] and best in result.”


This shows that non-Islamic sources are rejected, making the previously mentioned radical Islamist position having some foundation. However, when one says ‘non-Islamic sources are rejected’, does not necessarily mean that literally everything has to be specifically regulated in the Qur’an and Sunnah. After all, only a minority of verses in the Qur’an contain specific legal rulings. 22

As for the Sunnah, perhaps it would take a special research to calculate the proportions. We know some great hadith compilations specifically includes only legal rulings, such as Imam Malik’s Muwatta and the Sunans of Abu Dawud and Al-Tirmidhi. Others include other topics e.g. theology, manners, faith, knowledge, Quran interpretation, and various others, such as Sahih Al-Bukhari, Sahih Al-Muslim, and Musnad Imam Ahmad. Nonetheless, law is just one out of various other subjects under the broad scope of Islamic sciences, necessitating law-related Qur’an verses and Sunnah to be a minority.

When there are matters which are not specifically regulated in the Qur’an and Sunnah, the Islamic jurists will conduct *ijtihād* to explore the Qur’an and Sunnah in order to find rulings of *fiqh* (Islamic law) to be interpreted and applied towards the matter. 23 In doing so, the jurists will consider other instruments and sources such as *ijmā‘* (‘consensus’), *qiyyās* (‘analogy’), ‘urf (‘customary laws’), *maṣlaḥat* (‘benefits’), and others. 24

The Islamic laws of war (fiqh al-jihad) is a chapter under Islamic international law (fiqh al-siyar). 25 Parts of it takes the central role of the Muslim state, such as where international agreements must be obeyed by both the Muslim state and the Muslims under its jurisdiction insofar as they do not contradict the Qur’an and Sunnah. 26 In context of war specifically or governance generally, *maṣlaḥat* (benefit) is a particularly important consideration when deriving rulings, war maneuvers, or state policy in general. 27 It is however important to note that

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maṣlaḥat is derived from and finds its indicators in the Qurʾān and Sunnah, therefore maṣlaḥat must not contravene the Qurʾān and Sunnah.28

Other parts of the Islamic laws of war creates obligation towards individuals, such as the prohibition to kill certain persons in war (women, children, the elderly, the incapacitated, etc).29 One would find that these rules could be found not only in ‘moderate’ scholarship but also in ‘radical-inclined’ scholarship.30 Sometimes there are matters where it falls upon the Muslim commander (not necessarily the state) to make strategic decisions based on maṣlaḥat, such as in determining the fate of war captives.31

There can also interaction also between the state acts and the individual, such as how it is forbidden to kill a non-Muslim which with whom the Islamic state has a peace agreement with.32 As mentioned earlier, an agreement entered into by the Muslim state is binding towards all the Muslims in it. Especially in context of war, sometimes there are certain agreements that can be put to halt such as trade agreements. However, some agreements remain in effect especially if they are precisely about what to do or not to do during war.33

However, there will be questions on whether the agreement contradicts the Qurʾān and Sunnah (making the former null and void), or situations where non-state Islamic fighters are not parties to an agreement entered into by a state which they do not recognize. In such situations, it would revert back to the Muslim fighters’ individual obligations as previously mentioned.

Perfidy and treachery in war: an overview

War is more than just a competition of weapons and manpower. Rather, the play of planning and strategy is very vital, so much that they have caused large and strong armies to be defeated by weaker and smaller counterparts. A very famous example of this war was the Battle of Yarmouk, where the Muslim army of around 36,000 to 46,000 defeated a massive Roman (Byzantine) army of around 120,000 to 240,000 (the numbers are contested, but the sources are unanimous that it was a small army defeating a much larger one).34 Owing to inter alia Khālid ibn

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33 Hamidullah, Muslim Conduct of State, 198–99.

Al-Walid’s tactical genius, the Muslims not only won but also managed to kill from 50,000 to 120,000 Romans while themselves losing only 3000.\textsuperscript{35}

An important part of war strategy involves the use of ruses and deception, which’s use has been all over the pages of the history of warfare. Sometimes armies use tricks in such a way that enemies, sometimes ones they cannot normally defeat, are caught off guard and defeated. A very famous example of this is when the Greek alliance sneaked a small force into a giant wooden horse sent to the Trojans who took the ‘gift’ inside their previously impenetrable city walls.\textsuperscript{36} Even Sun Tzu, the famous strategist from ancient China, cannot emphasize enough on the importance of deception in warfare.\textsuperscript{37}

However, even throughout history, there are certain kinds of deception which are shunned and seen as an unacceptable method of warfare. Emer de Vattel and Hugo Grotius, for example, in context of the legality of assassination towards enemy leaders, have argued on the extent of which such acts may be treasonous.\textsuperscript{38}

Patricia Zengel gave some examples of other early commentators of the laws of war such as Alberico Gentili and C. Van Bynkershoek holding the same position as De Vattel and Grotius on the aforementioned matters.\textsuperscript{39} Zengel concluded that, according to the aforementioned commentators and reflective of the law of nations at the time, the term ‘treachery’ meant “…betrayal by one owing an obligation of good faith to the intended victim.”\textsuperscript{40}

In modern IHL, the rule to allow ruses and deception in general except when they are treasonous still persists as, in the words of the Jean-Maria Henckaerts and Louise Doswald-Beck, “a long-standing rule of customary international law”.\textsuperscript{41} Generally, treasonous deception is usually termed as perfidy\textsuperscript{42} which is defined as follows:

“…acts inviting the confidence of an adversary to lead him to believe that he is entitled to, or obliged to accord, protection under the rules of international law applicable in armed conflict, with intent to betray that confidence…”\textsuperscript{43}


\textsuperscript{37} Sun Tzu, \textit{The Art of War (Restored Translation)} (Pax Librorum Publishing House, 2009), 4–5.


\textsuperscript{39} Patricia Zengel, “Assassination and the Law of Armed Conflict” (The Judge Advocate General’s School, United States Army, 1991), 6–14.

\textsuperscript{40} Zengel, 14.

\textsuperscript{41} Jean-Marie Henckaerts and Louise Doswald-Beck, \textit{Customary International Humanitarian Law}, vol. 1 (Cambridge University Press, 2005), 203. See also Article 37(2) of AP I.

\textsuperscript{42} Although not all acts of unlawful deception necessarily fall under the definition perfidy, as shown in the later paragraphs.

\textsuperscript{43} Article 37(1) of AP I.
In addition, Article 15 of the Lieber Code needs to be mentioned:

“...such deception as does not involve the breaking of good faith either positively pledged, regarding agreements entered into during the war, or supposed by the modern law of war to exist.”

It may seem that modern IHL prohibits perfidy specifically only in combat situations, as Article 37(1) reads as follows: “It is prohibited to kill, injure or capture an adversary by resort to perfidy.” However, this is not to suggest that treachery is permitted in other situations. Rather, good faith (which treachery and deceit are breaches of) is a general principle of international law applicable in all situations. It is interesting that there seems to be a shift of paradigm between treachery before and upon the arrival of modern IHL. As Zengel noted, the modern IHL concept of perfidy shifts from protecting the victim of treachery towards protecting a greater interest of the international community. She said:

“In this context that means that the continued potency of protections established for civilian noncombatants depends upon those protections not being available to shield those who are combatants. The object to be protected is not the targeted adversary, but rather the safety of the civilian population and, more generally, continued confidence in law and international agreements.”

In addition, Article 37(1) of AP I provide some examples of acts of perfidy:

a. the feigning of an intent to negotiate under a flag of truce or of a surrender;
b. the feigning of an incapacitation by wounds or sickness;
c. the feigning of civilian, non-combatant status; and
d. the feigning of protected status by the use of signs, emblems or uniforms of the United Nations or of neutral or other States not Parties to the conflict.

It must be noted that numerous instruments of modern IHL (including the AP I) are in form of treaties. As per Article 26 of the Vienna Convention on the Law of Treaties 1969, treaties are binding to states who are parties to it. In addition, Jean-Marie Henckaerts and Louis Doswald-Beck has compiled evidences of state practice to indicate that much of modern IHL is also part of customary international law.

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War and deception in Islamic law

With regards to the matter of treachery and perfidy, Islam has always been clear. After all, honesty and trustworthiness are among the most basic traits of a Muslim. In fact, they are among the four characteristics necessary of the prophets AS: ṣafīnah (intelligent), tablīgh (conveys the message), and relevant to this article: ṣiddīq (truthful) and ʿāmīnah (trustworthy).¹⁸

There is endless evidence in the Qur’ān and Sunnah on the importance of truthfulness and trustworthiness.

1. Truthfulness, Lying, and War

With respect to truthfulness, there is endless evidence in the Qur’ān and Sunnah on the importance of truthfulness. Among so many others, Allah says in the Qur’ān, Surah al-Tawbah (9) verse 119:

يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ وَكُونُوا مَعَ الصَّادِقِينَ

“O you who have believed, fear Allah and be with those who are true.”

Allah says in Surah Al-Azhab (33) verse 24:

يَجْزِيَ اللَّهُ الصَّادِقِينَ بِصِدْقِهِمْ وَيُعَذِّبَ الْمُنَافِقِينَ إِن شَاءَ أَوْ يَتُوبُ عَلَيْهِمْ كَانَ غَفُورًا رَّحِيمًا

“That Allah may reward the truthful for their truth and punish the hypocrites if He wills or accept their repentance. Indeed, Allah is ever Forgiving and Merciful.”

With respect to trustworthiness, there are also endless evidence of its importance. In fact, the term ʿāmīnah is derived from the root امَن, from which the word ʾīmān (faith) is also derived from.⁴⁹ Allah says in the Qur’ān, Surah Al-Anfāl (8) verse 27:

يَأَيُّهَا الَّذِينَ آمَنُوا لَا تَخْرُجُوا الْحَوْاَلََّةَ مَنْ هُوَ أَخْلَصُ لَهُ عَنْهُ وَتََُونُوا أَمَانََتِكُمْ وَأَنتُمْ تَعْلَمُونَ

“O you who have believed, do not betray Allah and the Messenger or betray your trusts while you know [the consequence].”

Prophet Muhammad ﷺ, as reported by Abu Hurayrah, said in the famous ḥadīth regarding the hypocrites:

آيةُ الْمُنَافِقِ ۛتَلَّاثٌ إِذَا حَدَّثَ كَذَّبَ، إِذَا وَعَدَ أَخْلَفَ، إِذَا اتَّبَعَ خَانَ

"The signs of a hypocrite are three: Whenever he speaks, he tells a lie. Whenever he promises, he always breaks it (his promise)."

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Whenever he is entrusted, he betrays (proves dishonest). (If you keep something as a trust with him, he will not return it).”

However, a situation of war may provide some exceptions. At least in terms of honesty, there may be some clear exceptions where lying (i.e. the opposite of honesty) is permitted. It is narrated that Asma’ binti Yazīd said that Prophet Muḥammad ﷺ said:

لا تجعل الكذب إلا في ثلاث: تجعل الرجل لمراة ليضيعها والكذب في الحرب و الكذب ليصلح بين الناس

“It is not lawful to lie except in three cases: Something the man tells his wife to please her, to lie during war, and to lie in order to bring peace between the people.”

It must be noted that the authenticity of prophetic narrations is a big deal and subject to a rigorous critical process towards its sanad (chain of narrators) and mattan (content) even before thinking of interpreting it. Narrations are classified into either saḥih (authentic), ḥasan (good), daʿif (weak), and various others considered worse than daʿif such as fabricated, no chain of narrators found, etc. The process is very rigorous, and for the purpose of legal rulings generally only saḥih and ḥasan narrations can be considered.

Having that said, there is a discussion regarding the authenticity this narration. Al-Tirmidhi in that same ḥadith commented that such a narration is ḥasan gharib (the chain is good, but one narrator is alone in narrating it), and Al-Albani said it is authentic. In the chain of narrators there is Shahar ibn Hawshab, and the scholars differ about him but it seems that most of them say he is honest but weak and Ibn Hajr seems to agree with this latter view. However, at least the mattan (content) seems to be correct because it is corroborated by another authentic ḥadith.

Further, there is a famous narration authentically reported by various companions of Prophet Muḥammad ﷺ:

الحرب خذعة

“War is deceit.”

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50 Muhammad ibn Ismā’īl Al-Bukhārī, Sahih Al-Bukhari, vol. 1 (Riyadh: Darussalam, 1997), hadith no. 33.
51 Muhammad ibn ʿĪsā al-Sulamī Al-Tirmidhī, Jami Al-Tirmidhī, vol. 4 (Riyadh: Darussalam, 2007), hadith no. 1939.
52 For the general process, see: Syed Abdul Majid Ghouri, Pengenalan Ilmu Mustalah Al-Hadith (Selangor Darul Ehsan: Darul Syakir Enterprise, 2017).
54 See: Ibn Ḥajar Al- Asqalānī, Taqrib Al-Tahdīth (Syria: Dar al-Rashid, 1406), 269.
55 Muslim ibn al-Ḥaḍhāj Al-Naysābūrī, Sahih Muslim, 2nd ed., vol. 6 (Riyadh: Darussalam, 2007), hadith no. 6633-6634.
A famous narration concerning deception is regarding the assassination of Ka‘b ibn Ashraf by Muhammad ibn Maslama. Ka‘b ibn Ashraf was a Jewish man from the tribe of Banū Al-Naḍīr who, after the battle of Badr, slandered Prophet Muhammad and went to Makkah to provoke the Quraysh. After obtaining explicit permission to use deception from Prophet Muhammad, Muhammad ibn Maslama approached Ka‘b ibn Ashraf, requesting help and conversing with him to get closer. Eventually, Ibn Maslama tricked Ka‘b until he was allowed to be very close to then strongly hold him allowing Ibn Maslama’s companions to commit the mortal strike.

As an important side note, at first glance the aforementioned narration does not seem to tell a story of war considering that the assassination took place after the battle of Badr was over. The tribe of Banū Al-Naḍīr (where Ka‘b bin Ashraf belonged) were not, as a clan, in war with the Muslims at the time either. However, the Muslims who had just fought in the battle of Badr were still in a state of war with the Quraysh and this assassination was related to Ka‘b bin Ashraf’s assistance and provocations to the Quraysh. This is why the narration is among the common basis used by jurists to rule that deception is permissible during warfare. Additionally, Imam Al-Bukhari, Imam Muslim, and Imam Abu Dawud recorded the narration of the assassination in chapters titled ‘Book of Jihad’, ‘Book of Military Expeditions’ and the ‘Book of Jihad and Expeditions’ respectively. The choice of chapter titles usually indicate how the compilers understood the narrations in the chapter, especially in case of Imam Al-Bukhari it is known that his chapter titles indicate fiqh al-Bukhari (the legal rulings of Al-Bukhari).

In the later generations, numerous Islamic scholars and jurists have written about the permissibility of deception in form of lying during warfare. Imam al-Tabari noted that there is a difference of opinion regarding the permissibility of lying during warfare. Al-Ṭabarī said that some jurists rule that warfare only ‘misleading’ or ‘white-lying’ is permitted (perhaps the equivalent of ‘white lying’), but he said that the correct opinion is to say that ‘full lying’ is permissible during warfare. In this issue, Al-Nawawī holds the opinion that ‘white-lying’ is

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preferable to full lying, but both are permissible.\textsuperscript{62} He argues that lying is permissible in times of war or any similar situation which requires such a lie to save one’s own life or that of others.\textsuperscript{63}

Another scholar, Ibn Ḥajar, explains that the idea of deception is to display something which is different from the truth. In other words, masking reality with illusion.\textsuperscript{64} He noted that one should always beware of deception and do their best to deceive the enemy, because one who is unaware of deception would be at great loss.\textsuperscript{65} Ibn Ḥajar further cites other jurists such as Ibn al-ʿArabi who said that ruses can be done by deceiving the enemy or ambushing.\textsuperscript{66} He also cited Ibn al-Munir who explained that the best way to fight a war is to skillfully deceive the enemy, and not merely relying on face-to-face confrontation which may risk more casualties on the attacker rather than using deception properly.\textsuperscript{67} As can be seen in this explanation, there is a strong sense of maṣlahat in this rule.

The warrior and jurist Imam ibn Nuhās explained more kinds of deception which should be done by the Muslims. He mentioned the importance of espionage by sending spies to infiltrate the enemy ranks: to find out as much as possible about the enemy’s strength, causing disruption among their ranks, and to feed the enemy with false information about the Muslim army.\textsuperscript{68} He also mentioned the importance of identifying hidden traps or other psychological warfare that may affect the enemy morale.\textsuperscript{69}

2. Trustworthiness, Treachery, and War

With respect to trustworthiness, there are also endless evidence of its importance. In fact, the term amānah is derived from the root ام من, from which the word īmān (faith) is also derived from.\textsuperscript{70} Allah says in the Qurʾān, Surah Al-Anfāl (8) verse 27:

\begin{quote}
“O you who have believed, do not betray Allah and the Messenger or betray your trusts while you know [the consequence].”
\end{quote}

He also decrees in Surah al-Nisā (4) verse 58:

\begin{quote}
إِنَّ اللَّهَ يَأْمُرُكُمْ أَن تُؤَدُّوا الْمَانََتِ إِلََ  أَهْلِهَا وَإِذَا حَكَمْ تُم بَينَْ النَّاسِ أَن تََْكُمُوا بِِلْعَدْلَِۚ إِنَّ اللَّهَ نِعِمَّا يَعِظُكُم بِهِِۗ إِنَّ اللَّهَ كَانَ سََِيعًا بَصِيًْا
\end{quote}

\textsuperscript{63} Yahya ibn Sharaf Al-Nawawī, Šahih Muslim Šarḥ Al-Nawawī, vol. 4 (Damascus: Dar al-Khayr, 1416), 420.
\textsuperscript{64} Al-ʿAsqalānī, Fath Al-Bāri Fi Sharḥ Šahih Al-Bukhārī, 1379, 2:183.
\textsuperscript{65} Al-ʿAsqalānī, 2:183.
\textsuperscript{66} Al-ʿAsqalānī, 2:183.
\textsuperscript{67} Al-ʿAsqalānī, 2:183.
\textsuperscript{69} Ibn Nuhās, 1078–79.
\textsuperscript{70} Lane, An Arabic–English Lexicon: In Eight Parts, 1:102.
“Indeed, Allah commands you to render trusts to whom they are due and when you judge between people to judge with justice. Excellent is that which Allah instructs you. Indeed, Allah is ever Hearing and Seeing.”

Ibn Kathir explained in his tafsīr regarding this verse that the obligation to fulfil trusts apply both to the rights of Allah (e.g. ṣalāt, zakāt, shawm, etc) as well as the rights of fellow humans which includes whatever has been trusted towards each other.\(^{71}\) He further cites\(^{72}\) a narration where Prophet Muhammad ﷺ is reported to have said:

أَوْ الأَمَانَةَ إِلَىٰ مَنْ أَتَمَنَّكََ وَلَا تَخُنْ مَنْ خَانَكَ

“Render the trust back to the one who entrusted it to you, and do not betray the one who betrayed you.”\(^{73}\)

When it comes to trustworthiness, there seems to be a different rule concerning exceptions. While war becomes an exception towards the prohibition of lying, there are dalā‘il which instead prohibit treachery (i.e. the opposite of trustworthiness) specifically during warfare. Allah says in Surah Al-Anfāl (8) verse 58:

وَإِمَّا تَََافَنَّ مِن ق َوْ مٍ خِيَانَةً فَانبِذْ إِلَيْهِمْ عَلَى  سَوَاءٍَۚ إِنَّ اللَََّّ لََ يُُِبُّ الَْْا

“If you [have reason to] fear from a people betrayal, throw [their treaty] back to them, [putting you] on equal terms. Indeed, Allah does not like traitors.”

Ibn Kathir mentioned that this verse is especially related to peace treaties among nations when there is a fear that the other party might betray the said treaty.\(^{74}\) The final part of the verse (“Indeed, Allah does not like traitors”) refers not only generally towards traitors or the other party who wishes to betray but includes treachery against the disbelievers even when there is fear of treachery on

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\(^{71}\) Ismail ibn Katsir, Shahih Tafsir Ibnu Katsir, ed. Safiurrahman Al-Mubarakfuri, vol. 2 (Jakarta: Pustaka Ibnu Katsir, 2016), 559.

\(^{72}\) ibn Katsir, 2:559.

\(^{73}\) There is a discussion regarding this narration: it is found are from two different chains i.e. Yusuf bin Mahk and Abu Hurayrah respectively in: Abu Dawud Sulaymān ibn al-Ash’ath Al-Sijistānī, Sunan Abu Dawud, vol. 4 (Riyadh: Darussalam, 2008), ḥadīth no. 3534-3535. Darussalam, the publisher of this book, mentioned that those narrations are not authentic: Al-Sijistānī, 4:154. Afterall, the Abu Hurayrah chain has a narrator named Sharik ibn ‘Abdullah who is noted as honest by the scholars of ḥadīth, but some say he has bad memory while Imam Bukhari and Muslim lists him as a supporting (not main) narrator. See: Yūsuf ibn ‘Abd al-Rahman Al-Mizzā, Tahdhib Al-Kamal, vol. 12 (Beirut: Mu’assasah al-Risalah, 1400), 462; Al-ʿAsqalānī, Taqrib Al-Tahdhib, 266. The other chain (i.e. Yusuf bin Mahk) seems to have no issue except Yusuf bin Mahk himself who is a Tābi’in and did not meet the Prophet himself. However, Al-Albani ruled both narrations to be authentic because of the different chains of narrators which may corroborate each other: Muḥammad Nāṣiruddin Al-Albānī, Irsu Al-Ghalil, vol. 5 (Beirut: Al-Maktab al-Islami, 1405), 381. At the very least, the mattu does not seem to contradict the other basis cited in this article and can at least be used to corroborate the other basis.

their part.\textsuperscript{75} Further, Mu‘āwiyyah withdrew from an attack he was launching against the Byzantines when their peace treaty had just ended, because ‘Amr ibn ‘Abasah warned him that such an attack would be treasonous as Prophet Muḥammad ﷺ said:

\begin{align*}
\text{من كان بينه وبين قومه عهد فلا يشتد عقدة ولا يبتغى حقه حتى يتغضب أمدها أو}
\end{align*}

“Anyone who has a covenant with people, he is not to strengthen it nor loosen it, until the covenant has expired, or both parties bring it to an end.”\textsuperscript{76}

The above narration shows that two companions (i.e. Mu‘āwiyyah and ‘Amr ibn ‘Abasah) of Prophet Muḥammad ﷺ have understood that treaties should be ended fairly even for the enemy and even in the event when the that enemy is indicated to intend to betray the treaty.\textsuperscript{77} In addition, narrated by Buraydah, Prophet Muḥammad ﷺ said:

\begin{align*}
\text{اغزوا باسم الله في سبيل الله فانزلوا من كفر بن الله اغزوا ولا تعلموا ولا تغِلروا ولا}
\end{align*}

“Fight in the name of Allah and in the way of Allah. Fight against those who disbelieve in Allah. Make a holy war, do not embezzle the spoils; do not break your pledge; and do not mutilate (the dead) bodies; do not kill the children.”\textsuperscript{78}

Allah further also decrees in Surah al-Nisā’ (4) verse 58:

\begin{align*}
\text{إن الله يأمرك أن تُؤَدُوا الأمانات إلى أهلها وإذا حكمتم بين الناس أن تحكموا}
\end{align*}

\begin{align*}
\text{بالعدل إن الله نعمًا يعظكم به إن الله كان سميعًا بصيرًا}
\end{align*}

“Indeed, Allah commands you to render trusts to whom they are due and when you judge between people to judge with justice. Excellent is that which Allaah instructs you. Indeed, Allaah is ever Hearing and Seeing.”

Ibn Kathīr explained in his tafsīr regarding this verse that the obligation to fulfill trusts apply both to the rights of Allah (e.g. salāt, zakāt, shawm, etc) as well as the rights of fellow humans which includes whatever has been trusted towards each other.\textsuperscript{79} He further cites\textsuperscript{80} a narration where Prophet Muḥammad ﷺ is reported to have said:

\begin{align*}
\text{أَوَةَ الأمانة إلى من الفعتن وإلا تعلم من حانك}
\end{align*}

\textsuperscript{75} ibn Katsir, 4:107–9.

\textsuperscript{76} Al-Sijistānī, Sunan Abu Dawud, 2008, 3:hadith no. 2759; Muhammad ibn ’Īsā al-Sulamī Al-Tirmidhī, Jami Al-Tirmidhi, vol. 3 (Riyadh: Darussalam, 2007), hadith no 1580.

\textsuperscript{77} This is also the understanding of Ibn Kathīr. See: ibn Katsir, Shahih Tafsir Ibnu Katsir, 2016, 4:107–9.

\textsuperscript{78} al-Naysābūrī, Sahih Muslim, 5:hadith no. 4522.

\textsuperscript{79} ibn Katsir, Shahih Tafsir Ibnu Katsir, 2016, 2:559.

\textsuperscript{80} ibn Katsir, 2:559.
“Render the trust back to the one who entrusted it to you, and do not betray the one who betrayed you.”  

Therefore, when discussing the permissibility of deception during warfare, the jurists speak of how it is permissible to lie but not to commit treason. By ‘treason’ (khiyānat), in terms of language, it means “to be entrusted but did not fulfill it faithfully/sincerely, and to betray covenants/agreements.” In addition, Al-Raghib said “Khiyānat and nifāq are one same thing. However, khiyānat applies to covenants, while amānah and nifāq applies to matters of the religion (dit)... Khiyānat is to go against the truth and secretly breach covenants.” The strong relation between treason and treaties is further cemented in a ḥadīth reported by Anas ibn Mālik who narrated that Prophet Muhammad ﷺ said:

لا إيمان يَسْنَ لا أمانة لهَّ، ولا دين يَسْنَ لا غْنَدَه لهِّ

“There is no faith in those who do not have amānah, and there is no religion in those who do not fulfill their covenants/agreements”.

The jurists seem to follow the aforementioned understanding and notes how ‘treachery’ refers to the breaking of treaties or promises. Al-‘Aynī cites a narration where ‘Umar ibn Al-Khaṭṭāb declared that hinting safe passage towards an enemy soldier only to trick and then kill that enemy soldier is an act of treachery and punishable by death. This situation may seem to be analogous to any other scenario where the enemy is invited to or promised safety from attack (e.g. truces and negotiation), where making such invitation or promise only to betray it would likewise be considered as treachery.

81 These narrations are from two different chains i.e. Yusuf bin Mahk and Abu Hurayrah respectively in: Al-Sijistānī, Sunan Abu Dawud, 2008, 4:hadith no. 3534-3535. Darussalam, the publisher of this book, mentioned that those narrations are not authentic: Al-Sijistānī, 4:154. Afterall, the Abu Hurayrah chain has a narrator named Sharik ibn ‘Abdullah who is noted as honest by the scholars of hadith, but some say he has bad memory while Imam Bukhari and Muslim lists him as a supporting (not main) narrator. See: Al-Mizzī, Tahdhib Al-Kamāl, 12:462; Al-‘Asqālānī, Taqrib Al-Tahdīth, 266. The other chain (i.e. Yusuf bin Mahk) seems to have no issue except Yusuf bin Mahk himself who is a Tābi’in and did not meet the Prophet himself. However, Al-Albānī ruled both narrations to be authentic because of the different chains of narrators which may corroborate each other: Al-Albānī, Irsal Al-Ghalil, 5:381. At the very least, the matn does not seem to contradict the other basis cited in this Sub-Chapter and can at least be used to corroborate the other basis.


84 Narrated in the Musnad of Imam Ahmad: Ahmad ibn Ḥanbal, Musnad Muḥammad Ahmad, ed. Shu‘ayb Al-Arnawth (Tahqīq), vol. 19 (Beirut: Mu‘assasah al-Risalah, 1421), hadith no.12383; Ahmad ibn Ḥanbal, Musnad Muḥammad Ahmad, ed. Shu‘ayb Al-Arnawth (Tahqīq), vol. 20 (Beirut: Mu‘assasah al-Risalah, 1421), hadith no.12567 and 13199. All of these narrations have Muḥammad ibn Sulaym in the chain, who is honest but weak according to many scholars: Ibn Ḥajar Al-‘Asqālānī, Tahdhib Al-Tahdīth, vol. 9 (India: Dā‘irah Al-Ma‘ārif Al-Saghīr, 1326). 195. However, Muḥammad ibn Sulaym is supported by other chains so their status are elevated to ḥasan according to al-Arnawth (in the aforementioned citation of the Musnad in this footnote) and authentic according to Al-Albānī: Muḥammad Nāṣiruddīn Al-Albānī, Suhb Jami‘ Al-Ṣaghīr, vol. 2 (Beirut: Maktāb al-Islām, 1988), 1205.

Imam Al-Nawawi mentioned that there is a consensus that deception is impermissible if it results in violating agreements or *amān* (safety guarantee).\(^\text{86}\) Al-Shaybānī explains that even Muslims who have treacherously obtained permission to enter the enemy territory (e.g. pretending to be an ambassador or emissary, forging documents, *etc*) must still honor that entry permission.\(^\text{87}\) Meaning, that they must not commit harm in the territory of the enemy because the entry permission is like a safety guarantee agreement. This position is also endorsed by Al-Sarkhāšī who ruled that even in situations where the Muslims may end a treaty with the enemy, fair warning must be given towards that enemy that such treaty is to be ended or else it is considered as an act of treachery which is unacceptable.\(^\text{88}\)

Modern jurists seem to echo the same ruling. ‘Abdullah ‘Azzām, for example, rules that using peace agreements as part of an act of ruse to deceive the enemy is an unlawful act of treachery.\(^\text{89}\) He adds also that, in a modern context, visas are similar to *amān* thus Muslims committing any acts of violence in the state which gave her/him that visa is considered as treason.\(^\text{90}\)

Muhammad Hamidullah noted that it is impermissible to commit acts of ‘treachery and perfidy’ (he did not define these two terms),\(^\text{91}\) and also that treaties which prohibit certain acts during war must be obeyed as long as the treaty lasts.\(^\text{92}\) Al-Qardhawī also explains that it is permissible to lie during warfare and commit other deception towards the enemy but it is prohibited to do so in a manner that breaches agreements or *amān*.\(^\text{93}\)

**Suicide attackers feigning as civilians: a verdict**

After considering the aforementioned explanation, the conclusion regarding suicide attackers feigning as civilians can be found. However, more considerations will need to be made.

1. **Suicide Bombers Feigning as Civilians: Is It Treachery?**

There seems to be nothing to suggest that a combatant disguising as a civilian would, in itself, constitute as breaking a treaty or promise. Even though

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\(^\text{86}\) Al-Nawawi, *Ṣaḥīḥ Ṭaḥārīm Sharḥ Al-Nawawi*, 1416, 3:404.


\(^\text{90}\) ‘Azzām, 14–18, 50. This is why some scholars suggest that, although ‘Azzām was the founder of Al-Qaeda, he would not have approved of the infamous 9/11 attack to the World Trade Center had he have been still alive at the time. Although, ‘Azzām’s theological and operational positions are different from Osama bin Laden (and, consequently, different from the Al-Qaeda we know today). See: Muhammad Haniff Hassan and Mohamed Redzuan Salleh, “Abdullah Azzam: Would He Have Endorsed 9/11?,” *RSIS Commentaries*, 2009, https://www.rsis.edu.sg/rsis-publication/rsis/1188-abdullah-azzam-would-he-have/#.WRFL_dKGPIU.

\(^\text{91}\) Hamidullah, *Muslim Conduct of State*, 205.

\(^\text{92}\) Hamidullah, 208.

Muhammad Hamidullah cited that there was a tradition of combatants wearing identifying insignia, but it does not seem to suggest an obligation.\(^{94}\)

One may attempt to tweak the words around and suggest that presenting one-self as a civilian brings trust in the enemy combatants, therefore attacking in such state is a ‘break of trust’ thus ‘treacherous’. However, this seems to be pushing things too far. Further, such an interpretation will contradict the lesson obtained from the narration regarding Muhammad ibn Maslama explained earlier.

Muhammad ibn Maslama was known as a warrior. He was an \textit{ahl al-Badri} (i.e. fought in the Battle of Badr), and the assassination of Ka’b ibn Ashraf occurred not long after the battle of Badr and before the Battle of Uhud.\(^{95}\) However, when ibn Maslama approached Ka’b ibn Ashraf, he did not present himself as a combatant but simply as an average Muslim who was (pretending to be) fed up with Prophet Muhammad \(ﷺ\) and seeking for some help. Therefore, at the time it can be said that Muhammad ibn Maslama was pretending to be a normal civilian when approaching his target. However, the entire mission was on the orders of Prophet Muhammad \(ﷺ\), and Muhammad ibn Maslama specifically requested permission to lie which was then granted.\(^{96}\)

Having that said, from an Islamic perspective, it is difficult to classify suicide bombers feigning as civilians as an act that is, in itself, treacherous. The prohibition against treachery cannot be used to rule out such a method. Therefore, Muhammad Munir’s claim, at least to this extent, is disagreeable.

However, the above conclusion is a very general one, while specific circumstances may offer different conclusions. Some deceptions involving treachery can be potentially used as advantage for suicide missions. It is not unthinkable for a soldier to receive trust by first entering into an agreement with an intention to later break it and attack. It has been done before.

Approaching the end of the 19th century, Teuku Umar, a Muslim lord under the Aceh Sultanate during the war against the Dutch invaders. He famously pretended to cooperate with the Dutch to fight his fellow Aceh people only to later ambush the Dutch soldiers, killing them and seizing their weapons and supplies. Albeit the advantage that Teuku Umar’s tactic gave in the war, it is essential to evaluate the case from an Islamic standpoint.\(^{97}\)

\(^{94}\) Rather, it was simply due to \textit{maslaḥat} as to distinguish one’s forces from that of the opponent. See: Hamidullah, \textit{Muslim Conduct of State}, 235.


\(^{97}\) Arya Ajisaka, \textit{Mengenal Pahlawan Nasional} (Jakarta Selatan: PT Kawan Pustaka, 2018), 46. It is important to note that this is without any disrespect to Teuku Umar, which is a national hero of the Republic of Indonesia as per Presidential Decree No. 087/TK/1973. This does not mean to undermine his efforts, struggle, and martyrdom for the independence of Aceh and Indonesia in any way. Islam teaches that only Prophet Muhammad \(ﷺ\) is free from error. Everyone else can make mistakes, however a person who does \textit{ijtihad} there are two rewards when they are correct and one reward when they are incorrect. See: Muhammad ibn Ismā’īl Al-Bukhārī, \textit{Sahih Al-Bukhari}, vol. 9
What Teuku Umar agreed and promised to do for the Dutch invaders was not only treason towards the Islamic state (i.e. the Sultanate of Aceh) but a promise to fight against and very likely kill fellow Muslims of the Aceh fighters. Therefore, the agreement that Teuku Umar with the Dutch was invalid and therefore not binding according to Islamic law as the object of agreement is a violation of the Shari’ah. Consequently, legally under Islamic law, there was no agreement for Teuku Umar to betray. However, nonetheless the Dutch had placed their trust and amānah and, regardless of the other factors, Teuku Umar double-crossing them is still a breach of amānah.

Much more recently in 2010, a Jordanian doctor named Humam Khalil Abu-Mulal al-Balawi was working with the Jordanian intelligence and the CIA to feed them information on Al-Qaeda. He has been doing so for a while, until one day he was thought to be ready to deliver some important information. Instead, after being escorted to meet important CIA officials to provide such information, he triggered a bomb which destroyed himself and the seven CIA officials with him. If one considers the USA and Al-Qaeda to be in war with each other, perhaps the CIA can be considered as combatants. However, that Al-Balawi was initially working with the Jordanians and the CIA (whether as a triple agent from the start or ‘converting’ after). This implies that there was an agreement, which Al-Balawi then betrayed.

By participating as an informant like this, Al-Balawi is technically no longer a civilian. However, this illustrates an example where treachery towards agreements or promises has been committed in order to reach a good position from which to commit a suicide attack. It is not impossible that other combatants can pretend to be logistics suppliers or the likes (i.e. agreeing to provide services and thus given access to the enemy), feigning as civilians, to then get close to the enemy and commit suicide attacks. In this case, then such an act may be classified as treachery.

Therefore, as far as the Islamic notion of treason is concerned, feigning as civilians is not in itself treacherous except when it is committed in combination with breaking treaties or promises. However, this is not the end of the discussion regarding this matter. There are other matters that would need to be discussed that may affect the conclusion as explained in the following Sub-Sections.

2. Maslahat Considerations

It has been explained earlier that mašlaḥat is a very important consideration in deriving rulings concerning the Islamic laws of war. Certain decisions may be permissible in its original rule, but specific circumstances may cause muḍḍar (loss) and therefore should not be done.

(Riyadh: Darussalam, 1997), hadith no.7352. Muslim ibn al-Ḥajjāj Al-Naysābūrī, Sahih Muslim, vol. 4 (Riyadh: Darussalam, 2007), hadith no.4487-4489. These hadith mention judge rulings, but they are understood to apply also to ijtihad in general. See: Al-Utsaimin, Ushul Fiqih, 129-30.


99 Harnden.
Especially in the era of modern urban warfare, where the risk of civilian losses has increased exponentially and practically inevitable. One can only imagine the psychology of a soldier during urban warfare, and how difficult it will be when a person in civilian outfit approaches or makes sudden movements, while the opponent is known to feign as civilians. Commenting on the war in Afghanistan, The Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions reported that, if the Taliban keeps on feigning as civilians while committing suicide bombing, it would be more difficult for the opposing force to determine whether an incoming civilian is really a civilian or a suicide bomber. Also commenting on Afghanistan, the Human Rights Watch noted that, due to numerous suicide bombers feigning as civilians, the rate of soldiers erroneously shooting actual civilians actually potentially increases.

Therefore, even if the original rule of feigning civilian status may be permissible, such a tactic may only be used when the *maṣlaḥat* outweighs the *muḍarat*. Considering the potential civilian losses due to the habit of feigning as civilians as explained in the previous paragraph, it may be difficult to find any situation where the *maṣlaḥat* is higher than the potential calamities.

It seems that, given the reality of modern warfare, exceptions may be made only in very special circumstances where extreme *maṣlaḥat* is to be attained and massive *muḍarat* is to be avoided. Even in such circumstances it must be only conducted after very careful deliberations by the commanders and only conducted very rarely instead of on a regular basis. An example to this was when the Columbian forces disguised as a humanitarian mission to save hostages from notoriously hostile rebel groups. This case is not exactly about feigning civilians, but the logic used is applicable by analogy because it may illustrate an example where the otherwise unlawful deception averted a much greater potential *muḍarat*.

Another potential exception would perhaps be naval warfare, as it does not share the difficulties of urban warfare such as the density of civilian population. Also, civilian ships can be easily detected from miles away unlike in urban warfare.

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where people can suddenly show up just around the corner (hence giving time for proper inspection). In this situation, the risk of future civilian casualties would be much less and therefore more chances for feigning civilians to be conducted in a manner that does not cause higher muḍarat than maṣlahat.

3. Modern IHL Considerations

It could be seen that, in principle, Islamic law approaches the question of deception and its limitations in a different way from modern IHL. Modern IHL seems to treat the issue of perfidy from the sense of protecting non-combatants. On the other hand, Islamic law not only shares the same interest as explained in the previous sub-section. Rather, it also prohibits betrayal of agreements or pledges which modern IHL does not seem to touch. Therefore, arguably at least in theory, the Islamic laws of war covers more than modern IHL in this regard.

Nonetheless, there may be some room for the Muslims to adopt these provisions of modern IHL to further solidify the Islamic law interest to protect non-combatants. Most Muslims are organized into nation states, and a vast majority of them have ratified most modern IHL instruments. Therefore, those nations including Muslim nations who have consented to be bound by AP I must therefore obey its contents to the extent that it does not contradict the Qur’ān or Sunnah.

Particularly referring to Article 37(1)(c) of AP I, committing attacks while feigning as civilians would be a breach of the treaty and therefore an act of treachery. After all, feigning as civilians in Islamic law is not really a particular command from Allah for the Muslims to do but simply one possible strategy to undertake if there is maṣlahat in it. Such a provision to prohibit this type of strategy does not seem to violate the Qur’ān or Sunnah, in the sense that it does not contradict a prohibition or deny an obligation. Therefore it may seems that this provision could be seen as valid. In addition to that, if such rule is a well-practiced customary international law, it may also be Islamically binding by virtue of reciprocity according to fiqh al-siyar as explained earlier.

However, there is some problem when discussing non-State Islamic fighting groups, as they are not parties to treaties –not even the Additional Protocol II of the Geneva Conventions 1949 (1977) (hereinafter, AP II) which regulates non-international armed conflicts. Even from the perspective of international law, there are some question raised towards the legal ratio behind the binding nature of the AP II towards non-state actors.104

This may lead to some problems as to whether, as a question of legal theory, non-state armed groups can be bound by such treaties.105 In addition, it is debatable whether the rules related to perfidy in non-international armed conflicts


105 Kotlik, 6–14.
(as per AP II) have customary international law status. However, if in fact this rule is practiced in non-international armed conflicts or at least by the opponent of the Muslims, then non-state Islamic fighting groups must also abide by the prohibition to disguise as civilians when committing suicide attacks by virtue of reciprocity.

4. The Question of Reprisals

It is important to note that in case when there are strong indications that the enemy combatants are about to commit treachery as understood in fiqh al-jihād, one must practice caution in deciding how to act. Sub-Section “Trustworthiness, Treachery, and War” cited some dalil prohibiting to betray even those who betrayed the Muslims. While the authenticity of some of the dalil may be disputed, still the content is corroborated by the other general Qur’ān verses and aḥadith regarding the impermissibility of committing treason. One especially relevant was Surah Al-Anfāl (8) verse 58 which indicates that betrayal may not be responded by betrayal, although this verse speaks of treaties in particular but the line of reasoning is similar and therefore relevant.

What might seem to be the more proper and safer response towards a strong likelihood of enemy combatants feigning amān or treaties is firstly to not pretend to believe in the feign. Pretending to believe in the enemy maneuver may indicate acceptance towards an offer (of amān, truces, or surrenders) and therefore placing a trust which is intended to be betrayed. The following step would depend on what the commander sees fit, for example to not allow the enemy to approach for their fake truce to begin with or to accept them but with extra caution in order to anticipate (but not attacking or breaking trust first).

On the contrary, modern IHL seems to allow treacherous perfidy to be committed as an act of reprisal. Reprisals are allowed if following these requirements: (a) conducted towards an enemy who has already committed a violation, with purpose to stop them from doing so, (b) as a last resort, (c) proportional, (d) decided by the highest level of government, and (e) stops when the enemy has ceased the violation. In addition, civilians may not be the object of reprisals as per Article 51(6) of AP I. Perfidy, by definition targets only enemy combatants, making it lawful to make perfidy when the enemy commits it first.

However, Islamic laws of war does not and cannot share the rules on reprisals with modern IHL insofar as the act of perfidy is also a treasonous act as understood by Islamic law, and retaliating in form of similar act of treachery. Otherwise, it may be possible for the Muslims to retaliate in other forms of lawful manners such as terminating existing agreements or conducting non-treacherous military operations. This even if the Muslim nation is party to AP I and other relevant treaties. However, if the enemy force commits an act of perfidy which

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106 Except as a minor breach, instead of a grave breach as per AP I. See: Solis, The Law of Armed Conflict: International Humanitarian Law in War, 422.


108 See also: Henckaerts and Doswald-Beck, 1:520.

109 See also Dehn, “Permissible Perfidy? Analysing the Columbian Hostage Rescue, the Capture of Rebel Leaders and the World’s Reaction,” 649–51.
does not constitute as treachery as understood by Islamic law (e.g. feigning as civilians), then a likewise reprisal may be warranted.

This means that, to some extent, Islamic law is more strict than modern IHL arguably providing more protection towards those who may otherwise be target of retaliation by treachery.

**Conclusion**

In the end, it is found that the act of disguising as civilians by suicide bombers is generally Islamically impermissible. Those who seem to be famously known to commit suicide attacks usually belong to non-state armed groups such as Al-Qaeda affiliated militias, although some state militias (such as the Taliban who previously ruled over Afghanistan, and the Al-Qassam brigades which is loosely related to Palestine). However, this is an Islamic obligation towards all Islamic fighters, regardless whether they belong to an Islamic state bound by modern IHL rules and/or customary laws.

Such obligation arises despite the act not necessarily seen as treacherous as per Islamic law standards. At least, it is not so in itself. The reason is that Islamic law sees that treachery, as an impermissible method deception, is an act of betraying treaties or promises. The act of disguising as civilians, at face value, does not seem to fall under that category.

However, this is merely a general conclusion absent context. Certain circumstances may affect the general ruling. For example, committing a suicide attack by feigning as a civilian while also breaking a treaty or promise would constitute as an act of treason. In addition, even if such an act does not constitute as treason under Islamic law, it might still be impermissible on the basis of either *fiqh al-siyar* (i.e. making reference to some parts of modern IHL) or *maslahat*. This change of ruling due to circumstances must be made on a case-per-case basis considering the situation at the time.

As a side but important note, it may be interesting to observe that, while answering the main problem, some ‘side discoveries’ can be found. As is explained in the previous section concerning coverage of protection and reprisals, there are areas where Islamic law may provide better protection than modern IHL. Possible higher standards provided by Islamic law can be found also in various other issues, such as the protection of the environment during war and treatment of war captives.  

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110 An environmental damage must be widespread, long-term and severe for it to be a violation towards IHL. On the other hand, mere disproportionate damage to the environment is already a violation of Islamic law. See: Fajri Matahati Muhammadin, “Fiqh Al-Jihad Dan Perlindungan Lingkungan Di Perang Modern,” in Diskursus Seol Islam, Politik, Dan Hubungan Internasional, ed. Muhammad Qobidi’ Ainul Arif (Yogyakarta: Deepublish Publisher, 2020).

111 Modern IHL requires good treatment towards war captives. Islamic law requires the same as a minimum requirement, but also religiously encourages the Muslims to provide for the captives better than what they provide for themselves as a *mandub* act. It must be noted that Islamic legal injunctions are not limited to ‘obligations’ (wajib) and ‘prohibition’ (haram), but also ‘encouraged’ (mandub, incurs divine reward if done), ‘discouraged’ (makruh, incurs divine reward if avoided), and *mubah* (permissible, neither good nor bad). See: Fajri Matahati Muhammadin,
Perhaps an open, fair, deep, and positive dialogue between international law and Islamic law might be very fruitful and constructive.

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