



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 *maṣlaḥat*.

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

Abstrak

Serangan bunuh diri adalah suatu metode serangan yang biasanya dinisbatkan kepada kelompok-kelompok militant Islam. Ada banyak aspek dari serangan bunuh diri sebagai metode perang yang dapat dibahas dari sudut pandang *fikih siyar* (hukum internasional Islam). Akan tetapi, artikel ini menyoroti sisi penyamaran sebagai warga sipil yang seringkali dilakukan pelaku serangan bunuh diri. Hanya sebagian kecil pakar yang membahas sisi ini, dan biasanya melupakan salah satu isu: bisa jadi taktik ini merupakan tipudaya berupa khianat yang tidak diperbolehkan. Artikel ini membahas apakah serangan bunuh diri dengan menyamar sebagai warga sipil merupakan khianat sebagaimana dikenal dalam fikih siyar. Disimpulkan bahwa taktik ini prinsipnya tidak tergolong khianat, tapi ia berubah menjadi bersifat khianat tergantung situasinya. Selain itu, taktik tersebut tetap bisa menjadi terlarang dalam syariat karena pengaruh Hukum Humaniter Internasional (HHI) dan *maṣlaḥat*.

Kata Kunci: jihad, Islam, penipuan, syiar, hukum internasional

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, 2001,¹ the world was not the same anymore. Suicide attacks became an infamous method associated with 'Islamic extremism', occurring in various places in the

¹ Thereafter known as the "9/11" incident. This is of course putting aside the conspiracy theories, which is a discussion for another forum. See: "The Official Theory | Twin Towers," ae911truth.org, accessed April 17, 2019, <https://www.ae911truth.org/evidence/the-official-theory-twin-towers>.

world such as the 2004 Bali Bombing² 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 *'amaliyyah istishhadiyyah*. Usually also referred to as 'martyrdom operations', *'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). *'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 *'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

² "Bali Death Toll Set at 202," *BBC News*, February 19, 2003, <http://news.bbc.co.uk/2/hi/asia-pacific/2778923.stm>.

³ Eric Schmitt, Ben Hubbard, and Rukmini Callimachi, "ISIS Attack in Syria Kills 4 Americans, Raising New Worries About Troop Withdrawal," *New York Times*, January 16, 2019, <https://www.nytimes.com/2019/01/16/world/middleeast/isis-attack-syria-troops.html>.

⁴ See *inter alia* Ahmed Al-Dawoody, "IHL and Islamic Law in Contemporary Armed Conflict: Expert Workshop, Geneva 29-30 October 2018" (Genev, 2019), <https://www.icrc.org/en/document/eyeperts-workshop-report-ihl-and-islamic-law-contemporary-armed-conflicts>.

⁵ Further reading on the subject: Yūsuf Al-Qarḍāwī, *Min Hadyi Al-Islām Fatāwā Al-Mu'āshirah*, vol. 3 (Beirut: Dar al-Ma'rifah, 2001), 503-5; Muhammad Afifi Al-Akiti, *Defending the Transgressed by Censuring the Reckless against the Killing of Civilians* (Germany and United Kingdom: Warda Publications and Aqsa Press, 2005); Nawaf Hail Takruri, *Al-'Amaliyyat Al-Istishhadiyyah Fi Al-Mizan Al-Fiqhiy* (Beirut: Dar al-Fikr, 1997); Muhammad Saalih Al-Munajjid, "Ruling on Blowing Oneself Up," *islamqa*, accessed March 14, 2019, <https://islamqa.info/en/answers/217995/ruling-on-blowing-oneself-up>; Mufti Siraj Desai, "Are What the Western Media Calls 'Suicide Bombings' Allowed in Islam?," *islamqa.org*, accessed March 14, 2019, <https://islamqa.org/hanafi/askmufti/44811>.

⁶ "Army Intelligence Chief Killed in Deadly Homs Attack," *Aljazeera*, February 26, 2017, <https://www.aljazeera.com/news/2017/02/army-intelligence-chief-killed-deadly-homs-attack-170225132504480.html>.

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.⁷ 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.⁸

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.⁹

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).¹⁰ However, likewise, mainstream international law has been criticized for 'othering' anything non-Western.¹¹ 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

⁷ See: Al-Qarḍāwī, *Min Hadyi Al-Islām Fatāwā Al-Mu'āshirah*, 3:503–5; Takruri, *Al-'Amaliyyat Al-Istishhadiyyah Fi Al-Mizan Al-Fiqhiy*; 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.

⁸ Ayman Al-Zawahiri, "Zawahiri's Letter to Zarqawi (English Translation)," Combating Terrorism Center, 8–9, accessed April 17, 2019, <https://ctc.usma.edu/app/uploads/2013/10/Zawahiris-Letter-to-Zarqawi-Translation.pdf>.

⁹ Muhammad Munir, "Suicide Attacks: Martyrdom Operations or Acts of Perfidy?," in *Islam and International Law: Engaging Self-Centrism from a Plurality of Perspectives*, ed. Marie-Luisa Frick and Andreas Th. Muller (Leiden-Boston: Martinus Nijhoff Publishers, 2013), 83–84; Muhammad Munir, "Suicide Attacks and Islamic Law," *International Review of the Red Cross* 90, no. 869 (2008): 82–84.

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, *Saudi Di Mata Seorang Al Qaidah* (Solo: Jazera, 2005), 85–138.

¹¹ See *inter alia* Antony Anghie, *Imperialism, Sovereignty, and the Making of International Law* (New York: Cambridge University Press, 2004); Makau Mutua, "Savages, Victims, and Saviors: The Metaphor of Human Rights," *Harvard International Law Journal* 42, no. 1 (2001): 201–46.

armies had their code of war which included a ‘principle of distinction’, and the Muslims were more faithful and loyal to peace agreements.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.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.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).¹⁵ Especially regarding the subject of law, in principle the central subject of Islamic law is only natural persons.¹⁶ This is because obedience is part of the obligation of worship in Islam, because the concept of ‘religion’ (*Al-Din*) in Islam encompasses

¹² Jean Pictet, *Development and Principles of International Humanitarian Law* (Geneva: Henry Dunant Institute, 1985), 15–17.

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

¹⁴ Christopher G. Weeramantry, *Islamic Jurisprudence: An International Perspective* (Palgrave Macmillan, 1988); Julie Fraser, “Exploring Legal Compatibilities and Pursuing Cultural Legitimacy: Islamic Law and the International Criminal Court,” in *Intersections of Law and Culture at the International Criminal Court*, ed. Julie Fraser and Brianne McGonigle Leyh (Edward Elgar Publishing, 2020); Awn S. Al-Khasawneh, “Islam and International Law,” in *Islam and International Law: Engaging Self-Centrism from a Plurality of Perspectives*, ed. Marie-Luisa Frick and Andreas Th Müller (Martinus Nijhoff Publishers, 2013), 29–44.

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

¹⁶ Nyazee, 110. There is debate on whether Islamic law recognises ‘legal persons’ as subject of law. Compare: Muhammad Taqi Usmani, “The Principle of Limited Liability,” in *Meezanbank’s Guide to Islamic Banking*, ed. Muhammad Imran Ashraf Usmani (Karachi: Darul Ishaat, 2002); Siti Kholifatul Rizkiah and Fajri Matahati Muhammadiyah, “A Critical Examination Towards The Islamic Discourse on ‘Limited Liability,’” *UUM Journal of Legal Studies* 11, no. 1 (2020): 1–36; Kevin F Forbes, “Limited Liability and the Development of the Business Corporation’(1986),” *Journal of Law, Economics, & Organization* 2, no. 1 (1986): 163–77.

not only theology and ritual worship but also 'obeying commands and heeding prohibitions'.¹⁷ Law, then, is an extension of that obedience to Allah.¹⁸

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.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)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'an and Sunnah as primary sources of law. Rejecting them (while putting other laws above the Qur'an and Sunnah) would render a Muslim as a disbeliever.²¹ As Allah says in various places in the Qur'an, *inter alia* in Surah al-Mā'idah (5) verse 50:

أَفَحُكْمَ الْجَاهِلِيَّةِ يَبْغُونَ وَمَنْ أَحْسَنُ مِنَ اللَّهِ حُكْمًا لِّقَوْمٍ 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:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ فَإِن تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِن كُنتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ذَلِكَ خَيْرٌ وَأَحْسَنُ تَأْوِيلًا

"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."

¹⁷ Muhammad bin 'Abd Allah Al-Suhaym, *Al-Islam Usuluhu Mabaadi'uhu* (KSA: Wizarah Al-Shu'un Al-Islamiyah wa al-Awqaf wa al-Da'wah wa al-Irshaad, 1421), 105. See also a linguistic semantic breakdown of the term *Al-Din* which would reveal the same: Syed Muhammad Naquib Al-Attas, *Prolegomena to the Metaphysics of Islam: An Exposition of the Fundamental Elements of the Worldview of Islam* (Kuala Lumpur: Institute for the Study of Islamic Thought and Civilizations, 1995), 42; Aḥmad Mukhtār, *Mu'jam Al-Lughah Al-'Arabiyyah Mu'Aṣirah* (al-Qāhirah: 'Alam al-Kutub, 2008), 796.

¹⁸ See: Umar F. Abd-Allah, "Theological Dimensions of Islamic Law," in *The Cambridge Companion to Classical Islamic Theology*, ed. Tim Winter (New York: Cambridge University Press, 2008).

¹⁹ Wahbah Al-Zuhaylī, *Fiqh Islam Wa Al-Adillatuhu*, vol. 8 (Jakarta: Gema Insani Press, 2011), 461–62; Musthafa Al-Khin and Musthafa Al-Bugha, *Konsep Kepemimpinan Dan Jihad Dalam Islam: Menurut Madzhab Syafi'i* (Jakarta: Darul Haq, 2014).

²⁰ 'Abd Al-Qādir 'Awdah, *Al-Tashri' Al-Jinā'i Al-Islāmī Muqāranan Bi Al-Qānūn Al-Waḍ'i* (al-Qāhirah: Maktabah Dar al-Turath, 2003), 634–63.

²¹ Imam ibn Katsir, *Shahih Tafsir Ibnu Katsir*, ed. Safiurrahman Al-Mubarakfuri, vol. 3 (Jakarta: Pustaka Ibnu Katsir, 2016), 149; Ibn Abī 'Alī Al-Ḥanafī, *Sharḥ Al-'Aqīdah Al-Ṭahawīyyah*, vol. 2 (Beirut: Mu'assasah al-Risalah, 1997), 446. See also: Haji Abdulmalik Abdulkarim Amrullah, *Tafsir Al-Azhar*, vol. 3 (Singapore: Pustaka Nasional PTE Ltd, n.d.), 1758–60.

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 *ijtihad* 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 as *ijmā'* ('consensus'), *qiyās* ('analogy'), *'urf* ('customary laws'), *maṣlahat* ('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, *maṣlahat* (benefit) is a particularly important consideration when deriving rulings, war maneuvers, or state policy in general.²⁷ It is however important to note that

²² Asep Sulhadi, "Mengenal Ayat-Ayat Hukum Dalam Al-Qur'an," *Jurnal Samawat* 1, no. 1 (2017): 4.

²³ Imam Al-Shafi'i, *Shafi'is Risalah: Treatise on the Foundations of Islamic Jurisprudence (Translated with an Introduction, Notes, and Appendices by Majid Khadduri)*, 2nd ed. (Cambridge: The Islamic Texts Society, 1987), 288; Nyazee, *Islamic Jurisprudence*, 214 and 263; Muhammad bin Shalih Al-Utsaimin, *Ushul Fiqih* (Yogyakarta: Media Hidayah, 2008), 128.

²⁴ Nyazee, *Islamic Jurisprudence*, 213–60; Mawil Izzi Dien, *Islamic Law: From Historical Foundations to Contemporary Practise* (Notre Dame: University of Notre Dame Press, 2004), 57–63.

²⁵ See: Muḥammad ibn Aḥmad ibn Abi Sahl Al-Sarakhsī, *Sharḥ Al-Siyār Al-Kabīr* (Egypt: Al-Shirkah al-Sharqiyyah li l-I'lānāt, 1971); Abū Ishāq Al-Fazārī, *Kitāb Al-Siyar* (Beirut: Mu'assasah al-Risālāh, 1408).

²⁶ Muhammad Hamidullah, *Muslim Conduct of State* (Lahore: Sh. Muhammad Ashraf, 2011), 18, 32–33; Aḥmad ibn `Abd al-Ḥalīm Ibn Taymiyyah, *Majmu' Al-Fatāwa*, vol. 31 (Dar al-Wafa, 1426), 19. See also on customary international law: Md Anowar Zahid and Rohimi B Shapiee, "Considering Custom in the Making of Siyar (Islamic International Law)," *JE Asia & Int'l L.* 3 (2010): 123; Hamidullah, *Muslim Conduct of State*, 34–37.

²⁷ Ahmed Al-Dawoody, *The Islamic Law of War: Justifications and Regulations* (New York: Palgrave Macmillan, 2011), 118; Abdul Wahab Khallaf, *Ilmu Ushul Fiqih* (Jakarta: PT Rineka Cipta, 1993), 123.

maṣlaḥat is derived from and finds its indicators in the Qur'ān and Sunnah, therefore *maṣlaḥat* must not contravene the Qur'ān 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 Qur'an 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

²⁸ Muḥammad Sa'īd Ramaḍān Al-Būthī, *Ḍawābiṭ Al-Maṣlaḥat Fī Al-Sharī'ah Al-Islāmiyyah* (Bayrūt: Mu'assasah al-Risalah, 1973), 129, 161, and 216; Nyazee, *Islamic Jurisprudence*, 198–99; Bakr bin Abdullah and Muhammad bin Shalih Al-Utsaimin, *Syarah Hilyah Thalibil Ilmi (Akhlaq Pencari Ilmu)* (Jakarta: Akbar Media, 2013), 215.

²⁹ Al-Sarakhsī, *Sharḥ Al-Siyār Al-Kabīr*, 1971, para 2741; Ibn Rushd, *The Distinguished Jurist's Primer*, trans. Imran Ahsan Nyazee Khan, vol. 1 (Reading: Garnet Publishing, 2000), 458–60; Wahbah Al-Zuhaylī, *Āthār Al-Ḥarb Fī Al-Fiqh Al-Islāmī* (Damascus: Dar Al-Fikr, 1419), 494–95.

³⁰ See *inter alia* Abdullah Azzam, *Jihad: Adab Dan Hukumnya* (Jakarta: Gema Insani Press, 1993), 24, 30.

³¹ Ibn Rushd, *The Distinguished Jurist's Primer*, 1:456–57.

³² Muḥammad ibn Ismā'īl Al-Bukhārī, *Sahih Al-Bukhari*, vol. 4 (Riyadh: Darussalam, 1997), ḥadīth no.3166.

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

³⁴ See: Ismail ibn Katsir, *Al-Bidayah Wa Nihayah: Masa Kulafa'ur Rasyidin*, ed. Muhammad bin Shamil As-Sulami (Jakarta: Darul Haq, 2004), 157–60; Muḥammad ibn Jarīr Al-Ṭabari, *The History of Al-Tabari*, trans. Khalid Yahya Blankinship, vol. 11 (New York: State University of New York Press,

Al-Walīd's tactical genius, the Muslims not only won but also managed to kill from 50.000 to 120.000 Romans while themselves losing only 3000.³⁵

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.³⁶ Even Sun Tzu, the famous strategist from ancient China, cannot emphasize enough on the importance of deception in warfare.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.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.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."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".⁴¹ Generally, treasonous deception is usually termed as perfidy⁴² 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..."⁴³

1993), 86–87, 98, 100–102; Agha Ibrahim Akram, *The Sword of Allah: Khalid Bin Al-Waleed* (Oxford: Oxford University Press, 2004), 425.

³⁵ ibn Katsir, *Al-Bidayah Wa Nihayah: Masa Kulafa'ur Rasyidin*, 157–60; Al-Ṭabari, *The History of Al-Tabari*, 11:86–87, 98, 100–102; Akram, *The Sword of Allah: Khalid Bin Al-Waleed*, 425.

³⁶ See generally: Homer, *The Iliad* (New York: Penguin Group, 1990).

³⁷ Sun Tzu, *The Art of War (Restored Translation)* (Pax Librorum Publishing House, 2009), 4–5.

³⁸ Emer De Vattel and Joseph Chitty, *The Law of Nations: Or, Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns* (PH Nicklin & T. Johnson, 1835), 358–59, 363.

³⁹ Patricia Zengel, "Assassination and the Law of Armed Conflict" (The Judge Advocate General's School, United States Army, 1991), 6–14.

⁴⁰ Zengel, 14.

⁴¹ Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, vol. 1 (Cambridge University Press, 2005), 203. See also Article 37(2) of API.

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

⁴³ Article 37(1) of API.

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)⁴⁴ is a general principle of international law applicable in all situations.⁴⁵

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.”⁴⁶

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.⁴⁷

⁴⁴ Jean Pictet et al., *Commentary on the Additional Protocols of 8 June 1977 of 12 August 1949*, ed. Yves Sandoz, Christophe Swinarski, and Bruno Zimmermann (Geneva: International Committee of the Red Cross and Martinus Nijhoff Publishers, 1987), para. 1483.

⁴⁵ See: Robert Kolb, “Principles As Sources Of International Law (With Special Reference to Good Faith),” *Netherlands International Law Review* 53, no. 1 (2006): 1–36; Michael P Van Alstine, “The Death of Good Faith in Treaty Jurisprudence and a Call for Resurrection,” *The Georgetown Law Journal* 93 (2005): 1885–1945; Tariq Hassan, “Good Faith in Treaty Formation,” *Vancouver Journal of International Law* 21 (1980): 443.

⁴⁶ Zengel, “Assassination and the Law of Armed Conflict,” 36.

⁴⁷ Jean-Marie Henckaerts and Louise Doswald-Beck, eds., *Customary International Humanitarian Law*, vol. 2 (Cambridge: Cambridge University Press, 2005).

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: *faṭānah* (intelligent), *tabligh* (conveys the message), and relevant to this article: *ṣiddīq* (truthful) and *amānah* (trustworthy).⁴⁸

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:

لِيَجْزِيَ اللَّهُ الصَّادِقِينَ بِصِدْقِهِمْ وَيُعَذِّبَ الْمُنَافِقِينَ إِنْ شَاءَ أَوْ يَتُوبَ عَلَيْهِمْ إِنْ اللَّهُ كَانَ غَفُورًا رَحِيمًا

“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 *amānah* is derived from the root ا م ن, from which the word *īmān* (faith) is also derived from.⁴⁹ Allah says in the Qur'ān, Surah Al-Anfāl (8) verse 27:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَخُونُوا اللَّهَ وَالرَّسُولَ وَتَخُونُوا أَمَانَاتِكُمْ وَأَنْتُمْ تَعْلَمُونَ

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

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

آيَةُ الْمُنَافِقِ ثَلَاثٌ إِذَا حَدَّثَ كَذَبَ، وَإِذَا وَعَدَ أَخْلَفَ، وَإِذَا أُؤْتِيَ حَانَ

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

⁴⁸ Miftah ibn Ma'mūn ibn 'Abdillah Al-Shianjūr, *Al-Hāshiyah Al-Martiyah 'alā Tijān Al-Durārī* (Cianjur: Ma'had al-Islāmī al-Salafi, n.d.), 15–16; Imam Zarkasyi, *Usuluddīn ('Aqā'id) Ala Madzhab Ahlu Al-Sunna Wa Al-Jama'ah* (Gontor: Trimurti Press, 2014), 58–59; Sayid Ahmad Al-Marzuki, *Ilmu Tauhid Tingkat Dasar: Terjemah Aqidatul Awam Makna Pegon Dan Terjemah Indonesia*, trans. Achmad Sunarto (Surabaya: Al-Miftah, 2012), 24; Muḥammad al-Nawawī Al-Jāwī, *Tijān A-Darari* (Surabaya: Mutiara Ilmu, 2010), 30–35.

⁴⁹ Edward William Lane, *An Arabic-English Lexicon: In Eight Parts*, vol. 1 (Beirut: Librairie du Liban, 1968), 102.

Whenever he is entrusted, he betrays (proves dishonest). (If you keep something as a trust with him, he will not return it).⁵⁰

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:

لَا يَجِلُّ الْكَذِبُ إِلَّا فِي ثَلَاثٍ يُحَدِّثُ الرَّجُلُ امْرَأَتَهُ لِيَرْضِيَهَا وَالْكَذِبُ فِي الْحَرْبِ
وَالْكَذِبُ لِيُصْلِحَ بَيْنَ النَّاسِ

“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.”⁵¹

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 *ṣaḥīḥ* (authentic), *ḥasan* (good), *ḍa'īf* (weak), and various others considered worse than *ḍa'īf* such as fabricated, no chain of narrators found, *etc.* The process is very rigorous, and for the purpose of legal rulings generally only *ṣaḥīḥ* and *ḥasan* narrations can be considered.⁵²

Having that said, there is a discussion regarding the authenticity this narration. Al-Tirmidhi in that same *ḥadīth* 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.⁵³ 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.⁵⁴ However, at least the *mattan* (content) seems to be correct because it is corroborated by another authentic *ḥadīth*.⁵⁵

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

الْحَرْبُ خُدْعَةٌ

“War is deceit.”⁵⁶

⁵⁰ Muḥammad ibn Ismā'īl Al-Bukhārī, *Saḥīḥ Al-Bukhari*, vol. 1 (Riyadh: Darussalam, 1997), ḥadīth no. 33.

⁵¹ Muḥammad ibn 'Īsā al-Sulamī Al-Tirmidhī, *Jami Al-Tirmidhi*, vol. 4 (Riyadh: Darussalam, 2007), ḥadīth no. 1939.

⁵² For the general process, see: Syed Abdul Majid Ghouri, *Pengenalan Ilmu Mustalah Al-Hadith* (Selangor Darul Ehsan: Darul Syakir Enterprise, 2017).

⁵³ Muḥammad Nāṣiruddīn Al-Albānī, *Ṣaḥīḥ Wa ḍa'īf Sunan Al-Tirmidhi*, vol. 2 (Riyadh: Maktabah al-Ma'arif, 1419), 356–57.

⁵⁴ See: Ibn Ḥajar Al-'Asqalānī, *Taqrib Al-Tahdhib* (Syria: Dar al-Rashid, 1406), 269.

⁵⁵ Muslim ibn al-Ḥajjāj Al-Naysābūrī, *Saḥīḥ Muslim*, 2nd ed., vol. 6 (Riyadh: Darussalam, 2007), ḥadīth no. 6633-6634.

⁵⁶ Al-Bukhārī, *Saḥīḥ Al-Bukhari*, 1997, 4:ḥadīth no.3028-3030; Muslim ibn al-Ḥajjāj al-Naysābūrī, *Saḥīḥ Muslim*, vol. 5 (Riyadh: Darussalam, 2007), ḥadīth no.4539-4540.

A famous narration concerning deception is regarding the assassination of Ka'ab ibn Ashraf by Muḥammad ibn Maslama. Ka'ab ibn Ashraf was a Jewish man from the tribe of Banū Al-Naḍīr who, after the battle of Badr, slandered Prophet Muḥammad ﷺ and went to Makkah to provoke the Quraysh. After obtaining explicit permission to use deception from Prophet Muḥammad ﷺ, Muḥammad ibn Maslama approached Ka'ab ibn Ashraf, requesting help and conversing with him to get closer.⁵⁷ Eventually, Ibn Maslama tricked Ka'ab until he was allowed to be very close to then strongly hold him allowing Ibn Maslama's companions to commit the mortal strike.⁵⁸

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'ab 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'ab 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.⁵⁹ 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).⁶⁰

In the later generations, numerous Islamic scholars and jurists have written about the permissibility of deception in form of lying during warfare. Imam al-Ṭabari noted that there is a difference of opinion regarding the permissibility of lying during warfare. Al-Ṭabari 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.⁶¹ In this issue, Al-Nawawī holds the opinion that 'white-lying' is

⁵⁷ Muḥammad ibn Ismā'īl Al-Bukhārī, *Sahih Al-Bukhari*, vol. 5 (Riyadh: Darussalam, 1997), ḥadīth no.4037; Al-Bukhārī, *Sahih Al-Bukhari*, 1997, 4:ḥadīth no.3031-3032; al-Naysābūrī, *Sahih Muslim*, 5:ḥadīth no. 4664; Abu Dawud Sulaymān ibn al-Ash'ath Al-Sijistānī, *Sunan Abu Dawud*, vol. 3 (Riyadh: Darussalam, 2008), ḥadīth no. 2768.

⁵⁸ Al-Bukhārī, *Sahih Al-Bukhari*, 1997, 5:ḥadīth no.4037; Al-Bukhārī, *Sahih Al-Bukhari*, 1997, 4:ḥadīth no.3031-3032; al-Naysābūrī, *Sahih Muslim*, 5:ḥadīth no. 4664; Al-Sijistānī, *Sunan Abu Dawud*, 2008, 3:ḥadīth no. 2768.

⁵⁹ Al-Bukhārī, *Sahih Al-Bukhari*, 1997, 5:ḥadīth no.4037; Al-Bukhārī, *Sahih Al-Bukhari*, 1997, 4:ḥadīth no.3031-3032; al-Naysābūrī, *Sahih Muslim*, 5:ḥadīth no. 4664; Al-Sijistānī, *Sunan Abu Dawud*, 2008, 3:ḥadīth no. 2768. Although Imam Al-Bukhari and Imam Abu Dawud also recorded the same narration in a different chapter in their works, i.e. 'The Book of Mortgaging' and 'The Book Of Kharāj, Fai', and Ijarah' respectively. See: Muḥammad ibn Ismā'īl Al-Bukhārī, *Sahih Al-Bukhari*, vol. 3 (Riyadh: Darussalam, 1997), ḥadīth no. 2510; Al-Sijistānī, *Sunan Abu Dawud*, 2008, 3:ḥadīth no.2786.

⁶⁰ Ibn Ḥajar Al-'Asqalānī, *Fath Al-Bārī Fī Sharḥ Ṣaḥīḥ Al-Bukhārī*, vol. 1 (Beirut: Dar al-Ma'rifah, 1379), 13.

⁶¹ Cited in: Yahya ibn Sharaf Al-Nawawī, *Ṣaḥīḥ Muslim Sharḥ Al-Nawawī*, vol. 3 (Damascus: Dar al-Khayr, 1416), 404.

preferable to full lying, but both are permissible.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.⁶³

Another scholar, Ibn Hajar, explains that the idea of deception is to display something which is different from the truth. In other words, masking reality with illusion.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.⁶⁵ Ibn Hajar further cites other jurists such as Ibn al-'Arabi who said that ruses can be done by deceiving the enemy or ambushing.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.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.⁶⁸ He also mentioned the importance of identifying hidden traps or other psychological warfare that may affect the enemy morale.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 ا م ن, from which the word *īmān* (faith) is also derived from.⁷⁰ Allah says in the Qur'an, Surah Al-Anfal (8) verse 27:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَخُونُوا اللَّهَ وَالرَّسُولَ وَتَخُونُوا أَمَانَاتِكُمْ وَأَنْتُمْ تَعْلَمُونَ

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

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

إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ إِنَّ اللَّهَ نِعِمَّا يَعِظُكُمْ بِهِ إِنَّ اللَّهَ كَانَ سَمِيعًا بَصِيرًا

⁶² Cited in: Ibn Hajar Al-'Asqalānī, *Fath Al-Bārī Fī Sharḥ Ṣaḥīḥ Al-Bukhārī*, vol. 2 (Beirut: Dar al-Ma'rifah, 1379), 184.

⁶³ Yahya ibn Sharaf Al-Nawawī, *Ṣaḥīḥ Muslim Sharḥ Al-Nawawī*, vol. 4 (Damascus: Dar al-Khayr, 1416), 420.

⁶⁴ Al-'Asqalānī, *Fath Al-Bārī Fī Sharḥ Ṣaḥīḥ Al-Bukhārī*, 1379, 2:183.

⁶⁵ Al-'Asqalānī, 2:183.

⁶⁶ Al-'Asqalānī, 2:183.

⁶⁷ Al-'Asqalānī, 2:183.

⁶⁸ Abū Zakariyā Muḥī Al-Dīn Ibn Nuhās, *Mashāri' Al-Ashwāq Ila' Maṣāri' Al-Ushāq* (Beirut: Dār al-Bashā'ir al-Islamiyyah, 1990), 1075–77.

⁶⁹ Ibn Nuhās, 1078–79.

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 Kathīr 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 cites⁷² a narration where Prophet Muḥammad ﷺ is reported to have said:

أَدِّ الْأَمَانَةَ إِلَى مَنِ اتَّمَمْتَهَا 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:

وَأَمَّا تَخَافَنَّ مِنْ قَوْمٍ خِيَانَةً فَانْبِذْ إِلَيْهِمْ عَلَى سَوَاءٍ إِنَّ اللَّهَ لَا يُحِبُّ الْخَائِنِينَ

“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 Kathīr 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

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-Raḥman Al-Mizzī, *Tahdhib Al-Kamal*, vol. 12 (Beirut: Mu'assasah al-Risalah, 1400), 462; Al-'Asqalānī, *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 Tābī'īn 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 Nāṣiruddīn Al-Albānī, *Irwā' Al-Ghalīl*, vol. 5 (Beirut: Al-Maktab al-Islami, 1405), 381. At the very least, the *matn* does not seem to contradict the other basis cited in this article and can at least be used to corroborate the other basis.

⁷⁴ Ismail ibn Katsir, *Shahih Tafsir Ibnu Katsir*, ed. Safiurrahman Al-Mubarakfuri, vol. 4 (Jakarta: Pustaka Ibnu Katsir, 2016), 107-9.

their part.⁷⁵ Further, Mu'āwiyah 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:

مَنْ كَانَ بَيْنَهُ وَبَيْنَ قَوْمٍ عَهْدٌ فَلَا يَشُدُّ عَقْدَهُ وَلَا يَحُلُّهَا حَتَّى يَنْقُضِي أَمَدَهَا أَوْ
يَنْبِذَ إِلَيْهِمْ عَلَى سَوَاءٍ

“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.”⁷⁶

The above narration shows that two companions (i.e. Mu'āwiyah 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.⁷⁷ In addition, narrated by Buraydah, Prophet Muḥammad ﷺ said:

اغْزُوا بِاسْمِ اللَّهِ فِي سَبِيلِ اللَّهِ قَاتِلُوا مَنْ كَفَرَ بِاللَّهِ اغْزُوا وَلَا تَعْلُوا وَلَا تَغْدِرُوا وَلَا
تَمْتَلُوا وَلَا تَقْتُلُوا وَلِيدًا

“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.”⁷⁸

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

إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا
بِالْعَدْلِ إِنَّ اللَّهَ نِعِمَّا يَعِظُكُمْ بِهِ إِنَّ اللَّهَ كَانَ سَمِيعًا بَصِيرًا

“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 Kathīr 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.⁷⁹ He further cites⁸⁰ a narration where Prophet Muḥammad ﷺ is reported to have said:

أَدِّ الْأَمَانَةَ إِلَىٰ مَنْ ائْتَمَنَكَ وَلَا تَخُنْ مَنْ خَانَكَ

⁷⁵ ibn Katsir, 4:107–9.

⁷⁶ Al-Sijistānī, *Sunan Abu Dawud*, 2008, 3:ḥadīth no. 2759; Muḥammad ibn 'Īsā al-Sulamī Al-Tirmidhī, *Jami Al-Tirmidhi*, vol. 3 (Riyadh: Darussalam, 2007), ḥadīth no 1580.

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

⁷⁸ al-Naysābūrī, *Sahih Muslim*, 5:ḥadīth no. 4522.

⁷⁹ ibn Katsir, *Shahih Tafsir Ibnu Katsir*, 2016, 2:559.

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.”⁸¹

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 fulfil it faithfully/sincerely, and to betray covenants/agreements.”⁸² 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 (*dīn*)... *Khiyānat* is to go against the truth and secretly breach covenants.”⁸³ The strong relation between treason and treaties is further cemented in a ḥadīth reported by Anas ibn Mālik who narrated that Prophet Muḥammad ﷺ said:

لَا إِيمَانَ لِمَنْ لَا أَمَانَةَ لَهُ، وَلَا دِينَ لِمَنْ لَا عَهْدَ لَهُ

“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”.⁸⁴

The jurists seem to follow the aforementioned understanding and notes how ‘treachery’ refers to the breaking of treaties or promises. Al-‘Ayni 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.⁸⁵ 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:ḥadīth no. 3534-3535. Darussalam, the publisher of this book, mentioned that those narrations are not authentic: Al-Sijistānī, 4:154. After all, 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: Al-Mizzī, *Tahdhib Al-Kamal*, 12:462; Al-‘Asqalānī, *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 Ṭābi‘īn 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: Al-Albānī, *Irwā Al-Ghalil*, 5:381. At the very least, the *mattn* does not seem to contradict the other basis cited in this Sub-Chapter and can at least be used to corroborate the other basis.

⁸² Abu al-Husayn Ahmad bin Faris, *Mu‘jam Maqayis Al-Lughah*, vol. 1 (Misr: Muṣṭafā al-Bāb al-Ḥalab wa Awladuh, 1972), 313.

⁸³ Cited in: ‘Abd al-Ra‘ūf ibn Tāj al-‘Arifin Al-Munāwī, *Tawqīf ‘alā Muḥammāt Al-Ta‘ārīf* (al-Qāhirah: ‘Alam al-Kutub, 1410), 160.

⁸⁴ Narrated in the Musnad of Imam Aḥmad: Aḥmad ibn Ḥanbal, *Musnad Imām Aḥmad*, ed. Shu‘ayb Al-Arnawth (Taḥqīq), vol. 19 (Beirut: Mu‘assasah al-Risalah, 1421), ḥadīth no.12383; Aḥmad ibn Ḥanbal, *Musnad Imām Aḥmad*, ed. Shu‘ayb Al-Arnawth (Taḥqīq), vol. 20 (Beirut: Mu‘assasah al-Risalah, 1421), ḥadīth 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-‘Asqalānī, *Tahdhib Al-Tahdhib*, vol. 9 (India: Dā‘irah Al-Ma‘ārīf Al-Nizāmiyah, 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-Albani: Muḥammad Nāṣiruddīn Al-Albānī, *Ṣaḥīḥ Jami‘ Al-Ṣaḥīr*, vol. 2 (Beirut: Maktab al-Islami, 1988), 1205.

⁸⁵ Badruddin Al-‘Aynī, *Umdah Al-Qārī*, vol. 15 (al-Qāhirah: Idarat Al-Taba‘at Al-Muniriya, n.d.), 94. As cited in Munir, “Suicide Attacks and Islamic Law,” 83.

Imam Al-Nawawi mentioned that there is a consensus that deception is impermissible if it results in violating agreements or *amān* (safety guarantee).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.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-Sarkhasī 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.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.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.⁹⁰

Muhammad Hamidullah noted that it is impermissible to commit acts of ‘treachery and perfidy’ (he did not define these two terms),⁹¹ and also that treaties which prohibit certain acts during war must be obeyed as long as the treaty lasts.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*.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

⁸⁶ Al-Nawawī, *Ṣaḥīḥ Muslim Sharḥ Al-Nawawī*, 1416, 3:404.

⁸⁷ Cited in: Muḥammad ibn Aḥmad ibn Abi Sahl Al-Sarakhsī, *Sharḥ Al-Siyār Al-Kabīr*, vol. 2 (Beirut: Dār al-Kutub ‘Ilmiya, 1997), 66–67.

⁸⁸ Muḥammad ibn Aḥmad ibn Abi Sahl Al-Sarakhsī, *Sharḥ Al-Siyār Al-Kabīr*, vol. 1 (Beirut: Dār al-Kutub ‘Ilmiya, 1997), 185.

⁸⁹ ‘Abdullah ‘Azzām, *Fī Ḍilāl Sūrah Al-Tawbah* (Peshawar: Markaz al-Shahīd ‘Azzām Al-‘Ilamī, n.d.), 17.

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.

⁹¹ Hamidullah, *Muslim Conduct of State*, 205.

⁹² Hamidullah, 208.

⁹³ Yusuf Al-Qardhawī, *Fiqh Jihad* (Bandung: Mizan, 2010), 632–36.

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 Muḥammad ibn Maslama explained earlier.

Muḥammad ibn Maslama was known as a warrior. He was an *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 Muḥammad ﷺ and seeking for some help. Therefore, at the time it can be said that Muḥammad ibn Maslama was pretending to be a normal civilian when approaching his target. However, the entire mission was on the orders of Prophet Muḥammad ﷺ, and Muḥammad 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 *maṣlaḥat* as to distinguish one's forces from that of the opponent. See: Hamidullah, *Muslim Conduct of State*, 235.

⁹⁵ Ismail Ibn Kathir, *The Life of the Prophet by Ibn Kathir*, vol. 2 (Reading: Garnet Publishing, 2005), 340; Muḥammad ibn Ishāq, *The Life of Muhammad: A Translation of Ibn Ishaq's Sirat Rasul Allah* (Karachi: Oxford University Press, 1998), 330.

⁹⁶ Al-Bukhārī, *Sahih Al-Bukhari*, 1997, 5:ḥadīth no.4037; Al-Bukhārī, *Sahih Al-Bukhari*, 1997, 4:ḥadīth no.3031-3032; al-Naysābūrī, *Sahih Muslim*, 5:ḥadīth no. 4664; Al-Sijistānī, *Sunan Abu Dawud*, 2008, 3:ḥadīth no. 2768.

⁹⁷ Arya Ajisaka, *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 Muḥammad ﷺ is free from error. Everyone else can make mistakes, however a person who does *ijtihād* there are two rewards when they are correct and one reward when they are incorrect. See: Muḥammad ibn Ismā'īl Al-Bukhārī, *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 *Sharī'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.⁹⁸ 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.⁹⁹ 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 *maṣlahat* 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 *muḍarat* (loss) and therefore should not be done.

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

⁹⁸ Toby Harnden, "Could the CIA Have Achieved What Al-Qaeda Did?," *Telegraph UK*, January 9, 2010, <https://www.telegraph.co.uk/news/worldnews/asia/afghanistan/6956806/Could-the-CIA-have-achieved-what-al-Qaeda-did.html>.

⁹⁹ Harnden.

Especially in the era of modern urban warfare, where the risk of civilian losses has increased exponentially and practically inevitable.¹⁰⁰ 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.¹⁰¹ 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.¹⁰²

Therefore, even if the original rule of feigning civilian status may be permissible, such a tactic may only be used when the *maṣlahat* outweighs the *mudarat*. 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 *maṣlahat* 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 *maṣlahat* is to be attained and massive *mudarat* 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.¹⁰³ 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 *mudarat*.

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

¹⁰⁰ Nathalie Durhin, "Protecting Civilians in Urban Areas: A Military Perspective on the Application of International Humanitarian Law," *International Review of the Red Cross* 98, no. 901 (2016): 178–89; Valerie Epps, "Civilian Casualties in Modern Warfare: The Death of the Collateral Damage Rule," *Georgia Journal of International & Comparative Law* 41 (2012): 307–55.

¹⁰¹ HRC, "A/HRC/11/2/Add.4, Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston, Addendum, Mission To Afghanistan, 6 May 2009," 2009, 14.

¹⁰² HRW, "The Human Cost: The Consequences of Insurgent Attacks in Afghanistan," *Human Rights Watch* 19, no. 6(c) (2007): 93–94, <https://www.hrw.org/reports/2007/afghanistan0407/afghanistan0407webwcover.pdf>.

¹⁰³ However, this is a controversial case. International law scholars have differed on the matter. See: Jonathan Crowe and Kylie Weston-Scheuber, *Principles of International Humanitarian Law* (Massachusetts: Edward Elgar Publishing, 2013), 66–67; Richard Jackson, "Perfidy in Non-International Armed Conflicts," in *Non-International Armed Conflict in the Twenty-First Century*, ed. Kenneth Watkin and Andrew J. Norris (Newport, Rhode Island: Naval War College, 2012), 247; Gary D. Solis, *The Law of Armed Conflict: International Humanitarian Law in War* (New York: Cambridge University Press, 2010), 422; John C. Dehn, "Permissible Perfidy? Analysing the Columbian Hostage Rescue, the Capture of Rebel Leaders and the World's Reaction," *Journal of International Criminal Justice* 6 (2018): 627–53.

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 *mudarat* 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 lense 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 Qurʾān 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 Qurʾān or Sunnah, in the sense that it does not contradict a prohibition or deny an obligation. Therefore it may seem 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

¹⁰⁴ Marcos D. Kotlik, "Towards Equality of Belligerents: Why Are Armed Groups Bound by IHL?," in *Experts Conference on International Humanitarian Law: Emerging Issues in the Law of Armed Conflict* (American University Washington College of Law and the American Society of International Law's Lieber Society, 2012), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2621783.

¹⁰⁵ Kotlik, 6–14.

(as per AP II) have customary international law status.¹⁰⁶ 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 *dalīl* prohibiting to betray even those who betrayed the Muslims. While the authenticity of some of the *dalīl* may be disputed, still the content is corroborated by the other general Qur’ān verses and *aḥadīth* 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.¹⁰⁷ In addition, civilians may not be the object of reprisals as per Article 51(6) of AP I.¹⁰⁸ Perfidy, by definition targets only enemy combatants, making it lawful to make perfidy when the enemy commits it first.¹⁰⁹

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

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.

¹⁰⁷ Henckaerts and Doswald-Beck, *Customary International Humanitarian Law*, 2005, 1:515–19.

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 *maṣlaḥat*. 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 war¹¹⁰ and treatment of war captives.¹¹¹

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 Soal Islam, Politik, Dan Hubungan Internasional*, ed. Muhammad Qobidl ' 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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