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Introduction

On September 17th, 2024, 5,000 pagers were detonated across Lebanese territory, killing twelve individuals and wounding nearly 3,000 more (Reuters, 2024; BBC, 2024; Boothby, 2024). The following day, thousands of explosions in electronic devices were documented, including walkie-talkie radios, mobile phones, laptops and solar power cells, this time killing at least 20 and injuring 450 individuals (Al Jazeera, 2024). As revealed, the Mossad, the Israeli national intelligence agency, had planted these explosives with destructive objectives, presenting a series of questions for International Law (IL). Namely, the breach of the principles of distinction and precaution during armed conflicts is put under scrutiny, while there is also the need to dispute whether these new warfare tactics are compliant with the laws of war.

As a consequence of the October 7th terrorist attacks, Israel began the ground invasion of the Gaza Strip, triggering Hezbollah's retaliation by sending rockets into Israeli territory. Therefore, the Mossad has been undergoing an unprecedented operation to counter Hezbollah in Lebanon. For this purpose, Israel has allegedly targeted these pagers, communication devices which were able to avoid Israeli location-tracking (Reuters, 2024). To eliminate the source of communication among its enemies, Mossad planted explosives in 5,000 devices that were procured by Hezbollah, 3,000 of which exploded when a coded message was sent to activate them (Reuters, 2024). However, the aftermath of these attacks has also reached the wider public, with Lebanese civilians getting targeted, injured, and killed, raising serious concerns for International Humanitarian Law (IHL). Notably, it is impossible to describe such consequences as spillover effects due to the disproportionate scale of this targeting and the lack of efforts to not only minimise harm but actively protect civilians, per the purpose of International Humanitarian Law.

In this context, this article will analyse the principles of IHL that have been breached by these attacks. It will also provide a concise assessment of the legal principles and the unlawful use of this new tactic while reflecting on the implications of IHL related to the disregard for civilian lives.

I. Principles of Humanitarian Law: Distinction and Caution

International Humanitarian Law (IHL) is a broad branch of International Law tasked with the mission of "humanising war" by not merely minimising the harm to civilians during conflicts but actively ensuring their protection. It relies on a robust body of treaties and a series of principles, among other sources, which dictate State practices and non-state actors' conduct, constituting a fundamental dimension of IHL.

The four principles of IHL are the principles of humanity, distinction, proportionality, and necessity (ICRC, n.d.-j). Among these, Israel's attack using pagers and the subsequent explosion on various electronic devices requires legal scrutiny regarding the principles of distinction and the element of caution, as most of the victims of these attacks have been civilians (Reuters, 2024; BBC, 2024). This event poses further questions as to whether using these devices as weapons on this scale can even be justified based on the aforementioned principles.

A) Distinction

Enshrined under Article 48 of the Additional Protocol I to the Geneva Conventions (hereby API), the principle of distinction demands the Parties to the conflict to distinguish between civilian objects and military objectives, separating the civilian population from combatants (API, 1977). Solidifying this distinction is key as it implies that military objectives are the only ones that can be the lawful targets of operations. In the same line, Article 51(4) also prohibits indiscriminate attacks, which include those not directed to a military objective or those which employ a method or means of combat which cannot be produced or limited to a specific military objective (API, 1977). In other words, any attack carried out with a weapon that cannot discriminate between civilian objects and military objectives and be directed or limited is not compliant with this principle.

For the case at hand, it becomes a question of specificity in the target: as Boothby (2024) argues for the Lieber Institute: "If the target comprises the persons to whom the pagers have been issued, and if they are classed as fighters in the NIAC, then again in principle the targeting of those individuals will be lawful." The problem of lawfulness arises when one considers that it was likely that the pagers ended up in possession of civilians and persons who would not be regarded as combatants and, therefore, not lawful targets (Boothby, 2024).

The fundamental challenge for the analysis lies in the Mossad's objective to target Hezbollah members, as early information suggests (Reuters, 2024). Arguably, the attacks were conducted based on the intelligence information that the spy agency had acquired regarding the purpose of the pagers, which were ordered by Hezbollah and could presumably have been used to conduct attacks on Israel. If the Mossad's attack was designed to target Hezbollah members, it would be considered lawful since these targets are the military combatants in this conflict. Article 43(2) of API defines combatants as "members of the armed forces of a Party to a conflict (other than medical personnel and chaplains covered by Article 33 of the Third Convention)".

To reiterate, the right to participate directly in armed hostilities grants someone combatant status. Under this definition, Hezbollah members are lawful targets, as part of an armed militant group active in a conflict. Nevertheless, the issue lies in the fact that it was not exclusively Hezbollah members who ended up in possession of the explosive pagers and, hence, not the sole victims of this attack.

While it could be argued that this was not intentional, it is impossible to be legally assessed. Subsequently, the facts on the ground remain that most of the victims were not lawful targets but unarmed civilian populations, including vulnerable groups such as children and infants. Regardless of being ordered by Hezbollah, the impossibility of controlling in whose hands these devices end render them an unlawful weapon in this conflict. While the initial intention and targets were Hezbollah members, and the military necessity to strike Hezbollah's command structure could justify their use, the result was the killing and injury of thousands of persons unaffiliated with Hezbollah.

Among the devices that exploded were not only the pagers but also mobile phones, laptops and solar power cells, which were owned by civilians and should not have been presumed to be used only by Hezbollah members. This oversight is, at best, a grave mistake and failure to provide due care and, as such, a case of 'commission by omission' or breach of the 'duty to act'. These principles are enshrined under the Geneva Conventions (1949). Particularly, Common Article 1 of the Conventions clearly states the obligation of contracting parties to respect and ensure the Convention. At the same time, Article 86 ("Failure to Act") dictates that the High Contracting Parties and the Parties to the conflict shall take the necessary measures to suppress any breaches of both the Conventions and the API resulting from a failure to act when under a duty to do so. In this case, the duty refers to the distinction between civilians and combatants and the subsequent lawful use of weapons.

Had the sole victims of this attack been combatants, the legal debate would have been different. However, the fact that most of the victims were civilians undermines the principle of distinction when using this type of warfare. Additionally, the fundamental element of caution under International Law must be considered when analysing the attacks on the explosive pagers and the disregard for civilians.

B) Caution

Stemming from the aforementioned principle of distinction and in connection with the principles of humanity and proportionality, the element of caution has been widely understood as a principle.

Despite lacking formal acknowledgement, the principle of caution refers to the duty of the attacking party to ensure the sparing of civilians and civilian objects. Encompassed in Rule 15 of IHL practice, Principle of Precautions in Attack, this concept dictates that "in the conduct of military operations, constant care must be taken to spare the civilian population, civilians and civilian objects. All feasible precautions must be taken to avoid, and in any event to minimise, incidental loss of civilian life, injury to civilians and damage to civilian objects" (ICRC, n.d.-b).

Caution is codified in Chapter IV of the API, referring to the General protection against the effects of hostilities. This Chapter includes Articles 57 and 58, detailing the precautions that should be taken during attacks in conflict. More generally, Article 1 of the API establishes the obligation for all its parties to take constant care and precautions to avoid or minimise incidental civilian losses (API, 1977).

Article 57.1 clearly states that "in the conduct of military operations, constant care shall be taken to spare the civilian population, civilians and civilian objects". It continues to detail how those who plan an attack must (i) do everything possible to verify the targets are neither civilians nor civilian objects; (ii) take due precautions in the choice of means and methods of attack with the aim of avoiding or minimising injury or incidental loss of life; (iii) refrain from launching an attack that may be expected to cause injury or incidental loss of life to civilians. On the other hand, Article 58 refers to the precautions against the effects of attacks, stressing the obligation to, when possible, remove civilians and civilian objects from the vicinity of military objectives, avoid locating military objectives within or near densely populated areas, and take the necessary precautions to protect the civilian population against the dangers resulting from military operations (API, 1977).

Based on these two Articles, the specific obligations of this Rule are also contained in Rules 16 -21 of the International Committee of the Red Cross (ICRC), which detail the rules of conduct. Firstly, under ICRC's Rules 16 and 18, States ought to do everything feasible to verify the targets and assess whether the attack can be expected to cause harm to unlawful military objectives (ICRC, n.d.-c; ICRC, n.d.-e). Secondly, if the attacker learns that attacks may affect the civilian population, they are obliged to do everything in their power to cancel or suspend an attack given the target is unlawful or give an effective warning, as per Rules 19 and 20 (ICRC, n.d.-f; ICRC, n.d.-g). Finally, States are obliged in their choice to (when possible) opt for the military objective, which is expected to cause the least harm to civilians, as per Rule 21 (ICRC, n.d.-h). Notably, under Rule 17, those means and methods of warfare must avoid or minimise incidental loss of civilian life, any injury to civilians, or damage to civilian objects (ICRC, n.d.-d).

Due to the enormous number of explosives that were planted on the pagers, along with the impossibility of actually distinguishing among targets or warning them, the inobservance of this principle concludes that Mossad has effectively breached these obligations. The respect of these obligations requires exhaustive care and caution to spare civilians, yet adequate precautions have not been taken, as evidenced plainly by the disproportionate number of civilian casualties.

II. Limitations in methods of combat: Lawfulness in the use of weapons

IHL provides four criteria to assess the lawfulness of weapons and methods of warfare. The first one contemplates whether the aim of the used weapon is to cause superfluous injury or unnecessary suffering, as per Rule 70 of the practice of the ICRC (ICRC, n.d.-j). This Rule was first codified in the St. Petersburg Declaration of 1868 and further upheld/incorporated (pick) in Article 23(e) of the Hague Regulations 1899 and 1907, as well as Article 35(2) of the API, along with other treaties. It dictates that the purpose of considering the military objective is to weaken the enemy's military forces, not to cause any additional injury or suffering (or additional injury or suffering). Therefore, as per Rule 70, there needs to be a calculation of the desired military outcome expected by using the weapon. The purpose must align with this objective, considering lawful weapons are those "sufficient to disable the greatest possible number of men" (ICRC, n.d.-j) without causing unnecessary suffering. In this case, the used pagers do not comply with this Rule since they did indeed cause unnecessary suffering, injury, and victims. Therefore, the employment of these weapons that do not respect this Rule is against the laws of IHL.

The second criterion is also connected to the aforementioned principle of discrimination. It demands that the weapon or method be capable of being directed or targeted to a specific lawful military objective. This is stated under Rule of Practice 71 on Weapons That Are by Nature Indiscriminate. This constitutes customary international law considered in API Article 51(4), which prohibits the use of weapons which are "of a nature to strike military objectives and civilians or civilian objects without distinction" (API, 1977). It is safe to assume that Mossad was not surveying each of the more than 5,000 devices to ensure – as IHL demands – that the people who had them were legitimate targets.

The third criterion refers to whether the weapon breaches the obligation to protect the natural environment, as per the 2022 Draft on principles on protection of the environment in relation to armed conflicts (United Nations, 2022). However, this criterion is irrelevant to the case at hand (Boothby, 2024).

Lastly, the fourth criterion observes whether there are existing legal provisions that regulate this particular weapon. Due to the novel use of communications devices of this nature as weapons, the initial answer would be negative. However, Protocol II to the Conventional Weapons Convention (CCW) does address the use of booby traps. Article 2(2) of the CCW Protocol II and its Amended Protocol in Article 2(4) define booby trap as “any device or material which is designed, constructed or adapted to kill or injure and which functions unexpectedly when a person disturbs or approaches an apparently harmless object or performs an apparently safe act”. While Israel has not ratified CWW Protocol II, it remains part of Amended Protocol II, which encompasses the devices that exploded on the 17th and 18th of September.

Moreover, Article 7(2) of the Amended Protocol II prohibits the use of booby traps in “the form of apparently harmless portable objects which are specifically designed and constructed to contain explosive material.” (Amended Protocol II, 1996). Finally, Article 2(5) defines ‘Other devices’ as “means manually-emplaced munitions and devices including improvised explosive devices designed to kill, injure or damage and which are actuated manually, by remote control or automatically after a lapse of time”. Under this definition, one could include the pagers used in Lebanon, making their usage unlawful (Boothby, 2024).

The Mossad, as an intrinsic part of the Israeli defence and security system, directly connects the attack to the State and makes it attributable to it by Article 8 of the Draft Articles of Responsibility of States for Internationally Wrongful Acts, as a ‘conduct directed or controlled by a State’ (International Law Commission, 2001). While the investigations are ongoing, reports from the New York Times and other news organisations claim that Israel “manufactured pagers to incorporate explosives (reportedly the batteries of the devices were laced with the explosive PETN) and distributed them to Hezbollah via a front company registered in Europe” (Finucane, 2024).

III. Implications for IHL

The situation inevitably leads to several political questions regarding the changing nature of modern warfare, the possibility of escalation in the hostilities between Israel and its neighbours, and the ongoing current conflicts. Nonetheless, this article will limit itself to the analysis of the legal implications of the latest attack on the explosive pagers and electronic devices in the war against Hezbollah. The attacks raise concerns about civilian harm and compliance with well-established international norms that states like Israel claim

to be adherent to. Similar to Russia's aggression against Ukraine, severe disregard for the lives of civilians seems to be the norm in modern conflicts.

United Nations High Commissioner for Human Rights (UNHCHR), Volker Türk, warned that compared to 2022, the number of civilian deaths in armed conflict had increased in 2023 by 72% (UN, 2024). Such numbers subsequently showcase the increasing disregard for IHL that not only forbids targeting civilians but should actively ensure their protection. If war could have been waged in the past without such rates of civilian harm, it can be greatly accomplished today, especially with modern warfare technology, which is subjective to intentions. The legal instruments that limit this behaviour and guide the conduct of war safeguarding the lives of civilians exist, and the obligations that bind combatants are also in place. What is missing is compliance and accountability.

The provision of exact figures is complex, partially due to the methodological weaknesses of the most commonly used casualty recording and estimation techniques and also because of the political interests that might guide them (Seybolt et al., 2013). Nonetheless, there are still adequate estimations that point to an increase in civilian deaths, such as the one provided by the UNHCHR. Moreover, there have been reportedly more incidents against other protected subjects of IHL, like medical workers, facilities, equipment, transport, and sick and wounded persons (UN, 2024).

The data recorded by the Uppsala Conflict Data Program on fatalities in conflict informs that those fatalities were reduced from the start of the millennium and remained comparatively low throughout the beginning of the 2000s. From 2011 onwards, the number of fatalities in conflict started increasing, with the first peak in 2014, with 150,000, and then in 2022, with 300,000. These numbers, along with the UNHCR's reported increase in civilian deaths, paint a grim picture for the future. If the protection of civilians — the core of IHL — is not regarded as a priority, the wars of the future will be waged in the most inhumane way they have, since the Geneva Conventions milestone. In the European context of the war in Ukraine, which is the most connected to the organisation under which this article is published, his current tendency is reflected not only in the number of civilian casualties but also in the increase of targeting of civilian objects, like hospitals (Okhmatdyt Children's Hospital) and schools. In fact, since February 2022, over 3,790 educational facilities have been damaged or destroyed, as reported by Human Rights Watch, along with subsequent civilian infrastructure (such as the case of the Kakhovka Dam).

This phenomenon supersedes the current conflicts in Europe and across the Middle East, raging to the ongoing catastrophic conflicts in sub-Saharan Africa, namely the Democratic Republic of Congo and Sudan.

Ultimately, IHL depends on responsible and almost voluntary compliance, and the lack of accountability is indeed the reason why most of its pitfalls occur. Besides the International Criminal Court (ICC), IHL does not have a body that oversees and ensures that States that disregard it are punished. On top of this, the ICC is limited in its jurisdiction to war crimes and does not ensure compliance with the basic principles of IHL, which are assumed to be respected and almost expected to be followed voluntarily. This is not a gap or loophole on the law or an indication of ICC's limited powers, but rather a failure of states to fulfil their obligations.

Conclusion

This article has analysed the events surrounding the explosive attacks in Lebanon through the lens of IHL, uncovering significant concerns about Israel's adherence to IHL regarding the use of weapons and most fundamental principles. The lack of distinction between military objectives and civilian objects, coupled with the high number of civilian casualties, underscores the failure to comply with fundamental IHL. The implicit use of devices such as pagers, mobile phones, and laptops as explosive weapons hinders the ability to target combatants while minimising harm to civilians, as is demanded by IHL, making the use of this new method of warfare unlawful.

Despite the existing legal instruments that aim to protect civilians in conflicts, the evolution of modern warfare, and more worryingly, the disregard to comply with the principles of IHL in the face of 'military necessity', sets worrying precedents for respect of the most fundamental principles of IHL. Due to the anarchic nature of the international system, International Law is only effective if states uphold it. The Lebanese case exemplifies a broader trend of rising civilian harm in conflicts globally, as seen in Ukraine, the Middle East, and beyond. While the principles of IHL are well-established, compliance and accountability are increasingly elusive. This article has underscored the need for respect for the most basic principles of IHL, particularly distinction and caution when developing and using new methods of warfare. This analysis reflects a worrying trend and serves as a call for more respect for the principles that aim to make conflicts more humane by safeguarding the lives of civilians.

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