

Exploding Pagers and the Law

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Reports emerged on 17 September 2024 that, from about 15:45 that day local time, a large number of pagers used by Hezbollah personnel in Lebanon exploded spontaneously and virtually simultaneously. At the time of writing, nine persons are reported to have died and 2,750 persons reportedly suffered injuries. Subsequent reports on 18 September 2024 indicated that the death toll had risen to twelve persons, and there were suggestions that some of these may not have been members of Hezbollah.

While there will be speculation as to responsibility for these events, and while some observers will no doubt make assumptions in that regard, the purpose of this post is to address the relevant law, basing the discussion on the brief early reports. The BBC News website suggests that this evidently co-ordinated attack was achieved by the insertion into new pagers, at or shortly after their manufacture or servicing, of a fake component that contained between 10 and 20 grammes of military grade high explosive. The thought is that the device may have been armed using a signal in the form of an alphanumeric text message. Presumably, by sending the same message to all the devices in all of the pagers carrying the explosive component, the near simultaneous detonations would be achieved on the basis that once the device had been armed, the next occasion on which the pager is

used would trigger the explosive device. Early reports must always, of course, be treated with caution. However, for the purposes of the current discussion, let us assume that the explanation in this paragraph is broadly accurate.

The context in which these events took place is an ongoing non-international armed conflict between Israel and Hezbollah. However, at the time of writing there is no evidence to establish conclusively responsibility for these attacks. The apparently sophisticated nature of the attacks, their evident coordinated nature, and the sheer number of the affected devices may suggest State involvement. The operation might, perhaps, have been undertaken by organs of the Israeli State and could thus be attributable to Israel. There were suggestions, reported on the BBC News website on 18 September, suggesting that MOSSAD was responsible for the operation. If that was indeed the case, attribution to the Israeli State would indeed arise (art. 4).

Equally, the operation could have been undertaken by individuals or a group acting on the instructions, direction and control of the Israeli State such that the acts might be attributable to Israel on that footing (art. 8). Alternatively, maybe these are acts of private individuals operating within the pager manufacturing or pager processing facility who are sympathetic to Israel but whose acts are not attributable to it. For the purposes of the current discussion, let us however assume, hypothetically, that the events are indeed attributable to Israel.

Two key questions now need to be considered. First, are these weapons, weapon systems or methods of warfare lawful? The weapon system in the present case will comprise the fake component including the explosive content, the detonator, the arming mechanism and the equipment that is used to generate and transmit the relevant signal. A method of warfare is a way of conducting hostilities. Second, do these attacks comply with targeting law? I consider these questions in turn.

Weapons Law

When assessing the lawfulness of a new weapon or method of warfare, the following criteria should be applied:

1. Is the weapon or method of a nature to cause superfluous injury or unnecessary suffering? Essentially, this requires consideration of alternative methods of achieving the desired military outcome and a determination whether the weapon or method being considered will inevitably cause injury or suffering, or additional injury or suffering, for which there is no military purpose.

The device being considered here seems to employ a combination of blast and fragmentation as the injuring mechanism. Both of those technologies are widely employed in warfare and are unlikely to be regarded as breaching this principle.

2. Is the weapon or method indiscriminate by nature, meaning is it capable of being directed at a specific military objective (i.e. a lawful target), can its effects be reasonably limited to that military objective, and is it of a nature to strike civilians and military objectives without distinction?

Depending on the location of the person who is the target (i.e. one assumes a Hezbollah member), an exploding device of this kind can be used in a discriminating way. The concern under this principle would be that the process leading to the detonation of these devices is such that it cannot be known who is in their near vicinity and so on at the time when detonation is initiated. That is an issue I discuss in more detail under the law of targeting. Here, it suffices to say that yes, the weapon system is in principle capable of being used so as to comply with the indiscriminate weapons rule.

3. Does the weapon or method of warfare breach law of armed conflict rules that protect the natural environment? The short answer is no, and this aspect does not seem to merit further consideration.

4. Is there a legal rule that makes specific provision in relation to a weapon of this kind? Protocol II to the Conventional Weapons Convention (CCW) addresses, *inter alia*, booby-traps. The treaty defines a 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” (CCW Protocol II, art 2(2); CCW Amended Protocol II, art. 2(2)).

On 21 December 2001, the scope of application of the CCW and its then annexed Protocols was extended to apply to non-international armed conflicts (NIACs). However, that extension in scope only takes effect for States that ratify the extension. Israel has not done so. Israel is, however, a party to Amended Protocol II, which also, *inter alia*, addresses booby-traps and defines them in identical terms to those given above (CCW, Amended Protocol II, art. 2(4)). Significantly, Amended Protocol II applies to NIACs (art. 1(2) & (3)). The lawfulness of the weapon should therefore be considered by reference to Amended Protocol II.

Amended Protocol II

Of the provisions of Amended Protocol II, the following should be noted. Effective advance warning of the use of booby-traps should be given unless circumstances do not permit. Perhaps it was thought that the military purpose of the pager operation would be defeated if a warning had been given.

Key prohibitions with regard to the use of booby-traps are to be found in Article 7, paragraph 2, which stipulates as follows: “It is prohibited to use booby-traps or other devices in the form of apparently harmless portable objects which are specifically designed and constructed to contain explosive material.” Much will depend on the precise way in which these devices were produced. In my view, there is a distinction that must be drawn between booby-trapping

an object and making a booby-trap to look like an apparently harmless portable object. The former activity occurs, for example, when an explosive booby-trap device is applied to a door or drawer, such that when a person opens either, the device explodes.

Paragraph 1 of Article 7 lists the objects that must not be booby-trapped in that sense. Paragraph 2, by contrast, is simply prohibiting making booby-traps that look like apparently harmless portable objects. The information in the early reports suggests that once the arming signal has been sent, the devices used against Hezbollah in Lebanon fall within Article 7(2) and are therefore prohibited on that basis. Further details as to the devices in later reports may, of course, affect this provisional conclusion.

Note should also be taken of Article 7(3) which provides,

Without prejudice to the provisions of Article 3, it is prohibited to use weapons to which this Article applies in any city, town, village or other area containing a similar concentration of civilians in which combat between ground forces is not taking place or does not appear to be imminent, unless either:

- (a) they are placed on or in the close vicinity of a military objective; or
- (b) measures are taken to protect civilians from their effects, for example, the posting of warning sentries, the issuing of warnings or the provision of fences.

Of course, if later available information confirms the illegality of the weapons as such, the paragraph 3 provisions become potentially moot. Nevertheless, it is worth noting that the paragraph 3 requirements are probably satisfied because the pagers issued to Hezbollah were likely “in the close vicinity” of the users to whom they were issued, thus satisfying sub-paragraph (a).

For completeness, mention should also be made of “other devices” which are also regulated by Protocol II and Amended Protocol II to the CCW and which, as noted above, are also subject to the prohibitions and restrictions in Article 7 of Amended Protocol II. These are defined in the former treaty as “manually-emplaced munitions and devices designed to kill, injure or damage and which are actuated by remote control or automatically after a lapse of time” (art. 2(3)). In Amended Protocol II, the definition of “other devices” is as follows, “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” (art. 2(5)).

I have previously suggested that the use of the word “manually” is designed to distinguish between munitions that are individually and directly emplaced by a person and those that are mechanically emplaced (p. 161). Where the exploding pagers are concerned, my provisional view is that we are dealing here with booby-traps. The munition is not being manually emplaced in the manner required by the “other device” definition. The pager is being adapted

to convert it into a booby-trap of the sort addressed by Article 7(2) of Amended Protocol II and on that basis it would appear, considering what is currently known and assumed, to be an unlawful weapon.

A further factor should be considered, namely, reports on 18 September 2024 suggesting that eye witnesses observed smoke emerging from the pockets of victims. This may of course be consistent with the suggestion that the devices within the pagers, having been remotely armed, were then commencing detonation in response to an innocent act such as disturbance while being carried within the pocket. It will, it is emphasised, only be when full details emerge of the exact nature of the weapon and of its triggering mechanism that a clear interpretation can be given as to what we are dealing with here from an international law perspective.

The final point to make with regard to weapons law is that there is an obligation on all States legally to review all new weapons before employing them in armed conflict. In my view, this is an obligation that is implied by other provisions of international law, including common Article 1 to the Geneva Conventions 1949 (see also Additional Protocol I (AP I), art. 36 (to which Israel is not party); U.S. Department of Defense Law of War Manual, § 6.2; UK Manual of the Law of Armed Conflict, paras. 6.20 – 6.20.1; HPCR Air and Missile Warfare Manual, rule 9).

Targeting Law

To reduce the complexities of targeting law to a few sentences is, of course, not possible and this part of the post does not presume to do so. Moreover, whether or not the weapon is considered to be unlawful *per se*, the issue of compliance with targeting law should still be addressed. A few points can usefully be made.

The principle of distinction requires the parties to the conflict to distinguish between civilians and civilian objects on the one hand and combatants and military objectives on the other and to direct their military operations only against military objectives (AP I, art. 48).

Article 51(4) of AP I, reflecting customary international law, prohibits indiscriminate attacks, meaning attacks that are not directed at a military objective or that employ weapons or methods that are indiscriminate by nature. An example of indiscriminate attacks specifically mentioned in Articles 51(5)(b) and 57 of AP I is an attack that breaches the proportionality rule (i.e. which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects or a combination thereof which would be excessive in relation to the concrete and direct military advantage that is anticipated). These rules are then operationalised by further rules as to the precautions that attackers must take (AP I, art. 57) and, to an extent, by rules as to precautions against the effects of attacks (AP I, art. 58). Most of these precautionary rules reflect customary law such that they bind all States.

Targeting a device that it is known that the adverse party to the conflict has issued to persons who are lawful targets would not at first glance appear to be an indiscriminate act. The object itself, the pager, if it has been issued for military purposes (e.g. to promote effective communication between commanders and subordinate units and personnel) can be classed as a military objective and thus as a lawful target with the consequence that attacking that pager, destroying it or damaging it are lawful activities.

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 (International Institute of Humanitarian Law, *Manual on the Law of Non-International Armed Conflict*, para. 1.1.2.). If, however, it is known that the pagers are likely to be in the possession of persons who cannot be classed as fighters, for example because the individuals in question have exclusively diplomatic, political or administrative roles for Hezbollah and have no combat-related function, such persons should be categorised as civilians, and it would not be lawful to target them.

A key component of the precautions that attackers must take is the duty to take care to spare civilians and civilian objects. This implies a duty to ensure in advance of the attack as far as possible that the attack is directed at a lawful target and that the proportionality rule, explained earlier, will not be breached. Yoram Dinstein makes the vitally important point as follows:

In any post-event analysis, there is a temptation to scrutinize the situation with the benefit of knowledge of the facts as they unfolded rather than as foreseen at the time of the attack. The temptation must be strongly resisted: a post-event reviewer must put himself in the shoes of the planner, decision-maker or actor in real time (possessed with the information actually at his disposal, faulty as it may turn out to have been) (p. 190).

It was probably reasonable for those planning and conducting the operation to assume that pagers issued for military purposes would be in the possession of their military users at the time of detonation. The targeting law concern will be more likely to centre on whether adequate consideration was given to the incidental injury and damage to be expected from these explosions, given, as is assumed to be the case, that those planning and conducting the operation cannot have known the circumstances that would pertain where each of the large number of explosions took place.

Concluding Thoughts

I would like to emphasise that the foregoing is based on early reports, and these may, of course, prove to be inaccurate or incomplete. Nevertheless, I hope that some at least of these remarks prove to be useful.

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