

Israel – Hamas 2024 Symposium – Information Warfare and the Protection of Civilians in the Gaza Conflict

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In the recent Gaza conflict, the battle has extended into a conflict of morality, with each party attempting to demonize the other side to morally justify their own actions. As this battle has mainly been conducted in the media, and in particular social media, disinformation has become the primary weapon used.

To illustrate, consider the allegation Hamas fighters beheaded 40 babies. Although corroborated by U.S. President Joe Biden, this report has been identified as another form of disinformation. While the public has to now distinguish information from disinformation, this form of warfare must also be examined in light of its effects on civilian protection and international humanitarian law (IHL).

The Manipulation of Information and the Role of IHL

The manipulation of information is a longstanding military strategy. However, with the rise of social media, information warfare has become a more prominent component of armed conflict. Information warfare in modern conflict impacts the protection of civilians and their

ability to make decisions for their self-protection.

While the use of deceptive information tactics has been permissible in past conflicts, the historical permissibility of information warfare does not necessarily authorise all future use. As IHL finds its purpose in the protection of civilians, the principle of the protection of civilians must be the lens through which to interpret its provisions. As such, information warfare must be regulated by a party's obligations to civilians under IHL, with further considerations to a party's obligations under international human rights law (IHRL).

As a basic premise of IHL, parties to the conflict do not have the right to choose methods of warfare without limitation. While legal conservatives would suggest that IHL is permissive in nature, IHL should not be perceived as permissive but prohibitive. IHL should not be understood as a body of law "permitting" conflict, but one regulating conflict. As IHL is agnostic to the moral justification of the conflict, it is prohibitive as it attempts to mitigate the dangers of conflict to those who are not participating in hostilities and undue suffering on those who are.

As stated in the International Committee of the Red Cross (ICRC) 1958 commentary on the Fourth Geneva Convention, "the Conventions have been drawn up first and foremost to protect individuals, and not to serve State interests." The prohibitive nature of IHL is manifested in its two underlying principles: humanity; and military necessity. While the principle of military necessity allows military movement to achieve a legitimate purpose, the principle of humanity prohibits any suffering that is not necessary for accomplishing that legitimate purpose.

Therefore, as new means and methods of warfare emerge, the lack of a specific prohibition of those means or methods do not automatically mean that they are permitted. Rather, new means or methods of warfare must be considered in light of the principles of humanity and military necessity. A "cardinal" consideration, as outlined by the International Court of Justice (ICJ) in its Nuclear Weapons Advisory Opinion is "the protection of the civilian population and civilian objects" (para. 78).

At times, IHL practitioners overlook information warfare, as it is considered permissible as a ruse of war or a type of propaganda. While there is no doubt that ruses of war and propaganda are permissible under IHL, this does not mean that all deceptive conduct is legal. In particular, certain forms of information warfare can be analogous to misusing a flag of truce or emblem, and thus, illegal. As such, while the manipulation of information has previously been allowed, this does not consequentially permit all information warfare in the future.

For example, while the use of sound, for example using music to disturb opposing soldiers, has been considered legal in the past, the use of acoustic weapons would be prohibited due to its unneeded suffering. As such, any information operation directly affecting civilians must

be considered in light of IHL and the principle of humanity.

Misinformation, Disinformation, and Civilian Protection

There is an important distinction between “misinformation” and “disinformation.” While misinformation is the innocent sharing of false information, disinformation is the *intentional* spreading of false information. Although there is no agreed definition for disinformation, in this post, “disinformation” means the manipulation of information with the objective to create harm by deceiving and creating an atmosphere of chaos. As such, disinformation operations target civilians to create confusion to disable their ability to make effective decisions. This intent-based approach in defining disinformation is used by the UN, the European Commission, NATO, and some States. As IHL is cemented in the protection of civilians, any military operation intended to inflict harm on civilians must be regulated by the law.

To appreciate the gravity of information warfare, it is important to understand the significance of information for civilian protection. In armed conflict, the primary method by which civilians protect themselves is via self-protection. That is, civilians protect themselves by avoiding dangerous areas or use information to strategise for their survival. Therefore, civilians rely heavily on information to be able to protect themselves, as information allows them to make active decisions regarding their safety. As stated by the UN Human Rights Council, the right to access information in armed conflict becomes a “survival right.”

With increasing use of social media, disinformation operations have a larger effect on civilians’ access to survival information. In particular, military agents engaging in information warfare rely on the populace to disperse the false information, creating a storm of misinformation as users unknowingly spread the disinformation. As social media sites are structured on a “reward-based” system where users are trying to attract other users, military agents are weaponising these social media habits.

As information can be disseminated instantly on social media, disinformation can be effortlessly disguised by parties as accurate information affecting civilians’ right to receive and impart information for their self-protection. As the objective of disinformation operations is to spread the information widely, the harm on civilians is much greater than that of misinformation. The escalation of false information occurs as disinformation operatives are actively targeting specific platform cues to ensure a larger effect. Using social media algorithms, parties to a conflict can insert false information, creating a trend, which can spread the disinformation beyond one social platform.

Disinformation in Gaza

The use of social media in disinformation operations is clearly evident in the conflict in Gaza, where posts on TikTok, X, and Instagram were AI generated. In the Gaza conflict, users have unwittingly dispersed disinformation to multiple platforms, to the point where news outlets have reported on the conflict basing their sources on the disinformation.

While some disinformation operations might seem not to directly affect civilians on the ground, the flooding of disinformation makes all information suspect. This creates chaos, disabling civilians from making accurate decisions for their safety. For example, disinformation campaigns regarding areas of Hamas operations directly affects civilians' decision-making in seeking safe areas. Likewise, disinformation surrounding the availability of basic necessities hinders civilians' ability to plan for their long-term survival.

This has certainly been true in Gaza, with the information attacks on humanitarian agencies disrupting civilian access to the assistance they provide. This type of information warfare discrediting humanitarian workers was observed in disinformation attacks on the UN Relief and Works Agency (UNRWA) and Médicins Sans Frontières (MSF). This form of disinformation has made it difficult for humanitarian workers to implement their mandate in providing aid to civilians in need, with civilians distrusting these sources of assistance. Moreover, disinformation attacks have ultimately placed the humanitarian workers themselves at risk.

While the aim of information warfare is generally to disseminate false information, in the Gaza conflict, information warfare tactics have also been used to insert incomplete information into the public domain to create further chaos. For example, when the Israeli government advised civilians to flee certain areas, no other information was provided to ensure safe evacuation, for example safe areas and corridors, implementing an atmosphere of chaos. This particular situation was further exacerbated as Israeli forces cut all telecommunications preventing civilians from sharing immediate information regarding safe passages or shelters, incapacitating their ability to make decisions.

As can be observed in the Gaza conflict, these information operations are directed towards civilians. In IHL, parties to the conflict must at all times distinguish between civilians and combatants and between civilian objects and military objectives, as the basic rule in Article 48 of Additional Protocol I (AP I) makes clear. Specifically, the parties shall only direct their "military operations" against military objectives. The principle of distinction forms part of customary international law, as the ICJ stated in the *Nuclear Weapons Advisory Opinion* (para. 77-78).

It should be noted, that "military operations" encompasses military "attacks" as well as other military means. An ICRC Commentary to AP I notes that the term "military operations," which is used in several articles of the Additional Protocols, means "all movements and acts related to hostilities that are undertaken by armed forces," but does not encompass "ideological, political or religious campaigns" (para. 1875). As such, some scholars have concluded that information warfare falls outside the definition of a military operation, and therefore IHL does not apply.

Unlike political or ideological campaigns, information warfare is not attempting to change the mind of the enemy but is intended to create an atmosphere of chaos. Hence, this cannot be considered as mere propaganda. This perception of information warfare as a form of military operation is also found in military manuals. States have additionally identified disinformation operations as a military “threat” needing a military defence.

To ensure the protections owed to civilians under the principle of distinction, Hamas and Israeli forces must guarantee that their military operations are directed only towards military persons and objects. As such, Hamas and Israeli forces must not direct any disinformation operations towards civilians. As the conflict in Gaza has shown, these information attacks have created further chaos amongst civilians, which has directly affected their ability to self-protect.

Information Operations in Gaza and IHRL

A majority of the disinformation in the Gaza conflict aims to incite hatred or prejudice towards either Palestinians or Israelis. Consequently, these disinformation operations potentially violate the conflict parties’ obligations under Article 20(2) of the International Covenant on Civil and Political Rights (ICCPR). The language used in the Gaza conflict has led to violence against civilians outside of Gaza, in the West Bank and Jerusalem. However, even if disinformation does not lead to direct violence, as stated within the UN General Assembly, incitement is “a passive state of mind rather than a specific act.”

Parties to a conflict must also ensure adherence to their obligations under Article 20(1) of the ICCPR: “Any propaganda for war shall be prohibited by law.” This provision prohibits propaganda that incites or prolongs a war. In this light, language used by both Hamas and the Israeli government that dehumanises the “enemy” and entrenches the conflict, would potentially violate their respective obligations under Article 20(1) and (2).

While Israel’s IHRL obligations, as a State, are clear within Israeli territory, its IHRL obligations in Gaza are not so clear. Specifically, this will depend on whether Israel is an occupying power in Gaza. If Gaza is occupied territory (which I believe it is) then Israel’s IHRL obligations would extend to Gaza and the people residing within that territory. These IHRL obligations would also apply to Hamas in Gaza, as it is a non-State actor exercising governmental functions.

Concluding Thoughts

As IHL and IHRL share a similar philosophy of the protection of the “person,” new methods and means of warfare must be scrutinized via the lens of the protection of civilians. Unlike ruses of war and propaganda, information warfare in modern conflict inflicts harm on civilians by incapacitating them and disabling their decision-making abilities, as clearly seen in Gaza.

Any military operation intending to inflict harm on those remaining neutral to the hostilities cannot be outside the application of IHL, and a party's obligation to distinguish between civilians and military targets.

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