

# Israel – Hamas Symposium 2023 – Flooding Hamas Tunnels: A Legal Assessment

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December 11, 2023

by [Aurel Sari](#) | Dec 11, 2023



Reports emerged last week suggesting that Israel is preparing to flood the network of tunnels constructed by Hamas underneath Gaza with sea water. According to unnamed U.S. officials cited in the media, the Israel Defense Forces (IDF) have assembled at least five pumps that could draw water from the Mediterranean Sea to fill the tunnel network in a matter of weeks. The aim of the operation is to render the tunnels inaccessible and to drive Hamas fighters above ground.

Neither tunnelling nor flooding are new methods of war. Underground warfare has a long history. In the ancient world, tunnels were used primarily to overcome fortifications. More recently, they have been used during the First World War to breach enemy trenches, by Japanese troops for defensive purposes during the War in the Pacific, and by the Viet Cong for shelter and concealment. In Gaza, Hamas has constructed a complex web of tunnels believed to run for several hundred miles below the surface. The network serves both defensive and offensive purposes. It provides Hamas with protection, a logistical base, mobility, and an element of surprise.

Artificial flooding and other forms of hydraulic warfare too have a long tradition. During the Eighty Years' War in the late sixteenth century, Dutch rebels destroyed dams to impede the movement of Spanish forces. Other historical examples include the famous Dambuster Raid carried out by the Royal Air Force in 1943 to put the Ruhr Valley under water. More recently, the Kakhovka Dam was destroyed, most likely by Russian forces, in the context of Russia's invasion of Ukraine.

Bearing in mind the widespread use of these two forms of warfare, it should not come as a surprise to find that belligerents have relied on hydraulic warfare to counter underground warfare, including by flooding tunnels. In fact, Egypt has on more than one occasion pumped sea and waste water into Hamas tunnels running under its border with Gaza.

Since the action now being contemplated by Israel may be on a larger scale than similar operations in the past, the purpose of this post is to assess these plans against the law of armed conflict. To avoid the controversies surrounding the classification of the conflict between Hamas and Israel, and since Israel is not a party to Additional Protocol I (AP I), the post applies the relevant rules of the customary law of armed conflict.

### **Acts of Hostility or Attacks?**

Flooding an adversary's tunnels is an act of hostility, understood as an act which by its nature and purpose is intended to cause harm to enemy forces or to their equipment. For State parties to AP I, acts of hostility at a minimum engage the obligation to protect the civilian population and individual civilians from the dangers that may arise from such acts. Whether flooding the tunnels also constitutes an "attack" within the meaning of the customary law equivalent of Article 49(1) of AP I, which would in turn trigger the rules applicable to attacks, requires a closer look.

Attacks are acts of violence against the adversary, whether in offense or defense. Although not conventional in nature, military operations to flood underground structures with water are acts of violence, given their destructive intent and effect. In the present case, it is also clear that the flooding is directed against the adversary, since the aim of Israel's action is to degrade Hamas's ability to operate.

However, to pump water into the tunnels, the IDF must gain access to the shafts and exercise at least some degree of control over those access points, so that it can install pipes and other equipment. On one view (e.g. Judges Morrison and Hofmański, para. 31), destructive acts directed against objects that are within the control of a belligerent party do not constitute attacks, but are governed by other rules of the law of armed conflict, in particular the prohibition on destroying objects unless their destruction is imperatively demanded by the necessities of war (Hague IV Regulations, art. 23(g)). Accordingly, if the

tunnels fall under IDF control, operations to flood them would not constitute attacks, meaning that the rules governing the conduct of attacks, including precautionary duties, would not be applicable.

While the IDF must gain some level of control over the tunnels to put them under water, its control will almost certainly be only partial. In fact, it is safe to assume that it will extend only to a fraction of the tunnel system. For example, it cannot be said that persons present in the tunnels would be in the power of the IDF just because its forces exercise control over certain access points to pump water through them. The degree of control exercised by the IDF over the tunnels is likely to be marginal compared to situations where an object is within the power of a belligerent in its totality (see Judges Morrison and Hofmański, para. 44). Accordingly, an operation to flood the tunnels must be treated as an attack within the meaning of Article 49(1) of AP I.

### **Military Objectives?**

One consequence of characterizing the flooding of Hamas tunnels as an attack is that the principle of distinction must be observed. The tunnels may only be made the object of attack by flooding if they constitute military objectives, meaning that they must be objects which by their nature, location, purpose or use make an effective contribution to the military action of Hamas and whose partial or total destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage to Israel.

Whether the tunnels meet this definition has been discussed on the pages of this blog by BG (ret.) David Wallace and BG Shane Reeves. As Wallace and Reeves note, there is some debate about what it means for an object to make an effective contribution to military action *by its nature*. It is generally accepted (e.g. Dinstein, p. 88) that the nature test refers to the intrinsic character of an object.

What is subject to debate is whether only those objects satisfy this test which due to their intrinsic character are useful exclusively to the military or whether objects which may have multiple uses, but which were designed for the military and normally serve only in that role, also qualify. Most weapons fall into the first group. For instance, ballistic missiles are intrinsically military by nature, since they have no practical civilian use and serve only a military purpose. Examples that fall into the second category include military barracks and training camps, which both in principle and in practice could be repurposed for civilian use.

It is not necessary to decide which of these two positions is preferable or correct as a matter of law. As Professor Daphné Richemond-Barak has suggested (p. 178–79), tunnels designed to serve as fortifications, command and control centres, staging points, weapons storage facilities or barracks, and which perform no ordinary civilian purpose, would constitute military objectives by nature under both approaches (see also Professor Michael Schmitt). Whereas the tunnels dug by Hamas under the border between Gaza and Egypt

may serve both military and non-military purposes, for instance to smuggle goods, the ones being targeted by the IDF inside Gaza are likely to be exclusively military in nature. In any event, their current and future intended use by Hamas, as well as their location, may also make an effective contribution to the group's military action and hence satisfy the first part of the definition of a military objective on those alternative grounds.

As BGs Wallace and Reeves note, “there is little doubt that denying Hamas use of the tunnel complex in Gaza would provide the Israeli military a significant advantage.” Indeed, destroying or neutralizing the tunnels would deny Hamas the military benefits these structures offer and, crucially, force its fighters to operate above ground where they can be identified and engaged by the IDF. The military advantage to be gained is therefore not only definite, but of potentially strategic significance. In sum, the tunnels evidently qualify as military objectives.

### **Single or Several Military Objectives?**

A related question is what exactly constitutes the military objective in this context? Tunnels can be complex structures, composed of a network of interconnected shafts, chambers and passageways. Are these different elements merely constituent parts of a single object, a single tunnel, or are they distinct objects and the notion of a tunnel merely an umbrella term that refers to them collectively?

The answer matters, since filling up an underground void with water is likely to flood any connected structures. This does not pose a legal challenge if all of the different structures flooded in this way are component parts of a single military objective. By contrast, if connected underground voids constitute distinct objects, their status must be determined individually. They may only be made the object of attack if each constitutes a military objective in its own right. Should they not qualify as military objectives, but constitute civilian objects, the IDF must avoid, or in any event minimize, inflicting incidental harm on them and any incidental harm that it does expect to cause may not be excessive in relation to the direct and concrete military advantage anticipated from the attack.

The question of what is an object for these purposes has been discussed in relation to the targeting of high-rise buildings. The majority view (e.g. *Danish Military Manual*, p. 310) holds that when a complex structure like an apartment block becomes a military objective, the entire structure becomes liable to attack, notwithstanding the fact that some of its component parts, such as certain individual apartments, may not make an effective contribution to the enemy's military action. In such cases, there is no obligation to perform an “internal proportionality” assessment to ensure that the harm caused to the residual civilian functions of the object is not excessive in relation to the military advantage gained from destroying the overall structure. By contrast, a minority view (e.g. International Committee of the Red Cross, p. 39) suggests that the residual civilian use of a complex structure must be accounted for through precisely such an “internal proportionality” assessment.

Both positions suffer from certain weaknesses. A troubling implication of the majority view is that even relatively minor levels of military advantage may render a large structure liable to attack in its entirety, even where its total destruction would severely impact civilians. The trouble with the minority view is that the idea of “internal proportionality” finds no real support in the existing law and State practice.

Professor Michael Schmitt has proposed a third approach. Where an attacking party is capable of targeting component parts of a larger structure individually and it is feasible for it to do so, it may attack only those parts of the structure that are in actual use by the adversary, but must continue to treat other parts not so used as civilian objects. This approach is attractive in so far as it requires belligerent parties to be more discriminating where feasible, but does not prevent them from destroying a complex structure in its entirety should they lack the capability for greater discrimination or where it would not be feasible to do so. However, the fact that pursuant to this approach States with more advanced capabilities would have to include in their proportionality calculations any incidental harm caused to those parts of the building that are not in hostile use may blunt their enthusiasm for Professor Schmitt’s proposal.

Be that as it may, both the minority approach and Professor Schmitt’s proposal apply only to dual-use objects, that is civilian objects which have become military objectives because they are being used by the adversary. The two approaches are not applicable to objects that are intrinsically military. By definition, objects that are military in nature have no residual civilian use. Indeed, it would make little sense to insist that a belligerent capable of disabling only one particular component of an enemy armored vehicle must attack only that specific part, but may not destroy the vehicle in its entirety.

Accordingly, if Hamas tunnels are military objectives by nature, neither the minority position nor Professor Schmitt’s approach applies. The only question that arises is how to determine whether the different shafts, chambers and passageways that make up a tunnel are component parts of a single object or, alternatively, whether they are distinct objects?

In the context of the debate over high-rise buildings, I have suggested that the decisive factor is whether the different elements of a composite structure are structurally autonomous or co-dependent. An apartment in an apartment block is structurally co-dependent, since its floor, walls and ceiling all form an integral part of the overall building. Moreover, individual apartments can only be accessed through certain shared spaces, such as a staircase. Each apartment is functionally dependent on such spaces. Where underground chambers, rooms and other facilities can only be accessed through shafts or passages that connect them, these facilities are structurally and functionally co-dependent and should be considered as integral components of the same object, that is as component parts of a single tunnel.

What complicates matters is that tunnels may have several access points, potentially rendering their component parts less dependent on each other than individual apartments in a high-rise building. Bearing these considerations in mind, a key point to take away is that buildings and other overground structures that conceal access points to tunnels, but which otherwise are structurally distinct from them, must be treated as separate objects and their liability to attack must be assessed individually.

### **Indiscriminate Methods of Attack**

In its operations against the tunnels, the IDF must observe the prohibition against indiscriminate attacks. The prohibition extends to attacks that employ methods or means of combat which cannot be directed at a specific military objective and, consequently, are of a nature to strike military objectives and civilians or civilian objects without distinction.

As the International Committee of the Red Cross's (ICRC) Commentary to AP I explains, this rule prohibits the use of weapons or tactics that lack the precision necessary to target only specific military objectives. The destruction of dams to cause widespread flooding at surface level easily falls foul of this rule, as the extensive civilian and environmental damage caused by the demolition of the Kakhovka Dam illustrates. By contrast, by pumping sea water directly into the Hamas tunnels, the IDF would direct its attack specifically against the tunnels and thus respect the principle of distinction. The fact that flooding the tunnels may also affect civilians or civilian objects, whether they are present inside the tunnels or on the surface, does not change this assessment. Such harm would be incidental and fall within the scope of the proportionality rule, discussed below.

The prohibition of indiscriminate attacks also covers attacks that employ methods or means of combat the effects of which cannot be limited as required by the law of armed conflict. The ICRC Commentary to AP I expressly mentions fire and water as a means of warfare which, "depending on the circumstances of their use, can have either a restricted effect or, on the contrary, be completely out of the control of those using them, causing significant losses among the civilian population and extensive damage to civilian objects." Compared to flooding at surface level, the destructive effect of pumping water underground is likely to be more contained. However, the possibility cannot be discounted that the water may spill from the tunnels to damage civilian objects, such as sewers and other underground utilities, or cause subsidence with consequent harm to civilians and civilian objects overground. The prospect of such civilian harm engages Israel's precautionary duties and the proportionality rule. Nor can the possibility of environmental harm be dismissed, which in turn engages the relevant rules regarding the protection of the natural environment. Both of these points are discussed below.

### **Unnecessary Suffering and Superfluous Injury**

Pumping enough water into the tunnels to completely flood them may take weeks. Most Hamas fighters should therefore have sufficient time to evacuate the network. Nevertheless, it is reasonable to expect that some fighters may be killed during the operation. This raises the question whether flooding the tunnels is compatible with the prohibition to use of methods or means of warfare which are of a nature to cause superfluous injury or unnecessary suffering.

“Superfluous” and “unnecessary” are comparative terms. It is well established (e.g. Bootby, [ch. 5](#)) that they must be measured against the lawful military advantage that a particular weapon or tactic is designed to achieve. The injury caused may be superfluous and the suffering unnecessary if alternative weapons or tactics are available that could achieve the same military benefit at lower levels of injury and suffering.

In the present case, the most obvious harm faced by Hamas fighters would be the risk of drowning. No rule of the law of armed conflict specifically prohibits the use of methods or means of warfare that kill members of hostile forces by drowning. It is perfectly lawful to attack a vessel, or an aircraft in flight above the sea or other waters, where such an attack results in drowning the combatants on board. The necessity of this method of combat derives from the fact that in most cases it is impossible or impracticable to destroy a vessel or aircraft over water without sinking it.

The question is therefore whether alternative methods or means are available to the IDF which would achieve the same outcome, that is, render the tunnels inoperable and drive Hamas fighters overground, but which clearly involve lower levels of injury and suffering? Bearing in mind the prohibition against using [poison](#) and [chemical weapons](#), the use of poisonous gases is not a lawful option. Nor would it be possible to use non-lethal gasses, such as tear gas, since the employment of [riot-control agents](#) as a method of combat is also prohibited.

In any case, while such substances may disable persons inside the tunnels, unlike water, they would not cause physical damage to the tunnel network itself and therefore would not offer the same military benefit. Another alternative is to flood the tunnels with [concrete](#), a method the IDF has employed against Hezbollah tunnels at Israel’s northern border with Lebanon. However, compared with pumping water from the sea, it may not be possible to deploy this method at the speed and scale required to achieve the desired military outcome, which is to render the tunnels inoperable in the context of the ongoing hostilities. Also, pumping liquid concrete rather than sea water into the tunnels does not make much of a difference to the persons inside. In both cases, suffocation and impact trauma are the likely causes of death.

Based on these considerations, flooding the tunnel network with sea water does not appear to involve a method or means of combat that causes unnecessary suffering or superfluous injury.

## No Quarter

Although the relatively long time it would take to fill the tunnel network with water is likely to allow most Hamas fighters to escape, some might be trapped underground. Would this violate the rule against conducting hostilities on the basis that no quarter will be given? What the rule prohibits is ordering that there should be no survivors, threatening the enemy that there will be none or conducting hostilities on this basis. It is important to emphasize that this rule does not preclude the destruction of every single member of an enemy military unit or crew, provided that they remain lawful targets of attack. What it prohibits, rather, is to disregard or reject a clearly communicated intent to surrender (e.g. DoD, Law of War Manual, § 5.4.7). There is no obligation to pause operations to offer enemy fighters an opportunity to surrender. The onus is on the enemy to lay down their arms. Accordingly, as long as Hamas fighters who are underground remain lawful targets of attack, the fact that none may survive the flooding does not amount to a denial of quarter.

## Proportionality

As is well known, the proportionality rule prohibits attacks 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 anticipated.

Incidental civilian harm must be accounted for if it is expected either because it is known to occur or because it must reasonably be expected to occur in the ordinary course of events. It is also established that civilian harm must be included in the proportionality assessment not only when it is an immediate and direct consequence of an attack, but also when it is connected to the attack by a longer causal chain, provided the harm is foreseeable and not remote (e.g. Danish Military Manual, p. 311). Harm caused by reverberating effects is therefore included.

In the present case, it is reasonable to expect that some civilians may be present in the tunnels, including some of the civilian hostages taken by Hamas on 7 October 2023. However, since Hamas appears to use the tunnels almost exclusively for its own operations, the overall number of civilians present is likely to be low. Provisions, machinery, and other objects under the control of Hamas and intended to support its action will almost certainly meet the definition of military objectives. The number of civilian objects underground is therefore likely to be low as well.

In addition to any civilian persons and objects present in the tunnels, the IDF must also consider whether the flooding may cause incidental harm to civilians and civilian objects located elsewhere. Water may flow into buildings or structures that are not integral parts of the tunnel system. For example, the water may damage cellars, sewers, or other low-lying structures. Some tunnels may also collapse, either immediately or in the future. This could



cause significant damage to infrastructure and to persons above ground. How likely the risk of collapse is and how severe its potential consequences are depends on a number of factors, including the structural integrity of the tunnels.

Experts have also expressed concerns that flooding the Hamas tunnel network with sea water will further degrade the water quality of the Coastal Aquifer, the only source of groundwater in Gaza. The water extracted from the aquifer is brackish, affected by pollution, and for the most part not suitable for human consumption (UN Human Rights Council, para. 56). Further loss of water quality could have a significant impact on the civilian population due to a number of reasons, including the fact that the Coastal Aquifer is by far the largest source of water in Gaza, the already severely limited availability of potable water, and the damage suffered by water treatment facilities and infrastructure. Whether this may lead to injury and death among the civilian population and at what scale is a matter that requires expert assessment, but the obvious concern is that it may potentially affect a large part of the civilian population and do so severely.

Turning to the military advantage side of the proportionality assessment, the military benefit expected from the operation is both concrete and direct. Rendering the tunnels useless would deny Hamas a safe base from which to operate and deprive it of shelter and protection. It would force Hamas fighters above ground where they would be exposed to Israeli attack. Unless Hamas were able to retrieve equipment and supplies stored underground, it would also deprive the group of these items. Not only is the military advantage therefore concrete and direct, but it also appears to be very significant. While the destruction of the tunnel network would not guarantee strategic success, it may nevertheless have a decisive impact on the course of the conflict and for this reason is of potentially strategic significance.

From afar, what can be said with some degree of confidence is that the level of incidental harm caused as an immediate consequence of flooding the tunnels is likely to be low and therefore not excessive in relation to the very significant military advantage expected. By contrast, the reverberating and longer-term effects of the operation are difficult to determine without expert input. The impact of tunnel collapses and subsidence could be significant. If the water quality and availability is further degraded in what is already a dire humanitarian situation, this could affect the majority of the civilian population and may result in significant levels of injury and death, which might be excessive even in relation to the high level of military advantage anticipated. There may be ways to avoid such an outcome, for instance if Israel were to supply water in sufficient volume through alternative means or limit its attacks to certain sections of the tunnel network. Such mitigating measures could render lawful an attack that would otherwise not be proportionate.

Given the potentially serious implications of the attack, what is clear is that the IDF must make a rigorous, careful, and comprehensive assessment of its potential impact on the civilian population. In doing so, it must draw on relevant information and expertise from all

available sources to establish, as accurately as it can, the risk of collateral harm.

### **Starvation and Indispensable Objects**

Even if the flooding of Hamas tunnels would drastically reduce the availability of potable water to the civilian population of Gaza, it is unlikely that it would contravene the prohibition to use starvation of the civilian population as a method of warfare or the prohibition of attacking, destroying, removing or rendering useless objects indispensable to the survival of the civilian population.

Starvation of the civilian population is prohibited when pursued deliberately as a method of warfare. The impact that the flooding may have on the Coastal Aquifer and thus on the quality and availability of drinking water in Gaza is incidental. This brings it firmly within the scope of the proportionality rule, but not the prohibition of starvation. For similar reasons, while the flooding may render useless Gaza's supply of groundwater, this would be in breach of the rules only if done for the specific purpose of denying its sustenance value to the civilian population, which does not appear to be the case here.

### **Damage to the Environment**

The law of armed conflict also prohibits the use of methods or means of warfare that are intended, or may be expected, to cause widespread, long-term, and severe damage to the natural environment. The threshold of damage is high and not easily met. This is so because the three conditions are cumulative and demanding. "Widespread" refers to damage extending to several hundred square kilometres; "long-term" to a period of at least several years, possibly several decades; and "severe" to harm that threatens the health or survival of the population on a large scale (ICRC, *Customary IHL Study*, rule 2).

Although the threshold of damage is high, it is not inconceivable that at least some of the conditions could be met. Given the size of the Coastal Aquifer, the environmental damage could be widespread if it were to affect large parts of the aquifer. As already noted, further degradation of the quality and availability of the groundwater may satisfy the condition of severity. If the environmental damage were to persist for a period of at least several years, the long-term condition may also be met. Whether or not this is the case depends on the multitude of factors and ultimately requires more thorough expert analysis before firm conclusions can be drawn.

### **Precautionary Obligations**

In planning and carrying out an attack against the Hamas tunnel network, the IDF must do everything feasible to assess whether the attack may be expected to cause excessive incidental harm to civilians and civilian objects. As noted earlier, this requires the IDF to draw on relevant information and expertise from all available resources. In addition, the IDF must also take all feasible precautions to avoid, and in any event to minimize, incidental loss of

civilian life, injury to civilians and damage to civilian objects. For example, if the civilian harm anticipated from flooding the tunnels can be limited or mitigated, it must take all feasible steps to that end.

In this context, the IDF should also consider giving effective advance warnings. Since plans to flood the tunnels have already been reported and the success of the operation does not seem to depend on catching Hamas by surprise, there is no apparent reason why circumstances should not permit giving advance warnings. Doing so may enable the civilian population to take appropriate measures to protect themselves from the dangers that the operation may pose.

### **Concluding Remarks**

Flooding Hamas's network of tunnels with sea water raises a range of legal questions under the law of armed conflict. Having considered some of the most important issues, the overall conclusion to be drawn is that the operation would not be incompatible, in principle, with Israel's obligations. The tunnels are military objectives liable to attack. Filling them with water would not be an indiscriminate attack, cause superfluous injury and unnecessary suffering, or involve the denial of quarter. Bearing in mind the very significant military advantage that may be expected from putting the tunnels out of operation, the level of collateral damage that may be anticipated as an immediate consequence of the attack is unlikely to be excessive. However, the reverberating effects may be far more significant, in particular if they were to drastically reduce the availability of potable water to the civilian population and lead to high levels of injury and death.

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