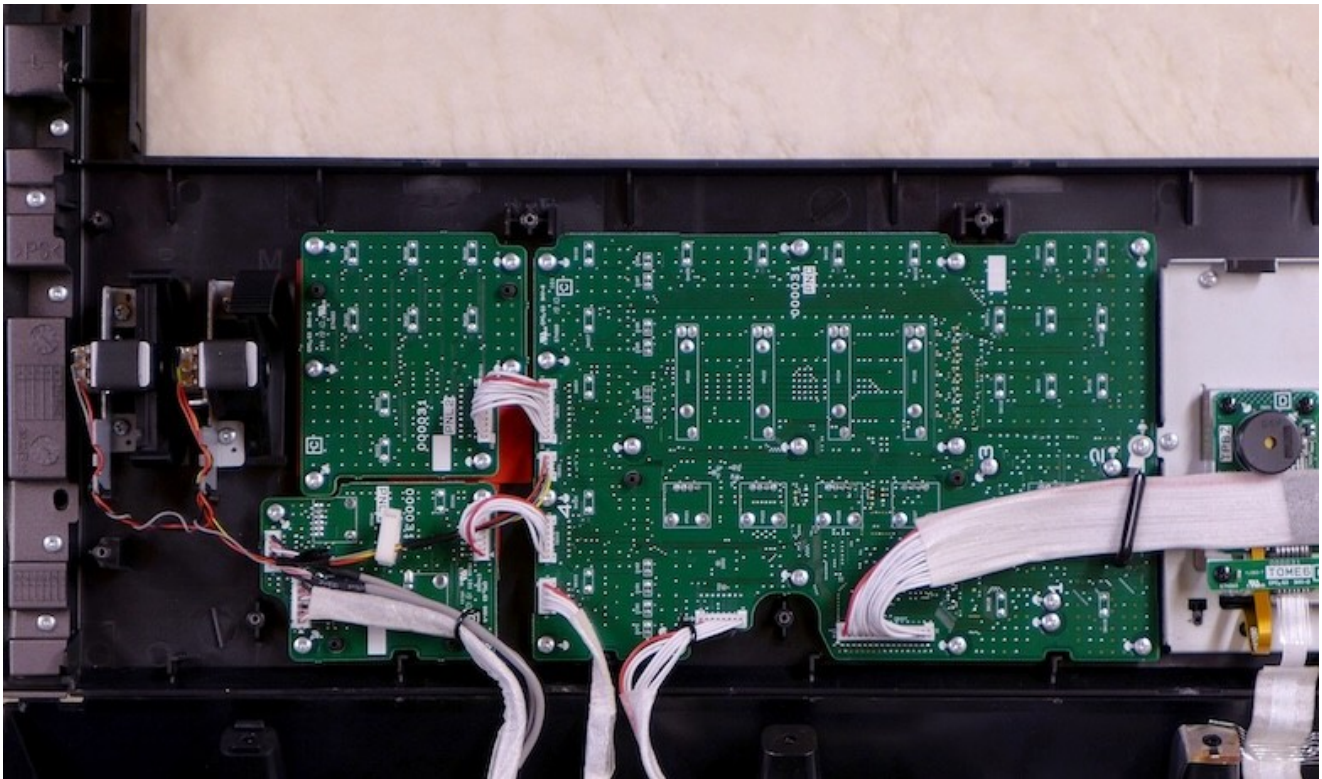


“Well, it Depends”: The Explosive Pagers Attack Revisited

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On 17 September, 2024, thousands of pagers distributed by Hezbollah to its operatives in Lebanon and Syria exploded. On the following day, hundreds of walkie talkies used by Hezbollah operatives also exploded. According to the [Lebanese Ministry of Health](#), more than 30 people were killed in both attacks and thousands were injured (most of the casualties appear to have been Hezbollah operatives, but a few civilian casualties were also reported, including two children who died in the attack). While no State acknowledged responsibility for these explosions, [media reports](#) have strongly suggested that Israel is responsible for them.

[New York Times](#) and [Washington Post](#) reporting suggests the following sequence of events. For years, Israeli intelligence identified pagers as a possible way to penetrate Hezbollah’s communication systems. As early as 2020, Hezbollah’s late leader, Hassan Nasrallah, warned members of the group against the use of cell phones, because he feared Israel was monitoring their cell phone conversations, and tracking their movements. In February 2024, Hezbollah decided to go “low tech” in order to evade Israel’s monitoring.

Anticipating this, Israel formed a shell corporation in Hungary called B.A.C. Consulting, which procured a license to manufacture pagers from the Taiwanese corporation Gold Apollo. Hezbollah ordered 5,000 new pagers from B.A.C., through an intermediary, and distributed them to its operatives and some of its allies. The pagers were particularly attractive for military use by Hezbollah since they had long-battery life, they were rugged and reliable, and could send encrypted messages.

As it turns out, Israeli intelligence, operating through B.A.C., produced for Hezbollah specially designed pagers containing batteries laced with small quantities of the explosive PETN, which is difficult to detect. The explosives were designed to detonate after a specific encrypted message was sent to them, activating an on-switch in the explosive charge. The actual explosion occurred shortly afterwards either by pager holders pressing two buttons manually with both of their hands to view the encrypted message or through a second activating message.

On 17 September, the detonation order was given and thousands of pagers exploded. Twelve persons were reportedly killed by the explosions (two of them children, most likely of Hezbollah operatives). Nearly 3,000 people were injured, most of them suffering injuries to the hands and face. On 18 September, a second set of explosions took place resulting in more casualties. This time the attacks were focused on walkie-talkies, which were probably in use by Hezbollah for a longer period of time (perhaps from as early as 2015).

While there appears to be broad appreciation among military experts of the sophistication of Israel's intelligence services and the technical prowess they demonstrated in the pager attack, professional debates regarding the legality of the attack reveal deep disagreements (see e.g., [here](#), [here](#) and [here](#)). Whereas some commentators described the attack as the "most precise anti-terrorist attack" ever conducted, UN officials referred to them as unlawful, and possibly even criminal. These debates indicate not only the deep polarization of expert opinions relating to the Middle East conflict, but also the real challenge posed to international humanitarian law (IHL) both by the introduction of new means and method of warfare and by lingering problems involving the conduct of hostilities involving irregular forces immersed in a civilian population.

In this post, we seek to revisit some aspects of the controversy surrounding the pagers attack. We analyze the attack in light of subsequent developments in the armed conflict between Israel and Hezbollah and highlight factual and legal uncertainties that complicate the analysis. These uncertainties prevent, in our view, a conclusive judgment on the legality of the attack before more information becomes available. To be clear, we have no independent knowledge regarding the details of the attack. We therefore base our tentative analysis and conclusions on media reports and on what we perceive to be reasonable factual assumptions about what actually happened.

Criticisms relating to the legality of the operation have been raised concerning three legal frameworks: first, Israel's right to use of force in Lebanon (*jus ad bellum*); second, questions of distinction, proportionality and the obligation to take precautionary measures in targeting under the laws of armed conflict; and third, the legality of using exploding pagers under the laws regulating choice of weapons (or means or methods of warfare). We address below, in turn, these three sets of criticisms.

Jus ad Bellum

The first criticism levelled against the pagers attack pertains to the legality of Israel's use of force in Lebanon. The main claim raised in this connection is that only if Hezbollah's military operations are attributed to the State of Lebanon is Israel entitled to use force inside the latter's territory. Other issues raised, which appear to us to be less significant in nature, are the concern that the timing of the attack was motivated by fears that the covert operation would be revealed—a consideration not captured by *jus ad bellum* tests of necessity—and the claim that Israel had no right to self-defense because Hezbollah declared that it would halt its military operations against Israel once Israel agreed to a cease-fire in Gaza.

The first claim involves a long-standing debate in international law regarding the right to apply force in self-defense in response to an armed attack by a non-State actor. This debate goes back to post-9/11 UN Security Council [resolutions](#) and the 2004 International Court of Justice [advisory opinion](#) on the *Wall in Occupied Palestinian Territory* (see para. 139). While the debate over uses of force in cases involving States that are unable or unwilling to curb the operations of a non-State actor based in their territory appears to be inconclusive (see e.g., [here](#) and [here](#)), it could be claimed that in the specific case of the Israel-Hezbollah armed conflict, Hezbollah's activities could be attributed to Lebanon itself. This is either because Hezbollah constitutes part of the [Lebanese government](#), or because Hezbollah acts as the *de facto* [armed forces of Lebanon](#) in the south of the country.

Arguably, Article 9 of the [Articles on State Responsibility](#), which attributes responsibility to States for acts by a “person or group of persons [that] is in fact exercising elements of the governmental authority in the absence or default of the official authorities and in circumstances such as to call for the exercise of those elements of authority,” allows attribution of acts of “resistance” undertaken by Hezbollah in parts of the country placed outside the actual control of the Lebanese army to the Lebanese State. This is especially so, because Hezbollah has been [recognized](#) by the Lebanese government as a military force that operates alongside the Lebanese army and complements its activities.

The upshot of this situation appears to be that, to the extent that Hezbollah attacks against Israel from 8 October, 2023 onwards constitute an armed attack, Israel has the legal right to take self-defense measures against Hezbollah, and probably also against the Lebanese State (which incidentally, for *jus in bello*, purposes would make the conflict an international armed conflict). We note in this regard that between 8 October 2023 and 17 September

2024, Hezbollah fired more than 8,000 rockets towards Israel, reaching a peak of 1,300 rockets in the month of August alone. More than 60,000 Israelis had to leave their homes in northern Israel, because of these rocket attacks and dozens of civilians and soldiers on the Israeli side were killed. Considerable damage to civilian and military objects also resulted. This level of armed violence appears to cross the threshold for an armed attack under international law.

The other *jus ad bellum* points mentioned above seem to us to be legally unfounded. Regardless of the particular tactical circumstances that led to the choice of time for launching the pagers attack, it is now clear that the attack was an initial step in a broader military campaign designed to end Hezbollah's armed attacks on Israel and to remove the grave and imminent security threat this organization poses. The fact that the Israeli major counter-attack was undertaken almost a year after Hezbollah's attacks started, following a series of failed attempts to end Hezbollah's use of force through resorting to more measured military responses and diplomatic means, appears to us to clearly meet the *jus ad bellum* test of necessity.

In the same vein, the argument that Israel was legally required to accept a ceasefire deal in Gaza—on terms which it considers unacceptable to it (i.e., which would leave Hamas in control of the Gaza Strip)—in order to stop Hezbollah's rocket attacks, and that its failure to do so implies lack of military necessity, appears to us to be baseless. As a non-State actor, Hezbollah has no legal right to use force against Israel (even if one is of the view that Israel's military operation in Gaza is unlawful and even if Hezbollah's acts can be ultimately attributed to Lebanon which has not itself claimed that it is exercising collective self-defense). Moreover, it is not in a position to compel Israel to accept its political demands regarding the Gaza Strip, which is the implicit assumption underlying the lack of necessity claim.

Targeting

The second criticism directed against the legality of the pagers attack revolves around issues of targeting. It could be argued that Israel did not know, and perhaps could not have known, who holds any specific pager at the exact time it exploded. Pagers were also perhaps disseminated to non-combatants and uninvolved civilians, including children who might have picked them up accidentally just before they exploded. As a result, the attack might have been indiscriminate and, perhaps, also disproportionate.

To discuss this criticism, we must make some factual assumptions. *First*, Hezbollah's main goal in acquiring 5,000 new pagers appears to have to enable non-geo-localized and encrypted communication with its operatives in ways that avoid possible monitoring by Israel. They were also designed to withstand difficult operational conditions (long battery life and rugged and reliable features). It therefore makes sense to us to assume that the pagers served military operational purposes which required a high degree of confidentiality.

If this is indeed the case, it is also sensible to make a *second* assumption, that is, that the vast majority of persons holding the pagers were members of Hezbollah who were involved in the military operational activities of the organization (i.e., members of its military branch as opposed to members of other branches such the political, judicial and welfare branch). This assumption is supported by news reports that describe most of those killed or injured by the attack as “fighters.”

We note in this regard that the military branch of Hezbollah comprises of some 30,000 fighters (and about 20,000 reservists). It is therefore likely, and this is our *third* assumption, that the 5,000 new pagers were distributed selectively, mostly to valuable military operatives that the Hezbollah high command wished to directly communicate with on a confidential basis. Granted, we also know from media reports that some pagers were probably given to other members of the organization (such as medical staff, who may or may not have had connections to military activities) and other allies (such as the Iranian Ambassador), who were apparently inside the operational information “loop.”

These assumed facts allow us to make a number of legal observations. First, regarding the very legality of the attacked targets, Article 52(2) of the First Additional Protocol to the Geneva Conventions—which reflects a norm of customary international law applicable in both international and non-international armed conflicts (IACs and NIACs, respectively)—provides that attacks against objects must only be directed at military objectives defined as “those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.”

As there are strong indications that the pagers were used for military communication purposes in operational contexts, they appear to be by *purpose and use* military objectives. The events which unfolded after the pagers attack illustrate the dramatic military advantage their destruction or neutralization provided Israel. Over and beyond the confusion generated by the spectacular collapse of Hezbollah’s communication system, the attack compelled leaders in the organization to resort to face-to-face meetings to coordinate future activities. Such meetings, in turn, created operational opportunities for the Israeli Air Force to target participants in them.

It has been claimed that designation of the pagers themselves as the target of the operation is “counterfactual” because Israel could have resorted to other, less lethal means to neutralize or destroy them. Further, it was suggested that the method of detonation by which operatives were encouraged to use both hands to open an encrypted message, was intentionally directed to cause Hezbollah operatives serious hand injuries.

It is indeed highly probable that Israel pursued through the pagers attack *two* different goals: taking down Hezbollah’s communication system; *and* incapacitating many Hezbollah operatives. However, the fact that a single attack has two goals does not mean that each of

these goals cannot justify the attack independently. On the assumption that the pagers were intended for military use, we are of the view that the very precise attack on them meets the test of distinction. As for the claim that Israel could have resorted to other methods of sabotaging Hezbollah's communication system—which is also based on factual assumptions regarding the operational alternatives that were actually available to Israel and the detection risk and repair possibilities appertaining to each alternative—we believe it actually relates to another legal requirement, namely, “the choice of means and methods of attack” and the need to avoid or minimize “incidental loss of civilian life, injury to civilians and damage to civilian objects” (art. 57(2)(a)(ii) of the First Additional Protocol).

If we are right and the pagers were expected to be mostly in the hands of military operatives, choosing means and methods that would also neutralize them is likely compatible with the principle of precaution. This is especially so because these operatives may themselves constitute legitimate military targets. Targeting the pagers in ways that also neutralize enemy combatants significantly enhances the military advantage produced by the attack. One possible analogy to illustrate this point is the choice to target a military base, a clearly lawful target, at daytime, when it is most busy. Because it can be assumed that most persons who would be at the military base at the time of the attack are themselves lawful targets, the attack would seem to meet the requirements of Article 57(2)(a)(ii), even if some civilians located inside the base (e.g., civilian service providers) are also harmed in the operation. The added military advantage of conducting the attack at daytime could justify the attack even if a nighttime operation would have led to reduced civilian harm.

Note that we do not plan to reopen here the debate over direct participation in hostilities. Whereas under the U.S. Department of Defense (DoD) Law of War Manual (§ 5.7.2) “individuals who are formally or functionally part of a non-State armed group that is engaged in hostilities may be made the object of attack,” the more restrictive International Committee of the Red Cross Interpretative Guidance on direct participation in hostilities designates as targetable members of a non-State group who are involved in a continuous combat function. As stated earlier, we have assumed that most of those who received the pagers were members of Hezbollah involved in military operations. In fact, it seems that the very eligibility of Hezbollah operatives to hold pagers for military operational communications is a strong (though not irrefutable) indication of their active participation in the hostilities between Hezbollah and Israel. Given how the pagers were operated, it also makes sense to assume that those holding them received some training from Hezbollah and were part of their inner circle of military operations. Most probably, they were already actively participating in hostilities or were battle-ready and on stand-by (i.e., involved in a continuous combat function).

Of course, even if the attack was not indiscriminate in nature, because it was targeted against a military objective (i.e., the pagers), it still must be assessed in accordance with the principle of proportionality. Attacks may not be executed if the expected incidental damage to civilians is excessive with regard to the anticipated concrete and direct military advantage.

While Israel is not party to the First Additional Protocol, we note that some States declared when joining it that for the purpose of the application of the principle of proportionality, the military advantage derived from the attack is to be “considered as a whole and not only from isolated or particular parts of the attack.” Israel supported the same position in 2015, in its official report stating its legal position regarding operation Protective Edge (para. 318). Applying this standard would suggest that for proportionality purposes, the pagers attack should be analyzed as a single attack. Indeed, the fact that all pagers exploded almost simultaneously strongly suggests one coordinated act (see here).

As indicated before, media reports indicate that two children were killed in the explosions. No information has been released regarding the number of civilians among the wounded. It has also been reported that the explosive charges installed in the pagers were relatively small, leading mostly to injuries and not deaths. And we are not aware of any reports of harm to non-pager carrying third persons (i.e., persons who did not hold or carry the pagers at the time of their explosion).

Based on these outcomes, then, and on the assumption that the vast majority of those killed or injured were Hezbollah militants, the attack on the whole appears proportional in view of the exceptional military advantage it produced, namely, the destruction of Hezbollah’s entire communication apparatus and neutralization of key military operatives on the eve of a larger military operation. In fact, the process by which most of the explosions was carried out—only after the operative tried to open an encrypted message—actually served to *limit* collateral damage. Arguably, uninvolved civilians accidentally picking up the beeping pager had no business trying to read the message sent to the operatives and therefore detonating the pager. This method caused the pagers to be held *close* to the military operative’s hands or face, and thus to restrict the harm to civilians who happen to be in his vicinity.

Still, critics of the operation raise another point, which is relevant to the proportionality analysis (as well as to distinction if one does not accept our position that the pagers were, formally speaking, the object of the attack). Even if one accepts that the pagers were distributed mostly to Hezbollah military operatives, Israel could not know who actually held the pagers at the time of their explosion, and therefore it could not have directed its attack only at militants and/or could not have anticipated that the harm to civilians would not be excessive. As already indicated, there are reports that suggest some of those harmed were civilians not participating in hostilities. Therefore, Israel’s actions arguably violate IHL’s presumption of civilian status, according to which a person is considered a civilian unless it can be proven otherwise. This rule is relevant for the application of both principles of distinction and proportionality.

Discussing these points requires addressing several controversial doctrinal issues. First, with regard to the presumption of civilian status, despite some disagreements in the past about its scope and contents (especially regarding NIACs), it now seems settled law that in case of doubt as to whether the attacked person or object is civilian, a presumption of civilian status

must hold. The level of proof that the attacking military must attain before reversing the presumption, however, is far from clear. Deciding extreme cases appears to be straightforward. The attacking State is not required to show one-hundred percent proof that the person targeted is taking a direct part in hostilities, nor can it base its identification of the target as military on general speculations, such as age or gender. Disagreements remain regarding the cases found in the middle between these two extreme scenarios.

The 2023 version of the U.S. DoD *Law of War Manual* suggests the following criteria: the decision of the commander should be based on his genuine and good faith professional opinion as to the identity of the target; on context; and on available information. It should consider the importance of the target, as well as expected civilian casualties. The level of proof need not be one which will convince a criminal court.

The *Manual* further states,

Commanders and other decision-makers must determine whether a potential target is a military objective based on the available information that is relevant to whether the potential target meets the applicable legal standard for a military objective. Such relevant information includes the characteristics of the potential target (e.g., the conduct or status of the person or the nature, location, purpose, or use of the object), as well as other information that indicates whether the potential target is a military objective (e.g., the military advantages or disadvantages offered by where the target is situated, intelligence estimates of enemy forces' presence or anticipated action, enemy tactics, or assessments of civilian presence and behavior). In addition, it may be feasible to gather more information about the potential target (§ 5.4.3.2).

This standard of “genuine and good faith professional opinion” seems to us to be a correct articulation of the evidentiary standard required for identifying military targets under IHL.

From that point of view, it seems to us that if Israel made a professional assessment as to the identity of the persons holding the pagers, in which it assumed that there is a very high chance that the person holding the pager would be a legitimate military target, this could, in the specific context of the conflict against Hezbollah, substantiate a decision to target pagers (and those holding them) in a manner that would not produce excessive collateral harm. In particular, the contextual analysis should, in our mind, consider the fact that alternative operations to target Hezbollah's mid-and high-level command structure, which is embedded in civilian settings (such as the Dahia quarter in Beirut) would most likely result in far greater collateral harm to civilians.

Another relevant doctrinal question involves the use of probabilities in targeting decisions. Let us assume that Israel knew in advance that five to ten percent of the persons holding the pagers would be civilians without being able to identify which of the pagers was actually used by civilians and without having the technological ability to target only those directly

participating in hostilities. Would it then be prohibited from detonating the pagers (under principles of distinction or proportionality)? This state of affairs appears to us to be analogous to the problem of error rate in the use of weapon systems. Assuming that even sophisticated missiles have a five to ten percent error rate, which could result in them missing their target, would one say that sending a barrage of missiles directed at military objectives during an active armed conflict is prohibited, just because there is almost statistical certainty that civilians would be harmed because of the malfunctioning of some of these missiles? If indeed our factual assumption is correct, and Israel anticipated according to its “genuine and good faith professional opinion” that almost but not everyone who would carry or hold a pager is a Hezbollah military operative, the fact that it could have been expected that a small number of civilians might be also harmed, does not render, in our view, the entire operation disproportionate in nature.

The Prohibition on the Use of Booby Traps and Other Devices

The last issue we wish to discuss here is whether the pagers attack was a violation of the Protocol on Prohibition or Restrictions on the Use of Mines, Booby-Traps and Other Devices (amended on 1996) annexed to the Convention on the Prohibitions or Restrictions on the Use of Certain Convention Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (CCW Amended Protocol II). CCW Amended Protocol II is especially relevant if indeed the pagers attack was executed by Israel because Israel is a State party to the amended protocol, which applies both to IAC and NIAC (art. 1).

The CCW Amended Protocol II bans most uses of booby traps and other devices in the course of armed conflicts. The definition of “booby trap” in the amended protocol (art. 2) is “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.” “Other devices” are defined as “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.”

It is not clear if the definition of booby traps is relevant for the pagers. First, it is not fully clear whether pressing the buttons of the pagers constituted exclusive activation by a person who “approaches or disturbs” them and not activation also based on remote external intervention, that is, the sending of a signal. Video clips indicating that some pagers exploded while still in their users’ pocket support the possibility that at least some exploding pagers did not qualify as booby traps as defined by the CCW Amended Protocol II. In this case, the question is whether such pagers could qualify as “other devices” under CCW Amended Protocol II.

One possible problem with the application of the definition of “other devices” to the pagers is that the “other devices” definition requires that the device was designed for the sole purpose of injuring, killing, or damaging. Here, however, the pagers were designed mainly to be used

as communication devices, and the addition of explosives was only a change to an existing the device, and not an initial “design.” Still, we accept that it is possible to argue that Israel’s intervention in the supply chain was designed to generate a potentially lethal device, which could fall under the definition of “other devices” to the pagers.

Some have suggested in that regard that the applicability of the “other devices” definition hinges on the term “manually emplaced,” which requires devices to be physically placed in their location by the adversary. It appears from a review of the *travaux préparatoires* of the CCW amended Protocol II and its predecessor protocol—Protocol (II) on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices—that the term “manually emplaced” was introduced to distinguish between devices that were placed by a person from those delivered from the air and thus requiring special precautionary mechanisms to reduce civilian harm during and after the armed conflict (such as a self-destruction or remote controlled destruction mechanism). It appears to us that the CCW amended Protocol II, and its predecessor protocol, might contain a *lacuna* with regard to remotely delivered “other devices,” such as the pagers in question (which were most probably sent via a shipping service). Review of the legality of the attack on them should be made subject to the general rule of IHL governing the use of all weapons and means and methods of war.

Furthermore, even assuming that the CCW Amended Protocol II definition of “booby traps” and “other devices” encompasses the pagers in question, we doubt whether the pagers were prohibited in the context of which they were actually operated. Article 7(2) of the Amended Protocol states that “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” (emphasis added).

This article seems to include a categorical prohibition on the use of exploding devices if they are: (a) in the form of apparently harmless portable object and; (b) specifically designed and constructed to contain explosive material. The pagers included arguably explosive devices “hidden” in the form of harmless devices, which were designed to contain them. On that basis, it has been claimed, for instance by retired Air Commodore Boothby, that the pagers attack was a violation of the prohibition in article 7(2).

This categorical reading of Article 7(2) to the amended protocol is not free of doubt, however. A key to the correct understanding of Article 7(2) seems to us to be the term “harmless object.” A harmless object in the context of Article 7(2), seems to be connected to the rest of the article, which intends to prevent its use in contexts associated with perfidy or harm to civilians. For example, Article 7(1) prohibits the use of booby traps and other devices in any way attached to internationally recognized emblems, signs or signals, sick, wounded, or dead persons, medical facilities, children’s toys, historic monuments etc. Article 7(3) prohibits the use of booby traps and other devices in a civilian area, if they are not placed near a military objective.

It seems to us that the term “harmless object” should be understood in the same context, that is, it is prohibited to use exploding devices disguised as an object which has no military application. It is interesting to note in this regard that an early text jointly submitted by four countries (including France and the United Kingdom) in the course of the negotiations towards the 1980 Protocol II envisioned this distinction precisely. From the text of proposed Article 5 we were able to trace (CDDH/IV/213; we located it only in French, and only in paper version) the following: *“Il est interdit en toutes circonstances d’employer un objet portable apparemment inoffensif (en dehors d’en élément d’équipement ou de fournitures militaires) expressément conçu et construit pour contenir une charge explosive ou détoner quand une personne le déplace ou s’en approche”* (emphasis added). This suggests that at least some of the drafters intended to exclude military equipment and supplies from the categorical ban. The Hezbollah pagers, arguably, were purchased and used for military purposes, and could be considered military equipment.

The interpretation we offer also serves to clear a seeming discrepancy in the Protocol. As will be recalled, booby traps are defined as devices that are triggered when a person approaches or disturbs an apparently harmless object. However, if the use of all booby traps, including those attached to military equipment, is prohibited by Article 7(2) (as the categorical reading suggests), Article 7(1) is largely superfluous. Similarly, Article 3 to CCW amended Protocol II prohibits the use of mines, booby-traps and other devices in certain ways (e.g., it is prohibited if such weapons are designed to cause superfluous injuries) (see e.g., art. 3(2)). Once again, according to the categorical reading, this reading is superfluous.

Finally, the fact that the pagers were mostly detonated by a purposeful operational act (i.e., the opening of an encrypted message seemingly sent by the military leadership of Hezbollah) seems to negate the idea that they were “harmless” objects. If the pagers were indeed military objects, whose explosion was caused by an operational act connected with an armed conflict, they were hardly “harmless.”

Conclusion

We agree with other commentators that the legality or illegality of the pagers attack can only be determined on the basis of a detailed factual analysis and that the relevant facts are still not fully known. Still, absent contrary information, we believe it can be assumed that the pagers were primarily designed to serve a military function. They afforded Hezbollah fighters the possibility of communicating discreetly. Destroying or neutralizing them in one single attack provided the attacker (presumably Israel) a significant military advantage and does not seem to raise a serious issue under the principle of distinction. Questions raised regarding the alleged indiscriminate nature of the attack are in our view really questions of proportionality. The decisive test is whether the Israeli officials who have undertaken the operation could reach in their “genuine and good faith professional opinion” a reasonable conclusion that the vast majority of individuals impacted by the pager attack would be Hezbollah militants who were themselves lawful targets.

The question of the legality of the pagers attack under CCW Amended Protocol II raises both questions of fact and law. If indeed the pagers were exploded remotely, they may, at first glance, constitute “other devices” banned under Article 7 of the protocol. Still, doubts remain in our minds as to whether the ban under the Protocol covers remotely placed devices designed to serve a military purpose.

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