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PSYCHOLOGICAL VIOLENCE IN MODERN ARMED CONFLICTS: EMERGING CHALLENGES FOR INTERNATIONAL HUMANITARIAN LAW

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I. ABSTRACT

Armed conflict is commonly associated with physical violence, loss of life and destruction, and international humanitarian law (IHL) was built around these visible harms. Yet contemporary conflicts increasingly rely on methods that injure people without touching them: terror campaigns against civilians, coordinated disinformation, the public display of atrocities, threats sent through messaging applications and constant surveillance. This paper asks whether IHL can adequately recognize, regulate and respond to such psychological violence. Using a doctrinal and qualitative method, it interprets the relevant treaty provisions under the Vienna Convention on the Law of Treaties and examines customary IHL, the case law of the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Court (ICC), and psychological research on trauma and collective distress. It analyses the prohibition of acts or threats of violence whose primary purpose is to spread terror among civilians under Article 51(2) of Additional Protocol I, the guarantee of humane treatment under Common Article 3, and the ban on outrages upon personal dignity. The analysis finds that IHL is not silent but that its protection is uneven. Mental suffering is usually treated as a by-product of physical harm rather than as an injury in its own right; concepts such as "attack" and "violence" were drafted with kinetic force in mind, leaving information and cyber operations uncertain; and the specific-intent standard for terror, with evidentiary and attribution problems, constrains accountability. The paper argues that digital technologies have widened the reach and speed of

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psychological harm and blurred the line between lawful propaganda and prohibited terror. It recommends authoritative interpretive guidance from the International Committee of the Red Cross (ICRC) and states, more consistent prosecution of terror-related conduct, and explicit attention to psychological injury in proportionality assessments and reparations.

II. KEYWORDS

Psychological violence, international humanitarian law, terror against civilians, mental harm, information warfare.

III. INTRODUCTION

International humanitarian law (IHL) exists to put limits on war. It protects people who are not fighting, or who can no longer fight, and it restricts the means and methods that parties to a conflict may use. Its modern core is the four Geneva Conventions of 1949 and the two Additional Protocols of 1977, which sit alongside customary rules and a growing body of case law from international criminal courts.[1] The principles running through all of this (humanity, distinction, proportionality, and military necessity) took shape in response to what war most obviously does: it kills and maims soldiers, flattens cities, and drives families from their homes.

The wars of today do not always fit that picture. Increasingly, parties to a conflict, whether states or armed groups, go after the minds of civilians as much as their bodies or property. Long sieges and heavy shelling keep a population in a state of permanent dread. Executions, torture, and sexual violence are filmed and put online so that whole communities will see them. Detainees are put through mock executions, kept in isolation, or told that their relatives will be harmed.

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[1] Geneva Conventions I–IV (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 31, 85, 135, 287 (GC I–IV); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3 (AP I); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 609 (AP II).

Ordinary people receive anonymous threats, doctored images, and false evacuation notices on their phones. None of this need leave a physical mark, yet it produces anxiety, depression, post-traumatic stress, and a slow collapse of trust within communities. It would be wrong to say that IHL has nothing to offer here. Both Additional Protocols forbid acts or threats of violence whose primary purpose is to spread terror among the civilian population.[2] The Fourth Geneva Convention prohibits physical or moral coercion of protected persons, as well as all measures of intimidation or of terrorism.[3]

Common Article 3 demands humane treatment and bans outrages upon personal dignity, in particular humiliating and degrading treatment.[4] The Rome Statute treats torture, inhuman treatment, and outrages upon personal dignity as war crimes, and counts causing serious mental harm as a way of committing genocide.[5] The ban on terror against civilians is also recognized as a rule of customary law.[6] Technology has made these rules more important and harder to apply at the same time.

Cyber tools, social media, and cheap video let a party frighten, humiliate, and demoralize civilians on a large scale, often from far away and with little chance of being identified. The ICRC has itself pointed to digital threats and the information environment as areas where the law needs clarification.[7] So, the central question is a

[2] AP I (n 1) art 51(2); AP II (n 1) art 13(2).
[3] GC IV (n 1) arts 31, 33.
[4] GC I–IV (n 1) common art 3(1), 3(1)(c).
[5] Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3, arts 6(b), 8(2)(a)(ii), 8(2)(b)(xxi), 8(2)(c)(i)–(ii).
[6] Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law, Volume I: Rules* (CUP/ICRC 2005) Rule 2; *Prosecutor v Galić* (Appeal Judgment) IT-98-29-A (30 November 2006) paras 87–98.
[7] ICRC, *Harmful Information: Misinformation, Disinformation and Hate Speech in Armed Conflict and Other Situations of Violence* (ICRC 2021); ICRC Global Advisory Board on Digital Threats during Armed Conflicts, *Protecting Civilians against Digital Threats during Armed Conflict: Recommendations to States, Belligerents, Tech Companies, and Humanitarian Organizations* (ICRC 2023); Laurent Gisel, Tilman Rodenhäuser and Knut Dörmann, 'Twenty Years On: International Humanitarian Law and the Protection of Civilians against the Effects of Cyber Operations during Armed Conflicts' (2020) 102(913) International Review of the Red Cross 287.

fair one: can a body of law designed around physical force deal with harm that is psychological in nature and often delivered through information? The answer matters for legal theory, but it matters more for the people living through these conflicts. This paper looks at psychological harm inflicted on civilians and on persons *hors de combat*, in both international and non-international armed conflicts. It does not deal with psychological operations aimed at enemy fighters. It also leaves aside international human rights law and international criminal law as separate fields, except where they help explain how IHL should be read.

A. Statement Of Problem

The trouble with psychological violence in IHL is not that the law ignores it. The trouble is that the protection is patchy, often indirect, and hard to enforce. Five problems stand out. First, there is no agreed definition. No IHL treaty defines psychological violence. Instead, phrases like "terror," "moral coercion," "outrages upon personal dignity," and "mental suffering" are scattered across different instruments, each with its own scope and threshold. Without a shared concept, courts, states, and humanitarian organizations can end up treating very similar conduct in very different ways.[8] Second, mental harm is usually treated as a side effect.

In most analysis it shows up as the result of physical violence, or as something that makes an already recognized crime worse. It is rarely treated as the principal wrong. That leaves little space for conduct that terrorizes or degrades people without physically injuring them. Third, the law struggles with technology and with the idea of an "attack." The rules on terror and protecting civilians are tied to "acts or threats of violence" and to "attacks," concepts built around kinetic force.[9]

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[8] *Prosecutor v Akayesu* (Judgment) ICTR-96-4-T (2 September 1998); *Prosecutor v Kunarac, Kovač and Vuković* (Appeal Judgment) IT-96-23 & IT-96-23/1-A (12 June 2002).

[9] Yves Sandoz, Christophe Swinarski and Bruno Zimmermann (eds), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (ICRC/Martinus Nijhoff 1987) commentary on art 51; Henckaerts and Doswald-Beck (n 6) Rule 2; Michael N Schmitt (ed), *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations* (CUP 2017) Rule 92.

Whether an information campaign, an online threat, the publication of someone's personal details, or a cyber operation that frightens civilians can fall under those words is disputed. Scholars and states do not agree on whether damage to mental health, without any physical damage, can count as violence. Fourth, the line between lawful and unlawful influence is blurry. IHL does not ban propaganda or psychological operations in themselves, and the law on ruses allows certain kinds of deception.

What separates acceptable messaging from prohibited terror turns on purpose, content, and effect, and that is hard to judge when messages are mixed, anonymous, or spread by third parties. Fifth, accountability is difficult, and the evidentiary burden differs from one crime to another. For the war crime of terror, the case law requires proof that spreading terror was the primary purpose of the conduct, not merely a foreseeable result, but actual terrorization of the population is not an element of the offence.[10]

Proof of mental injury is required, by contrast, where genocide is charged as causing serious mental harm, which must be serious and lasting, or where torture is charged, which requires severe physical or mental pain or suffering.[11] In conflict zones, medical evidence is thin, victims may be unable or unwilling to testify, and the people behind digital harm are hard to trace. Put together, these problems mean that a kind of harm now central to modern warfare is only partly recognized and unevenly enforced. Civilians are protected on paper but often exposed in practice.

B. Research Objectives

The overall aim of this study is to examine whether, and how far, IHL protects civilians from psychological violence in modern armed conflicts, and to identify the

[10] *Prosecutor v Galić* (Judgment and Opinion) IT-98-29-T (5 December 2003) paras 133–134; *Galić* (Appeal Judgment) (n 6) paras 102–104.
[11] Rome Statute (n 5) arts 6(b), 8(2)(a)(ii); ICC, *Elements of Crimes* (2011) arts 6(b), 8(2)(a)(ii)-1.

legal difficulties raised by contemporary methods of warfare. More specifically, the study sets out to:

1. Build a working definition and typology of psychological violence in armed conflict, using both legal and psychological literature;
2. Analyze the treaty and customary rules on terror, moral coercion, humane treatment, and personal dignity, including their drafting history and purpose;
3. Review how the ICTY, ICTR, and ICC have dealt with terror, torture, sexual violence, and mental harm, paying attention to how intent and harm were proved;
4. Assess whether cyber operations, disinformation, online threats, and the circulation of atrocity footage come within existing IHL prohibitions;
5. Identify the normative, evidentiary, and institutional gaps that limit protection and accountability; and
6. Suggest practical measures, including interpretive guidance, prosecutorial practice, and greater attention to mental harm in proportionality assessments and reparations.

C. Research Questions

1. How should psychological violence be understood and defined in the context of armed conflict?
2. Which rules of treaty and customary IHL address psychological harm, and what thresholds do they set?
3. How have international courts and tribunals interpreted and proved terror and mental suffering?
4. Can digital and information-based practices be caught by existing IHL prohibitions?

5. What gaps remain, and how might they be closed through interpretation, practice, or reform?

D. Research Methodology

This is a doctrinal, qualitative study. It asks what the law says, how it has been read, and where it falls short, and it does not collect data from human participants. Three approaches work together. The analytical approach sets out the rules. The comparative approach reads treaty text alongside tribunal case law and soft-law guidance. The critical approach asks whether the framework holds up against how wars are actually fought today.

The primary sources are the Geneva Conventions of 1949, Additional Protocols I and II, the Rome Statute with its Elements of Crimes, and customary rules as shown by state practice and *opinio juris*.[12] On the judicial side, the paper draws on judgments of the ICTY and its Residual Mechanism, the ICTR, the Special Court for Sierra Leone, and the ICC. Two sets of cases get the most attention: *Galić* and *Dragomir Milošević*, which dealt with the crime of terror during the siege of Sarajevo, together with the appellate decisions that later applied them,[13] and *Akayesu* and *Kunarac*, which considered mental suffering in cases of sexual violence and torture.

Secondary and interpretive sources include the original and updated ICRC Commentaries, the ICRC study on customary IHL, the Tallinn Manual 2.0, reports from UN bodies, and academic writing on IHL, cyber operations, and information warfare. Psychological and public health research is used only to help understand mental harm and how it affects civilians. The study makes no clinical claims of its own.

Treaty provisions are read according to Articles 31 and 32 of the Vienna Convention

[12] Statute of the International Court of Justice art 38(1)(b); Henckaerts and Doswald-Beck (n 6).
[13] *Galić* (Appeal Judgment) (n 6); *Prosecutor v Dragomir Milošević* (Trial Judgment) IT-98-29/1-T (12 December 2007).

on the Law of Treaties, which look to ordinary meaning, context, and object and purpose and, where needed, to the preparatory work.[14] Because IHL must operate in changing circumstances, the study also considers evolutive interpretation and the role of the Martens clause in filling gaps.[15] The work proceeds in four steps. It begins by mapping the framework, identifying every relevant treaty provision and customary rule. It then reviews the case law, drawing out the elements of the relevant crimes and the standards of proof the courts have applied.

Next, it tests the framework against contemporary practices: sieges and shelling meant to terrorize, treatment of detainees, publication of atrocity material, and cyber and information operations. Credible international reports are used here for illustration. Finally, it examines where the law is unclear, contested, or hard to enforce, and proposes responses that stay within existing legal principles. The study depends on publicly available legal and secondary materials. It involves no interviews and no clinical assessment.

Examples from ongoing conflicts illustrate legal questions and should not be read as findings of responsibility. And because state practice and *opinio juris* on new technologies are still developing, any legal analysis in this area is necessarily provisional.

E. Literature Review

Most writing on IHL still treats the protection of civilians as a question about physical force. The standard treatises on the conduct of hostilities, such as Dinstein's, build their analysis around the definition of an attack in Article 49(1) of Additional Protocol I, which refers to "acts of violence." Sassòli's work on IHL is more open to the human experience of war, but even their psychological harm usually appears in discussions

[14] Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, arts 31–32.
[15] AP I (n 1) art 1(2); Rupert Ticehurst, 'The Martens Clause and the Laws of Armed Conflict' (1997) 37(317) International Review of the Red Cross 125.

of detention, interrogation, or the effects of sieges, not as a stand-alone category.[16] The older ICRC Commentary on Article 51 takes a similar line.

It explains that the ban on terror was meant to catch campaigns of intimidation, and it makes clear that the provision does not outlaw every action that happens to frighten people.[17] The law's historical focus is therefore easy to see, though it does not mean the law is empty. The most developed body of scholarship concerns the prohibition of terror. Commentators generally agree that the rule was confirmed as customary law and that it criminalizes conduct whose primary purpose is to spread terror, as distinct from conduct that merely causes it incidentally.

The ICTY's decision in *Galić* is the reference point. The Appeals Chamber held that terror against civilians, as a violation of the laws or customs of war, attracted individual criminal responsibility under customary law, and it set out the elements of the offence.[18] The *Dragomir Milošević* judgment later applied the same framework to the same siege. Scholars have welcomed these rulings but have also pointed to a limitation. The requirement of specific intent places a heavy burden on prosecutors, and the case law has relied on a pattern of indiscriminate shelling and sniping to infer that intent, which will not always be available in other conflicts.

A second strand deals with mental pain and suffering as an element of other crimes. The definition of torture in the Convention against Torture covers "severe pain or suffering, whether physical or mental,"[19] and the ICTY has followed that approach, including in cases involving threats and humiliation.[20] The *Kunarac* Appeals Chamber

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[16] Yoram Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict* (4th edn, CUP 2022); Marco Sassòli, *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare* (Edward Elgar 2019).

[17] Sandoz, Swinarski and Zimmermann (n 9) commentary on art 51(2).

[18] *Galić* (Appeal Judgment) (n 6) paras 87–98 (customary status and criminalization) and 99–104 (elements).

[19] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85, art 1.

[20] *Prosecutor v Furundžija* (Trial Judgment) IT-95-17/1-T (10 December 1998); *Prosecutor v Delalić and others* (Trial Judgment) IT-96-21-T (16 November 1998).

confirmed that rape may amount to torture and that the suffering required can be mental or physical.[21]

In genocide cases, the tribunals treated "serious mental harm" as one of the prohibited acts but have expressed its threshold in two ways. *Akayesu* held that the harm need not be permanent or irremediable, while later judgments required harm that goes beyond temporary unhappiness, embarrassment or humiliation and causes a grave and long-term disadvantage to a person's ability to lead a normal and constructive life.[22] This paper adopts the latter formulation, read with *Akayesu*: the harm must be serious and lasting, though not necessarily permanent. Taken together, these cases show that international criminal law already accepts mental injury as real and serious. They do not, however, treat it as the central wrong in a stand-alone war crime of psychological violence.

Humiliation has been addressed through the war crime of outrages upon personal dignity. The ICTY held in *Aleksovski* and *Kunarac* that the offence requires an act causing serious humiliation, degradation, or a serious attack on human dignity.[23] The Geneva Conventions also protect prisoners of war and civilians against insults and public curiosity, and the 2020 ICRC Commentary on the Third Convention applies this protection to photographs and videos of prisoners.[24] This line of authority is especially relevant to the online circulation of footage of captured persons, and it appears underused in the literature on digital conflict. A newer body of work asks how IHL applies to digital harm.

The Tallinn Manual 2.0 defines a cyber-attack as an operation reasonably expected to

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[21] *Kunarac* (Appeal Judgment) (n 8) paras 149–151.
[22] *Akayesu* (n 8) para 502; *Prosecutor v Kajelijeli* (Judgment and Sentence) ICTR-98-44A-T (1 December 2003) paras 814–815; *Prosecutor v Krstić* (Trial Judgment) IT-98-33-T (2 August 2001) para 513.
[23] *Prosecutor v Aleksovski* (Trial Judgment) IT-95-14/1-T (25 June 1999) para 56; *Prosecutor v Kunarac, Kovač and Vuković* (Trial Judgment) IT-96-23-T & IT-96-23/1-T (22 February 2001) para 514.
[24] ICRC, *Commentary on the Third Geneva Convention: Convention (III) relative to the Treatment of Prisoners of War* (2nd edn, ICRC 2020) commentary on art 13, section D (protection against insults and public curiosity).

cause injury or death to persons or damage or destruction to objects; its experts treated serious illness and severe mental suffering tantamount to injury as falling within that definition, but divided over whether loss of functionality alone would count.[25] Droege and Schmitt, among others, discuss how far civilians are protected against cyber operations, and both focus mostly on physical and infrastructural effects.[26] The ICRC's work on harmful information in armed conflict marks a shift in attention, noting that misinformation, disinformation, and hate speech can cause fear, panic, and even physical danger for civilians, and asking whether existing protections are adequate.[27]

Even so, the literature generally does not link these concerns to the rule on terror against civilians in detail. Studies outside law show how serious the harm is. A large meta-analysis by Charlson and colleagues estimated that around one in five people living in conflict-affected settings have a mental disorder, with a significant proportion having moderate or severe conditions.[28] Steel and colleagues found that exposure to torture and other potentially traumatic events was strongly associated with post-traumatic stress disorder and depression among populations affected by mass conflict and displacement.[29]

Başoğlu and colleagues reported that psychological manipulations, humiliation, and threats produced distress comparable to that caused by physical torture, which challenges the idea that physical harm is inherently graver.[30] The Istanbul Protocol

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[25] *Tallinn Manual 2.0* (n 9) Rule 92 and commentary.
[26] Cordula Droege, 'Get Off My Cloud: Cyber Warfare, International Humanitarian Law, and the Protection of Civilians' (2012) 94(886) International Review of the Red Cross 533; Michael N Schmitt, 'Wired Warfare 3.0: Protecting the Civilian Population during Cyber Operations' (2019) 101(910) International Review of the Red Cross 333.
[27] ICRC, *Harmful Information* (n 7).
[28] Fiona Charlson and others, 'New WHO Prevalence Estimates of Mental Disorders in Conflict Settings: A Systematic Review and Meta-Analysis' (2019) 394 The Lancet 240.
[29] Zachary Steel and others, 'Association of Torture and Other Potentially Traumatic Events with Mental Health Outcomes among Populations Exposed to Mass Conflict and Displacement: A Systematic Review and Meta-Analysis' (2009) 302 JAMA 537.
[30] Metin Başoğlu and others, 'Torture vs Other Cruel, Inhuman, and Degrading Treatment: Is the

likewise recognizes that torture can be psychological and sets out ways of documenting it.[31]

The literature on terror, mental harm in international crimes, and cyber operations is substantial, but the three bodies of work are rarely brought together. Legal scholarship tends to treat mental suffering as an element of other offences, and digital literature mostly concerns physical or infrastructural effects. Psychological research, meanwhile, rarely engages with legal thresholds. This paper tries to connect them by asking whether the existing rules, read together and in light of the psychological evidence, can cover psychological violence as it is practiced in contemporary conflicts.

IV. MAIN DISCUSSION AND ANALYSIS

A. Working Concept of Psychological Violence

IHL has no definition of psychological violence, so a working concept is needed. For this paper, psychological violence in armed conflict means conduct, including threats, humiliation, intimidation, and the exploitation of fear, that is directed at civilians or persons *hors de combat* and is intended to, or is likely to, cause serious mental suffering or to break their capacity to live and make decisions freely. Three features follow from this.

First, it centers on the effect on the person's mind, which distinguishes it from physical violence, although the two often overlap.

Second, it can be delivered by physical means (a bombardment meant to terrorize), by direct contact (mock executions), or by communications (threats and images sent through digital channels).

Third, it should be separated from ordinary fears of war. Everyone in a conflict zone

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Distinction Real or Apparent?' (2007) 64(3) Archives of General Psychiatry 277.

[31] Office of the United Nations High Commissioner for Human Rights, *Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Professional Training Series No 8/Rev.2, UN 2022).

is frightened, and IHL cannot prohibit that. The rules apply when fear, humiliation, or distress is the deliberate instrument of the conduct.

B. Treaty Protections

The relevant provisions can be organized by what they protect:

1. **Freedom from Terror:** Article 51(2) of Additional Protocol I and Article 13(2) of Additional Protocol II prohibit acts or threats of violence whose primary purpose is to spread terror among civilians. The word "threats" matters, because it means that a rule aimed at fear does not require that violence actually be carried out. Article 33 of the Fourth Convention separately prohibits "all measures of intimidation or of terrorism" against protected persons.[32] This second rule is arguably broader, since it refers to measures, not just violence.

2. **Freedom from Coercion and Degrading Treatment:** Article 31 of the Fourth Convention bans physical or moral coercion, and Article 27 requires that protected persons be treated humanely and protected against insults and public curiosity.[33] Article 75(2)(a)(ii) of Additional Protocol I prohibits "torture of all kinds, whether physical or mental," and Article 75(2)(b) prohibits "outrages upon personal dignity, in particular humiliating and degrading treatment."[34] Common Article 3(1)(a) and (c) prohibits "cruel treatment and torture" and "outrages upon personal dignity," and Article 4(2)(a) of Additional Protocol II protects the "physical or mental well-being of persons."[35] These provisions apply to detainees and others under the control of a party, and they cover many of the practices that are common in detention: mock executions, threats

[32] GC IV (n 1) art 33.
[33] GC IV (n 1) arts 27, 31.
[34] AP I (n 1) art 75(2)(a)(ii), (b).
[35] GC I–IV (n 1) common art 3(1)(a), (c); AP II (n 1) art 4(2)(a).

against family members, sleep deprivation, and humiliation.

3. **Contemporary ICRC Interpretation:** The ICRC's updated Commentaries are now the principal contemporary interpretation of these provisions. The Commentaries on the First (2016), Second (2017) and Third (2020) Conventions address Common Article 3, and the updated Commentary on the Fourth Convention, published in October 2025, addresses Articles 27, 31 and 33.[36] They support the thesis of this paper in treating mental suffering and humiliation as harms in their own right: cruel treatment and torture under Common Article 3 extend to serious or severe mental suffering, and the 2020 Commentary applies the protection against public curiosity to the disclosure of identifying images of prisoners. The Commentaries are, however, organized provision by provision and offer no general concept of psychological violence, so the fragmentation identified below persists.

4. **Criminal Responsibility:** The Rome Statute makes torture, inhuman treatment, and outrages upon personal dignity war crimes, and the Elements of Crimes confirm that the pain or suffering involved in torture may be mental.[37] There is no war crime of terror against civilians in the Statute itself, which means that prosecution at the ICC would have to proceed through other charges, although the ICTY, its Residual Mechanism, and the Special Court for Sierra Leone have each applied terror as a war crime.

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[36] ICRC, *Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (2nd edn, ICRC 2016) commentary on common art 3; ICRC, *Commentary on the Second Geneva Convention: Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea* (2nd edn, ICRC 2017) commentary on common art 3; ICRC, *Commentary on the Third Geneva Convention* (n 24) commentary on common art 3; ICRC, *Commentary on the Fourth Geneva Convention: Convention (IV) relative to the Protection of Civilian Persons in Time of War* (2nd edn, ICRC 2025) commentary on arts 27, 31 and 33.

[37] Rome Statute (n 5) art 8(2)(a)(ii), (b)(xxi), (c)(i)–(ii); *Elements of Crimes* (n 11) art 8(2)(a)(ii)-1.

It is therefore inaccurate to claim that IHL ignores psychological harm. The rules exist, though they are spread across different instruments and applied to different groups of protected people.

C. Judicial Methods of Proof

The jurisprudence on terror gives the clearest guidance. In *Galić*, the Trial Chamber found that civilians in Sarajevo had been subjected to a campaign of sniping and shelling over a long period, and that the primary purpose was to spread terror. On appeal, the Chamber confirmed the crime's customary status and clarified that the intent to terrorize may be inferred from the circumstances, including the nature, manner, timing, and duration of the attacks.

It also held that actual terrorization is not an element of the crime, while observing that extensive trauma and psychological damage form part of the acts or threats of violence.[38] That observation is the clearest judicial support for treating psychological injury as central to the offence. The inferential approach helps address the evidentiary difficulty mentioned earlier, and it shows that the crime does not depend on proving how each victim felt, since the focus is on the perpetrator's purpose and on the acts themselves.

Later authorities confirm and refine this approach. The Appeals Chamber in *Dragomir Milošević* upheld the terror conviction and stressed that nature, manner, timing and duration are indicative, not exhaustive, factors from which intent may be inferred.[39] The International Residual Mechanism for Criminal Tribunals (IRMCT), which succeeded the ICTY, affirmed terror convictions for the Sarajevo sniping and shelling campaign in *Karadžić* and *Mladić*, again drawing inferences from the protracted and indiscriminate character of the campaign.[40] The Special Court for Sierra Leone (SCSL)

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[38] *Galić* (Appeal Judgment) (n 6) paras 87–98, 102, 104.
[39] *Prosecutor v Dragomir Milošević* (Appeal Judgment) IT-98-29/1-A (12 November 2009) para 37.
[40] *Prosecutor v Karadžić* (Appeal Judgment) MICT-13-55-A (20 March 2019); *Prosecutor v Mladić* (Appeal Judgment) MICT-13-56-A (8 June 2021).

convicted for "acts of terrorism" under Article 3(d) of its Statute, which reproduces Article 4(2)(d) of Additional Protocol II. In *Brima et al* and *Taylor*, the chambers inferred the purpose of terrorizing civilians from the public and systematic character of killings, amputations and other mutilations, and accepted that the offence may extend to acts directed against property.[41] Across these courts, specific intent has been inferred from patterns of conduct rather than from direct evidence.

The mental-harm cases show a different pattern. In genocide cases the tribunals required a serious and lasting effect on the victim's mental state, which sets a high threshold. In torture cases, the question is whether the suffering was severe, and tribunals have relied on the nature of the acts, their duration, and the victim's circumstances, accepting that rape and threats can meet the threshold. In dignity cases, the test turns on whether the act would be seen as seriously humiliating by a reasonable person, which is an objective standard that avoids the need to prove a specific psychological injury.

The ICC has no terror offence, but its practice on torture and outrages upon personal dignity shows how mental harm is handled within existing crimes. In *Ongwen*, Trial Chamber IX convicted the accused of 61 crimes, including torture and outrages upon personal dignity committed during attacks on camps for internally displaced persons and against women and girls held within the Lord's Resistance Army; the Appeals Chamber confirmed all the convictions.[42] In *Al Hassan*, Trial Chamber X convicted the accused of torture, cruel treatment and outrages upon personal dignity arising from punishments imposed by the Islamic police and tribunal in Timbuktu.[43] In both cases the chambers assessed the "severe physical or mental pain or suffering" required for

[41] *Prosecutor v Brima, Kamara and Kanu* (Trial Judgment) SCSL-04-16-T (20 June 2007); *Prosecutor v Taylor* (Appeal Judgment) SCSL-03-01-A (26 September 2013).
[42] *Prosecutor v Ongwen* (Trial Judgment) ICC-02/04-01/15-1762-Red (4 February 2021); *Prosecutor v Ongwen* (Appeals Judgment) ICC-02/04-01/15-2022-Red (15 December 2022).
[43] *Prosecutor v Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud* (Trial Judgment) ICC-01/12-01/18 (26 June 2024).

torture by reference to the nature and context of the acts, and applied the objective test in the Elements of Crimes, under which the humiliation must be of such degree as to be "generally recognized" as an outrage upon personal dignity.[44] Neither judgment treats mental harm as a free-standing wrong; it is assessed within the elements of established crimes.

The case law therefore reveals useful routes for dealing with psychological violence, including the inferential approach to intent in terror cases and the objective test in dignity cases. It also reveals a limit: all these cases arose from physical settings, namely sieges, camps, and detention facilities. None concerns purely digital conduct, so there is no judicial guidance on how these tests would apply online.

V. APPLICATION TO CONTEMPORARY PRACTICES

A. Sieges and Bombardment Intended to Terrorize

This is the easiest case, since *Galić* directly applies. Where a party attacks a besieged population in ways that cannot be explained by military objectives and the pattern shows an intention to spread fear, the prohibition applies. The harder cases arise where shelling is mixed with legitimate military aims, because the "primary purpose" requirement can be hard to satisfy when a party can point to some military justification. Reports by UN-mandated commissions of inquiry on recent conflicts have described patterns of siege warfare and attacks on civilian life in terms that raise precisely these questions, and they are useful for illustration, though they do not amount to judicial findings.

B. Treatment of Detainees

Here the rules are the strongest. Mock executions, threats against relatives, prolonged isolation, and forced humiliation are covered by the bans on torture, inhuman treatment, and outrages upon dignity, and the prohibition on mental torture is

[44] *Elements of Crimes* (n 11) art 8(2)(b)(xxi), element 2.

explicit. The main difficulty is evidence, since psychological effects need to be documented by qualified examiners, and the Istanbul Protocol provides a method for doing so.[45] The research by Başoğlu and others is helpful because it counters the argument that purely psychological methods are less serious.

C. Publication of Atrocity Footage

The online display of executions, abuse, or captured persons raises two separate legal questions. The first concerns the persons depicted: filming and publishing images of prisoners or civilians in humiliating circumstances is likely to violate the protection against public curiosity and the ban on outrages upon dignity, as the ICRC's 2020 Commentary on the Third Convention indicates.[46]

The second concerns the audience: where footage is distributed with the primary purpose of frightening a civilian population into submission or flight, it can be characterized as a threat of violence aimed at spreading terror under Article 51(2). The act of publication may be the "threat," since it conveys that similar violence will follow. This reading seems consistent with the text, but it has not been tested before a court, and I treat it here as a plausible argument, not settled law.

D. Threats, Disinformation and Cyber Operations

This is the least clear area. A text message warning civilians that they will be killed if they stay in an area is, on its face, a threat of violence, and if its primary purpose is to terrorize, Article 51(2) applies. Where a message is a genuine warning intended to enable civilians to leave, the position is different: Article 57(2)(c) obliges parties to give effective advance warning of attacks that may affect the civilian population, unless circumstances do not permit, so the purpose of the message is decisive.[47] Disinformation is more difficult.

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[45] Istanbul Protocol (n 31).
[46] ICRC, *Commentary on the Third Geneva Convention* (n 24) commentary on art 13, section D.
[47] AP I (n 1) art 57(2)(c).

IHL does not prohibit false information as such, and ruses of war are lawful so long as they are not perfidious.[48] Disinformation designed to cause panic among civilians might still fall under the terror rule if its primary purpose is to terrorize, but the connection to "acts or threats of violence" is thin unless the message itself conveys a threat. On cyber operations, the Tallinn Manual 2.0 defines a cyber-attack by reference to injury or death to persons or damage or destruction to objects, and its experts accepted that serious illness and severe mental suffering tantamount to injury fall within that definition.[49]

Its own terror rule, Rule 98, prohibits "cyber-attacks, or the threat thereof," whose primary purpose is to spread terror among the civilian population, and so ties the prohibition to the attack threshold.[50] Article 51(2), however, refers to "acts or threats of violence," not to "attacks," and the *Galić* Appeals Chamber held that such acts or threats are not limited to direct attacks against civilians or threats thereof.[51] It is therefore arguable that the treaty rule is broader than Rule 98 and that the attack definition should not control its interpretation. On that reading, the terror rule could reach threats of violence communicated through digital means, even where the cyber operation itself is not an attack.

E. Gaps

Several gaps emerge from this analysis.

First, the conceptual gap. Without a shared definition, the different provisions are applied separately, and a campaign of psychological violence that crosses several categories (a threat, a humiliation, a degrading video) may escape because no single rule captures all of it.

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[48] AP I (n 1) arts 37, 51(2); Henckaerts and Doswald-Beck (n 6) Rule 57.
[49] *Tallinn Manual 2.0* (n 9) Rule 92 and commentary.
[50] *Tallinn Manual 2.0* (n 9) Rule 98 and commentary.
[51] *Galić* (Appeal Judgment) (n 6) para 102.

Second, the thresholds gap. The rules set different thresholds: "primary purpose" for terror, "severe" suffering for torture, "serious" humiliation for outrages upon dignity, and "serious" and lasting harm for genocide. A form of psychological harm that is real but falls between these thresholds may go unaddressed.

Third, the technology gap. There is no authoritative guidance on whether the terror rule or the dignity rules apply to purely digital conduct.

Fourth, the enforcement gap. The ICC Statute has no terror war crime; evidence is hard to obtain, and attribution of online conduct is difficult.

Fifth, the proportionality gap. Proportionality assessments focus on expected civilian death, injury, and damage to civilian objects, and the treaty text does not mention mental harm. Whether severe psychological suffering counts as civilian "injury" is debated, and there is no settled practice.[52]

VI. FINDINGS

The analysis produces the following findings.

1. IHL already prohibits a significant range of psychological harm. Terror against civilians, moral coercion, mental torture, humiliating treatment, and public curiosity are all addressed, in both treaty and customary law.
2. The protection is fragmented. Different rules apply to different groups, use different thresholds, and are interpreted by different bodies, and no general concept of psychological violence connects them.
3. The strongest protection exists where psychological harm accompanies physical conduct, such as sieges, detention, and sexual violence. The weakest is

[52] Gisel, Rodenhäuser and Dörmann (n 7); Emanuela-Chiara Gillard, *Proportionality in the Conduct of Hostilities: The Incidental Harm Side of the Assessment* (Chatham House 2018); Emanuela-Chiara Gillard, 'Some Reflections on the "Incidental Harm" Side of Proportionality Assessments' (2018) 51 Vanderbilt Journal of Transnational Law 827.

where harm is delivered through information alone.

4. The case law has developed workable methods for proving intent to terrorise (inference from the circumstances) and for assessing humiliation (an objective standard), and these could be applied to newer conduct.
5. The notion of "attack" in Article 49(1), which has shaped the cyber debate and underlies Rule 98 of the Tallinn Manual 2.0, need not limit the terror rule in Article 51(2), because that provision refers to acts or threats of violence. This reading has not been tested and remains an interpretive argument.
6. The publication of footage of persons in captivity is probably already covered by the protection against public curiosity and the ban on outrages upon dignity, but practice has rarely applied these rules to online conduct.
7. Evidence from psychological and public-health research supports treating mental harm as serious and, in some respects, as comparable to physical harm, which strengthens the case for giving it more weight in legal assessments.
8. Accountability is limited by the absence of a terror war crime at the ICC, by the high intent standard, and by difficulties of evidence and attribution.

VII. SUGGESTIONS AND RECOMMENDATIONS

For states and the ICRC:

1. The ICRC and interested states should build on the resolution on protecting civilians against the potential human cost of ICT activities during armed conflict, adopted by the 34th International Conference of the Red Cross and Red Crescent in October 2024, and on the ICRC's work on digital threats and harmful information.[53] The resolution recognizes the human cost of such

[53] International Conference of the Red Cross and Red Crescent, 'Protecting Civilians and Other Protected Persons and Objects against the Potential Human Cost of ICT Activities during Armed Conflict' (Resolution 2, 34th International Conference, October 2024) 34IC/24/R2; ICRC Global Advisory Board (n

activities but stops short of explicitly affirming that IHL governs them.[54] What is still needed is interpretive guidance on how the prohibition of terror and the protections of dignity apply to digital and information-based conduct. Such guidance would carry weight without requiring a new treaty, in the way the ICRC's Commentaries have clarified other provisions.

2. States should state clearly, in national positions on international law in cyberspace, whether they consider that threats of violence spread online with the primary purpose of terrorizing civilians fall within Article 51(2). Many states have already published positions on cyber operations, including in the official compendium of national contributions submitted to the UN Group of Governmental Experts, and this question should be added to them.[55]
3. Guidance should clarify the line between lawful warnings and ruses on one hand and unlawful terror on the other, with practical examples.

For courts and prosecutors (accountability)

1. Prosecutors should be encouraged to charge terror against civilians where the evidence supports it, using the inferential approach developed in *Galić*, and to consider the publication of degrading footage as a separate violation of the protection of dignity.
2. States parties to the Rome Statute should consider whether the war crime of terror against civilians should be added to the Statute, building on earlier proposals to extend the Court's jurisdiction to terrorism, such as the proposal by the Netherlands considered by the Assembly's Working Group on

7); Bailey Ulbricht and Joelle Rizk, 'How Harmful Information on Social Media Impacts People Affected by Armed Conflict: A Typology of Harms' (2024) 106(926) International Review of the Red Cross 823.
[54] Kubo Mačák, 'The First Humanitarian ICT Resolution: Ambitions and Limitations' (*EJIL:Talk!*, 25 November 2024).
[55] UNGA, 'Official Compendium of Voluntary National Contributions on the Subject of How International Law Applies to the Use of Information and Communications Technologies by States' (13 July 2021) UN Doc A/76/136.

Amendments,[56] or should at least enact it in national law and prosecute it through universal jurisdiction.

3. Investigators should be trained to use the Istanbul Protocol and to preserve digital evidence, including metadata, so that psychological harm and the origin of online conduct can be documented.

For parties to conflict and military practice:

1. Military manuals and rules of engagement should address psychological effects explicitly, including in the planning of strikes and information operations, and should require legal review of messaging campaigns directed at civilian populations.
2. Parties should assess foreseeable mental harm as part of their proportionality and precautions analysis. There is respectable support for treating severe mental harm as civilian "injury" for this purpose, although the point remains unsettled, and the Tallinn Manual experts considered that inconvenience, irritation, stress or fear alone do not suffice.[57]

For humanitarian and policy actors:

1. Mental health and psychosocial support should be treated as part of reparations and humanitarian response, and psychological harm should be explicitly considered by reparations bodies.
2. Technology platforms should be encouraged, through voluntary commitments and ICRC dialogue, to limit the spread of content that exposes captured

[56] ICC Assembly of States Parties, 'Report on the Working Group on Amendments' (9 December 2011) ICC-ASP/10/32 annex III.
[57] Gillard, *Proportionality in the Conduct of Hostilities* (n 52); Gillard, 'Some Reflections' (n 52); ICRC, *The Principle of Proportionality in the Rules Governing the Conduct of Hostilities under International Humanitarian Law* (Report of an International Expert Meeting, ICRC 2018); *Tallinn Manual 2.0* (n 9) commentary to Rule 92.

persons to humiliation, or that is clearly intended to terrorize civilians.

VIII. CONCLUSION

This paper began by asking whether IHL, designed in an age of visible destruction, can respond to psychological violence in modern armed conflicts. The answer is that it can do so in part. The treaty and customary rules already forbid terror against civilians; moral coercion, mental torture, humiliation, and public curiosity, and international tribunals have developed practical tools for applying them. Psychological research confirms that the harms these rules are meant to prevent are real and serious. Yet the protection is incomplete.

It is spread across separate provisions with different thresholds; it relies on concepts of violence and attack that were shaped by kinetic warfare, and it has not been tested on conduct that takes place entirely online. Enforcement is weakened by evidentiary difficulties and the lack of a stand-alone terror offence in the Rome Statute. None of this requires abandoning the existing framework. The principles of humanity, distinction, and proportionality are flexible enough to guide interpretation, provided that mental harm is treated as harm.

Clearer interpretive guidance, more consistent prosecution, better evidence practices, and greater attention to psychological injury in military planning and reparations would go a long way toward closing the gap. Without these steps, civilians may remain formally protected but exposed, in practice, to some of the most widespread harms of contemporary war.

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