

בצלם - מרכז המידע הישראלי לזכויות האדם בשטחים (ע.ר.)  
B'Tselem – The Israeli Information Center for Human Rights in the Occupied Territories

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12 May 2009

Brig.-Gen. Avichai Mandelblit  
Judge Advocate General  
The Kirya, Tel Aviv

Dear Sir:

Re: **Use of phosphorus during Operation Cast Lead**

During Operation Cast Lead, the military used munitions containing phosphorus. No precise details exist regarding the number of persons who were killed or injured by white phosphorus, in part because physicians in hospitals in Gaza did not know how to diagnose the cause of injury, and due to incomplete medical documentation during the military operation, which resulted from the heavy caseload of the hospitals. Human Rights Watch investigated six cases and found that at least thirteen Palestinians had been killed by phosphorus, among them four women and seven children, including a one-year-old infant. In addition, the use of phosphorus caused significant property damage. There is documentation of fires throughout the Gaza Strip that resulted from the use of phosphorus in bombings that struck houses, UN facilities, and humanitarian-aid warehouses.

Phosphorus burns everything it touches. It causes severe burns when it comes into contact with humans. Phosphorus continues to burn as long as it is exposed to oxygen, so the burns continue to penetrate deeper into the body's tissues, making the injury especially horrific. Even if physicians manage to remove the burnt tissue, the phosphorus is absorbed in the blood stream and poisons internal organs. One of the victims of phosphorus, Ghada Abu Halima, died from her wounds many weeks after being exposed to phosphorus. She had given a testimony to B'Tselem about the incident in which members of her family were killed by a phosphorus shell (see our letter of 5 April 2009).

During the operation, Israeli officials denied that the military was using this ammunition. As the number of reports on the use of phosphorus increased, and pictures proving that the

military was using phosphorus appeared, officials were forced to admit that the military indeed used phosphorus. However, they insisted its use was lawful under international humanitarian law.

Recently, the results of the military's inquiry into "munitions containing phosphorus components" were made public. According to the inquiry, the military used two kinds of such phosphorus munitions during the operation. The first kind, which was used less, consists of shells in which phosphorus was a major component. These shells, the inquiry found, are not intended to provide a smoke screen. Nevertheless, the inquiry determined, because they were fired at open areas, and "phosphorus munitions were not fired at a built-up area and not against humans," their use conformed to international law. Although not required by the strict letter of the law, the military decided to cease use of this ammunition.

The second kind of phosphorus ammunition, whose use was more prevalent, was munitions that "contained felt soaked with phosphorus." To the best of B'Tselem's knowledge, most of the injuries to civilians and of property damage resulting from the use of phosphorus were caused by this kind of phosphorus.

The report of the military's inquiry states that these munitions are intended *only for smokescreen purposes*. Therefore, it holds in its conclusions that they are not subject to the special restrictions specified in international law regarding the use of "incendiary" munitions, and, in any event, *are permitted under international law* (emphases in the original). The investigative report added that the Third Protocol to the Conventional Weapons Convention "explicitly states that camouflage means are not considered an 'incendiary weapon.'" Finally, the report states that this weapon was used "for military purposes only...balancing military needs and humanitarian considerations."

The findings of the inquiry raise doubts about the military's willingness to seriously examine the claims raised about the conduct of its operation. The published comments are completely detached from the effects of the use of phosphorus in the field. Not one mention is made of injury to humans, buildings, or farmland, as if the inquiry is merely a theoretical exercise in international law. The claim that the use of phosphorus was "in a configuration that is not intended to harm humans or ignite fires," and that it was intended "only for smokescreen purposes," is so divorced from the reality of use of phosphorus in the field that it raises doubts as to the material the investigators had at their disposal, or, alternatively, as to their commitment to the truth.

Moreover, the statements made in the investigative report are based on a faulty understanding of international humanitarian law. The statement that these munitions are not deemed an “incendiary weapon,” in that the military uses it solely as camouflage, is mistaken. The determination as to whether a certain weapon is an “incendiary weapon” is based on an objective determination of the nature of the weapon, its chemical effects, and consequences of its use. The questions regarding its intended use and the purpose sought to be achieved by using it are irrelevant in determining the kind of weapon it is and the restrictions on its use.

Also, the facts presented in the investigative report are inaccurate, and the investigators’ determination that use of these munitions was “only for smokescreen purposes” is not true. At least in some cases, the military fired phosphorus in the air above populated areas, in circumstances in which justification for creating a smokescreen was unclear given that soldiers were not present in the area. This occurred, for example, in the attack on the UNRWA compound, in the center of Gaza City, on 15 January 2009. HRW’s investigation indicates that, around ten o’clock in the morning, six shells, at least three of which contained phosphorus, landed inside the compound. As a result, two warehouses containing food, medical equipment, and humanitarian supplies caught fire. Another example was the attack on the UN school in Beit Lahiya, on 17 January. According to HRW, at six o’clock in the morning, the military fired at least three white-phosphorus shells at the school. Two children were killed.

Finally, even after publication of the results of the inquiry, it is still not clear why the military specifically chose to use munitions whose consequences are so horrible. If it were indeed intended only to provide camouflage to protect the soldiers, the objective might have been achieved by using smoke bombs, which, as I understand, the military possesses. This fact, which officials have ignored, strengthens the belief that the use of phosphorus was not chosen as camouflage but to achieve other, unlawful purposes.

International humanitarian law does not prohibit the use of munitions containing phosphorus. However, due to its grave effects and the great damage it can cause, many restrictions have been placed on its use.

For example, the Third Protocol to the Convention on the Use of Certain Conventional Weapons deals with prohibitions and restrictions on the use of incendiary weapons, which include phosphorus. The Protocol states that it is absolutely prohibited to use incendiary weapons against civilians and that it is prohibited to use them against military objects when

the weapon is delivered from the air and when the military objects are located within a concentration of civilians.

Israel did not sign the Third Protocol, but the rules specified in the Protocol are based on customary principles that are binding on Israel, among them the principles of distinction and proportionality, the prohibition on use of weapons which by their nature cause excessive suffering, and the obligation to take all feasible precautions to prevent harm to civilians. Use of phosphorus within a densely populated area like the Gaza Strip breaches these principles. Its use is, therefore, is absolutely prohibited in the Gaza Strip.

Taking the above into account, the argument made in the investigative report that phosphorus munitions are used in a way that “balances military needs and humanitarian considerations” is either indicative of a lack of understanding of international humanitarian law, or disingenuous. Given that it is forbidden to use phosphorus in the circumstances existing in the Gaza Strip, a balance between military and humanitarian needs is meaningless. In any case, no proof was made of the imperative military needs that required the specific use of phosphorus.

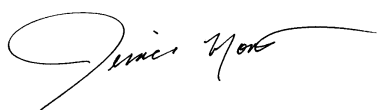
At the end of the investigative report, it is stated that the chief of staff published a directive “that the use of phosphorus munitions which are not intended as a smokescreen will only be an exception.” This is a vague declaration, and the additional need for which the military will use phosphorus is unclear.

Based on the above, B'Tselem demands that the military completely cease its use of munitions containing phosphorus, for any purpose, including as camouflage.

B'Tselem also demands that all cases in which the military used phosphorus during Operation Cast Lead be investigated, in accord with the relevant provisions of international humanitarian law.

Your prompt attention to this matter would be appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Jessica Montell", with a stylized flourish at the end.

Jessica Montell  
Executive Director