



המוקד להגנת הפרט

HAMOKED

Center for the Defence of the Individual

هموكيد - مركز الدفاع عن الفرد

14 January 2009

Please cite 59110 in response

To
Mr. Ehud Olmert
Prime Minister
By fax 02-6466527

To
Mr. Ehud Barak
Defense Minister
By fax 03-6976218

To
Mr. Meni Mazuz
Attorney General
By fax 02-6467001

MOST URGENT!

**Re: Immediate Cessation of Use of Means of Warfare in
Contravention of International Humanitarian Law**

1. On behalf of the Association for Civil Rights in Israel, Amnesty – Israel, Gisha, the Public Committee against Torture in Israel, HaMoked – Center for the Defence of the Individual, Adalah and Physicians for Human Rights – Israel, I hereby address you as follows.
2. In recent days, some of the media has reported that Israel had been using phosphorus shells in the war in the Gaza Strip

See, for example, today's report on the nrg website entitled "Gaza Injured: Injured Suffer Peculiar Burns": <http://www.nrg.co.il/online/1/ART1/839/376.html>; a report in the Times dated 5 January 2009 entitled "**Israel rains fire on Gaza with phosphorus shells**":

http://www.timesonline.co.uk/tol/news/world/middle_east/article5447590.ece

3. A publication by Human Rights Watch dated 10 January 2009 indicates that an analysis of photos carried out by the organization reveals that Israel is indeed using phosphorous shells:

On January 9, Human Rights Watch researchers on a ridge overlooking Gaza from the northwest observed multiple air-bursts of artillery-fired WP that appeared to be over the Gaza City/Jabaliya area. In addition, Human Rights Watch has analyzed photographs taken by the media on the Israel-Gaza border showing Israeli artillery units handling fused WP artillery shells, as well as video of air bursts over Gaza followed by tendrils of smoke and flame that are highly indicative of WP use.

See Human Rights Watch publication on this issue:

<http://www.hrw.org/en/news/2009/01/10/q-israel-s-use-white-phosphorus-gaza>

See also:

<http://www.hrw.org/en/news/2009/01/10/israel-stop-unlawful-use-white-phosphorus-gaza-0>

4. International humanitarian law limits the use of methods and means of warfare. The use of means of warfare which cause unnecessary suffering, beyond what is necessary for neutralizing a military threat is strictly prohibited. This is one of the earliest rules in modern laws of war. It is entrenched, *inter alia*, in Article 35 of the Protocol Additional to the Geneva Conventions relating to the Protection of Victims of International Armed Conflicts of 1977 (hereinafter: Protocol I).

Art 35. Basic rule

- 1) In any armed conflict, the right of the Parties to the conflict to choose methods or means of warfare is not unlimited
 - 2) It is prohibited to employ weapons, projectiles and material and methods of warfare of a nature to cause **superfluous injury or unnecessary suffering.**
5. International humanitarian law prohibits the use of means of warfare which may result in direct harm to civilians who are not taking part in the fighting. International humanitarian law clearly distinguishes between civilians and combatants as well as between military targets and civilian ones (see Articles 48 to 51 of Protocol I, which have acquired the status of international customary law; as well as Article 2(I) of the Convention on Certain Conventional Weapons, Protocol III 1980.

6. As detailed below, inasmuch as the military made use of phosphorous shells in the Gaza Strip, such use constitutes a clear violation of both these rules.
7. Even if the use of phosphorous shells is for the purpose of creating a smoke screen, in the overcrowded Gaza Strip, injury to people is almost certain. When such injury is incurred, the result is horrifying due to the caustic attributes of the phosphorous which cause particularly severe burns and consume raw flesh.
8. Furthermore, it is a means which, in the conditions of the Gaza Strip, does not allow the forces using it to distinguish between civilians and combatants. Causing large fires in a primarily civilian area will inevitably result in indiscriminate harm to civilian property and severe injuries to the civilians themselves.
9. Additionally, various media reports give rise to a concern that Israel is using cluster bombs. As is well known, cluster bombs are an inaccurate type of ammunition. One bomb could contain dozens to hundreds of secondary bombs which disperse over a vast area around the original hit. Some of the submunitions might not explode immediately and remain on the ground, turning the bombed area into a large minefield.
10. It shall be noted that the convention relating to the use of cluster bombs, ratified by 107 countries, prohibits the manufacture, use or possession of cluster bombs.
11. The Winograd Committee addressed Israel's use of cluster bombs in its final report on the second Lebanon war. In that instance, Lebanese villages were shelled with cluster bombs while the villagers were temporarily away. The Committee established that:

Broad interpretation [by the Military Advocate General] which allows the use of cluster type munitions for military targets located in areas where the duds may harm civilians – albeit only after their return – based solely on considerations made by the military commander on the ground – does not accord with the rationale underlying the limitations placed on the use of cluster [...] Warfare focusing on actions from within urban areas does indeed considerably limit the military possibilities of those defending against it.

International law expressly prohibits such warfare. However, **we do not believe that expanding the rules of usage of cluster type**

munitions, which involves many duds, to such areas, without strict individual scrutiny – even after their inhabitants were temporarily evacuated – is an acceptable expansion. (Emphasis in original) (Report of the Committee to Examine the Events of the War in Lebanon, 2006, page 499).

12. Unfortunately, the use Israel makes of conventional means of warfare is itself done while systematically violating the principles of distinction and proportionality, however, the use of unconventional means constitutes a further, severe, facet of breaching the most basic norms regulating what is prohibited and what is permitted at war.
13. The laws of war, which were designed to minimize the horrors of war, if only a little, are the fruits of international effort through the generations and were designed to protect both civilians and soldiers. The protective shield they create is delicate and fragile. Breaking the rules may bring about an irreparable breach. The military's temptation to erode this protective shield is great – despite the fact that soldiers on the battleground are the first people who need its protection. The price of the erosion of obedience to the laws of war cannot be enumerated, and its toll may not be limited to Gaza.
14. In light of the above, and inasmuch as use was made of the abovementioned means, we demand Israel cease the use of the latter means of warfare and any other means with similar effects forthwith and desist from harming protected civilians.
15. For your immediate response.

Abeer Jubran-Daqwar, Adv.

Copies:

Brigadier General, Avihai Mandelblit, Military Advocate General, by fax: 03-5694526

Major General Yoav Galant, GOC Southern Command, by fax 08-9902655