

# HRW's "Rain of Fire": Neither Thorough Nor Impartial

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## Summary

- On March 26, 2009, [Human Rights Watch](#) (HRW) issued a 71-page [report](#) headlined “Rain of Fire: Israel’s Unlawful Use of White Phosphorous in Gaza.” As in HRW’s other statements on Gaza, this report reflects a manipulation of “evidence” and lack of professionalism to support pre-determined political and ideological positions.
- NGO Monitor’s analysis of “Rain of Fire” highlights: 1) [reliance on unverifiable and highly questionable evidence](#); 2) [political and ideological biases of the authors, which would explain manipulation of the evidence](#); and 3) [dubious interpretations of international law](#). These continue a [well-established pattern of false claims and a biased agenda](#) in HRW publications regarding Israel.
- The entirely disproportionate attention given to this narrow aspect of this conflict erases the wider context of aggression and response. The charges of “war crimes” are unjustified, and reflect HRW’s role in the wider Durban strategy of demonization.
- The lack of credibility results from reliance on unreliable and tampered evidence; false and inaccurate claims; and internal contradictions. One section of the report claims that the IDF targeted civilian areas with white phosphorous, but other sections admit that the “researchers were unable to determine precisely where the white phosphorous landed and what effect it had on the civilian population.”
- The authors of “Rain of Fire” include Marc Garlasco, whose previous work for HRW has exhibited factual inaccuracies and [significant flaws](#) in methodology; Fares Akram, a Palestinian whose father [was killed](#) during the fighting; and Darryl Li, a pro-Palestinian activist who has worked at the highly politicized Palestinian Center for Human Rights (PCHR).
- The authors substitute their limited military expertise and knowledge for the experience of the IDF commanders. Thus, HRW extends its claim of credibility far beyond the realm of human rights.

# Introduction

On March 26, 2009, [Human Rights Watch](#) (HRW) issued another in a series of [one-sided reports](#) on the Gaza conflict, headlined “Rain of Fire: Israel’s Unlawful Use of White Phosphorous in Gaza.” As in HRW’s other statements on Gaza, this report reflects a lack of professionalism and manipulation of “evidence” to support pre-determined political and ideological conclusions. This 71-page publication and its accompanying [press release](#) add to the disproportionality reflected in more than 25 statements issued by HRW on the 3 weeks of fighting in Gaza, most of which accuse Israel of “war crimes.” In contrast, the patently illegal activities of Hamas, including aggression and indiscriminate rocket attacks, again received very little attention.

To promote this publication, HRW held a press conference at the American Colony Hotel on March 26. The conference was attended by Al Jazeera, the Guardian (which has [reproduced](#) HRW claims without confirming their accuracy), and Egyptian television.

## Analysis

NGO Monitor’s analysis of “Rain of Fire” reveals three basic dimensions that undermine the credibility of this report: 1) [reliance on unverifiable and highly questionable evidence](#); 2) [political and ideological biases of the authors, which would explain manipulation of the evidence](#); and 3) [dubious interpretations of international law](#). These are all aspects of a [well-established pattern of false claims and a biased agenda](#) in HRW publications regarding Israel.

### 1) Reliance on unverifiable and highly questionable evidence

- **Use of unreliable or tampered “evidence”:** Since HRW had no personnel in Gaza during the fighting, the report consists primarily of Palestinian “eyewitness accounts” which cannot be verified, and photographs of allegedly spent white phosphorous shells. Such photographs cannot prove claims that the use of white phosphorous was unlawful; nor do they provide essential information such as whether combat was taking place in the area, the source of the shells or where they landed, the purpose for firing the shells, etc. Moreover, the chain of custody for this crucial evidence is not mentioned, nor can this be verified. Several sections of the report indicate the shells were collected and moved by Palestinians prior to being photographed by HRW. HRW claims many of the photographs reflect damage caused by white phosphorous even though there is no corroborating proof, nor is it

possible to confirm the location of many of the photographs.

- **False or inaccurate claims:** The HRW report alleges that there was no Hamas activity around the Al-Quds Hospital in Tel al-Hawa, yet, the Sydney Morning Herald reported that Hamas operatives “made several attempts to hijack the Al-Qud’s Hospital’s fleet of ambulances.” In another instance, HRW alleges there was “no indication” of “Palestinian armed groups” operating in Beit Lahiya; in contrast, [Palestinian media reports](#) and [photographic evidence](#) reveal otherwise.
- **Broad generalizations and criminal accusations based on a small, non-representative sample of only six alleged cases.** Moreover, in all of the six cases presented by HRW, its conclusion of “war crimes” and “unlawful” use of white phosphorous is not consistent with the facts. In two of these incidents, media accounts and other evidence related to combat in the area at the time contradicts HRW’s claims (see section above). In several of the cases, (Beit Lahiya and Gaza City) media reports reveal there was on-going heavy fighting between Palestinians and the IDF thereby bolstering the need for smoke screens. And in at least two cases, HRW acknowledges in the report that there was fighting occurring at the time of the incidents. HRW also admits that in many instances, the IDF use of white phosphorous was entirely consistent with international law, although these are not documented in the report. HRW’s allegations, therefore, clearly do not support its overarching conclusion that the IDF committed “war crimes” or engaged in a “policy and practice” of using white phosphorous “indiscriminately”.
- **Internal contradictions:** In parts of the report, HRW claims that the IDF targeted civilian areas with white phosphorous, but in other sections admits, its “researchers were unable to determine precisely where the white phosphorous landed and what effect it had on the civilian population.”
- **Lack of appropriate military expertise:** In this and in many other instances, HRW is claiming expertise in asymmetric warfare that it does not have. For example, the report argues the IDF could have used a “readily available and non-lethal alternative to white phosphorous . . . to the same effect”. However, in another section, the authors admit that the alternative smoke shells “do not block infra-red optics and weapons tracking systems”. By substituting the limited military expertise and knowledge of its researchers for the experience of the IDF commanders, HRW is extending its claim of credibility far beyond the realm of human rights.
- **No proof of motive, and unsupported charges against the IDF.** HRW alleges that the IDF use of this weapons was “neither incidental nor accidental,” and intended to “willfully-that is, deliberately or recklessly” harm civilians. But there is no evidence in the report regarding IDF motives. HRW also claims that the Israeli military is “infected by a climate of impunity” and alleges the IDF will not conduct

“an honest and thorough investigation.” HRW, however, chose to rush its report to print and add to the anti-Israel atmosphere in the media, rather than wait for the IDF’s on-going investigation to be completed. These charges and the rhetoric that is employed further highlight the bias and lack of professionalism in HRW’s activities regarding Israel.

- **Reliance on NGOs that lack credibility:** HRW relies extensively on Palestinian NGO [Al Mezan](#), thanking them in the report. Among other claims, Al Mezan lists a child as deceased, who was subsequently interviewed by Garlasco in Gaza. For detailed information and analysis of Al Mezan, see NGO Monitor’s analyses.

## 2) Political and ideological biases of the authors further undermines credibility

The authors of “Rain of Fire” include Marc Garlasco, whose previous work for HRW has exhibited [significant flaws](#) in methodology and factual inaccuracies; Fares Akram, a Palestinian whose father [was killed](#) during the fighting, and therefore cannot be considered an independent or impartial investigator; and Darryl Li, a pro-Palestinian solidarity activist and former employee of the Palestinian Center for Human Rights (PCHR), whose [inflammatory pseudo-legal arguments](#) published in the pro-Palestinian propaganda journal MERIP [describes](#) Gaza as a “bantustan, internment camp, animal pen.” (Li was also listed as an author of HRW’s 2004, “Razing Rafa”, along with Garlasco). The report was edited by [Joe Stork](#), who prior to joining HRW was a highly visible anti-Israel political activist and ex-editor of MERIP.

## 3) Misleading and artificially narrow interpretations of international law

International law is a highly complex topic, with multiple aspects, and the restrictions on the use of certain weapons are valid under very specific circumstances. The practice by HRW and other NGOs of taking one narrow element out context and expanding its visibility, while ignoring other aspects, such as the UN Charter’s prohibition on aggression and the use of force (including by groups such as Hamas and Hezbollah), is a major source of distortion. This is clearly the case in the focus on white phosphorous in the context of the Gaza conflict.

White phosphorous is a [legal](#) conventional weapon often used for illumination of wide areas and to create smoke in order to conceal troop movements and positions (see above). The use of flares to assist search and rescue forces and for similar purposes saves lives of injured soldiers and prevents the kidnapping of the bodies of dead soldiers by Hamas, as has happened in the past. As admitted by the authors of HRW’s report,

“international humanitarian law – the laws of war – does not ban white phosphorous munitions either as an ‘obscurant’ to hide military operations or as an incendiary weapon.”

On January 10, however, as part of its overall effort to criminalize warfare (particularly with respect to Israeli responses to attack), HRW launched a campaign condemning the IDF for allegedly using white phosphorous deliberately and specifically against civilians, a practice which would be in violation of the laws of war. Immediately following that report, HRW’s claims were copied in the media (the Guardian, the Times (UK), Ha’aretz, CNN). Highly politicized Palestinian NGOs such as PCHR, and sympathizers such as Mads Gilbert, began repeating the allegations of widespread Palestinian casualties and “burns” caused by white phosphorous “bombs.” B’Tselem also repeated the charge that Israel was using white phosphorous “illegally” without providing any source for its claim. The disproportionate focus on this issue and false claims diverted attention from the far more significant aspects of the conflict, such as Hamas’ systematic and illegal use of human shields, indiscriminate rocket attacks targeting Israeli civilians, and the role of Iran and Syria in supplying weapons and support to Hamas. In repeating the anti-Israel condemnations in the 71-page report and press conference, HRW continued this bias.

The report also makes repeated allegations that Israel committed “war crimes” simply based on the presence of spent white phosphorous shells in civilian areas. (As stated above, due to the chain of custody problems with the shells referred to in HRW’s report, there is no way to confirm where many of these shells originally landed, or the context of their use.) In order to assess whether a war crime has been committed, however, a court (not self appointed investigators who do not apply professional forensic standards to document and preserve evidence) needs to consider many factors, including the purpose for the use of the particular munitions, the location of enemy troops at the time of their use; IDF intent; and many other factors. This vital information is clearly outside the competence of HRW’s researchers and was missing from this report.

Significantly, at the beginning of the March 26 press conference to promote this report, HRW representatives remarked that they would not take questions regarding the definition of “war crimes” or other legal issues, even though such charges are freely levied by HRW throughout the report. Since the debate on the legitimate use of weapons such as white phosphorous is an essential aspect of this issue, and the applications of terms such as “war crimes,” “military necessity,” and “violation of international law” are subject to multi-faceted legal tests, by refusing to open this dimension to discussion, HRW officials prevented discussion of the most misleading aspect of its report.

## **A well-established pattern: false claims and a biased agenda**

HRW's record consistently exhibits a strong anti-Israel bias. An analysis of all of its publications and [reporting in 2008](#) reflected the portrayal of Israel as the second worst abuser of human rights in the Middle East. Even before the renewal of the military conflict on December 27, 2008, HRW focused disproportionately on Gaza: 18 out of 27 HRW statements in 2008 dealing with Israel addressed Gaza, accusing Israel of "collective punishment," "continued occupation," and contributing to a "humanitarian crisis" - charges that are [inconsistent with international law](#) and lack supporting evidence.

The pattern of inconsistent and distorted legal definitions is also well established in HRW activities. For example, in reports on the conflict in [Sri Lanka](#), HRW condemned the LTTE for "deploy[ing] their forces close to civilians, thus using them as 'human shields.'" Yet in Gaza, HRW claims (without credibility) that it "found no evidence of Hamas using human shields in the vicinity at the time of the attacks" despite the fact that "[i]n some areas Palestinian fighters appear to have been present..."

HRW also has a history of inaccurate reporting on Israel. In October 2000, HRW joined the campaign blaming Israel for the highly publicized death of Muhammad al-Dura, citing "eyewitnesses" and rejecting contradictory evidence. In 2004, HRW published "Razing Rafah" (the authors included Garlasco and Li) which described terrorism as "resistance" and was used to promote the boycott campaign against Caterpillar over sales to Israel. With no credible evidence, the report claimed Israel's operations were "unnecessary," "unlawful" and designed to maintain "long-term control over the Gaza Strip." During the Second Lebanon War (2006), HRW promoted the myth of a Qana "massacre," inflating the death toll to 54, although officials knew at the time that the Red Cross was only reporting 28 casualties. HRW eventually retracted its false report. Similarly, HRW's major report on the conflict, "Fatal Strikes" (August 2006), claimed the NGO "found no cases in which Hezbollah deliberately used civilians" - i.e., operated from civilian areas - despite a wealth of documentary and video proof of the extensive Hezbollah activity in many of the specific villages where HRW claimed it was absent. Nine out of 21 cases described in "Fatal Strikes" were contradicted by later HRW reports - a remarkable inaccuracy rate of 43% - even before independent analysis of the evidence.

## **Conclusion**

Despite the methodological flaws, the factual inaccuracies and distortions in the report,

and HRW's credibility deficit, HRW's unverified claims were repeated in the international media without question. Through this, HRW undermines the universality and integrity of human rights, and promotes the Durban Strategy of demonizing Israel by removing the context of terrorism and self-defense, accompanied by unsubstantiated allegations using the language of human rights and international law.

For more information see:

[CNN](#) – Prof. Gerald Steinberg comments on this report

[The NGO Front In the Gaza War: The Durban Strategy Continues](#), NGO Monitor Monograph Series, February 2009

Gerald Steinberg, "[Human Rights as a Weapon](#)," Forbes, January 28, 2009

Anne Herzberg, "[NGOs Aid Hamas PR Campaign](#)," The Jerusalem Post, January 11, 2009

## Topics in this Report

- [2009 Gaza War](#)
- [Biases](#)
- [International Law](#)
- [Lack of Evidence](#)
- [white phosphorus](#)

## NGOs in this Report

- [Human Rights Watch \(HRW\)](#)

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