On December 27, 2008, Israel initiated a major 22-days long military operation in the Gaza Strip (Operation Cast Lead).\(^1\) Similar to the case of the 2006 Second Lebanon War,\(^2\) Israel was accused of using illegal weapons (cluster munitions in the former, white phosphorus [WP] in the latter). This claim appeared during a time of intense fighting\(^1\) and became increasingly acerbic after the Operation’s conclusion on January 17 (local time).\(^4\) Ten days later, however, Amnesty International reported that “Apart from white phosphorus” its fact-finding team in Gaza found “hard evidence” of the use of flechettes – in the Israeli context armor rounds containing thousands of ‘dart-like projectile[s that] stabilized [their] flight by small fins’\(^5\) – during


\(^2\) See, for example Israeli Cluster Munitions Hit Civilians in Lebanon, Human Rights Watch (HRW) Press Release (July 24, 2006), available at <hrw.org/english/docs/2006/07/24/isrlpa13798_txt.htm>. Notably, in the context of the Law of Weaponry, the term ‘weapons’ includes ‘ammunitions’. For the reader’s benefit, we use the term “weapons” to cover both although the term “means of warfare” is used as well. The term “methods of warfare”, however, refers specifically to the manner in which these means are used. For a discussion of these terms see, Hays, W. Parks, “Means and Methods of Warfare”, The George Washington International Law Review (GWILR) (2006), 511, at 512, fn. 2.


\(^4\) See, for example, Rain of Fire: Israel’s Unlawful Use of White Phosphorus in Gaza (HRW Rep., Mar. 25, 2009). For a critique of this report see, HRW’s “Rain of Fire? Neither Thorough Nor Impartial”, (Non-Governmental Organization [NGO] Monitor Rep., Apr. 2, 2009). For internal criticism see, for example, Amos Harel, “IDF Probes Improper Use of Phosphorus Shells in Gaza Strip”, Haaretz, (Jan. 21, 2009), at A1; “Investigate Now” (Editorial), Haaretz, (Jan. 22, 2009), at 5. Note: Haaretz has published a concise English-language edition as of September 1997 (also available online). Citations were taken from this source whenever possible to avoid translation errors. Unless otherwise indicated, Hebrew sources were translated by the author.

the Gaza Operation.6 This news release was followed the next month by a 45-page brief on the types of munitions used in the Operation, in which a few cases of civilian casualties resulting from flechette rounds were first mentioned.7 Yet, the emphasis was placed on Israel’s use of WP and this growing debate detracted attention from the use of the flechette weapons. Neither the media8 nor Amnesty’s reports on civilian casualties (i.e., collateral damage) due to the use of flechette weapons during the Operation were seemingly powerful enough to alter this state of affairs.

In September 2009, however, nine months after the Operation’s conclusion, the legality of flechette weapons became the subject of interest following the release of the report prepared by the Gaza Fact-Finding Mission, commissioned by the United Nations (UN) Human Rights Council.9 The “Goldstone Report,” as it was called after the Mission’s head, Justice Richard J. Goldstone, highlighted flechettes and a few other types of weapons (mainly WP) that were allegedly used by Israel during the Operation “in relation to the obligation to take all feasible precautions in the choice of the means and methods of warfare.”10 After finding that “in all cases those hit by these devices were civilians,”11 the Mission stated that “(f)lechettes, as an area weapon, are particularly unsuitable for use in urban settings.”12 Hence, despite acknowledgment by the report’s authors that the weapon is not “currently proscribed under international law,”13 they called for an urgent UN General Assembly (UNGA) discussion on the “future legality of the use of certain munitions referred to in this report, and in particular white phosphorous, flechettes and heavy metal such as tungsten”:14

Unlike the case of cluster munitions, Israel’s use of flechette, an area weapon (i.e., a means of warfare that is effective over a broad area), even if it is targeted against a specific point by definition, within the Arab-Israeli conflict, has not been reserved

---

8 See, for example, Amira Hass, “Penetrating the Laws of War”, Haaretz, Apr. 17, 2009, at 3.
10 Human Rights in Palestine and other Occupied Arab Territories, Report of the United Nations Fact-Finding Mission on the Gaza Conflict (A/HRC/12/48) Sept. 15, 2009, Chap. XII [“The Use of Certain Weapons”] [hereinafter, The Goldstone Report], at 194, para. 886. In addition to flechettes and WP, Dense Inert Metal Explosive (DIME) and “depleted and non-depleted uranium munitions” were mentioned. As to (the first) weapon (DIME), the Mission cited allegations regarding its use by the IDF in its “factual findings” section and noted that “further clarifications” were required (see, Id., at 198, para. 909). As to the latter (munitions containing uranium) it stated that: “While it cannot be excluded that such weapons were used, on the basis of the information received the Mission decided not to investigate the matter further”. Id., at 198, para. 911.
11 Id., at 197, para. 904.
12 Id., at 414, para. 1924.
13 Id.
14 Id., at 425, para. 1971(d).