

# Shameless BBC: When Misinformation means War Crimes

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In-depth Report: [Fallujah: US War Crimes, IRAQ REPORT](#)

Exclusive interview with Karen Parker, Chief Counsel of the Association of Humanitarian Lawyers By Gabriele Zamparini (\*)

The BBC News website, in a special page “[Q&A: White phosphorus](#)” and under the title “The BBC News website looks at the facts behind the row.” reads:

What are the international conventions?

Washington is not a signatory to any treaty restricting the use of white phosphorus against civilians.

White phosphorus is covered by Protocol III of the 1980 Convention on Conventional Weapons, which prohibits its use as an incendiary weapon against civilian populations or in air attacks against enemy forces in civilian areas.

The US - unlike 80 other countries including the UK - is not a signatory to Protocol III.

The same BBC News website, in the article “[Iraq probes US phosphorus weapons](#)” reads:

“Washington is not a signatory to an international treaty restricting the use of the substance against civilians.”

I asked Karen Parker, Chief Counsel of the [Association of Humanitarian Lawyers](#) based in San Francisco to comment on what the BBC reports.

Question: Karen, how do you comment on what the BBC writes?

Answer: The comment “Washington is not a signatory to an international treaty restricting the use of the substance [WP] against civilians.” assumes that therefore civilians may be targeted by WP weapons. This is an outrageous assumption because civilians may NEVER be the target of military operations — whether using bows and arrows or white phosphorous, or any other weapon. This rule is not dependent on specific treaties but is a fundamental part of the laws and customs of war. Protocol III relating to incendiary weapons (of the Convention on Prohibitions on the Use of Certain Conventional Weapons Which May Be

Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (1983)) makes all this clear by reinforcing this. While this treaty mainly sets out rules relating to WP in regards to combatants, it also reinforces the rule against targeting civilians.

There seems to be some controversy about whether WP might be a chemical weapon or a poisonous gas weapon and hence prohibited by treaties ratified by the US relating to these types of weapons. While a technically interesting question, it deflects attention from the fact that the US forces targeted civilians with WP and other weapons, both illegal and legal in Falluja. The debate about what category of weapons WP weapons are is irrelevant to THAT issue. What is important is to focus on the deliberate targeting of civilians or using weapons against a legal military target when there is a substantial likelihood of serious and numerous civilian casualties. Such targeting is a grave breach of the Geneva Conventions, especially due to the nature of the weapons such as those containing WP used against them.

While the US may not have ratified certain weapons conventions, this does not mean that therefore the US may legally use the weapons that are the subject of such treaties. This is because weapons may be otherwise banned by operation of existing humanitarian law. Under these rules, a weapon may be considered banned if: (1) it cannot be contained to the legal field of battle; (2) it cannot be stopped or cleaned-up when the war is over; (3) it causes “undue suffering” or “superfluous injury” (terms from The Hague Conventions of 1899 and 1907 — echoed in the “Conventional Weapons Treaty”); or (4) it unduly harms the environment. The nature of WP makes it difficult to control, so it cannot be contained to legal military targets. In this sense, it could be banned by operation of international law in urban areas, as it cannot be sufficiently controlled to the legal field of battle. Note that the Incendiary Weapons Protocol was intended to limit the use of these weapons even against combatants because of the “excessively injurious” issue.

Most specific weapons treaties have provisions that provide for “similar, but unnamed weapons” that are “analogous” to the names ones. For example, the 1925 Protocol on Gases has such clauses. WP weapons fit this rule as either “chemical” or “gases” by analogy.

Q. The US government has just admitted to have used WP in Fallujah as a weapon. What’s your comment on this?

A. It is very disturbing that the US lied for a number of months about the use of WP in Falluja, and only came forward with an admission of use after clear evidence. While combatant forces are allowed to withhold certain information from the general public at certain times, the US apparently lied to US Members of Congress and other officials. This is especially disturbing because the use of WP in urban areas is prohibited by operation of law. In this sense, the US was covering up war crimes.

Q. Which other WMD – if any – have been used by the US in Iraq?

A. The US has used weapons containing depleted uranium (DU) in both the first and second Gulf Wars. DU weapons also fail the test set out above, as attested by the UN Sub-Commission on the Promotion and Protection of Human Rights in its resolutions and reports on this issue. Both the UN Secretary General and a Sub-Commission expert, Chief Justice Sik Yuen (Supreme Court, Mauritius) addressed this issue in their reports, that concurred with my prior assessment, submitted to the UN Commission on Human Rights and its expert

body, that DU weapons are illegal.

I also understand that napalm may have been used in Iraq. At present, I have not been able to verify this conclusively.

Q. What should the international community do now and what you and your organization are doing?

A. My organization, the [Association of Humanitarian Lawyers](http://www.humanlaw.org), has filed a legal action against the US at the Organization of American States for attacking hospitals and medical facilities in Falluja and for using illegal weapons in those attacks. For details, please see [www.humanlaw.org](http://www.humanlaw.org). Obviously, this lawsuit needs to be fully supported, and I welcome help in that regard. In addition, however, we at AHL are trying to set up a “conclave” of attorneys to look at both this and a number of other legal challenges to the way that the US has conducted military actions in Iraq. I would hope to look at illegal weapons, illegal military operations and a wider variety of humanitarian law violations than just torture. I would also hope to look at the “anticipatory” agreements that the US pushed with a number of European and other governments in which the signatory States agreed to NOT bring the US to either the International Criminal Court (not possible anyway, as the US has not ratified the treaty) or to its own domestic Courts as mandated by the Geneva Conventions. These “anticipatory” treaties are “void” as they violate the Geneva Conventions and basic principles of international law, but they need to be judicially challenged. Such challenges are very expensive and economically beyond the reach of human rights organizations such as ours. One reason to force these agreements is that there are no funds to challenge them. So “they” win by default. This is tragic.

Q. How the antiwar movement may help?

A. The anti-war movement can help by making certain that they understand the gravity of the breaches of international law. This is not a “rogue elephant” situation — this is a herd of rogue elephants. The US, and to a lesser extent the UK, are decimating the Geneva Conventions and all other rules of the laws and customs of war. It is shocking that most MP and Members of US Congress do not even know the rules: they are willing to send their citizens to die, but don’t know the rules. It doesn’t get any worse than this. The anti-war movement could also help to raise funds for legal actions. Yes, we must be in the streets, but we must also be in the courthouse. There simply must be legal challenges to these egregious violations. For those interested in helping in my Association of Humanitarian Lawyers action against the US at the OAS, please feel free to contact me at [ied@igc.org](mailto:ied@igc.org) or [reb@xcaretresearch.com](mailto:reb@xcaretresearch.com). And as stated, we are interested in holding a conference for attorneys who are ready, willing and able to take on the US in national and regional and UN forums.

To know more:

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