

30 October 2012

**NGO Monitor Submission to the UN Human Rights Council
Independent International Fact-finding Mission on the Israeli
Settlements in the Occupied Palestinian Territory including East
Jerusalem Pursuant to HRC Resolution 19/7**

NGO Monitor is a Jerusalem-based research institution that tracks the activities, campaigns, and funding of NGOs operating in the Arab-Israeli conflict. For nearly a decade, NGO Monitor, which was founded in the aftermath of the NGO Forum at the UN Durban World Conference Against Racism, has published numerous detailed and systematic research studies on the issues of NGO transparency, accountability, international law, human rights, humanitarian aid, and the laws of armed conflict. These works include *Best Practices for Human Rights and Humanitarian NGO Fact-Finding* (Nijhoff 2012), “IHL 2.0: Is there a Role for Social Media in Monitoring and Enforcement” (forthcoming *Israel Law Review* 2012), and *The Goldstone Report “Reconsidered”: A Critical Analysis* (2011).¹

Members of NGO Monitor’s Advisory Board include Nobel Peace Prize Laureate Elie Wiesel; Harvard Professor Alan Dershowitz; Colonel Richard Kemp, former commander of British forces in Iraq and Afghanistan; R. James Woolsey, former US Director of Central Intelligence; Member of Italian Parliament, Fiamma Nirenstein; US Jurist and former Legal Advisor to the State Department, Abraham Sofaer; Ambassador Yehuda Avner; UCLA Professor and President of the Daniel Pearl Foundation, Judea Pearl; Harvard Professor Ruth Wisse, former US government official, Elliot Abrams; Douglas Murray, Director of the Centre for Social Cohesion, best-selling author and commentator; and British journalist and international affairs commentator, Tom Gross.

¹ A copy of “*Reconsidered*” is attached as an exhibit to this submission.

NGO Monitor has prepared this submission for the UN Human Rights Council Independent International Fact-finding Mission on the Israeli Settlements in the Occupied Palestinian Territory including East Jerusalem Pursuant to HRC Resolution 19/7 (“the Mission”) to provide background information and context that may not be known, as well as to remind the Mission of the obligation to maintain ethical standards and to adhere to the principles of transparency, impartiality, and independence in conducting its work. We hope that this information will aid in the preparation of the final report.

Introduction

For more than 60 years, the State of Israel has been subjected to violence, warfare, and a relentless campaign of terror attacks deliberately targeting its civilians. Thousands have been murdered and injured in suicide bombings, mass shootings, stabbings, rocket attacks, car bombings, kidnappings, and hijackings. Today, these attacks are spearheaded by states including Iran and Syria, and terror organizations – Hamas, Islamic Jihad, Hezbollah, Fatah’s Al Aksa Martyrs Brigade, the PFLP, and even Al Qaeda. They not only outwardly reject the existence of a Jewish state within any borders, but their ideology is marred by overt antisemitism and calls for genocide of the Jewish people. Many so-called Palestinian moderates and supporters also refuse to recognize Israel as a Jewish state and the right of self-determination for the Jewish people. Instead, they seek to reverse the November 1947 UN decision calling for two states, which was accepted by the Jewish nation and rejected by the Arabs.

This “hard power” terror war has been bolstered by a corresponding “soft power” political war aimed at delegitimizing and demonizing the State of Israel. For decades, this “soft power” war has sought to maintain the stance of Arab rejectionism in order to circumvent the process of peace negotiations and to avoid the difficult compromises necessary for a peaceful resolution to the Arab-Israeli conflict. In addition to States, these political attacks are often led by civil society or non-governmental organizations (NGOs) that claim the mantle of universal human rights and humanitarian goals. Many powerful organizations have joined this effort, organizations whose budgets and influence rival that of large multinational corporations, such as Amnesty International, Human Rights Watch, and Oxfam.

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Tragically, the co-opting of UN frameworks and other international institutions has been central to this strategy. In the 1970s, by exploiting Cold War politics and an alliance with the Soviet Union, Palestinians and their supporters launched several efforts at the UN to undermine Israel's legitimacy and eliminate Jewish self-determination rights. These initiatives included numerous declarations and resolutions adopted by the Security Council and the General Assembly, the establishment of several committees and legal commissions, as well as actions by the UN human rights and treaty bodies. For instance, Palestinians sought to have Zionism codified as a form of "apartheid" in the 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid—a document initiated by the Soviet Union that defined apartheid so broadly as to apply to all Western states. In 1975, the Arab and Islamic blocs gained passage of the infamous 1975 UN General Assembly "Zionism is Racism" declaration. The UN Committee on the Exercise of the Inalienable Rights of the Palestinian People, one of the primary vehicles for Israeli demonization, was also created on that day. This campaign has also exploited the International Court of Justice and the International Criminal Court.

Indeed, Palestinian Authority (PA) President Mahmoud Abbas admitted in his May 17, 2011, *New York Times* op-ed that the Palestinian statehood bid would not be used to peacefully end the conflict, but rather:

Palestine's admission to the United Nations would pave the way for the internationalization of the conflict as a legal matter, not only a political one. It would also pave the way for us to pursue claims against Israel at the United Nations, human rights treaty bodies and the International Court of Justice.

Sadly, the co-opting of UN institutions has been most evident within the framework of the Human Rights Council, and its predecessor, the Commission on Human Rights. The Commission created the framework for the infamous NGO Forum of the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, in which 1,500 NGOs gathered in Durban, South Africa adopted a final declaration that singled-out Israel and launched a political war based on soft-power and false accusations. The HRC was established in part to rectify the overt politicization

and bias against Israel by the Commission of Human Rights. As noted by former UN Secretary General, Kofi Annan, “the Commission’s ability to perform its tasks has been . . . undermined by the politicization of its sessions and the selectivity of its work.”² Yet, as noted by French academic Antonia Dürnsteiner, “[a]s far as the principle of non-selectivity is concerned . . . the Human Rights Council’s selectivity . . . is greater than it was in the Commission.”³

Israel is the only country with its own permanent agenda item at the HRC and it has been the focus of more than 80 percent of the resolutions issued.⁴ Six of the first twelve special sessions were devoted to one-sided condemnations of the Jewish state. The “Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967” is the only country-themed mandate that never expires and is typically chaired by extreme anti-Israel ideologues.⁵ Since 2002, the HRC (and its predecessor) has appointed at least six “fact finding” committees targeting Israel, including Jenin (2002), Lebanon War (2006), Beit Hanoun (2008), Gaza (2009), the IHH Flotilla (2010), and now settlements (2012) – more than any other country.

² Office of the Spokesperson (U.N.), Secretary-General's Address to the Commission on Human Rights, 7 April 2005, available at <http://www.un.org/apps/sg/sgstats.asp?nid=1388>.

³ Antonia Dürnsteiner, The Debate on the New Human Rights Council, Peace Center, Sciences-Po, http://www.peacecenter.sciences-po.fr/journal/issue8/hsj_antonia.pdf

⁴ As noted by *Washington Post* columnist, Jackson Diehl, “[w]hile ending the scrutiny of those dictatorships, the council chose to establish one permanent and special agenda item: the ‘human rights situation in Palestine and other occupied Arab territories.’ In other words, Israel (or ‘Palestine,’ in the council's terminology), alone among the nations of the world, will be subjected to continual and open-ended examination. That's in keeping with the record of the council's first year: Eleven resolutions were directed at the Jewish state. None criticized any other government.” Jackson Diehl, “A Shadow on the Human Rights Movement,” *THE WASHINGTON POST*, 25 June 2007, available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/06/24/AR2007062401373.html>

⁵ The current Rapporteur has been reprimanded for highly offensive comments about the 9/11 terror attacks and for posting antisemitic material on his personal blog. See, e.g., Betwa Sharma, US Wants UN Human Rights Expert Fired for 9/11 Comments, *AolNews*, 25 January 2011, available at <http://www.aolnews.com/2011/01/25/us-wants-un-human-rights-expert-richard-falk-fired-for-9-11-comm/>; UN Watch, Richard Falk endorses 9/11 “inside job” theory, interviewed in his official UN capacity, March 21, 2011, available at <http://blog.unwatch.org/index.php/2011/03/21/richard-falk-endorses-911-inside-job-theory-interviewed-in-his-official-un-capacity/>; Jeremy Sharon, “Pillay says Falk's cartoon was anti-Semitic, objectionable,” *Jerusalem Post*, 14 July 2011, available at <http://www.jpost.com/JewishWorld/JewishNews/Article.aspx?id=229422>.

Many prominent scholars have analyzed these previous initiatives and have demonstrated that they have been marred by bias, double standards, factual inaccuracies, a lack of transparency and independence, and a failure to adhere to ethical standards and best practices for fact-finding.⁶ Part of these failings was due to the reliance of these committees on political advocacy organizations with little to no independent verification or corroboration of claims.

As the terms of reference make clear, this Mission will undoubtedly meet with many NGOs in the region and receive a significant amount of NGO documentation and reports. While often providing valuable humanitarian assistance, the NGO network in the region also often plays a counterproductive role in the Arab-Israeli conflict. As NGO Monitor and others have documented, established human rights NGOs often produce reports and launch campaigns that stand in sharp contradiction to their own mission statements claiming to uphold universal human rights values. They regularly obscure or remove the context of terrorism, provide incomplete statistics and images, and disseminate gross distortions of the humanitarian and human rights dimension of the Arab-Israeli conflict. Violations of human rights and international humanitarian law committed by Palestinian actors or terror groups are ignored or minimized. And in several cases, information has been fabricated. As a result, NGO publications and campaigns provide an incomplete and often non-credible picture of the conflict.

⁶ See, e.g., Moshe Halbertal, "The Goldstone Illusion," *The New Republic*, 6 November 2009, available at <http://www.tnr.com/article/world/the-goldstone-illusion>; Report of an Expert Meeting which Assessed Procedural Criticisms made of the U.N. Fact-finding Mission on the Gaza Conflict (The Goldstone Report), Chatham House, (27 November 2009), available at http://www.chathamhouse.org.uk/files/15572_il271109summary.pdf; Ed Morgan, "The UN Book of Judges," *Global Governance*, April-June 2010, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1622307; Nigel S. Rodley, "Assessing the Goldstone Report," *Global Governance*, April-June 2010, available at http://findarticles.com/p/articles/mi_7055/is_2_16/ai_n55407196/?tag=content;col1; Laurie Blank, "The Application of IHL in the Goldstone Report: A Critical Commentary," 12 Y.B. of Int'l Hum. L. (2009); Peter Berkowitz, "The Goldstone Report and International Law," Stanford University Hoover Institution, 1 August 2010, available at <http://www.hoover.org/publications/policy-review/article/43281>; Avi Bell, "A Critique of the Goldstone Report and its Treatment of International Humanitarian Law," *American Society of International Law Proceedings*, Vol. 104, March 2010, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1581533; Trevor Norwitz, "Open Letter to Judge Goldstone," 19 October 2009, available at <http://www.goldstonereport.org/pro-and-con/critics/316-trevor-norvitz-open-letter-to-judge-goldstone-191009>.

Few, if any, mechanisms exist within the HRC (and other UN) frameworks to verify and evaluate the credibility of allegations proffered by these organizations, in violation of best practices and ethical standards for fact-finding. As a result, this credibility deficit implicates several of the principles in the HRC's and the Missions's mandate, including universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation, transparency, accountability, and balance.⁷ The Mission therefore should adopt and fully implement guidelines and procedures to ensure these principles are maintained. Importantly, it is essential that these guidelines and procedures govern the Mission's interaction with NGOs.

Ethical Standards and Fact-finding “Best Practices”

The Terms of Reference (“ToR”) for the Mission require it will “be guided in its activities by the principles of do no harm, independence, impartiality, objectivity, discretion, transparency, confidentiality, integrity and professionalism.”⁸ Moreover, the ToR acknowledges that the members of the mission were appointed on the basis of “their personal integrity, independence, impartiality and objectivity.”⁹

These principles are key standards for any fact-finding mission. In 2009, the Human Rights Institute of the International Bar Association issued the [Lund-London](#)¹⁰ Guidelines on international Human Rights Fact Finding Visits elaborated on these norms.

⁷As a organ of the HRC the Mission is also required to follow the guiding principles of the Council as specified in General Assembly Resolution, [60/251](#)(3 April 2006), mandating that the work of the Council shall be guided by the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation . . .” GA Res. 60/251, U.N. Doc. A/RES/60/251 (3 April 2006); See also, HRC Res. 5/1, UN Doc. A/HRC/RES/5/1, 18 June 2007. The HRC's *Institution-building package* elaborated on the principles to include “transparency, accountability, [and] balance . . .”

⁸ “Terms of Reference: Independent International Fact-finding Mission on the Israeli Settlements in the Occupied Palestinian Territory including East Jerusalem,” at para. 12, *available at* <http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/FFM/FFMSettlementTOR.pdf> [hereinafter “ToR”].

⁹ *Id.* at para. 3.

¹⁰ London-Lund Guidelines, www.factfindingguidelines.org

In particular, the Lund-London guidelines state:

- Reports must be **clearly objective and properly sourced**, and the conclusions in them reached in a **transparent** manner. . . . In making their findings the delegation should try to verify alleged facts with an independent third party or otherwise. Where this is not possible, it should be noted.
- The **terms of reference must not reflect any predetermined conclusions** about the situation under investigation.
- The mission's delegation must comprise individuals **who are and are seen to be unbiased**. The NGO should be confident that the delegation members have the competence, experience and expertise relevant to the matters pertaining to the terms of reference.

Despite these clear standards, NGO Monitor has several concerns regarding the establishment and working methodologies of the Mission:

Impartiality & Objectivity

The core principles for any fact-finding investigation are that of impartiality and objectivity and these standards were emphasized in the ToR.

HRC Mandate

The Mission's mandate was established by HRC Resolution 19/7. This resolution, however, is neither impartial, nor objective.¹¹ Resolution 19/7 was initiated by the abusive regimes of Cuba, Venezuela, Mauritania (on behalf of the Arab Group), Pakistan (on behalf of the Organization for Islamic Cooperation), and the Palestinian Authority.¹²

The mandate calls for the appointment of an "independent international fact-finding mission . . . to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem . . ." In contrast to the

¹¹ One of the most heavily criticized aspects of the Goldstone Mission was the one-sided mandate from the HRC. See, e.g. note 6, *supra*.

¹² Bolivia also sponsored the draft. See "19/... Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the Occupied Syrian Golan," A/HRC/19/L.35 (19 March 2012).

principle of impartiality, the mandate has a singular focus on alleged violations by Israel (which the mandate has already pre-assumed). The resolution similarly makes prejudicial and pre-determined legal conclusions that Israel's actions "are illegal under international law and constitute very serious violations of international humanitarian law and of the human rights of the Palestinian people therein."

The mandate fails to call for the examination of any other aspect of the Arab-Israeli conflict. In particular, the mandate fails to address the systematic campaign of terrorism against Israeli civilians nor calls on the Mission to examine the culpability and actions of other actors including the Palestinian Authority, Hamas, Islamic Jihad, other terrorist organizations, Syria, Hezbollah, Iran, etc... The Oslo Accords, jointly agreed to by the PLO and Israel is ignored, despite the fact that this series of agreements is the primary source of law that governs the status of the West Bank and the obligations of the parties operating therein. The mandate also fails to take into account that in law, few rights are absolute, and that all countries are charged with the difficult task of weighing competing claims and balancing rights in a complex society. This is all the more so when that society is facing asymmetrical warfare. Instead, Resolution 19/7 solely addresses the rights of Palestinians while disregarding Israeli human rights, and promotes the protection of some rights – such as the "right to work" or the "right to a culture" – at the expense of more fundamental rights – such as the right to life or the right to self-defense.¹³

¹³ NGO Monitor is concerned that Mission member Asma Jahangir has previously failed to rigorously analyze or take into account the implications of terrorism while serving as Special Rapporteur on Freedom of Religion or Belief. In her report following a visit to Israel and the Palestinian Authority in January 2008, Ms. Jahangir repeatedly emphasized "that any measure taken to combat terrorism must comply with the State's obligations under international law." See A/HRC/10/8/Add.2 (12 January 2009), available at <http://www.unhcr.org/refworld/country,,,MISSION.ISR,,49788a742,0.html>. However, these statements were simply conclusory or a recitation of various legal provisions. Ms. Jahangir provided only cursory legal analysis, if any, regarding whether security measures put in place were in accordance with the law. Moreover, while she did acknowledge the principle of "the State's obligation to . . . take effective measures to combat terrorism," she did not provide any guidance as to what security measures would be appropriate in the circumstances. These statements seem to echo many of those made in the Arab-Israeli conflict, where lip service is paid regarding terrorism and Israel's legitimate security concerns, but where any measure taken by the Israel government to protect civilians is immediately condemned as a illegal and without justification.

Due to the one-sided nature of 19/7 and based upon past fact-finding initiatives targeting Israel, fact-finding expert and human rights lawyer Professor Françoise Hampson remarked that she understood why Israel would not want to cooperate with what it suspected was an “ad hoc mission...proposed almost as a punitive measure.”¹⁴

Terms of Reference

Comparing the ToR for the Mission with the the ToR for the HRC’s fact-finding mission to Syria highlights the double standards related to inquiries regarding Israel conducted under the auspices of the HRC and the OHCHR. For instance, the ToR for this Mission focuses solely on violations of Palestinian rights, and it pre-assumes that violations have been committed.¹⁵ In contrast, the ToR for the Syrian mission calls for investigation of “all alleged violations.”¹⁶ In other words, the mandate concerning Syria allows for investigation of all actors to the conflict and does not conclude in advance that violations have indeed been committed. Second, while this Mission will examine compliance with the “Charter of the United Nations, together with the four pillars of the modern international legal system (international human rights law, international humanitarian law, international criminal law and international refugee law),” the mission to Syria only examined “alleged violations on international human rights law” despite the clear applicability of the bodies of law referred to in the inquiry targeting Israel.¹⁷ Third, while this Mission’s ToR repeatedly emphasizes that NGO information

¹⁴ Raphael Ahern, “Israel’s break with Human Rights Council understandable but misguided, says expert” *Times of Israel*, 4 July 2012, available at <http://www.timesofisrael.com/israels-break-with-human-rights-council-understandable-but-misguided-says-expert/>.

¹⁵ See ToR, *supra* n. 8, at para. 1.

¹⁶ OHCHR Fact-Finding Mission to Syria Terms of Reference, para. 1, available at http://www.ohchr.org/Documents/Countries/SY/TORs_FFM_Syria.pdf. [hereinafter “Syria ToR”]

¹⁷ Compare paragraph 2 of ToR with paragraph 1 of Syrian ToR. NGO Monitor notes that there are other bodies of law and legal instruments that are applicable, including those related to the combating of terrorism, such as Security Council Resolution 1373. We remind the Mission that according to Article 103 of the UN Charter, Security Council resolutions issued pursuant to Chapter VII trump all treaty law, even the Geneva Conventions. We also remind the Mission that advisory opinions of the International Court of Justice do not constitute binding legal precedent.

will play a prominent role in the inquiry,¹⁸ the Syrian ToR states it will “approach third States with a request for cooperation in the collection of material or information relevant to the case.”¹⁹ NGOs are not mentioned in the ToR except for the request that the Syrian authorities provide fact-finding staff the freedom to interview representatives of civil society.²⁰

Limited resources

As we are sure the Mission members are aware, there are dozens of human rights crises on-going globally at the present time. These include the horrific systematic repression and wholesale violation of rights in North Korea; the occupations of Tibet, Western Sahara, West Papua, and Northern Cyprus; genocide and denial of self-determination for the Kurdish people; the massive restrictions on free expression and movement in Cuba and China; mistreatment of the Roma throughout Europe; and the system of gender and religious apartheid in Saudi Arabia. To our knowledge, there has never been an HRC fact-finding inquiry established to address any of these abuses. In contrast, this is at least the sixth HRC investigation directed at Israel in the past ten years. In a time of severe economic uncertainty and restricted budgets, it would appear that UN funding should be directed to the most urgent human rights situations. NGO Monitor expresses grave concern at the apparent waste of resources on yet another politically motivated and one-sided “fact-finding” mission against Israel, whose only likely impact will be to further delay peace negotiations and make reaching an agreement that much harder to achieve.

Prior to adopting Resolution 19/7, the UN Programme Planning and Budget Division (UPPBD) reported that in order to implement the resolution, the General Assembly would need to authorize the additional expenses from the UN Contingency Fund as there was no funding for the Mission currently allotted in the HRC or UN budget. According to the UPPBD, the Mission would require a \$290,000 appropriation,

¹⁸ See, e.g., ToR, *supra* n. 8, at paras 7(b), 9, 10

¹⁹ Syrian ToR, *supra* n. 15, at para. 5.

²⁰ *Id.* at para 3(b).

including \$88,000 for translation services;\$90,900 for travel and accommodation for “three commissioners with four support staff and other staff members to Geneva, Cairo, and Lebanon”; \$105,300 for a “thematic expert” consultancy for two months; and \$5,500 additional funding for local costs, food, and transportation.

There appears to be no explanation as to who would be hired as a “thematic expert,” nor does it explain why this person would merit a payment of \$105,000 for only two months of work, an amount that seems highly excessive. The travel and accommodation costs also appear to be grossly disproportionate. No explanation is offered as to why the Mission would require “travel and accommodation” in Cairo and Lebanon which clearly have no connection to the Mission’s mandate. The high cost of translation, which is almost equivalent to the astronomical travel costs, is also similarly unexplained.

Past Statements Reflecting Lack of Impartiality

Paragraph 3 of the ToR states that the Mission members were selected for “their personal integrity, independence, impartiality and objectivity.” Remarks made in July 2010 by Mission head Christine Chanut, however, raise significant concerns regarding her impartiality and objectivity in relation to the Mission. According to *Reuters*, Ms. Chanut stated, following a report by Israel to the Human Rights Committee, that “[i]n Israel’s written responses to the committee, one could see a total discrimination in the sense that settlers benefited from the pact.”²¹ She further commented that “[i]t is very difficult to have a real dialogue (with Israel).” In making those remarks, Chanut also relied on the 2004 International Court of Justice advisory opinion on Israel’s Security Barrier, “[w]e are stronger because the International Court of Justice has said we were right on this position.” (As mentioned, this opinion is of no binding legal significance.)

These statements indicate that Ms. Chanut has formed pre-existing prejudicial opinions on areas directly covered by the Mission mandate. Her appointment, therefore,

²¹ “U.N. rights body tells Israel to end Gaza blockade,” *Reuters*, 30 July 2010, available at <http://www.reuters.com/article/2010/07/30/us-rights-israel-idUSLDE66T0KY20100730>.

would appear to be a conflict of interest and not in keeping with fact-finding standards or ethical principles.

Transparency

As mentioned, ToR requires that the Mission operate in a transparent manner. Unfortunately, it does not appear to be the case.

Unidentified Staffing and Meetings

The Lund-London Guidelines emphasize that in order for a fact-finding mission to comply with its obligations, the people involved must be individuals **“who are and are seen to be unbiased.”** The UNPPBD report notes that in addition to the three commission members appointed by the HRC President, the Mission will require “four support staff and other staff members,” as well as a “thematic expert.” While the three commissioners of the Mission have been identified, the “four support staff and other staff members” and the “thematic expert” remain secret. The failure to disclose these names makes it impossible for outside sources to independently evaluate whether these individuals are objective, free from conflicts of interest, and have the requisite expertise. Given that these unnamed individuals will likely do the bulk of the information collection, compiling of data, witness interviews, and drafting of the report, this failure to disclose is a clear violation of fact-finding standards and ethical principles.

Moreover, the Mission has not been transparent in the meetings that have already taken place. In a 20 September 2012 report to the President of the HRC, Mission head Christine Chanet states that during 27-31 August, a first round of meetings in Geneva was conducted with “concerned representatives of Permanent Missions and other relevant stakeholders.” None of the “concerned representatives” nor “relevant stakeholders” was identified.²²

The Role of Non-Governmental Organizations

²² 20 September 12 Letter from Christine Chanet to HRC President Lasserre, *available at* http://blog.unwatch.org/wp-content/uploads/Letter_fromChristineChanet_FFMIIsraeli_settlements20Sept2012.pdf

This latest HRC fact-finding mission appears to be the direct result of a lobbying campaign by several NGOs in conjunction with the OIC, the Arab League, Cuba, and Venezuela.

These NGOs include [Al Haq](#), BADIL, Commission of the Churches on International Affairs of the [World Council of Churches](#), [International Federation for Human Rights Leagues](#) (also on behalf of [Palestinian Centre for Human Rights](#)), and [Nord-Sud XXI](#) (North-South XXI). These NGOs frequently utilize highly offensive and one-sided rhetoric in their advocacy campaigns. Moreover, these organizations ignore or contradict the Oslo framework, jointly negotiated between Israel and the Palestinians, which regulates the administration of the West Bank. European governments and the EU played a significant role in establishing and preserving the Oslo framework. It appears that Resolution 19/7 in large part adopted the unverified and one-sided claims of these organizations.²³

Not only did NGOs play a significant role in the establishment of this Mission, but based on past precedent and the ToR, they will likely prominently feature in all aspects of the Mission work. In order to comply with its mandate and prevent repetition of deviations from best practices, it is imperative that the Mission immediately enact specific transparency guidelines regarding NGO participation.

NGO Submission and Witnesses

Paragraph 9 of the ToR explicitly states that the Mission will take into account information from NGOs and “[w]here feasible and appropriate, the Mission will endeavour to consult and meet with such sources . . .”²⁴

The significant participation of NGOs in the Mission raises several concerns regarding the adherence to transparency. In most HRC frameworks, certain selected

²³ NGO Monitor, European Government-funded NGOs, Lobby for Latest UNHRC Investigation,” 27 March 2012, available at <http://www.ngo-monitor.org/article/european-government-funded-ngos-lobby-for-latest-unhrc-investigation>

²⁴ For more on NGOs and the UN process see, Gerald Steinberg, “NGOs, the UN, and The Politics of Human Rights in the Arab-Israeli Conflict,” *Israel Journal of Foreign Affairs*, 2012.

NGOs are prominent fixtures at HRC sessions and working groups, while other groups appear to be excluded. Few, if any, criteria are disclosed regarding the selection of NGO participation. Often, no public record exists of NGO interaction, creating the perception of improprieties or conflicts of interest.

As with the text of Resolution 19/7, NGO submissions will likely constitute the vast majority of the source material for the Mission's final reports. Judging by the practices of previous HRC fact-finding initiatives, large portions of the final report will simply have been "cut and pasted" from NGO submissions.²⁵

Item 11 of the ToR states that "The Mission will issue a call for written submissions in order to provide an opportunity to any interested person or group to address the Mission, and to enhance the transparency of and strengthen the confidence in the investigation." However, in the call that was issued, the Mission explicitly states that "[a]ll submissions will be treated as confidential and will not be made public." No explanation was provided as to why the Mission plans to keep these submissions secret. The failure to disclose these submissions makes it impossible to independently verify materials that will undoubtedly form the bulk of the Mission's report. In contrast, the HRC's fact-finding mission to Syria has stated that "[u]nless otherwise indicated by the author, the Mission will assume that submissions can be made public."²⁶ There is no reason why submissions related to the horrific situation in Syria, where there have been more than 60,000 killed or disappeared and participants may likely face retribution, can

²⁵ NGO Monitor is also troubled by a 2011 statement made by Christine Chanet in her role as Rapporteur on the Follow-up to concluding observations in the Human Rights Committee. Ms. Chanet told the committee that "When no reply had been received, as in the case of Israel, the report focused on information received by non-governmental organizations." UNOG, "Human Rights Committee Hears Progress Report of Special Rapporteur on Follow-up to Concluding Observations," 31 October 2011, available at

[http://www.unog.ch/80256EDD006B9C2E/\(httpNewsByYear_en\)/2ABC65691FB51944C125793A005B7883?OpenDocument](http://www.unog.ch/80256EDD006B9C2E/(httpNewsByYear_en)/2ABC65691FB51944C125793A005B7883?OpenDocument) This statement appears to indicate that the Mission will be inclined to solely base its information on NGO statements rather than on other sources available in the public domain in the absence of Israeli government participation. This would be an unacceptable result and indicative of a non-rigorous working methodology.

²⁶ Call for submissions (A/HRC/RES/S-16/1), available at <http://www.ohchr.org/EN/Countries/MENARegion/Pages/SyriaFactFindingMission.aspx>

be disclosed, yet submissions to this Mission must remain secret. If there is a rationale for confidentiality in this case, it should be explicitly stated.

It appears, unfortunately, that the Mission will be repeating the same mistakes as those of the HRC Fact-finding Mission to Gaza in relation to transparency. Some examples from that initiative are instructive:²⁷

During the inquiry, there was little disclosure regarding the interaction between the Mission, officials of OHCHR, and NGOs. A central element of the Goldstone committee's activities consisted of inviting and receiving submissions and testimony, including oral statements, from NGO representatives. In May 2009, Goldstone convened a "townhall meeting" for NGOs in Geneva, facilitating personal connections between officials from these organizations and mission members. NGOs were able to provide "evidence" and ask questions regarding the mission's activities.

During the meeting, Amnesty International circulated a detailed outline to the mission members intended to guide the Goldstone investigation.²⁸ These recommendations corresponded closely to the structure of the mission's public hearings and its final report. Neither a list of attendees nor a transcript from this meeting was publicly released. Documents presented to the mission from NGOs such as Amnesty were similarly kept secret.

A similar lack of transparency occurred during the mission's public hearings in Gaza on June 28 and 29, 2009, and in Geneva on July 6 and 7.²⁹ Witnesses were selected via a secret process, and their testimonies were pre-screened. Additionally, NGO Monitor is aware that the Commission held secret hearings in Geneva, Jordan, and

²⁷ For more information on the role of NGOs and the Goldstone process see Anne Herzberg, "NGO 'Lawfare': Exploitation of Courts in the Arab-Israeli Conflict," available at <http://www.ngo-monitor.org/data/images/File/lawfare-monograph.pdf>; and NGO Monitor, "Goldstone and NGOs," available at http://www.ngo-monitor.org/article/goldstone_and_ngos.

²⁸ A private recording of the hearing is on file with NGO Monitor.

²⁹ Testimony available at <http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/9/FactFindingMission.htm>.

possibly in Gaza. The full extent of NGO participation, therefore, remains hidden, as do other aspects of this highly non-transparent process. During the hearings, the mission chose representatives from some of the most politicized NGOs operating in Israel, Gaza, and the Palestinian Authority. NGO Monitor contacted the mission on several occasions to request information on the criteria employed in selecting NGO-related participants for the hearings, but without success.

In conjunction with the hearings, the mission also issued a Call for Submissions from interested persons and organizations to submit relevant information and documentation to “assist in the implementation of the Mission’s mandate.” Again, despite written assurances made by Judge Goldstone and mission staffers to NGO Monitor and other individuals that these submissions would be made public, the Mission ultimately refused to release them. Such refusal made independent evaluation of this information and its credibility impossible.

We urge the current Mission to avoid these “worst practices” and stay faithful to the principles delineated in the ToR.

Conflicts of Interest

It appears that several members of the Mission have significant prior links to political advocacy NGOs, including the International Commission of Jurists (ICJ), FIDH (France), Dutch NGO ICCO, and Amnesty International, NGOs that have routinely demonstrated a one-sided approach to the Arab-Israeli conflict.³⁰ All three Mission members were or are Commissioners of the ICJ, and Ms. Jahangir is a board member of the International Crisis Group.³¹ Ms Jahangir is also a founder and was the

³⁰ See, e.g., Anne Herzberg, “NGO ‘Lawfare’: Exploitation of Courts in the Arab-Israeli Conflict,” NGO Monitor Monograph Series (2d ed. 2010), available at <http://www.ngo-monitor.org/data/images/File/lawfare-monograph.pdf>; NGO Monitor, “FIDH: Prioritizing Politics Over Protection,” 28 September 2006, available at http://www.ngo-monitor.org/article/fidh_prioritizing_politics_over_protection; NGO Monitor File, ICCO, available at http://www.ngo-monitor.org/article/interchurch_organization_for_development_cooperation_icco; NGO Monitor File, Amnesty International, http://www.ngo-monitor.org/article/amnesty_international.

³¹ See <http://www.icj.org/commission/commissioners-from-africa/>; <http://www.unhcr.org/refworld/pdfid/48a928235.pdf>; <http://www.crisisgroup.org/en/about/board.aspx>

long-time chair of the Human Rights Commission of Pakistan. This organization is affiliated with the ICJ and the French NGO FIDH, and has received funding from ICCO.³² According to Unity Dow's bio, she has previously worked with Amnesty International.³³ These connections call into question the ability of panel members and staff to objectively evaluate information submitted by these organizations. Because the Mission has not disclosed the names of OHCHR staff members and others working on this initiative, it is impossible to evaluate whether additional conflicts exist.

Any conflicts between Mission and staff members with organizations or individuals likely to participate in the current fact-finding exercise should be clearly and thoroughly disclosed.

Credibility

The ToR states that “[t]he Mission will take into account all available sources of information that it considers to be relevant and credible.” The provision goes on to say that the Mission will “cross-check information received to the best extent possible.” Few, if any, mechanisms exist, however, within the HRC (and other UN) frameworks to verify and evaluate the credibility of allegations proffered by NGOs. As Chair of the University of Essex Human Rights Centre, Nigel Rodley has commented, “[r]egrettably, the United Nations has not provided comprehensive criteria for the guidance of fact-finding missions to be carried out under its auspices.”³⁴ The ToR does not elaborate on how it will assess relevance and credibility, nor does it specify how it will aim to “cross check” NGO information. In order for the Mission to be credible and be seen as credible, the Mission must immediately develop and disclose standards for assessing materials provided by NGOs.

³²HRC blog, “Organization and Structure,” available at <http://hrcpblog.wordpress.com/organization-and-structure/>

³³ http://www-dev.law.columbia.edu/fac/Unity_Dow

³⁴ Nigel S. Rodley, “Assessing the Goldstone Report,” *Global Governance*, April-June 2010, available at http://findarticles.com/p/articles/mi_7055/is_2_16/ai_n55407196/?tag=content:coll

The failure to develop standards led to the publishing of false claims in the Goldstone report, and which ultimately led to Judge Goldstone's retraction of his own report.³⁵ For example, one of the "thirty-six" incidents reviewed by the Goldstone mission was an alleged Israeli airstrike on the al-Bader flour mill. This alleged event was described in an Amnesty International publication entitled, "22 Days of Death and Destruction," which accused Israel of engaging in "wanton destruction" and deliberately "targeting" the mill on 10 January 2009. It further claimed that the mill's "owners are adamant that the site was neither a launch pad for rockets nor a weapons cache, and the Israeli army has provided no evidence to the contrary."³⁶ As a result, this incident featured prominently during the public hearings. When issued, the Goldstone Report claimed the mill had been "hit by a series of air strikes on 9 January 2009," that "its destruction had no military justification," and that the attack was "carried out to deny sustenance to the civilian population" of Gaza.³⁷

Notably, however, this incident was not contemporaneously reported in the Arabic media. Moreover, documentary evidence, including photographs of the mill released by both the UN (UNITAR)³⁸ and the IDF, refuted Amnesty's and Goldstone's version of events. These materials clearly showed that the mill was damaged by artillery during a firefight with Hamas combatants more than a week after 9 January, and not by an F-16 airstrike as Goldstone claimed. Of seven airstrikes conducted by the IDF within that area, all were more than 300 meters from the mill. Indeed, during the Goldstone hearings, the mill's owner never testified to seeing the remains of an aerial

³⁵ Richard Goldstone, "Reconsidering the Goldstone Report on Israel and War Crimes," *Washington Post*, 2 April 2011, available at http://www.washingtonpost.com/opinions/reconsidering-the-goldstone-report-on-israel-and-war-crimes/2011/04/01/AFg111JC_story.html

³⁶ *Israel/Gaza: Operation "Cast Lead": 22 days of death and destruction*, Amnesty International, July 1, 2009, available at <http://www.amnesty.org/en/library/info/MDE15/015/2009/en>.

³⁷ Goldstone Report, at para. 50

³⁸ UNITAR, Satellite Image Analysis in Support to the United Nations Fact Finding Mission to the Gaza Conflict, 31 July 2009, at 33, available at http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/9/docs/UNITAR_UNOSAT_FFMGC_31July2009.pdf. The UNITAR report notes that most of the damage it found to the mill appears to have occurred between 16-18 January 2009 (not January 9 and 10 as claimed by Amnesty and Goldstone) and was a result of "ground fire."

bomb or damage caused by an air strike. Rather, he stated that “[w]hat I did see are the empty bullets in the factory, on the factory roof, that’s what I saw,” corroborating the UNITAR and IDF findings.

In another example, the Goldstone mission relied almost entirely on NGO claims, without independent analysis, regarding the number of Palestinian civilians killed during the Gaza War. These NGO figures were cited by the mission as “proof” of disproportionate or indiscriminate attacks carried out by Israel, and as the basis for war crimes accusations. Citing to NGOs PCHR, Al Mezan, and B’Tselem (pages 90-91), the Goldstone Report claims that:

Statistics alleging that fewer than one out of five persons killed in an armed conflict was a combatant, such as those provided by PCHR and Al Mezan as a result of months of field research, raise very serious concerns about the way Israel conducted the military operations in Gaza. The counterclaims published by the Government of Israel fall far short of international law standards (paragraph 361).

In a November 2010 [interview](#) given by Hamas Interior Minister Fathi Hamad to the *Al-Hayat* newspaper, however, Hamad acknowledged that **600-700 Hamas members were killed in the Gaza fighting**. This more than doubles the number of combatants published by the NGOs’ and Goldstone’s unreliable version of events, and closely matches the numbers issued by the Israeli government. This example highlights the unreliability of NGO claims, and reinforces the need for careful and skeptical evaluation.

Promotion of antisemitic, racist, xenophobic, and discriminatory content

A number of NGOs that regularly participate in HRC frameworks and that will likely contribute to the Mission, disseminate and publish antisemitic, racist, and discriminatory content in violation of principles of universality, impartiality, objectivity, non-selectivity, cooperation, and dialogue. Many of the NGOs that initiated this mission have engaged in rhetoric that violates antisemitism guidelines promulgated by

the European Union and adopted by the UK Parliament.³⁹ These statements include offensive imagery reminiscent of Nazi propaganda, utilizing imagery and themes of classical antisemitism, and making remarks denigrating Judaism and right of the Jewish people to self-determination. The following examples highlight this activity by NGOs involved in lobbying for the establishment of the Mission and which will likely participate in the Mission's activities.

BADIL is one NGO that has engaged in such activity. In one highly egregious incident, an [antisemitic cartoon](#) won a [monetary award](#) for second prize in BADIL's 2010 Al-Awda Nakba caricature competition.⁴⁰ The cartoon is a blatant representation of classic antisemitic tropes, including a Jewish man, garbed in traditional Hasidic attire, with a hooked nose and side locks. He stands above a dead child and skulls, holding a pitchfork styled as a menorah dripping with blood. As a result of this extremely troubling incident, funding to BADIL from the Swiss, Dutch, Swedish, and Danish governments was [frozen](#).⁴¹

Libyan NGO Nord-Sud XXI. The NGO was granted ECOSOC status in 1995,⁴² and has been [linked](#) to the authoritarian and abusive regime of Moammar Khadaffi, and awarded a human rights prize to known Holocaust denier, Roger Garaudy.⁴³ Its filings

³⁹ European Forum on Antisemitism, "Working Definition of Antisemitism," *available at* <http://www.european-forum-on-antisemitism.org/working-definition-of-antisemitism/english/>

⁴⁰ "Badil," "Info File, NGO Monitor, 31 May 2011, *available at* <http://www.ngo-monitor.org/article/badil>; . "Badil's Antisemitic Cartoon: Questions For Danchurchaid, Trocaire And Funders," Ngo Monitor, 11 October 2010, *AVAILABLE AT* http://www.ngo-monitor.org/article/badil_s_antisemitic_cartoon_questions_for_danchurchaid_trocaire_and_funders

⁴¹ Benjamin Weinthal, "Swiss Freeze funds for pro-Palestinian NGO," 22 May 2011, *available at* <http://www.jpost.com/International/Article.aspx?id=221623>

⁴² "Nord-Sud XXI," Info File, NGO Monitor, *available at* http://www.ngo-monitor.org/article/nord_sud_xxi

⁴³ *See id.* "Timeline: How Libya funded GONGO 'North Sud XXI' Leads Lobbying Campaign for Durban II NGO Forum," UN Watch Blog, Nov. 9, 2008, *available at* <http://blog.unwatch.org/?p=237>; Al Gaddafi International Prize for Human Rights, website, <http://www.gaddafiprize.org/DiginingEn.html>

with the HRC routinely invoke offensive speech that meets the EU/UK definition of antisemitism.

The International Organization for the Elimination of all Forms of Racial Discrimination (EAFORD) has also engaged in similar rhetoric in its submissions to the HRC. One [submission](#), for example, accused Israeli soldiers of harvesting the organs of Palestinians for profit, harkening to antisemitic medieval blood libels.⁴⁴

It is imperative that any submission that contains antisemitic and discriminatory content should be disregarded by the Mission and the Mission should refuse to meet with individuals engaged in this activity.

Obligation to “Do No Harm”

One of the core tenants of the ToR is that the Mission should “do no harm.” This is unlikely to be the outcome of this initiative. This politicized inquiry was organized at the behest of abusive regimes in conjunction with Palestinian and Arab NGOs that explicitly reject normalization and a negotiated solution to the Arab-Israeli conflict. The initiative was also designed to further weaken the Oslo Accords and the “Road Map” for peace. It has been and will be used to bolster those seeking the elimination of Jewish self-determination and the establishment of a bi-national state in Israel’s place. Any report issued by the Mission will likely be used to further boycott, divestment, and sanctions (BDS) campaigns and politically motivated lawsuits against Israeli officials aimed at interfering with diplomatic relations. It will also be used as a pretext by the Palestinian and Arab States to continue to avoid engaging in negotiations. By participating in this exercise, the Mission is therefore serving as a key player in the delegitimization and demonization of Israel and as an obstacle to the peace process. It

⁴⁴ Written statement submitted by the International Organization for the Elimination of all Forms of Racial Discrimination (EAFORD), a non-governmental organization in special consultative status, HRC Thirteenth Session, Agenda Item 7, Feb. 24, 2010, *available at* <http://unispal.un.org/UNISPAL.NSF/0/AAD8F4BF423DD2D8852576DA006C08BA>; *see also* “EAFORD,” Info File, NGO Monitor, *available at* http://www.ngo-monitor.org/article/eaford_the_international_organization_for_the_elimination_of_all_forms_of_racial_discrimination; Appeal to UN High Commissioner of Human Rights Navi Pillay on myth of Palestinian organ stealing, UN Watch Blog, Apr. 28, 2010, *available at* <http://blog.unwatch.org/index.php/category/eaford/>

is clear that this inquiry will not further the peace process in any way, but rather, contribute to its demise.

Conclusion & Recommendations

NGOs are extremely influential within the Human Rights Council framework and particularly in the HRC's fact-finding missions. Accumulated power, however, must be balanced by appropriate checks, lest it be abused. The continued failure by the HRC and fact-finding mechanisms to employ clear benchmarks for ethical standards vis-à-vis its relations with NGOs, as well as its failure to adhere to the principles of objectivity, non-selectivity, balance, and universality, are among the reasons for the HRC's failures during its first five years and the sweeping criticism of the Goldstone mission, among other initiatives.

At a minimum, the Mission must strictly adhere to the principles of impartiality and objectivity, identify all individuals involved in its work, adopt transparency standards governing all interactions with NGOs, and implement guidelines as to how the credibility and factual claims of NGOs will be assessed.

Respectfully submitted,

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