

April 13, 2011

**NGO Monitor's Submission to the Human Rights Council Review  
Open-Ended Working Group**

NGO Monitor is a Jerusalem-based research institution that tracks the activities, campaigns, and funding of NGOs operating in the Arab-Israeli conflict. For more than eight years, NGO Monitor has conducted numerous detailed and systematic research studies on the issues of NGO transparency and accountability, international law, human rights, humanitarian aid, and the laws of armed conflict.<sup>1</sup>

NGO Monitor has prepared this submission as part of the Review of the UN Human Rights Council (HRC) for the Open-Ended Working Group (Working Group), in order to support the HRC review process.

**Synopsis**

A large number of political advocacy NGOs that claim to promote human rights and international law are extremely active and utilize their influence in Human Rights Council frameworks related to the Arab-Israeli conflict.

Acting together as transnational advocacy networks, NGOs have promoted condemnations and sanctions targeting Israel, joining forces with the repressive or authoritarian countries that dominate the HRC – specifically the members of the Organization of the Islamic Conference (OIC) and the Arab League. In particular, many NGO submissions to the Council provide an incomplete, ideological, and often non-credible picture of the state of human rights in Israel, and strip away the context of asymmetrical war. Often, as the evidence clearly demonstrates, these documents provide false or incomplete statistics and images, and disseminate gross distortions of the humanitarian, human rights, and legal dimensions of the Arab-Israeli conflict.

Few, if any, mechanisms exist within the HRC (and other UN) frameworks to verify and evaluate the credibility of allegations proffered by NGOs, in violation of best practices

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<sup>1</sup> Members of NGO Monitor's Advisory Board include Nobel Peace Prize winner 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; Judea Pearl, UCLA Professor and President of the Daniel Pearl Foundation; 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.

for NGO fact-finding. This credibility deficit implicates several of the principles in the Council's mandate, including universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation, transparency, accountability, and balance. The HRC therefore should adopt and fully implement guidelines and procedures to govern its interaction with NGOs in order to restore these founding principles.

## Background

The Human Rights Council was created after decades of serious failings on the part of its predecessor entity, the Commission on Human Rights. In 2005, former UN Secretary General Kofi Annan remarked that "*the Commission's ability to perform its tasks has been . . . undermined by the politicization of its sessions and the selectivity of its work.*" ([Remarks](#) by Kofi Annan in creating the Human Rights Council, 7 Apr 2005)<sup>2</sup>

In order to ostensibly remedy the problems of politicization and selectivity, the General Assembly passed Resolution, [60/251](#) on April 3, 2006, establishing the new Human Rights Council and 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, with a view to enhancing the promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development;<sup>3</sup>

The HRC's *Institution-building package* elaborated on the principles set forth by the General Assembly, including "transparency, accountability, [and] balance . . ." as additional values guiding its work.<sup>4</sup>

Unfortunately, during the first five years of its operation, the HRC has not lived up to these principles, and severe deficits exist, particularly regarding the principles of universality, impartiality, objectivity, non-selectivity, transparency, accountability, and balance.<sup>5</sup> As French academic Antonia Dürnsteiner has noted, "[a]s far as the principle

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

<sup>3</sup> GA Res. 60/251, U.N. Doc. A/RES/60/251 (Apr. 3, 2006)

<sup>4</sup> HRC Res. 5/1, UN Doc. A/HRC/RES/5/1, June 18, 2007.

<sup>5</sup> Immediately after enumerating these principles, the next section of the resolution fixed a permanent agenda item on Israel. No other country was subject to this immoral and gross violation of universality and non-selectivity. 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

of non-selectivity is concerned . . . the Human Rights Council's selectivity . . . is greater than it was in the Commission."<sup>6</sup>

Several submissions to the Working Group highlight these failures and offer recommendations for improvement.<sup>7</sup> NGO Monitor will not repeat those comments here. Instead, this submission will focus on the relationship between non-governmental organizations and the HRC, and the impact of that relationship on the efficacy of the Council's work.

### **The Role of Non-Governmental Organizations at the HRC**

NGOs (non-governmental organizations) have become important actors in the "soft power" arena of international diplomacy, particularly in the United Nations. Over four thousand NGOs are accredited to the UN Economic and Social Council (ECOSOC),<sup>8</sup> giving them privileged access to many UN activities, including meetings and other frameworks of the Human Rights Council. According to HRC Resolution 5/1, the Council is obligated to "ensure the participation of all relevant stakeholders, including non-governmental organizations," and the HRC's Advisory Committee "is urged to establish interaction with . . . non-governmental organizations and other civil society entities."

Officials from these NGOs use this access to influence agendas, speak in the proceedings, meet both formally and informally with HRC officials and participating diplomats, nominate candidates for the special procedures mandates holders,<sup>9</sup> and submit documents that are quoted in the final reports and publicly available online at HRC websites.<sup>10</sup>

A large number of political advocacy NGOs that claim to promote human rights and international law are extremely active, and utilize their full influence in the HRC

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directed at the Jewish state. None criticized any other government." Jackson Diehl, "A Shadow on the Human Rights Movement," THE WASHINGTON POST, June 25, 2007, available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/06/24/AR2007062401373.html>.

<sup>6</sup> 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](http://www.peacecenter.sciences-po.fr/journal/issue8/hsj_antonia.pdf)

<sup>7</sup> UN Watch, "2010 UNHRC Scorecard," March 9, 2010, available at

[http://www.unwatch.org/atf/cf/%7B6DEB65DA-BE5B-4CAE-8056-8BF0BEDF4D17%7D/ADVANCE%20VERSION%20-%202010%20HRC%20REPORT%20\(RELEASE%20DATE%20%20%20MARCH%202010\).PDF](http://www.unwatch.org/atf/cf/%7B6DEB65DA-BE5B-4CAE-8056-8BF0BEDF4D17%7D/ADVANCE%20VERSION%20-%202010%20HRC%20REPORT%20(RELEASE%20DATE%20%20%20MARCH%202010).PDF);

United States: "Rationalizing the Agenda," "Strengthening HRC Membership," "Strengthening the Response to Gross and Systematic Violations"; Canada: OEWG on the Review of the Work of the Human Rights Council: Agenda Item 4.4; The State of Israel's Contribution to the First Open-Ended Working Group on the Human Rights Council Review.

<sup>8</sup> United Nations Economic and Social Council, "List of non-governmental organizations in consultative status with the Economic and Social Council" October 17, 2007, E/2007/INF/4, 17 October 2007, retrieved Dec. 12, 2009 from <http://esa.un.org/coordination/ngo/new/INF2007.pdf>.

<sup>9</sup> See H.R.C. Res. 5/1, ¶ 42, A/HRC/RES/5/1 (June 18, 2001).

<sup>10</sup> 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*, 2011 (forthcoming).

proceedings related to the Arab-Israeli conflict. These organizations have a largely unchallenged monopoly and promote the Palestinian narrative; NGOs that present different perspectives and analyses are largely shut out of the process.

Acting together as transnational advocacy networks, NGOs have promoted condemnations and sanctions targeting Israel, joining forces with the repressive or authoritarian countries that dominate the HRC – specifically the members of the Organization of the Islamic Conference (OIC) and the Arab League. These NGOs have played a leading role in singling out Israel through unsupported allegations of human rights violations, “war crimes,” and violations of international humanitarian law (IHL), and their allegations are copied directly and used by HRC officials.

In particular, NGO publications and campaigns, including submissions to the Council, provide an incomplete and often non-credible picture of the state of human rights in Israel and strip away the context of asymmetrical war. These NGOs produce reports and launch campaigns that stand in sharp contradiction to their stated mandates of upholding universal human rights. Often, these documents provide false or incomplete statistics and images, and disseminate gross distortions of the humanitarian, human rights, and legal dimensions of the Arab-Israeli conflict.<sup>11</sup> This activity often stresses the rights of Palestinians at the expense of Israelis, and promotes the protection of some human rights – such as the “right to work” – at the expense of more fundamental rights – such as the right to life or the right to self-defense. Violations of human rights and international humanitarian law committed by Palestinian actors or terror groups, including Hezbollah, are systematically ignored or minimized.

Few, if any, mechanisms exist within the HRC (and other UN) frameworks to verify and evaluate the credibility of allegations proffered by NGOs. Given this lack of standards, NGO Monitor highlights the following issues:

### **Transparency**

As noted in General Assembly resolution 60/251, “the methods of work of the Council shall be transparent, fair and impartial and shall enable genuine dialogue . . .” Transparency is not always practiced, however, with respect to NGO participation at the HRC. Certain selected NGOs are prominent fixtures at HRC sessions and working groups (e.g., Amnesty International, Human Rights Watch, Fédération Internationale de Ligues des Droits de l’Homme [FIDH]), while other groups appear to be excluded. Often, no public record exists of NGO interaction, creating the perception of improprieties or conflicts of interest.

For example, at a pre-session meeting on the HRC review, held from July 14-16, 2010 in Seoul, South Korea, only two NGOs (Human Rights Watch, Conectas Direitos Humanos) appear to have been present and were thanked for their “significant

<sup>11</sup> For examples, see [www.ngo-monitor.org](http://www.ngo-monitor.org)

contribution.”<sup>12</sup> It is unclear whether these organizations received a special invitation to participate, and if so, on what basis. Moreover, the nature of their “contribution”<sup>13</sup> was not specified.

NGOs also played a prominent role with the HRC’s Gaza Fact Finding Mission.<sup>14</sup> Yet, there was no transparency regarding this interaction. 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.<sup>15</sup> 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 like 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.<sup>16</sup> 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, and 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

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<sup>12</sup> HRC Extranet, Pre-Working Group, Review initiative, *available at* <http://portal.ohchr.org/portal/page/portal/HRCExtranet/Pre-WorkingGroup/ReviewInitiatives>.

<sup>13</sup> HRC Extranet, Pre-Working Group, Review initiative, *available at* <http://portal.ohchr.org/portal/page/portal/HRCExtranet/Pre-WorkingGroup/ReviewInitiatives>.

<sup>14</sup> 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](http://www.ngo-monitor.org/article/goldstone_and_ngos).

<sup>15</sup> A private recording of the hearing is on file with the author.

<sup>16</sup> Testimony *available at* <http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/9/FactFindingMission.htm>.

refused to release them. Such refusal made independent evaluation of this information and its credibility impossible.

Several members of the Goldstone Mission also had significant prior links to political advocacy NGOs, including Human Rights Watch, Amnesty International, and the Palestinian Center for Human Rights. These organizations were intensely involved in the mission's work, and at the same time, were among the most cited in the Goldstone report. These connections, which were not disclosed by the Mission or the HRC, call into question the ability of panel members and staff to objectively evaluate information submitted by these organizations. Such conflicts are in clear violation of ethical standards and transparency principles. The following are just a few examples of these conflicts:

- Three members of the Mission – Richard Goldstone, Hina Jilani, and Desmond Travers – signed a prejudicial March 2009 [letter](#) initiated by [Amnesty International](#) and widely publicized, stating that “events in Gaza have shocked us to the core.”<sup>17</sup>
- The fourth member, Christine Chinkin, who [declared](#) Israel's actions to be a “war crime”<sup>18</sup> and delegitimized Israel's right to self-defense while the fighting in Gaza was still underway, was also [previously a consultant](#) to Amnesty International.<sup>19</sup>
- Goldstone mission [staff researcher](#),<sup>20</sup> Sareta Ashraph, is a UK lawyer and a [member of Amnesty International](#) who has a history of anti-Israel activism. In 2003, she was an organizer for a [Lawyers for Palestinian Human Rights “lawfare” lecture](#)<sup>21</sup> given by Raji Sourani, head of the Palestinian Center for Human Rights (PCHR), and chaired by Daniel Machover, an attorney responsible for filing several of PCHR's applications for arrest warrants of Israeli officials. Ashraph also worked in the West Bank on “investigations of allegations of violations of international humanitarian law following ‘Operation Defensive Shield’ in 2002.”

<sup>17</sup> NGO Monitor Blog, “Open letter to signatories of Amnesty's latest attack on Israel,” (Mar. 17, 2010), available at <http://blog.ngo-monitor.org/other-ngos/amnesty-international/open-letter-to-signatories-of-amnestys-latest-attack-on-israel/>.

<sup>18</sup> Letters to the editor, “Israel's bombardment of Gaza is not self-defence – it's a war crime,” THE SUNDAY TIMES (U.K.), Jan. 11, 2009, available at <http://www.timesonline.co.uk/tol/comment/letters/article5488380.ece>.

<sup>19</sup> See Matrix Chambers, <http://www.matrixlaw.co.uk/Search.aspx>

<sup>20</sup> Letter to Sderot Media Center Director Noam Bedein requesting report on the affect of rocket fire on citizens of southern Israel, available at <http://sderotmedia.org.il/bin/content.cgi?ID=487&q=6>

<sup>21</sup> Law Society Gazette, Dec. 11, 2003, [http://www.gardencourtchambers.co.uk/barristers/sareta\\_ashraph.cfm](http://www.gardencourtchambers.co.uk/barristers/sareta_ashraph.cfm).

- As [previously reported](#)<sup>22</sup> by NGO Monitor, Goldstone was a Human Rights Watch board member at the time of his appointment. Although he stepped down after NGO Monitor pointed to this conflict of interest, his role was vigorously promoted by both HRW and its Executive Director, Kenneth Roth. Goldstone's September 17, 2009 [op-ed in the New York Times](#)<sup>23</sup> closely echoed language from a September 16, 2009 HRW press release.

In order to comply with its mandate, and prevent repetition of these violations from best practices, it is imperative that the HRC immediately enact specific transparency guidelines regarding NGO participation in all HRC frameworks.

### Fact-Finding Standards

The ability of the HRC to receive reliable information is further blocked by a lack of fact-finding standards for assessing NGO submissions to the Council and its associated frameworks. 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."<sup>24</sup> Failure to enact such standards violates the principles set forth in the HRC's mandate, including impartiality, objectivity, non-selectivity, accountability, and balance.

HRC resolutions and other documents are frequently underpinned by NGO submissions. No standards currently exist, however, for assessing these materials which are often highly politicized and lack credibility.

For instance, the NGOs PCHR, Al Mezan, Al Haq, Badil, Defence for Children International-Palestine Section, and FIDH, allege in a written submission filed with the Council (September 1, 2010) that civilian supervision of the Israeli military justice system "exists in law but not in fact" and falsely claim that "the scope of judicial review is extremely limited, negating the possibility of civilian oversight."<sup>25</sup> As support for these claims, the organizations cite to a decision of the Israeli Supreme Court and refer to a lengthy translated quote.

This case, however, is grossly misrepresented. The cited case relates to the discretion of the Attorney General on a limited evidentiary issue in a domestic rape case, and says nothing about nor has any applicability to civilian judicial review of the military justice system.<sup>26</sup> Similarly, in the report of the Committee of Independent Experts charged

<sup>22</sup> The Goldstone "Fact Finding" Mission and the Role of Political NGOs, NGO Monitor, Sept. 7, 2009, available at [http://www.gardencourtchambers.co.uk/barristers/sareta\\_ashraph.cfm](http://www.gardencourtchambers.co.uk/barristers/sareta_ashraph.cfm).

<sup>23</sup> Richard Goldstone, *Justice in Gaza*, N.Y. TIMES, Sept. 17, 2009, at A33.

<sup>24</sup> 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](http://findarticles.com/p/articles/mi_7055/is_2_16/ai_n55407196/?tag=content:coll)

<sup>25</sup> "Joint Written Statement – Human Rights Council 15th Session, The Failure to Conduct Genuine Criminal Investigations and Prosecutions at the National Level," September 1, 2010, available at <http://www.alhaq.org/pdfs/2+Joint+Written+Statement+-+The+failure+to+conduct+genuine+investigations.pdf>

<sup>26</sup> Further discrediting the charges of these NGOs, an Israeli court issued a verdict on December 30, 2010 against the defendant referred to in the case cited by the NGOs convicting him on two charges of rape.

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with evaluating follow-up to recommendations in the Goldstone Report, chair Judge Mary McGowan Davis noted that “Israel’s military justice system provides for mechanisms to ensure its independence, in particular the fact that the MAG is not hierarchically subordinate to the Chief of General Staff and that his decisions are subject to review by the Attorney General and by the Supreme Court. The Committee has not received any new evidence that challenges this finding.”<sup>27</sup> Nevertheless, the NGO filing was accepted by the HRC, and continues to serve as a basis for condemnations of Israel by the Council and other UN bodies.

Similarly, the Goldstone mission and NGO publications, upon which the Goldstone report was largely based, were compromised by serious methodological defects and a failure to comply with fact-finding standards.

For example, one of the “thirty-six” incidents reviewed by the Goldstone mission was an alleged Israeli airstrike on the al-Bader flour mill, based on claims made by Amnesty International. The NGO’s July 2009 publication on the fighting, “22 Days of Death and Destruction,” accused Israel of engaging in “wanton destruction” and deliberately “targeting” the mill on January 10, 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.”<sup>28</sup> Based on information that Amnesty provided to the Goldstone mission at the Geneva NGO “townhall meeting” and elsewhere, the mission prominently featured this incident at its public hearings. In its report, Goldstone then exaggerated Amnesty’s original claims, alleging 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.<sup>29</sup>

Notably, however, this incident was not contemporaneously reported by Palestinian NGOs in Gaza, nor in the Arabic media. Moreover, documentary evidence, including photographs of the mill released by both the UN (UNITAR)<sup>30</sup> and the IDF, refuted Amnesty’s and Goldstone’s version of events. These materials clearly show that the mill was damaged by artillery during a firefight with Hamas combatants more than a week later, 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 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,” confirming the UNITAR and IDF findings.

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<sup>27</sup> See *Report of the Committee of independent experts in international humanitarian and human rights law established pursuant to Council resolution 13/9*, March 18, 2011, available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.16.24\\_AUV.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.16.24_AUV.pdf)

<sup>28</sup> *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>.

<sup>29</sup> Goldstone report at para. 50

<sup>30</sup> UNITAR, *Satellite Image Analysis in Support to the United Nations Fact Finding Mission to the Gaza Conflict*, July 31, 2009, at 33, available at [http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/9/docs/UNITAR\\_UNOSAT\\_FFMGC\\_31July2009.pdf](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 January 16-18, 2009 (not January 9 and 10 as claimed by Amnesty and Goldstone) and was a result of “ground fire.”

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. The Goldstone Report demonstrates the need to discard and reject such false “investigations” that simply consist of a collection of such NGO allegations. Although this new information was presented more than three months ago, UN officials and members of the Goldstone mission have yet to issue a correction.

These failures highlight the failure to observe fundamental ethical standards by the Goldstone mission and the NGO network.

University of Essex Professor Françoise Hampson has noted that the key problems with Goldstone were the “biased HRC mandate,” “the nature and confused conclusions reached,” and Goldstone’s faulty assumption that violations of IHL can be based solely upon result.<sup>31</sup> Hebrew University Professor Yuval Shany, who is often critical of the Israeli military, has remarked that the Goldstone report “sets a standard that no one applies and no one can meet.”<sup>32</sup>

Laurie Blank, Director of Emory University Law International Humanitarian Law Clinic, found that “the Goldstone Report’s application of IHL is questionable, either because it uses the incorrect legal standard or because it applies the wrong law when

<sup>31</sup> Remarks made at Hebrew University, “Securing Compliance with IHL” Conference, November 22-24, 2009.

<sup>32</sup> *Id.*

more than one body of law applies.”<sup>33</sup> Judge Fausto Pocar, former President of the International Criminal Tribunal for the Former Yugoslavia, criticized<sup>34</sup> the Goldstone report for its one-sided and discriminatory call for universal jurisdiction solely against Israel.<sup>35</sup>

British think tank Chatham House also issued a report regarding irregularities in the Goldstone process and concluded that among other aspects, “the Mission had given insufficient acknowledgement of the difficulty in obtaining information in a political environment dominated by Hamas,” that there was a perception of bias regarding mission members, that “the criteria employed [for selection of incidents to be investigated] should have been indicated,” and that criticisms of Hamas were “tentative.”<sup>36</sup>

Many of these fundamental failures are linked to reliance on political advocacy NGOs. In order to uphold the principles of universality, impartiality, objectivity, non-selectivity, accountability, and balance, the HRC must adopt standards for fact-finding and evaluation of NGO submissions in all of its frameworks including working groups, organizational meetings, Special Procedures and within the Universal Periodic Review (UPR).

In 2009, the Human Rights Institute of the International Bar Association issued the [Lund-London](#)<sup>37</sup> Guidelines on international Human Rights Fact Finding Visits specifying norms for the composition of inquiries and appropriate methodologies.

In particular, the London-Lund 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

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<sup>33</sup> Laurie Blank, “The Application of IHL in the Goldstone Report: A Critical Commentary,” 12 Y.B. of Int’l Hum. L. (2009) at 2.

<sup>34</sup> Remarks made at Hebrew University, “Securing Compliance with IHL” Conference, November 22-24, 2009.

<sup>35</sup> See Goldstone Report at paras. 127, 1856-57. For other critiques of the Goldstone process, see Moshe Halbertal, “The Goldstone Illusion,” THE NEW REPUBLIC, November 6, 2009, available at <http://www.tnr.com/article/world/the-goldstone-illusion>.

<sup>36</sup> 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, (Nov. 27, 2009), available at [http://www.chathamhouse.org.uk/files/15572\\_il271109summary.pdf](http://www.chathamhouse.org.uk/files/15572_il271109summary.pdf)

<sup>37</sup> London-Lund Guidelines, [www.factfindingguidelines.org](http://www.factfindingguidelines.org)

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competence, experience and expertise relevant to the matters pertaining to the terms of reference.

These ethical standards should become the basis of any guidelines adopted by the HRC.

**Promotion of antisemitic, racist, xenophobic, and discriminatory content:**

A number of NGO submissions to the HRC and its related frameworks contain antisemitic, racist, and discriminatory content in violation of the Council principles of universality, impartiality, objectivity, non-selectivity, cooperation and dialogue.

One clear example is the inclusion of the Libyan NGO Nord-Sud XXI in HRC proceedings. The NGO was granted ECOSOC status in 1995,<sup>38</sup> and has been [linked](#) to the authoritarian and abusive regime of Moammar Khadaffi, and has awarded a human rights prize to known Holocaust denier, Roger Garaudy.<sup>39</sup> Its filings with the HRC routinely invoke antisemitic hate speech.

Another example of such activity is found in [a submission](#) by the International Organization for the Elimination of all Forms of Racial Discrimination (EAFORD) accusing Israeli soldiers of harvesting the organs of Palestinians for profit, harkening to antisemitic medieval blood libels.<sup>40</sup> Despite the inflammatory and antisemitic content, the HRC allowed this document to remain publicly available on its website. Requests to remove the offensive content were ignored.

The HRC must adopt an independent complaint procedure and clear guidelines so as to prevent the further promotion of racist NGO statements in its official documents and on the HRC website.

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<sup>38</sup> “Nord-Sud XXI,” Info File, NGO Monitor, available at [http://www.ngo-monitor.org/article/nord\\_sud\\_xxi](http://www.ngo-monitor.org/article/nord_sud_xxi)

<sup>39</sup> 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>

<sup>40</sup> 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](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/>

## **Conclusion & Recommendations**

NGOs are extremely influential with the Human Rights Council framework. Accumulated power, however, must be balanced by appropriate checks, lest it be abused. The continued failure by the HRC 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.

At a minimum, the Council should adopt the following recommendations related to NGOs immediately:

- Implement transparency standards governing all interactions with NGOs.
- Adopt internationally recognized standards for fact-finding missions, working groups, organizational meetings, Special Procedures and within the Universal Periodic Review (UPR), such as the Lund-London guidelines.
- Create an independent ethics committee to provide oversight for the various HRC bodies and NGOs that are involved.
- Implement an independent complaints procedure related to NGO activity in HRC frameworks.