Israel pressing to stop UNHRC from labeling it an apartheid state

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<https://www.jpost.com/diaspora/antisemitism/article-694842>

Israel has intensified its campaign to prevent the UN Human Rights Council from [labeling it an apartheid state](https://www.jpost.com/israel-news/charging-israel-with-apartheid-turns-intl-law-on-its-head-ngo-monitor-688936), warning that the UNHRC could take such a step as early as June when its open-ended Commission of Inquiry against the Jewish state is due to publish its first report.

“Apartheid has become a kind of fundamental charge that is being used to delegitimize the Jewish state,” explained former Israeli Ambassador to the UN Dore Gold.

It is important that Israel take the offensive against the initiative to brand Israel as an apartheid state, he stated.

Attorney Michael Sfard, who authored a report for the left-wing NGO Yesh Din that charged Israel with the crime of apartheid in the West Bank, said that it was not possible to halt an apartheid designation against Israel.

Israel "will not be able to escape it anymore,” Sfard said.

Foreign Minister Yair Lapid is mistaken if he thinks he can[battle the apartheid anthology](https://www.jpost.com/israel-news/article-691814), Sfard said. “This is a horse that has already left the stable.”

On Wednesday, the Hebrew news site Walla published details of a secret Foreign Ministry cable about the report, which stated that combating it was a top priority for Israel at the UN in 2022.

The goal, said the missive, was to delegitimize the committee, its members and reports either by preventing votes or delaying action. It noted that the Foreign Ministry’s campaign was set to intensify in advance of the UNHRC’s 49th session, due to be held in Geneva from February 28 to April 1.

It is expected that four resolutions against Israel will be passed at that session. It is also possible that a separate report by a judicial expert speaking of Israeli apartheid actions could also be submitted at the meeting.

Israel anticipates that the full weight of the apartheid issue will be part of the Commission of Inquiry’s June report.

The probe is chaired by former UN High Commissioner for Human Rights Navi Pillay, who has said that “apartheid means the enforced segregation of people on racial lines and that is happening in Israel.”

Beyond Pillay’s views, it is the mandate itself that concerns Israel, even though the word apartheid is not in the text of the resolution that the UNHRC approved at a special session in May.

The probe’s mandate calls for the investigation of “all underlying root causes of recurrent tensions, instability and protraction of conflict, including systematic discrimination and repression based on national, ethnic, racial or religious identity.”

Israel believes that the focus on a racial investigation is a back-handed way of opening the door to the issue of apartheid.

Since its inception in 2006, the UNHRC has created 33 Commissions of Inquiry, out of which nine, including this latest probe, have dealt with the Israeli-Palestinian conflict.

There have been no UNHRC commissions of inquiry into Iranian or Chinese human rights violations.

This latest Commission of Inquiry (COI) differs from any other UNHRC probe, all of which are limited in scope. This one is a perpetual probe, with no end date. It places Israel alone among the other 193 UN members, under permanent investigation.

The investigation itself was sparked by the Gaza war in May, known as Operation Guardian of the Walls, but its mandate includes any action taken by Israel during any time period since the state’s inception 1948.

This includes its activities in Gaza, the West Bank and within sovereign Israel.

The Palestinians have an automatic majority of support in most UN bodies, including the 47-member UNHRC.

Israel, therefore, rarely has the ability to block UN resolutions or reports against it, but it has at times been able to delay or mitigate the damage.

The primary tactic would be to prevent the publication of the report. Once language labeling Israel an apartheid state enters the UN lexicon, it is difficult to erase it.

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UNHRC documents can also be used to shore up cases before the International Criminal Court which is now investigating whether to allow war crimes suits to be leveled against Israelis.

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Neither the Foreign Ministry nor Israel’s Mission to the UN in Geneva would comment on the Walla report.

A UNHRC spokesperson said it was premature to speculate on how members of the commission of inquiry would implement their mandate.

Lapid recently told reporters that “calling Israel an apartheid state has been a slowly creeping trend for a very long time, and in 2022, it will be a real threat.”

He outlined four arenas in which the issue of apartheid could be a factor; the UNHRC, the ICC, the International Court of Justice (ICJ) and the Committee on the Elimination of Racial Discrimination (CERD).

The question at hand is not whether Israel can be compared to apartheid South Africa but whether Article 7 of the Rome Statute's Article 7 can be applied to Israel.

Article 7 outlines for the ICC those actions that constitute crimes against humanity.

That article defines apartheid as "inhuman acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime."

Out of the four venues in which Israel could be labeled an apartheid state, the UNHRC probe appears to be the most pressing, given the June publication date. The political nature of its decision-making process, which relies on votes by member states and not professional bodies, makes Israel particularly vulnerable.

CERD, which is a professional UN body, is already evaluating the applicably of Israel's actions to the crime of apartheid, but timeline is still vague.

The ICC is still in the initial phases of its war crimes investigation into Israel and the ICJ has not declared an intention to issue a legal opinion on the matter.

The Palestinian Authority has long accused Israel of apartheid, but its campaign received a boost in 2021 from NGO in the international arena and among Israeli left-wing groups.

The Israeli NGO B'Tselem, as well as the US-based Human Rights Watch, have issued reports in the last year charging that Israel's actions against the Palestinians are tantamount to apartheid.

"The fact that there is a growing body of legal reports that make the claim that the crime of apartheid is being committed is significant," Sfard said.

Gold said that there were also strong legal voices against labeling Israel as an apartheid state.

”Some of the greatest experts of international law in the last century have rejected this charge out of hand,” Gold explained.

The apartheid branding of Israel is a modern version of historic antisemitic tropes, he said.

“In the Middle Ages, it was said that Jews were poisoning the wells. In the 21st century, it is now being said that the Jewish state is an apartheid state,” Gold stated.

Sfard said that criticism of Israel could be motivated by a desire to change policy or it could be a front for antisemitism.

Nor is there agreement among those who believe they are witnessing Israeli actions of apartheid, Sfard said.

"I do not think there is apartheid within Israel I think it has been committed in the West Bank," he said.

But "the apartheid analogy in and of itself is not antisemitism," Sfard said, adding that  "it is a legitimate argument that is leveled against a regime which has traits of supremacy, of imposing this one group and inferiority on another."

Gold, in contrast, explained that "the ideas that are put forward at the UN, affect the discourse about Israel in the media, on campuses and actually can become a cause for spreading antisemitism.”

It was important to recall, he said, that Israel was created through a strong international legal procedure.

"Remember Israel the only country in the world whose legitimacy was backed both by the League of Nations and the United Nations.

“I believe that is a cause for why its adversaries seek to find new methods all the time to undercut its legitimacy,” he said.

"That is why Israel must fight back with all its strength. That is what I did when I was at UN and that is what we should do now,” Gold stated.