Biden Can Reset the UN’s Discriminatory Approach to Israel

February 18, 2022

By [Toby Dershowitz](https://nationalinterest.org/profile/toby-dershowitz) and [Orde Kittrie](https://nationalinterest.org/profile/orde-kittrie)

The National Interest

<https://nationalinterest.org/feature/biden-can-reset-un%E2%80%99s-discriminatory-approach-israel-200629>

Amnesty International’s recent [report](https://www.amnestyusa.org/endapartheid/?gclid=Cj0KCQiAmKiQBhClARIsAKtSj-n8hK9FbB1VmRQQYlu7s-FEhtohwJPymEPH115hffGIQCIg2nkgG-IaAi7-EALw_wcB&gclsrc=aw.ds) falsely accusing Israel of committing apartheid is designed to fuel a [Commission of Inquiry](https://www.ohchr.org/EN/HRBodies/HRC/CoIOPT-Israel/Pages/Index.aspx) (COI) that the United Nations Human Rights Council (UNHRC) established in May 2021 to investigate the Jewish state’s alleged human rights abuses. The COI, which will release its first report this June, appears likely to discredit the UNHRC by echoing Amnesty’s false accusation.

The Biden administration, which rightly [rejected](https://www.state.gov/briefings/department-press-briefing-february-1-2022/) the apartheid slander and [committed](https://usun.usmission.gov/remarks-at-the-closing-session-of-the-un-general-assembly-fifth-committee/) to oppose the COI, will have a little-noticed but pivotal opportunity to counter both at a UNHRC [session](https://www.ohchr.org/EN/HRBodies/HRC/Pages/Sessions.aspx) from February 28 to April 1.

The COI is even more egregious and biased than [prior](https://www.ohchr.org/EN/HRBodies/HRC/Pages/ListHRCMandat.aspx) UNHRC investigations of Israel. For example, the [list](https://undocs.org/A/HRC/RES/S-30/1) of Israeli actions that the UNHRC tasked the COI with investigating includes language adopting a spurious definition of apartheid. Human Rights Watch (HRW) fabricated that definition, which is [inconsistent](https://www.ngo-monitor.org/reports/apartheid-report/) with international law, in a [report](https://www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution) issued one month prior to the UNHRC’s creation of the COI. The Amnesty report then adopted the false HRW definition of apartheid and accused Israel of violating it in both the territories and within Israel’s pre-1967 borders.

None of the UNHRC’s [prior](https://www.ohchr.org/EN/HRBodies/HRC/Pages/ListHRCMandat.aspx) commissions investigating Israel included either an apartheid component or an assessment of Israel’s activities within its pre-1967 borders. Nor were any of them created to last indefinitely, unlike this COI.

It is instructive to compare the COI with the UNHRC investigative bodies for [South Sudan](https://www.ohchr.org/EN/HRBodies/HRC/CoHSouthSudan/Pages/Index.aspx), [Syria](https://www.ohchr.org/EN/HRBodies/HRC/IICISyria/Pages/IndependentInternationalCommission.aspx), and [Yemen](https://www.ohchr.org/EN/HRBodies/HRC/YemenGEE/Pages/Index.aspx) (recently [not](https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=27636&LangID=E) renewed). All civilian deaths from armed conflict are tragic. The Israeli military takes [deliberate](https://nypost.com/2021/11/12/new-proof-that-it-was-hamas-not-israel-that-committed-war-crimes-last-may/) [steps](https://jinsa.org/jinsa_report/gaza-conflict-2021-assessment-observations-and-lessons/) to avoid Palestinian civilian casualties, even while confronting Palestinian militants’ repeated missile and other attacks on Israeli civilians.

That’s one reason why Israeli-Palestinian conflict deaths since 2010 have, according to the UN, totaled some 2 percent ([4,300](https://www.ochaopt.org/data/casualties) total, 360 in the last year) of those resulting from the inter-ethnic conflicts in South Sudan (over [380,000](https://www.cfr.org/global-conflict-tracker/conflict/civil-war-south-sudan)), Syria (over [350,000](https://www.reuters.com/world/middle-east/un-issues-new-syria-war-death-toll-says-350000-is-an-undercount-2021-09-24/)), and Yemen (over [370,000](https://www.al-monitor.com/originals/2021/11/yemen-death-toll-reach-377000-years-end-un-says)). Yet in contrast with the Israel COI’s endless mandate, these other investigative bodies require renewal on an annual or biannual basis.

The UNHRC compounded the COI’s one-sidedness by [appointing](https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=27331&LangID=E) as commission chair Navi Pillay, whose prior record on Israel was so biased that the Obama administration attempted to [block](https://www.reuters.com/article/us-rights-un/u-n-rights-chief-to-stay-two-more-years-u-s-syria-arent-fans-idUSBRE84N1O720120524) her renewal as UN high commissioner for human rights, a position she held from 2008 to 2014. In that role, Pillay falsely [accused](https://www.bbc.com/news/world-middle-east-28437626) Israel of committing war crimes and [declared](https://www.un.org/unispal/document/auto-insert-196051/), “the Israeli government treats international law with perpetual disdain.” Pillay’s credibility was further eroded by her [reported](https://twitter.com/HillelNeuer/status/1418345006541283328) failure to say anything about human rights abuses in dozens of countries that, unlike Israel, received the worst, “Not Free” rating from [Freedom House](https://freedomhouse.org/countries/freedom-world/scores).

The UNHRC was [established](https://documents-dds-ny.un.org/doc/UNDOC/GEN/N05/502/66/PDF/N0550266.pdf?OpenElement) to advance human rights without “double standards and politicization.” Yet, since its creation, the UNHRC has instead adopted [more](https://twitter.com/hillelneuer/status/1397979421395636224?lang=en) resolutions condemning Israel—a robust democracy rated “Free” by Freedom House—than every other country in the world combined. In contrast, the UNHRC has [adopted](https://unwatch.org/database/problems/unhrc/) zero resolutions on the gross human rights abuses in China, Cuba, and Russia.

The UNHRC’s disproportionate focus on Israel seems designed to distract attention from the gross and systemic abuses committed by the council’s own [members](https://www.ohchr.org/EN/HRBodies/HRC/Pages/CurrentMembers.aspx), which this year [include](https://www.ohchr.org/EN/HRBodies/HRC/Pages/CurrentMembers.aspx) the following countries [rated](https://freedomhouse.org/countries/freedom-world/scores) “Not Free” by Freedom House: Cameroon, China, Cuba, Eritrea, Gabon, Kazakhstan, Libya, Qatar, Russia, Somalia, Sudan, Uzbekistan, and Venezuela. These authoritarian governments will all sit in judgment of Israel.

When Secretary of State Antony Blinken [declared](https://www.state.gov/u-s-decision-to-reengage-with-the-un-human-rights-council/) last year that the United States would rejoin the UNHRC, he prioritized changing its “disproportionate focus on Israel.” Blinken committed the United States to “using the full weight of our diplomatic leadership” to reform the council and said that “when the United States engages constructively with the council, in concert with our allies and friends, positive change is within reach.” Senator Jim Risch (R-ID), the Senate Foreign Relations Committee’s ranking Republican, [responded](https://www.foreign.senate.gov/press/ranking/release/ranking-member-risch-rejoining-un-human-rights-council-without-reforms-is-a-mistake) that he [opposes](https://www.foreign.senate.gov/press/ranking/release/risch-rejoining-the-unhrc-is-a-disgrace) U.S. membership in a UNHRC that continues “persecuting our ally, Israel.”

How the Biden administration addresses the COI, including at the upcoming UNHRC session, will be a pivotal test of Blinken’s commitment and, quite possibly, of the next Congress’ support for continued U.S. membership on the UNHRC.

The administration has already taken preliminary action to oppose the COI. At the UN in December, U.S. ambassador Patrick Kennedy, senior advisor for UN management and reform, [voted](https://www.jpost.com/israel-news/article-689705) in favor of an Israeli motion to entirely defund the COI. Kennedy [said](https://www.unmultimedia.org/avlibrary/asset/2700/2700135/) the COI “perpetuates a practice of unfairly singling out Israel in the UN, and like prior U.S. administrations, we strongly oppose such treatment of Israel.” Kennedy also said the “United States will continue to oppose this COI and look for opportunities in Geneva to revisit its mandate” and “to persuade more Member States that it is inherently biased and an obstacle to the cause of peace.”

A January 2022 bipartisan [letter](https://gottheimer.house.gov/news/documentsingle.aspx?DocumentID=2985) from forty-two members of Congress led by Reps. Josh Gottheimer (D- NJ) and Vicky Hartzler (R-MO) praised Kennedy’s commitment and urged Blinken to “prioritize reversing the [UNHRC’s] discriminatory and unwarranted treatment of Israel” and to “lead an effort to end the outrageous and unjust” COI.

The COI formally labeling Israel as committing apartheid would be the equivalent of returning to the infamous UN General Assembly resolution—passed in 1975 and rescinded in 1991—that falsely asserted that “Zionism is a form of racism and racial discrimination.” Such an action would also meet the [definition](https://www.holocaustremembrance.com/resources/working-definitions-charters/working-definition-antisemitism) of anti-Semitism adopted by the thirty-five member countries of the International Holocaust Remembrance Alliance (IHRA), which includes denying “the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavor.”

It is disturbing to see Amnesty and other self-proclaimed human rights organizations trying to turn back the clock by claiming exactly that. It’s only one reason that since Amnesty published its report, governments including those of the [United States](https://www.state.gov/briefings/department-press-briefing-february-1-2022/), [Germany](https://www.dw.com/en/germany-rejects-amnestys-apartheid-label-for-israel/a-60637149), [Austria](https://www.jpost.com/israel-news/article-695546), [the Czech Republic](https://www.jpost.com/israel-news/article-695546), [Ireland](https://www.thejournal.ie/israel-palestine-dublin-5677178-Feb2022/), and [the United Kingdom](https://www.timesofisrael.com/we-do-not-agree-uk-rejects-amnesty-report-accusing-israel-of-apartheid/) have rejected the report’s conclusions and recommendations.

The facts in Israel and the territories don’t fit either the actual international law [definitions](https://www.ngo-monitor.org/reports/apartheid-report/) of apartheid or even the false definition of apartheid cooked up by [HRW](https://www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution) and parroted by the COI and Amnesty. In apartheid South Africa, black persons had no rights to [vote](https://www.britannica.com/place/South-Africa/The-National-Party-and-apartheid), hold political office, or use “white” [universities](https://www.britannica.com/topic/education/South-Africa), [hospitals](https://www.latimes.com/archives/la-xpm-1990-05-17-mn-301-story.html), [ambulances](https://www.nytimes.com/1990/05/17/world/south-africa-to-admit-all-races-as-patients-in-its-public-hospitals.html), [benches](https://www.smithsonianmag.com/history/what-did-apartheid-south-africa-look-180956945/), and bathrooms.

In contrast, not only do Israeli Arabs vote but an Israeli Arab party [currently](https://www.nytimes.com/2021/06/02/world/middleeast/arab-party-raam-coalition.html) holds the balance of power in Israel’s parliament. Israeli Arabs also serve as [justices](https://www.jpost.com/israel-news/arab-justices-make-history-496784) on Israel’s Supreme Court and as cabinet [ministers](https://www.knesset.gov.il/mk/eng/mk_eng.asp?mk_individual_id_t=758). They also use the same facilities as Israeli Jews, and include leading Israeli scientific [researchers and entrepreneurs](https://www.israel21c.org/16-arabs-from-israel-making-a-difference-on-the-world-stage/), prominent physicians (23 percent of Israeli doctors are Arabs), and [major generals](https://www.jpost.com/israel-news/druse-officer-to-become-new-cogat-head-518327) in Israel’s military.

When asked whether Israel engages in apartheid, Jacque de Maio, who heads the delegation to Israel and the Palestinian Authority of the International Committee of the Red Cross—an influential interpreter of human rights law and the law of war—[responded](https://www.ynetnews.com/articles/0,7340,L-4953648,00.html), “The Red Cross was very familiar with the regime that prevailed in South Africa during the apartheid period, and we are responding to all those who raise their claim of apartheid against Israel: No, there is no apartheid here ... There is a bloody national conflict, whose most prominent and tragic characteristic is its continuation over the years.”

Israel has faced repeated armed attacks designed to destroy it. Some in its neighborhood, including Hamas and Iran, continue to issue [genocidal](https://www.jpost.com/middle-east/iran-news/iranian-brig-gen-urges-destruction-of-israel-prior-to-nuke-talks-687248) threats against it. Despite the security risks, Israel [has](https://www.nytimes.com/2001/03/25/magazine/dennis-ross-s-exit-interview.html) repeatedly [offered](https://www.voanews.com/a/former-israeli-pm-details-failed-peace-deal-with-palestinians-114803389/172651.html)—in exchange for peace—a Palestinian state in [up](https://www.ejiltalk.org/uncomfortable-truths-how-hrw-errs-in-its-definition-of-israeli-apartheid-what-is-missing-and-what-are-the-implications/) to 94 percent of the territory of the West Bank. This notwithstanding the Jewish people’s 3,000-year history there and the Palestinian leadership’s discriminatory [insistence](https://www.reuters.com/article/us-palestinians-israel-abbas/abbas-wants-not-a-single-israeli-in-future-palestinian-state-idUSBRE96T00920130730) that it would not allow Jews to live within a Palestinian state. Israel’s policy is one of self-defense, not subjugation.

The Biden administration should spearhead an initiative at the UNHRC session that begins on February 28 to pass a resolution repealing the COI. Support could come from the several countries that abstained on the vote creating the COI but have recently taken proactive stances on analogous issues. That includes the thirty-eight countries that cited concerns about anti-Semitism and anti-Israel bias as the reason they [withdrew](https://www.worldjewishcongress.org/en/news/38-countries-boycott-antisemitic-durban-iv-conference) from the UN’s Durban IV conference in September 2021. The thirty-five IHRA [member](https://www.holocaustremembrance.com/about-us/countries-membership) countries would also likely support repeal.

The United States led when it persuaded the General Assembly to repeal its 1975 vote declaring Zionism to be racism. It should now actively and decisively lead the effort to end the COI, which the UNHRC created to conclude essentially the same thing. Ending the COI before it can parrot Amnesty’s anti-Israel slander should be welcomed by those who support a UNHRC that truly advances human rights rather than authoritarian and other pernicious agendas.