The UN Commission of Inquiry: What you need to know

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On June 13, the United Nation’s new Commission of Inquiry (“COI”) against Israel is scheduled to deliver its first report. Created after the conflict between Israel and Gaza terror groups in May 2021, the COI is just the latest addition to the U.N.’s overflowing arsenal of weaponry against the Jewish state.

The COI is set to emulate the [disgraced](https://www.cambridge.org/core/journals/german-law-journal/article/due-process-in-un-commissions-of-inquiry-a-legal-analysis-of-the-procedures-of-goldstones-gaza-inquiry/9BA7C10C179544801F8B9AD06E605993) and widely [ridiculed](https://ssrn.com/abstract=1581533) Goldstone Report—which accused Israel of committing crimes during “Operation Cast Lead” in 2008-09—that even its chairman, Richard Goldstone, ended up [disavowing](https://www.washingtonpost.com/opinions/reconsidering-the-goldstone-report-on-israel-and-war-crimes/2011/04/01/AFg111JC_story.html).

That’s not all, however. In many ways, the new COI makes the Goldstone Commission look tame by comparison. The new COI is widely expected to try to fuel the recent [wave](https://www.camera.org/article/amnestys-slander-why-now-and-for-what-purpose/) of “apartheid” libels being made against the Jewish state. With a mandate so broad as to allow the commissioners to question Israel’s very legitimacy, the COI represents the most obscene attack on the Jewish state since the infamous “Zionism is racism” resolution.

Here is some basic background information that everyone, including both journalists and their audiences, needs to know about the COI.

### **The Commissioners**

The United Nations is not known for demonstrating [objectivity](https://www.washingtontimes.com/news/2021/jul/6/russia-and-chinas-conquest-of-the-united-nations/) or [fairness](https://www.fdd.org/podcasts/2021/09/03/the-un-record-on-health-human-rights-trade-and-communications-is-worse-than-you-think/), [particularly](https://www.jstor.org/stable/10.2979/israelstudies.25.1.03) when it comes to the Jewish state. Nonetheless, it attempts to portray itself as having some semblance of rules and professionalism.

Thus, when the United Nations creates commissions of inquiry, the [criteria](https://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_5_1.doc) for “selecting and appointing” such commissioners include: a) expertise; b) experience in the field of the mandate; c) independence; d) impartiality; e) personal integrity; and f) objectivity.

As demonstrated below, all three of the COI members fall far short of these criteria.

1. Navi Pillay

Chairwoman Navi Pillay is notorious among Jewish and Israeli groups for the role she played in defending the anti-Semitic hate fest that was the Durban “Anti-Racism” Conference. Notwithstanding its name, the Durban Conference was, as [described](http://www.humanrightsvoices.org/assets/attachments/articles/568_durban_debacle.pdf) by Holocaust survivor Tom Lantos, “the most sickening and unabashed display of hate for Jews I had seen since the Nazi period.”

Among the countless examples of overt hatred aimed at the Jewish people at Durban were hundreds of fliers handed out showing a photograph of Adolf Hitler asking the question, “What if I had won?” The flier answered that among the positives would be no Israel. The negatives? Hitler would not have permitted the production of the Volkswagen Beetle.

In response to the criticism, Pillay repeatedly [dismissed](https://www.ilfngo.org/_files/ugd/3445b6_16b0eb66521a4a4491667df768a8a1f1.pdf) Jewish groups as “lobby groups focused on single issues.”

Pillay’s anti-Israel credentials are unquestionable. As pointed out in a [letter](https://unwatch.org/wp-content/uploads/2022/02/Request-for-Navi-Pillay-to-Recuse-Herself-on-Grounds-of-Bias.pdf) from U.N. Watch to the United Nations requesting that Pillay resign from the COI, Pillay declared Israel guilty even before any investigation. She has [signed](https://bdsmovement.net/news/250-prominent-south-africans-call-for-sanctions-stop-annexation) petitions to “sanction apartheid Israel” and [endorsed](https://www.youtube.com/watch?v=6sIEfCf1Dhs) the anti-Semitic BDS movement.

2. Miloon Kothari

Not only do the commissioners show disdain for the concepts of impartiality and objectivity, but they even show contempt for basic U.N. rules. Case in point is Miloon Kothari. In 2002, as a U.N. Special Rapporteur on housing, Kothari [lied](https://www.un.org/unispal/document/auto-insert-188268/) in order to enter Israel, claiming he was simply on a private visit when instead he was there to prepare an anti-Israel report in his official U.N. capacity. He even lied to U.N. officials, insisting that it would “not be an official visit status.”

This incident exposed not only a clear lack of impartiality and objectivity, but also a clear lack of personal integrity.

As with the other two commissioners, Kothari’s anti-Israel bias is in plain view. In his previous U.N. position as a special rapporteur, Kothari [called](https://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=1029&LangID=E) for the cessation of “military cooperation with Israel,” and even described Jews living in Judea and Samaria as engaged in “colonization activities,” denying the indigeneity of Jewish people in the Land of Israel. Kothari made clear he [viewed](https://undocs.org/e/cn.4/2003/5/add.1) all Israelis as “settlers.”

Kothari has also absurdly [claimed](https://www.aljazeera.com/opinions/2011/12/27/palestinians-in-a-jewish-state) there is a “basic theocratic character of the Israeli legal system [that] establishes ethnic criteria as the grounds for the enjoyment of full rights.” This statement is a complete fabrication. As CAMERA has repeatedly pointed out (see, e.g., pages 5-9 of this [brief](https://www.camera.org/wp-content/uploads/2022/05/Final-Draft-Reply-Brief-to-Harvard-Law-Clinic-Apartheid-Submission-with-FN.pdf); see also [here](https://www.camera.org/article/according-to-the-uns-michael-lynk-facts-change-covetous-jews-do-not/#:~:text=objectively%20false%20claims.-,%E2%80%9CJewish%2DOnly%E2%80%9D%20Settlements,-Throughout%20the%20report) and [here](https://www.camera.org/article/amnestys-apartheid-class-making-a-mockery-of-the-law-and-the-truth/)), Israeli law enshrines equal rights for its citizens regardless of religion, nationality, or ethnicity.

3. Chris Sidoti

Commissioner Chris Sidoti has a [history](https://www.ichr.ps/en/media-center/1366.html) of “work[ing] closely with Arab and Palestinian Human Rights organizations” and is a “close friend and ally” of the notoriously anti-Israel Palestinian Independent Commission for Human Rights (“PICHR”), the Palestinian Authority’s “national human rights institution.” To give an idea of the kind of organization PICHR is, it has [described](https://undocs.org/a/hrc/28/NI/4) stone-throwing [attacks](https://www.timesofisrael.com/son-grandchildren-of-mk-hurt-in-west-bank-rock-throwing-attack/) as a “natural right” of the Palestinians.

Sidoti is also on the [advisory council](https://acij.org.au/about-us/advisory-council/) of the Australian Centre for International Justice, which has openly [called](https://acij.org.au/joint-open-letter-impose-a-two-way-arms-embargo-on-israel-to-protect-palestinian-lives/) for an arms embargo against Israel and [accused](https://acij.org.au/joint-ngo-submission-australias-international-obligations-relating-to-trade-with-israel/) Israel of “apartheid.”

The Mandate

Not only are the commissioners themselves biased, but so is the mandate under which they are supposed to operate. The COI’s [mandate](https://undocs.org/a/hrc/res/s-30/1), adopted during a special session of the U.N. Human Rights Council on May 27, 2021, continues the tradition of creating slanted inquisitions that predetermine the results of the “investigation.”

1. Omits Hamas and Israeli civilians, focuses only on Israel and Palestinian civilians

As is typical of the United Nations, the language of the mandating resolution never mentions Palestinian terror groups like Hamas and instead only mentions the State of Israel. Similarly, while the resolution expressly mentions the “Palestinian civilian population,” at no point is the Israeli civilian population mentioned, notwithstanding the thousands of terrorist rockets launched at them.

The United Nations has consistently failed to specifically address the terrorist organization Hamas and the attempts by it and other terror groups to murder Israeli civilians with rockets. In 2018, the U.N. General Assembly even rejected an amendment that would have condemned “Hamas for repeatedly firing rockets into Israel and for inciting violence.”

2. Unlimited temporal and geographic scope

Unlike past U.N. inquiries, the latest COI has been given what can only be described as a wide-open mandate. There is no temporal limit to its inquiry, in any sense of the word. The COI’s mandate does not need to be renewed. It will continue to exist until an affirmative vote is conducted to end the COI, whereas nearly all other such inquiries have a temporally definite mandate which must be affirmatively renewed periodically. The COI also has “no temporal restrictions” in terms of what it may investigate.

In other words, under the terms of the mandate, the COI could write up a charge sheet against King Solomon for building the Temple on “occupied Palestinian territory” 3,000 years ago.

Additionally, whereas past inquiries were focused on specific conflicts or events, the latest COI can focus on virtually whatever aspect of the conflict, or Israel’s entire existence and legitimacy, that it so chooses, by virtue of the broad language of the mandate.

3. An enormous budget

The COI has been granted a budget of $11,812,700 for just the first three years alone. After that, it will receive $5,475,600 each year.

As Professor Anne Bayefsky [wrote](https://jcpa.org/article/the-newest-anti-israel-un-action-must-be-challenged-now/), it “will cost more than all but one of the 33 investigative mechanisms ever created by the Human Rights Council in its 15-year history.” The only exception is an investigative mechanism for Myanmar, which was created only after 25,000 Rohingya Muslims were killed and 700,000 forced to flee. By contrast, even U.N. [figures](https://www.ochaopt.org/content/response-escalation-opt-situation-report-no-1-21-27-may-2021) suggest that 256 Palestinians died during the May 2021 conflict. That’s about 1% of the fatalities in Myanmar.

4. Mixing the criminal with the political

While pretending to act as some form of a criminal investigation, the COI has also been tasked with “identify[ing] overall patterns, policies, historical legacies and structural inequalities.” On the latter, the commissioners themselves have said they “shall give priority to broad questions.”

Notably, those broad questions have already been predetermined, as the mandate answers the question of “root causes” for the COI, blaming “systematic discrimination.”

But consider how different these two tasks are. A criminal process requires exacting procedures, high standards of proof and objective reasoning and analysis.

On the other hand, questions of policies, and those of these vague, undefined concepts of “historical legacies” and “structural inequalities,” are inherently subjective. They are subject to differences of opinion and perspective. Unlike criminal law, there simply is no set of specific elements that must all be proven before it can be considered established beyond a reasonable doubt.

Rather than illuminate the law and facts surrounding alleged violations of international humanitarian law or human rights law, past U.N. efforts at revisionist history have served only to expose anti-Israel biases and distance the institution further and further from reality.

By mixing these two very different questions into one “investigation,” the United Nations is once again making it clear for the world to see that the charges are political, the investigation is political, and inevitably, the conviction will be political, too.

5. The nod to the ‘apartheid’ libel and excusing violence

The language of the COI’s mandate is clearly designed to further the “apartheid” libel against Israel. The resolution, drafted after the Israel-Hamas conflict in May 2021, instructs the COI to investigate “root causes,” which the Human Rights Council already decided (before any investigation) include “systematic discrimination and repression based on national, ethnic, racial or religious identity.”

As Jonathan Schanzer, author of “Gaza Conflict 2021,” [puts it](https://twitter.com/JSchanzer/status/1523687785672060929), “Gaza wars begin because Hamas launches them. They are not caused by tensions or anger. They are caused by rockets and bombs.” The attempt to shift responsibility away from Hamas—which began the war by firing barrages of rockets—and point instead to vague, debatable concepts of “systematic discrimination” serves only to justify and legitimize terrorist violence against Israeli civilians.

Instead of being a legitimate exercise in conflict resolution, the [timing](https://www.camera.org/article/amnestys-slander-why-now-and-for-what-purpose/) of this expansive language, adopted in the highly partisan halls of the U.N. Human Rights Council, is intended to build on the campaign to slander Israel as an “apartheid” state, which just a month earlier was bolstered by [Human Rights Watch’s](https://www.camera.org/article/human-rights-watch-report-maligns-israel-with-lies-on-top-of-lies/) substantively empty accusation.

How the COI ‘investigates’

Combining both a selection of biased commissioners and a biased mandate, the actual working methods of the COI demonstrate the unserious nature of the “inquiry.” Between a low standard of proof, the ability of commissioners to rely on their own feelings, a complete lack of transparency as to the U.N. staff conducting the “investigation,” and other aspects of its work, the COI has shown itself as little more than a partisan attack on the Jewish state.

1. A low standard of proof

The COI has stated it will apply a standard of proof of “reasonable grounds.” To put in context what this means, “reasonable grounds” is the same standard used to authorize police in the United Kingdom to make an arrest but falls well short of the standard to convict someone. Consequently, this will mean that the COI is set to identify “violations” and make recommendations for “accountability” [without](https://www.thinc.info/wp-content/uploads/2022/04/UNCOI-BP_final_20220412.pdf) “any of the protections of an open trial, confrontation of witnesses, criminal-level standards and burdens of proof, rules of admissibility or advice of counsel.”

While some may point out (correctly) that the COI isn’t a criminal court and can’t convict anyone anyway, this misses the point. The game played is one in which the allegation is the goal itself. The court is not one of law, but of public opinion. As Human Rights Watch Executive Director Ken Roth clearly [explained](https://twitter.com/kenroth/status/1388246573008756741) while promoting HRW’s substantively empty “apartheid” report, which had to invent an entirely [new definition](https://www.ejiltalk.org/the-apartheid-accusation-against-israel-lacks-is-baseless-and-agenda-driven/) of the crime in order to try to label Israel as guilty, “[t]he longer the charge sticks, the greater the threat it will pose to perceptions of Israel’s legitimacy.” Not only are such courts designed to sway public opinion, in other words, but they are meant to sway them to the extreme, eliminationist opinion that Israel’s existence isn’t legitimate.

2. The biased commissioners may rely on their own findings

To put the unseriousness of the COI’s “investigation” into full view, consider the commissioners’ own interpretations of the standard of proof they are to apply. The commissioners [declared](https://www.ohchr.org/sites/default/files/2022-01/TORs-UN-Independent_ICI_Occupied_Palestinian_Territories.pdf) that a “reliable primary source” need only be corroborated by “one additional independent and reliable source, *which may include the investigator’s own findings*.”

Does anyone really think the chairwoman, Navi Pillay, is above deeming a member of Hamas as a “reliable primary source” and declaring his testimony “verified” by virtue of her own findings?

It’s worth recalling, in this regard, how the infamous Goldstone Commission found that every single witness it used in the report was “fully credible and reliable.”

3. Lack of transparency regarding U.N. staffers

Importantly, reports such as the one expected from the COI are produced not just by the three appointed commissioners. Such U.N. commissions have entire teams of U.N. staff involved in researching and writing the report. Yet no one outside the United Nations will know who exactly these staff members are, whether they’re qualified, and whether they’re independent and impartial.

This isn’t just a hypothetical problem, either. The Goldstone Report, for example, had as its lead writer and researcher [Grietje Baars](https://unwatch.org/letter-brief-re-grietje-baars-052517-final-neuer-to-guterres/), an anti-Israel activist who publicly supported BDS, compared Israelis to Nazis, and even had already declared Israel guilty of a “massacre” during the very conflict she was hired to supposedly investigate.

It’s worth noting, too, that Baars was hired by then U.N. High Commissioner for Human Rights Navi Pillay, who is now chairwoman of the new COI.

4. The COI is already relying on partisan, anti-Israel NGOs

After it was formed, a “call for submissions” of evidence was published by the COI. Jewish, Israeli and other groups sent in literally [millions](https://www.jpost.com/israel-news/article-704781) of examples of attacks on and human rights violations against Jews and Israelis.

Yet, despite stating it would “seek to receive information from as broad a range of stakeholders as possible,” there are only two known instances of the COI actually meeting with groups or individuals.

As CAMERA [noted](https://www.jns.org/opinion/desecration-of-tombs-and-truths-un-inquiry-asks-an-inciter-about-root-causes-of-conflict/), one of those meetings was with the anti-Israel organization [Adalah](https://www.ngo-monitor.org/ngos/adalah/) and Mohammed Barakeh, who had just days earlier participated in [inciting](https://shehabnews.com/post/98397/%D8%A8%D8%B1%D9%83%D8%A9-%D8%A7%D9%84%D8%A7%D8%AD%D8%AA%D9%84%D8%A7%D9%84-%D9%8A-%D8%A8%D9%8A%D8%AA-%D9%84%D9%85%D8%AE%D8%B7%D8%B7-%D8%A5%D8%AC%D8%B1%D8%A7%D9%85%D9%8A-%D8%AF%D9%85%D9%88%D9%8A-%D8%AE%D9%84%D8%A7%D9%84-%D8%B4%D9%87%D8%B1-%D8%B1%D9%85%D8%B6%D8%A7%D9%86) against the Jewish state.

The other [meeting](https://www.dci-palestine.org/dcip_meets_with_un_commission_investigating_israel_s_2021_military_assault_on_gaza) was with Defense for Children International Palestine, the same group that has been designated by Israel over its connection to the terrorist organization Popular Front for the Liberation of Palestine.

It is certainly possible that meetings with pro-Israel organizations, or Jewish Israeli victims, were held in private. Given, however, that chairwoman Pillay likes to denigrate Jewish groups opposed to anti-Semitism as “lobby groups” it seems unlikely that even if such a meeting were held, their stories would be actually heard.

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*A Selection of Other Resources:*

1. *Pillay’s Pogrom, Human Rights Voices,*[*http://humanrightsvoices.org/pillays-pogrom/*](http://humanrightsvoices.org/pillays-pogrom/)*(containing a wealth of resources, articles, and other information about the COI).*
2. *Richard Goldberg & Orde Kittrie, US rejoining UN Human Rights Council; what it should do first, The Hill, October 16, 2021,*[*https://thehill.com/opinion/international/577044-us-rejoining-un-human-rights-council-what-it-should-do-first*](https://thehill.com/opinion/international/577044-us-rejoining-un-human-rights-council-what-it-should-do-first)*.*
3. *Anne Bayefsky, The Newest Anti-Israel UN Action Must Be Challenged – Now, Jerusalem Center for Public Affairs, December 20, 2021,*[*https://jcpa.org/article/the-newest-anti-israel-un-action-must-be-challenged-now/*](https://jcpa.org/article/the-newest-anti-israel-un-action-must-be-challenged-now/)*.*
4. *The Editorial Board, The U.N.’s Israel Libel Machine Expands, Wall Street Journal, December 27, 2021,*[*https://www.wsj.com/articles/the-u-n-s-israel-libel-machine-expands-11640648491*](https://www.wsj.com/articles/the-u-n-s-israel-libel-machine-expands-11640648491)*.*
5. *Clifford D. May, The U.N.’s final solution to the Israel question, Washington Times, January 11, 2022,*[*https://www.washingtontimes.com/news/2022/jan/11/the-uns-final-solution-to-the-israel-question/*](https://www.washingtontimes.com/news/2022/jan/11/the-uns-final-solution-to-the-israel-question/)*.*
6. *Anne Bayefsky, UN ditches its rules for an anti-Israel ‘Inquiry’, Jewish News Syndicate, January 19, 2022,*[*https://www.jns.org/opinion/un-revises-its-rules-for-an-anti-israel-inquiry/*](https://www.jns.org/opinion/un-revises-its-rules-for-an-anti-israel-inquiry/)*.*
7. *Request for Navi Pillay to Recuse Herself for Bias or the Appearance Thereof, UN Watch, February 14, 2022,*[*https://unwatch.org/wp-content/uploads/2022/02/Request-for-Navi-Pillay-to-Recuse-Herself-on-Grounds-of-Bias.pdf*](https://unwatch.org/wp-content/uploads/2022/02/Request-for-Navi-Pillay-to-Recuse-Herself-on-Grounds-of-Bias.pdf)*.*
8. *Anti-Israel Bias and NGO Links of UNHRC’s Gaza Committee of Inquiry Members, NGO Monitor, February 22, 2022,*[*https://www.ngo-monitor.org/reports/anti-israel-bias-and-ngo-links-of-unhrcs-gaza-committee-of-inquiry-members/*](https://www.ngo-monitor.org/reports/anti-israel-bias-and-ngo-links-of-unhrcs-gaza-committee-of-inquiry-members/)*.*
9. *David Matas, Submission to the UN Commission of Inquiry on “the Occupied Palestinian Territory, including East Jerusalem,” and Israel, B’nai B’rith, March 2, 2022,*[*https://drive.google.com/file/d/1LfzXulzi1sDRpeXP6r8nQ27oTIwoBvtr/view*](https://drive.google.com/file/d/1LfzXulzi1sDRpeXP6r8nQ27oTIwoBvtr/view)*.*
10. *Briefing Paper: The UNHRC ongoing Commission of Inquiry into Israel and the Occupied Palestinian Territories (Res. S-30/1) – A fundamentally flawed institution, The Hague Initiative for International Cooperation, April 2022,*[*https://www.thinc.info/wp-content/uploads/2022/04/UNCOI-BP\_final\_20220412.pdf*](https://www.thinc.info/wp-content/uploads/2022/04/UNCOI-BP_final_20220412.pdf)*.*
11. *Fixed Inquiry: The Biased UN Commission Against Israel, International Legal Forum, May 2022,*[*https://www.ilfngo.org/coifixedinquiry*](https://www.ilfngo.org/coifixedinquiry)*.*
12. *Rabbi Abraham Cooper, A Legal Inquisition: The UN’s Latest Attempt to Demonize the Jewish State Is Exposed, The Algemeiner, May 18, 2022,*[*https://www.algemeiner.com/2022/05/18/a-legal-inquisition-the-uns-latest-attempt-to-demonize-the-jewish-state-is-exposed/*](https://www.algemeiner.com/2022/05/18/a-legal-inquisition-the-uns-latest-attempt-to-demonize-the-jewish-state-is-exposed/)*.*