UNHRC Creates Flawed Commission of Inquiry to Investigate Israel

June 9, 2021

By David May, Michael Levinson

Foundation for the Defense of Democracies

<https://www.fdd.org/analysis/2021/06/09/unhrc-creates-flawed-commission-of-inquiry/>

The UN Human Rights Council (UNHRC) [passed a resolution](https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=27119&LangID=E) on May 27 creating a Commission of Inquiry (COI) to investigate alleged violations of international law during the recent fighting in Gaza, as well as the root causes of the Israeli-Palestinian conflict. Given that the resolution does not mention Hamas by name or acknowledge its deliberate attacks on Israeli civilians, the apparent purpose of the COI is to attack the State of Israel, particularly at the International Criminal Court (ICC).

The commission is “[ongoing](https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=27119&LangID=E),” meaning it is to exist in perpetuity. The commission has a broad mandate, including to investigate “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.” Yet the mandate does not mention Hamas’ terrorism or oppressive rule in Gaza as a cause. Furthermore, the mandate’s reference to “systematic discrimination” appears to reflect a trend whereby activists harness the [false charge](https://www.nytimes.com/2017/03/31/opinion/why-israel-is-nothing-like-apartheid-south-africa.html) of apartheid against Israel, suggesting that could be a key purpose of the COI.

In addition to establishing the COI, with its mandate slanted to produce an annual anti-Israel report, the resolution will have at least two other tangible impacts. First, the resolution [calls](https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=27119&LangID=E) on “all States to refrain from transferring arms” to human rights abusers – presumably intended at least in part to discourage arms sales to Israel. Second, the commission’s expansive mandate to collect evidence suitable for “admissibility in legal proceedings” is clearly designed to [supply evidence](https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=27119&LangID=E) to the ICC to ensure that “perpetrators of violations are held accountable.” The ICC has decided to advance an investigation of Israel despite [strong](https://www.eureporter.co/frontpage/2020/12/26/international-criminal-court-election-could-facilitate-reset-with-us/) [arguments](https://www.thinc.info/should-israel-cooperate-with-the-icc/) that the court lacks jurisdiction. The COI is designed to assist in this politically motivated exercise.

The UNHRC has a long history of focusing disproportionately on allegations against Israel even while other states commit exceptionally grave violations. The United Nations [disbanded](https://fas.org/sgp/crs/row/RL33608.pdf) the Commission on Human Rights, the UNHRC’s predecessor, partly due to its [unfair treatment](https://jcpa.org/article/the-struggle-against-anti-israel-bias-at-the-un-commission-on-human-rights/) of Israel. Nevertheless, the UNHRC maintains [Agenda Item 7](https://www.bnaibrith.org/expert-analysis/category/item-7), which requires Israel’s human rights record to be evaluated at [every meeting,](https://www.timesofisrael.com/muslim-nations-ask-un-to-form-unprecedented-permanent-panel-to-critique-israel/) distracting attention from the flagrant abuses committed by the council’s own members. Thanks to this structural bias and the council’s inordinate focus on the Jewish state, the UNHRC from 2006 to 2019 passed roughly an [equal number](https://twitter.com/HillelNeuer/status/1283753748997779461) of resolutions condemning Israel and the rest of the world combined – a tally that included not a single condemnation of Russia or China.

The UNHRC’s settlements blacklist is one example of this selective scrutiny. In March 2016, the council passed a [resolution](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/31/36) calling for the creation of a database to catalogue companies operating in the West Bank, but has not passed a similar resolution for any other [conflict zone](https://www.fdd.org/analysis/2020/01/27/occupied-elsewhere/). The list, which was published in February 2020, included 112 companies, mostly Israeli, and has served as a tool for anti-Israel boycotters.

The UNHRC commissioned a similarly biased COI during the 2014 Israel-Hamas conflict. In establishing that COI, the council predetermined Israeli guilt, including by prejudging, in the very [resolution](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/092/50/PDF/G1409250.pdf?OpenElement) establishing the commission, that Israel had engaged in “widespread, systematic and gross violations” during the conflict the commission was created to investigate. In another blow to the commission’s impartiality, its first chairman, William Schabas, resigned amid [revelations](https://www.nytimes.com/2015/02/03/world/middleeast/leader-of-war-crimes-inquiry-into-14-gaza-conflict-resigns.html?emc=edit_tnt_20150202&nlid=19195684&tntemail0=y&_r=2) that he had served as a consultant for the Palestine Liberation Organization.

Earlier, a UNHRC inquiry into the three-week Gaza war in 2008-2009, led by South African Judge Richard Goldstone, also ran into [strong criticism](https://mfa.gov.il/MFA/FOREIGNPOLICY/TERRORISM/GAZAFACTS/Pages/The-Goldstone-Mission.aspx). Goldstone himself retracted the report’s most damning claim when he [clarified](https://www.washingtonpost.com/opinions/reconsidering-the-goldstone-report-on-israel-and-war-crimes/2011/04/01/AFg111JC_story.html), “Civilians were not intentionally targeted [by Israel] as a matter of policy.”

The UNHRC’s ongoing COI on the Israeli-Palestinian conflict will serve as a permanent reminder of the council’s anti-Israel bias. Nevertheless, the Biden administration remains committed to rejoining the UNHRC. The White House should demand [reform](https://www.newsweek.com/un-should-protect-human-rights-not-human-rights-abusers-opinion-1572418) as part of its return to the council, namely by insisting on common-sense human rights standards for membership and by ensuring the UNHRC treats Israel fairly.