‘Biased’, ‘Selective’, ‘Antisemitic’: Accusations against the U.N. Commission of Inquiry on Israel and the Occupied Palestinian Territories

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Last week UN independent expert [Miloon Kothari](https://www.geneva-academy.ch/miloon-kothari%22%20%5Ct%20%22_blank) publicly questioned why Israel is a UN member and accused Jews of controlling social media, which is a long-recognised antisemitic trope. These are two separate but interlinked issues: firstly anti-Israel bias, and secondly antisemitism.

In an interview with [Mondoweiss](https://mondoweiss.net/2022/07/apartheid-is-not-sufficient-an-interview-with-un-human-rights-commissioner-miloon-kothari/%22%20%5Ct%20%22_blank) Kothari stated: “I would go as far as to raise the question of why [Israel is] even a member of the United Nations. Because … the Israeli government does not respect its own obligations as a UN member state. They, in fact, consistently, either directly or through the United States, try to undermine UN mechanisms,”

And then went on to say: “We are very disheartened by the social media that is controlled largely by, whether it is the Jewish lobby or it is specific NGOs, a lot of money is being thrown into trying to discredit us,”

These remarks may seem inconsequential to many people, particularly those who do not follow what happens in the UN human rights system, or those who are not interested in the Israel/Palestine conflict. Israel has long-been the focus of excessive and disproportionate attention from the UN human rights mechanisms. And antisemitic tropes are as old as Christianity. But Kothari’s remarks threaten the legitimacy, credibility and the future existence of all independent UN human rights mechanisms.

Miloon Kothari is one of three members of a commission of inquiry set up to investigate alleged violations of abuses by Israel in the Occupied Palestinian Territories leading up to and since April 2021. The commission was set up by the [Human Rights Council in May 2021](https://undocs.org/A/HRC/RES/S-30/1) and the appointments made solely by then-HRC President Nazhat Khan of Fiji. The choice of commissioners was queried from the outset, with accusations of bias lodged against all three members. Israel pointed to a number of public statements made about Israel, war crimes, and even likening the occupation to apartheid, by these experts before their appointments. Commissioners, like all independent UN experts, are supposed to be impartial. The fact that the commissioners seemed already to made up their minds about whether or not Israel commits war crimes led to questions being raised about whether they could be impartial on a commission investigating that very question. And the commission itself has [been criticised](https://www.rosen.senate.gov/rosen-scott-introduce-bill-halt-united-nations-commission-inquiry-israel#:~:text=On%20June%2013%2C%202022%2C%20the,in%20an%20even%2Dhanded%20manner.) for its unprecedently broad and biased mandate and failure to include a mandate to investigate abuses by Hamas or other armed militants in Gaza.

Since its establishment in 2006, the Human Rights Council has continually singled out and censured Israel. No other country has been subjected to such scrutiny and systemic bias. Of course, the UN human rights system ought to address human rights abuses in the Occupied Palestinian Territories. But the grossly disproportionate and excessive scrutiny of Israel compared with similar or worse human rights situations elsewhere has long been pointed to by those who say the system lacks credibility or legitimacy. Those criticisms are compounded by Israel being singled out by some human rights actors to be held to different standards than other countries in the way it behaves at the UN.

The change from Commission to Council in 2006 was hoped to address the bias and selectivity of the UN’s main human rights body. But so far the Council has held 33 special sessions, of which nine were dedicated to Israel. Ten of the 35 commissions of inquiry and independent fact-finding missions established by the Council have been on Israel. Most egregious is the Council’s agenda Item 7, which subjects Israel to permanent indictment. Indeed, Israel is the only country that is subject to a separate, stand-alone agenda item. This unfair treatment undermines the Council’s credibility and emboldens those who believe they can rely solely on international pressure on Israel to resolve the conflict, rather than both parties coming to the table to make the necessary compromises for peace.

Many observers simply shrug their shoulders or look away when excessive and disproportionate attention is paid to Israel. They recognise that Israel commits human rights abuses, and at the same time also recognise the gross politicisation involved in the excessive scrutiny of that country, and as such stay silent about the situation within the UN human rights system. But concerned observers should care about whether they meet the test of impartiality, which is stipulated by the UN’s own code for such appointees. In fact, HRC President Villegas devoted 9 lines in a strongly worded paragraph reminding the COI chair what impartiality requires. He says that some of the remarks by Kothari ‘could reasonably be interpreted as stigmatization of the Jewish people’ – which is ‘at the heart of any expression of antisemitism.’  It is clear to him that the latest attacks from a UN-appointed independent expert have gone too far to be ignored or left unaddressed. It should be equally clear to the Commission’s chair, former High Commissioner for Human Rights and international criminal court judge Navi Pillay and to Kothari and to the third Commission member, Chris Sidotti.

The interview Kothari gave to [Mondoweiss](https://mondoweiss.net/%22%20%5Ct%20%22_blank) has already been condemned by [Austria](https://twitter.com/AustriaUNGeneva/status/1553426511985868801?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1553426511985868801%7Ctwgr%5E4a5a7a57f72d610d992ba70853e36637d20cade9%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Funwatch.org%2Fun-investigator-condemned-for-antisemitism-by-uk-france-canada-us%2F), [Canada](https://twitter.com/BobRae48/status/1552635724754812928?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1552635724754812928%7Ctwgr%5E4a5a7a57f72d610d992ba70853e36637d20cade9%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Funwatch.org%2Fun-investigator-condemned-for-antisemitism-by-uk-france-canada-us%2F), [France](https://twitter.com/FranceONUGeneve/status/1552945477699751937?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1553029093783998465%7Ctwgr%5E4a5a7a57f72d610d992ba70853e36637d20cade9%7Ctwcon%5Es3_&ref_url=https%3A%2F%2Funwatch.org%2Fun-investigator-condemned-for-antisemitism-by-uk-france-canada-us%2F), [Germany](https://twitter.com/GermanyUNGeneva/status/1553343981341347841?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1553343981341347841%7Ctwgr%5E4a5a7a57f72d610d992ba70853e36637d20cade9%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Funwatch.org%2Fun-investigator-condemned-for-antisemitism-by-uk-france-canada-us%2F), the [Netherlands](https://twitter.com/NLinGeneva/status/1553089241802055680?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1553089241802055680%7Ctwgr%5E4a5a7a57f72d610d992ba70853e36637d20cade9%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Funwatch.org%2Fun-investigator-condemned-for-antisemitism-by-uk-france-canada-us%2F), the [UK](https://twitter.com/SimonManleyFCDO/status/1552622107577679873?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1552622107577679873%7Ctwgr%5E4a5a7a57f72d610d992ba70853e36637d20cade9%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Funwatch.org%2Fun-investigator-condemned-for-antisemitism-by-uk-france-canada-us%2F) and the [US](https://twitter.com/USAmbUN/status/1552663142815121410?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1552663142815121410%7Ctwgr%5E4a5a7a57f72d610d992ba70853e36637d20cade9%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Funwatch.org%2Fun-investigator-condemned-for-antisemitism-by-uk-france-canada-us%2F), amongst others. They have been joined by other high level observers, including the [U.S.](https://geneva.usmission.gov/2022/07/28/statement-on-antisemitic-remarks-by-a-commissioner-of-the-israel-coi/)and [Canadian](https://montrealgazette.com/news/world/canadas-un-ambassador-slams-biased-antisemitic-remarks-by-human-rights-expert)special envoys on antisemitism. They point to two key issues. Firstly, Kothari’s questioning of Israel’s legitimacy as a state and its commitment to the UN. And secondly, his use of antisemitic slurs and tropes. This would be shocking from anyone connected to the UN human rights system, but is made even worse by his membership of a supposedly impartial and objective commission looking into alleged abuses by Israel.

It would be one thing if UN independent experts routinely called for grave human rights abusers to be denied UN membership. There would be pushback about the sovereign equality of all states. Although, of course, no other state is ever singled out for this type of treatment. Kothari and his colleagues have never called for similar or more egregious situations to be addressed in this way. Perhaps efforts could focus on Russia and its occupation of Crimea and the Donbas, China and its occupation of Tibet, India’s occupation of Kashmir, or Turkey’s occupation of Northern Cyprus, or Morocco’s occupation/annexation of the Western Sahara amongst others. Independent experts could call for UN membership to be withdrawn from the worst abusers that refuse to engage with the human rights system, including North Korea, Iran, and Syria, But of course the idea of kicking states out of the UN is a foolish one that would undermine and destroy the essence and nature of this global organisation.

Not only did Kothari single out Israel in a biased, selective and politicised manner, but he also used an antisemitic trope to blame the Jews for criticism of him and his colleagues. It is crucial to note that days later Kothari is yet to apologise for doing so. But even if he were to say that he did not intend to blame Jews for controlling social media or that he misspoke, the fact that he allowed himself to say something like this in public destroys his credibility and that of the body he sits on. Even if he were to claim that he did not know the history and significance of the slur he used, his prejudice colours any investigation or reports that he is involved in undertaking or writing. Non-discrimination is a cornerstone of international human rights and needs to be foregrounded and seen to be foregrounded.

Kothari’s remarks were so [outrageous](https://twitter.com/StateSEAS/status/1552600882210037763?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1552600882210037763%7Ctwgr%5E4ae3253d96d31d39a52d193a2967b2897e10bfa0%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Funwatch.org%2Fun-investigator-condemned-for-antisemitism-by-uk-france-canada-us%2F) that the Human Rights Council’s President, Ambassador Federico Villegas of Argentina, wrote to the commission chair asking for those statements to be clarified. But instead of addressing the core of the issues, the chair of the commission, Navi Pillay, defended Kothari. In a [letter](https://eur03.safelinks.protection.outlook.com/?url=https%3A%2F%2Fhrcmeetings.ohchr.org%2FPresidencyBureau%2FBureauRegionalGroupsCorrespondence%2FCorrespondence%2FLetter%2520from%2520Chair%2520of%2520the%2520COI%2520on%2520the%2520OPT%2C%2520including%2520East%2520Jerusalem%2C%2520and%2520Israel%2520to%2520HRC%2520President.pdf&data=05%7C01%7Cr.a.freedman%40reading.ac.uk%7C6d9577977479492467bd08da73325bdd%7C4ffa3bc4ecfc48c09080f5e43ff90e5f%7C0%7C0%7C637948957374295183%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=7ZQddBLh3dC3L0YbVz%2BkRl02O5KowoHudj53daiz%2B%2FA%3D&reserved=0) to the Council’s President she attempted to shift the blame onto Israel, highlighting that the state had not cooperated with the commission or its members. She seemingly defended Kothari’s remarks as borne from frustration with Israel’s refusal to cooperate with the commission. She stated that “Israel is under an obligation to abide by the international legal framework, as well as independent bodies set up by the United Nations”. While perhaps regrettable, Israel’s refusal to cooperate is by no means unusual. Countries have state sovereignty, and that allows them to decide whether or not to cooperate with mandate holders. Israel has regularly chosen not to cooperate with independent experts when they have perceived the mandates or the individuals as biased. And it is far from the only country that chooses not to engage with independent experts. May countries refuse or ignore visit requests from special procedures mandate holders, yet none of those have faced calls for their UN membership to be withdrawn.

Pillay’s attempt to victim-blame Israel for Kothari’s remarks mirrors the way Jews are routinely victim-blamed for antisemitism. It shows how Israel is treated differently to all other states, and singles it out to be held to different standards to all other countries.

She also failed to address the antisemitic remarks made by Kothari, particularly the trope about Jews controlling the media. This centres on a long-held antisemitic slur that Jews control the world’s money, narrative and global order. Despite being a tiny minority of 14 million people in a world population of more than 9 billion, and despite being persecuted throughout history in every country where they have lived, this trope persists. It also conflates Jews and Israel in a way that has repeatedly been shown to be antisemitic and that contravenes the IHRA definition of antisemitism.

In 2019 Ahmad Shaheed, then UN Special Rapporteur on FORB,  delivered the first [UN human rights report on antisemitism](https://www.ohchr.org/en/documents/thematic-reports/a74358-report-combating-antisemitism-eliminate-discrimination-and) as a human rights abuse. In it, he clearly sets out that tropes of this type are antisemitic. It seems clear, that some other UN human rights experts are not aware of or perhaps even concerned with antisemitism.

Pillay sought to defend Kothari’s remarks by saying they had been taken out of context.

“The Commission also wishes to underline that Commissioner Kothari’s comments on efforts by governments as well as specific NGOs to discredit individual members of the Commission were again deliberately misquoted to imply that ‘social media’ was controlled by the Jewish lobby . . . The Commission takes great exception to personal attacks against individual Commissioners appointed by the United Nations Human Rights Council. Such attacks have been continuously directed against all three Commissioners throughout our tenure, and it is to this that Commissioner Kothari was making reference.”

This statement ignores the fact that Kothari was using a well-known antisemitic trope and that he was conflating pro-Israel organisations with Jews. It also seems to insinuate that legitimate criticism of commissioners and questions about alleged or perceived bias should not be raised in the media, even though such matters are routinely discussed in relation to many mandates particularly politically sensitive or controversial ones. Once again, her remarks single out Israel for criticism that is not levelled against other states.

In contrast, Ahmed Shaheed very quickly [condemned Kothari’s comments](https://twitter.com/ahmedshaheed/status/1553524346961928192) as have other observers and some member states. Use of these tropes and conflation of Israel and Jews by the very people tasked with protecting and promoting human rights indicates that there is something rotten within the UN human rights system itself.

So where does that leave us? The commission has been discredited and it is unlikely that it can move ahead with reports that will have any credibility or authority. Israel and its allies are aggrieved about the way it is being treated. The right-wing is using this as a method to attack the very legitimacy and purpose of the UN human rights system. Countries concerned more about state sovereignty than human rights are likely to point to this as a reason for dismantling all independent UN human right mechanisms. All of this is deeply concerning to anyone who cares about the UN and human rights. And none of this will help to address any alleged human rights violation in the Occupied Palestinian Territories.

This situation needs to be addressed. The UN Secretary-General has been silent and so has the High Commissioner for Human Rights. They have the moral authority and responsibility to help correct this egregious situation.  Civil society actors, other than those concerned about Israel/Palestine, are nowhere to be found. But whatever their views on this conflict, it is time for the UN human rights community to condemn the ongoing treatment of Israel, if nothing else other than to protect the system itself.

There is a need to address human rights abuses in Israel and the Occupied Palestinian Territories, but this will not happen through a commission that is alleged or perceived to be biased or selective, let alone antisemitic. Members of a body that is or purports to be quasi-judicial in character need to be very careful what they say in public. Even if we are being beyond charitable about Kothari’s intentions or motives – which, to be clear, he has failed to clarify despite clear and public accusations of bias and antisemitism – an objective standard of reasonable appearance of bias must apply to him in his position as commissioner. This means not singling out the state he is investigating to query its membership of the UN, and it means not saying antisemitic slurs, because objectively this creates an appearance of bias and destroys the credibility of the body he sits on.

At the very least Kothari must be held to account for his remarks and his failure to clarify them despite the Council President’s request. The commission chair should publicly condemn all antisemitism and state that this will not be tolerated by the commission. And if the commission is to have any legitimacy and credibility, the commission members ought to step down and be replaced to ensure that any work it does is not tainted by accusations of bias and antisemitism.