**The UN Human Rights Council Report on Israel’s Response to the Gaza Border Riots**

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Another biased, malevolent, and unprofessional UN report

* Where the UN Human Rights Council is concerned, there can be no such thing as an “independent” commission of inquiry. The outcome of the commission’s inquiry was determined in advance by its mandating resolution, which condemned in its first paragraph “the disproportionate and indiscriminate use of force by the Israeli occupying forces against Palestinian civilians… in the context of peaceful protests.”
* The commission uses the term “Occupied Palestinian Territory” in the title of the report, which wrongfully assumes and determines that the territory is Palestinian, despite the fact that its status remains in dispute pending a negotiated settlement between Israel and the PLO pursuant to the 1993-1995 Oslo Accords.
* Even more absurd is the fact that the commission’s report determined that the Gaza Strip is part of the territories occupied by Israel, even though Israel withdrew from Gaza in 2005 and the report acknowledges that the Gaza Strip is governed by “de facto authorities in Gaza.”
* To accept that the protests are “non-violent” and “fully peaceful” shows a lack of awareness of the extent of the violence of the demonstrations and public statements by senior Hamas operatives and demonstration organizers inciting violence, assaulting the separation fence, infiltrating into Israeli territory, and seeking to kill Israelis.
* MEMRI quotes Emad ‘Aql, of Gaza, who tweeted: “[The Israeli town of] Sderot is only 700 meters east of [the Palestinian town of] Beit Hanoun in northern Gaza….[The town] can be reached in two minutes on motorcycles or in 5-8 minutes at a brisk run.” He urged: “Murder, slaughter, burn and never show them any mercy.”
* An extensive professional analysis of the identities of those Palestinians killed during the protests found that 80% were identified as terrorist operatives or affiliated with terrorist organizations, mostly from Hamas. This demonstrates that the marches were not “popular” events but rather a Hamas strategic move accompanied by preplanned violence.

In an ideal world, a report by three ostensibly distinguished jurists of international stature and knowledgeable in human rights and international humanitarian law would be expected to be serious, credible, authoritative, and genuinely bona fide.

This would be more evident knowing that such a report is written by “an independent, international commission of inquiry.”

Sadly though, no such ideal world exists, and hence, neither the UN nor its Human Rights Council can be considered to be serious, credible, authoritative and genuinely bona fide.

Where the UN Human Rights Council is concerned, there can be no such thing as an “independent” commission of inquiry. The very mandating resolution for such an “independent” commission, was adopted by the political majority of the council and condemned in its first paragraph “the disproportionate and indiscriminate use of force by the Israeli occupying forces against Palestinian civilians…in the context of peaceful protests.”1,2

The Commission’s Mandate

Since the outcome of the commission’s “independent” inquiry was determined in advance by the mandating resolution, one may justifiably ask how any self-respecting members of an ostensibly independent commission of inquiry could risk their professional reputations and permit themselves to serve in a biased, politically-generated and flawed commission of inquiry?

No less transparent and indicative of the extreme bias of the commission’s mandate, is the politically loaded and partisan terminology used in the resolution, calling upon the inquiry: “to investigate all alleged violations and abuses of international humanitarian law and international human rights law in the Occupied Palestinian Territory, including East Jerusalem, particularly in the occupied Gaza Strip, in the context of the military assaults on the large-scale civilian protests.”

This terminology, which is repeated throughout the commission’s report, cannot conceal the fact that the aim of the commission was to target Israel.

Use of the term “Occupied Palestinian Territory” (in upper case) is itself a politically loaded, flawed UN term inasmuch as it wrongfully assumes and determines that the territory is Palestinian, despite the fact that its status remains in dispute pending a negotiated settlement between Israel and the PLO pursuant to the 1993-1995 Oslo Accords. The Accords were agreed upon by the Palestinian leadership and endorsed even by the UN itself.3

The Status of the Gaza Strip

Even more absurd is the fact that the commission’s mandate and report determine that the Gaza Strip is part of the territories occupied by Israel.

Incredibly, at the same time, the report acknowledges that Israel withdrew from Gaza in 2005 (Paragraph 15). It also acknowledges that the Gaza Strip is governed by “de facto authorities in Gaza” (paragraph 120) and determines that the organizers of the “peaceful protest” are “all sectors of Palestinian society, including civil society, cultural and social organizations, student unions, women’s groups, eminent persons and members of clans, with representatives of several political parties including the Democratic Front for the liberation of Palestine, Fatah, Hamas, the Popular Front for the Liberation of Palestine and the Palestinian Islamic Jihad”(Paragraph 24).

How then, in all seriousness, can the commission consider the Gaza Strip to be territory occupied by Israel and go on to accuse Israel of violating its obligations as an occupying power while at the same time acknowledging the fact that Israel is neither occupying nor controlling the Gaza Strip?

The “Peaceful” Nature and Aims of the Protest

To determine that the self-declared and internationally acknowledged terror organizations such as Hamas, Fatah, the Democratic Front for the Liberation of Palestine, and the Palestinian Islamic Jihad are “political parties” (Paragraph 24) participating in the committee organizing peaceful protests appears, at the least, to be utter naiveté, and at the most, acute self-deception.

To blindly accept that the protests are just “weekly demonstrations by Palestinians near the fence” (Paragraph 14), “non-violent march at the separation fence” (Paragraph 22), “fully peaceful from beginning to the end” (paragraph 24), is indicative of the utter ignorance by the members of the commission of what goes on along the separation fence. It shows a lack of awareness of the public statements by senior Hamas operatives and demonstration organizers inciting violence, assaulting the separation fence, infiltrating into Israeli territory, and seeking to kill Israelis.

To accept the statements of the above-noted terror organizations that “their unifying element was the principle that the march was to be fully peaceful from beginning to end and the demonstrators would be unarmed”(Paragraph 24), is indicative of a total lack of knowledge by the members of the commission of the structure, aims, and activities of those terror organizations.

Public Statements by Hamas Officials and Protest Organizers Encouraging Violence

In a submission to the commission of inquiry dated February 28, 2019, by Col. (ret.) Richard Kemp CBE on behalf of the “High Level Military Group,” a group of senior, retired military experts, Col. Kemp quotes the leader of Hamas in the Gaza Strip, Yahya Sinwar, who called on April 6, 2018, to “take down the fence and tear the hearts out of their bodies.”

Kemp pointed to the extensive incitement by the Palestinian leadership and its calls to infiltrate into Israel:

Proof of the effectiveness of this incitement may be seen in the social media pages of the “Great March of Return,” which posted maps and aerial photographs showing the routes and distances from various parts of the Gaza Strip to nearby Israeli communities. Some of these maps were accompanied by specific calls to infiltrate these communities by various routes.4

Readily available public information sources documented by the Middle East Media Research Institute (MEMRI) show the extensive propaganda and incitement by the Hamas leadership in Gaza, including in public and social media calling for violence at the fence and armed infiltration into Israeli territory.

MEMRI quotes poet Ahmed Abu Ratima, referred to by the commission as the visionary of a non-violent protest (Paragraph 22), who is on record in the Arabic Al-Quds Al-Arabi daily newspaper as having written on the Return March Whatsapp group: the breaching of the border “will be especially painful for the occupation and will have significant international resonance.” Abu Ratima added: “Within ten minutes, all the returning [marchers] will be in the very heart of the settlement of Sderot, and then the weapons of the occupation will be completely useless. The [Palestinian] processions will blend with the settlers in the heart of our occupied cities… This will be a deadly blow to the occupier, and he will no doubt succumb.”

Other posts, posters, and leaflets published on social media called to clash with Israelis after breaching the fence and entering their communities.

In this context, MEMRI quotes Emad ‘Aql, of Gaza, who tweeted:

“[The Israeli town of] Sderot is only 700 meters east of [the Palestinian town of] Beit Hanoun in northern Gaza. The headquarters of the Israeli army is there and houses about 800 pigs. [The town] can be reached in two minutes on motorcycles or in 5-8 minutes at a brisk run.” He urged: “Murder, slaughter, burn and never show them any mercy.”5

In his presentation to the commission, Col. Kemp summarizes the “Great March of Return” as follows:

Assessing the nature of the mass events on the border indicates clearly that these are not popular or sporadic incidents of mass protest (even violent ones), but rather carefully orchestrated events, managed by military operatives, and with a clear goal of creating large-scale breaches of the border security infrastructure. This can be seen by looking at the use of personnel, the sequence of events at each mass border incident, and the nature of the weapons employed.6

Clearly, this is very different from the determinations of the Inquiry commission as to the peaceful and civilian nature of the protests.

Identities of Fatalities and Flawed Methodology of the Commission

Those sections of the commission’s report devoted to statistics and listing specific incidents and the identities of fatalities appear to be based on a very narrow and selective list of sources while ignoring authoritative and professional resource material that is readily available on the web.

After an extensive professional analysis of the identities of those Palestinians killed during the protests, including a comparison of lists of fatalities with the obituaries published by Hamas and the Gaza Health Ministry, the Meir Amit Intelligence and Terrorism Information Center (ITIC) published several detailed reports which place considerable doubt as to the reliability and credibility of the information detailed by the commission in its report:

According to the findings of examinations carried out by the ITIC, at least 112 Palestinians were killed during the “Great Return March.” In an examination of the names of the fatalities on an individual basis, 93 were identified as terrorist operatives or affiliated with the terrorist organizations, i.e., about 83 percent of those killed in the “return marches.” Most of the fatalities (63) are from Hamas (about 56 percent of the total killed in all the marches)…. The organizational affiliation of 19 of the fatalities is unknown to the ITIC. It may be assumed that these are Hamas operatives or civilians who do not belong to any organization.

The findings of the examination of the identity of the fatalities carried out by the ITIC, and statements of senior Hamas officials, clearly demonstrate the central role played by Hamas in organizing the “return marches” and orchestrating them. The “return marches” were not “popular,” “peaceful” events, as falsely presented by Palestinian propaganda, but rather a Hamas strategic move accompanied by preplanned violence.… Furthermore, the findings of the examination of the identity of the fatalities and reports from the ground demonstrate that IDF soldiers did not shoot indiscriminately at innocent residents but instead hit terrorist operatives. These operatives were the dominant factor among those in the front line who tried to break into Israeli territory.7

A further examination by ITIC of the list of fatalities in the “return marches” confirms that most of them are operatives of terrorist organizations, about half of whom affiliated with Hamas:

The events of the “return marches” in the Gaza Strip have continued for 42 weeks. In most cases, these events are characterized by a high level of violence, resulting in casualties among the rioters, mainly among those in the front line confronting the IDF troops. According to the ITIC’s examination, based on reports of the Gaza Strip Ministry of Health in combination with other sources, since the beginning of the “return marches” on March 30, 2018, a total of 187 Palestinians were killed in those events. As for the identity of the fatalities (updated to January 16, 2019), 150 of them were found to be affiliated with Hamas or with other terrorist organizations (about 80 percent). Prominent among the fatalities are those belonging to Hamas or affiliated with it (96 fatalities, about 51 percent of the total number of fatalities). A total of 45 fatalities are operatives of the Hamas military wing (about 24 percent of the total number of fatalities, about 47 percent of the total of the Hamas fatalities)8

As reported by the Times of Israel, in the most recent March 2019 outbreak of violence along the fence, some 30,000 Palestinians took part in demonstrations, threw rocks and firebombs at Israeli troops on the other side of the fence, burned tires and scrap wood, sought to breach and damage the security fence, and in one case opened fire at Israeli soldiers.

Hamas publicly acknowledged that five members of its military wing, the Izz ad-Din al-Qassam Brigades, were among the fatalities. Most could be independently verified with photographic evidence of the operatives wearing uniforms or receiving a military-style funeral from the terror group in question.9

Legal Assessment of the Demonstrations

The commission’s legal assessment determines that the demonstrations “were civilian in nature, had clearly stated political aims and, despite some acts of significant violence, did not constitute combat or a military campaign.”

As such, the commission interprets the applicable legal framework to be that of law enforcement and policing, and “did not constitute combat or a military campaign” (paragraph 32).

In making this curious assessment and determination, the commission totally ignores both the declared and documented intentions of the organizers as well as the declarations by the Hamas leadership calling upon the demonstrators to physically charge the border fence, hurl explosive devises towards the Israeli soldiers guarding the fence, attach explosive devices to the fence, break through and infiltrate into Israeli territory, and attack and kill Israeli residents in towns and villages in the vicinity of the fence.

The members of the commission were neither blind to, nor ignorant of the incitement to violence by Hamas leaders and the statements and actions along the fence calling for infiltration into Israel, including the active involvement and participation by armed Hamas terrorists – all widely documented in the international media.

One, therefore, wonders how they could still insist on presenting the protests as peaceful, unarmed demonstrations, requiring nothing more than policing and law-enforcement measures.

Furthermore, how could the members of the commission consider that thousands of incited Palestinians, forcibly and violently assaulting the agreed-upon official barrier separating the sovereign territory of Israel and the Gaza Strip, and forcibly infiltrating into Israeli towns and villages, constitute a peaceful protest that does not merit a right of self-defense on the part of Israel and its soldiers?

An even more curious question for the members of the commission is what did the “peaceful” demonstrators intend to do after breaching the separation fence?

Did they really believe the vision quoted by them in Paragraph 22 of the report, of Palestinian poet and journalist Ahmed Abu Artema, stating:

what if 200,000 demonstrators marched peacefully and broke through the fence east of Gaza and entered a few kilometers into the lands that are ours, holding flags of Palestine and the keys to return, accompanied by international media, and then set up tents and establish a city there.

In making their legal assessment, and in so down-playing the illegal nature of the demonstrations, the commission is, in effect, denying Israel’s sovereign right to defend its border against armed assault and to prevent illegal and violent infiltration into its sovereign territory.

The Blockade

In the commission’s summary of the context and background of the protests, it determines that following the Hamas takeover of the Gaza Strip in 2006, Israel “imposed an air, land and sea blockade in a campaign of ‘economic warfare’” (Paragraph 15).

Subsequently, the commission recommends that Israel “Lift the blockade on Gaza with immediate effect” (Paragraph 122(a)).

The commission provides no reasoning for its assumption that the blockade was imposed as a campaign of economic warfare. Its summary and recommendations appear to be based on misinformation as to the reasons for the blockade and may amount to a flawed and misinformed value-judgment.

More importantly, the commission appears to have overlooked the findings and conclusions of the “Report of the UN Secretary-General’s Panel of Inquiry on the 31 May 2010 Flotilla Incident,” chaired by former New Zealand Prime Minister Sir Geoffrey Palmer. The report states, “Israel faces a real threat to its security from militant groups in Gaza. The naval blockade was imposed as a legitimate security measure in order to prevent weapons from entering Gaza by sea and its implementation complied with the requirements of international law.”10

Two-State Solution

In its presentation of the context and background of the protests, the commission curiously found the need to add what would appear to be a somewhat gratuitous and irrelevant value judgment with regard to the December 2017 decision by the U.S. government to move its embassy to Jerusalem “thereby reducing hopes for a two-state solution and further sparking new demonstrations across the Occupied Palestinian Territory” (Paragraph 21).

Whatever may be the perception of the members of the commission as to “hopes for a two state solution,” no such solution has ever been accepted, or agreed-upon by the parties and does not exist in any binding and accepted document. It remains the wishful thinking on the part of large sections of the international community, including, evidently, the members of the commission.

To the contrary, one might expect that prior to making such value judgments, the commission would have made itself aware of the agreed-upon provisions of the Israeli-Palestinian 1995 Interim Agreement on the West Bank and the Gaza Strip (commonly termed “Oslo 2”) in which the parties agreed that the permanent status of the territories would be determined in negotiation between them. Thus, the commission’s reference to the “two state solution” would appear to be a gratuitous prejudgment of the negotiation that has yet to take place.11

Incendiary Kites and Balloons, and Environmental Terror

Towards the end of its report the commission pays brief and minimal lip-service to the “Impact on Israel” observing:

Extensive damage to Israeli civilian property was caused by hundreds of incendiary kites and balloons launched from the Gaza Strip during the demonstrations. Some landed in empty educational institutions and private houses; others burned agricultural land and crops, causing significant property damage. Civilians in southern Israel reported experiencing psychological distress related to the fires and their fear of demonstrators crossing into Israeli territory and reaching their communities (Paragraph 92).

Following on from this, the commission in its chapter on accountability makes a cursory reference to the fact that:

the police force of the de facto authorities in Gaza bears responsibility for failing to take adequate measures to prevent incendiary kites and balloons from reaching Israel, spreading fear among civilians in Israel and inflicting damage on parks, fields, and property (Paragraph 109).

In this context, it is curious to note that the international independent commission of inquiry mandated by the UN Human Rights Council to investigate “all alleged violations and abuses of international humanitarian law and international human rights law” did not consider it appropriate to investigate the extensive, willful violations of environmental and ecological norms and conventions by the Palestinians in Gaza in deliberately burning tires and polluting water sources, causing huge waves of caustic air and water pollution in Israel.

Similarly, the commission appears to have overlooked the violation of humanitarian norms and conventions by the Palestinians in the launching of incendiary and explosive kites and balloons intended to kill Israeli citizens.

Not less serious is the commission’s ignoring the fact that the Palestinian leaders of the “peaceful demonstrations” organized, often by force, the placement of children and disabled people at the forefront of the demonstrations as human shields in violation of norms and conventions on the rights of the child and the disabled.12

Accountability for Actions

Regrettably, fatalities and injuries occur in such charged situations of incitement, terror, armed assaults on the separation fence, attacks on Israel’s soldiers with explosive and incendiary devices, attempts to forcibly infiltrate sovereign Israeli territory, with the concomitant need to act in self-defense.

Israel’s military justice authorities duly investigate such instances with a view to examining whether violations by its security personnel of humanitarian norms and rules have occurred, and take the appropriate juridical and prosecution measures against offenders, in strict accordance with Israeli and international law.

In his concluding comments, Col. Kemp stated:

[I]t is my professional opinion that the IDF’s preparations for these events were conducted in a professional and reasonable manner and that the IDF’s policy for the use of force conformed to the military necessity. In my opinion, there was no other reasonable alternative that the IDF could have employed in order to contend with the threats posed by these events.13

Conclusion

The report of the independent international commission of inquiry is flawed, biased, and slanted.

Its mandate was politically generated to prejudge its outcome against Israel.

The data included in the report is selective, partial, and based on partisan reporting.

This report does not add one iota of credibility to the already discredited and redundant Human Rights Council.

Sadly, it reflects in a very negative manner on the integrity and professionalism of the members of the commission who appear to have worked without the requisite expert and professional military advice so essential to any examination of the military situation in the area of events.

It is all the more regrettable that this report will doubtless be interpreted by Hamas and the other terrorist elements involved, as granting a green light to further terror activity against Israel, in the knowledge that the UN Human Rights Council chooses to direct its criticism solely against Israel.

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Notes

1 The full text of the Inquiry Commission can be found at https://www.ohchr.org/Documents/HRBodies/HRCouncil/CoIOPT/A\_HRC\_40\_74.pdf

2 UN Human Rights Council resolution S-28/1 of 22 May 2018 entitled “Violations of international law in the context of large-scale civilian protests in the Occupied Palestinian Territory, including East Jerusalem” https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/137/36/PDF/G1813736.pdf?OpenElement

3 See Article XXXI(7) of the 1995 Israeli-Palestinian Interim Agreement at https://mfa.gov.il/MFA/ForeignPolicy/Peace/Guide/Pages/THE%20ISRAELI-PALESTINIAN%20INTERIM%20AGREEMENT.aspx

4 http://www.high-level-military-group.org/pdf/hlmg-unhrc-col-richard-kemp-2.pdf

5 Middle East Media Research Institute (MEMRI) https://www.memri.org/reports/great-return-march-campaign-initiative-sponsored-hamas-whose-goal-was-breach-border-fence

6 See note iv above

7 Meir Amit Intelligence and Terrorism Information Center (ITIC) – Findings of the ITIC‘s examination of the identity of Palestinians killed in the events of the “Great Return March” https://www.terrorism-info.org.il/en/findings-itics-examination-identity-palestinians-killed-events-great-return-march-march-30-2018-may-15-2018

8 Ibid see https://www.terrorism-info.org.il/app/uploads/2019/01/E\_012\_19.pdf

9 https://www.timesofisrael.com/idf-at-least-10-of-the-16-killed-at-gaza-border-were-members-of-terror-groups/

10 http://www.un.org/News/dh/infocus/middle\_east/Gaza\_Flotilla\_Panel\_Report.pdf

11 See note 3 above

12 See http://jcpa.org/article/the-many-ways-the-palestinians-violate-international-law/ by the present author

13 See note 4 above