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24 August 2022

HE Federico Villegas
Office of the President
United Nations Human Rights Council
Palais des Nations
1211 Geneva 10
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24 August 2022

Your Excellency,

I am instructed by the Institute for NGO Research. I have the honour to enclose an open letter addressed to Your Excellency co-authored with Anne Herzberg. The open letter requests Your Excellency to initiate an assessment of the mandate of the Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel (“COI” or “Commission”) at the September 2022 session of the Human Rights Council (the “Council”).

I stand ready to assist Your Excellency consider any assessment of the Commission’s mandate in advance of the next session of the Council in September 2022.

Please accept, Your Excellency, the assurances of my highest consideration.

Joshua Kern

Encl.

By email to:

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Your Excellency,

We act for the Institute for NGO Research, an NGO in special consultative status with ECOSOC since 2013. We are writing to request that Your Excellency exercise your authority as President, pursuant to the Council's Resolution 5/1, to initiate an assessment of the mandate of the Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel ("COI" or "Commission") at the September 2022 session of the Human Rights Council (the "Council").¹

We make this request because: (i) the Commission is in breach of its duties of impartiality and non-discrimination; (ii) the Commission is in breach of its duty to investigate inculpatory and exculpatory material equally, and investigate even-handedly; and (iii) the Commission is in breach of its duty of transparency. We address below these professional duties and our concerns that they are being violated. Our concerns relate to the Commission's methodology; nothing should be taken as a waiver or acceptance of any legal or factual elements contained in the Commissioners' report of 9 May 2022,² nor the Commissioners' statements.

President's authority to initiate an assessment of the Commission's Mandate

Our request for Your Excellency to initiate an assessment of the Commission's mandate is grounded in Council Resolutions 5/1 and 5/2. Pursuant to Resolution 5/1, the Council allows for the "review, rationalisation, or improvement" of special procedures' mandates.³ Any such review "must be guided

¹ A/HRC/50/21.

² Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, A/HRC/50/21, 9 May 2022 (Issued on 7 June 2022) (hereinafter "Commission May 2022 Report").

³ UNHRC Resolution 5/1, Annex, Art 54.

by principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation, with a view to enhancing the promotion and protection of all human rights, civil, political, economic, social and cultural rights”.⁴ An “assessment of the mandate may take place in a separate segment of the interactive dialogue between the Council and special procedures mandate-holders.”⁵ Such an assessment, therefore, may properly be initiated by Your Excellency, as President of the Council, without prejudice to the fact that the Commission remains accountable to the Council.⁶

The Commission is in breach of its duties of impartiality and non-discrimination

Your Excellency’s letter to the Commission’s Chair, Ms Pillay, of 29 July 2022 correctly noted that “members of all of the mechanisms created by the Human Rights Council... should be guided by principles such as discretion and impartiality and adhere strictly to the terms of reference established by the Council.”⁷ Indeed, the Commission itself has asserted that it “will pursue its investigations and the collection and analysis of information and evidence placed before it guided by the principles of independence, impartiality, objectivity and integrity and the principle of ‘do no harm’”.⁸

These principles not only provide normative guidance to the Commissioners but also bind them as matters of professional duty.⁹ They also arise from the Commission’s mandate, which requires the Commissioners to investigate “*all* alleged violations and abuses of international human rights law..., and *all* underlying root causes of recurrent tensions, instability and protraction of conflict” (emphasis added) in Israeli and Palestinian territories.¹⁰ OHCHR Guidance identifies notions of independence, impartiality, and objectivity as principles that UN-mandated commissions and missions should adhere to in their working methods.¹¹

Importantly, for both independence and impartiality, appearance matters as much as reality; they must be perceived to be respected. The 2002 Bangalore Principles on Judicial Conduct provide a useful analogy.¹² They note that the principle of independence requires a judge to “uphold and exemplify

⁴ Ibid.

⁵ *Id.*, Art 55.

⁶ UNHRC Resolution 5/2, Annex, Art. 15.

⁷ Letter from the President of the Human Rights Council to Ms Pillay, 29 July 2022.

⁸ COI Terms of Reference, p.7, *available* [here](#).

⁹ UNRC Resolution 5/2 underlines “the centrality of the notions of impartiality and objectivity, as well as the expertise of mandate-holders, within the context of special procedures.” Article 3(e) of the Code of Conduct annexed to Resolution 5/2 requires mandate-holders to uphold “the highest standards of efficiency, competence and integrity, meaning, in particular, though not exclusively, probity, impartiality, equity, honesty and good faith.” Article 3(g) requires mandate-holders to adopt “conduct that is consistent with their status at all times.” Article 3(h) requires mandate-holders to be “aware of the importance of their duties and responsibilities, taking the particular nature of their mandate into consideration and behaving in such a way as to maintain and reinforce the trust they enjoy of all stakeholders.”

¹⁰ UNHRC Resolution S/30, para. 1. Cf. UNITAD’s UNSC-established mandate, which is solely directed to support “domestic efforts to hold ISIL/Da’esh accountable by collecting, preserving and storing evidence in Iraq of acts that might amount to war crimes, crimes against humanity and genocide committed in Iraq.” UNHRC S/RES/2379. See also F. D’Alessandra, Ambassador S.J. Rapp, K. Sutherland, S. Ashraph, *Anchoring Accountability for Mass Atrocities: The Permanent Support Needed to Fulfil UN Investigative Mandates*, May 2022 (“Anchoring Accountability for Mass Atrocities”), p.32-33.

¹¹ OHCHR, *Commissions of Inquiry and Fact-Finding Missions on International Human Rights and Humanitarian Law: Guidance and Practice*, 2015, p.19, 21, 22. See also Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security 1991, GA Res. 46/59, UN Doc. A/RES/46/59, 9 December 1991, para. 3; T. Boutruche, ‘Selectivity and Choices in Human Rights Fact-finding: Reconciling Subjectivity with Objectivity?’ in C. Henderson (ed.), *Commissions of Inquiry: Problems and Prospects* (Hart 2017) (hereinafter ‘Boutruche’), p.291.

¹² Boutruche, p.297.

judicial independence in both its *individual and institutional aspects*,”¹³ and specifies that the principle of impartiality “applies not only *to the decision itself* but also *to the process by which the decision is made*” (emphasis added).¹⁴ Standards of independence and impartiality are determined by whether judges appear to be independent and impartial “to a reasonable observer,” viewing the matter “realistically and practically.”¹⁵ With respect to Commissioners’ public statements, OHCHR Guidance cautions that Commissioners should avoid creating “any perception that the commission/mission has already reached its conclusions before gathering and analysing the full range of information.”¹⁶ These standards have not been met by the Commissioners.

The Commission’s June 2022 reporting gives rise to an appearance of bias

The Commissioners have, to date, rejected suggestions of bias. Ms Pillay asserted on 14 June that accusations of bias “leveled against critics of Israel policy and practices are not new and are often used by Israel to deflect public attention from findings and recommendations issued by various mechanisms dedicated to looking at Israel’s conduct in the OPT.”¹⁷ This is not accurate. As a primary matter, at the 13-14 June Interactive Dialogue, more than 22 UN member States, apart from Israel, expressed significant concerns relating to the disproportionate attention given to Israel in the Council.¹⁸ Moreover, based on the Commission’s work and the Commissioners’ public statements to date, such “accusations” cannot be so blithely dismissed.

Concerning approach to antisemitism

The Commissioners’ duties of impartiality and objectivity are interconnected with fundamental norms of equality and non-discrimination, as these norms underpin the duties.¹⁹ As such, the duties are rooted in the essence of human rights and are conceived as legal entitlements that pertain to any human being.²⁰ When creating the Human Rights Council, in 2006, the General Assembly linked its mandate to promote universal respect for the protection of all human rights and fundamental freedoms, without distinction of any kind and in a fair and equal manner, with its work to be guided by the principles of universality, impartiality, objectivity, and non-selectivity.²¹

¹³ See also International Bar Association: Human Rights Institute, Guidelines on International Human Rights Fact-Finding Visits and Reports (“Lund-London Guidelines”), para 8.

¹⁴ The Bangalore Code of Judicial Conduct, adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague (25-26 November 2002) (hereinafter “Bangalore Code”), Value 2 (Impartiality). See also Boutruche, p.297.

¹⁵ Bangalore Code, p.45; Boutruche, p.297; UNODC, Commentary on the Bangalore Code of Judicial Conduct (September 2007), para 56. See also Human Rights Committee, General Comment no 32, CCPR/C/GC/32 (2007); M Cherif Bassiouni and C Abraham (eds), *Siracusa Guidelines for International, Regional and National Fact-Finding Bodies* (Cambridge, Intersentia, 2013) 43; Lund-London Guidelines; K. J. Heller, ‘The International Commission of Inquiry on Libya: A Critical Analysis’ (2012) (hereinafter “Heller”) available [here](#), p.4, 6; T. M. Franck & H. S. Fairley, ‘Procedural Due Process in Human Rights Fact-Finding by International Agencies,’ 74 AM. J. INTL. L. 308, 309, 313; M. Farrell and B. Murphy, ‘Hegemony and Counter-Hegemony: The Politics of Establishing United Nations Commissions of Inquiry’ in C. Henderson (ed.), *Commissions of Inquiry: Problems and Prospects* (Hart 2017) (hereinafter “Farrell & Murphy”), p.53 (“in order to maintain credibility, it is imperative that a commission is seen to be conducting its inquiry objectively”).

¹⁶ OHCHR, *Commissions of Inquiry and Fact-Finding Missions on International Human Rights and Humanitarian Law: Guidance and Practice*, 2015, p.86.

¹⁷ Annex 4.

¹⁸ Joint Statement Delivered by Ambassador Michèle Taylor, 13 June 2022 available [here](#). See also Oral Statement of Australia, 14 June 2022 available [here](#).

¹⁹ See e.g. Boutruche, p.289.

²⁰ *Id.*

²¹ UNGA Resolution 60/251, Preamble, A/RES/60/251, 3 April 2006.

Statements made by each of the Commissioners concerning antisemitism, as well as statements that have appeared to stigmatise the Jewish people, violate these principles. First, your letter of 29 July addressed the concerning nature of Mr Miloon Kothari's comments to the *Mondoweiss* podcast, namely that social media is controlled largely by the "Jewish lobby," or "specific NGOs." We were likewise appalled by the association of "specific NGOs" with tropes evoked by the Commission's reference to the "Jewish lobby."²² Which "specific NGOs" was Mr Kothari referring to? Do they include the Institute for NGO Research, or organisations associated with it, such as NGO Monitor? Would Mr Kothari consider that this communication too is simply reflective of the "Jewish lobby's" attempts to "discredit" the Commission? Indeed, Mr Kothari's comments appeared to be specifically directed at delegitimizing Jewish and Israeli civil society organisations by associating them with antisemitic tropes of Jewish power and control. Coupled with the Commissioners' failure to investigate even-handedly (see further below), the intention appears to be to shrink civil society space for specific NGOs whose work entails making the case for Israeli and Jewish communities, as well as victims, affected by the Commission's mandate.

Second, Ms Pillay's response, dated 28 July 2022, was – in this context – almost as offensive.²³ To claim that Mr Kothari was "deliberately misquoted to imply that 'social media' was controlled by the Jewish lobby" served to gaslight those individuals and organisations stigmatised by Mr Kothari's comments. To "underline" that Mr Kothari's comments on "specific NGOs" were deliberately misquoted served to reinforce the perception of stigmatisation arising from his remarks.

Third, for his part, Mr Sidoti appears to trivialize the International Holocaust Remembrance Association (IHRA) consensus-building definition of antisemitism by dismissing it as "the definition of antisemitism promoted by the government of Israel, and its GONGOS."²⁴ He contends that "accusations of antisemitism are thrown around like rice at a wedding," and claims that such accusations "legitimize" antisemitism.²⁵ It is unclear whether, like Ms Pillay, Mr Sidoti also holds the view that Mr Kothari had been "deliberately misquoted" when he said that social media is controlled largely by the "Jewish lobby," or "specific NGOs", or whether it was "trivializing" and "legitimizing" antisemitism to argue that Mr Kothari's comments were racist.

Not one of the Commissioners appears fully to understand the nature of antisemitic incitement and hatred; this blind spot arguably renders each of them ill-qualified to assess the extent to which this hatred and incitement represent a root cause of the conflict.

Predetermination of conclusions

The Commission is mandated to "[i]dentify patterns of violations over time by analysing the similarities in the findings and recommendations of all United Nations fact-finding missions and commissions of inquiry on the situation" in Israeli and Palestinian administered territories.²⁶ In their

²² See Annex 1 (where Mr Kothari is quoted as saying "I think that it's not only governments, but we are very disheartened by the social media that is controlled largely by whether it's the Jewish Lobby or it's very specific NGOs. A lot of money is being thrown into trying to discredit us").

²³ COIOPTEJI/2022/GVA/78 ([here](#)).

²⁴ Responses by the Commissioners as part of the Item 2 Interactive Dialogue, 14 June 2022, available at the HRC Extranet. It. See also IHRA, 'What is antisemitism?' ([here](#)).

²⁵ Annex 4.

²⁶ UNHRC Res S-30/1, para 1(e). See also Terms of Reference, p.2.

report,²⁷ and in its statements to the Council,²⁸ the Commissioners asserted that they had accomplished this aspect of their mandate, and Ms Pillay reiterated that the Commission's May report was limited to this aspect of it.²⁹

In his interview with *Mondoweiss*, however, Mr Kothari said that one "conclusion that we've reached... is that Israel has no intention of ending the occupation and the persistent discrimination against the Palestinians lies at the heart of the systematic recurrence of violations in the occupied territories, in East Jerusalem, and in Israel."³⁰ Mr Kothari added that the occupation has "been illegal from the beginning," and "Israel is in systematic violation" of human rights law, humanitarian law, and criminal law. On these bases, Mr Kothari questioned why Israel is "even a member of the United Nations."³¹ These statements are admissions that the Commission has predetermined its conclusions regarding Israeli intentions and the legality of Israeli conduct before it has gathered and analysed the full range of information. Such statements subvert the process by which the Commission should properly arrive at its conclusions, and therefore gives rise to the appearance of bias.

Ms Pillay has also articulated conclusions as to the underlying root causes of the conflict. In remarks to the Council on 13 June, Ms Pillay observed that "[s]uccessive Israeli governments have developed clear policies for ensuring and entrenching complete control over the entirety of the occupied Palestinian territory as well as the occupied Syrian Golan." The next day, she said that "we call this a perpetual occupation, and we say that's the core underlying root cause of ongoing violence, you know, displayed in terms of the forced displacement, the threats of forced displacement demolitions, settlement construction and expansions, settler violence and the blockade of Gaza."³² To predetermine the Commission's conclusions as to root causes in this way subverts the process by which the Commission's conclusions should properly be made, and likewise gives rise to the appearance of bias.

Selectivity with regards to previous findings and recommendations

Our concerns also arise from the nature of the Commission's review of previous UN fact-finding missions and commissions of inquiry. Rather than reviewing "all" such findings and recommendations, as required by its mandate, the Commission appears to have undertaken a selective review of *certain* findings and recommendations.

For example, although the Commission relied extensively upon the Report of the United Nations Fact-Finding Mission on the Gaza Conflict (2009),³³ chaired by Richard Goldstone, it failed to mention that

²⁷ Commission May 2022 Report, para 11.

²⁸ See Annex 3; Annex 4. In the responses by the Commissioners following the debate on 14 June, Ms Pillay stated: "Let me reiterate a very important point. We have an expansive mandate. We selected to focus in our first report just on the items concerning the collection of what has been said so far in connection with the situation in Israel and Palestine by other UN mechanisms. And here we have detailed the extensive number of not only commissions of inquiry, but special rapporteurs treaty bodies... So let me reiterate then. In this report you find the assessment of findings of previous UN mechanisms relating to the underlying root causes of current conflict and instability which were overwhelmingly directed against Israel. Our assessment indicates that this is due to the occupation. As indicated in our report, the commission has not yet undertaken its own investigations, including with regards to various instances and episodes such as the May 2021 events.... [Let] me reiterate again, this one was specifically directed to all the conclusions and recommendations made by previous mechanisms and our assessment that none of those recommendations have been implemented."

²⁹ Annex 2. However, on 14 June, Mr Kothari said that the report was "not only based on... the COIs and the reports of the special rapporteur and treaty bodies" but also "testimonies that we have ourselves taken when we did a field visit to Amman." *Id.*

³⁰ Annex 1.

³¹ *Id.*

³² *Id.*

³³ A/HRC/49/83. The Goldstone report is cited in the Commission's June report.

core findings of that report were disavowed in 2011.³⁴ The Commission also excluded 2009’s Board of Inquiry (“BOI”),³⁵ 2011’s Palmer Commission (with which Israel fully cooperated),³⁶ and 2015’s BOI.³⁷ Although the Commission interpreted its mandate to extend to “recommendations made since 2018 by United Nations Treaty Bodies, Special Procedures, and the Universal Periodic Reviews of both the State of Israel and the State of Palestine,” the 2018 cut-off date and materials reviewed appear to be arbitrary. The Commission did not report on briefings to the Security Council and statements made by the United Nations Special Coordinator for the Middle East Peace Process (UNSCO) in this period, and appears to have disregarded Israel’s actions following recommendations made in 2009’s Goldstone Report,³⁸ 2009’s BOI,³⁹ the Palmer Report, as well through the UPR process and by UN Treaty Bodies.⁴⁰ The Commission also appears to have disregarded any structural bias inherent in the Council’s permanent Agenda Item 7 and resolutions passed thereunder, the one-sided mandate of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967,⁴¹ as well as recommendations to Palestinian authorities by UN bodies which remain unimplemented.⁴² Ms Pillay nevertheless concludes “none of [the] recommendations were carried out by Israel,”⁴³ and that this reflects “a clear refusal by Israel to take concrete measures to implement the findings and recommendations of past commissions.”⁴⁴ Taken together with the Commission’s treatment of antisemitism and the apparent predetermination of its conclusions, such selectivity gives rise to the appearance of bias.

The Commission is in breach of its duty to investigate even-handedly

The Commissioners are under a duty to investigate both inculpatory and exculpatory material equally. Article 6(c) of the Code of Conduct annexed to Resolution 5/2 states that “mandate-holders shall... [evaluate] all information in the light of internationally recognized human rights standards relevant to

³⁴ Richard Goldstone, *Reconsidering the Goldstone Report on Israel and war crimes*, Washington Post, 1 April 2011 [available here](#).

³⁵ See Report of UNHQ Board of Inquiry into incidents in the Gaza Strip (Ian Martin et al) – Sec-Gen summary, letter to SecCo President, 4 May 2009, A/63/855/S/2009/250 [available here](#).

³⁶ Report of the Secretary-General’s Panel of Inquiry on the 31 May 2010 Flotilla Incident, July 2011 [available here](#).

³⁷ Report of UNHQ Board of Inquiry into certain incidents that occurred in the Gaza Strip between 8 July 2014 and 26 August 2014 – Sec-Gen summary; Letter from Secretary-General to Sec-Co President, 4 May 2009 [available here](#).

³⁸ Israel tasked the Turkel Commission with assessing the conformity with international law of: (1) the imposition of the naval blockade on the Gaza Strip; (2) the actions taken by Israel to enforce the naval blockade on 31 May 2010; and (3) Israel’s mechanism for examining and investigating complaints and claims raised in relation to violations of the laws of armed conflict. Commission observer Professor Tim McCormack said, “I know that no other study is [as] comprehensive as this on the international legal obligations relating to investigation on accountability for alleged violation of international humanitarian law. I’ve learned a great deal myself from being involved in the process of the commission and the preparation of the report and I think the State of Israel should be very proud of this contribution to the study of a very important area of the law” ([here](#)). See also H. Khoury-Bisharat, ‘The Unintended Consequences of the Goldstone Commission of Inquiry on Human Rights Organizations in Israel,’ *EJIL* (2019), Vol. 30 No. 3, 877–901 [available here](#).

³⁹ Israel compensates UN for damages during last year’s Gaza offensive, UN News, 22 January 2010 [available here](#).

⁴⁰ In its Concluding Observations following its review of Israel in March 2022, the Human Rights Committee, for instance, thanked Israel for its cooperation and noted several instances of the State Party’s acceptance and implementation of recommendations. CCPR/C/ISR/CO/5. Similarly, as noted by OHCHR, Israel accepted more than 70 recommendations during its last UPR cycle ([here](#)).

⁴¹ The language of the Special Rapporteur’s mandate prejudices that Israel has committed violations and mandates the Special Rapporteur only to investigate Israeli “violations” (“To investigate Israel’s violations of the principles and bases of international law, international humanitarian law and the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, in the Palestinian territories occupied by Israel since 1967”) ([here](#)).

⁴² These include recommendations relating to the recruitment and use of children by armed groups, hate speech, and incitement. See CRC/C/PSE/CO/1 ([here](#)).

⁴³ Annex 2.

⁴⁴ Annex 3.

their mandate.” Article 8 (“Sources of information”) states that in “their information-gathering activities the mandate-holders shall: (a) be guided by the principles of discretion, transparency, impartiality, and even handedness.” Article 12 states that mandate-holders “shall: (a) [bear] in mind the need to ensure that their personal political opinions are without prejudice to the execution of their mission, and base their conclusions and recommendations on objective assessments of human rights situations; [and] (b) [in] implementing their mandate, therefore, show restraint, moderation and discretion so as not to undermine the recognition of the independent nature of their mandate or the environment necessary to properly discharge the said mandate.”

These duties are interconnected with the Commission’s duty of impartiality.⁴⁵ OHCHR Guidance states that all “tasks of the commission/mission should be based on its mandate and applicable international norms, and alleged violations by all parties should be investigated with equal thoroughness and vigour. The commission/mission should avoid any perceptions that it could be siding with one party over another.”⁴⁶

The duty to investigate inculpatory and exculpatory material equally is also interconnected with principles of independence, objectivity, and consistency. OHCHR Guidance states, in relation to the principle of independence, that Commissioners and their staff should ensure that they “are not unduly influenced in the exercise of their functions by any person, Government, NGO or other entity.”⁴⁷ In relation to the principle of objectivity, the Guidance states that the Commission “is required to collect all relevant facts from all relevant sources, objectively consider all the facts and information gathered and base its conclusions on the facts gathered. It should take into consideration only information that is gathered in an unbiased and impartial manner.”⁴⁸ In relation to the principle of consistency, the Guidance states that the Commission “should examine and analyse each piece of information it receives, irrespective of the source.” It should continue this process until “all possible sources of information have been explored and it has obtained a clear understanding of the situation under investigation.”⁴⁹

The duty to investigate both inculpatory and exculpatory material equally, together with the Commission’s mandate to “maximize the possibility of ... admissibility in legal proceedings,”⁵⁰ means that evidence should be taken in such a way as to facilitate informed cross-examination and rebuttal.⁵¹ OHCHR Guidance states that such an “investigation should strive to hear all sides of the story... This does not mean that the results of identification have to be ‘balanced’ in numbers, but rather that an equal effort to identify is to be made on all sides of a political divide, including by actively counterbalancing if information on perpetrators from one side is simply easier to find than information on perpetrators from the other.”⁵² In relation to collecting and analysing information from publicly available information, open sources, and social networks, “it is incumbent upon the investigation to

⁴⁵ See Boutruche, p.291.

⁴⁶ OHCHR, *Commissions of Inquiry and Fact-Finding Missions on International Human Rights and Humanitarian Law: Guidance and Practice*, 2015, p.33. See also Boutruche, p.302.

⁴⁷ OHCHR, *Commissions of Inquiry and Fact-Finding Missions on International Human Rights and Humanitarian Law: Guidance and Practice*, 2015, p.33.

⁴⁸ *Id.*, p.34.

⁴⁹ *Id.*, p.35. See also H. J. Kim, 'Are UN Investigations into Human Rights Violations a Viable Solution? An Assessment of UN Commissions of Inquiry,' *Journal of Human Rights Practice*, 11, 2019, 96–115, p.108.

⁵⁰ Resolution S-30/1, para 2(b).

⁵¹ Frank & Fairley, p.344.

⁵² OHCHR, *Who's Responsible? Attributing Individual Responsibility for Violations of International Human Rights Law and Humanitarian Law in United Nations Commissions of Inquiry, Fact-Finding Missions and Other Investigations*, HR/PUB/18/3 (2018) (hereinafter “OHCHR Guidance on Accountability”), p.43.

explore countervailing narratives and otherwise to test the credibility of the information and the reliability of the source.”⁵³

The emphasis on criminal accountability in the Commission’s mandate “requires an adjustment in the information-gathering methodology to account for more than just documenting ‘facts and patterns’ with which UN investigative mandates have traditionally been tasked.”⁵⁴ Moreover, the Commission’s work may impact upon rights to reputation, and its proceedings may have repercussions in the longer term for a range of rights.⁵⁵ Natural justice is also relevant as a framework for the Commission’s operation.⁵⁶

The Commission has failed to (a) investigate inculpatory and exculpatory material equally, and (b) investigate alleged violations by all parties with equal thoroughness and vigour in an impartial and unbiased manner

The Commission has asserted that it will seek to receive information from as broad a range of stakeholders as possible,⁵⁷ and both “inculpatory and exculpatory information and evidence will be treated on the same basis.”⁵⁸ Ms Pillay has underlined “the importance of hearing from all concerned parties, duty bearers, victims and witnesses,”⁵⁹ but claims that Israel’s refusal to cooperate “has obstructed the Commission from engaging with some stakeholders in all territories – including victims of rocket and other attacks directed at civilians inside Israel.” Nevertheless, Ms Pillay has said, “we’re very interested in receiving submissions from all over the world,” and “I would be very keen to conduct interviews with all stakeholders to see what the situation is like on the ground.” Ms Pillay added that “[we] are welcoming submissions from anyone, everyone ready to talk to anyone,” and that the Commission “is still open to hearing from all stakeholders regardless of political affiliation on the basis of mutual respect and professionalism.”⁶⁰ In practice, however, this does not seem to be the case.

Ms Pillay has described the Commission’s approach to outreach to date. “While we are here in Geneva,” she told the press on 14 June, “we are going to be holding a roundtable of experts, many, many of them academics, Jewish academics coming from Israel to see us or they will be on line.” Ms Pillay later added the Commission was “very much in touch with Israeli Jews,” and this was “a compensation” for Israel’s refusal to cooperate with it. Mr Kothari noted that the Commission had conducted a roundtable “with 20 leading academics and journalists and former diplomats from Jewish [sic]...” He added that “there is a voice emerging and that’s the voice we are trying to reach out to,” and “the voice we are trying to learn from.”⁶¹

It is unclear whether the Commissioners have met formally with any stakeholders who have put before them the case of Israeli and Jewish affected communities supportive of Israel. Ms Pillay and Mr Kothari claim that the Commission has met with Israeli Jews, but ethnic profiling in this context is arbitrary, and is no substitute for investigating a plurality of source materials; legal, historical, and

⁵³ *Id.*, p.66.

⁵⁴ Anchoring Accountability for Mass Atrocities, p.15.

⁵⁵ A. Bisset, 'Commissions of Inquiry and Procedural Fairness,' in C. Henderson (ed.), *Commissions of Inquiry: Problems and Prospects* (Hart 2017), p.313.

⁵⁶ *Id.*, p.313.

⁵⁷ Terms of Reference, p.8.

⁵⁸ COIOPTEJI, Frequently Asked Questions ([here](#)).

⁵⁹ Annex 3.

⁶⁰ Annex 4.

⁶¹ Annex 1.

military experts; and political opinions.⁶² To date, our own offers to meet with the Commissioners have been noted but not responded to substantively.⁶³ We have heard anecdotally that others supportive of the Israeli position have not received any response. Accordingly, we are concerned that insufficient efforts have been, and are being, made to meet with and investigate the accounts of Israelis who represent a majority of citizens of the State of Israel.

Ms Pillay and Mr Kothari are responsible for creating a perception that, by meeting “Jewish academics”, the Commission considers that its duty to investigate equally is satisfied. Ms Pillay has explained that she cites the example to “say how we are listening to all stakeholders of whatever political point of view.” Such an approach cannot be accepted; it discriminates on grounds of ethnic, national or religious identity, rather on account of the quality of the information held by the stakeholder concerned. A meeting with “Jewish academics” says nothing about whether stakeholders representing all political points of view have been engaged. That Ms Pillay suggests that the former can be substituted for the latter is revealing of the treatment that Israel, Israelis and affected Jewish communities – based on its current performance – have received to date, and can expect to receive, from the Commission. The duty to investigate equally must extend to engagement with representatives of all corners of Israeli and Jewish civil society, including those who argue on human rights grounds that Israel’s existence as a Jewish state must be safeguarded as a manifestation of the Jewish people’s right to self-determination. This represents mainstream opinion in Israel as well as amongst Jews globally.

The State of Israel is not under a duty to cooperate with the Commission

As noted above, the Commission has lamented Israel’s refusal to cooperate with it to date.⁶⁴ The Commissioners have also suggested that perceptions of bias might be remedied through permitting the Commissioners to access Israeli administered territory.⁶⁵ In her letter to you dated 28 July 2022, Ms Pillay further appeared to suggest that Israel was obliged to cooperate with “independent bodies set up by the United Nations.”⁶⁶

In situations of a lack of cooperation that require the Council’s attention, principles of objectivity, non-selectivity, and the elimination of double standards and politicisation should apply.⁶⁷ When the General Assembly resolved that Member States elected to the Council shall fully cooperate with the Council, it also stressed the importance of “ensuring universality, objectivity and non-selectivity in the consideration of human rights issues, and the elimination of double standards and politicization.” It decided that “the methods of work of the Council shall be transparent, fair and impartial and shall

⁶² OHCHR, Commissions of Inquiry and Fact-Finding Missions on International Human Rights and Humanitarian Law: Guidance and Practice, 2015, p.26; OHCHR Guidance on Accountability, p.67. See also Heller, p.7.

⁶³ Email from Commission to Joshua Kern dated 12 May 2022.

⁶⁴ See Report, para 5 (“The Commission regrets the lack of cooperation by the Government of Israel, and its refusal to allow entry to Israel and to permit access to the Occupied Palestinian Territory...”)

⁶⁵ See Annex 2 (where Ms Pillay stated: “I constantly hear murmuring that we're very biased and we only represent the one side that's anti-Israel side. So I'm I don't I cannot understand why they wouldn't let us in and interview appropriate witnesses.” Miloon Kothari stated: “one way to remove this issue of bias would be for Israel to allow us entry into inside the green line to allow us entry into the West Bank, for us to also make it easier for us to go to go into Gaza.” Mr Kothari said to *Mondoweiss*: “we’ll look at violations by the Gaza Authority, violations done by the Palestinian authorities and we can only look at that systematically and with some level of accuracy if Israel allows this allows us in and we can visit the areas where the rockets have created damage and where people have suffered”). Annex 1.

⁶⁶ COIOPTEJI/2022/GVA/78 ([here](#)) (“The Commission continues to highlight the refusal of Israel to cooperate with the Commission of Inquiry... Israel is under an obligation to abide by the international legal framework; as well as independent bodies set up by the United Nations”).

⁶⁷ UNHRC Resolution 5/1, Annex, para 64.

enable genuine dialogue, be results-oriented, allow for subsequent follow-up discussions to recommendations and their implementation and also allow for substantive interaction with special procedures and mechanisms.”⁶⁸ Accordingly, when Resolution 5/2 urged all States “to cooperate with, and assist... special procedures in the performance of their tasks and to provide all information in a timely manner, as well as respond to communications transmitted to them by the special procedures without undue delay,” it also adopted its Code of Conduct for Special Procedures Mandate-Holders of the Human Rights Council.

This letter has shown good faith concerns that the Commission is violating provisions of Resolution 5/1, and the Code of Conduct annexed to Resolution 5/2. These include violations of principles of impartiality, independence, objectivity, transparency, consistency, and non-selectivity. To date, the Commission has failed to undertake a genuine dialogue and substantive interaction with all stakeholders. Its standard operating procedures for document retention and analysis remain undisclosed and opaque (as to which, see below). In these circumstances, Israel is under no obligation - whether diplomatic, legal, or political – to cooperate with such a flawed mechanism. The absence of cooperation by the State of Israel does not abrogate the Commission’s obligation to conduct an impartial and objective investigation and to investigate even-handedly.

The Commission is in breach of its duty of transparency

The Commissioners are under a duty to be guided by principles of transparency in the conduct of their investigation.⁶⁹ The Commission should, as far as is possible, make information about its mandate, methodology, and work publicly available; it should not work in secrecy.⁷⁰ Making COIs’ standard operating procedures public can “assist [NGOs] and other documentation efforts to both understand the standards required by mandates and how they should approach their own investigative activities.”⁷¹

The Syria IIIM’s Lausanne Protocol, for example, sets out services that the IIIM undertakes to provide (eg through the use of “advanced technology tools, including state-of-the-art software” to process, store, and protect material received), modalities and responsibilities concerning the transfer of data to investigative and/or prosecuting authorities, for the protection of victims and witnesses (including the protection of personal data), its commitment to transparency, and its commitment to outreach, including through “provid[ing] feedback to Syrian NGOs that have submitted information and evidence, in order to allow them to build on lessons learned and also with a view to strengthening further collaboration with the Mechanism.”⁷²

The Commission states that it will “develop methodologies and standard operating procedures aimed at ensuring that information and evidence collected and preserved will be done so in a manner which maximises the possibility of its admissibility in legal proceedings.”⁷³ It has assured stakeholders that it “will develop an information and evidence repository along with standard operating procedures to ensure that information or evidence collected or received is stored in a manner which meets international standards for evidence preservation.”⁷⁴ Consistent with the principle of transparency, we expect the Commission’s methodology for stakeholder outreach, collecting, fairly recording, and

⁶⁸ UNGA Resolution 60/251 of 15 March 2006.

⁶⁹ UNHRC Resolution 5/2.

⁷⁰ OHCHR, *Commissions of Inquiry and Fact-Finding Missions on International Human Rights and Humanitarian Law: Guidance and Practice*, 2015, p.34

⁷¹ *Anchoring Accountability for Mass Atrocities*, p.45

⁷² *Anchoring Accountability for Mass Atrocities*, p.53-54 *citing* Lausanne Protocol.

⁷³ *Terms of Reference*, p.5.

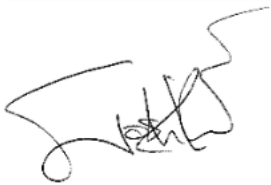
⁷⁴ *Terms of Reference*, p.5. See also Commission May 2022 Report, para 12.

preserving information to be disclosed to ensure that all information sought out by and received by the Commission is handled appropriately and even-handedly. To date, this has not occurred. We further request, therefore, that the Commission's mandate be assessed to ensure its compliance with the principle of transparency.

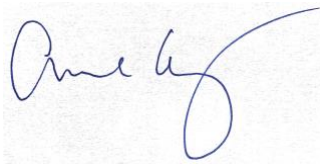
Conclusion

This letter shows that so-called "attacks" against the Commission are not "launched to delegitimize and undermine its work," but represent legitimate concerns held in good faith that the Commission has, in its work to date, failed to abide by its guiding principles. We therefore invite you to initiate an assessment of the Commission's Mandate in a separate segment during the next session of the Human Rights Council in September 2022.

Please accept, Your Excellency, the assurances of our highest consideration.



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Annex 1

39. The UN is investigating the root causes of violence between Israelis and Palestinians - Mondoweiss Podcast

Welcome to the Mondoweiss podcast. I'm your host, Dave Reid. At Mondoweiss, we cover the movements, activists and policymakers who affect the struggle for freedom in Palestine. In May, 20, 21 fighting broke out between Palestinian resistance groups in Gaza and the Israeli military. 300 Palestinian residents of Gaza were killed, including 66 children and thousands more were injured. The United Nations Human Rights Council set up a commission of inquiry to identify the root causes of the violence.

On June seven of this year, the Commission presented its first report to the Human Rights Council. Unlike past U.N. commissions of inquiry on violence between Israelis and Palestinians, the mandate of this commission is not time limited. It is not subject to annual renewal, and it is not restricted to examining the immediate circumstances that led to its formation. Rather, it was told to take its time and examine the underlying root causes of recurrent tensions.

In further contrast with past commissions and special rapporteurs on the occupied Palestinian territories, this commission has been tasked with examining the situation in both the occupied Palestinian territories and, in the words of the Commission's June report, Israel itself. The Commission is led by several highly experienced leaders in international law including Miloon Kothari, who served as the United Nations Special Rapporteur on adequate housing with the Human Rights Council.

In the wake of the commission's first report, Mondoweiss contributor David Kattenberg spoke with Miloon Kothari. His views were both candid and cutting.

David Kattenberg

Hello, Miloon Kothari. Thank you so much for joining me.

Miloon Kothari

Greetings.

David Kattenberg

Can you introduce yourself briefly? Tell me who you are and a little bit about the special Commission of inquiry and what it is to start by introducing yourself.

Miloon Kothari

Yes, it's very good to be on this program. My name is Miloon Kothari. I'm a scholar, activist from India. I've been working on human rights for the last 30 odd years. I've been primarily focusing on economic, social and cultural rights. So the issue of housing, land displacement, evictions. I was formerly a special rapporteur on adequate housing with the UN Human Rights Council from 2000-2008.

And I've also set up several civil society organizations in India. And lately I've been doing quite a lot of work on the Universal Periodic Review which is a peer review mechanism at the Human Rights Council, where the comprehensive human rights record of all U.N. member states is assessed every four and a half years, And quite a lot of training on the UN with governments, with national human rights institutions, with UN teams, with civil society.

And I was appointed in July last year to the commission, the Human Rights Council, established an independent inquiry commission to investigate human rights issues in the occupied Palestinian territories, but also in inside the Green Line in Israel. And there are some very unique features to this commission of inquiry, which I can speak about later.

So we are three commissioners. The chair of the Commission is Navi Pillay from South Africa, who was formerly High Commissioner for Human Rights and the third member is Chris Sidoti, who is an expert on national human rights institutions, and he is from Australia. So the three of us comprise this commission of inquiry.

And what I wanted to raise, there's several unique features to this commission. The Human Rights Council, of course, has had commissions of inquiry on the Occupied Territories before. I think there were seven of them. What distinguishes our commission and in a way I would consider our redeeming features is first of all, that it's an ongoing mandate. Earlier commissions were annual, had to be renewed annually but we are an ongoing mandate which gives us the scope to do sort of longer term thinking, visioning, looking at historical issues, So that temporal scope is very important and that's what has caused some concern among certain countries. We can get into that.

The second important aspect is that we have been asked to look at the root causes of the conflict. So we are not looking necessarily at specific instances of violations, but we are looking at the root causes of recurrent tensions, instability and protraction of the conflict, including systematic discrimination and repression based on national ethnic, racial or religious identity.

So that's a very important aspect of our mandate, which allows us to take a historical perspective, which allows us to look at the history of settler colonialism, to look at issues of discrimination, and to look at issues of what are the consequences historically and what have been the accumulated consequences of occupation by Israel.

The third aspect, which is very important, is the geographical scope. You know, we have a previous commission of inquiry and the work of the UN Special Rapporteur on the occupied territories were limited to the occupied areas, essentially West Bank and Gaza but our mandate includes Israel, so it includes all areas inside the Green Line. So essentially we are looking at the human rights situation from the river to the sea, which is also very important because that's a critical aspect of what has what has gone wrong in a sense.

Davif Kattenburg

In your report, you refer there's a phrase in there about Israel itself. Some refer to kind of quaintly as Israel proper, when in fact I mean, anybody who goes and travels there, as I have just recently, knows that the Green Line is largely fictitious. It's been erased. That is, Israel is really for all intents and purposes, a single state from the river to the sea.

And yet in your commission, in your report, you talk about the compelling linkage between what goes on in the occupied territories, quote unquote, and what goes on inside Israel itself. So it is and thoughts on this.

Miloon Kothari

But yeah, I think you're absolutely right, of course. But, you know, in terms of the sort of governance issues, the functioning of the state, the national laws in terms of, you know, what Israel itself recognizes as the state in terms of what the United Nations recognizes as the state of Israel as a member of the United Nations, I think that is a there is a distinction that has to be made, no your absolutely right, that when we look at the kinds of discrimination inside the green line, when we look at, you know, the historical sort of occupation issues there are many, many similarities.

But we have to treat it differently. And the reason we are, you know, obviously wanting to make the linkages is precisely because of the point you raise that actually what has transpired in the occupied territories since 67 is something that had already been happening inside the Green Line since 48. You know, the levels of discrimination, the different laws, the dispossession, of Palestinian Israelis.

So I think it's important to make that distinction, but then also to draw the parallels because that's something that the U.N. has not successfully been able to do because the earlier mandates only included the occupied territories, except for the work of the United Nations treaty bodies. You mentioned the Committee on the Human Rights Committee, but then they were limited to only looking at inside the green line.

And so we have an opportunity to make that historical link and to, you know, to see how the entire area has to be treated in terms of redressing the violations that are there.

David Kattenburg

Now, in your interim report, which you presented to the Human Rights Council in early June, this was essentially a review of past findings, determinations and findings and recommendations from

a host of other U.N. human rights bodies and mechanisms and so forth. This was not a work of your own analysis so much as it was a review of past findings.

Could you comment on that? Like methodologically? The bottom line is that none of the findings and recommendations, the myriad recommendations made by past human rights bodies mechanisms have been abided by Israel. Israel's ignored everything. And it's done so with complete impunity.

Miloon Kothari

Well, that's correct. But first of all, the resolution from the Human Rights Council that created our mandate explicitly asked us to draw the essence from all the earlier work that hadn't been done by the human rights bodies so we actually went beyond we didn't look at only the commission on inquiry, but we also looked at the work done by historically, by the mandate of the special rapporteur on occupied territories.

We looked at the work done by treaty bodies that are monitoring the different treaties that Israel has ratified and its reporting on. But I just want to say that that was not the only part covered in the report. We also had we had done a mission to Amman. We had taken, we had heard testimonies from 30 individuals who came from inside the Green Line, who came from Gaza and the West Bank.

We had leaders of both Jewish and Palestinian civil society. We had ministers from the Palestinian Authority, we had academics from inside Israel and so it was partly based on that. We also did quite a few online interviews because, you know, we are not allowed to go into the areas.

David Kattenburg

Israel would not allow you into the country, nor would Egypt allow you entry into Gaza.

Miloon Kothari

So far they haven't. But we keep trying. But Israel from the beginning has said they will not cooperate with the mandate and even our attempts to meet with the Israeli ambassador in Geneva have received no response. So that is there. So we have to collect our data and our evidence based on people that we can interview in the surrounding countries.

And we will be visiting Lebanon and we'll be visiting Egypt, possibly Syria, continuing to do this work. And we are hoping that we will be allowed into Gaza at some point. And we haven't have yet. We are hoping also that Israel will allow us in inside the Green Line and to go to the West Bank, because we feel that our mandate also asks us to look at violations on the other side.

So we look at violations by the Gaza Authority, violations done by the Palestinian authorities and we can only look at that systematically and with some level of accuracy if Israel allows this allows us in and we can visit the areas where the rockets have created damage and where people have suffered.

And we are also hoping, you know, Israel keeps talking about, well, our mandate is not accurate. Our perspective is not correct. So we you know, if they feel that they have a story to tell, they should let us in and tell us their perspective on the whole situation. So we are hoping we keep trying. We keep trying, and we hope that that they will allow us in at one point.

David Kattenburg

But Israel has never Israel has never allowed any commission of inquiry or investigating group or U.N. body committee or U.N. special rapporteur, not since Richard Falk. They don't let them into the country.

Miloon Kothari

But David, does one I mean, there are some exceptions. I was actually part of a four rapporteur mission in 2006, you know, when there was a crisis with Lebanon and we visited Lebanon we looked at the impact of Israel's cluster bombs and then we requested Israel to allow us in. And they actually did so four U.N. rapporteurs, travel.

We went to the Galilee. We interviewed families that had been affected by Hezbollah rockets. So there is a precedent there. So it's not and then Navi Pillay, when she was high commissioner, actually did an official mission of Israel as well, and she was allowed to go to the occupied territories so. So, you know, I mean, if they want to, they can it's not it's not unprecedented. And we are hoping that they will.

David Kattenburg

And they totally ignored all the recommendations and all the recommendations made by the Human Rights Committee and the Committee on Economic, Social and Cultural Rights and of the special rapporteur. They just ignore them.

Miloon Kothari

Yeah, that was our finding that.

David Kattenburg

And they do so with impunity.

Miloon Kothari

With impunity. And they've been overwhelmingly you know, ignored. And in fact, one of our conclusions is that because these recommendations have been consistently ignored, it has been one of the causes of fueling the conflict and a cause for great despair amongst the Palestinians.

But what is also very interesting about the recommendations, we found that that overwhelmingly they have been directed towards Israel. So which actually also shows the asymmetrical nature of the conflict. And, you know, it even being called conflict actually raises a lot of questions so that's you know, that's what we are trying to show.

And the other conclusion that we reached, which we think is very important to continue to stress, is that Israel has no intention of ending the occupation and the persistent discrimination against the Palestinians lies at the heart of the systematic recurrence of violations in the occupied territories, in East Jerusalem, and in Israel.

David Kattenburg

And, you know, down here in your assessment, you wrote the commission notes the strength of prima facie credible evidence available that convincingly indicates that Israel has no intention of ending the occupation and has clear policies for ensuring complete control over the occupied Palestinian territory and is acting to alter the demography through the maintenance of a repressive environment for Palestinians in a favorable environment for Israeli settlers. So you've confirmed or cited Michael Lynk's comments that the occupation is now it's permanent, it's an occupation of perpetuity. I mean, this is illegal, is it not?

Miloon Kothari

Yes, it's been illegal from the beginning. And in fact, one of our mandates is to look at the you know, the role of both humanitarian law, human rights law, criminal law, and on all three counts, Israel is in systematic violation of all the legislation that in fact, I mean, I would go as far as to raise the question is why are they even a member of the United Nations? Because they don't respect 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.

You might know at this session of the council when we presented our report, the United States, which is a, you know, become a member of the council again, circulated a statement signed by 22 countries objecting to our mandate. And that actually shows great disrespect for the body that the United States is a member of. Because once you are a member of a body and a body has adopted a mechanism, you have to you have to respect that. You cannot then say, oh, you know, we were not there last year or we don't agree with it now.

And also it's a I mean, we are quite surprised in a way. We are, I would say, we are also glad that our commission of inquiry has received so much notice. As you might know, just a few weeks ago, I think in the Senate, there's a bill that's been presented in the U.S. which is called the Elimination of the COI Act. And the Secretary of State, Antony Blinken, has gone out criticizing the thing he

has to report back to Congress next year on what the US has done to eliminate our commission. I mean, none of that is succeeding. The US failed quite badly at the Council this year to do anything to us because we have already.

David Kattenburg

And I was going to ask about that. I mean your chairperson Ms Pillay has been specifically the target of attacks in Canada. The Canadian Government has apparently expressed its displeasure with Ms Pillay's presence as chair.

Miloon Kothari

Yeah, that's right. We think it's very unfortunate to attack individual members of the commission who have been appointed to you know, a long and rigorous process. And I think I think it's just a way to try to discredit the council. But it's very I think it's very counterproductive because well, first of all, it brings more attention to our work and also it brings more support.

I mean, at the council this year, we had overwhelming support of the UN member states. The US got, you know, 20 to 22 states to sign, but that's 22 out of 193. That's not very much. And also I think that it's not only governments but we are very disheartened by the social media that is controlled largely by whether it's the Jewish lobby or it's very specific NGOs. A lot of money is being thrown into trying to discredit us.

But, you know, the important thing is that our mandate is based on international human rights and humanitarian standards. And we are all seeking the truth. And we feel that, you know, based on the evidence that we have, overwhelming evidence, I think it's one of the most well documented conflicts in the world historically, based on that evidence, based on the international law, if people feel that we are biased, then we are biased.

But for us, that's the job we've been given to do, and that's what we are doing.

David Kattenburg

But international law is not a term of reference in the context of what's referred to as the peace process. Since the early 1990s, international law is completely off the table.

Miloon Kothari

Yeah, well that was a, that was a serious flaw in the Oslo process and so on. But I think it's not it's very much been on the table with all the UN human rights bodies and it's very much the standard by which the behavior of Israel is, is assessed all over the world. So it's very, very relevant.

David Kattenburg

But it's not a term of reference for the US government nor for the Canadian government nor for the European Union. The EU talks with greater conviction about the role of international law in this quote unquote conflict. But international law was completely off the table in Ottawa and in Washington.

Miloon Kothari

Yeah, but that's, that's I would consider that a problem with Canada and the United States. It's not a problem for the world. I mean, we have all come together in the U.N. and Israel itself has ratified this instrument. It's not I mean, if there was if it was not the terms of reference, why would Israel ratify it? Why would they report to the U.N. treaty bodies?

You know, why would they come to the Human Rights Council? So I think there's a duplicity there. There are double standards. When it comes to Ukraine, the international law becomes very, very important, in fact, it's used as a standard by even by the United States, but most certainly by the European Union, also by the International Criminal Court. And they are pushing ahead and pointing out all the violations done by Russia. But the same violations of occupation and dispossession done by Israel do not receive the same treatment. So there is a serious double standard here, which needs to be exposed.

David Kattenburg

I'm wondering if you, Professor Kothari, if the apartheid lead idea came up in the course of your deliberations leading to this interim report, because the term apartheid doesn't appear anywhere, although you do at paragraph 45, there's a quote from the Human Rights Committee Concluding Observations on the Covenant on Civil and Political Rights, that is, quote, Israeli domestic legal framework maintains a three tiered system of laws affording different civil status, rights and legal protections for Jewish Israeli citizens, Palestinian citizens of Israel and Palestinian residents in East Jerusalem. This is apartheid.

Miloon Kothari

Yes. Well, there's actually been a lot of pressure on us to give our opinion on that. And we deliberated on it. We felt that we were not ready because we need to reach our own conclusions after deep study and analysis, which we haven't had time. We also feel and I think we've stated that, that we do not think it's a useful paradigm, it's a useful framework, but we don't think it's sufficient to capture the enormity of what has happened in the area.

So it doesn't look, for example, at the whole history of settler colonialism, it doesn't look at the whole issue of occupation, it doesn't look at many other dimensions which I think when we are asked to look at root causes are very important to draw the full picture. Just saying apartheid, just ending apartheid is not going to end occupation, you know, so, so there is a much, much deeper and a much more comprehensive review that has to be done. And that's what we are doing. We will get to the apartheid question at some point in the future because we will be looking at discrimination in general, you know, from the river to the sea. So I think we will. But at this point, we felt we were we were not we were not neither we were ready nor in our initial assessment did we think it was a sufficient paradigm that that we should only focus on that.

David Kattenburg

You talked in your in your interim report about developing a database or a repository of evidence that could be used in subsequent judicial processes without getting too specific. Can you talk about that? About this repository and what your thoughts are about that? Building a case that could be taken to a judicial instance.

Miloon Kothari

Obviously, we have been actually explicitly mandated to collect data, information and forensic material because we are an accountability body. We have to seek accountability. And so we have to also work with other international bodies. So, for example, we are we will be working closely with the International Criminal Court, which, as you know, has opened a file on Palestine.

We will also be looking at other methods, so you know, universal jurisdiction, perhaps a role for the International Court of Justice. So our work is to collect a repository of all the evidence that we gather and then at a particular time hand it over to the judicial bodies that can take action. So our role is much beyond just reporting and so on.

We have a very explicit investigative role and our staff, our secretariat has very senior experts on investigation and on legal jurisprudence and so on. Yes, we are beginning to collect that information.

David Kattenburg

And are members or have members of your staff been in touch with people in the International Criminal Court? Are there linkages now that have been established?

Miloon Kothari

Yes. Yes, actually, we have ourselves visited there last month and met with the deputy prosecutor. So the three commissioners have been to The Hague. And we are exploring possibilities of working with them.

David Kattenburg

Spoken with Miss Khan.

Miloon Kothari

That's right, yes. And her team.

David Kattenburg

And her team.

Miloon Kothari

Yes, that's correct.

David Kattenburg

You also speak in your interim report about trying to convince state parties to the various legal instruments that they have a duty on under, for example, Article one of the common to the Geneva Conventions that countries, state parties must respect and ensure respect for the convention, in all circumstances which they have not been doing.

I mean, there's no better example than Canada. Canada's official position is that Israel is an occupying power in the West Bank, including East Jerusalem and the Golan Heights and Gaza, and that settlements are therefore legal. It knows that settlements are therefore presumptive of crime under the Rome Statute. But Canada extends aid and assistance to Israel settlement enterprise economic, fiscal and diplomatic. And of course, the United States does as well, and so does the European Union.

So how do you how does the Commission see its role in trying to get state parties to abide by their own obligations?

Miloon Kothari

Yeah, that's a very good point. But first of all, our role is to identify the obligations. So we have been, again, given explicitly the mandate to look at third party accountability which means to look at, you know, the high contracting parties of the Geneva Conventions. I mean, all the human rights instruments, whether they're complying with their obligations, including what are called extraterritorial obligations.

And we will be doing that in one of our subsequent reports. And we will also be examining, and that's been asked, the whole question of arms, arms transfer, which is a very, very serious issue that countries you name some of them, there are others, who continue to supply arms to Israel, which are obviously also being used to suppress the you know, and to damage the Palestinian population.

So that's something we will be looking, at third party accountability. And I think that will be and it's not only arms and you know this, it's also the business interests. As you know, there's a business database on companies that operate in the occupied territories. So that's also part of the third party accountability that states allowing businesses that are registered in their countries to, you know, to operate and to promote development in these areas, primarily, you know, benefiting the Jewish populations, including, you know, work in the settlements.

So, yes, we will be looking at that. That's absolutely part of our remit.

David Kattenburg

And how and how do you go about doing that? How does the commission of inquiry go about procedurally getting state parties to abide by their obligations?

Miloon Kothari

Well, I think the first step is to identify what is the nature of that involvement and to identify the extent of the damage being done by that involvement. And that's the first step we will take. And then to obviously to discuss with the committees to raise the issue at the Human Rights Council, and see what their response is.

As you know, you know, the BDS movement is there. As you know, some countries have taken steps to label products from the occupied territories. Other countries are considering that. So I think it our role is to expose the extent of third party culpability in the occupied territories. And that's what we will do, including the arms issue, which I think which we think is very important.

David Kattenburg

And so your next step, Professor Kothari, is to move forward into your own investigation and legal analysis with a view to identifying those bearing individual criminal responsibility city. When will this work begin?

Miloon Kothari

Well, we've already started. I mean, we are we have started collecting information. And as I was mentioning that we will be visiting areas, taking testimony and slowly proceeding with that work. It's not something that will suddenly appear in a report. it's something we have to accumulate over or some years and see when it is time to share that information with the relevant authorities. But our work has already begun.

David Kattenburg

And toward the very end of your report, you say that the commission will seek to engage with the wider Palestinian diaspora. Is this 50% of the Palestinian population residing outside of the occupied territories. This is interesting. You proposed to speak to Palestinians in the United States and Canada and throughout the Middle East and Australia and all those places.

Miloon Kothari

Yes, yes, very much so. We will be speaking to the Palestinian diaspora in Lebanon, in Jordan, in Egypt, in Syria, and also wherever we go, possibly in the US as well. And that's one way for us to collect the information that we need because there are refugees that have, of course, historically been dispossessed from the occupied territories, but they're even recent are able to who can give us a lot of information.

I mean, we are getting a lot of information already from with all the new technology available, we are using we are working with the UN satellite agency. we're looking at other forms of getting information if we cannot travel. There is quite a lot of geospatial data that is available, which very clearly shows for example, which we hope to share in our report to the General Assembly, which

shows the evolution, the extent to which the occupation has been solidified in the West Bank, and the damage is being done by, for example, the blockade on Gaza.

David Kattenburg

My last question Miloon Kothari and thank you so much for your time. There is a yawning gulf, a huge chasm between the ideas that are conveyed in this interim report from the Special Commission of Inquiry and from other reports that have been produced by U.N. human rights bodies and special rapporteurs. This is a huge gulf between what they say talking about profound, systematic, comprehensive, chronic violations of international humanitarian and human rights law by State of Israel, on the one hand, and on the other hand, statements that we hear from while Joe Biden was asked just the other day, you know, what do you think about Israeli apartheid? And he said he denies it and he insists that Israel is a shining democracy, a light on to the world. And, of course, you know, Justin Trudeau in Canada says the same thing. You know, the governments of the European Union say the same thing.

So on one hand, you see the international human rights community, you know, saying one thing, and it's completely at odds with what the state parties are saying. So how does the committee, the commission, wrap its head around this? Is this demoralizing? Is this disconcerting?

Miloon Kothari

No, no, it's not demoralizing, David. It's disconcerting. It's an obstacle that we face. But, you know, it's the point I was making earlier. When you have truth and universally accepted legal standards on your side, you have to keep pursuing. And we are hoping that the more evidence we collect and we present and as I mentioning, we have a sort of a wider and a different mandate than the ones that have passed before.

We are hoping to convince these countries to go beyond ideology, to go beyond just a blind faith in whatever Israel does. We want to continue to expose that, you know, you cannot allow a country in the world to get away with this kind of we are also, you know, beginning to tackle this issue of how far you can take antisemitism, for example.

So I think that the more work we do, the more we present. And I don't think it's, I mean, I could tell you that we have had meetings at very high level with different European Union countries, and we see a change. We see a number of countries. I don't want to name them all here, but we see a number of countries who are now very critical of Israel.

But what we would like to see is to go beyond just statements to actually take action. And we are hoping that the evidence we produce we are hoping that the issues that we raise will, and the dialogs that we have with not only these countries, but with their parliaments, which we will be doing and their media and so on, and academics, we are hoping that that will that will change. And I can tell you that we see a perceptible change. It's not something where you can be just immediately optimistic. You see you see the changes on the campuses in the United States as well. So we are we are going to try to reach across the aisle.

We are hoping to also meet with people who don't agree with us. We are having regular roundtables, as I mentioned to you, we had a roundtable just two weeks ago with 20 leading academics and journalists and former diplomats from Jewish from inside the Green Line who came to Geneva to speak to us. We asked them what they thought about our first report. We asked them what do they think are the issues we should cover. We will continue to do this. You know.

David Kattenburg

What are they saying?

Miloon Kothari

Well, they generally agreed with us. They generally agreed with us. They generally they encouraged us to continue. As you know, there are very strong voices inside Israel, including leading journalists and academics who are writing and or speaking out on these issues. And in fact, what is striking to us is that some of the, you know, some of the articles and analysis that you read in some of the Israeli media is very forthright and very direct.

It's things that you would never read anywhere in the United States, for example, so there is a voice emerging. And that's the voice we are trying to reach out to. That's the voice we are trying to learn

from. Now, the political process is a much more bigger obstacle inside Israel, as you know. But we are we are, you know, trying to cross the aisle.

We are we are even willing and we've had some communication even with Congress, congress people and senators in the United States. So we are going to try to do as much work as we can, which is well beyond just our reports. Our mandate is much beyond that.

David Kattenburg

And so your next report will be issued in October.

Miloon Kothari

Yes, it will be available should be available by the end of September. We will present it in October. It's the third week of October. We present it to the General Assembly. We'll have, you know, press conferences. We're also going to try to have roundtables in the US going to be visiting some of the campuses, speak to students, and we are hoping to do some other, you know, public meetings and work when we are in we are we are going to be in the United States for about two weeks.

David Kattenburg

Malone Kothari, thank you so much for joining me today.

Miloon Kothari

Yeah, thanks very much for your work.

Annex 2

00;00;03;25 – 00;00;48;21

Very good afternoon and thank you for joining us at this press conference with the Commission of Inquiry on the occupied Palestinian Territory and in Israel. The three commissioners are with me, Miss Navi Pillay, the chairperson of the three person commission. On my left is Chris Sidoti, a member of the Commission and Miloon Kothari on the far side of the table. The commissioners presented their first report to the Human Rights Council yesterday, and this was followed by an interactive discussion which concluded this morning.

As you know, we've shared with you the list, or rather the statement that was delivered yesterday, and the report itself was made public last week. So the commissioners wanted to take this opportunity to meet with you. So we'll turn it over immediately to Mr. Pillay for his opening remarks and then to you for your questions. Thank you. Go ahead, please.

00;00;50;20 - 00;07;31;08

Navi Pillay:

Well, thank you very much for being here. Media is really, really important for the work of the commission. Because we're very interested in receiving submissions from all over the world. We do believe that the conflict in in the Middle East here involving Israel and Palestine has global consequences. So, once again, thank you for being here. My colleagues are Miloon Kothari from India, Chris Sidoti from Australia, and they will take most of the questions So as the moderator has said, we've already delivered our report we sent it well ahead to in particular to Israel and Palestine.

And it's clear from that report that we were not engaging on issues that the certain NGOs seem to have planned on. What we did is since the mandate is so expansive, we picked on the paragraph, which requires us to analyze the similarities in the findings and recommendations of all United Nations Fact-Finding Missions and Commissions of inquiry. And this is what we did.

It's massive. It's all the recommendations from 2018, and we included the treaty bodies. And in further reports, we're going to also be looking at Security Council recommendations. General Assembly and other UN bodies. This is not done before where we take the collect of the sum total of recommendations that were made and then see whether any of them were implemented.

So that's the story tale that despite these high profile recommendations made by experts and by Member States, none of those recommendations were carried out by Israel. So that's the content of the first report. If you had an opportunity to see that and we, of course, have an unlimited mandate. We will be reporting to the General Assembly in October and the focus of our recommendation as we looked at and assessed all the recommendations made so far is that the root cause is clearly the occupation and the occupation must end.

There are very many consequences of this occupation. We will be addressing them in detail in subsequent reports. So unlike other commissions, we'll just have the opportunity to file a single report and then the term is over. We are going to be continuing investigating this. While we are here in Geneva, we are going to be holding a roundtable of experts, many, many of them academics, Jewish academics coming from Israel to see us or they will be on line.

Why do I mention that? To say how we are listening to all stakeholders of whatever political point of view, so on. So we call this a perpetual occupation, and we say that's the core underlying root cause of ongoing violence, you know, displayed in terms of the forced displacement, the threats of forced displacement demolitions, settlement construction and expansions, settler violence and the blockade of Gaza.

And as we all know, this has endured for decades. And there's a sense of despair and hopelessness within the Palestinian population as well as in Israel and the diaspora. We are disappointed that Israel has not permitted us to visit Israel, to see for ourselves, to talk to victims, particularly of the Hamas rocket attacks. It's very important that we have a balanced report reflecting the situation of all victims. You know, I constantly hear murmuring that we're very biased and we only represent the one side that's anti-Israel side.

So I'm I don't I cannot understand why they wouldn't let us in and interview appropriate witnesses. However, as a compensation, as I said earlier, we're very much in touch with Israeli Jews. And many of them came out to Jordan when we physically our held interviews. So that was a huge surprise to me like that. We had like almost 20 representatives of organizations who took the trouble to cross the borders and come to us.

And I think we commissioners feel and I definitely noticed the difference that there is increased interest from the public on solving the situation in Israel and Palestine.

During the dialogue, the overwhelming majority of states supported the mandate, supported our work, and we feel very encouraged by that. However, there were some states, such as the United States, that delivered this statement together with the support of four Member States. I know they said they had 22 states, but it's four member states of the Human Rights Council.

We expressed disappointment with that view and asked how do they explain the double standards of rushing to oppose what's happening in Ukraine, the invasion, annexation, setting up a commission of inquiry there, and their reluctance to support the situation of human rights protections in Palestine And we call that double standards as well. And I hope that that message gets through.

So I will just stop there and see if my colleagues have any initial remarks. But we're very much interested in your questions. Thank you.

00;07;35;15 - 00;07;49;26

Moderator

Thank you very much. Over to you now for questions. So two. Okay. We have a question from Laurent Sierro with Swiss News Agency. If we can unmute, please.

00;07;51;02 - 00;08;35;06

Laurent Sierro:

Yeah. Thank you. Thank you, Rolando. Thank you, Commissioners, for the press conference. First. So now you're gonna lead your own investigation after having assessed all these previous recommendations. So what would be the topic and the components that you will start with in the investigation that you would like to lead? And then yesterday you complained about the fact that the funding that was planned for your mandate has been has been reduced or not all the funding was given Uh, who do you attribute that to? Thank you.

00;08;42;04 - 00;11;55;25

Navi Pillay:

Well, thank you for those questions. And you're quite right. This was really a report of what other experts had said, and we assessed the implementation part. So we have an expansive mandate and number one is we will be doing our own investigations. That's why I would be very keen to conduct interviews with all stakeholders to see what the situation is like on the ground.

And we have set certain priorities. Firstly, we have to deliver a report of the UNGA. in October. We will be working on that. And for that, we are consulting a lot of experts on the occupation, how it could be ended. You know, we're not state parties. They are the ones who have to work out solutions. But we I should be in a position to make recommendations. My colleagues will add to this.

You could see the various issues raised by people the effect on children. Just the effect of the rocket attacks on Israelis so various issues like that. Traditionally, commissions of inquiry focus on an episode that just happened, such as now the killing of the journalists Shireen Abu Akleh. And notice that we have not followed that pattern because very fortunately we have this very wide mandate to address the root causes and also to conduct our own investigations and to address justice and accountability, which is usually not the portfolio of human rights.

So we are very interested in in the part of the mandate that requires us to identify individuals who are responsible and to work with judicial institutions for possible prosecutions and to secure justice. So all this is new. We will gradually work out for each report what we are going to focus on. With the funding that's reduced. Yes. You know, I originally thought the assessment made by OHCHR was small to begin with, which was 24 staff members. We got 18 and I don't know who does what in the UN third committee, but it seems some states have the power to reduce funding. Once again, it seems there is a lack of interest in supporting human rights issues when it involves Israel and yet the same members of the third committee granted huge amounts to the triple I mechanisms for Syria and for Myanmar, we will be raising these issues with Member States because it is they who can address this issue.

So on these two questions, let me add to what did I say third committee? So its fifth committee. Sorry about that.

00;11;58;08 - 00;16;42;25

Miloon Kothari:

Yeah. Good afternoon, everyone. On the question of what are the issues we are going to address, you will have seen in our first report that we've identified a number of issues, we were very sort of pleased with the response for the last two days. The overwhelming number of states who in their own statements reinforced the issues that we had raised in our in our report.

And I want to just say that the report is not only based on what has preceded us, the COIs and the reports of the special rapporteur and treaty bodies, but also testimonies that we have ourselves taken when we did a field visit to Amman. And also we have done a series of secure online interviews with civil society leaders, with academics and others.

So the main issues that are coming out, which were reinforced over the last few days by a number of states, are the persistent discrimination against Palestinians, the construction of illegal settlements, forced evictions and demolitions that continue to drive the violence and the conflict. And this is very important, this particular issue we will be taking up, because as you all have been following that are ongoing evictions right now in in the West Bank, in Area C, in an area that Israel has designated as a firing zone in the area of Massafer Yata.

And there have been what we would like to stress in our reports is that this is an incremental, deliberate policy of the state of Israel to have evictions periodically. But it all adds up to a situation of perpetual occupation, which is what we have raised. And you have seen in the report. So other mandate holders. If I can just give you some statistics, just beginning this year, from the beginning of this year, there are 64 Palestinian owned structures that have been demolished. 130 Palestinians have been displaced. There's been a range of you know, property, acquisitions and so on. And I mean, all these data is available, so I won't go into it. But so these are the kinds of issues that we will be raising. But just to reinforce what the chair was saying, we are not looking only at individual events of human rights violations, but we are trying to establish patterns, patterns that are historical patterns that are, you know, inimical to the to the occupation that are that are leading to this constant cycles of violence and conflict.

And we in our forthcoming reports, hope to pick up on these themes. I just wanted to also say that just on the point again, that the chair raised, which we reinforced in our closing remarks this morning at the council. We are very concerned about this issue of double standards. And now it has sharply come out in the context of the crisis in in Ukraine. And we are very clear that these are these are double standards. And the international community is rightly appalled in the face of aggression and occupation and has correctly moved to act swiftly and collectively and forcefully to ensure compliance with international law. But in the case of Israel and Palestine, there has been inaction for decades, and it continues. And recent data has actually shown that the very countries who are supporting the work on the scrutiny of what's happening in Ukraine, you know, because of actions from Russia have consistently supported commissions of inquiry over the last 20 years. All the inquiries that the Council has initiated except for the ones on Israel and Palestine. So we want to continue to stress this with the European Union with the United States primarily it's the Western countries that are that have shown this duplicity and this complicity, if I can say. And also I just wanted to add that one of the one of the encouraging aspects for us has been the we are greatly emboldened in our work by the tremendous support that we have received also from Jewish groups, civil society groups, academics, even parts of the media, former diplomats from within Israel, some of whom we will be meeting next week when we have our roundtable to inform the content of our General Assembly report. Thank you.

00;16;46;22 - 00;16;50;04

Moderator:

Thank you both. We have a question now from John Zarocostas, John.

00;16;52;29 - 00;17;42;27

John Zarocostas:

Yes, good afternoon. Nice to see familiar faces on the podium. My question is with what Madame Champion just mentioned that you'll be looking at with a wide mandate for justice and accountability. Will it be like the commission of inquiry on Syria where the evidence they collect they forward to various national or international or multilateral judicial structures to follow through what is exactly the terms of reference?

And in your inquiry, will you also be interviewing officials in the UN system who are on the ground for many decades? I'm interested in particular on access to health and attacks on health. Thank you.

00;17;49;10 - 00;19;59;17

Chris Sidoti:

John. I think you've been around even longer than this conflict has and the two questions, accountability is an important component of our mandate. And in fact, the way in which accountability is framed in the mandate, it's different from other commissions of inquiry. This is one of the reasons why the resources issue has arisen for us. We have to act a little bit like the investigative mechanisms on Syria and Myanmar in collecting information, storing it, ensuring its organization and availability for accountability mechanisms, that is, national and international courts operating in accordance with the international standards of justice.

So we have this expanded mandate, and we will be taking most accountability side seriously. We are already in touch, for example, with the office of the Prosecutor of the International Criminal Court. And later this week, we'll be having a further meeting with the office. We hope to be similarly involved with other courts that are interested in accountability. So far as Israel and Palestine are concerned, that is an explicit part of our mandate. And so the simple answer, yes, that is part of what we will be doing, and we have already commenced that task and we'll be continuing it and the answer to the second question also is yes, we have met already with UN officials on the ground in the region and will continue to do so. We have to form our own independent conclusions, as the Chair has indicated. But certainly UN officials who are there, who are providing services, who are monitoring what is occurring for us critical parts of the evidentiary base. They can tell us a great deal, not as victims obviously, but as witnesses in many respects of direct issues, but also as people who have a good analysis of the situation. So we have already been in touch with them extensively and we will continue to do so.

00;20;03;09 - 00;20;12;10

Moderator:

Thank you very much. Do we have for the questions we have Nick Cumming-Bruce of The New York Times. We can unmute. Nick, please yeah.

00;20;12;12 - 00;21;07;29

Nick Cumming-Bruce

Thank you very much. I was interested by Ms. Pillay's comment that she seemed to feel as a result of the discussions you've had in Jordan particularly, that there was more interest now in finding solutions in Israel. I'm more interested in really compared with what. How do you measure or assess this trajectory? you're going to be dogged with the allegation of bias as you go forward. One of the allegations is that you're only talking to organizations from Israel that are interested in condemning Israel. I don't want to give that any particular substance, but I just wonder if you could push back a little bit at the accusations that this is an institutionally biased mechanism and that it's serving a specifically biased agenda.

00;21;10;10 - 00;24;20;01

Navi Pillay:

Well, thank you for your question, Nick. I think many believe the longer they hear this allegation of bias, that there must be some truth in it. We are welcoming submissions from anyone, everyone ready to talk to anyone. In the council today there was a NGO input that they sent us 5 million submissions, so all of them would be pro-Israel. Shall I characterize them as such? And we've actually received 2.5 million. And we have many constraints, of course, with the lack of staff and so on. But all of that will be saved. We will look into all that and if need be, we will meet with the persons who have made that submission. In this case, it's one website that does sent 2.5 million submissions and it appears to be a record of all the Jews who were killed in the Holocaust. So it's a long list of names, but I have not seen them personally. So I say this with some caution and assure you that we will be looking at all of this very much interested in the views of Israelis, of Jews, Palestinians, Bedouins, or anyone who wishes to enlighten us on any matter. You know, I have a previous record where I was the first high commissioner to go on official mission to Israel, invited by them. So I made sure I went to Sderot, that I'm pronouncing it correctly and talked talk and saw how afraid those children were because of these crashing rockets coming from the other side. It's that kind of impartiality and independence that this commission will bring to its work. All three of us would not have agreed to participate if we had been told by anyone that you can't do this or you can't do that. So we don't come with any preconceived notions here.

But if you look at the report we already filed, the assessment we made of all the recommendations made so far since 2018, those are factual findings and assessments by experts. So really if they are all presumed to be biased Security Council that is should resolutions Human Rights Council, all these member states they are all biased then I would say I'm in distinguished company but seriously we want everyone to take this commission seriously because the first time it has it can look into political questions which you can't do under the Human Rights Council regular mandates and we all are very keen to find solutions. We're not here just to say how bad things are. People on the ground know it's bad. We want contribution on ideas, on solutions, and how we can pursue a change.

00:24;21;02 - 00:26;18;12

Miloon Kothari:

And if I can just add on this point of bias, you know, we are our work is based on international standards, humanitarian law, human rights law, criminal law. It's based on truth that, you know, there's overwhelming evidence the testimonies that we are taking. And one way to remove this issue of bias would be for Israel to allow us entry into inside the green line to allow us entry into the West Bank, for us to also make it easier for us to go to go into Gaza.

We want to interview the victims of the Hamas rockets, we want to interview victims that are there because of Palestinian violence. But we have to be allowed to do that. We cannot be kept away from these territories and areas. And then there will be a, you know, an accusation of bias and here I want to say that the disappearance or the nonappearance of Israel at the Human Rights Council for us is very disturbing because it's also shows of disrespect for the council itself. There are General Assembly resolutions that call on all members of the council to be present, to respond, even if they don't agree to a mandate. It's the same problem with the United States. They're issuing a joint statement against a mechanism that has been adopted by the Human Rights Council. Shows great disrespect for the human, for the functioning of the Human Rights Council. And there are new member and this is not this does not bode well for the credibility of the United States. And they're going ahead further and getting as many signatures as possible to their statement, which was, in any case, considerably watered down. We do not accept that. We hope

that all you and all members of the Human Rights Council will respect the sanctity of the body and of the United Nations. Thanks,

00;26;18;16 - 00;26;26;12

Moderator

Further questions, colleagues. No, I don't see any. There are little yellow hands popping up. Oh, there's another a follow up from Nick. Go ahead, please.

00;26;36;40 - 00;27;17;11

Nick Cumming-Bruce

Well, yes, I'd just like to come back to this point that I made about finding Israelis who are more interested now in solutions. And I didn't get a sense of how she feels Israelis are more interested now as opposed to before and I wonder if she could address that point. And particularly, I mean, in reference to a report which has very much pinpointed the continuing occupation as the root cause of the violence, is she saying that there is now growing evidence of opinion that says this occupation has to be brought to an end? Thank you.

00;27;21;05 – 00;30;09;08

Navi Pillay

You know, I realized, Nick, that I hadn't responded to that. It's not only because of my own experience as the former high commissioner that I say I see now, I note an increased interest in participation, particularly by Israeli Jews. Firstly, in the number of submissions we received, the good response we've received now when we asked for experts to participate in the roundtable, I think there are very many academics in Israel who are publishing articles and books, and maybe they're not able to ventilate their points of views within the country and they want to use the commission to do so. I don't know yet. Who they are and what they're going to say. So I have no idea whether they're pro-Israel or anti-Israel. I'm talking about the interests and how much I welcome that they want to engage with the commission.

From the submissions made, we can see very active litigation, even by organizations that are not Palestinian organizations. They said they are even now litigating in Israel over the banning of these six NGOs who have been declared terrorist organizations and prohibited from functioning. So I see this interesting tender isn't the divide between people who are unhappy with the situation in Israel, inside Israel, as there is outside in the diaspora, they seem to think there's a very huge divide idea that these two groups are antagonistic to one another. They're not. We spent, I think, four days in Jordan listening to well-known NGOs, others, women's rights activists. So they were talking about the consequences to all people in Israel, mainly Palestine, but all people. And that's why I say I was so surprised that 20 representatives of organizations came at great risk to themselves. Some obviously could not come. They were not allowed to travel, and some reported that they'd been followed and so on. One person was actually detained at the border on the Israeli side and couldn't come to our meetings. That told me the risks they face. And yet they want to be able to tell their stories. They want to voice in these reports that we are fighting.

00;30;10;19 - 00;31;47;13

Miloon Kothari:

I can add on that. You know, there's a sort of a tremendous outpouring now of material, as Navi was saying from this, from leading academics, Israeli Jewish academics, historians. We even see a change in the media. You have probably followed the articles in Haaretz, many things that we

read that we would never read in the United States press of the analysis of what is going wrong. You have so many more religious Jewish groups that are outspoken. They're saying what whatever Israel as a state is doing is a terrible distortion of Zionism, of the, you know, the holy books of Judaism, so there is there is a I mean, there is a kind of a groundswell developing. We are not saying it's there yet, but I think it's the responsibility of the media all over the world to investigate this and see. I mean, the crisis, of course, in Israel is that that part of the society, which is which is critical of Israeli occupation policies, does not have much of a voice in the Knesset, in the parliament. But these are issues that we are following. And when we speak to them directly, which will be next week and in the coming months, we want to get to the bottom of that. And as Navi were saying, we would also like to participate even though our work is very victim centered. We would also like to participate in whatever solutions or avenues for peace that may be developing. But there's definitely a change, I would say we would say in the last few years.

00;31;47;23 - 00;34;01;14

Chris Sidoti

I'd add just one point about the context in which what Navi and Miloon describes is occurring and that is that we are just embarking on a period of possibility so far as this protracted conflict is concerned. It's been in a position, a static position now for 20 years. A generation has passed without really any significant progress at all in resolving this dispute.

But now we see instability increasing, continuing within the Israeli political leadership. We see the inevitability of human life about to affect the change in the leadership of Fatah and the Palestinian Authority. And the same dynamic inevitably occurring amongst many of the most senior leaders of Hamas. There is a possibility in the next couple of years, for the first time in a generation of new people and new ideas and new openings, I am not naive. I am not utopian. I don't say that this window is wide open but I say that it's open a little bit and that places a grave responsibility on the international system and individual states to take advantage of what may be a once in a generation opportunity to pressure for change, push for change, reopen possibilities that have been locked. Now that may not come again for another generation. If it doesn't succeed in the next few years. And for me individually, the importance of this commission of inquiry is the opportunity to make a small contribution to opening that window of possibility a bit further.

00;34;04;25 - 00;34;07;26

Moderator

Thank you all very much. We have another question from John Zarocostas.

00;34;10;26 - 00;34;26;03

John Zarocostas

Yes, it's a bit logistical. I didn't catch the details. You'll be meeting with the office of the prosecutor of the ICC in Hague or in Geneva, and the roundtable meetings will take place in Geneva or in the region. Thank you.

00;34;27;24 - 00;34;36;24

Miloon Kothari

Hi, John. The roundtable will be in Geneva next week, Monday, Tuesday. And our meetings with the office of the prosecutor will be in The Hague.

00;34;39;29 - 00;34;46;11

Chris Sidoti

But we also hope to have roundtables elsewhere as time goes. This will be a methodology for us during the life of the COI.

00;34;50;13 - 00;35;06;12

Moderator

Thank you once again for the questions before we close I think in that case, we will close this press conference and take this opportunity. Thank you all very much for joining us. And to you, of course, online for joining us for this important press conference this afternoon.

Annex 3

Check against delivery

Human Rights Council 50th Session

**The United Nations Independent International Commission
of Inquiry on the Occupied Palestinian Territory, including
East Jerusalem, and in Israel**

**Chair Navi Pillay, Remarks to the Human Rights Council
Geneva, 13 June 2022**

Item 2: Presentation of COI OPTEJI report

Mr. Vice President,

Excellencies, Members of the Council.

We are pleased to present our first **report (A/HRC/50/21)** which responds to the fifth point in our mandate, “analysing the similarities in the findings and recommendations of all United Nations fact-finding missions and commissions of inquiry on the situation”.

The report is an assessment of recommendations made by previous Commissions of Inquiry and Fact-Finding Missions, as well as recommendations made since 2018 by United Nations Treaty Bodies, Special Procedures, and the Universal Periodic Reviews of both the State of Israel and the State of Palestine. In doing this, we have focused on the findings and recommendations that directly related to underlying root causes of recurrent tensions, instability and protraction of conflict. In conjunction with this, in March of this year we held consultations in person in Geneva and Amman and by video-conference with relevant stakeholders and continue to review written submissions, complaints, reports and statements received from individuals and organizations from diverse sectors of society and political backgrounds, from disparate geographic locations.

Mr Vice President,

In conducting our review, we noted that many findings and recommendations relevant to the underlying root causes related to Palestinian entities and armed groups, but the vast majority were directed towards the State of Israel, confirming the asymmetrical nature of the conflict, dispelling the view that there are two parties on equal footing, and reflecting the reality of one state occupying another.

Mr Vice President,

It is clear from our review that this state of “perpetual occupation” of Palestine and longstanding discrimination in both Israel and Palestine is a core underlying root cause of ongoing violence. Threats of forced displacement, forced displacement, demolitions, settlement construction and expansion, settler violence and the blockade of Gaza have all contributed to and will continue to contribute to cycles of violence

This reality, which has endured for decades, brings a general sense of despair and hopelessness within the Palestinian population in Palestine, in Israel and in the diaspora. They are left without hope of a better future that affords them their full range of human rights, without discrimination.

Successive Israeli governments have developed clear policies for ensuring and entrenching complete control over the entirety

of the occupied Palestinian territory as well as the occupied Syrian Golan. A recent Supreme Court decision notably contributed to this process, in ruling that thousands of Palestinian residents of Masafer Yatta in the West Bank could be forcibly removed. This decision stands in stark contrast to core principles of international humanitarian law and international human rights law identified in our report.

This continued situation of occupation and discrimination is being used by Palestinian duty bearers to justify their own violations and abuses of international law, **including the failure of the Palestinian Authority to hold legislative and presidential elections.** The *de-facto* authorities in Gaza have shown little commitment towards upholding human rights, and no adherence to international humanitarian law.

Since the finalisation of this report, we have sadly received reports of continued violations of individual and collective rights- including excessive use of force- sometimes lethal, by Israeli security forces against Palestinians, including women and children and journalists.

Policies of occupation, dispossession, and discrimination, can only translate into increased hatred and further acts of violence. These acts of violence serve to further fuel endless cycles of conflict- on both sides.

Mr. Vice President,

The May 2021 escalation in hostilities in Gaza, including the increased violence within Israel itself and against Israeli civilians – which led to the creation of this Commission - was fuelled by the wider context of tensions in the West Bank and East Jerusalem. The reports that we have reviewed trace the connections and the consequences.

It is our strong view too that the continued occupation of the Palestinian Territory, including East Jerusalem and Gaza, the 15-year blockade of Gaza, and longstanding discrimination within Israel are all linked and cannot be looked at in isolation.

We emphasise that **impunity for human rights violations, identified by all previous commissions of inquiry and fact-finding missions, has compounded the situation, and has led to increased resentment and distrust among Israelis and Palestinians.** Impunity is a key factor fuelling conflict and violence, compromising chances for sustainable peace, coexistence and, ultimately, security. It exonerates the perpetrators of past violations and abuses of human rights and international humanitarian law and encourages future violations and abuses.

Mr. Vice President.

This Commission is but the latest in a series of investigative bodies tasked by the international community to examine the escalations of hostilities involving Israel and the Occupied Palestinian Territory.

However, our mandate differs significantly from those that came before us, in allowing us the depth and breadth to investigate all underlying root causes of this situation and the examination of recurrent patterns of human rights violations and abuses, and specific thematic areas, with a geographic scope spanning the Occupied Palestinian Territory, including East Jerusalem, and Israel, on a continuing basis.

While our review of past findings and the status of implementation of recommendations documents numerous violations and abuses of international law, as well as international crimes, **we plan to conduct our own investigations and legal analysis and reach independent findings in relation to alleged violations and abuses.** In line with the Commission's mandate, we will then **make recommendations, in particular on accountability measures,** and seek to work with judicial accountability mechanisms that adhere to internationally accepted due process and fair trial standards towards ensuring individual, state and corporate accountability. **We are already interacting with international judicial accountability mechanisms in line with**

our mandate to end impunity and ensure accountability, including individual criminal accountability.

Mr. Vice President,

The Commission has made numerous attempts to engage with the Government of Israel, underlining the importance of hearing from all concerned parties, duty bearers, victims and witnesses. We regret that Israel has so far refused to cooperate, or to allow entry to Israel. Israel has also refused to permit access to the occupied territory of the State of Palestine, despite the latter's active cooperation and desire to allow the Commission to visit. This refusal has obstructed the Commission from engaging with some stakeholders in all territories - including victims of rocket and other attacks directed at civilians inside Israel.

Mr. Vice President,

As previously noted by the independent commission of inquiry on the 2014 Gaza conflict, **the persistent lack of implementation of UN resolutions contributes to the systematic recurrence of violations in Israel and the Occupied Palestinian Territory.**

Given a clear refusal by Israel to take concrete measures to implement the findings and recommendations of past commissions, the international community must urgently explore new ways of ensuring compliance with international law. We note

that the international community has thus far failed to take any meaningful measures to ensure compliance with international law, and influence Israel in bringing an end to the occupation. This is despite the unavoidable parallels with the recent demonstration of the ability of third States and international mechanisms to take prompt and unified action to ensure respect for international law in the face of aggression, occupation and violations of international law by a member state of the United Nations. The question has to be asked why such a difference in approaches exists, and why there are glaring double standards when it comes to holding perpetrators accountable.

In accordance with our mandate from the Human Rights Council, we will carefully assess the responsibilities of third states along with that of private and other actors in the continued violations and abuses of human rights law, and violations of international humanitarian law in Palestine and Israel. This includes, but is not limited to, the transfer of arms when there is a clear risk that they might be used to commit or facilitate serious violations or abuses of international human rights law or serious violations of international humanitarian law.

My fellow commissioners and I therefore stress three overarching recommendations at this initial phase of our work, which we have found from our review are necessary to address the root causes of conflict: **the occupation must end now; all**

persons in Palestine and Israel must be afforded all their human rights, without discrimination including their right to live in peace and security alongside their neighbours. The international community must adhere to its international obligations to ensure full respect for international law in Israel and the Occupied Palestinian Territory, and work towards ensuring that those responsible for international crimes are held to account.

Finally, let me stress that, while the three Commissioners intend to faithfully implement the broad and complex mandate entrusted upon them, we are dismayed that our capacity has been weakened by the budget of the Commission having been reduced by 25% of the amount that this Council had approved. We urge this Council to look at this situation that detracts from the United Nations commitment to human rights and indeed the decisions of this Council itself. We ask members of the Council to consider measures to reinstate resources to enable the Commission to operate at an adequate capacity.

Thank you.

Annex 4

Responses by the Commissioners following the debate:

Navi Pillay:

Excellencies, members of the council, all three of the commissioners will be joining in this dialogue so I will address a few issues. The others, Chris Sidoti and Miloon Kothari, will also be contributing.

First let me say how encouraged we are that the overwhelming number of countries that spoke at this council session recognized the mandate given to us by the Human Rights Council and welcomed our report. We are obviously disappointed by statements such as that read by the United States of America reflecting the views of 4 other Member States of this council questioning the mandate and the validity of our report. Given the mandate entrusted to us by the Human Rights Council and the information included in the report as to the extremely serious human rights situation of Palestinians in the West Bank, including East Jerusalem and Gaza. This position stands in direct contrast to other investigative mechanisms, which are supported by the United States, including the independent investigative mechanism for Myanmar which also has an ongoing mandate and so does the independent mechanism on Syria which had been established by the GA. So this is not novel that this commission has been given an ongoing mandate. The other 2 instances were supported by the United States. The United States Permanent Mission has indeed expressed its strong support for that mechanism yet questions the open ended nature of this commission's mandate. This position clearly indicates that when it comes to the Human Rights Mandate and responsibilities concerning the state of Israel, some countries are not prepared to live up to their stated commitments to protect human rights. The commission would therefore ask such states that support some mechanisms but not others a question of why when human rights are universal. And I have said many times in my previous capacity as high commissioner for human rights that states should hold their friends to the same standard as their foes.

Let me reiterate a very important point. We have an expansive mandate. We selected to focus in our first report just on the items concerning the collection of what has been said so far in connection with the situation in Israel and Palestine by other UN mechanisms. And here we have detailed the extensive number of not only commissions of inquiry, but special rapporteurs treaty bodies. In our next report we intend to look at all the resolutions, including security council resolutions, human rights council resolutions and resolutions passed by other independent UN and international bodies. So a vast number of findings. So let me reiterate then. In this report you find the assessment of findings of previous UN mechanisms relating to the underlying root causes of current conflict and instability which were overwhelmingly directed against Israel. Our assessment indicates that this is due to the occupation. As indicated in our report, the commission has not yet undertaken its own investigations, including with regards to various instances and episodes such as the May 2021 events. All our investigations will examine the actions of all rights holders and duty bearers, both Israel and Palestine.

Let me recall that mandates given by the Human Rights Council are a matter decided by the States themselves. The high commission of human rights has urged council members and all observers

to do their utmost to depoliticize discussions to the extent possible and work constructively when addressing human rights, including in relation to the OPT.

Accusations of bias leveled against critics of Israel policy and practices are not new and are often used by Israel to deflect public attention from findings and recommendations issued by various mechanisms dedicated to looking at Israel's conduct in the OPT. Like all states, Israel should be held accountable for any failure to promote and protect the human rights of persons within the borders and in areas under its control. Our commission has a mandate to investigate all duty bearers and indeed our report presented to the council addressed the human rights responsibilities of the Palestinian authorities and the de facto authorities in Gaza. The report notes for example actions being taken by the Palestinian authority and the de facto authorities in Gaza that significantly curtails civic space and demands for accountability.

Two questions were addressed to us on what will be our thematic priorities for our upcoming work. As you know we have an ongoing mandate with many components to this mandate. So in this context we will be addressing all of those issues with time. We will be furnishing further reports particularly on issues of concern raised by civil society organizations and NGOs on some of the omissions in this report. So let me reiterate again, this one was specifically directed to all the conclusions and recommendations made by previous mechanisms and our assessment that none of those recommendations have been implemented. So in light of the continuing nature and the investigations of all underlying root causes of current tensions, instability and protection of conflict and patterns of violations over time, this commission will give priority to broad questions. It will give seek to identify overall patterns, policies, historical legacies, and structural inequalities that effect the enjoyment of human rights of all individuals in the occupied Palestinian territories, including East Jerusalem and in Israel and that have led to instability and protracted conflict. In doing so, it will also seek to identify where possible those responsible and will cooperate with judicial and other entities with the view to ensuring the perpetrators of violations are held accountable.

I believe the remark about the submissions that we received. We made a general call for written submissions. We received several thousand written submissions, including individual complaints, reports, and statements addressing a broad range of issues underlying root causes of recurrent tensions, instability, and protracted conflict. These were received from a vast array of geographic locations and from individuals and organizations from diverse sectors of society and diverse political backgrounds confirming to the commission the global reach of the consequences of the occupation. The commission has preserved these submissions and is conducting a continuing review of all information received. Shortly after our report was finalized, the commission also received what appears to be one submission with over 2.5 million attachments. As with all other submissions, these will all be safely stored, reviewed, and duly recorded.

As we have indicated clearly on our webpage, individual acknowledgment of receipt of information and submissions will not be provided. Under very special circumstances we have acknowledged submissions and this irrespectively of the content of the submissions. We have indeed acknowledged receiving some submissions reflecting the position of the Israeli government. The commission has not made public who it has spoken to, however as we indicated in our report, it met with Israeli and Palestinian civil society organizations and international non-

governmental organizations. The commission is still open to hearing from all stakeholders regardless of political affiliation on the basis of mutual respect and professionalism. The commission has underlined several times to the Israeli government the need to hear from all concerned parties, all duty bearers, victims and witnesses. Israel's refusal to allow the commission to visit Israel does make hearing from Israel victims and witnesses more challenging.

Chris Sidoti:

I would like to make only one comment. And that comment relates to the accusation of antisemitism. Antisemitism is an atrocity in itself. It is the basis for some of the most extreme atrocities in history. The Shoah most particularly, pogroms, persecutions going back centuries. It is a tragedy and a travesty to trivialize antisemitism for political purposes. To rob it of its content. To use it as a shield for ordinary criticism of the actions of a state. Even the definition of antisemitism promoted by the government of Israel, and its GONGOS, acknowledges that criticism of Israel, similar to that leveled against any other country, cannot be regarded as antisemitic. It seems that accusations of antisemitism are thrown around like rice at a wedding. That legitimizes antisemitism. Trivializes antisemitism. Defiles the memory of the 6 million victims of the Shoah. Frankly, it is an outrage.

Miloon Kothari:

It's an honor for me to serve on this commission. The vast majority of states that spoke yesterday and this morning have emphasized the grave human rights situation associated with the continuing occupation by Israel of Palestinian territory and reiterated the persistent discrimination against Palestinians, construction of illegal settlements, forced evictions and demolitions, as factors that will continue to drive violence and conflict. We see that happening as we sit here today in the evictions that are being carried out in Masafer Yata, the so-called firing zone in the West Bank. We will be looking into all of these themes in our future investigations and we strongly believe that all states should be held accountable to the same standards of international law and none should be above scrutiny.

I just wanted to make one very quick point which we had raised in our report and which our chair raised in her opening statement here. The question of the parallels between the two situations in Palestine and in Ukraine. The question needs to be asked why in the case of Ukraine the international community is rightly appalled in the face of aggression and occupation and has correctly moved to act swiftly and forcefully to ensure compliance with international law, while in the case of Israel and Palestine there has been inaction for decades. Are these glaring double standards? The answer has to be yes. We feel that the commission, the Human Rights Council, has to do something about this habitual persistent use of double standards by states, particularly the western states, and the recent data also shows that most of these states that have not acted against Israel, have overwhelmingly supported the accountability mechanisms from this council.

We are greatly emboldened in our work by the tremendous support that all of you are giving and also emboldened by support from a range of Jewish civil society organizations inside Israel, by a range of academics, former diplomats, and important media houses. We will continue to do our work and thank everyone for their support.