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Submission to the UN Commission of Inquiry on "the Occupied Palestinian Territory, including East Jerusalem," and Israel

by David Matas

A. The mandate

The United Nations Human Rights Council, in a resolution of May 2021, decided

"to urgently establish an ongoing independent, international commission of inquiry, to be appointed by the President of the Human Rights Council, to investigate in the Occupied Palestinian Territory, including East Jerusalem, and in Israel all alleged violations of international humanitarian law and all alleged violations and abuses of international human rights law leading up to and since 13 April 2021, and all underlying root causes of recurrent tensions, instability and protraction of conflict, including systematic discrimination and repression based on national, ethnic, racial or religious identity."

The subsequently established UN Commission of Inquiry on "the Occupied Palestinian Territory, including East Jerusalem" and Israel has invited individuals, groups and organizations to submit information and documentation relevant to its mandate. The Commission welcomed information concerning, amongst others,

"Investigate in the Occupied Palestinian Territory, including East Jerusalem, and in Israel all alleged violations of international humanitarian law and all alleged violations and abuses of international human rights law leading up to and since 13 April 2021; Underlying root causes of recurrent tensions, instability and protraction of conflict in and between the Occupied Palestinian Territory, including East Jerusalem, and Israel; as well as systematic discrimination and repression based on national, ethnic, racial or religious identity."

This submission addresses this aspect of the call for submissions. Before providing the information asked by this component of the call for submissions, we want to address two preliminary matters. The first is to explain why we are making this submission. The second is our understanding of what is being asked by the quoted texts.

B. Preliminary matters

1. The reasons for the submission

a) The need for reasons

The need to explain our reasons for submission are related to our understanding of the quoted texts. The resolution establishing the Commission and the topics of investigation are far from neutral.

The resolution excerpt and quoted topic for investigation assert that there is Occupied Palestinian Territory and that this Occupied Palestinian Territory includes East Jerusalem. So, the quoted component of the resolution and call for submissions assert that East Jerusalem is not part of Israel, that there is a Palestinian territory and that this territory is occupied.

These are not the positions of the Government of Israel. They also assert positions with which we disagree, a matter addressed in more detail later in this submission. The Commission will, presumably, act according to its mandate and produce a report that reflects its mandating resolution and its call for submissions.

The question we have to answer is, given that this is so, why make submissions at all? It is unreasonable to expect that our submission will impact the work of this Commission in any positive way.

We have seen what happens when one of these one-sided mandated exercises produces a report which does not echo the biases of the states who commissioned the report. The last thing that these states want is a neutral report. If, in defiance of their mandate, the Commission was bold enough be objective - for instance to say something as obvious as that the status of East Jerusalem as part of Israel is contested, rather than just saying that East Jerusalem is not part of Israel - the result would be a chorus of complaints and

denunciations from the states who asked for the report.¹

Indeed, this submission, in addition to having no hope of having a positive impact on the report of the Commission, opens us up to farfetched criticism we would not have received if we remained silent. Why bother to make submissions to a Commission whose report result is determined in advance, who is given a mandate to produce a result contrary to what we have to say, no matter how persuasive, no matter how grounded in reality our position may be?

Our answer is that is worthwhile, even important, to make submissions to an entity such as this Commission, despite the fact that our submission is doomed to failure, and even possibly to denunciation. We can both make submissions to the Commission and object to its existence, as long as we make clear in our submissions that we do object.

b) Human rights

One reason why it is important to make this submission is the importance of human rights. This is true both in a Middle East context and in a general context.

The UN Human Rights Council passed the resolution creating the Commission with only one vote more in favour than the votes against or abstaining. The vote was 24 in favour 9 against and 14 abstentions.

Of the 24 who voted in favour, Freedom House rated two free - Argentina and Namibia, eleven partly free - Armenia, Bangladesh, Bolivia, Burkina Faso, Cote d'Ivoire, Indonesia,

¹ See for instance the Organization of Islamic Cooperation (OIC) and country speeches in the October 2006 session of the UN Human Rights Council in reaction to the 2006 report of the mission to Lebanon and Israel of four UN rapporteurs. The reaction is set out in the text "Disproportionality and anti-Zionism" by David Matas.

Mauritania, Mexico, Pakistan, Philippines, and Senegal, and eleven not free - Bahrain, China, Cuba, Eritrea, Gabon, Libya, Russian Federation, Somalia, Sudan, Uzbekistan, and Venezuela. Of the 9 who voted against the resolution, Freedom House rated seven free - Austria, Bulgaria, Czech Republic, Germany, Marshall Islands, United Kingdom and Uruguay, one partly free - Malawi, and one not free - Cameroon.

The 2006 United Nations General Assembly resolution mandating the creation of the UN Human Rights Council provided that

"when electing members of the Council, Member States shall take into account the contribution of candidates to the promotion and protection of human rights".²

This requirement, as we can see, has gone by the wayside. If we were to take into account the contribution of Member States of the UN Human Rights Council to the promotion and protection of human rights when assessing the vote which created this Commission of Inquiry, the vote among the countries rated as free would be two in favour and seven against.

In other words, if we take into account the contribution of Member States of the UN Human Rights Council to the promotion and protection of human rights, the resolution proposing the creation of the Commission would be defeated handily. The votes in favour do not even amount to a handful. Israel, we note, is rated by Freedom House as free.

This vote is hardly surprising. Serious human rights violators gang up on a rights respecting state, it should be obvious, not out of concern for human rights. If they really were concerned about human rights, they would get their own houses in order.

Rather they vote in favour of a Commission such as this precisely because they are human rights violators. They do so to divert time and money of the UN human rights system away

² UNGA Resolution 60/251 paragraph 8

from themselves, where it should be, and towards a state with which they have nothing in common, a state which respects human rights.

Those of us concerned about human rights, not just in the Middle East, but globally, have to protest this corruption of the human rights system, the inordinate attention demanded by human rights violators to be given to a human rights respecting state. We should do so not just out of concern over the unbalanced and unfair treatment towards Israel. As well, we should do so out of concern for respect for human rights neglected, shirked, abandoned, overlooked elsewhere, because of the attention, time and money diverted to attacks on Israel.

Every minute, every dollar spent on this Commission is a minute not spent on the human rights violations in China, Russia, Venezuela, Eritrea and the many other violator countries who voted in favour of the resolution. Anyone concerned about human rights in any of these countries should be voicing their opposition, as we do, to the diversion of attention, time and money away from these countries and to this Commission.

c) The integrity of the UN

The United Nations Human Rights Council spends an enormous amount of time unnecessarily debating anti-Israel efforts, time that could be a lot better used in addressing human rights violations in countries which have no effective internal mechanisms for remedying them. The UN Human Rights Council is far from the only international organ diverted from its appointed task to attack Israel.

The United Nations Education, Science and Cultural Organization, UNESCO, is diverted from addressing education, science and culture while spending time on the efforts of anti-Zionists to condemn Israel. The World Health Organization is diverted from addressing global health issues while spending time there too on anti-Israel initiatives. The International

Criminal Court is spending unnecessary time and effort in dealing with attempts to bring Israelis before the Court. The United Nations General Assembly is a common forum for anti-Israel attacks. And one could go on.

We need to forestall this constant attempt to abuse international instances in order to attack Israel. We need to stand up for the integrity generally of international institutions. The inordinate focus on Israel is harmful to all international instances which are embroiled in it.

Attacks against Israel takes a variety of forms, one of which is corruption of multilateral institutions, diverting them from the work they should be doing in order to endorse, in detail, the anti-Israel cause. The creation of this Commission is one such example. The reports it will produce will, we expect, provide many more examples.

Entangling the various UN institutions in one-sided anti-Israel studies, resolutions, commissions, investigations, sessions and reports divorced from the mandates and often contradicting the mandates of the institutions is harmful not just in dealing with Israel/Palestinian issues. It is harmful to the credibility and functioning of these institutions, undermining their efforts to go about the work that they should be doing.

We do not expect the Commission to conclude that the task given to them is harmful to the integrity of the UN Human Right Council which created them or the UN General Assembly which budgeted them. But we can say it and we do.

d) Combating antisemitism

The third reason why we need to make submissions to this Commission is the need to stand against antisemitism. We do not make these submissions on behalf of the Government of Israel, in support of the Government of Israel or in coordination with the Government of Israel, with whom we have had no contact in the making of these submissions. We make

these submissions on behalf of the Jewish community of Canada who are, along with Jewish communities elsewhere in the diaspora, the primary victims of initiatives such as the creation of this Commission and its inevitably hostile reports.

Israel, through initiatives like the Commission, is demonized with accusations and then Jews world-wide are demonized as actual or presumed supporters of this supposedly demon state. Israel bashing ends up being global Jew bashing, both rhetorically and physically.

Israelis who misbehaved should not be blamed, even in part, for antisemitism. Even when specific accusations against individual Israelis are real, others with the same identity characteristics should not be blamed for the wrongdoing. When they are, that is an over-generalization, a stereotype, prejudice, and bigotry.

The notion that the proper way or even a proper way to attack bigotry against a group is to combat the alleged misbehaviour of some members of the group is misplaced. The proper way to attack bigotry is to attack bigotry directly. Diverting the effort against bigotry to combating alleged misbehaviour of some members of the targeted group leaves the bigotry itself in place.

Anti-Zionism does not exist because of the alleged misbehaviour of some Israelis. Rather, anti-Zionism exists because of antisemitism. Anti-Zionists oppose the existence of Israel because Israel is Jewish and not Arab. If Israel were Arab, anti-Zionism would not exist. Anti-Zionism was not an adverse reaction to behaviour of the Israeli state. Anti-Zionism paralleled Zionism. Both existed before the creation of the State of Israel. The wars against the existence of Israel began from its inception. The basis for rejection was not something Israelis did. The basis for rejection was who Israelis are -Jewish.

Israel is the only state and the Jewish diaspora is the only diaspora who are attacked rhetorically and physically simply because of the ethnic and religious composition of a state.

Canadian police recorded hate crimes are in absolute numbers greater against Jews than against any other religious or racial/ethnic group.³ On a per capita basis, the Jewish victimization is triple the rate of the next largest group, Muslims.⁴

In May 2021, the month after the heightened terrorist attacks on Israel and Israeli response, the month of the UN Human Rights Council resolution creating the Commission, Canada experienced a dramatic rise of antisemitic incidents. B'nai Brith Canada reported:

"Calls to rape Jewish women. Rocks thrown at peaceful protesters. Nazi emblems in our streets. From coast to coast, Canada's Jewish community came under assault on multiple fronts throughout the month of May, 2021. And we're talking about unprecedented ways. B'nai Brith Canada's staffers were overwhelmed by the sheer volume of calls and online reports about antisemitic incidents. We had to reassign some of our staff to the League for Human Rights to help deal with the surge in reports. B'nai Brith spent the entire past month gathering data and investigating incidents. We can now reveal that the situation was far worse than previously reported. The month was tarnished by more than 250 known incidents, including assaults. This figure does not include the many other online incidents, for which the numbers are still being compiled. Most of these incidents involved anti-Israel activists at public events who targeted anyone publicly displaying Jewish or Israeli garb or symbols."⁵

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<https://web.archive.org/web/20211007071102/https://www150.statcan.gc.ca/n1/dailyquoidien/210329/t001aeng.htm>

⁴ For the estimated Jewish population of Canada see

<https://www.elections.ca/content.aspx?section=ele&dir=pas/43ge/jui&document=jew&lang=e>

For the estimated Muslim population of Canada see

<https://worldpopulationreview.com/countries/canadapopulation>

⁵ <https://www.bnaibrith.ca/specialreportlastmonthssurgeofantisemitism/>

There were similar reports for other countries.⁶

For the Government of Israel, one sided, ill informed, unprincipled attacks at the UN are easy to ignore as just so much bafflegab. For the Jewish diaspora, ignoring these attacks is not so easy. These attacks, though aimed at Israel, end up hitting the diaspora. We must, accordingly, protest them.

e) The road to peace

The fourth reason we make this submission is the need to emphasize how destructive this Commission is to the prospect of peace between Israel and Palestinians. One would have thought that the point of focus on root causes of conflict would be to address that very issue, how to get to peace.

However, if one reads the Human Rights Council resolution and the call for submissions, one can see that the purpose of the creation of the Commission is far from that intent. The point rather seems to be to label Israeli efforts of self defence against terrorist attacks as violations and abuses of international human rights and humanitarian law. That sort of invidious labelling evenenoms the situation and pushes both parties away from peace negotiations.

Since, formally, the enabling resolution and call for submissions request information on root causes, the text below elaborates on this point at length. The root causes may not be what the authors of the resolution and call for submissions have in mind. Yet, the root causes, even if they do not conform to those implied in the resolution and call for submissions,

⁶ Cnaan Liphshiz, Times of Israel, "UK Jews record 2,255 antisemitic incidents in2021 — the highest tally in Europe10 February 2022"

<https://www.timesofisrael.com/uk-jews-record-2255-antisemitic-incidents-in-2021-the-highest-tally-in-europe/>

certainly deserve an airing.

2. The wording of the call

a) root cause or causes

The wording of the segment of the resolution and call for submissions addressed here, in addition to being tendentious, raise a number of questions about what exactly is being asked. The wording refers to root causes, as if there were more than one. In our view, there is only one root cause, anti-Zionism. While the authors of the resolution and call for submissions may well not agree with that analysis, we assume that it does not violate the intent of the resolution and call for submissions to refer to only one root cause.

As well, the segment of the resolution and call for submissions addressed here refer only to root causes and not proximate causes. Yet, proximate causes are relevant to root causes, not just because they grow from root causes, but also because they can tell us what the root causes are. Considering proximate causes helps us identify root causes. Accordingly, we assume that it does not violate the intent of the resolution and call for submissions to identify proximate causes as well as root causes.

We note differences between the mandating resolution and the call for submission, for the component of the mandate of the Commission we are addressing. The mandating resolution asks the Commission to investigate "all underlying root causes". The Call for Submissions invites information on "underlying root causes".

Both formulations accept that there is more than one underlying root cause. The second formulation would be satisfied as long as more than one root cause would be identified, as long as what the Commission considered predominant or proximate root causes were addressed.

The first formulation is more comprehensive in scope and ambition. The first formulation requires that no root cause be ignored. Insofar as there is an incompatibility between the two formulations, the formulation of the mandating resolution must prevail.

When we take the position that anti-Zionism is the root cause of the situation in the region, we are not submitting that anti-Zionism is one root cause among several. We are submitting that anti-Zionism is the only root cause. We are, accordingly, referring to all root causes when we refer to anti-Zionism as the root cause.

b) In and between

A second difference between the resolution and call for submissions is the use of the phrase "in and between". The call for submissions uses that phrase. The mandating resolution does not. The mandating resolution uses only the word "in".

If we separate the words "in" and "between" in the relevant component of the call for submissions, we get two subcomponents. One is

"Underlying root causes of recurrent tensions, instability and protraction of conflict in the Occupied Palestinian Territory, including East Jerusalem, and Israel."

The other is

"Underlying root causes of recurrent tensions, instability and protraction of conflict between the Occupied Palestinian Territory, including East Jerusalem, and Israel; as well as systematic discrimination and repression based on national, ethnic, racial or religious identity."

Even more confusing is the reference in the call for submissions to conflicts between territories. Territories do not conflict. Land does not conflict. A territory can be a place of conflict. But a territory can not engage in conflict. What is meant by the reference to

conflict between territories?

Perhaps the word "between" is meant to be a reference to conflicts between Palestinians and Israelis. Yet there are many Israelis who self-identify as Palestinians. It is unlikely that the word means to refer to a conflict between Palestinians who are not nationals of Israel and Palestinians who are. The conflict, further, is not a struggle between Jews and Arabs or Jews and Palestinians. Not all Jews are Israelis. And not all Palestinians, not all Arabs are anti-Zionist.

It would seem elementary that in order to get at the "underlying root causes of recurrent tensions, instability and protraction of conflict", we should have a clear idea of who is conflicting with whom. This component of the mandate of the call for submissions, unfortunately, is anything but clear.

There has been, it is obvious, a prolonged problem in the areas to which the quoted phrase refers. But who is conflicting with whom?

This confusion highlights a problem with the adoption of the resolution and the creation of the Commission. The resolution refers to a conflict and identifies tendentiously the territory in which the conflict is occurring, but makes no attempt to identify the conflicting parties. The call for submissions realizes the gap and attempts to fill it, but in a most confusing way.

Conflicts have to be between two or more sides. How can anyone possibly identify root causes of a conflict without an identification of who is conflicting with whom?

c) Including

The phrase in the resolution "all underlying root causes of recurrent tensions, instability and protraction of conflict, including systematic discrimination and repression based on national,

ethnic, racial or religious identity" raises the question, "included in what"? Are systematic discrimination and repression included in the underlying root causes? If so, it seemed odd, although not unusual in the context of anti-Zionist resolution, both to ask a question and then say what the answer is.

Or are systematic discrimination and repression included in the conflict? Again, it is odd to refer to systematic discrimination and repression as a conflict. The phrase "systematic discrimination and repression" suggests right on one side and wrong on the other. The word "conflict" does not take sides between the conflicting parties.

Again here, the mandate of the Commission varies from the resolution. The mandate states "as well as systematic discrimination and repression based on national, ethnic, racial or religious identity". The mandate walks away from the suggestions in the resolution that systematic discrimination and repression are either a root cause of the situation in the region or forms of conflict. The mandate of the Commission appears to be asking the Commission to treat systematic discrimination and repression as separate subjects, independently from root causes.

"Discrimination" and "repression", in the context of an anti-Zionist resolution, are trigger words. The intent is to refer to Israel as the discriminator and repressor. It is one more indication of the tendentious nature of the whole resolution and Commission exercise.

This submission nonetheless treats those words conversely. As elaborated later, we consider anti-Zionists discriminatory and repressive. Viewed from that perspective, referring to discrimination and repression as root causes of the recurrent tensions, instability and protraction of situation in the region makes sense. Discrimination and repression are legitimately included in a consideration of root causes.

d) Palestinian occupied territory

The call for submissions and the mandating resolution both refer to Occupied Palestinian Territory. Anti-Zionists typically refer to all of Israel as occupied Palestinian territory. Is that what is meant by the phrase "Occupied Palestinian Territory" in the resolution and call for submissions?

The UN Human Rights Council has a Special Rapporteur on the situation of human rights in the Palestinian Territory Occupied since 1967. The mandate of that rapporteur leaves open the claim that there was other Palestinian territory, that is to say all of Israel, occupied earlier.

Will this Commission say that Israel is not Palestinian occupied territory? Even if they were to do so, even if they were to limit territory to which the phrase "Occupied Palestinian Territory" refers to territory which came under Israeli control as a result of the 1967 six day war, there would be a problem, both for practical and legal reasons.

Gaza is not controlled by Israel. Israel controls the borders of Gaza. But then so does Egypt. Gaza is controlled by Hamas. After Israel evacuated Gaza in 2005, there were many statements by Hamas leaders that Gaza had been liberated, that the occupation of Gaza had ended. The official position today is that Israel still occupies Gaza, despite the evacuation. Hypocrisy is a tribute that Hamas pays to anti-Zionism. Occupation is a too convenient narrative to be abandoned, regardless of the facts.

The West Bank, according to the Oslo accords, is divided into three components - area A under the control of the Palestinian Authority, area B under joint Israeli - Palestinian control and area C under Israeli control. The phrase "Occupied Palestinian territory" on its face refers to territory the Palestinian Authority claims but does not control. That could be area C. Yet, even area C, which is under sole Israeli control, is controlled by Israel because of

Palestinian Authority agreement. It is not occupied against the will of the Palestinian Authority. So, the phrase "Occupied Palestinian Territory", if it is meant to refer to the West Bank and Gaza, practically appears to refer to an empty category.

Legally, the phrase is even more puzzling. Before the 1967 war, the West Bank and East Jerusalem came under the control of Jordan. Gaza came under the control of Egypt. These territories, if occupied by Israel at all today, would have been occupied as against Jordan and Egypt yesterday. Yet, both Jordan and Egypt, through peace treaties, have renounced claims over those territories.

The notion that the territory transformed to "Occupied Palestinian Territory" the moment it shifted from two controlling states to a third controlling state is untenable. When those territories were controlled by Jordan and Egypt, they were never labelled "Occupied Palestinian Territory". The notion that the territory transformed to "Occupied Palestinian Territory" the moment it shifted from two controlling states to a third controlling state is untenable.

Why would that labelling change when the state of control changes, insofar as Israel has control over those territories? The answer, for anti-Zionists, is that Jordan and Egypt are Arab. Israel is not.

That sort of distinction may be what motivates anti-Zionists. But it should not drive international law. If the West Bank, Gaza and East Jerusalem were not occupied Palestinian territory before 1967, they should not be occupied Palestinian territory after 1967 merely because the state controlling the territories, insofar as Israel has control of these territories, has changed.

Let us suppose that the resolution of the United Nations Human Rights Council and the call for submissions of the Commission, by referring to Occupied Palestinian Territory, intends

to refer only to the West Bank, Gaza and East Jerusalem and not all of Israel. At the very least one can say that this is not neutral labelling. Israel does not describe or name or characterize the West Bank, Gaza and East Jerusalem as Occupied Palestinian Territory. By describing this territory in this way, the United Nations Human Rights Council and the Commission are, from the get go, taking sides against Israel.

e) Conflict

The very labelling of what is transpiring between Israel and its enemies as a conflict creates a false symmetry between attackers and defenders. It is misleading to characterise as a conflict a situation where one side attacks and the other defends. One would not characterise the attacks of misogynists on women as a conflict between misogynists and women, or attacks of white supremacists on blacks as a conflict between white supremacists and blacks. The situation should be characterised as it is - the refusal of anti-Zionists to accept Israel, the use of violence to act out that refusal, and Israeli defense in response.

Attacks on Jews, simply because they are Jews, did not begin with the creation of the State of Israel. These attacks have existed since pre-historic times. Jews, for millennia, have been blind-sided by these attacks, not anticipating them and reacting, when they could, by flight.

Jews have been, many of them, successful contributors to the societies in which they found themselves. Their very success, rather than generating appreciation, has, for all too many, generated envy and hatred.

Antisemites attribute Jewish success not to their individual abilities but rather to a Jewish conspiracy to control the world. The very word antisemitism, though now used generically to refer to prejudice against Jews, was originally an opposition to semitism - semitism being in the mind of antisemites this world Jewish conspiracy. Jews, who knew full well that this

conspiracy did not exist, often found it hard, before the Holocaust, to take antisemitism seriously.

For those Jews who survived the Holocaust, antisemitism became impossible to ignore. Antisemitism, as nonsensical as it seems to the Jewish community, had to be countered.

There is a Hebrew phrase and a Jewish belief *tikkun olam*, repair or save the world. The antisemitism spawned by Jewish efforts and successes in doing that is emblematic of the self-destructive character of the human species. For Jews to continue to try to repair or save the world, first they must save themselves.

With Israel, what we are seeing is the playing out of antisemitism, in the form of anti-Zionism, in a local context. What is unusual about anti-Zionism is not so much that this form of antisemitism exists. What is unusual is that Jews are, at last, after millennia of unanswered victimization, finally defending themselves against these attacks.

f) Location

The reference to the Occupied Palestinian Territory, including East Jerusalem, and in Israel is problematic, even if one rephrases it to refer to the West Bank and Gaza and skips over the mislocation of East Jerusalem, because it overlocalizes the never ending crisis to which the resolution and mandate are addressed. The problem of anti-Zionism is not specific to the West Bank and Gaza. It is widespread.

Moreover, this anti-Zionism is not tied to the Palestinians, though Palestinians are instrumentalized to advance its cause. There are twenty eight states which do not recognize Israel - Algeria, Comoros, Djibouti, Iraq, Kuwait, Lebanon, Libya, Mauritania, Oman, Qatar, Saudi Arabia, Somalia, Syria, Tunisia, and Yemen, Afghanistan, Bangladesh, Brunei, Indonesia, Iran, Malaysia, Maldives, Mali, Niger, Pakistan, Venezuela, Cuba and

North Korea. This non-recognition persisted even after the Palestinian Authority accepted the existence of Israel.

At the forefront of this anti-Zionism without regard to the views of Palestinians is Iran, which has rejected any peace accords or negotiations with Israel. Those who have entered into, or even worse from the Iranian perspective, who have agreed to peace with Israel are labelled traitors. Iran even refuses to call Israel by its name, referring to it as "the Zionist entity".⁷

Iran has threatened Israel with nuclear destruction when it gets nuclear weapons, which it is developing.⁸ Iran funds terrorist entities - Hezbollah and Islamic Jihad, as well as Hamas, which attack Israel.

Hezbollah sits in Lebanon, on the northern border with Israel, as every bit as threatening and dangerous as Hamas on the western border and then some. For this UN resolution and Commission mandate to ignore the threats Israel faces from its northern border and consider only the "recurrent tensions, instability and protraction of conflict" coming from Israel's eastern and western borders is arbitrary.

Iran also makes clear the linkage between anti-Zionism and antisemitism by two car bomb attacks it effected in Buenos Argentina. The first car bomb attacked the Israeli embassy in

⁷ Mahdi Ahouie, "The Middle East peace process from the perspective of revolutionary Iran: Will Tehran ever take part?"

<http://webcache.googleusercontent.com/search?q=cache:oUQw16hhqsIJ:web.mit.edu/ISG/iaqfall04ahouie.htm+&cd=1&hl=en&ct=cnk&gl=ca>

⁸ Middle East Media & Research Institute, MEMRI Latest News, January 7, 2002, Special Dispatch No. 325; Gerald M. Steinberg "When will the West confront Iran?" National Post, July 14, 2004; Paul Hughes, "Iran claims successful field test of missile", National Post, August 12, 2004.

March 1992, killed 29 people and injured 100; the second attacked the Jewish community centre in July 1994, killing 85 and wounding over 200.⁹

To look only at the West Bank, Gaza and Israel to determine the root cause of the never ending crisis which Israel faces and in which Palestinians are enmeshed is too narrow a focus. The scope has to be widened.

g) April 13, 2021

The reference to April 13, 2021 in the resolution of the United Nations Human Rights Council special session and call for submissions to the Commission established as a result of that resolution is a mystery. It is the only specific reference in the resolution and call for submissions. The events of that date are presumably the primary reason for the special session, the resolution, the establishment of the Commission, and the call for submission. What happened then?

The special session of the Council which adopted the resolution establishing the Commission was held May 27th, 2021. The request for a special session, on May 19th, 2021, coming from Pakistan and the Palestinian Authority under the name of the State of Palestine, does not mention that date or, for that matter, any date or event.¹⁰

This request does not even mention Israel. It refers only to "the grave human rights situation in the Occupied Palestinian Territory, including East Jerusalem". The phrase "Occupied Palestinian Territory" may be meant to include Israel. Alternatively, the request may have not meant not to show concern for grave human rights abuses committed against

⁹ Anti-Defamation League "Investigation finds Iranian, Hezbollah and Syrian involvement in 1994 bombing of Argentine Jewish Community Centre" October 2003, at www.adl.org

¹⁰ <https://undocs.org/A/HRC/S-30/1>

Israel and Israelis.

The events which one would have thought precipitated the UN Human Rights Council special session which established the Commission were the Hamas rocket and missile attacks on Israel and the Israeli response. These events occurred between May 10th to 21st, when a cease fire took hold. During that period, Hamas fired over 4,300 rockets and missiles at Israel. The Hamas attack and the Israel response killed an estimated 13 people in Israel, and 248 in Gaza, including those killed by Hamas rockets falling short.¹¹

Yet, there is no reference to these events, even obliquely, in either the request for the special session, the resolution coming out of the special session or the call for submissions. Instead, there is a reference to a date almost a month before the Hamas onslaught began.

Hamas on May 10th, in the afternoon before it began its rocket and missile aggression, issued an ultimatum to Israel to withdraw its forces from the Sheikh Jarrah neighbourhood of East Jerusalem and Temple Mount by 6 pm that day, or else Hamas would attack.¹² What was going on in these locations?

An Israeli Court on May 1st had ordered the eviction for the next day, May 2nd, of some Palestinian residents living in property in Sheikh Jarrah on the basis that they were not the rightful owners of the property in which they were living. This eviction order led to some demonstrations, scuffling with police on May 6th and the continued presence of police.¹³

¹¹ Anti-Defamation League, "2021 Israel-Hamas Conflict"

<https://www.adl.org/resources/glossary-terms/2021-israel-hamas-conflict>

¹² Judah Ari Gross "IDF sends reinforcements to Gaza border as Hamas issues ultimatum on Jerusalem" 10 May 2021

<https://www.timesofisrael.com/idf-sends-reinforcements-to-gaza-border-as-hamas-issues-ultimatum-on-jerusalem/>

¹³ AP NEWS "Palestinians, Israeli settlers scuffle in east Jerusalem" May 6, 2021

These events, though they explain, in part the Hamas ultimatum, cannot explain the reference to April 13th, a date which preceded by more than two weeks these events.

What about the reference to the Temple Mount? On May 7th, there were clashes between police and rioters, again leading to the presence the police.¹⁴ Here too, the reference in the ultimatum of Hamas is explained but not the UN resolution and call for submissions reference to April 13th, which occurred substantially before the Temple Mount events to which Hamas was referring.

On its face, whatever happened on April 13th had nothing to do with the Hamas attack on Israel, the Israel response, or the events which precipitated the Hamas attack. So, why is it there? And why is it the only specific reference in the resolution and call for submissions?

If one looks at the oral statements made at the special session by states, state groupings, inter-governmental organizations, non-governmental organizations, and UN human rights experts and there were 81 such statements, the date of April 13th is not mentioned in any of them. Nobody at the special session, spoke about April 13th.

The speech of Pakistan, on behalf of the Organization of Islamic Co-operation States, does not mention the April date. Neither do the statements of Michael Lynk, Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michelle Bachelet, the UN High Commissioner for Human Rights, Gwyn Lewis, United Nations Relief

<https://apnews.com/article/jerusalem-middle-east-israel-lifestyle-religion-f4c2594aab82ca8117c39b577a42ff01>

¹⁴ "Palestinians stocked rocks for Temple Mount riots, police caught unawares" 8 May 2021, Times of Israel

<https://www.timesofisrael.com/tv-palestinians-stocked-rocks-for-temple-mount-riots-police-caught-unawares/>

and Works Agency for Palestine Refugees in the Near East (UNRWA), South Africa on behalf of Group of African States (African Group), Sweden on behalf of Nordic countries, Egypt on behalf of Group of Arab States (Arab Group), Qatar, Saudi Arabia, Syrian Arab Republic, Turkey, Al Haq, ADALAH - Legal Center for Arab Minority Rights in Israel, or the Cairo Institute for Human Rights Studies. None of the 24 states who voted in favour of the resolution which the special session adopted mentioned April 13 in their speeches.

There is nothing connected to the special session which gives us even a hint why April 13th is mentioned in the resolution of the session or the call for submissions of the Commission.¹⁵

Amnesty International released a 280 page report on February 1st, 2022 highly critical of Israel, addressed later in these submissions. The report addresses the events of May 10th to 21st, 2021, but, despite its length and detail, makes no reference to April 13th.

Human Rights Watch released a 116 page report on April 27, 2021 also highly critical of Israel, also addressed later in these submissions. The report was two weeks after April 13th. Yet, despite its length, detail and proximity to April 13th, the report makes no reference to April 13th.

The date of April 13th appears drawn out of the blue. There is no apparent explanation for that date.

From media reports, one can glean three possible explanations for this April 13th date. One explanation is based on a speculative article in the New York Times published before the special session began suggesting that an incident on April 13th was one of several that led to the Hamas attack on May 10th.

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<https://hrcmeetings.ohchr.org/HRCSessions/RegularSessions/46session/Pages/Statements.aspx?SessionId=43&MeetingDate=27/05/2021%2000:00:00>

On April 13th Israeli officials asked the Al Aqsa Mosque leadership not to broadcast prayers for a brief period later in the day during which the Israeli president would be delivering a video speech nearby, at the Western Wall. The speech was scheduled for Memorial Day, commemorating those who died for the country. The request was made out of a concern that the prayer broadcast would drown out the speech.¹⁶ The mosque leadership refused the request. Israeli police then cut the cables to the loudspeakers. The speech lasted three minutes and thirty six seconds.¹⁷

Two other possible explanations are based on reporting about protests against denial of access either to a promenade around the walls of the old city of Jerusalem or to a Palestinian gathering place outside the Damascus gate to the Old City. Al Jazeera reported on April 23rd 2021 that there had been nightly disturbances in the area of the old City gates since the start of Ramadan on April 13th with Palestinians complaining that police were blocking access to the promenade around the walls surrounding the old City.¹⁸ Reuters reported on the same date that Palestinians were complaining that police, from April 13th, were preventing them from gathering outside the Damascus gate.¹⁹ The reports indicated that

¹⁶ Patrick Kingsley "After Years of Quiet, Israeli-Palestinian Conflict Exploded. Why Now?" New York Times, May 15, 2021

<https://web.archive.org/web/20210527214803/https://www.nytimes.com/2021/05/15/world/middleeast/israel-palestinian-gaza-war.html>

¹⁷ <https://www.timesofisrael.com/rivlin-thanks-global-jewry-for-standing-side-by-side-with-israel/>

¹⁸ "Violent clashes in Jerusalem after Israeli far-right march" Al Jazeera 23 Apr 2021
<https://www.aljazeera.com/news/2021/4/23/dozens-of-palestinians-wounded-by-israeli-police-in-jerusalem>

¹⁹ Stephen Farrell and Rami Ayyub, "Scores injured in Jerusalem clashes; Israeli nationalists shout 'Death to Arabs'"

<https://www.reuters.com/world/middle-east/police-arrest-dozens-jerusalem-clashes-israeli>

the reason for the police action was preventive, to avoid clashes between extremists from both sides.

The reference intended in the Council resolution to April 13th, 2021 could be to all three. But then one would have to identify their common features. Yet, the first incident appear to have nothing in common with the other two, other than that they all happened in Jerusalem on the same day.

If one is to read the United Nations Human Rights Council special session resolution and Commission call for action literally, it looks like what mobilized the United Nations Human Rights Council to call yet another special session about Israel and establish a never ending Commission directed against the State was not, primarily, the launch from May 10 to 21 of over 4,000 rockets and missiles by Hamas or the resulting over 250 deaths. It looks like what mobilized the Council was either the temporary cutting off of a sound cable or denial of access to a promenade or gathering area or all three a month earlier.

Let us assume that one or other or all three of the events of April 13th are the references intended by the resolution and the call. If these are the answers to the mystery, if these are the reasons for the reference to April 13th, those answers lead to another mystery. Why would the Council do that?

Though the recently established Commission has the cumbersome title "The United Nations Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel", the centrality, the emphasis and the detail of April 13, 2021 in the establishing resolution justify this Commission being called "The April 13th Commission". Why in light of all the havoc, damage, injury and death on which they could rightly focus, would they give pride of place to one or other or all three of the temporary

[-nationalists-chant-death-arabs-2021-04-23/](#)

cutting off of a sound cable or denial of access to a promenade or gathering area?

Addressing this second mystery relates to the substance of these submissions on root causes. The significance of the UN emphasis on this event, to the exclusion of the other events which, in reality, should have been the focus of the resolution and the call for submission, is explored later in these submissions.

h) A reformulation of the call

It would seem that the first step in identifying root causes is answering the question, root causes of what? The mandate of the Commission, which refers to a conflict without indicating who are the conflicting parties, does not answer that question.

Going about the task of attempting to identify the conflicting parties assumes that the situation being addressed is best described as a conflict. However, that assumption, like any assumption, needs to be addressed squarely to determine whether it is rightly made.

Why is Israel being given such a hard time, both at the UN and in its own neighbourhood? Put that way, the answer is obvious and easy. The reason for the difficulties Israel face is that Israel is mostly Jewish.

Though both the resolution and the topic for investigation quoted refer to underlying root causes of conflict, there is only one underlying root cause of the present situation - anti-Zionism, the refusal to accept the existence of a Jewish state in what anti-Zionists refer to as Arab land. Land, of course, does not have ethnicity. Only people do. However, that does not stop the constant refrain of anti-Zionists that Israel is Arab land. The root cause of the difficulties Israel face has little or nothing to do with what Israelis do. It has everything to do with who Israelis are - mostly Jewish.

If we take the first part of the component of the mandate under discussion and attempt to rephrase it in a way which reflects the reality of the situation, what we get is

"Underlying root causes of recurrent tensions facing Israel, the instability of the situation of the Palestinians, and the protraction of anti-Zionism".

There are two problems with this reformulation. It is unlikely that the Commission would accept it. The very form the mandate takes bodes ill for the work of the Commission. When the mandate of the Commission is one-sided and overly narrow, it seems unlikely that the Commission would produce a balanced report. Should it do so, the report, as noted, is bound to meet with displeasure and even rejection from those who mandated its work.

Nonetheless, even though we do not hold up much hope for a fair balanced report, that does not stop us from trying to be, as best we can, fair and balanced ourselves. Even if our submission is doomed to fail with the Human Rights Council Commission itself because our submission does not adopt the one-sided perspective of the Human Rights Council resolution mandating the Commission, the submission may, and we hope would, succeed in the commission of public opinion.

The other problem is that the reformulation raises the question whether we have anything left to say about root causes once we have identified anti-Zionism as the root cause. What more is there left to say, beyond saying that there is a refusal to accept the existence of Israel as a Jewish state?

The answer is, yes there is a lot to be said. This component of the mandate of the Commission does not just ask for root causes. It asks about root causes of recurrent tensions, instability, and protraction. It asks also about discrimination and repression.

So, to address this component of the mandate of the Commission, we have to consider not

only what is causing the situation, but why the situation is so protracted. Why do tensions keep on recurring? Why is the situation so unstable? Is there discrimination? If so, who is discriminating against whom? Is there repression? If so, who is repressing whom? This submission addresses these questions.

C. Root Causes

3. Anti-Zionist Strategy

Israel was under attack from its inception. Israel was born in war, an armed invasion from a coalition of Arab states to prevent its existence. The objection to the existence of Israel was that Israel was Jewish, not Arab. Arab hostility to Israel was anti-Jewish.

What we see since 1948 and those initial attacks is not a change in the overall objective of the anti-Zionists but rather just a shift in strategies. The rejection of a Jewish state initially pursued a military course. Following on the invasions of 1948 were an Israeli pre-emptive attack in 1967 and a further invasion in 1973.

These wars having failed, the anti-Zionist camp split into two factions. One faction continued to espouse violence - what they called armed struggle or resistance and what in reality was terrorism, including suicide bombings and the use of human shields. The other faction shifted to delegitimization - going to the UN to use anti-democratic majorities to condemn Israel for virtually every human rights and humanitarian violation known to humanity, using universal standards adopted after the Holocaust and because of the Holocaust, distorting them and turning them against its surviving victims. Both factions had and have the same goal - destruction of Israel as a Jewish state. However, the means used are different.

4. Delegitimization

The Palestinian Authority under Fatah is focused on this delegitimization campaign. The resolution creating this Commission is part of that campaign.

Why are tensions recurrent, the situation unstable and the anti-Zionism so protracted? One reason is the Palestinian Authority demonization campaign at the United Nations. That demonization campaign continues and envenoms the attackers. It may give the Palestinian Authority and its constituency satisfaction to see their bigotry against Jews in their midst endorsed by the United Nations system. But it does nothing to resolve the situation. Reinforcing the prejudices of the bigoted, needless to say, is not going to persuade the victims of bigotry. That sort of strategy hardens the positions of both sides.

The constant parade of resolutions, missions, reports, commissions, rapporteurs, investigations, and sessions singling out Israel at the United Nations are efforts by anti-Zionists to destroy the State of Israel through delegitimization. The UN focus on Israel is a reflection of anti-Zionism, the root cause of the situation. The focus is, as well, a proximate cause of the present situation and the situation itself in verbal form.

a) The Commission

The creation of the Commission is a manifestation of the recurrent tensions and instability and protraction of the anti-Zionism in the region. But more than that, the creation of the Commission is a proximate cause of the recurrent tensions, instability and protraction of the anti-Zionism in the region.

Acceptance that the creation of the Commission is a proximate cause leads us back to the root cause, helps us understand what the root cause is. If the Commission were forthright about the causes, they would say that, as one of these causes, we are, by exacerbating the situation and providing a diversion on the road to peace.

The resolution of the United Nations Human Rights Council establishing the Commission and the call of the Commission, in asking for root causes of "recurrent tensions, instability and protraction of the conflict", are asking for the root causes of their own behaviour. The discovery to end that quest should be simple. All they need to do is to see themselves.

The Human Rights Council which adopted the resolution, the General Assembly which budgeted it, and the Commission which put out the call for submissions may be so befuddled that they do not realize that they are a manifestation of the very problem which they are purportedly attempting to identify. What is more likely is that they are fully aware of what they are doing.

What we typically see from human rights violators is blaming the victims for their victimization. In this case that takes the form of blaming the Jewish state for its resistance to the invasions to destroy it, its defence against the terrorist attacks against it and its rejection of the delegitimization campaign at the United Nations of which the resolution creating this Commission all form part.

Given the long history of anti-Zionism and efforts at demonization of the Jewish state within the UN Human Rights Council and General Assembly and the tendentious nature of the resolution creating the Commission, we can expect this Commission to be part of the continuing litany of demonization. Does the Commission really want to do something to alleviate recurrent tensions, instability and protraction of the situation in the region? There are two ways to do that.

One way is for the Commission to disband, for the Commissioners to resign. Alternatively, the Commission should address and attack the real source of the problem - anti-Zionism. The Commissioners should tell the Palestinian Authority to negotiate with Israel rather than seeking to undermine Israel through the UN system.

b) Length of the Mandate

One obvious indicator that what lies behind the resolution and the call for submissions is anti-Zionism, aside from the states voting for and against and the tendentious nature of the wording set out earlier, is the length of the mandate of the Commission. When is the Commission supposed to end its work? The Commission is described in its mandating resolution as "on-going". It does not matter what the Commission finds.

Even should Israel's respect for human rights reach absolute perfection, the Commission would continue, as long as there are recurrent tensions, instability and protraction of the situation in the region. Yet, as long as there is anti-Zionism those tensions, that instability, that protraction will continue to be there.

When will anti-Zionism end? Asking that question is similar to asking when antisemitism will end; the answer is never. Anti-Zionism is, after all, just a variant of antisemitism. Antisemitism has been with us since prehistoric times. It has survived the Holocaust, as devastating a condemnation of antisemitism as one can imagine. Anti-Zionism will exist as long as there is a Jewish state. So, apparently, will this Commission.

The creation of such a mandate is unusual in itself. It is even more unusual when compared with the other country mechanisms created by the UN Human Rights Council. With one exception, other country mechanisms are given fixed term mandates, potentially renewable, fixed tasks or both.

In 2021, the Council by resolution renewed the mandates of the Special Rapporteurs on the

situation of human rights in Afghanistan,²⁰ Belarus,²¹ North Korea,²² Eritrea,²³ Iran,²⁴ and Myanmar,²⁵ the Independent Experts on the situation of human rights in Mali²⁶ and in Somalia,²⁷ the Independent International Commission of Inquiry on Syria²⁸, and the Commission on Human Rights in South Sudan²⁹ each for one year and the Special Rapporteur on the situation of human rights in Cambodia³⁰ and the Independent Fact Finding Mission for Venezuela³¹ each for two years. The Council in 2021 mandated a Special Rapporteur for Burundi³² who was requested to present a comprehensive report for the fifty first session of the Council. The Council also in 2021 established an International Team of Experts on the Democratic Republic of Congo³³ who were requested to present their final report at the 51st session of the Council.

²⁰ Resolution A/HRC/RES/48/1, 13 October 2021, clause 12

²¹ A/HRC/47/L.13, 7 July 2021, clause 18

²² A/HRC/RES/46/17, 30 March 2021, clause 16

²³ A/HRC/47/L.14, 7 July 2021, clause 2

²⁴ A/HRC/RES/46/18, 6 April 2021, clause 1

²⁵ A/HRC/RES/46/21, 29 March 2021, clause 47

²⁶ A/HRC/RES/46/28, 26 March 2021, clause 28

²⁷ A/HRC/RES/48/22, 15 October 2021, clause 18

²⁸ A/HRC/RES/46/22, 30 March 2021, clause 38

²⁹ A/HRC/RES/46/22, 30 March 2021, clause 25

³⁰ A/HRC/48/L.16, 4 October 2021, clause 6

³¹ A/HRC/RES/39/2, 3 October 2018, clause 15

³² A/HRC/48/L.19/Rev.1, 5 October 2021, clause 21

³³ A/HRC/RES/48/20, 13 October 2021, clause 42

To supplement the work of Special Rapporteur on Belarus, the Office of the High Commissioner for Human Rights has, as a result of a Council resolution,³⁴ established an examination of the human rights situation in Belarus in order to present a comprehensive report at the 49th session of the Council. As a result of a resolution of the Council passed in March 2021,³⁵ the Office of the High Commissioner for Human Rights established a Sri Lanka accountability project which is scheduled to present a comprehensive report to the Council at its fifty first session.

The Independent Experts on the situation of human rights in the Central African Republic³⁶ submitted their final report in June 2021. The Council established Fact Finding Mission for Libya³⁷ is requested to present a comprehensive report to the 50th session of the Council. The Council established in December 2021 an international commission of human rights experts on Ethiopia for one year, renewable as necessary.³⁸

To supplement the work of the Special Rapporteur on Myanmar, the Human Rights Council created an ongoing independent mechanism

"to collect, consolidate, preserve and analyse evidence of the most serious international crimes and violations of international law committed in Myanmar since 2011, and to prepare files in order to facilitate and expedite fair and independent criminal proceedings, in accordance with international law standards, in national, regional or international courts or tribunals that have or may in the future have

³⁴ A/HRC/RES/46/20, 29 March 2021, clause 16

³⁵ A/HRC/RES/46/1, 26 March 2021 clause 16

³⁶ S/2021/569 25 June 2021

³⁷ A/HRC/RES/46/20, 29 March 2021, clause 16

³⁸ UN document A/HRC/S33/L.1 clause 9

jurisdiction over these crimes, in accordance with international law".³⁹

This Commission on "the Occupied Palestinian Territory, including East Jerusalem," and Israel, in contrast, is not given a term of one year or two. It is not asked to present a comprehensive written report by a certain session. It is not given a specific limited task. It is asked rather to report on a wide range of matters on an annual basis indefinitely.⁴⁰

An astute reader should already by now be able to guess the one other exception to the fixed term and/ or specifics of mandates of missions, mechanisms, experts and rapporteurs. It is, of course, the Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967. The mandate of that Rapporteur continues "until the end of the Israeli occupation" of "Arab territories, including Palestine".⁴¹ Since anti-Zionists consider all of Israel to be Arab territory, the mandate of this Rapporteur exists as long as Israel exists as a Jewish state.

Myanmar, like Israel, has two mechanisms, one of which, the Special Rapporteur, has a limited term. Israel is the only country with two mechanisms, both of which have unlimited terms.

This singling out of Israel, in this case for indefinite scrutiny, is far from unusual. Israel is the country that is the subject of the most Human Rights Council special sessions – nine - the most resolutions and the harshest language in the resolutions. It is the only country which has a dedicated agenda item in the Human Rights Council directed to attacking it.⁴²

³⁹ A/HRC/RES/39/2, 3 October 2018, clause 22

⁴⁰ Clause 2 (h)

⁴¹ Human Rights Commission resolution 1993/2 A

⁴² See David Matas, *Anti-Zionism and Antisemitism*, Chapter Nine "Corruption of International Institutions"

This, in spite of the fact that, as noted earlier, Israel ranks high in human rights ratings.

It is sometimes said that the UN holds up a mirror to the face of the world. It would be more accurate to say that the UN provides a couch for the psychoses of the world. Wandering into the UN today, one would think that Israel is the world's worst human rights violations. When the UN Human Rights Council began in 2006 its first three special sessions were directed against Israel. When the Council began, one would have thought that Israel was the world's only human rights violator.

Normally human rights concerns are raised for the purpose of alleviation. Here the purpose is different, to contribute to the delegitimization campaign against Israel.

The notion of making Israel a better state by suggesting improvements in its human rights record can not possibly be the purpose of this obsessive focus on a state whose human rights record is far better than every other state the subject of special procedures, mechanisms, investigations, missions or commissions and the overwhelming majority of states who vote in favour of the litany of condemnations of Israel. When it comes to Israel, the Human Rights Council stands on the side of the violators and against human rights. Needless to say, the effect of this sort of UN behaviour on the alleviation of human rights violations committed by Israel is bound to be nil.

The Commission is a dog chasing its tail. The tail will never be caught. The only realistic outcome for the Commission is to stop the chase. Recurrent tensions, instability and protraction of the of anti-Zionism in the region become a self-fulfilling prophecy when the Council sets up a mechanism established to produce one sided condemnations of Israel and reinforcement of anti-Zionist biases which support and generate recurrent tensions, instability and protraction.

5. Victimization

It overstates the importance of the United Nations to suggest the root cause or even a primary proximate cause lies there. What we see at the United Nations is a shadow, an echo of the situation in the region, at most a reinforcing cause of the problem. A more significant impact of the perversion of the United Nations to support anti-Zionist bigotry, as noted, earlier lies elsewhere, the global continuation and rise of antisemitism. The reason the UN is caught in the thralls of the anti-Zionist faction is the hold that antisemitism and its baby brother anti-Zionism have on the planet.

Much more real as a proximate cause of the situation in the region is the engineered victimization or instrumentalization of Palestinians. Palestinians are victims of human rights violations that are at one and the same time real and engineered. Claimed Israeli human rights violations are, in large part, Israeli self-defense measures decontextualized from the anti-Zionist terrorism and threats of terrorism which precipitated them. Security measures are criticized as if the threat of terrorism did not exist, as if the imposition of these measures was just discrimination and repression.

a) Refugees

Anti-Zionists claim that Palestinians are refugees. Yet, legally, almost entirely they are not.⁴³ The United Nations Relief and Works Agency (UNRWA) definition of refugees is an artificial concoction that has more or less nothing to do with the definition of refugees found in the United Nations Refugee Convention.

The UNRWA definition of refugees includes nationals of other states, those with substantive

⁴³ David Matas "Learning from the past: Palestinian and Jewish refugees" Remarks prepared for a delivery to a conference on Justice for Jews from Arab countries, Jerusalem, Israel, 10 September 2012

rights of nationality in other states, temporary workers in the territory that became Israel, those who have committed war crimes, crimes against humanity, crimes against peace, serious non-political crimes, and acts contrary to the purposes and principles of the United Nations, those who have local integration as a durable solution, and who refuse to renounce armed activity. The definition also includes those who have ceased to be refugees and those with hereditary status - descendants of all of this artificially enlarged class of refugees, merely because they are descendants. None of these fit within the UN Refugee Convention definition of refugees.

The right of return that anti-Zionists claim has no basis in international law. Descendants generally do not have a right of entry, let alone nationality, in a country which now has jurisdiction over territory in which one of their ancestors once lived. Such a right, if legislated by any country, as Israel has done, does not violate international law. International law does not require recognition of such a right, absent such legislation. But, even if one puts that absence of international legal foundation requiring recognition, as opposed to empowering, the right of return to one side, the very claim of wanting to return, not eventually when the situation changes, but immediately, in the current situation, is inconsistent with a claim to refugee status.

The assertion that there now exists a Palestinian state is inconsistent with the claim of refugee status for citizens of this asserted new state. Yet, even after the assertion of the existence of this Palestinian state, the claim that its population are refugees persists.

One durable solution for refugees, promoted by the Office of the United Nations High Commissioner for Refugees, is resettlement. Prime Minister Jean Chrétien in April 2000 and Foreign Affairs Minister John Manley in January 2001 offered to resettle Palestinian refugees in Canada. PLO spokesman Ahmed Abdel Rahman rejected the Prime Minister's offer. He said: "We reject any kind of settlement of refugees in Arab countries, or in

Canada."⁴⁴

John Manley, in response to his offer, was burned in effigy near the West Bank city of Nablus.⁴⁵ Hussum Khader, head of the largest Palestinian Fatah militia in Nablus, "If Canada is serious about resettlement, you could expect military attacks in Ottawa or Montreal".⁴⁶

The narrative of expulsion of Palestinians from Israel in anti-Zionist mythology is incomplete. As I had previously written, the Palestinian refugee population was created by the wars for Israel's existence. Without the attacks by Arab states against Israel from its very beginning, there would have been no Palestinian refugees. Arab governments and leaders called on Palestinians to get out of the way while Arab armies expelled the Jewish population from British mandate Palestine. Some Palestinians fled because they heeded those calls. Others fled simply to avoid the crossfire of war.⁴⁷

There were more Jewish refugees from Arab countries and Iran created by the anti-Israeli wars, expelled from those countries because they were Jewish, than Palestinian refugees from Israel. Yet, these Jewish refugees have now become completely resettled. The reason there is no comparable development for Palestinian refugees is that, for anti-Zionists, the well-being of Palestinians comes second to hatred of Israel.

b) BDS

Another form of engineered victimization is the boycotts divestment and sanctions (BDS)

⁴⁴ Robert Fife, "Policy chaos as PM stumbles again", National Post, April 13, 2000

⁴⁵ Mike Trickey "Angry at a reported offer of a home, Palestinians burn Manley in effigy" Ottawa Citizen, January 19, 2001

⁴⁶ "Canadians might understand now" Canadian Jewish News, February 22, 2001

⁴⁷ David Matas *Aftershock: Anti-Zionism and Antisemitism* Dundurn, 2005, page 166

campaign against Israel. In December 2013, Palestinian Authority Chairman Mahmoud Abbas stated that the Authority did not support a boycott of Israel, but does support a boycott of Israeli goods produced in the West Bank, including goods produced in area C, the part of the West Bank which, according to the Oslo Accord, remains under the sole control of Israel.⁴⁸ Yet, the production of goods in the West Bank employs Palestinians. The BDS campaign results in unemployment and poverty of Palestinians.

c) Human shields

A clearcut engineered form of victimization is the use of human shields. There is a direct link between this form of abuse and the creation of this Commission.

An independent Gaza Assessment Task Force comprised of senior retired U.S. military officers⁴⁹ concluded in October 2021:

" Hamas serially violated LOAC [the law of armed conflict] by directing attacks against Israeli civilians, launching indiscriminate attacks against Israel, and exposing Gazan civilians to avoidable risk to either intentionally complicate Israeli military operations or exploit civilian casualties in order to make false claims of Israeli war crimes. Hamas violated the most fundamental LOAC principle - that of distinction or distinguishing between military and civilian targets - by deliberately attacking Israeli civilian population areas and by launching indiscriminate attacks. While most of these attacks failed, it was the effort, not the result, that indicates Hamas' pervasive LOAC violations. Furthermore, Hamas deliberately located its military assets - including rocket launchers, mortar positions, command and control posts, and military tunnels

⁴⁸ Liran Ofek "The Palestinian Authority, the BDS Movement, and Delegitimization" Memorandum No. 169, Tel Aviv: Institute for National Security Studies, September 2017, <http://www.inss.org.il/publication/palestinian-authority-bds-movement-delegitimization/>

⁴⁹ <https://jinsa.org/wp-content/uploads/2021/10/Gaza-Assessment.v8-1.pdf>

- in close proximity to civilians, indicating an unlawful intent to utilize human shields and render it near impossible for the IDF to attack lawful targets without serious risk of incidental civilian casualties or collateral damage to civilian property.”

The resulting Israeli response to the Hamas attacks led to an estimated 192 civilian human shield Palestinian deaths in Gaza. Israel, which does not use human shields, suffered far fewer casualties. The anti-Zionist reaction to the Hamas attacks and Israeli response, as to other like situations, was to accuse Israel of war crimes for a disproportionate response, even though a disproportionate response to an armed attack is not a war crime.⁵⁰ Whatever one can say about the proportionality of the Israeli response to rocket attacks from Gaza, that response pales in comparison to the disproportionality of the response of Hamas to the events to which they referred in their ultimatum preceding the missile and rocket attacks - the eviction orders in Sheikh Jarrah which were not final and were subject to appeal and the clash between police and rioters on Temple Mount.

Although the dispute over evictions at Sheikh Jarrah and the clashes at Temple Mount are out of scale with their aftermath, these disputes open a window into the determination of anti-Zionists to victimize their own people in pursuit of their anti-Zionist cause. The families subject to eviction in Sheikh Jarrah, after the eviction orders, were offered a settlement allowing them to stay for decades at a nominal rent in the premises where they were living. The residents rejected the offer after "sustained pressure from Palestinian politicians and activists to reject the deal".⁵¹

⁵⁰ See David Matas "Disproportionality and anti-Zionism"

⁵¹ Patrick Kingsley "Palestinian Families Reject Deal in Area That Helped Set Off Gaza Conflict", New York Times, Nov. 2, 2021

<https://www.nytimes.com/2021/11/02/world/middleeast/palestinianjerusalem evictionjarrah.html>

d) Child attackers

Adult attackers are perpetrators. Child attackers are both perpetrators and victims. There are several terrorist factions within the West Bank and Gaza which have used children.

The most dramatic form of abuse of children in the anti-Zionist cause is child suicide bombers. However it is far from the only one. The UN Secretary General in 2014 circulated a statement from the US based NGO Amuta which stated:

"Pictures abound of Palestinian babies dressed as suicide bombers and brandishing arms. Children's TV programs, many sponsored by the Palestinian Authority itself, preach jihad, advocate genocide against Jews and infidels, and glorify martyrdom. A young girl on a program recently aired on Hamas TV was encouraged by the host to be in the police when she grew up so that she could 'shoot Jews - all of them.'

After years of being educated with incitement, Palestinian pre-teens are then pressed into service by 'popular committees' to engage in riots and violent confrontations with Israeli soldiers. Older kids are sent to hurl firebombs and slingshot projectiles. Hamas, Islamic Jihad, and Fatah's Martyrs Brigades enlist teens to be suicide bombers and to commit other atrocities against Israeli civilians. Even rock-throwing, which has often been deadly, puts Palestinian minors at risk for arrest and jail time."⁵²

The Palestinian Authority today opposes the use of child suicide bombers. However, it has not opposed and indeed has not stopped its own complicity in other forms of abuse of Palestinian children in pursuit of the anti-Zionist cause.

⁵² <https://www.un.org/unispal/document/auto-insert-181056/>

e) Martyrdom

Another form of engineered victimization or instrumentalization of Palestinians in the anti-Zionist cause is abuse of the concept of martyrdom. Anti-Zionists apply this concept to suicide bombers, whom they have indoctrinated, trained and weaponized, and human shields, behind whom they have hid, proclaiming that all those who die as suicide bombers or human shields are martyrs.

Posters litter West Bank and Gaza streets with photos and names of these suicide bombers and human shields and the Koranic verse "the martyr is not dead but lives on". Schools, hospitals, streets, new babies, children's events, and so on, are named after these human shield and suicide bombing dead.⁵³

Generally, a martyr would be someone who is killed for the expression of their beliefs by someone who opposes those beliefs. Here, the engineers of death are those who share the beliefs of the victims. The concept of martyrdom is perverted in the anti-Zionist cause.

When anti-Zionists kill Jewish children, it is apparent that they are acting out of hatred. When anti-Zionists engineer the death of their own children by using them as suicide bombers or human shields and then extol their deaths as martyrdom, it is apparent how deep seated, how intractable that hatred is.

f) Death over life

The independent military Gaza Assessment of the events of May 2021 previously quoted

⁵³ Lori Allen "There Are Many Reasons Why: Suicide Bombers and Martyrs in Palestine", Middle East Report, No. 223 (Summer, 2002), pp. 34-37

https://www.jstor.org/stable/1559462?read-now=1&seq=1#page_scan_tab_contents

included this comment:

"These actions [the use of of human shields] are in keeping with Hamas' stated ideology. Hamas then spread disinformation, claiming that the inevitable civilian casualties were an indication of Israeli war crimes. The media and public's misunderstanding of how LOAC applies to military operations - especially the false assumption that the effect of an attack, and especially the presence of civilian casualties, determine its legality - coupled with social media's ability to transmit graphic images rapidly and globally without explanatory context, made audiences more receptive to Hamas' disinformation that Gazan suffering was evidence of Israeli LOAC violations."

This excerpt refers to the stated ideology of Hamas. The Assessment describes the stated ideology of Hamas this way:

"During the course of hostilities, Hamas continued to accuse Israel of 'war crimes,' 'terrorism,' and carrying out a 'massacre,' as it had prior to initiating hostilities. This disinformation focused primarily on asserting that every civilian casualty or destruction of civilian property in Gaza was caused by Israel and constituted a LOAC violation."

The then acting Speaker of the Palestinian Legislative Council in 2007 said

"I guarantee you that the power of belief and faith is greater than the power of America and Israel. They are cowards, as is said in the Book of Allah: "You shall find them the people most eager to protect their lives." They are cowards, who are eager for life, while we are eager for death for the sake of Allah." ⁵⁴

Variations on this assertion are common in anti-Zionist rallies. Yet, it is not the anti-Zionists uttering these cries who put their lives at risk. It is rather innocent Palestinians whose lives are put at risk by anti-Zionists through their anti-Zionism in general and their use of

⁵⁴ <https://www.jewishvirtuallibrary.org/myths-and-facts-quotes>

child suicide bombers and human shields in particular. Innocent Palestinians become, for anti-Zionists, human sacrifices in the cause of anti-Zionism.

g) An appropriate response

Another Abbas, Mansour Abbas, the leader of the United Arab List in the Israeli parliament, the Knesset, and a component of support of the current Israeli coalition government has called on Palestinians to end their strategy of victimization. He has stated: "Victimization will get us nowhere". One of his supporters added "For seventy years, it got us nowhere."⁵⁵ This Commission and its inevitable report moves in the opposite direction, a form of endorsement of the strategy of engineered victimization.

Anti-Zionism victimizes Palestinians both through engineering facts on the ground and through creating illusions. A realistic strategy to end Palestinian victimization would be to deconstruct both the engineering and the illusions. The illusions are that the land of Israel will become Arab land, that the artificially defined and expanded Palestinian refugee population will move en masse into Israel, that Israel will cease to exist as Jewish state.

6. Terrorism

a) Terrorist entities

Terrorism is both a proximate cause of tensions and instability in Israel, the West Bank and Gaza and an emanation of the root cause of anti-Zionism. Despite the change of the Charter of Hamas in 2017, Hamas remains a terrorist entity. The Palestinian Authority continues to propagandize for terrorism, including through the school system, reward

⁵⁵ Ruth Margalit "The Arab-Israeli Power Broker in the Knesset" The New Yorker October 25, 2021

<https://www.newyorker.com/magazine/2021/11/01/the-arab-israeli-power-broker-in-the-knesset>

terrorism, through payments to families of detained terrorists, and honour terrorism, through the naming of streets, buildings and monuments after terrorists. The Palestinian Authority is both unable and unwilling to counter the destruction of Israel through terrorism.

Canada, for one, lists as terrorist entities the Palestine Revolutionary Council (which also uses the names Abu Nidal and Black September), the Palestine Liberation Front, Palestinian Islamic Jihad, the Popular Front for the Liberation of Palestine, Hizballah and Hamas.⁵⁶ The Palestinian Authority does not ban any of these entities, allowing terrorist entities to take part in Palestinian elections.

If free and fair elections were held in the West Bank and Gaza today, the likelihood that Hamas would winning is significant. Hamas won the previous election, in January 2006, and formed the government of the Palestinian Authority, until dismissed by President Mahmoud Abbas, in June 2007. The reason there has been no election in the seventeen years since the previous election is likely due to the expectation that new elections would issue in a Hamas government.

b) Terrorism and resistance

The concern about terrorism is more than just theoretical. In Israel it is a frequent daily occurrence. In September 2021, the last month for which statistics are available, the Israel Security Agency reported 251 terrorist attacks in Israel, the West Bank and Gaza or an average of slightly more than eight a day.⁵⁷ United Nations statistics indicate a lower figure

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<https://www.publicsafety.gc.ca/cnt/ntnl-scr/cntr-trrrsm/lstd-ntts/crnt-lstd-ntts-en.aspx>

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<https://www.shabak.gov.il/SiteCollectionDocuments/Monthly%20Summary%20EN/Monthly%20Summary/2021%20%D7%93%D7%95%D7%97%20%D7%97%D7%95%D7%93%D7%A9%D7%99%20%D7%A1%D7%A4%D7%98%D7%9E%D7%91%D7%A8%20%20%D7%90%D7%A0%D7%92%D7%9C%D7%99%D7%AA.pdf>

for terrorist incidents.⁵⁸ Yet, anti-Zionists classify all terrorist incidents as resistance. The UN figures are clouded by the anti-Zionist terminological obfuscation.

In considering the claim of resistance, one has to consider both what is being claimed to be resisted and how the claimed resistance takes place. A person suspected on reasonable grounds of a common crime who resists arrest in a democratic society under the rule of law is engaged in resistance. Yet, the resistance is not justifiable.

What does Hamas claim to be resisting? The answer, from reading the Hamas Covenant of 1988 and Charter of 2017, is plain. It is the existence of Israel.

The Covenant and Charter, though they make vague general statements against oppression globally, do not accuse Israel of oppression, repression, tyranny or discrimination. In the 1988 Covenant, opposition to the existence of Israel, described as the Zionist entity, is expressed 22 times.⁵⁹ In the 2017 Charter, opposition to the existence of Israel is expressed 19 times.⁶⁰

The Universal Declaration of Human Rights provides in a preamble:

"Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,"

Yet, for Hamas, tyranny and oppression are not the justification for their resistance. It is rather the existence of Israel.

⁵⁸ <https://thecic.org/event/cic-national-capital-ottawa-is-it-now-time-for-canada-to-recognize-the-state-of-palestine-online-event/>

⁵⁹ https://avalon.law.yale.edu/20th_century/hamas.asp

⁶⁰ <https://www.middleeasteye.net/news/hamas-2017-document-full>

There are, of course, others who accuse Israel of tyranny, oppression, repression, and discrimination. These accusations highlight the difference between the two contemporary anti-Zionist strategies - delegitimization in the faction led by Fatah and terrorism, euphemised as resistance, in the faction led by Hamas. Let us blend the two, the accusations from the delegitimization faction and the the claim of resistance from the terrorism faction.

Can the actions of the violence faction be justified by the accusations of the delegitimization faction as resistance against tyranny, oppression, repression, and discrimination? This gets us back to our second question, how the claimed resistance takes place.

It is commonplace for human rights violators to accuse their victims of human rights violations to justify their own violations. In this respect, anti-Zionists are far from unique. There are, regrettably, a number of oppressive governments who label any resistance to their oppression as terrorism, and then justify the continuation and escalation of their oppression by the very resistance their initial oppression has generated. It is wrong to characterize all resistance to tyranny and oppression as terrorism.

The United Nations General Assembly in October 2001, shortly after the attack on the Twin Towers in Manhattan, had a five day debate on global terrorism in which several speakers addressed the difference between terrorism and resistance. A UN press release summarizing the debate of October 4th noted that the difference between terrorism and legitimate resistance was among the issues raised.⁶¹ The difference, which speakers representing several governments set out, is that resistance is not legitimate when it targets innocents or kills them indiscriminately.

The summary of the statement of Israel's representative was this:

⁶¹ <https://www.un.org/press/en/2001/ga9927.doc.htm>

"the United Nations must reaffirm today that there was not, and there could never be, a justification for the calculated murder of innocents. The indiscriminate murder of innocent civilians to advance political or religious objectives was terrorism, no matter how its apologists sought to label it. Fabricating distinctions between different types of terror, though conveniently couched in the language of noble ideals, was an unforgivable insult to the memories of those who had perished. Terrorism was defined by what one did, not by what one did it for."

This intervention is noteworthy not just because it makes the distinction clearly but also because it represents the official position of the Government of Israel. For Israel, resistance becomes terrorism when innocents are targeted or killed indiscriminately.

This distinction is relevant for exhaustion of local remedies, a matter discussed later. If, as we can see, Israel has a firm grip on the distinction between resistance and terrorism, a distinction shared generally by the international community, there is no need for the United Nations Human Rights Council and this Commission to get involved in the issue in relation to Israel.

The distinction is also relevant to the United Nations Human Rights Council's and this Commission's focus on root causes. The firing off by Hamas of over 4,300 rockets and missiles to Israel in the space of 11 days in May 2021 was an indiscriminate attack. Getting into the root causes means wandering down the wrong path, looking to excuse terrorism by the causes which motivated it.

c) Terrorism and peace

Terrorism is the antithesis of peace between the terrorists and their victims. It is also an obstacle to peace in the Middle East between the Palestinian Authority and Israel. Terrorism leads to the stalemate of the present situation.

Palestinians walked away from peace negotiations at Camp David and a seeming agreement in 2000, without explanation, leading to a variety of speculations. One compelling explanation is the linkage between terrorism and peace.

Generally, terrorists, who themselves are not peaceful, oppose peace, which inevitably involves concessions and rejection of their maximalist demands. Terrorist attacks reacting against peace efforts are often directed not just against the other side. They are also frequently directed against their moderate allies.

King Abdullah of Jordan was assassinated in 1951 by a Palestinian because of his effort to achieve peace with Israel. Egyptian President Anwar Sadat was assassinated by Egyptian army officers in 1981 because of his 1978 peace agreement with Israel.

PLO Chair Yasser Arafat, if he had in 2000 signed on to the peace agreement offered him, which ostensibly met virtually all Palestinian negotiating demands, could have reasonably feared a similar fate. Even if one puts that explanation to one side, there is nonetheless a strong linkage in the Palestinian Israeli context between efforts to achieve peace and terrorist attacks. There has been a long history of terrorism accompanying Israeli Palestinian peace negotiations.⁶² This linkage has an adverse impact not only on Palestinian willingness to get to peace; it affects Israeli peace motivations as well.

One incentive for Israelis to get to peace is an end to terrorism. If a peace agreement leads to an increase in terrorism, and that has been the Israeli-Palestinian history to date, that incentive evaporates.

⁶² Andrew Kydd and Barbara F. Walter, "Sabotaging the Peace: The Politics of Extremist Violence", *International Organization* 56, 2, Spring 2002, page 263-296,

<https://www.jstor.org/stable/3078606>

Although assassins have targeted peace leaning leaders on both sides, the situation is asymmetrical. Israel has enough confidence in its security forces not to back away from a peace agreement for fear of assassination from within. It is hard to say the same of the Palestinian Authority, which has been playing a terrorist double game - on the one hand renouncing terrorism, and on the other hand both encouraging it and doing nothing much to stop it. The Authority, in any case, does not have the ability, even if it had the willingness, to counter Palestinian terrorist forces.

A peace agreement is not a precondition to ending terrorism. Rather the linkage is the reverse. A credible and effective effort to combat terrorism is necessary to get to peace.

Well, how does one do that? Israel, on its own, can only do so much. A realistic strategy to combat terrorism has to involve the Palestinian Authority. The Palestinian Authority has, to be sure, renounced the use of terrorism and has been cooperating with Israeli security forces. However, the cooperation has been fitful and unstable.

There have been a sequence of threats and recommendations within the Palestinian Authority to end that cooperation. The cooperation was suspended in June 2020 when the Israeli government announced an intent to annex parts of the West Bank and resumed in November that year when the annexation plan was delayed indefinitely.

As well, the Palestinian Authority memorializes, honours, rewards and incites terrorism. It floods its school systems with anti-Zionist literature. And it does nothing to ban and dismantle the terrorist organizations in its midst, not least Hamas. The Palestinian Authority right now is unwilling to end promotion of terrorism and is both unable and unwilling to end actual terrorism from Hamas and other organizations operating in Gaza and the West Bank.

Addressing causes of tension, instability and protraction means addressing Palestinian

encouragement and forbearance of terrorism. It means not turning a blind eye to the inability of the Palestinian Authority to control terrorists operating in the West Bank and Gaza. It means not accepting the present Palestinian Authority terrorism double game.

When anti-Zionists incite and act out terrorism against Israel Jews and Israel defends, both Israeli Jews and Palestinians suffer. The Palestinian people deserve international assistance. But the current resolution and Commission, by playing the anti-Zionist game, does just the opposite. That is not the sort of help the Palestinian people need.

What would be most helpful is encouraging and assisting the Palestinian Authority to come to grips with the terrorist promoters and actual terrorists in their midst. Doing that would benefit both Palestinians and Israelis. Doing that would lead to Israeli confidence in the peace process and lessen the Israeli based heightened security which impacts on the daily life of Palestinians. The anti-terrorist road is the pathway to ending the tensions, instability and protraction of the situation in the region.

Martin Scheinin, then United Nations Special Rapporteur on counter-terrorism and human rights, in 2007 wrote a detailed report on Israel efforts to counter terrorism and their consistency with human rights standards.⁶³ One can disagree with analysis and the recommendations. However, it is incontestable that the Rapporteur took the matter seriously.

One can not say the same about the UN Council resolution establishing the Commission, the Commission call for submissions, or, for that matter, the recent Amnesty International and Human Rights Watch reports on Israel. The resolution and the call make no reference to the issue. Neither the Amnesty International nor the Human Rights Watch report the

⁶³ UN document number A/HRC/6/17/Add.4, 16 November 2007,

<https://www.refworld.org/docid/47501e2d2.html>

mentions the work of Scheinin. For them, the issue does not exist.

What would be an improper constraint on freedom in the absence of a terrorist threat can become legitimate in the effort to combat terrorism. One can do both too little and too much to counter terrorism. As in many other areas, there is a balance here between competing rights.

Anti-Zionists are ill placed to weigh this balance since they reject the legitimacy of the Jewish state in general and its efforts to combat terrorism in particular. Nonetheless the balance should be weighed.

China, which brandishes the threat of terrorism in East Turkestan/ Xinjiang, inflicts genocide against the Uyghur people in response.⁶⁴ One would have thought that it would have been easy to say that inflicting genocide on a people because some of their members may pose a threat of terrorism is wrong. Yet, there is nothing like that coming out of the UN Human Rights Council.

Instead, the UN focuses on Israel, where the threat of terrorism is far more real and far more actualized than in China and where the efforts to combat it are far more attuned to human rights concerns. It is apparent, when the UN turns a blind eye to genocide in China in response to a hypothetical threat of terrorism but focuses inordinately in Israel on a

⁶⁴ Uyghur Tribunal Judgment

<https://uyghurtribunal.com/wp-content/uploads/2022/01/Uyghur-Tribunal-Judgment-9th-Dec-21.pdf>

"The architecture of repression: unpacking Xinjiang's governance" Oct 2, 2021, Report No. 51/2021, Vicky Xiuzhong Xu, James Leibold and Daria Impiombato, The Australian Strategic Policy Institute

<https://s3-ap-southeast-2.amazonaws.com/ad-aspi/2021-10/The%20architecture%20of%20repression-v3.pdf?VersionId=.CbKE2OnnI5qKVZbTedTXt9eW3sjflzS>

nuanced reply to real terrorism, that the concern of the UN is not whether Israel is responding appropriately to the terrorist threat. The concern lies elsewhere - that a Jewish state exists.

7. Absence of peace

To say that the absence of peace is a root cause of tensions, instability and protraction of the situation in the region looks to be circular reasoning. The tensions, instability and protraction of the situation the region are themselves an absence of peace.

Yet practically there is a difference between the two. The absence of peace is both a consequence and a cause of the never ending situation. Absence of peace is a cause of the current and prolonged situation, because for some, anti-Zionists, it is a desired result.

Anti-Zionists have not been able to achieve the end of Israel, the result for which they fought and for which they yearn. They have not won. But at least with the absence of peace, they have not lost.

For anti-Zionists, peace would mean the end to their hope of destruction of the State of Israel. So, for them, better keep instability and tensions in place, better protract the situation as much as possible, than abandon their fantasy of obliteration of the Jewish state in their midst. Instability, tensions, and protraction of the situation keep the dreams of anti-Zionists alive.

Israel treats Palestinians who are not citizens of the State of Israel as foreign nationals, which of course they are, even though Palestinians do not have their own state. Israeli state security also engages in systemic efforts to prevent terrorism through security checks. This combination could easily be ended by an end to terrorism and a peace treaty with Israel which would encompass the recognition of Palestine as a state.

Yet anti-Zionists, in pursuit of the destruction of the State of Israel, renounce both. For the United Nations Human Rights Council, which should in principle be opposed to terrorism and supportive of peace, to turn a blind eye to these anti-Zionist tactics through the creation of this Commission is harmful to the United Nations, the institution of which the Council forms part and a rejection of its ideals.

Peace is at the very core of the mission of the United Nations. The very first words of the United Nations Charter are these:

"We the peoples of the United Nations determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind..."

Yet, the resolution establishing this Commission and its mandate, with its one-sided approach and never ending mandate, sound the drumbeats of perpetual war against the existence of Israel.

The resolution and Commission mandate, though unclear about who is conflicting with whom, indicate, by the very reference to conflict and protraction, that they are concerned about the absence of peace. Well, how can the UN contribute to peace between Israel and its neighbours, rather than attacks against Israel? The answer is simple - say and do nothing in response to anti-Zionist lobbying. The UN hyper-activity directed against Israel gives anti-Zionists an outlet and an opportunity to pursue the delegitimization option. As long as the UN continues to give anti-Zionists the opportunity, it will be seized.

Peace will arrive between Israel and its enemies only when every possible avenue for destruction of the state is closed. If the UN is serious about assisting in peace rather than fomenting war, it will close off all delegitimization avenues within the UN system that anti-Zionists explore and leave them nowhere to go except down the road to peace.

8. Recognition

a) Non-recognition of Israel

Refusal to accept the existence of the State of Israel is an obvious cause of tensions, instability and protraction of the situation. What the UN could reasonably do, in the absence of total silence, is to call on all states and non-state entities who do not yet recognize the existence of the State of Israel to do so.

The current Hamas Charter rejects the existence of Israel. It refers to Israel as "the land of the Arab Palestinian people". It vows to continue "resistance" until "liberation" is accomplished. "Resistance" is a euphemism for terrorism. "Liberation" is a euphemism for the destruction of the State of Israel.⁶⁵

The Palestinian National Charter adopted in 1964 and amended in 1968 called for the rejection and destruction of Israel. The Palestinian National Council in 1993 and 1998 issued statements that the provisions of the Charter inconsistent with the existence of Israel are nullified. To date, the Palestinian National Council has not formally adopted an amended Charter which incorporates these commitments. Mahmoud Abbas, President of the Palestinian Authority, stated in September 2021 that the Palestinian Authority would withdraw their acceptance of Israel in a year if Israel in the interim does not withdraw from the West Bank, Gaza and East Jerusalem.⁶⁶

This very statement highlights the unreality in which the Palestinian Authority operates. Israel withdrew from Lebanon in 2000 and was replaced by Hezbollah, which used its

⁶⁵ <https://www.middleeasteye.net/news/hamas2017documentfull>

⁶⁶ Al Jazeera, "Abbas gives Israel 'one year' to leave Palestinian territory" 25 Sep 2021
<https://www.aljazeera.com/news/2021/9/25/abbas-gives-israel-ultimatum-to-quit-palestinian-territory>

proximity to Israel to engage in terrorist attacks against Israel. Israel withdrew from Gaza in 2005, with the same result, an onslaught of terrorist attacks from Hamas. When Israel withdrew from Gaza, it felt it necessary to remove all Jewish Israeli residents for their own safety. All businesses these residents had run, which could have been run by the Palestinians who remained, were destroyed by Hamas.

There may have been a strategic justification for these withdrawals, because the Israeli military was safer not having to police these territories. However, it is impossible to justify an Israeli withdrawal from the West Bank on that basis.

Hamas, in the name of resistance, began, after the Israeli withdrawal, almost daily rocket, fire balloon and fire kite attacks into Israel, leaving Israeli farms on the other side of the border a burned out mess. These sorts of attacks emanating from the West Bank directed to the Israel international airport or Jerusalem after the withdrawal that the Palestinian Authority requests would be intolerable. A peace agreement could set up preventive practices and systems. Withdrawal without a peace agreement is not a serious option.

b) Recognition of Palestine

Recognition of the state of Palestine is itself a proximate cause of tensions, instability and protraction of the situation in the region and indicator of the root cause of these phenomena. First of all, Palestine does not meet the legal criteria for statehood. The 1933 Montevideo Convention on the Rights and Duties of States sets out four criteria for statehood.⁶⁷ They are

- i) a permanent population,
- ii) a defined territory,

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<https://www.jus.uio.no/english/services/library/treaties/01/1-02/rights-duties=states.xml>

- iii) government, and
- iv) a capacity to enter into relations with the other states.

What is claimed to be the state of Palestine meets none of these criteria. The population of the claimed state is unclear. Does it exclude or include Palestinians living outside the West Bank and Gaza? Does it exclude or include residents of the West Bank who are nationals of Israel, Jordan or other countries?

The territory of the West Bank is not defined. East Jerusalem is part of Israel, but the Palestinian Authority claims it. Does recognition of Palestine as a state means acceptance of this claim? The territory of the West Bank, according to the Oslo Accords, is divided into three components, one of which is controlled by the Palestinian Authority, one of which is controlled by Israel and the third of which is jointly controlled. Does the claimed state of Palestine include territory that the Palestinian authority has agreed is to be controlled exclusively by Israel?

The claimed state of Palestine does not have a fully-fledged government. Even if the areas of the West Bank under sole Israeli control by virtue of the Oslo Accords are considered part of the territory of the claimed state of Palestine, the Palestinian Authority does not now govern these areas. Does recognition of Palestine as a state mean rejection of the Oslo peace accords?

Even in the areas the Palestinian Authority does control, it does not control its borders. Recognition of Palestine as a state would not change this fact. Gaza is ruled, functionally, by Hamas and not by Fatah which is the predominant component of the Palestinian Authority. Is the Government of Gaza Hamas or not?

As for the capacity to enter into relations with the other states, the claimed state of Palestine does not have that either. There are a lot of international activities legally in which the

claimed state of Palestine can not engage because the entity does not have the requisite degree of control for its engagement to have substantive meaning.

A pre-trial chamber of The International Criminal Court in February of this year ruled that Palestinian Authority, which had signed on to the Court statute in the name of the state of Palestine, had the legal capacity to do so. The Court based that finding not on the Montevideo Convention criteria for statehood, but rather on the vote of the United Nations General Assembly which gave Palestine non-member state observer status.⁶⁸

This Court recognition is political, based on a vote of the United Nations General Assembly, rather than legal. It is an example of yet another instance of corruption of international institutions in pursuit of the anti-Zionist strategy of delegitimization of Israel.

The Palestinian Authority wants Palestine to be recognized as a state. Peace negotiations which would end in that result incentivize the Palestinians to engage in those negotiations. Recognition of Palestine as a state before a peace process which leads to that result removes that incentive for engaging in the peace process. Recognizing Palestine now as a state means undermining the resumption and successful conclusion of the peace process.

Even if one puts the disincentive to one side, the discussion about whether states or the United Nations should recognize Palestine as a state is a diversion. The real problem both Palestinians and Israelis face is the absence of peace. That is a matter which only Israel and the Palestinians can resolve. United Nations recognition of the claimed state of Palestine, pushes peace further away, and certainly does nothing to bring it closer.

⁶⁸ Situation in the state of Palestine Court number ICC-01/18 Pre-Trial Chamber I, 5 February 2021

https://www.icc-cpi.int/CourtRecords/CR2021_01165.PDF

Peace negotiations, successfully concluded, between Israel and the Palestinian Authority would lead to recognition by Israel of Palestine as a state. Why does the Palestinian Authority not to pursue that course instead of coming to UN instances for state recognition? To what does the Palestinian Authority aspire that they can not get through peace negotiations? What do they lose by entering into good faith negotiations with Israel?

The answer is the opportunity to pursue the end and the means, the end being the destruction of the State of Israel and the means being the continuation of the delegitimization campaign and the inciting, rewarding, propagandizing on and, in the case of Hamas, acting on terrorism. These are aspirations that in principle the United Nations should do nothing to encourage.

Anti-Zionists have, as their very name indicates, the goal of destruction of the State of Israel. In pursuit of that goal, they have used every military means, every national and international standard, institution and mechanism they can access for that purpose.

Is the existence of the Palestinian people anything more than that, an anti-Zionist vehicle, an attachment to the standards and mechanisms for self-determination in order to deny the existence of the State of Israel? If there is more, that should be recognized through the peace process. Circumventing that process through attempts at extraneous recognition looks to be just a continuation of anti-Zionist efforts to deny the existence of Israel.

Many Israelis have themselves given up on the peace process. One reason is that some of the Palestinian Authority and their supporters appear disinterested and disingenuous. Another reason is that even those elements of the Authority that are interested and genuine show no ability to exercise the control over terrorism necessary to make peace viable. For the peace process to work, the Palestinian Authority has to show both that they want it to work and that they can make it work.

There is a real prospect for success in peace negotiations, provided the Palestinians do exactly that, provided the Palestinian Authority shows both that they want it to work and that they can make it work. United Nations recognition of Palestine as a state does nothing to overcome obstacles to peace. Indeed, it has exactly the opposite effect. For the Palestinians to obtain United Nations recognition outside of the peace process is not just extraneous to the peace process. It is antithetical to the peace process.

Even if Palestinians are attempting an end run around the peace process, and the Israelis have given up on that process because of the Palestinian disinterest in that process and/ or their inability to control terrorism, the United Nations should not. The United Nations should be pushing the Palestinians into the peace process rather than pulling them away from it. The United Nations should be recognizing Palestine as a state when the peace process ends with that conclusion and not before.

9. Inversion

Anti-Zionist rhetoric against Israel has no limits. Israel is accused of every wrong known to humanity, regardless of the facts. A particularly common form of accusation is inversion, accusing Israel of the very wrongs which anti-Zionists commit. Anti-Zionists are racists. So, Israel is accused of racism.

Anti-Zionist condemnations of Israel work backwards. Anti-Zionists move from opposition to Israel to charges against Israel rather than from wrongdoings by Israel to anti-Zionism. Their starting point is the vocabulary of condemnation rather than the practices of Israel. Any unsavoury verbal weapon that comes to hand is used to club Israel and its supporters. The reality of what happens in Israel is ignored. What matters is the condemnation itself. For anti-Zionists, the more repugnant the accusation made against Israel the better, because the more that accusation supports the anti-Zionist cause.

A classic example of this phenomenon is the United Nations General Assembly resolution passed in 1975 that Zionism is a form of racism and racial discrimination. Yet, Zionism is the expression of the right to self-determination of the Jewish people. Israel is its realization. The right to self-determination of a people coalesces into a right to statehood where the human rights of the people have been consistently and flagrantly violated in the states in which they have lived.⁶⁹ That has been true for the Jews of Europe and the Middle East.

It would have been inhumane to expect the Jewish refugees who survived the Holocaust to return to live among the murderers of their family and friends. There had been Jews living in Israel since before recorded history, albeit not in the present numbers. Israel was the historic home of the Jewish people, the natural location for a Jewish state. As for Jews expelled or driven from Arab countries and Iran as the result of the advent of Israel, their continued presence in those countries was an impossibility.

It is anti-Zionism which is a form of racism and racial discrimination by denying specifically to Jews among all the peoples in the world the right to self-determination. The UN General Assembly resolution amounted to saying that the right to equality of the Jewish people in the realization of the right to self-determination was a form of racism. It became obvious over time that the assertion was so outrageous and untenable that the resolution, in 1991, was repealed.

However, that did not mean that the effort to label equality for the Jewish people in the realization of the right to self-determination of peoples was abandoned. It just took other forms. The current form is labelling Israel as an apartheid state.

⁶⁹ There is a significant body of literature and jurisprudence on this subject. See for instance the concurring opinion of Judge Wildhaber, joined by Judge Ryssdal in the case of *Loizidou v. Turkey*, European Court of Human Rights, application no. 15318/89, 18 December 1996

Like many other forms of invective against Israel, apartheid has the advantage of being universally condemned. There was a global coalition opposed to apartheid which helped to bring about its downfall. Anti-Zionists saw and remembered this global anti-apartheid effort. They dream of constructing a similar global anti-Zionism effort. The simplest and most direct way for them to do so is to label Israel as an apartheid state. The fact that there is no resemblance whatsoever between true apartheid and the State of Israel have not stopped anti-Zionists for a moment.

Basic to apartheid was the denationalization of blacks, because they were black and allocation of nationality in state created bantustans or homelands. Blacks assigned to bantustans were subject to influx controls and pass laws. The objective of apartheid was to denationalize all blacks, to assign every black to one of ten bantustans. Blacks were forcibly removed from where they lived to their designated bantustans.

Israel has not since its inception taken away vested Israeli citizenship of even one Palestinian for the sole reason that the person is ethnic Palestinian. Israel has not created designated territories within its borders to which it has forcibly removed its own citizens who are ethnic Palestinian.⁷⁰

Indeed, Israel, rather than just being different from South Africa under apartheid, is its complete opposite. South Africa under apartheid recognized bantustans as independent states. Other states did not. Israel does not recognize the West Bank and Gaza as an independent state of Palestine. Those states most hostile to Israel do.

The charge of apartheid against Israel is so defamatory and harmful that Jean-Christophe Rufin, in a report to the French Ministry of Interior, recommended in 2004 that it be

⁷⁰ See David Matas "Aftershock: Anti-Zionism and Antisemitism" Chapter Three: Accusations of Israeli Human Rights Violations, pages 53 to 55

criminalized.⁷¹ To make a charge of apartheid against Israel, aside from its wild inaccuracy, its obvious political motivation, and its incitement to hatred, is a disrespect, a trivialization of the suffering of the true victims of apartheid.

The delegitimization component of the anti-Zionist movement targets, as one can see, the UN. However, their scope goes far beyond that. They target universities and human rights NGOs, who are as vulnerable to manipulation as the UN.

So, we see recent reports of both Human Rights Watch and Amnesty international replicating the apartheid slander against Israel. The Amnesty International report goes on for 280 pages and mentions the word "apartheid" 684 times. The Human Rights Watch report in its 116 pages mentions the word "apartheid" 142 times. Yet, neither of them mentions the words "bantustan" or "bantou" even once, let alone attempt to show how the bantustan system could possibly resemble Israel.

For the Human Rights Watch report, its cover says it all, a photo of a wall, supposedly indicative of the title "A Threshold Crossed -Israeli Authorities and the Crimes of Apartheid and Persecution". The barrier which the cover depicts was built, not to keep out Palestinians, who both live in and enter into Israel in large numbers, but to keep out terrorist infiltration from the West Bank, an intent which has succeeded in large measure. The barrier is a fence for more than 97% of its length and a wall for only less than 3%⁷².

The Amnesty International report does not have a similar photo, but mostly refers to the barrier as the fence/wall, as if the two existed in roughly similar proportions. Yet, it would be generous to say that either report is even 3% accurate. Both reports are classic

⁷¹ "Chantier sur la lutte contre le racisme et l'antisemitisme" Report presented October 19, 2004.

⁷² "Saving Lives: Israel's Anti-Terrorist Fence - Answers to Questions" January 1, 2004, Israel Ministry of Foreign Affairs, www.mfa.gov.il

examples of missing the forest for the trees.

The fence became a wall for 3% of its length in areas where the threat was, in addition to terrorist infiltration, anti-Zionist snipers terrorizing innocents on the other side.⁷³ Needless to say, neither report mentions this sniper history.

10. Diversion

One would have thought a resolution adopted by the May 27th UN special session, invoked after the massive Hamas rocket and missile assault on Israel May 10th to 21st and addressed to grave human rights violations in Israel, the West Bank and Gaza, would have, if the resolution were to mention any date at all, mentioned the dates May 10th to 21st. Instead, we have mention of the date April 13th. Why is this so?

Answering that question means answering not just why the date April 13th was used, but also why the dates May 10th to 21st were not used. If one considers that question first, why the dates May 10th to 21st were not used, the answer seems pretty straightforward. It is hard to put the launch by Hamas of over four thousand rockets against Israel, many of which fell in Gaza, and the massive use of human shields in reaction to the Israeli response, leading to hundreds of Palestinian casualties, in a good light. If one wants to avoid criticism of Hamas, the best tactic is to change the subject.

But why that subject, the events that happened on April 13th? In general, one can see what is going on by the reference in the resolution of the special session to root causes. So, the Commission is being asked through the resolution to attempt to blame Israel for the

⁷³ Mitchell Bard, "West Bank, Gaza and Lebanon Security Barriers: Background & Overview"

<https://www.jewishvirtuallibrary.org/background-and-overview-of-israel-s-security-fence>

actions of Hamas. The logic of the resolution is that, although Hamas may have, superficially seemed to have done something wrong by shooting off over 4,000 rockets and missiles, and precipitating the death of hundreds by the use of human shields, the real reason for this is the root cause, what Israel did, which is, in anti-Zionist eyes, tied to its very existence.

But how does one do that, blame Israel for what Hamas did? That is the purpose of the reference to the events of April 13th, to show that the Hamas aggression and terrorism against Israel are really the fault of Israel for an act or acts of Israel on that date.

The events of April 13th are slender reeds on which to rest the weight of this farfetched argumentation. Yet it is a weight that they were intended to bear.

It seems churlish of the Al Aqsa Mosque leadership not to have agreed to shut off their continuous public broadcasting of prayers for three minutes and thirty six seconds to allow the President of Israel to give a speech in the vicinity. Yet, for anti-Zionists, the event has appeal.

In this event, there was no violence by the Mosque leadership. Indeed, the problem they presented was their passivity, not their action. Israeli forces were the actors, cutting off the cable. The cutting off impacted adversely, however briefly, on freedom of religion. From the anti-Zionist perspective, the event presents a decidedly better narrative than the shooting off of by their own devotees of thousands of rockets and missiles, precipitating the deaths of hundreds whose cause they purportedly advocate.

As for the blocking of Palestinian access to the promenade around the Old City of Jerusalem wall or a gathering area outside the Damascus gate, that blocking off was not limited to Palestinians. It included Israeli Jews as well. The promenade and gathering area were blocked to everyone, as a security measure to prevent clashes.

As inconvenient as these facts may be, they present less of an inconvenience than what Hamas did May 10th to 21st. Again, for anti-Zionists, the event has this appeal. Here too the Palestinians are passive, not doing something as opposed to doing something wrong. Here too, the actors are the Israeli forces. Here too, there is a shutting off or shutting down of something that was before ongoing.

One can see here in microcosm, the anti-Zionist strategy in response to their aggression, violence, hostility, bigotry and hatred. The response is, change the subject, blame Israel, turn everything said against them to justification for their anti-Zionist cause. The reference to April 13th is just a recent example of the acting out of this strategy.

The blame for the Hamas missile and rocket attacks on Israel has to lie with Hamas. What happened on April 13th, the cutting off of a sound cable to minarets which would have otherwise drowned out a Presidential speech and the blocking off of access to the Old City wall promenade and Damascus Gate to prevent clashes between extremists, looks to be blame shifting. The logic of the reference appears to be that the thousands of Hamas rocket and missile attacks on Israel one month later were really the fault of Israel because of what happened on April 13th.

The reasoning of the resolution of the Council, illogical as it may seem, is that Hamas was spurred to its action primarily by these earlier events. Indeed, in light of the tendentious nature of the resolution, the point that is intended to be made appears to be that Israel, rather than Hamas, bears responsibility for the mass rocket and missile attacks and the subsequent hundreds of deaths because of what Israel did on April 13th, cutting off cables and preventing access to the Old City wall promenade and Damascus Gate.

This interpretation of the resolution and call is consistent with the reference to root causes. The reference to root causes in both the resolution and the call for submissions immediately

follows the reference to April 13th. The implication is that what happened on April 13th is either a root or proximate cause of the subsequent Hamas attacks on Israel.

The centrality of the events of April 13th, 2021, the only events to which reference is made in either the resolution or call for submissions, has to be a guide both to the Commission for its task and to others to understand what was intended. If one considers that date in the context of anti-Zionist rhetoric, the intent is to blame everything on Israel, to claim that Muslims and Arabs are only passive victims of the Israeli state, that violations of international humanitarian law and violations and abuses of international human rights law lie wholly on the Israeli side, and that the root causes of recurrent tensions, instability and protraction of conflict lie solely in the existence and behaviour of the Jewish state.

Yet, in fact, the direct opposite is the case. It is anti-Zionism which creates the present situation, not the existence of the State of Israel.

There are of course many tensions in democratic countries between claims of religious freedom and the functioning of a secular state. There are legitimate debates about where to draw the line between these two. The cutting off of speakers to a minaret in order not to drown out the speech of the President was arguably a reasonable limit on freedom of religion. The blocking of access to the Old City wall promenade and Damascus Gate to prevent violent clashes between extremists was arguably a reasonable limit to personal liberty.

Respect for rights overall often requires balancing of rights. Yet, if that balancing is foreclosed, then rights overall are not respected.

To give the events of April 13th pride of place in the establishment and mandate of this Commission does not point to a solution to recurrent tensions, instability and protraction of the situation in the region. The inordinate focus on this event, rather than the event itself,

points to the cause of recurrent tensions, instability and protraction of the situation in the region.

The resolution establishing the Commission and the call for submissions, by their reference to and emphasis on events of April 13, 2021, suggest that the rights and freedoms of non-Jews are to be treated as absolutes. The resolution and the call suggest that infringements of freedoms of non-Jews in Israel are inexcusable, no matter what the extent or significance of the infringement, no matter how justifiable in order to respect other rights. These infringements are seen as a violation of international humanitarian law and a violation and abuse of international human rights law and a justification for acts of terror in response.

This kind of absolutism of anti-Zionists, that non-Jews have all the rights and Jews have none, that in any dispute over rights, non-Jews are always right and Jews always wrong, is the antithesis of human rights. It is this absolutism, rather than a failure to respect it, that is a root cause of recurrent tensions, instability and protraction of the situation in the region.

11. Gravity

In principle, international human rights instances should restrict their attention to serious, grave, acute violations. The United Nations press office has described the power of the Human Rights Commission, the predecessor of the Human Rights Council, to convene special sessions as a power to be used in particularly grave human rights situations.⁷⁴ The Office of the High Commissioner for Human Rights has made a similar statement referring to this power to convene special sessions as a power to deal with urgent and acute human rights situations.⁷⁵

⁷⁴ <https://www.un.org/press/en/1998/19980310.HRCN815.html>

⁷⁵ <https://www.ohchr.org/EN/HRBodies/CHR/Pages/PreviousSessions.aspx>

The International Criminal Court has a similar principle. Its statute provides that a case is inadmissible if the case is not of sufficient gravity to justify action by the Court.⁷⁶

Anti-Zionism flouts this principle with regularity. Serious, grave, acute violations against Israel are ignored. Alleged violations and abuses committed by Israel are the subject of incessant anti-Zionist invective and labelled grave, serious and acute, even when objectively, they come nowhere close.

One can argue, in any particular situation, whether Israel behaved properly or improperly. It is a lot harder to argue that, even if Israel behaved improperly, the assumed impropriety is grave, acute or serious.

The present Council resolution and Commission call for submissions are classic examples. One would have thought that the firing by Hamas of over 4,000 rockets and missiles toward Israel would have qualified as a grave, serious, acute violation of human rights and humanitarian law. Yet neither the Council resolution nor Commission call for submissions mention this onslaught.

Instead, what the resolution and call do mention is April 13, 2021. Even if one assumes Israel was totally in the wrong in the three events which occurred on that date, and the evidence suggests that this was not the case, that assumed wrongdoing does not rise to the level of gravity required to engage a UN Human Rights Council special session or to justify the creation of a commission. Yet, one can see from the very wording of the resolution and call for submissions that the events of April 13th were important to the special session and is important to this Commission.

The resolution and the call for submissions present in microcosm one aspect of anti-Zionism

⁷⁶ Article 17(1)(d)

- its global amplification of incidents not grave nor serious nor acute by international human rights or humanitarian standards. These amplified decontextualized incidents are used as cudgels to beat up on Israel. This exaggeration of incidents which are presented from a one-sided perspective and, even from that perspective, do not meet international standards of gravity, inflame hostility both against the Jewish state and the Jewish people worldwide.

The resolution of the Council and the call for submissions of the Commission suggest that the temporary cutting of the sound cable and access to the Old City wall promenade and Damascus Gate were allegedly a violation of international humanitarian law and a violation and abuse of international human rights law. Yet, the temporary cutting off of the sound cable, access to the Old City wall promenade and Damascus Gate, even if they had been improper, would not rise to the level of gravity required to constitute a violation of international humanitarian law or a violation and abuse of international human rights law.

The difficulty here is not the incidents. It is the refusal of anti-Zionists to accept the legitimacy of Israel to address the issues raised by the incidents. In principle, that sort of difficulty should be a problem for anti-Zionists only and not the United Nations.

12. Evasion

In looking at any document, it is worth considering not only what is there, but also what is not there. What is missing from the Human Rights Council resolution and the Commission call for submission is striking.

The most obvious omission is the absence of reference to the dates May 10th to 21, 2021. If no dates were mentioned, the absence of those dates might be explicable. However, when the date of April 13th, 2021 is mentioned and the dates of May 10th to 21, 2021 are not, the omission stands out. Given the context, we can assume that the Commission established by the resolution is not just being told, focus on April 13th. It is also being told,

do not focus on May 10th to 21, except as a consequence of April 13th.

If one combines the inclusion and omission with the reference to root causes, what we can see is the root cause perspective of the authors of the resolution. It is not refusal to accept the existence of Israel, which would jump out from the massive Hamas rocket assault in May. It is rather what the resolution authors see as Israeli responsibility for mistreatment of Palestinians, without regard to what generated the situation that led to the Israeli reaction which impacted on the Palestinians.

This submission has already noted the narrow geographical focus of the resolution. The absence of reference to the larger area of the Middle East is worth noting not only because it obscures the view of the threats Israel faces. It also sidelines the victimization that Jews in the region have faced. Jews in Arab countries and also in Islamic non-Arab countries have been harshly victimized. Their plight is directly linked to the anti-Zionist assaults on Israel. Yet the persecution they have faced is, in this Council resolution and call for submissions, just ignored.

This blinkered approach is also notable in the recent Amnesty International and Human Rights Watch reports. The reports are entirely dedicated to claimed victimization of Palestinians. The incontrovertible, voluminous evidence of victimization of Jews in Arab countries and Iran generated by the same situation which led to the plight the Palestinians face is not mentioned, not once.

Also worth noting is the absence in the Council resolution and Commission call for submissions is any reference to terrorism. Alleged violations of international humanitarian law and alleged violations and abuses of international human rights law are mentioned, but terrorism is not.

Again, the recent Amnesty International and Human Rights Watch reports are instructive.

Both address Israeli anti-terrorist efforts as pretexts for Palestinian oppression and nothing more. The actual existence, persistence and scope of terrorism and how better to combat it consistent with respect for human rights and humanitarian standards than Israel does is not given a moments' consideration.

This perspective is standard anti-Zionist discourse and again relates to root causes. The root cause to anti-Zionists is not the refusal to accept the existence of Israel. It is rather the existence of Israel. It goes without saying that the anti-Zionist movement does not address anti-Zionism. When one combines what the Council resolution and Commission call for submissions say with what they do not say, one can see where the Commission is heading.

13. Non-exhaustion of local remedies

The Office of the High Commissioner for Human Rights, on their webpage about complaints to the Human Rights Council on consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms states:

"Communications should contain information or a statement to the effect that the remedies available under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law and, if possible, documentary proof of any final decision by a court of law or other competent authorities in the State concerned.

The exception to this requirement is when those remedies would be 'ineffective or unreasonably prolonged' (resolution 5/1 par. 87 (g)). For instance, the complainant is not required to exhaust domestic remedies when legislation restricts due process (e.g. absence of an independent judiciary), or when the complainant and/or the victim has been denied access to the remedies, or has been prevented from exhausting them.

If the State concerned claims that all available domestic remedies have not been exhausted, the State may be requested by the Working Group to give details on the

effective remedies available to the alleged victims in the particular circumstances of the case."⁷⁷

In the case of the events of April 13th, there is no public record that domestic remedies have been pursued, let alone exhausted. Insofar as there was anything wrong with what Israeli forces did in cutting of cables leading to minaret speakers after the Al Aqsa Mosque leadership refused silence for three minutes and thirty six seconds to allow the President of Israel to give a speech in the vicinity, there is a remedy available, through the Israel Jordan peace agreement of 1994. That agreement provides:

"Israel respects the present special role of the Hashemite Kingdom of Jordan in Muslim holy shrines in Jerusalem."⁷⁸

"Disputes arising out of the application or interpretation of this Treaty shall be resolved by negotiations.

Any such disputes which cannot be settled by negotiations shall be resolved by conciliation or submitted to arbitration."⁷⁹

There is no indication that any of that happened.

As for the blocking on April 13th and following of Palestinian access to a promenade or gathering area, a legal remedy could have been sought. Adalah, The Legal Center for Arab Minority Rights in Israel, reports no such effort.⁸⁰ Yet, it is impossible to say that such an

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[https://www.ohchr.org/en/hrbodies/hrc/complaintprocedure/pages/faq.aspx#:~:text=Do mestic%20remedies%20have%20been%20exhausted,provide%20compensation%20to%20alleged%20victims](https://www.ohchr.org/en/hrbodies/hrc/complaintprocedure/pages/faq.aspx#:~:text=Do%20mestic%20remedies%20have%20been%20exhausted,provide%20compensation%20to%20alleged%20victims)

⁷⁸ Article 9(3)

<https://www.jewishvirtuallibrary.org/israel-jordan-treaty-of-peace>

⁷⁹ Article 29

⁸⁰ <https://www.adalah.org/>

effort would have been ineffective or unreasonably prolonged. Adalah reports several other areas where it has litigated for Arab minority rights in Israel successfully.

Israel has an independent judiciary which respects due process and the rule of law. Claims of human rights violations can be adjudicated within Israel. There is no need to go outside Israel to do this and certainly no need to set up a UN Commission to do this.

The principle of exhaustion of local remedies has a counterpart in the statute of the International Criminal Court, the principle of complementarity. Under the statute of the Court, a case is inadmissible where a State with jurisdiction over the crime is either investigating or prosecuting or, after investigation, has decided not to prosecute, unless the state is either unable or unwilling to carry out the investigation or prosecution.⁸¹ This principle is relevant, in light of the fact that the Council resolution and the Commission call for submissions both refer to alleged violations of international humanitarian law and alleged violations and abuses of international human rights law. In deciding whether there are such violations and abuses, the principle of complementarity comes into play.

So, what we have with the current Commission is violation of basic principles of the UN legal human rights system, the principles of exhaustion of local remedies and complementarity. Whatever the rights and wrongs of the incidents of April 13th, this much is surely wrong - the establishment of a permanent UN Commission which gives pride of place to the events of April 13th, without exhaustion of local remedies and without a finding of either unwillingness or inability of Israel or Jordan to take local action related to those events.

⁸¹ Article 17

14. Demand and supply

Demand creates its own supply. This maxim is typically invoked as an economic principle. But it is also a political one.

Anti-Zionism creates anti-Zionists. There are not just propagandizers and propagandized, inciters and incited, victimizers and manipulated and engineered Palestinian victims. There are also purchasers and vendors, shouters and echoers, commanders and the obsequious, demanders and suppliers. Anti-Zionism is more than invective. It is an industry with its own supply chains, entrepreneurs and customers.

We see this industry in universities, with persons who produce and teach anti-Zionist discourse, with NGOs who generate anti-Zionist reports, and in the UN itself with persons who are appointed to anti-Zionist tasks. This Commission is part of this industry.

The members of this Commission - Navi Pillay, Miloon Kothari, and Chris Sodari - have a history of anti-Zionist discourse.⁸² Yet, the problem is not just poor appointments to the Commission. Any person who accepted an appointment to the Commission would have to be anti-Zionist, given its mandate. All these appointments do is remind us that there is a steady supply of candidates for this sort of work.

How do we shut off this supply? The answer is to shut off the demand. Anti-Zionism, like its big brother antisemitism, will always be with us. But it can be marginalized.

Marginalize anti-Zionism within universities and the pool of quasi-academics producing anti-

⁸² Prof. Anne Bayefsky, "The Newest Anti-Israel UN Action Must Be Challenged - Now", Jerusalem Center for Public Affairs. December 20, 2021

<https://jcpa.org/article/the-newest-anti-israel-un-action-must-be-challenged-now/>

Zionist pseudo-research will evaporate. When otherwise respectable NGOs disassociate from anti-Zionism, the swamp of workers employed and contracted by those NGOs to do this work will drain. Beat back the anti-Zionist coalition within the United Nations, and the pool of persons available to produce anti-Zionists reports will become a puddle.

It is all very well to ask entrepreneurs to have nothing to do with a human rights violating customer. And it should be done. Nonetheless, if that is all we do, the problem will remain. If some entrepreneurs walk away, others will spring up to take their place. The problem of the human rights violating entrepreneurs will be squarely addressed only when the violations themselves are addressed. That means, in this context, confronting anti-Zionism directly.

15. Discrimination

This submission has already pointed out, in the section on preliminary matters, the increase of antisemitism worldwide in solidarity with the Hamas rocket and missile attacks on Israel. This increase has demonstrated graphically in real time with a myriad of real incidents that anti-Zionism is a form of antisemitism.

This submission has also already pointed out the massive hostility, repression and expulsion of Jews in Arab countries and Iran because of the existence of the State of Israel. This victimization shows in real terms the link between anti-Zionism and antisemitism and the artificial geographical limitation of the United Nations Human Rights Council resolution being addressed here and the Commission established by virtue of that resolution.

In addition, there is discrimination against Jews specific to the region specifically delimited by the Council resolution and the Commission call for submissions. It is the anti-Zionist treatment of Jews in the West Bank and Gaza.

There are, according to recent population estimates, about .43 million Jewish residents and 2.95 million people total in the West Bank.⁸³ Jews are about 15% of the population of the West Bank. The total Israeli population is 9.45 million. Arabs are about 2.00 million. Arabs are about 21% of the Israeli population.⁸⁴ Jews living in the West Bank both in absolute and percentage terms are far fewer in number than Arabs in Israel.

It makes no more sense to say that Jews should not live in the West Bank than to say that Arabs should not live within Israel. Amnesty International, in a September 2003 report, called for the forcible evacuation of Jews from the West Bank and Gaza, without calling for Arabs to be forcibly evacuated from pre-1967 Israel.⁸⁵ Evacuation of Arabs from Israel would be a violation of human rights and we do not suggest that there should be such an evacuation. But evacuation of Jews from the West Bank would be as much a violation of human rights, and indeed the same sort of violation.

It is often said that the residence of Jews in the West Bank, labelled as settlements, is an obstacle to peace. Yet, the opposite is the case. It is the anti-Zionist intolerance of Jewish neighbours which is the obstacle to peace.⁸⁶

What threatens the viability of a Palestinian state in the West Bank is not the residence of Jews in the West Bank, but rather anti-Zionist intolerance of them. As long as living in the neighbourhood while Jewish is, in the West Bank, not tolerated, it is impossible to conceive of a Palestinian state living side by side in peace with Israel.

⁸³ <https://www.cia.gov/the-world-factbook/countries/west-bank/>

⁸⁴ https://www.cbs.gov.il/he/mediarelease/DocLib/2021/447/11_21_447e.pdf

⁸⁵ "Surviving under Siege: The impact of movement restriction on the right to work", AI Index: MDE 15/064/2003.

⁸⁶ For a discussion of the international legal arguments on the settlements see chapter five of *Aftershock: Anti-Zionism and Antisemitism* by David Matas, Dundurn, 2005

When Israel withdrew from Gaza in 2005, Jewish residents had to be evacuated for their own safety. Israel is required to take elaborate security precautions to protect Jewish residents of the West Bank. Anti-Zionists want to kill Jews. Israel does its best to try to protect them. These protection efforts are then misleadingly characterized by anti-Zionists as apartheid.

Here too we can see the link between anti-Zionism and the recurrent tensions, instability and protraction of the situation in the region. Hatred is a basic human emotion and can not be eradicated. Antisemitism, as the oldest, most pervasive and physically disastrous hatred in the history of the planet, will always be with us. But the United Nations should be doing nothing to fan that hatred.

Anyone who truly does not want Israeli security precautions to be there should focus on preventing the killing of Jews simply because they happen to live in the neighbourhood. If Palestinians in the West Bank are prepared to accept the presence of Jews in their midst and offer them protection, the existing security precautions, including the security barrier, would not be necessary.

16. Repression

The Palestinian Authority in the West Bank represses Hamas and Hamas in Gaza represses Fatah. Both repress support for Israel.

The Palestinian Penal Code penalizes collaboration with the enemy with death. The United Nations Declaration on Measures to Eliminate International Terrorism⁸⁷ calls on all states

"To cooperate with one another in exchanging relevant information concerning the

⁸⁷ <http://www.un-documents.net/a49r60.htm>

prevention and combating of terrorism;"

Yet Palestinians in Gaza who provide information to Israel about preventing and combating Hamas terrorists are guilty of collaboration with the enemy and risk execution.

This is more than just a theoretical possibility. The Research Directorate of the Immigration and Refugee Board of Canada, in a Response to Information Request titled "Palestine: Treatment of those collaborating or suspected of collaborating with Israel by political and militant groups (2012-July 2013)",⁸⁸ reported that Hamas has used military courts to sentence a number of Palestinians to death on the charge of collaboration with the enemy based on coerced confessions. As well, Palestinians suspected of collaboration with Israel have either been summarily executed by anti-Zionist mobs or summarily executed by Hamas.

The concept of collaboration is broad. It is not limited to providing information to Israel. It includes "political collaborators, who represent Israeli interests in Palestinian public life" and even "Palestinian journalists who are 'friendly' with Israeli journalists". Being a Zionist in Gaza can lead to suspicion of collaboration and death.

This form of repression is cruel and tragic. It is also a cause of recurrent tensions, instability and protraction of the situation. When the very advocacy of the Zionist point of view can lead to death, it is little wonder that anti-Zionism has such a grip on the population.

17. A focus on root causes

Sometimes consideration of root causes can be useful, in providing understanding and also in suggesting how to resolve a problem. This submission has addressed root causes not in the hope of resolving the problem of anti-Zionism which, as stated earlier, is just a variant of antisemitism, which will always be with us, but in the hope of providing some

⁸⁸ <https://irb.gc.ca/en/country-information/rir/Pages/index.aspx?doc=454725&pls=1>

understanding and one, would hope, some mitigation of the virulence of this form of antisemitism.

The root causes, in contrast, to which the resolution of the United Nations Human Rights Council and the call for submissions of the Commission refer are altogether different. The very reference to root causes is a manifestation of the problems this submission addresses.

One can see where the resolution and the Commission is heading with the reference to root causes. The root causes, from an anti-Zionist perspective, which is the perspective of the resolution, are violations of international humanitarian law by Israel, violations and abuses of international human rights law by Israel, systematic discrimination by Israel based on national, ethnic, racial or religious identity, systematic repression by Israel based on national, ethnic, racial or religious identity, and Israeli responsibility for the events of April 13th.

The conclusion to which the resolution points the Commission is that the very existence of Israel is the root cause of all of the litany of problems to which reference is made in the resolution and that Israel should cease to exist. Moreover, since this is a never ending Commission, the Commission will be coming out with this conclusion with new reports year after year after year.

This approach is both legally and practically wrong. Legally it confuses motive with intent. In criminal law, including international criminal law, motive is never a defence. As long as the requisite intent is there, the accused is guilty whatever their motive. When anti-Zionists perpetrate terrorist attacks, it does not matter what their motives are. As long as they intended the terrorist attacks, they are guilty of terrorism.

The statute of the International Criminal Court provides that a person has intent where:

- "(a) In relation to conduct, that person means to engage in the conduct;
- (b) In relation to a consequence, that person means to cause that consequence or

is aware that it will occur in the ordinary course of events."⁸⁹

Root causes have nothing to do with it. Legally Hamas can not avoid responsibility for terrorist acts and Fatah can not evade responsibility for inciting, glorifying and rewarding terrorism, by reference to root causes.

More than that, pointing towards the existence of Israel as a root cause of all the wrongs to which the resolution of the United Nations Human Rights Council and the call for submissions of the Commission refer is itself a root cause of recurrent tensions, instability and protraction of the situation. Until anti-Zionists are prepared to acknowledge that the root cause of all the problems of which they complain is their own anti-Zionism, the real root cause, that anti-Zionism, will continue to be with us.

D. Conclusion

Looking backward can help us to go forward. However, looking backward in the wrong direction can lead us astray.

The resolution of the United Nations Human Rights Council coming out of the special session sparked by the Hamas rocket and missile attacks on Israel and the Israeli response from May 10th to 21st, 221, and the Commission it established are troubling. The Council special session, by setting up a Commission with a tendentious anti-Israel mandate, including a backward look at the events of April 13th, looks bound to wander off in the wrong direction. That does not mean that a backward looking effort is itself pointless.

If we accept that the real problem, which the resolution of the United Nations Human Rights Council and the Commission address only tangentially and perversely, is not the existence

⁸⁹ Article 30

of Israel but the refusal to accept the existence of Israel, one can ask why that is so. Behind anti-Zionism looms antisemitism. But why is their antisemitism? Asking that question is asking why there is racial, religious and ethnic hatred.

One explanation is the magnification of differences and the minimization of similarities. The global Jewish population, by tradition and history, comes from Israel. Judaism, though allowing for conversion, does not proselytize, meaning that most Jews have a biological connection with Israeli ancestors.

Despite the impact of the Holocaust on the creation of Israel and its demographics, the majority of the Jewish population of Israel have full or partial Mizrahi ancestry, that is to say are descendants fully or partially of Jews from the Arab world and Iran.

The armed attacks against Israel's existence generated a rebuttal to the justification for those attacks - as noted earlier, a Jewish refugee population from Arab countries and Iran larger than the Palestinian population displaced from Israel. Most of these Jewish refugees found a haven in Israel.

The term "antisemitism", though it is now used to refer to racial hatred against Jews, etymologically refers to semites, a term that encompasses both Arabs and Jews. Anti-Zionists use against their Jewish neighbours the language of colonialism, occupation, and settlements. Jews then have been castigated in Europe by antisemites for coming from the Arab world and castigated in the Arab by world anti-Zionists for coming from Europe.

Islam was inspired by and derived from Judaism. The two religions have large overlaps. Both religions espouse various formulations of the concept "Love thy neighbour". What we see in practice, with anti-Zionism, is its complete opposite, hatred of the neighbour. Antisemitism did not end with the Holocaust. It just retreated and regrouped. Its present formulation is heavily anti-Zionist.

Those who buy the sizzle buy the steak. Despite the reams of criticism of Israeli behaviour, anti-Zionism has more or less nothing to do with the behaviour of Israel. It is based almost entirely on the fact that Israel is predominantly Jewish.

If Israel were predominantly Arab and Muslim, if there was an Arab Muslim minority in the country heavily invested in terrorism against the majority and the majority took security precautions, the uproar against Israel we hear and the physical attacks we see would not be happening.

The problem is becoming more acute as the years go by. There are positive aspects to the present security situation of Israel. However, one has to differentiate between that situation and the danger of global antisemitism through anti-Zionism.

Our planet is becoming generally less democratic, less respectful of human rights. That has an adverse impact on many rights seeking communities, not least the Jews. We can see that phenomenon impacting adversely on the global Jewish community through the ganging up by the non-democratic states at the United Nations on the Jewish state. The situation of the global Jewish diaspora is deteriorating because of expanding anti-Zionism.

The global attacks we saw on Jewish communities coincident with Hamas terrorist attacks on Israel in May 2021 run the risk of repetition. What is scheduled to be an unending stream of reports emanating from the Commission established by resolution of a special session of the United Nations Human Rights Council will likely fan the flames of anti-Zionism.

If we look backward to anti-Zionism as the root cause of the recurrent tensions, instability and protraction of the situation which generated the special session of the United Nations Human Rights Council, its resolution and this Commission, we can see forward to meaningful solutions. The solution has to be combating anti-Zionism as a component of combating

antisemitism, and more generally, as a component of combating national, racial, religious and ethnic intolerance and hatred. If we do that, tensions will abate, the situation will stabilize and the protraction of the hostility to the existence of Israel will be marginalized.

When it comes to national, racial, religious and ethnic intolerance and hatred, it is unrealistic to expect its disappearance. But this hatred can increase or decrease. The fact that the United Nations Human Rights Council special session resolution and the Commission will be exacerbating tensions, promoting further destabilization, and protracting hostilities should not stop us from trying to make matters right. That means doing what we can to combat anti-Zionism.

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