UN commission will probe question of Israeli apartheid - Pillay tells 'Post'

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<https://www.jpost.com/arab-israeli-conflict/article-709511>

The [UN’s Commission of Inquiry](https://www.jpost.com/international/article-709403) (COI) plans to investigate whether Israel committed acts of apartheid against Palestinians, but has no immediate intentions to do so, nor has it reached any conclusions on the matter in advance of such a probe, COI chair Navi Pillay told The Jerusalem Post on Wednesday.

“Whether apartheid is a matter of concern to the people of Israel and Palestine is something that we will investigate,” Pillay said by phone from Geneva along with COI investigator Miloon Kothari of India.

The two international legal experts are part of a three-member COI on Israel, which presented its first report on alleged Israeli human rights abuses against Palestinians to the United Nations Human Rights Council this week as the body opened its 50th session in Geneva.

Israeli officials have feared that the COI plans to find the country guilty of apartheid, thereby bolstering a drive to transform what they believe is a territorial conflict into a racial one by way of delegitimizing the Jewish state.

Non-governmental groups such as Amnesty International have already submitted reports to the COI charging Israel with apartheid already from the state’s inception in 1948.

'There's a lot of pressure'

“There is a lot of pressure on us... to respond to [the apartheid questio](https://www.jpost.com/arab-israeli-conflict/article-702118)n and reports,” Kothari said. But any such investigation would happen in the future, once the COI is more established, he explained.

The COI’s mandate does not include the word apartheid nor was it mentioned in the COI’s first report, Pillay said.

As a native of apartheid South Africa, Pillay said, “you can imagine I have great empathy for understanding what it means to be discriminated [against] under apartheid.”

She recalled her 2011 trip to Israel during her tenure as the former high commissioner for human rights.

“Apartheid was not the issue then,” Pillay said, as she reflected on the changes to the political discourse with respect to the Israeli-Palestinian conflict over the last decade. For some people, this issue has become their entire strategy, she said.

Her COI team, Pillay explained, had a very broad and complex mission of which an investigation into apartheid charges was just one piece of a much larger puzzle as they seek to identify the root causes of the Israeli-Palestinian conflict.

“It’s one element, but it’s not the only one,” Kothari said.

Reports submitted to the COI on the matter will be taken into consideration, she said, but no conclusions will be reached until the COI has done its own investigation.

“We don’t want to just say we agree” with someone else’s work, Kothari said. “We want to understand the situation and we want to place it [the apartheid issue] in a historical context which also ties with the clear responsibility given us to look at the roots of the conflict and to assign responsibility.”

Pillay has in the past said that she believes Israel was guilty of acts of apartheid, a statement that has pushed pro-Israel activists to call for her removal from the COI.

Both Pillay and Kothari were careful to distinguish between any statements they may have made as individuals in the past and the legal fact base analysis they would reach as part of the COI.

They were careful to say they did not want to jump to conclusions on apartheid prior to their own investigation. It was premature to conclude that acts of Israeli discrimination were comparable to apartheid, but neither, they said, “have we ruled it out."

They were, however, ready to speak of the relationship of their work vis-à-vis the International Criminal Court, which is now investigating Israel for war crimes. At the UNHRC on Tuesday and later in their conversation with the Post, they said they would be meeting with the ICC to provide information about possible violations of international law, including acts by specific individuals.

Part of the COI mandate is to ensure accountability, Pillay said.

Israel refuses to cooperate

Israel has argued that the COI is symptomatic of the UN’s bias against Israel and has refused to cooperate with the probe, as it has with past probes. It has refused to grant the COI team access to sovereign Israel, the West Bank or Gaza, thereby forcing it to conduct its interviews virtually or in neighboring Jordan.

"We are appealing for access to Israel so we can speak to people and hear their opinions," Pillay said.

Kothari added, “They need to allow us in. We want to meet with the ministries and the people there. We want to hear their side of the story.”

Israel’s diplomatic team in Geneva has also shunned them, Kothari said.

“We cannot even meet with the Israeli ambassador. We keep asking. We have no access to any Israeli authorities and they do not show up at the council” for discussions on the report, Kothari said. He referenced Israel’s decision to boycott COI proceedings at the UNHRC.

The COI on Israel, known as the “Independent International Commission of Inquiry on the occupied Palestinian territory, including east Jerusalem and Israel,” is a permanent investigation. Its three-member team is tasked with presenting two reports a year, one of the UNHRC and another one to the UN General Assembly in New York.

What can the COI do?

The COI is mandated to explore “root causes of recurrent tensions” of the Israeli-Palestinian conflict including systematic discrimination and repression based on national, ethnic, racial or religious identity.”

It has been tasked with exploring these issues both within and without Israel’s sovereign territory as they investigate events that occurred any time during the country’s 74-year history.

Given the COI’s extensive mandate, the panel has focused more on setting the stage for its future work than on addressing all issues at once, Pillay and Kothari explained.

Most COIs focus on a singular issue or event, they noted. “We are not like other commissions where we deal with an episode that has just happened,” Pillay said, adding that the COI was seeking to uncover the patterns and root causes of the conflict.

“We will not be jumping in each time there is a troubling episode that is done by special rapporteurs,” Pillay explained.

The 18-page document the COI presented this week, for example, looked at past UN reports and investigations into the Israeli-Palestinian conflict.

It found that the reports showed that the “underlying root causes were overwhelmingly directed toward Israel” and that Israel’s seemed to have no plans to end its “occupation” of the Palestinians even though that “occupation” was fueling Palestinian violence.

It was a conclusion, Pillay said, that the COI agreed with based on the evidence presented.

“They [the reports] were right based on their investigations, to have said that,” Pillay said, adding that anyone would likely come to that conclusion.

“If you had looked at this big collection of resolutions and recommendations... I am dead sure that you will make the factual conclusion that they are all mainly targeted at Israel,” she said.

Pillay and Kothari clarified that in the future, the COI would explore the damage done by Hamas rockets in southern Israel to better understand how the conflict looks from the Israeli perspective.

“We have the data on Hamas. We know what they did in May. We know what they did before,” Kothari said.

Still, he noted, the balance of the responsibility falls to Israel. “Even if you take all of that data, all of the damage done by the missiles... it is still disproportionate on the Israeli side,” Kothari said.

The two investigators dismissed charges of bias against them, noting that they were reaching conclusions based on evidence and international law.

“Our work is based on a very clear analysis of the breach of international humanitarian law and human rights law and criminal law,” Kothari said. “We are looking for truth.”

He has resigned himself in part to the idea that charges of bias will dog the COI’s work.

“It doesn’t matter what we do, we will be called biased,” he stated. “That has become like a mantra now” by Israelis and NGOs.

“If you base your work on international human rights standards and on truth and witnesses and evidence and then you are called biased, then yes, we are biased,” Kothari stated.

Pillay added, biased “in favor of human rights.”

At the UNHRC on Tuesday, COI member Chris Sidoti, an Australian legal expert, pushed back at charges that the work of the COI was antisemitic.

“Antisemitism is an atrocity in itself. It is the basis for some of the most extreme atrocities in history,” Sidoti said. “The Shoah most particularly, pogroms, persecutions going back centuries. It is a tragedy and a travesty to trivialize antisemitism for political purposes, to rob it of its content, to use it as a shield for ordinary criticism of the actions of the state.”