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Israel Gaza commission criticised over transparency and accountability

Amnesty International today criticised Israel's proposed investigation into its military action against a Gaza aid flotilla on May 31 as lacking in transparency and unlikely to ensure accountability over the nine deaths of activists during the operation.

The Israeli cabinet approved a three-man Israeli commission, with two international observers, to examine Israel's military action off the Gaza coast in which nine international activists were killed by Israeli forces.

"The format of this government-appointed Commission represents a disappointment and a missed opportunity," said Malcolm Smart, Amnesty International's director for the Middle East and North Africa.

"The Commission looks to be neither independent nor sufficiently transparent, the two international observers may be denied access to crucial information, and the Commission's findings may not be used in future prosecutions."

The Commission will not have access to members of the Israeli military who were involved in the planning and implementation of the military action, except for the Chief of Staff, and there is nothing to indicate that its findings or recommendations will be binding.

The Commission will be chaired by former Israeli high court judge Jacob Turkel, a specialist in civil law who has also served as a judge on military court appeals panels.

The other two Commission members will be Amos Horev, a retired major-general and former chief scientist of Israel's defence establishment, and Shabbtai Rosen, a professor of international law at Bar Ilan University and former representative of Israel to the United Nations.

The two international observers, David Trimble, former First Minister of Northern Ireland, and Ken Watkin, former head of Canada's military judiciary, will only participate in the hearings and discussions of the Commission as observers.

Any information considered "almost certain to cause substantial harm" to Israel's national security or foreign relations, by the Commission chair can be withheld from the international observers.

The Commission may also choose to censor their report on similar grounds, after consulting with what is vaguely termed 'the authorized bodies'.

"The processes of the Commission must be open, transparent and allow access to all information sources,"

said Malcolm Smart. “It should not allow the political considerations of the Israeli government to determine which of its findings are made public.”

It is unclear too whether and to what extent the Commission will have access to all documentation, including film and video footage seized from television crews and others aboard the ships in the flotilla, and what efforts it will make to gather information from the international activists who were on board the ships making up the flotilla.

“The stipulation that the findings of the Commission cannot be used in future legal proceedings is particularly worrying” said Malcolm Smart.

“Its puts into serious question the possibility that anyone found to have ordered or committed human rights violations or violations of international humanitarian law will be held accountable.”

Israel, like all states, has an obligation to prosecute and punish perpetrators of crimes under international law. In addition, individual commanders and superiors may be criminally responsible as a result of the conduct of their subordinates. The Israeli investigation should reaffirm the State of Israel’s obligation to combat impunity.

While its mandate includes examining "the security circumstances surrounding the imposition of the naval blockade" the Commission has not been given scope to examine more broadly the legality of Israel’s closure of Gaza, which includes a blockade by land and air as well as by sea.

“The creation of this Commission must not distract attention from Israel’s continuing blockade of Gaza, which Israel must lift immediately,” said Smart. “The Israeli authorities’ closure of Gaza constitutes collective punishment and is in clear violation of the Israel’s legal obligations as the occupying power.”

The mechanisms available within Israel for investigating complaints have been widely criticized.

Despite repeated calls from the UN General Assembly, in the 18 months since the end of its 22-day military operation in Gaza, Israel has so far failed to conduct investigations that are “independent, credible and in conformity with international standards” into the alleged war crimes and other serious violations of international law by its forces which were reported by the UN-mandated Fact-Finding Mission on the conflict in Gaza and southern Israel.

Amnesty International has called for a prompt and credible international inquiry into the deaths of nine international activists during the Israeli action against the flotilla on 31 May and for full accountability.

Those selected to conduct such inquiry should be persons of acknowledged impartiality, competence and expertise. Israel should cooperate fully with this international inquiry.