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THE PURPOSE AND PROCESS OF INVESTIGATIVE BODIES OF THE UN HUMAN RIGHTS COUNCIL ON THE ISRAELI-PALESTINIAN CONFLICT -A STUDY

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ABSTRACT:-

The United Nations Organization in general and the United Nations Human Rights Council, in particular, have more and more investigative bodies to help respond to violations of international humanitarian and human rights law was suspected to have taken



place in the Israeli Palestinian conflict, and to ensure accountability for these violations in order to fight impunity. In this issue of Israeli Palestinian, article will find out whether actions of the Human Rights Council in investigations and following up are helpful to obtain justice or have remained only on paper.

KEYWORDS: United Nations Organization ,human rights law , Human Rights Council.

INTRODUCTION :

The United Nations Commission of Inquiry was established at the call of the United Nations Human Rights Council, the Gaza Commission operated inside the general situation of current crisis between Israeli-Palestinians. It was established in specific response to the 2014 whether before, during or after, where the commission of crimes against humanity and war crimes was assumed to have taken place. The Gaza Investigative body was, in other words a post-conflict where there suspected that conflict can be broke out again anytime. The plan was intended to address humanitarian law and human rights abuses on a huge level by handing over responsibility for wrongs committed, just as the Darfur, Rwanda and Yugoslav COIs did before it, but it was also quite clearly intended to make recommendations to demonstrate the consequences and causes of the conflict.

Commentators in the field of UN COIs have repeatedly focused their attention on certain specific and recurring problems with UN COIs, largely procedural in nature. UN COIs are generally criticized with regard to their lack of clarity of purpose, partiality, independence, and/or openness and transparency; moreover, these general concerns tend to manifest themselves in very particular ways. So UN COIs have consistently been criticized with regard to: their biased mandates (partiality); the clarity of their mandate and purpose (transparency and consistency/clarity); a disproportionate focus on a particular country, region or conflict (a lack of representative participation, partiality); the selection of biased commissioners (partiality and independence); inflammatory language used in reports (partiality) and shifting standards of proof(transparency of rules and operating procedures); a misguided or biased review of the facts (partiality); the lack of clarity in or promulgation of their rules and methods of operation (transparency); the quality of their evidence used to indict and the quality, quantity and use of corroborating evidence (fairness, partiality, transparency of processes and rules of

evidence); and their approach to balancing interests in protecting witnesses while also providing full and prompt disclosure of legal findings to individuals and/or states concerned. The last is a general due process issue but also one to do with the transparency and promulgation of working principles and approaches.

The Gaza COI is also exceptionally useful because the COI was contentious and politically sensitive from the beginning in way that few other inquiries could be though, as we have seen early, it is also generally representative of other UN COIs in that they all tend to operate in relation to politically sensitive disputes that are generally in the most significant to the international community at the appropriate time. In the end, the Gaza COI's final report the Goldstone Report was not accepted by Israel, the lone state subject to investigation, and also suffered from a lack of hold up from other important nations worldwide, such as the European Union (representing the respective European states) and United States. Because of the disagreement surrounding the Gaza COI, it is perhaps the best example of what it means to produce a legal-factual report for both political and legal bodies based on a legal mandate that was influenced by political agendas and objectives.

Moreover, the Gaza COI is particularly interesting as compared with other contemporary ad hoc UN COIs for the fact that it focused on human rights laws including economic and social rights then is larger coverage than was done in Rwanda or the former Yugoslavia, where both focused primarily on humanitarian and international criminal law. This broader focus as compared to its immediate predecessors meant that social and economic rights, and the context in which those rights were evaluated, played an important role both in the final report's study and in the subsequent evaluation of the Goldstone Report. As result, the Gaza COI provides an interesting opportunity to discuss what role abroad range of human rights should play in UN COIs' analysis of post conflict situations, and as a corollary what purposes UN COIs should play in addressing mass atrocities and helping to promote peace.

HUMAN RIGHTS COUNCIL'S EXPECTATIONS OF THE INVESTIGATIONS

Identifying perpetrators

In the most general terms and according to the traditional logic of the activity, human rights fact-finding keep for receiving information and to find out the event of human rights violations. However, the HRC has expanded and, at the same time, specified the mandates in tasking the investigators to identify perpetrators and to make recommendations for further action. Such a shift may be seen as offering a more concrete possibility of linking the results to further accountability endeavors. As with the current investigative body in Gaza, mandated in 2014, which had the purpose to establish the facts and circumstances of such violations and the crimes committed in the perspective of making recommendations, in particular on accountability measures, all with opinion for fighting and stay away from impunity and be sure that those criminal are held accountable. Similar cases have been made for identifying perpetrators on Côte d'Ivoire, Darfur, Syria and Libya. In the perspective of Syria, the principal mandate for the commission of Inquiry in 2011 was to investigate all alleged violations of international human rights law and to establish the facts and circumstances of those violations and the crimes done, with vision of fighting impunity and make sure for accountability.

The commission of inquiry ended up compiling a list of 50 alleged perpetrators at various levels of government and its agencies in relation with the information obtained. The list is confidential but direct link with accountability may arise as the list may be presented by OHCHR in the context of future investigations and possible condemnations by capable prosecutor. Views have been expressed that it is essential to carry on the confidentiality of the lists which could otherwise end up being naming and shaming individuals, having severe implications to their rights. Criticism has focused towards the possible lack of procedural due process with regard to fact-finding results identifying perpetrators, which may have unpleasant impact on the person's rights. So far the lists of perpetrators of the HRC investigations have been kept confidential. Thus, the HRC mandates have come to contain various international criminal law implications: identifying perpetrated crimes and perpetrators (states, individuals, groups). The investigative bodies are progressively more tasked with the purpose of getting evidence with view of criminal prosecutions. This raises further questions, including on the standard of proof applied by the investigators.

QUALIFYING PERPETRATORS AND CRIMES

Although the HRC had mandated the Investigative body on Lebanon to investigate the organized targeting and killings of civilians and did not expressly call on the investigative body to assign responsibility or find out perpetrators of the possible crimes, the Col, nevertheless, considered that the conflict gave rise to issues of international responsibility of Israel under international human rights and humanitarian law, and the accountability of people for severe violations of international Human Rights and international Humanitarian law. After investigations for the crimes done by Israel Defense Forces investigators concluded that crimes committed could be eligible as grave violations of the war crimes, and customs of war therefore report contains indications of conduct that constitute serious international humanitarian law and human rights violations for which individual responsibility can be charged.

The Col went further beyond strictly assigning responsibility by concluding that the deliberate strikes against civilians amounting to summary and extra judicial capital punishment of persons not only dishonored essential rights of these persons but also constituted very harmful State practice, particularly disturbing for modern legal culture.

As opposed to the Lebanon case, in the case of Beit Hanoun, in addition to Israel the report also expressly discusses the accountability of the other party to the conflict by statement that, as the duty has repetitively stressed those who are shelling rockets on Israeli civilians are no less answerable than the Israeli military for their actions. The conclusions also make assumptions on the proportions of responsibility, as the commission finds that Israel, Hamas and the Palestinian Authority have human rights obligations towards the victims. Most of the current violations, however, are caused by Israeli action or inaction.

In its second report in the same question, the commission found that in addition to independent, impartial investigations to be conducted into the bombing of Beit Hanoun, also mechanism must be constitute with the purpose of making accountability for those who are responsible of launching rockets towards Israeli towns.

ATTRIBUTES OF FOLLOW-UP

For affirmative explanation by the OHCHR, investigative bodies have confirmed to be important in fighting impunity with the purpose of promoting responsibility. They collect and make sure information, create an historical proof of actions, and provide a basis for further investigations. They also suggest measures to level out violations, provide justice and compensation to victims, and hold perpetrator to be accountable.

According to this two report on dispute settlement held at the Hague Conferences on clash settlement, the statement of the commission in manner had the character of grant and leaving to the parties full freedom as the consequence of given report. While the 1899 convention foresees the report of the commission to be submitted to the conflicting parties, leaving its fate to the parties involved, the 1907 convention has ventured to have the report read at a public sitting, at the attendance of the agents and counsel of the parties. Regardless of this, nothing reminiscent of a follow-up or an appeal is envisaged in these instruments. The report has no legally binding nature on the parties.

In case of alleged violations, post-investigation and pre-accountability is the space that should be invaded by all possible follow-up. In a similar context, the term "utilization of reports" can be used.

According to the manual of operations of the HRC special procedures, follow-up to country visits may take the form of either:

1. Undertaking follow-up initiatives through communications and further visits; and
2. Put together their recommendations in ways that make possible achievement and monitoring;
3. Collaborating with relevant partners.

It is, however, argued that instead of facilitation of implementation, for HRC investigations formulation of recommendations should first be guided by the necessity to make them. Further visits by the investigative body depend on the HRC. The missions are usually dispatched once. Certain missions, such as on Syria and the OPT(Occupied Palestinian territories), are often basically renewed. Cooperation with relevant partners could mean inter-UN cooperation and referral, which is the main fate of the HRC investigation reports.

As a possibility, the OHCHR could perform follow-up, to see over the implementation of recommendations. The OHCHR is independent from the HRC and states and could be especially useful when it has a country office in the particular country.

With regard to recommendations, according to the OHCHR, they should be specific, measurable, attainable, realistic, and time-bound. This approach implies that recommendations hold different degrees as to the possibility of their implementation.

Alston has further noted major broadening of remedial and institutional options in terms of the outcomes of human rights fact finding whole spectrum, from avoidance of criminal responsibility issues all the way to the detailed naming and strong recommendations for criminal prosecutions with the crimes being specified.

FOLLOW-UP BY THE COUNCIL

However, attempts to follow-up on investigations on Gaza have yielded no significant results. The Human Rights Council focused on Israel's actions in the 2009 FFM with very large mandate of investigating the crimes of international human rights law and international humanitarian law done by Israel particularly in Gaza.

The resolution 13/9 holds many follow-up phrases, including calling the Secretary-General to demonstrate comprehensive information on the progress made in the presentation of the suggestions of the Goldstone Fact-Finding action by all concerned parties, together with United Nations . The report of the Secretary General was absolutely filled, including enlightening the fact that the Human Rights Council had transmitted the statement of the mission to the Prosecutor of the ICC, but had unsuccessful to advance the report to the UN Security Council because of Article 99 of the Charter. The Security Council had failed to require Israel to take steps to launch right investigations into violations. There were no significant effects of the follow-up.

Among other endeavors, the HRC has establishing follow-up committee of independent experts to the Goldstone report in April 2010, and in October 2010 renewed the members of experts. After further investigations on the Israeli attacks on the flotilla of ships carrying humanitarian assistance to Gaza in 2010 and in the OPT in 2012, yet again in July 2014, including while being concerned at the lack of implementation of the recommendations contained in the report of the FFM of 2009, the HRC dispatched investigative body with the purpose of investigating crimes was assumed to have taken place on the Gaza in the context of the military operations conducted.

The investigations of Israel's activities are not accompanied by effectuation of the former's recommendations, and build up on overlapping recommendations addressing violations. Explanatory of the circumstances, in the second report of the Beit Hanoun investigative body was explain that one victim of the Beit Hanoun bombardment was the rule of law. There has been no responsibility for act that murdered 19 persons and others injured.

Obstacles of investigative bodies of the Council during investigations.

According to the United Nations statement on fact finding, even though voluntary, states should endeavor to follow the policy of admitting UN fact-finding missions to their territory, to cooperate with the missions, and give them full and speedy support required for the work out of their functions and the accomplishment of their mandate. Some states have declared, especially in debates which preceded the setting up of the first expert group by the Commission on Human Rights that human rights issues fall within their sovereign sphere and that article 2(7) of the UN Charter prevents the UN from intervening in the domestic sphere on these issues. Yet it has been argued that with the adoption of the UN Charter human rights have become an international concern and are no longer a domestic matter, and that most states have accepted intervention by fact-finding, including by way of accepting the UN Charter and the implied powers of the UN main and subsidiary bodies.

Nevertheless, some states refuse investigations access to their territory. The cooperation of the state concerned is usually dependent on its acceptance of the investigation. As a prominent example, Israel has refused to cooperate with any of the investigations or the OPT special procedures mandate-holder for reasons of

alleged politisation and injustice against Israel.

In the first year of the HRC, in the case of investigation of Israel's actions in Gaza, specifically the town of Beit Hanoun, the high-level FFM, comprising of an odd number of members: Archbishop Desmond Tutu and Professor Christine Chinkin did not manage to get visas from Israel to travel to Gaza, which they regretted..

The operation demonstrated that without travelling to Beit Hanoun with the purpose to meet the sufferers and survivors, it would not be possible independently to attain their goals in that situation even formulation recommendation for protection in future. The choice to make interview with the victim in other countries was not possible during that time. In 2008 also a further effort operation determined to pass through Beit Hanoun via Egypt. In the case of another investigation in 2014 the commission also regretted the failure to obtain access to Gaza by Israel after numerous fruitless attempts, but got suggestion for using the way of Egypt in context of reaching easily in Gaza then received permits travel from Egypt. Witnesses and officials have been met in neighboring countries; information technology is used to interview witnesses and victims, both in Israel and the OPT. It is also important to note that while the situation of Gaza is not usual state-controlled territory, it is in similar position to other territories in conflict.

Access to a state does not seem to be deemed highly important for a credible report any more. Due to frustrating circumstances, the investigations are not finding access imperative, thus circumnavigating the hurdle of non-cooperation by states.

CONCLUSION

As countries keep unashamedly violating human rights and not admitting to wrongdoings, the United Nations in general and the Human Rights Council in particular have established investigative bodies to facilitate reaction to all violations of human rights and international humanitarian Law, and to make sure accountability for these violations. The responses of the international community rely on obtaining truthful information of the alleged violations to pursue possible further action in the context of protection people from violations of their rights.

In order to fight impunity and ensuring that those responsible are held accountable, the investigations should complement the existing of the UN and international criminal justice systems. This should be similar to the resolution adopted by the UN Security Council on Rwanda and former Yugoslavia cases where United Nations Security Council established accountability procedure of prosecution the people liable for violations of International Humanitarian and Human Rights Law, however, the Council sought to complete its mandate in Israeli-Palestinian conflict but still blocked by states seeking to use it for political interest, biased and subjective aims.

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