

October 7 Attack Necessitates Establishment of State Commission of Inquiry

Introduction

Half a year after the Hamas terror attack on Israel's southern communities and the unprecedentedly heinous murder of civilians, the national public discourse continues to deal with all aspects of the tragedy in an attempt to understand the reasons for its severe consequences, which can only be seen as the greatest failure in the country's history to protect the lives of its citizens. Anti-government protests have intensified as more than 130 hostages remain captive in Gaza, hundreds of thousands of Israelis have been forced out of their homes, and the war continues to exact an unbearable toll, with no visible solution in sight. Against this backdrop, especially in light of Prime Minister Netanyahu's refusal to publicly assume responsibility for the debacle, the establishment of an independent commission of inquiry is inevitable.

This document deals with the appointment of a state commission of inquiry following the October 7 attack and with the political and legal context behind the establishment of inquiry commissions in Israel in general. The question of whether such a commission ought to be established is examined in light of the circumstances of the attack and of the legal infrastructure addressing the conditions and justifications for the appointment of such commissions. The likelihood of such an outcome is dissected based on political science research on such decisions in general, the political situation ensuing from the attack, Prime Minister Netanyahu's response, and the anomalous reluctance of all the governments under his leadership to appoint inquiry commissions.

As the document will show, the October 7 attack meets the criteria justifying the establishment of a state commission of inquiry, due to the consequent profound crisis of trust regarding the state's most fundamental role, which is to protect the lives of its citizens. Given that the individuals potentially responsible for the failure that enabled the attack comprise the entire political and security leadership, what is needed is an institutionally independent investigation, which can only be carried out by a state commission of inquiry.

Having said that, there clearly is a very low chance that the current government will appoint such a committee, for reasons to be detailed in the document related both to the

refusal of the political leadership, Netanyahu first and foremost, to assume responsibility, and to the fact that independent investigations are meant to bolster and restore trust in state institutions rather than to preserve political and elected officials in power, an apolitical stance that is anathema to the declared policy of Netanyahu and his government, even after October 7. Therefore, what is needed is a public outcry demanding the appointment of a state commission of inquiry and maintaining the high visibility of the issue on the public agenda, which have in the past been shown to contribute to the chances of a commission being appointed.

Commissions of Inquiry: Definition and Historical Background

An inquiry commission committee is a quasi-judicial public body, anchored in the law, whose role is to conduct an independent investigation of extraordinary events that result in a crisis of confidence in existing government frameworks.¹ Such commissions are commonplace in many democratic countries in assorted variations, whose common denominator is that they are ad-hoc panels (established for the purpose of the investigation and disbanded upon its completion) external to the executive branch (and usually, to the legislative branch as well), appointed by decision of the government or a minister with the purpose of conducting a public investigation of an event in the past.²

Democratic countries have many bodies whose job is to conduct investigations (police, security/intelligence organizations, tax authorities, regulators, etc.), but events of unusual scope and severity necessitate inquiry commissions given that they call for an investigation spanning diverse areas of expertise, which ordinary investigative bodies do not possess. Furthermore, such events entail a crisis of trust in government institutions and often raise questions about the possible responsibility of the very same officials in charge of those investigative bodies.

In Britain, the difficulty of effectively investigating exceptional events and gaining the public's trust in the process and its findings led to the enactment of the Tribunals of Inquiry

* English-language reference. All other references in this paper are in Hebrew.

¹ Avigdor Klagsblad, *Tribunals of Inquiry*, Srigim: Nevo Publishers, 2001; Yifat Holzman-Gazit and Raanan Sulitzeanu-Kenan, [Truth or Criticism: Public Trust in Commissions of Inquiry and Attitude Change Regarding the Inquired Event: The Winograd Report as a Case Study](#), *Law and Government Journal*, 2011.

² Raanan Sulitzeanu-Kenan, [If They Get It Right: An Experimental Test of the Effects of the Appointment and Reports of UK Public Inquiries](#), *Public Administration*, 2006.

Act of 1921, after which Israeli legislation is modeled.³ Similar to the British political context, in Israel too this legislation was preceded by unsuccessful attempts to investigate events implicating government officials. The political scandal about the responsibility borne by government ministers and security officials for "the Lavon Affair" (a failed covert operation in Egypt in 1954) led to public recognition of the need for a powerful, independent, and credible investigative body to probe serious events resulting in crises of confidence.⁴ The Commissions of Inquiry Law enacted in 1968 created the primary legal framework for the appointment of commissions of inquiry in Israel.

Objectives of an Inquiry

The Commissions of Inquiry Law states that the establishment of a state commission of inquiry may be considered for the purpose of investigating "a matter of vital public importance at that time."⁵ Thus, the decision to appoint a commission could be said to be a possible response by the state to serious events that resulted in a crisis of trust in its institutions and received wide public attention.⁶ The need for an investigation to ascertain the truth, draw lessons, and assign responsibility is first and foremost affected by the gravity of the event. Secondly, a crisis of trust in existing institutions justifies an independent investigation external to ordinary investigative bodies. Third, heightened public interest attests to the importance of an event, and is a major normative justification for the appointment of an inquiry commission. Heightened public attention often makes it hard on a government, whose members may be held responsible for the said event, to oppose the appointment of such a commission, as will be detailed below.

A. Factual Investigation and Policy Learning

The need for an investigation is based on the realization that in order to recover from a crisis it is imperative to ascertain facts, identify the cause of failures, and draw professional

³ The legislation ensued from the Marconi scandal, which began with suspicions that senior British cabinet ministers had used their influence to secure a major contract in 1911. A parliamentary select committee set up to look into the allegations issued two reports, one for the majority and one for the minority in the committee, which clearly followed party lines. See: Frances Donaldson, "The Marconi Scandal," *Harcourt, Brace & World*, 1962.

⁴ Klagsblad, see footnote 1.

⁵ Klagsblad, see footnote 1.

⁶ Dominic Elliott and Martina McGuinness, "Public Inquiry: Panacea or Placebo," *Journal of Contingencies and Crisis Management*, 2002; Raanan Sulitzeanu-Kenan, "Reflection in the Shadow of Blame: When Do Politicians Appoint Commissions of Inquiry," *British Journal of Political Science*, 24 March 2010.

conclusions whose implementation will lessen the danger of similar blunders in the future.⁷ In the case of systemic failures, the learning process must combine perspectives and insights from different disciplines in order to build the most accurately possible picture of the key facts and to grasp their significance. Such a process enables an assessment of how diverse factors and events contributed to the outcome and how individuals and organizations performed vis-a-vis standards, goals, and values, and makes it possible to draw well-founded explanations for the facts underlying the event being investigated. As noted, such explanations allow for a more accurate learning process, which leads to improved performance, reduces the risk of similar failures in the future, and may reach personal conclusions regarding officials, to the extent that they are shown to have failed to do their job properly.

The investigative role is a key characteristic of inquiry commissions, which distinguishes them from bodies that are primarily intended to recommend policy. In addition, unlike other investigative bodies, its findings are not intended only for internal consumption by state institutions, but are also meant to be publicized given that one of the objectives of appointing an inquiry commission is to respond to a crisis of confidence in those institutions.⁸ This particular objective affects the processes and structure of the inquiry commission, as well as the emphasis on its independence. However, it should be noted that while its purpose is to conduct an investigation in order to ascertain the facts and possibly make recommendations about policy and personal accountability, it is not its job to implement them. The implementation of policy measures arising from the findings of the investigation is up to the appointing entity, which is the government.⁹ This distinction is important, as it demarcates the level of reasonable expectations from inquiry commissions, and the subsequent evaluation of their contribution. For example, the fact that some crises that were investigated in the past did not result in significant policy changes does not necessarily indicate that such inquiry commissions are handicapped or flawed in any way, given that setting policy is up to the legislative and executive branches,

⁷ Charles F. Parker and Sander Dekker, [*September 11 and Post-Crisis Investigation: Exploring the Role and Impact of the 9/11 Commission](#), Cambridge University Press, 4 June 2010; Geoffrey Howe, [*The Management of Public Inquiries](#), *Political Quarterly*, 1999.

⁸ Klagsblad, see footnote 1; Sulitzeanu-Kenan, footnote 2.

⁹ Zeev Segal, [*The Power to Probe Into Matters of Vital Public Importance](#), *Tulane Law Review*, 1984; Klagsblad, see footnote 1.

whereas implementation of policy is up to the government and the executive bodies at its disposal.

B. Independent Investigation and Rebuilding Public Trust

The modern inquiry commission emphasizes the independence of an investigation. A key way to ensure it is to have it conducted by an investigative body that enjoys high institutional and personal autonomy rather than by political institutions or their subordinates, given that an investigation often involves questions about policies and decisions of political officials. Therefore, the assumption is that in the event of a break in trust in government institutions, only an autonomous entity that is not dependent on political institutions will regain the public's trust and restore the legitimacy of state institutions in the long term.¹⁰

The expectation that an investigation that may reveal failures, errors, and even malicious actions will contribute to rebuilding public trust is based on the distinction between trust in an institution and its top officials at a specific point in time and trust in state institutions in the long term. The idea behind it is that failings may always occur, which is why mechanisms are needed to identify these failings efficiently and accurately and help remedy them. The knowledge that the country's institutions comprise such correction mechanisms is expected to boost the citizens' confidence in the proper functioning of government institutions. **This is a distinct apolitical notion, which places the importance of the proper functioning of government institutions and the people's trust in them above the people's approval of specific officials temporarily heading those institutions.**

Types of Commissions in Israel

In Israel, as in other countries, there are several types of inquiry commissions,¹¹ but the law offers two options for independent commissions designed to investigate serious events generating a crisis of trust in state institutions and high public attention. The first is a state commission of inquiry by virtue of Article 1 of the Commissions of Inquiry Law-1968 and the second is a government inspection committee by virtue of Article 8a of the Government Law-2001.

¹⁰ Klagsblad, see footnote 1; Holzman-Gazit and Sulitzeanu-Kenan, see footnote 1.

¹¹ For more details, see Holzman-Gazit and Sulitzeanu-Kenan in footnote 1.

Most of the commissions appointed in Israel have been state commissions of inquiry. Prominent examples are the Agranat Commission that investigated the information, assessments, and decisions of the military and civilian echelons on the eve of the Yom Kippur War (1973), the Shamgar Commission that investigated the assassination of Prime Minister Rabin (1995), and the Naor-Berliner Commission that investigated the Mount Meron crowd crush that saw 45 people killed (2021). An issue justifying a state commission of inquiry is defined as "a matter that is of positive public importance at that time," and the decision to appoint it is made by the government, which also demarcates the issues to be covered (known as the commission's mandate). Once the decision is made, the president of the Supreme Court appoints its chairman and members. According to the law, the chairman must be a practicing or retired District Court or Supreme Court judge.

In contrast, a government inspection committee can be appointed by a minister "to examine a specific issue or event within his area of responsibility,"¹² and its chairman and members are named by him (or the government).¹³ Any person or retired judge (from any court level) may serve as chairman. If chaired by a judge, the Minister of Justice may confer upon it some of the powers of a state commission of inquiry (a prominent example is the Winograd Committee set up to investigate the events of the war in Lebanon in 2006), in which case the committee would enjoy substantial institutional independence. However, a number of differences accord greater autonomy to a state commission over a government committee, even one chaired by a judge. These have to do primarily with the way the latter's members are appointed and the fact that in the case of a state commission the decision to publicize the findings is up to the commission itself, whereas in the case of a government committee it rests with the appointer (minister/government).

October 7 Attack Necessitates Establishment of State Commission of Inquiry

Based on the reasons justifying the establishment of inquiry commissions, worldwide and in Israel in particular, the need for a commission to probe the circumstances of the October

¹² Article 8a of the [Government Law-2001](#), Nevo, 18 September 2023.

¹³ It should be noted that in most countries where similar investigative committees exist, the authority to appoint members is vested in the appointer (minister/government), which is why the Israeli setup pertaining to state commissions is unusual. Moreover, a study examining the level of public trust in the Winograd Committee (a government inspection committee headed by a judge) found that the identity of the appointer carried little influence but the fact that it was chaired by a judge did. See Raanan Sulitzeanu-Kenan and Yafit Holzman-Gazit, **Form and Content: Institutional Preferences and Public Opinion in a Crisis Inquiry, Administration & Society*, 2016.

7 attack (an indisputably specific event centered on public institutions and their officials, as opposed to a question of general policy) speaks for itself. From the legal point of view, the Commissions of Inquiry Law states that the government is authorized to establish a state commission of inquiry to investigate "a matter of vital public importance at that time," a phrase commonly interpreted as requiring the matter at hand to be of exceptional importance and be accompanied by public controversy and a deep crisis of trust.¹⁴

It is not hard to determine that the October 7 attack, in all its aspects, generated an unprecedented crisis of confidence. Covered by a barrage of thousands of rockets, more than 2,000 armed Hamas terrorists, who were followed by a murderous rabble of Gazans, crossed the border into Israeli territory, indiscriminately killed 1,200 civilians, policemen, and soldiers, and abducted more than 200 civilians and soldiers.¹⁵ This is undoubtedly the most serious one-off event in the history of the Israeli state in terms of the fatality toll,¹⁶ the number of abducted hostages, and the fact that certain areas of its sovereign territory, including civilian localities, were occupied for periods ranging from hours to several days. Compounding the distrust and the citizens' sense of having been abandoned by the state are the reports about torture, rape, and other serious injuries inflicted by the terrorists.

The crisis concerns the most fundamental role of the state: protecting the lives of its citizens. It stems first and foremost from the six-month (at the time of writing) evacuation from their homes along the Gaza and Lebanon borders of 150,000 citizens whose safety could not be guaranteed, the unprecedented demand for gun licenses, the huge clamor to bring the elections forward, and many public opinion polls conducted since the October 7 attack pointing to a loss of support for the coalition parties, especially the Likud.

Finally, the attack took Israel's security establishment by surprise. The intelligence lapse led to an operational fiasco on account of the mismatch between the number of troops deployed in the area and the actual threat. The security forces, the IDF and the Shin Bet bear direct responsibility for the mishap, but the dimensions of the event raise broader questions about Israel's policy vis-à-vis Hamas prior to the attack, for which the government is responsible. The fact that the entire political and security leadership might potentially be held accountable for the failure that enabled the October 7 attack demands

¹⁴ Klagsblad, see footnote 1.

¹⁵ Amos Harel, [*Half a Year After Hamas' Attack, Parts of the October 7 Puzzle Are Still Coming Together](#), *Haaretz*, 29 March 2024.

¹⁶ [Causes of Death in Israel, 2020–2022](#), *Central Bureau of Statistics*, 17 April 2024.

an institutionally independent investigation, a demand that can only be met by a state commission of inquiry. Thus, there is no doubt that the October 7 attack meets the criteria justifying the establishment of a state commission of inquiry. However, as noted, the decision whether to appoint one rests with the government, and the chances of the current government deciding to do so are very low, as will be explained in the next section.

Likelihood of Establishment of Inquiry Commission

Governments tend to avoid, or even to oppose, the establishment of commissions to probe debacles for which they may be held accountable. The greater the chances of officials being implicated, the less likely such an appointment. In contrast, the higher the public attention commanded by the catastrophe (as reflected in the intensity of media coverage, the national discourse, statements by elected officials, civil protests, etc.), the greater the likelihood of such a commission coming into being.¹⁷ There are two main reasons for this reluctance on the part of governments: one is that the very appointment constitutes acknowledgment that a failure or crisis has occurred, thereby doing away with the option of denying or concealing blunders,¹⁸ and the other is the danger posed by the commission's findings.¹⁹ Political aversion to appoint such commissions stems from willingness to avoid blame, and the likelihood of their establishment decreases upon the increase of indications about the responsibility of government officials.

There is a real possibility that the political echelon might be held accountable for the October 7 attack, which is why the government's reluctance to appoint an inquiry commission is expected to be high. In this respect, Netanyahu's adamant refusal to accept any responsibility for the political-security failure that enabled the attack has been particularly notable, primarily in contrast to explicit statements by security establishment leaders acknowledging their own responsibility. His obstinacy fits well with the aforementioned political reluctance, both because the appointment of a commission would constitute acknowledgment of failure and because an independent investigation

¹⁷ Raanan Sulitzeanu-Kenan, [*Blame Avoidance and Crisis Inquiries](#), Oxford University Press, 30 June 2020.

¹⁸ R. Kent Weaver, [*The Politics of Blame Avoidance](#), *Journal of Public Policy*, October-December 1986; Kathleen M. McGraw, [*Managing Blame: An Experimental Test of the Effects of Political Accounts](#), *American Political Science Review*, December 1991; Christopher Hood, [*The Blame Game: Spin, Bureaucracy, and Self-Preservation in Government](#), Princeton University Press, 2010.

¹⁹ Sulitzeanu-Kenan, see footnote 6.

could assign responsibility for it to Netanyahu and his government, and not just to the army's top echelon and intelligence officers.

Assessing the likelihood of the appointment of an inquiry commission calls for a review of Netanyahu's record on the issue given the key role that he plays in any decision to that effect. It should be noted that although he has been Israel's longest serving prime minister (a cumulative tenure spanning nearly 17 years), none of his governments has ever appointed a commission to probe events that seemingly justified such a move, like the deadly Mount Carmel forest fire in 2010 that killed 44 people and the Mount Meron deadly crowd crush in 2021 (the commission that looked into it was appointed by the Bennett-Lapid government). Since the legislation of the Commissions on Inquiry Law in 1968, nearly 20 such panels have been named (most of them state commissions and just a few government committees), all of them in years when Netanyahu was not prime minister. Had Netanyahu's governments resembled other Israeli governments in their tendency to appoint inquiry commissions, his years in office would have been expected to produce seven or eight of them.²⁰ The fact that his governments never appointed a single one attests to an exceptionally strong aversion to using this tool.

It should also be noted that the distinct apolitical basis of inquiry commissions, which prefers to ensure the robustness and normal functioning of state institutions over keeping the politicians and bureaucrats running them in power, stands out in stark contrast to Netanyahu's politicized conduct in recent years, and even more so after the formation of his latest government in December 2022 and the promotion of the regime revolution. Therefore, despite the clear need to establish a state commission of inquiry into the fiasco that enabled the October 7 attack, the chances of the current government appointing such a body (be it a state commission or a government committee headed by a judge) is very low. This, it looks like this may only occur after a different government is elected.

Having said that, to the extent that the October 7 debacle should go on stirring public unrest, the government may choose to allay the pressure by appointing a commission. Though the level of public attention commanded by the blunders preceding the attack is very high, this interest was not channeled into major public pressure on the government in the period immediately after the attack and during the first months of intense fighting

²⁰ Some 20 inquiry committees during 39 years (56 years since 1968 minus Netanyahu's 17 years in power) means that on the average one committee was established every two years.

in Gaza. However, with the transition to a lower-intensity conflict in February–March 2024,²¹ especially in the absence of a deal for the release of the hostages held by Hamas and the uncertainty about future security arrangements on the Gaza and Lebanon borders, public pressure and criticism of the government has been mounting, thereby increasing the likelihood of such a development. A vigorous public demand for an inquiry commission and continued prominence of the issue in the public agenda have in the past shown to contribute to the chances, and therefore there is merit in pursuing the efforts in this direction.

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²¹ At the time of this writing, only three IDF brigades are deployed in Gaza. See Harel, footnote 17.