**Why the Human Rights Council of the UN is ‘Eyeless in Gaza’**

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In a speech in September 1960, presidential candidate John F Kennedy told a New York audience that “we can no longer put our faith in war as a method of settling international disputes. We can no longer tolerate a world which is like a frontier town, without a sheriff or a magistrate”.

Unfortunately, as confirmed this summer in the Gaza conflict, one of the world’s leading magistrates, the Human Rights Council of the United Nations, is plainly not capable of performing this essential function.

The council has the important role of identifying and publicising human rights breaches by states. The hope, and sometimes the reality, is that states will be reluctant to act in breach of international human rights norms if their conduct will be the subject of analysis and judgment. But that depends on the judge being objective.

The Human Rights Council is made up of 47 member states elected by the General Assembly of the UN, which “takes into account the candidate States’ contribution to the promotion and protection of human rights, as well as their voluntary pledges and commitments in this regard”. The General Assembly voted that among the countries to serve on the Council are China, Congo, Cuba, Ethiopia, Kazakhstan, the Russian Federation, Saudi Arabia, and many others with (I put this as politely as I can) a less than distinguished human rights record.

On July 23, the council adopted (by 29 votes to 1, with 17 abstentions, including the United Kingdom and the other EU states) a resolution condemning “widespread, systematic and gross violations of international human rights and fundamental freedoms arising from the Israeli military operations” carried out in Gaza. The resolution decided to “dispatch an independent, international commission of inquiry” to investigate violations of international humanitarian law in Gaza. The commission of inquiry is to report by next March.

The resolution was remarkable in two respects. First, that the Human Rights Council should condemn before receiving the report of the inquiry that it had commissioned to investigate. And second, that the condemnation does not mention Hamas, the ruling authority in Gaza, which has been responsible for appalling human rights violations including public executions of opponents of the regime. The EU refused to support the resolution, concluding that it was “unbalanced, inaccurate, and prejudges the outcome of the investigation”. The EU added that the resolution “fails to condemn explicitly the indiscriminate firing of rockets into Israeli civilian areas as well as to recognise Israel’s legitimate right to defend itself”.

On August 11, the council announced the appointment of the three members of the commission of inquiry. One of them, Amal Alamuddin, a barrister at Doughty Street Chambers (and fiancée of George Clooney) wisely withdrew her name, citing “existing commitments”.

The chairman is to be William Schabas, an international law professor from Canada, and a critic of Israeli policy. He commented last year that Benjamin Netanyahu, the prime minister of Israel, was his favourite candidate to see “in the dock” of the International Criminal Court. He has made a similar statement about Shimon Peres, the former president of Israel. These are surprising statements given the strength of competing candidates in the Middle East and other repressive countries in the world.

**The basic legal principle, summarised by Lord Hope of Craighead for the Appellate Committee of the House of Lords in 2001, is that a person should not sit in a judicial or quasi-judicial role if “the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased”. The appearance of bias is sufficient to disqualify a person. There is no need to show actual bias.**

**Professor Schabas responded to the criticism by insisting that he intended to leave his opinions “at the door” of the inquiry and not be influenced by them. But, as Lord Hope added, “protestations” by an individual accused of bias that he had an open mind “are unlikely to be helpful”.**

Gaza poses difficult questions of international human rights law. In particular, what are the limits on proportionate action by a state under attack by a neighbouring government dedicated to its destruction by all possible means, and which launches attacks from civilian centres without concern for its own people? Milton’s blinded Samson Agonistes was left “eyeless in Gaza”.

Unfortunately, clear-sighted answers to the legal questions will not come from the United Nations Human Rights Council or its inquiry.

The determination of the council, and many of its members, to abuse human rights for political purposes is undermining the role of international law at a dangerous period in world affairs.