

October 7: Not Who Should Investigate, but How the Investigation Should Be Conducted

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Executive Summary

- The ongoing debate over which Israeli authority should appoint a commission of inquiry into the collapse on October 7, 2023, is important for maintaining public confidence in the investigative process. However, this debate overlooks an equally important question: How the investigation itself should be conducted.
- The model of commissions of inquiry traditionally employed in Israel closely resembles judicial proceedings. Such commissions are typically chaired by judges and conduct public hearings, allow legal representation, issue formal warnings to individuals who may be adversely affected by their findings, hear witness testimony, and permit cross-examination.
- This model is ill-suited to investigating a systemic failure on the scale of the October 7 attack. Its quasi-judicial structure risks producing an inquiry that is unnecessarily slow, procedurally cumbersome, and overly focused on assigning responsibility rather than deeply understanding the underlying causes of failure.
- Investigations of this nature should instead prioritize establishing an accurate factual record, reconstructing the sequence of events, identifying systemic failures, and generating lessons capable of preventing future catastrophes. These objectives are more consistent with the methodology employed in aviation accident investigations.
- Judges and legal professionals are not necessarily the most suitable individuals to lead such an inquiry. The adversarial methodology of legal proceedings differs fundamentally from the interdisciplinary, research-based, and system-oriented approach required to investigate complex organizational failures.

- This paper therefore proposes an alternative model based on multidisciplinary investigative teams operating in a manner similar to aviation accident investigation agencies and military operational debriefings. Such teams would be supported by experts in intelligence, military operations, organizational behavior, technology, weapons systems, human factors, and related disciplines.
- This proposal does not advocate abandoning either individual or public accountability. Rather, it argues that the institutional process of learning from failure should be separated from the mechanisms responsible for determining personal, command, and political responsibility.

Introduction

Since the October 7 attack, public debate has focused primarily on the question of who should appoint the members of the commission charged with investigating the attack and the massacre. This is an important issue. Public confidence in those conducting the investigation is essential if both the investigative process and its conclusions are to command legitimacy. Without such confidence, the investigation is unlikely to produce lessons that Israel's political and security leadership will be willing to implement. Only under these conditions can investigative findings be translated into meaningful institutional reform capable of reducing the risk of future catastrophes.

Yet this debate has obscured another question that deserves equal—if not greater—attention: how should the investigation itself be conducted?

This article argues that the investigative model traditionally employed in Israel—referred to here as the judicial model—is poorly suited to inquiries into systemic failures such as the October 7 attack. Instead, Israel should adopt an investigative framework modeled more closely on aviation accident investigations and military operational debriefings, while adapting these approaches to the unique characteristics of a national security catastrophe.

The Judicial Model

For the purposes of this discussion, I refer to the traditional Israeli approach to commissions of inquiry as the judicial model because it closely resembles judicial proceedings. This characterization applies to both principal forms of inquiry recognized under Israeli law: the Commission of Inquiry (commonly referred to as

the “State Commission of Inquiry,” although this term does not appear in the statute) and the Governmental Commission of Examination (officially termed a Governmental Examination Committee).¹

The similarities between these commissions and courts are substantial. They are ordinarily chaired by sitting or retired judges,² and their membership typically consists of an odd number of commissioners, reflecting the practice of judicial panels.³ Their proceedings are generally conducted in public, consistent with the principle of open justice.⁴ Knowingly providing false testimony before a commission constitutes perjury to the same extent as false testimony before a court.⁵ Individuals who may be adversely affected by the commission’s findings are entitled to prior warning, and anyone whose interests may be affected may be represented by legal counsel throughout the proceedings.⁶ Through their attorneys, such individuals may also cross-examine witnesses.

Like courts, commissions of inquiry possess extensive coercive powers, including the authority to compel testimony, require the production of documents, and seize relevant materials.⁷ Their reports are published pursuant to statute and may include dissenting opinions. In some instances, their conclusions have influenced subsequent legal and public understandings of responsibility in a manner resembling judicial precedent. The Kahan Commission, for example, articulated the distinction between direct and indirect responsibility among Israeli public officials.⁸

The judicial orientation of these commissions has both historical and institutional roots. The framers of the Commissions of Inquiry Law presumably believed that appointing judges to lead such inquiries would enhance their objectivity and impartiality while reinforcing public confidence in their conclusions. At the time the legislation was enacted, the judiciary enjoyed broad public trust, making judges a natural choice to chair commissions of national importance (as opposed to current low levels of public trust in the judicial branch). The resemblance between commissions of inquiry and judicial proceedings may also reflect the intuitive assumption that both institutions seek to reconstruct disputed events and reach authoritative conclusions regarding responsibility. Moreover, the commissions’ statutory coercive powers naturally reinforce their resemblance to courts.

Institutional design, however, shapes institutional behavior. Organizations tend to

adopt the professional norms and methodologies of those who lead them. It is therefore unsurprising that commissions chaired predominantly by judges have evolved according to judicial methods of reasoning and procedure. Had engineers, military investigators, or systems analysts traditionally chaired such commissions, they would almost certainly have developed a markedly different investigative methodology and character.

Cumbersome, Inefficient, and Ill-Suited to the Search for Truth

The judicial model is fundamentally ill-suited to investigating systemic failures such as the October 7 attack and the massacre that accompanied it. Even at an intuitive level, this conclusion is difficult to avoid. Few people would be comfortable boarding an aircraft if aviation accident investigations were conducted according to procedures modeled on Israeli commissions of inquiry.⁹

The first difficulty is institutional. Compared with professional accident investigation agencies, commissions operating under the judicial model are procedurally cumbersome. Their quasi-judicial structure imports many of the inefficiencies associated with litigation. Extensive participation by legal counsel, public hearings, procedural safeguards, formal witness examinations, and cross-examination inevitably lengthen the investigative process and divert attention from its central objective.

These procedural safeguards serve an important purpose in judicial proceedings, where protecting the rights of individuals who may be adversely affected is paramount. Yet the principal objective of a national inquiry into a catastrophe such as October 7 is fundamentally different. As with aviation accident investigations, its overriding purpose should be to establish an accurate factual record, identify the systemic causes of failure, and generate recommendations capable of preventing future disasters. Procedures designed primarily to safeguard adversarial fairness should not be permitted to undermine those objectives.

With all due respect to the judiciary, the routine appointment of judges to chair commissions of inquiry further limits their suitability for investigating systemic organizational failures. This is not a criticism of judges themselves, but rather a recognition that professional expertise is context dependent. Judges are trained to resolve legal disputes through established rules of evidence and procedure.

Investigating a complex institutional failure requires a fundamentally different set of skills.

The methodological contrast is particularly striking. Israeli legal proceedings are fundamentally adversarial. Courts generally occupy a relatively passive position while opposing parties present competing factual narratives. The judge's role is to evaluate the evidence placed before the court rather than to conduct the investigation itself.

Professional accident investigators operate according to an entirely different logic. They actively direct the investigative process, identify missing information, formulate and test hypotheses, integrate evidence from multiple disciplines, and continuously refine their reconstruction of events. Rather than acting as neutral arbiters between competing narratives, they assume primary responsibility for uncovering what actually occurred.

This methodological difference extends beyond institutional procedure to modes of reasoning. Legal analysis focuses primarily on determining responsibility and applying legal doctrines to established facts. Investigations of systemic failures, by contrast, require empirical, interdisciplinary inquiry. They demand an understanding of the complex interactions among organizational structures, technological systems, intelligence processes, human decision-making, cognitive bias, and institutional culture.

Events such as the October 7 attack therefore require the use of methods extending well beyond legal reasoning. Effective investigation depends upon contributions from specialists in intelligence, military operations, systems engineering, organizational behavior, human factors, decision-making under uncertainty, communications technology, cyber capabilities, and related disciplines. A commission designed primarily around judicial methods is not naturally equipped to integrate these diverse forms of expertise into a coherent investigative framework.

The Alternative: An Investigative Model

The shortcomings of the judicial model become even clearer when contrasted with a more suitable alternative. In my view, Israel should establish a professional investigative body modeled on aviation accident investigation agencies while incorporating selected elements of the military operational debriefing process.

The team's primary responsibility should be the systematic reconstruction of the events surrounding the October 7 attack. Its central mission would be rigorous fact-finding: establishing as accurately as possible what occurred, why it occurred, and how the various failures interacted to produce the catastrophe.

As in aviation accident investigations, the investigative team should be supported by specialists drawn from all relevant disciplines. Depending on the issues under examination, these could include experts in intelligence collection and assessment, weapons systems, surveillance technologies, communications, cyber operations, command and control, organizational behavior, human factors, systems engineering, and any other fields necessary to reconstruct the events and identify their underlying causes.

Similarly, following the model of the US National Transportation Safety Board (NTSB), the investigative body could convene multidisciplinary hearings involving experts and institutional representatives from the relevant organizations. Unlike judicial proceedings, however, these sessions would not be adversarial. Their purpose would be collaborative fact-finding aimed at developing the most accurate and comprehensive understanding of the vents.

The composition of the investigative body should reflect the principal purpose of the inquiry. If the primary objective is to assign blame or determine legal or personal liability, procedures resembling judicial proceedings are appropriate because they provide essential procedural protection for those whose interests may be adversely affected.

If, however, the principal objective is institutional learning and the prevention of future failures, the investigative process should be designed accordingly. Questions of legal, disciplinary, command, and political responsibility can be addressed through separate institutional mechanisms. Free from the procedural constraints inherent in quasi-judicial proceedings, investigators would be able to employ a more flexible methodology, draw upon a broader range of expertise, and conduct a more efficient inquiry. Such an approach would maximize the investigation's capacity to achieve its central public purpose: preventing future national catastrophes.

Conclusion

The argument advanced in this paper should not be understood as suggesting that

responsibility for the October 7 attack and the ensuing massacre should be ignored. On the contrary, accountability remains an essential component of democratic governance. The central claim is instead that determination of responsibility should be institutionally separated from the principal fact-finding process.

Within the Israel Defense Forces and the various security agencies, each organization should evaluate the factual findings relating to its own personnel and determine whether disciplinary, professional, or command measures are warranted. With respect to political leaders and former officeholders, the public should be presented with a comprehensive factual record and allowed to reach its own judgments through the ordinary mechanisms of democratic accountability.

The principal purpose of a national inquiry into an event such as the October 7 attack should not be to replicate the functions of a court of law. Courts exist to resolve disputes and assign legal responsibility. A commission established in the aftermath of an unprecedented national catastrophe should serve a different institutional function: to establish the factual record, identify the systemic failures that made the catastrophe possible, and generate the knowledge necessary to reduce the likelihood of similar failures in the future.

Achieving these objectives requires an investigative methodology fundamentally different from the traditional judicial model. The inquiry should be led by professionals with expertise in complex systems, intelligence, military operations, technology, organizational analysis, and interdisciplinary investigation, operating according to methodologies that have proven effective in fields where learning from catastrophic failure is paramount—most notably aviation safety.

Only by distinguishing between the objectives of learning and accountability can a national investigation maximize its contribution to institutional resilience. Accountability is indispensable, but it should not come at the expense of understanding. Where the overriding objective is to prevent future catastrophes, rigorous fact-finding must take precedence over the procedural framework of adjudication.

Footnotes

1. Nevertheless, the judicial model is considerably less applicable to parliamentary commissions of inquiry.

2. In the case of a Commission of Inquiry appointed by the President of the Supreme Court, the chairperson must, by law, be a judge (Section 4(b) of the Commissions of Inquiry Law, 5729-1968). With respect to a Governmental Commission of Examination, the commission enjoys statutory powers only if its chairperson is a judge (Section 8A(a) of the Government Law, 5761-2001).
3. Section 3 of the Commissions of Inquiry Law, 5729-1968.
4. Section 18 of the Commissions of Inquiry Law, 5729-1968.
5. Section 237 of the Penal Law, 5737-1977.
6. See, for example, Section 15 of the Commissions of Inquiry Law, 5729-1968.
7. See, for example, Sections 9, 11, and 12 of the Commissions of Inquiry Law, 5729-1968.
8. The Commission nevertheless emphasized that *"It is not our function, as a commission of inquiry, to establish the precise legal basis for this indirect responsibility."* *Report of the Commission of Inquiry into the Events at the Refugee Camps in Beirut (Sabra and Shatila)* (1983), 65-73.
9. A similar insight underlies Professor Boaz Sangero's argument that the criminal justice system should, at least in part, adopt investigative and safety methodologies developed in aviation and medicine. See Boaz Sangero, *Safety from Wrongful Convictions* (2023).