**Schabas Must Recuse Himself, Or Be Removed**

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The International Commission of Inquiry established by a special session of the UN Human Rights Council – now known as the “Schabas inquiry” after its appointed chair, Prof. William Schabas – is not only “tainted at the core,” as I wrote of its predecessor Goldstone inquiry, but also partakes of a pernicious tripartite bias.

First, the resolution giving birth to the inquiry presupposes Israeli guilt, condemning “in the strongest possible terms, the widespread, systematic and gross violations of international human rights and fundamental freedoms arising from the Israeli military operations in the occupied Palestinian territory.” It is thus an *Alice in Wonderland* resolution, where the conviction and sentence are secured before the inquiry begins.

Second, and astonishingly so, the biased commission mandate not only presupposes Israeli criminality – which it references 18 times in the resolution itself – but it makes no reference at all to the Hamas spectrum of war crimes and crimes against humanity, let alone its ongoing terrorist war of attrition, during which it has launched 10,000 rockets targeting Israeli civilians since 2007.

Third, and astonishingly again, the resolution refers to Israeli perpetration of “hate crimes,” but makes no reference to the Hamas Charter, which calls for the destruction of Israel and the killing of Jews wherever they may be – the toxic convergence of the advocacy of the most horrific of crimes, namely genocide, embedded in the oldest and most enduring of hatreds, namely anti-Semitism – and the perpetration of terrorist acts in furtherance of this genocidal anti-Semitism, which is the root cause of the conflict as a whole.

Moreover, the UN Human Rights Council – which gave birth to the inquiry and to which the inquiry will subsequently report – itself partakes of a longstanding, systemic and juridical bias against Israel, in violation of the UN’s express mandate of “equality of all nations, large and small,” in the following ways, among others:

• 40 per cent of its special sessions – including the one establishing the Schabas inquiry – have been condemnatory of Israel, while the world’s major human rights violators have enjoyed exculpatory immunity;

• every session of the UN Human Rights Council – as I witnessed when I appeared before it – features a standing agenda item targeting “Israeli violations of human rights in the Occupied Palestinian Territories.” This is an utter denial of international due process, as one country – in this instance, Israel – is singled out for differential and discriminatory indictment;

• the mandate of the special UN Rapporteur on the Middle East – also a creature of the council – is to inquire into Israel’s actions alone, which are presumed to be in violation of international law; and

• there is ongoing, widespread and systematic condemnation of Israel in the deliberations of the council, a discourse which preceded the resolution establishing the Schabas inquiry.

It is therefore not surprising that the European Union characterized the UN Human Rights Council’s mandate as “inaccurate, unbalanced and prejudging the outcome.”

Accordingly, when I was asked in 2006 by the then-UN high commissioner for human rights to be part of a commission of inquiry into the tragic deaths of 18 Palestinians killed by an errant Israeli strike, I refused to do so, as the resolution establishing the inquiry spoke of the “Israeli wilful killing of Palestinian civilians,” again presupposing Israeli guilt, while its terms of reference deliberately ignored the Palestinian rocket attacks on the Israeli city of Sderot that had preceded Israel’s response.

Enter Prof. William Schabas, a distinguished international law professor, not unlike Richard Goldstone, who should recuse himself for the same reasons that I suggested to Goldstone when he was appointed, namely that the commission is the creature of a fatally flawed resolution, that its biased mandate presupposes Israeli guilt, and that the systemic and systematic bias of the UN Human Rights Council is in gross violation of the UN Charter guarantee of “equal treatment of all nations, large or small.”

In his *CJN* interview, Schabas said, “I’m not acting on the basis of the resolution, I’m only acting on the basis of the mandate in Paragraph 13.” But Schabas ignores the basic principles of statutory interpretation as set forth in Canadian Supreme Court jurisprudence, to the effect that “the interpretation of a statutory provision must be made according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the act as a whole.” Simply put, one cannot isolate Paragraph 13 from the resolution as a whole, nor seek to confine the interpretation of the resolution to this one paragraph alone.

In any event, if Schabas will not recuse himself – notwithstanding the tripartite bias of his mandate – then the inquiry will be further tainted by his own past conduct and prejudicial pronouncements, including:

• In October 2012, Schabas openly declared that his “favourite person to bring to the International Criminal Court would be Israeli Prime Minister Benjamin Netanyahu” for supposed Israeli criminality during the January 2009 Gaza conflict. Apart from presupposing Netanyahu’s criminality, Schabas got his basic facts wrong: in 2009, Ehud Olmert was the Israeli Prime Minister, and not Netanyahu, who was then leader of the Opposition;

• in an incredulous statement, Schabas expressed surprise that the president of Sudan would be prosecuted before the ICC – where he was indicted for war crimes, crimes against humanity and genocide in Darfur – but not then-Israeli president Shimon Peres;

• Schabas has accused Israel of war crimes, crimes against humanity and aggression committed “on the territory of Palestine since 2002,” while acknowledging that “much of [my] effort” is focused on bringing about the prosecution of Israelis at the ICC;

• Schabas has made frequent statements of support for the Goldstone report, which even its author, Justice Richard Goldstone, has discredited; and

• in a 2009 blog post, Schabas urged the international community to “ignore” Iranian President Mahmoud Ahmadinejad’s incendiary incitement, sanitizing Ahmadinejad as nothing more than a “provocative politician,” and ignoring his massive domestic repression, state-sponsorship of international terrorism, and incitement to hate and genocide.

Simply put, Schabas’ appointment to an already fatally flawed commission raises, at a minimum, a reasonable apprehension of bias, if not actual bias, and is a standing violation of the elementary principles of due process applicable to UN fact-finding missions.

Basic integrity requires that he recuse himself, if he is not removed.