**An Interview with Professor William Schabas**

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[**Prefatory Note:**This interview was conducted by email in recent days with Professor William Schabas in the immediate aftermath of his resignation as Chair and Member of the three person Commission of Inquiry appointed by the UN Human Rights Council last August to investigate allegations of violations of international human rights and international humanitarian law, as well as state crimes associated with Israel’s military attack on Gaza (code named by Israel as Operation Protective Edge) of July-August 2014. The depleted commission now consists of the remaining two members (Mary McGowan Davis of the United States as the newly designated Chair, and Doudou Diène of Senegal) and is due to submit its final report to the HRC in March; Professor Schabas, a distinguished specialist in international criminal law with a worldwide reputation is on the faculty of Middlesex University in London, had participated fully in planning the inquiry, the gathering of evidence, listening to witnesses. His exclusion from the drafting of the report deprives the Commission, and hence the HRC and the international community, of the member with the greatest professional credibility and reputation for no acceptable reason.

As has so often been the case when Israel faces the prospect of criticism it mounts an array of charges of bias directed at both prominent individuals and their institutional sponsors. This was my experience as Special Rapporteur for Occupied Palestine during the entire period of 2008-2014 in which I was subject to continuous defamatory attacks, spearheaded by UN Watch, a notorious NGO that avoids the message while mounting a furious attack on the messenger, seeking to blacken my reputation by writing letters of personal denunciation to a variety of prominent persons, who took such tactics far more seriously than they deserved. Israel officially charged me with bias at the time of my appointment, including issuing a Foreign Ministry declaration of non-cooperation, implemented in December 2008 when I tried to enter Israel on a HRC mission on behalf of the UN and was expelled after being held in a detention cell overnight.

In September 2009 when the Goldstone Report was issued after an inquiry similar to the one that Scshabas was chairing, prompted by the 2008-09 Israeli attack on Gaza (Operation Cast Lead). Richard Goldstone, a prominent liberal figure at the time but also a dedicated Zionist with close personal and professional connections to Israel, was put under pressure from the outset to decline the appointment, and Israel as in this case refused to allow the UN to enter Israel to carry out its fact finding mission in the most efficient manner. Although the Goldstone Report was fair and balanced, it was viciously attacked from the first moment of its presentation as ‘a blood libel’ against the Jewish people, and Goldstone personally was vilified by Israel’s most prominent political leaders, including the Prime Minister and President. This relentless pressure led Goldstone to retract on his own a crucial finding of the report as to the deliberate use of force by the IDF against Palestinian civilians, an action mainly discrediting of Goldstone himself, as the finding of the report continued to enjoy the support of the other three distinguished members of the inquiry group, including by Christine Chinkin of LSE, one of the world’s leading experts on international humanitarian law.

William Schabas’ resignation has its own disturbing specific context, although it bears the imprint of Israel’s determination and skill in mounting campaigns of bias to discredit whoever has had the professional willingness to present unpopular truths concerning allegations of state crimes by Israel arising out of its controversial uses of force in Gaza and overall unlawful occupation administration. As explained in the interview, Schabas was responding to Israeli charges of bias from the outset of his appointment, but with a recent emphasis on the fact that he had some years ago prepared as a modestly paid consultant a short technical report for the Palestinian Liberation Organization on the international law questions associated with a possible Palestinian application for membership in the International Criminal Court. Schabas’ attackers had gained enough traction in recent weeks to induce the President of the HRC to propose referring the question of Schabas’ bias to the UN Legal Affairs Office for resolution. Rather than see the work of the COI diverted and delayed by this side issue, Schabas chose to resign. As is usual in these cases, when a person who stands forth in public for truth and principle as Schabas has done since the beginning, there follows a flow of hate mail and death threats that appear to be the work of pro-Israeli extremists who consider critics of Israel as ‘Jew-haters’ or worse. It is important that those of us who seek a sustainable and just peace for the region stand in solidarity with William Schabas who knowingly stepped into this toxic environment because of his lifelong commitment to strengthening the role of international criminal law in protecting the innocent and punishing the guilty. It is a shameful reality that Israel has been so successful in mounting these campaigns within the United Nations against its more visible critics, and by so doing divert needed attention from its own persistent and flagrant wrongdoing from the perspective of international law. ]

Interview with William Schabas, recently resigned under pressure as Chair of the Commission of Inquiry appointed by the UN Human Rights Council in Geneva to Investigate Allegations of State Crimes associated with Israel’s military attack on Gaza, code named Operation Protective Edge

**When you accepted the position of Chair of this Commission of Inquiry into allegations of criminality directed at Israel and Hamas in relation to Israel’s military operations in Gaza during July and August 2014, what were your hopes and worries? Were these borne out by your actual experience?**

This was not the first time I have been asked to do something by the High Commissioner for Human Rights. I have never said no when asked. I am a loyal and enthusiastic supporter both of the High Commissioner and of the Human Rights Council. Thus, when initially requested by the High Commissioner if I would agree to have my name submitted as a candidate for the Commission and then by the President of the Human Rights Council if I would agree to be a member of the Commission I did not hesitate. I considered it an honour that both of them thought I could do this challenging job of participating in the Commission. I should add that I was never asked whether I would be the Chairman and only learned that I had been selected for that job when the announcement was made.

This was not the first such Commission. In particular, in a sense it follows in the footsteps of the Goldstone Commission. But there have been other inquiries since Goldstone and a huge amount of work conducted by special procedures of the Human Rights Council and by other UN institutions over the decades. When the most recent Commission of Inquiry was established, I think I believed that we would be a small piece in this much bigger mosaic of initiatives. I hoped the Commission would contribute both to justice and peace but my expectations were modest. On more than one occasion, I said that the difference between this Commission and its predecessors was that this time the International Criminal Court was standing in the wings. The State of Palestine had already begun ratifying international treaties. It acknowledged that accession to the Rome Statute was on its agenda.

**How did the work of COI proceed? Were you pleased with the workings of the undertaking as a whole? Do you expect that your resignation will have effects on the conclusions of the report, the reception of its findings, and their likely implementation?**

I need to be very careful here because the Commission has not been very public in its activities. It has gathered a huge amount of material. It has also met with many individuals – victims, experts, human rights activists, UN officials, representatives of governments, diplomats – but these ‘hearings’ were not open to the public. Some of those who met with the Commission, in particular a delegation of Israelis that travelled to Geneva in January 2015, publicized their meetings with the Commission. But as a general rule, the identity of those who met with the Commission has not been divulged.

I regret not being able to contribute to the drafting of the report. That job was only beginning at the time of my resignation. I am confident that the professional staff of the Commission, consisting of a dozen specialists, and the two Commissioners will produce a fair and effective report.

Although Netanyahu has called my departure a victory, my own sense is that he has shot himself in the foot or, as they say on this side of the Atlantic, scored an own goal. His strategy seems to be based on the idea that he will be able to prevent the report from appearing. But I think he is very wrong here. Instead of keeping his powder dry, he has fired one of his best pieces of ammunition in order to eliminate me. Now, it is harder for him to attack the Commission and its report.

**Can you explain your rationale for resignation more fully? Were you influenced by the experience of Richard Goldstone and the Goldstone Report?**

**Were you not aware when you were approached that these issues of supposed ‘conflict of interest’ would be used to challenge your credibility in a defamatory manner? Was the decisive factor the unanticipated response of the President of the Human Rights Council to the contention about your consultancy with the PLO on Palestinian statehood?**

There had been calls for me to resign from the moment I accepted the mandate in early August 2014. I did not ignore them but I concluded that they were not substantial. I do not think that I was biased or that there was a reasonable apprehension of bias. The allegation about the legal opinion I delivered to the PLO in October 2012 only emerged in late January. It seems the Israeli ambassador raised this informally with the President of the Human Rights Council who then drew it to my attention and asked me to explain, which I did. Subsequently, Israel made a formal complaint. The President proposed that legal advice from the United Nations in New York be requested in order to determine the procedure to follow in examining the complaint. The five-member Bureau of the Council agreed to this. Within minutes of its decision, I submitted my resignation.

I think that when there is an inquiry or investigation into the impartiality of a member of a tribunal or similar body, it is problematic for that body to proceed with other matters until the issue of impartiality is resolved. It was my own assessment that it would be difficult for the Commission to continue to work until my status had been determined. That was likely to take weeks. At best, it would distract the Commission from its important work at a crucial phase. At worst, it would prevent the Commission from completing its report by the March session, as it was required to do. Although I would have preferred to fight and defend myself from the unfair charges of conflict of interest, I considered that I had become an obstacle to the Commission completing its mandate. The least bad solution was for me to get out of the way.

Your question seems to imply that I should have seen all of this coming and extricated myself from the business much earlier. I cannot say I did not consider this in August when I saw how brutal and vicious the attacks on me had become. An important difficulty then was that already one of the three members who had been appointed had taken the step of withdrawing. Amal Clooney had initially been named along with myself and Doudou Diene. It seems there was some kind of misunderstanding. Within a few hours of the announcement of her appointment, she said that she could not serve. For me to withdraw subsequently would, I thought at the time, have been disastrous for the Human Rights Council. Bear in mind that the conflict in Gaza was still raging at the time. I decided that I would tough it out. I did not accept the charges of bias. It is easy today to second guess this. I should add that despite the nasty attacks from predictable directions, there was great support for the Commission of Inquiry. In September, the President of the Council reported to the plenary Human Rights Council. UN Watch and its friends howled about the composition of the Commission but there was no reaction from the members of the Council. In particular, on various occasions the European member states, who had abstained in the resolution establishing the Commission, reassured the three Commissioners of their support for its work and its activities.

**In retrospect, do you find any substance to the charges of bias or conflict of interest? How can one be both an expert on this subject-matter and not have some pre-existing opinions? Should not the proper test be one of professionalism and objectivity with respect to the evidence and applicable law? For instance, would a person who had been critical of Nazism or apartheid be rendered unfit to investigate allegations of crimes against humanity or racism?**

The word ‘bias’ gets thrown around a lot in this discussion. My attackers constantly claimed that I was ‘biased’. All that they meant was that I had an opinion different from their own. When one talks about bias in the context of judicial independence and impartiality, the issue is not whether the individual in question has opinions that have been expressed in the past. Everyone has opinions. Some conceal them. Others, like myself, wear them on their sleeve. But bias only occurs when an individual charged with a task requiring fairness and impartiality is unable to set his or her opinions aside. There is absolutely no evidence to support such a charge against me on this basis.

Lawyers often talk about ‘perception of bias’ or ‘fear of bias’. This is more subjective. It will occur when someone has a close personal relationship with a litigant or when financial interests are involved. There is reasonable concern that someone placed in such circumstances would have difficulty being impartial. But again, there is nothing of the sort in my situation.

Until the issue of the legal opinion that I provided in 2012 for the PLO arose, the only serious charges against me concerned a couple of statements I had made about Netanyahu. They were presented out of context to suggest that I had some kind of obsession with the man. In one case I was reacting to Netanyahu’s attack on Richard Goldstone. Netanyahu had said that Goldstone was one of the greatest threats to the survival of Israel. I said that I thought Netanyahu was the greatest threat to Israel’s survival. In the other I was talking about double standards at the International Criminal Court. I cited Desmond Tutu, who had criticised the African focus of the Court and said that he wanted to see Tony Blair brought before it. I said that my choice would be Netanyahu. Otherwise, I had not really thought much about the man. I of course stand by what I said. I have never said that I regretted making those remarks. I have never retracted them. I had a right to say them.

Could the UN have found someone who would be qualified to work on a Commission of Inquiry who did not have opinions about Israel and Palestine? Perhaps. Is there a thoughtful, well-informed individual on the planet who does not have an opinion on this?

The Israeli complaint about the legal opinion I had done for the PLO precipitated the chain of events that led to my resignation. Israeli called it a blatant conflict of interest. That is simply wrong. I did the opinion about two years before my appointment. It concerned Palestinian accession to the Rome Statute. I’ve done this for other governments too, helping them to address the legal issues involved in joining the International Criminal Court. I’ll gladly do it for others too, including Israel and the United States, if they ask me. The legal opinion for the PLO was the work of a recognised expert in the field. Although the PLO later acceded to the Rome Statute, it seems it was unimpressed with my legal advice because it did not accede in 2012. But that’s the nature of a legal opinion. Political leaders respond to other imperatives, which is quite understandable. I was not giving the PLO political advice. I was not their advocate or lawyer. I was simply providing a technical service. From beginning to end the whole matter lasted a couple of weeks. I received the request by e-mail and delivered the opinion by e-mail. I was paid a modest amount for my work. This is not a conflict of interest.

I have been struck by the failure of those who have challenged my presence on the Commission to engage with the legal authorities. For example, in 2004 Israel applied to have Judge Elaraby removed from the International Court of Justice in the advisory opinion on the Wall. The application was dismissed almost unanimously by the Court. Judge Elaraby had been a senior diplomat in Egypt and had frequently expressed views about Israel and Palestine. Judge Elaraby had been legal advisor to Egypt for part of his career. He certainly gave legal opinions to Egypt about the conflict over the years.

An Israeli academic friend of mine has drawn my attention to Hersch Lauterpacht, who was a strong supporter of Israel. He even wrote a draft of the declaration of independence, and provided advice to the Zionist movement and the State of Israel at various times. He was elected a judge of the International Court of Justice. Lauterpacht sat in the Israel v. Bulgaria case, which was dismissed at a preliminary stage but with Lauterpacht in dissent. Israel didn’t object that time.

Your reference to a person with views on Nazism is of interest because this was precisely the argument raised by Eichmann against the Israeli judges. There was never any suggestion that the three judges, all of them German Jews, did not have strong views about the Holocaust. It was assumed that they did. How could that not be the case? The Supreme Court of Israel ruled that professional judges would set aside their opinions and judge in an impartial manner.

**On the basis of this experience, would you accept future assignments from the HRC or OHCHR? Were you a victim of a campaign of defamation waged by UN Watch, NGO Monitor, etc.?**

Of course I will continue to serve the Human Rights Council and the Office of the High Commissioner for Human Rights. These two institutions are central to the international protection of human rights.

The charges of bias against me were nothing more than a witch-hunt, something reminiscent of McCarthyism. Shortly after I was appointed, Rabbi Shmuley Boteach published full-page ads in the New York Times, the Wall Street Journal and the Washington Post attacking my appointment. These were full of vicious lies. They dealt with matters that had nothing whatsoever to do with the mandate of the Commission. For example, I was described as a ‘friend of Iran and its genocidal former President Mahmoud Ahmadinejad’. This is simply a lie. In 2012, I was a member of the Iran Truth Commission that condemned the Iranian regime for gross violations of human rights. In 2011, I accompanied filmmaker Sandra Schulberg to Tehran in order to show her film Nuremberg, Its Lesson for Today. I spoke there about the Holocaust to young Iranians, confronting denialism and anti-Semitism in the lion’s den, so to speak.

**Overall, what did you learn from this experience that bears on the role and limitations of the UN? Is the Israel/Palestine conflict a special case? What can be done to depoliticize the process of such fact finding and policy making undertakings? Did the approach of the Canadian Government of not backing its own citizens play a role in making you more vulnerable to the Israeli pushback?**

I think that Israel and Palestine is indeed a special case in UN activity because of the highly politicized context. Fact finding commissions dealing with Syria, Libya and North Korea simply do not confront the hysteria associated with Israel and Palestine. Israel argues that it is a victim of double standards at the Human Rights Council. But it is a beneficiary of double standards at the other Council. This is a nasty, toxic matter. But the job must be done. I hope that those who will be called upon to pursue these issues within the United Nations will not be intimidated by stories of the intense and vicious attacks to which I was subjected, including death threats and unceasing abuse on the internet, much of it quite vile, violent and even racist. The language employed by Israel’s leaders contributes to this terrible atmosphere and, at least indirectly, incites the more fanatical participants. Last week, Foreign Minister Liberman likened me to Cain, a man who murdered his own brother. I must confess to having punched my brothers a few times, when I was much younger, but I have never murdered anyone! The Israeli representative to the UN described me as ‘Dracula’. But such analogies only contribute to the violent tone of the discussions.

Canada’s foreign minister, John Baird, denounced my appointment. I’m a Canadian citizen who has served his country in a variety of ways. I am an Officer in the Order of Canada, one of the country’s highest honours. The current government of Canada is run by a nasty, right-wing bunch who have greatly tarnished the country’s once rather noble position in the field of human rights. Their reactionary positions are well known within the Human Rights Council and, more generally, the United Nations. It would have been an embarrassment if Baird had approved of my appointment.

**On balance, how would you compare this COI with that chaired by Goldstone? My impression is that with Goldstone, there was a posture of noncooperation, but no public campaign until the report was issued, and then an ugly multi-level campaign took shape, and led to his partial retraction and total discrediting (especially as he acted without the support of the other three members with whom he apparently did not even consult). How should such COIs be structured in the future? (you may know that my successor as SR had no prior knowledge, and has made the position almost invisible, which may have been the intention).**

I wish I had a good answer to your question. It is tempting to say that in the future, the UN should vet appointees in the way that US government officials vet judicial nominees and similar appointments. As you know, there is no shortage of judges in the US who get through congressional approval because they don’t seem to have ever had an opinion about abortion or capital punishment and similar issues. Maybe the UN can identify a similar cohort of human rights experts who have never had opinions on important issues. Given that the nature of human rights work involves participating in various forms of activism, that may prove more difficult than similar exercises in the US judiciary. And it is also likely to eliminate some of the best qualified candidates from the pool.

What I would like to see is more pushback on these wrong and unfair charges of bias and conflict of interest. Some clarification on what is and what is not acceptable would make things clearer. I would like to see some UN guidelines that spell out the fact that the mere fact of having expressed opinions about a situation or a crisis does not disqualify someone from being a member of a Commission of Inquiry or serving in some similar function. It could also be made clear that providing a legal opinion in the past on a matter not directly related to the subject-matter of a commission is not a conflict of interest. The charge of bias seems far too easy to throw around. When it gets before courts, as it did in the International Court of Justice and the Supreme Court of Israel, it doesn’t get much traction, however. Let us get more clarity on this within the UN so that demagogic charges of bias can be knocked out early.