

INTEREST OF PETITIONER AND LOCUS STANDI

UN Watch has standing to bring this petition as a human rights organization accredited with the United Nations as a NGO in Special Consultative status with ECOSOC, pursuant to Article 71 of the United Nations Charter. In this capacity Petitioner is a recognized stakeholder at the UN Human Rights Council (“the Council”), and a regular participant in its proceedings, intervening on a wide range of thematic human rights issues and country situations. UN Watch reports, briefings and analyses on the Council are widely read by diplomats, academics and journalists, and its speeches in defense of the principles of universal human rights, democracy, and accountability, have been seen on the Internet by millions of concerned citizens around the world.¹

Petitioner actively participated in the 23 July 2014 Special Session of the Council that adopted Resolution S-21/1, which created the mandate under which this Commission of Inquiry (“the COI”) was created. UN Watch has since been actively involved in reporting on and analyzing the work of the COI, and may potentially make submissions before it on matters of procedure, fact and law.

The COI invited UN Watch to meet privately with Professor Schabas and the other two commissioners, Doudou Diène and Mary McGowan Davis, together with the head of the COI Secretariat. The meeting took place at the Palais des Nations in Geneva on 17 September 2014 (“the COI-UNW meeting”). By inviting UN Watch and encouraging its continued engagement, the COI recognized the standing of UN Watch within the proceedings of the COI. During the COI-UNW meeting, UN Watch Executive Director Hillel Neuer notified Professor Schabas that the organization would be

¹ *See generally* UN Watch reports, articles and speeches at www.unwatch.org, and the UN Watch blog on latest U.N. and human rights developments at blog.unwatch.org.

submitting this request, summarized the key facts and applicable legal test that require his recusal, and provided him and the other commissioners with a draft copy of this request. A brief exchange took place on the merits of the request. At no point did the COI challenge the standing of UN Watch to make this request.

Consequently, UN Watch has an interest in a COI that adheres to the principle of impartiality, and the organization has standing to bring this petition. In addition, UN Watch has public interest standing because this request addresses serious public international issues, including the credibility of the COI to impartially decide matters of international human rights and humanitarian law. Finally, this petition is the only reasonable and effective means for the material defect in Prof. Schabas' impartiality to be challenged and remedied.

STATEMENT OF FACTS

Prof. Schabas Says His “Favorite” to see in Dock of the International Criminal Court is the Prime Minister of Israel

On 7 October 2012, Prof. William Schabas participated in the “Russell Tribunal,” a mock trial of Israel that in a *New York Times* op-ed was condemned by Judge Richard Goldstone as a kangaroo court composed of “critics whose harsh views of Israel are well known.”²

In Schabas' address to this mock tribunal—on the subject of whether Israel was guilty of something called “Sociocide”—he declared: “Actually, my favorite would be Netanyahu within the dock of the International Criminal Court.”³

² Richard Goldstone, “Israel and the Apartheid Slander,” *New York Times*, 4 September 2012.

³ William Schabas, testimony before the “Russell Tribunal on Palestine,” 7 October 2012, at <https://www.youtube.com/watch?v=0EgykgqpgQY>.

Similarly, speaking in a university symposium on 10 September 2010, Schabas declared: “Frankly, if I had to think of an individual who would be the biggest threat to the survival of Israel, I’d probably choose Netanyahu.” He then chuckled, prompting further guffaws from the audience.⁴

And again, in a subsequent law journal article, Schabas wrote that Prime Minister Netanyahu could be considered “the single individual most likely to threaten the survival of Israel.”⁵

Schabas Called for “Going After” Israeli President Shimon Peres for War Crimes

Interviewed in 2009, Schabas called for “going after” Israel’s president—then Shimon Peres—for war crimes. Schabas asked: “Why are we going after the president of Sudan for Darfur and not the president of Israel for Gaza?”⁶ In the same interview, Schabas complained that the UN Security Council had created a tribunal for Yugoslavia, “but it did not create a Tribunal for Israel, for example.”⁷ It is noteworthy that Schabas cited no other examples—not Russia, Libya, Syria, North Korea, or any other country.

⁴ W. Schabas, 10 September 2010, “Lawfare and the Israeli-Palestine Predicament,” War Crimes Research Symposium, Frederick K. Cox International Law Center, at <https://www.youtube.com/watch?v=jFwUmNXZm14>.

⁵ W. Schabas, “Gaza, Goldstone, and Lawfare,” 43 Case Western Reserve Journal of International Law (2011) at 308.

⁶ Victor Tsilonis, “International Protection of Human Rights and Politics: an Inescapable Reality, Interview with Professor William Schabas,” published on 2 December 2010, online at http://www.intellectum.org/articles/issues/intellectum7/en/Int%27l%20Protection%20of%20Human%20Rights%20and%20Politics_English%20co-edited%20WS%20&%20VT3.pdf. That Israel’s presidency is a ceremonial position with no command authority over the military is a separate matter.

⁷ Tsilonis, *ibid*.

For Over Three Decades Schabas Campaigned to Indict Israelis for Alleged War Crimes

For over three decades, Schabas has campaigned fervently with Israel's opponents toward the goal of prosecuting Israelis for alleged war crimes:

- As far back as 1991, Schabas was a regular participant in the UN's notoriously one-sided "Committee on the Exercise of the Inalienable Rights of the Palestinian People," a body controlled by the world's worst dictatorships.⁸ At its NGO symposium that year, Schabas, speaking after the message from PLO Chairman Yasser Arafat, "articulated Israel's rationales for the inapplicability of the Convention," and then "made a legal rebuttal of all Israeli facile arguments."⁹
- In 1999, before the ICC was even in operation, Schabas was an early campaigner for the indictment of Israeli leaders. At a Cairo meeting of the same problematic UN committee, Schabas embraced an extraordinary session on Israel to be held by the High Contracting Parties to the Fourth Geneva Convention, which he called an "exciting opportunity."¹⁰ Schabas said that member states were "under an obligation to prosecute" Israelis "suspected of committing grave breaches."¹¹ States are required to seek extradition of those whom Israel refuses to try, said Schabas.¹² If the result of threats of prosecution under article 146 is "only to restrain the travel plans of Israeli civilian and military officials," said Schabas, this may still constitute a "useful means of pressure."¹³

⁸ Current members and observers of this committee include Syria, Belarus, Cuba, Pakistan, Turkey, Venezuela, Algeria, Bangladesh, Bulgaria, China, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Qatar, Saudi Arabia, Sri Lanka, UAE, Viet Nam, Yemen, the State of Palestine, the African Union, the League of Arab States, and the Organization of Islamic Cooperation.

⁹ UN Division for Palestinian Rights, *Eighth United Nations North American Regional NGO Symposium on the Question of Palestine*, under the auspices of the UN Committee on the Exercise of the Inalienable Rights of the Palestinian People, June 28-30, 1991, online at <http://unispal.un.org/UNISPAL.NSF/0/03BB61BF3F26A1FF8525610A00712C7B>.

¹⁰ UN Division for Palestinian Rights, *United Nations International Meeting on the Convening of the Conference on Measures to Enforce the Fourth Geneva Convention in the Occupied Palestinian Territory, including Jerusalem*, Cairo, June 14-15, 1999, online at: <http://unispal.un.org/UNISPAL.NSF/0/3B8A2154701B3FFA8525683C0056B022#sthash.y1c2EeCb.dpuf>.

¹¹ UN Division for Palestinian Rights, *ibid.*

¹² UN Division for Palestinian Rights, *ibid.*

¹³ UN Division for Palestinian Rights, *ibid.*

- In 2012, Schabas accused Israel of perpetrating “crimes against humanity, war crimes and the crime of aggression” at various times during its history.¹⁴
- In the same talk, Schabas acknowledged that the thrust of his current efforts is to indict Israelis at the ICC: “A strong and arguable case could be made that the court can already exercise jurisdiction over crimes against humanity and war crimes perpetrated in Palestine, and that the obstacle... is simply a decision by the prosecutor of the international criminal court,” said Schabas. “And so much of my effort these times is addressed to trying to get that decision rethought and reversed, and pointing out the legal fallacy and the policy error of the court in failing to take up this burning, important issue.”¹⁵
- On 7 August 2012, Schabas and John Dugard, the former UNHRC special rapporteur charged with investigating “Israel’s violations of the principles and bases of international law,” led a joint letter demanding that Palestine be recognized as a state by the ICC. Schabas stated openly that his goal was to indict Israelis for purported crimes in Gaza.¹⁶ He made no mention of indicting Hamas for firing rockets or perpetrating other attacks against Israelis.¹⁷

There are numerous other such statements by Schabas made in books, articles speeches and blog posts.

Schabas Has Repeatedly Defended Hamas and its Iranian Sponsor

Speaking in 2012, Schabas accused Israel of engaging in “punitive action” in 2009 that was not motivated by self-defense but rather “aimed to punish the people of Gaza.” He went on to legitimize Hamas. “If we look at the poor people of Gaza,” said

¹⁴ W. Schabas, testimony before the “Russell Tribunal on Palestine,” 7 October 2012, online at http://youtu.be/Vm_WhxIGytk?t=1m58s.

¹⁵ “Russell Tribunal,” *ibid*.

¹⁶ Schabas-Dugard letter, “ICC Assembly of States Parties Urged to Decide on Status of Palestine,” at <http://www.ejiltalk.org/icc-assembly-of-states-parties-urged-to-decide-on-status-of-palestine/>. Schabas describes the letter at “Palestinian Statehood and the International Criminal Court: A Curious Condition from Whitehall,” Nov. 27, 2012, saying: “confirmation that Palestine is indeed a State will dispel any ambiguity and throw the ball back into the Prosecutor’s court. She should then examine the Goldstone report, with its credible and serious allegations of war crimes and crimes against humanity perpetrated in Gaza in early 2009,” online at <http://humanrightsdoctorate.blogspot.ch/2012/11/palestinian-statehood-and-international.html>.

¹⁷ Schabas-Dugard letter, *ibid*.

Schabas, “all they want is a state—and they get punished for insisting upon this,” and for supporting “a political party” that “in their own determination and their own assessment” “seems to be representing that aspiration.”¹⁸

By contrast to his strict and aggressive stance toward Israel and its leaders, Schabas has often sought to defend or explain away some of the most dangerous positions or practices of the Islamic Republic of Iran and its leaders. For example, Schabas has written that Iran—a highly relevant actor for the COI given the regime’s role in arming and training Hamas—“very arguably has a claim to require [nuclear weapons] for defensive purposes.”¹⁹

Schabas downplayed Iranian calls to destroy the Jewish state by comparing them to Western “Cold Warriors” who “wanted to destroy the Soviet Union.”²⁰ Writing about the UN’s highly controversial 2009 Durban II conference on racism, Schabas said that former president Mahmoud Ahmadinejad was merely “provocative,” suggesting that his statements (which included denying the Holocaust) were made “in desperation” and “deserve to be ignored rather than exaggerated.”²¹ Those truly responsible for the conference’s troubles, Schabas argued, were “Israel and its friends.”²²

Schabas has also co-sponsored numerous conferences organized by an Iranian-backed “human rights” center—headed by a former Iranian official—designed to

¹⁸ W. Schabas, 10 September 2010, “Lawfare and the Israeli-Palestine Predicament,” War Crimes Research Symposium, Frederick K. Cox International Law Center, at https://www.youtube.com/watch?v=7wM_SBlo6JM.

¹⁹ W. Schabas, December 2012, *Human Rights Doctorate* blog, online at <http://humanrightsdoctorate.blogspot.co.il/2012/12/dancing-around-genocide.html>

²⁰ *Ibid.*

²¹ <http://humanrightsdoctorate.blogspot.co.il/2009/09/naomi-klein-on-durban-ii-conference.html>

²² *Ibid.*

promote anti-Western propaganda.²³ While Schabas has argued that his participation in the 2011 Iranian conference does not undermine his impartiality because he allegedly screened a film about the Nuremberg trials, in fact the available summaries show that Schabas' speech in Iran addressed his favorite topic of the ICC and Palestine. This recent interview he chose not to disclose.²⁴ Therefore, it would appear that the head of an Irish human rights center took pains to raise the Palestinian issue at the conference even when the Iranian hosts did not.

Schabas Repeatedly Participated in One-Sided Mandates that Only Investigate Israel

Although Schabas now claims to have great concern for conducting an impartial inquiry, this is belied by his prior record of consistently seeking out or participating with blatantly one-sided entities or exercises that exclusively examine Israeli actions. These include the UN's "Committee on the Exercise of the Inalienable Rights of the Palestinian People"; the campaign group known as the "Russell Tribunal"; and the UNHRC mandate of Special Rapporteur for Palestine.

UN Vetting Committee Rejected Schabas' Application to Replace Richard Falk, Citing His Prior Statements

In March of this year, a vetting panel of the UNHRC, consisting of five ambassadors acting in their personal capacities—the majority of whom in this

²³ See H. Neuer, "An Iranian 'human rights' wrong," *New York Daily News*, 21 November 2011, at <http://www.nydailynews.com/opinion/iranian-human-rights-wrong-board-north-korea-cuba-article-1.979942>. Schabas' Irish Center for Human Rights co-sponsored at least four separate events in Iran put on by the regime-backed center, including a conference on "protection of civilians" on 22-23 November 2011; a "workshop on human rights development" on 21-22 May 2012; a seminar on "cultural diversity and human rights education" on 1-3 July 2012; and a conference on "the jurisprudence of humanity" on 12-14 November 2012. See "Non Aligned Movement Center for Human Rights and Cultural Diversity," 2011 Annual Report, at 23 and 68-72.

²⁴ NAMCHRD 2011 Report at 28.

exceptional case were from democracies—rejected Schabas’ application to replace Richard Falk in one of the most biased UN positions, that of the Human Rights Council’s Special Rapporteur charged with investigating “Israel’s violations” (and no one else’s) of “the principles and bases of international law.”²⁵

Schabas actively sought out this one-sided post even though Amnesty International, a frequent critic of Israel, has criticized the mandate for having a “limitation to Israeli violations” which “undercuts both the effectiveness and the credibility of the mandate.”²⁶ According to Amnesty, the mandate which Schabas actively tried to obtain “fails to take account of the human rights of victims of violations of international human rights and humanitarian law committed by parties other than the State of Israel.”²⁷ Even Falk himself, a supporter of Hamas and 9/11 conspiracy theories, once acknowledged the mandate’s “bias and one-sidedness.”²⁸ Yet notwithstanding its inherent bias, Schabas actively sought out this post of investigating only Israel—and not Hamas, the PA, Islamic Jihad or anyone else.

It is telling that the 5-member panel, which strove to appoint a balanced person despite the imbalanced mandate, rejected Schabas’ application, instead choosing someone who was deemed “the most likely to be able to objectively engage the key

²⁵ For more on the mandate, see H. Neuer, online at “The Demonization of Israel at the United Nations in Europe: Focus on the Human Rights Council and Specialized Agencies,” at:

http://jcpa.org/demonization_of_israel_at_the_united_nations/#sthash.nJ145dSm.dpuf.

²⁶ <http://www.amnesty.org/en/library/asset/MDE15/028/2008/en/789c2afd-4f63-11dd-a20f-af4976c1087c/mde150282008eng.html>.

²⁷ *ibid.*

²⁸ See UN summary at

<http://www.unhchr.ch/hurricane/hurricane.nsf/0/2B6ED3462A1CE0BEC125746A00487111?opendocument>.

interested parties,” above Schabas and other candidates who had “previously taken public positions on issues relevant to the mandate.”²⁹

It is worth noting that Schabas was rejected for bias because his application to be Special Rapporteur was vetted in an open, structured and transparent procedure that identified the defects in his candidacy. By contrast, Schabas’ politically-motivated appointment to the commission of inquiry took place behind closed doors, where, according to Georgetown Law School professor Christine Cerna, Schabas was chosen specifically because of his prior prejudicial statements.³⁰

BBC Interview of 17 July 2014: Schabas Makes Prejudicial Statements on the Very Question Before the Commission

In a 17 July 2014 interview with the BBC, Schabas pronounced Israel presumptively guilty on the very question that his commission is now called to investigate. Asked about war crimes and self-defense in the summer’s Gaza conflict, Schabas declared that “prima facie, there is evidence of disproportionality in the response that Israel is undertaking in order to protect itself.”³¹

²⁹ [UN committee] (Emphasis added)

³⁰ Christine Cerna, comment on European Journal of International Law blog, Nov. 5, 2014, at <http://www.ejiltalk.org/after-gaza-2014-schabas/comment-page-1/#comment-222487>.

³¹ BBC World Service, *Newshour*, 17 July 2014, <http://youtu.be/yHc7RqYBI64>.

BBC: “Well, Israel has maintained that it is doing its best to minimize civilian casualties and that Hamas is using civilians as human shields. Israel also says that Hamas’ rockets are illegally targeting residential areas. So, are any crimes being committed here? William Schabas is professor of international law at Middlesex University in London and at Leiden University in the Netherlands. First of all on the Israeli airstrikes, are they justified as self-defense protecting Israelis?”

SCHABAS: “Well, self-defense will always be a justification, but it’s only to the extent that it’s proportionate to the threat that’s being posed... [T]here are huge numbers of civilian casualties on one side and virtually no civilian casualties on the other, and so prima facie, there is evidence of disproportionality in the response that Israel is undertaking in order to protect itself.”