



# General Assembly

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## Human Rights Council

Twenty-seventh session

Agenda item 1

Organizational and procedural matters

Agenda item 7

Human rights situation in Palestine and other  
occupied Arab territories

### Written statement\* submitted by United Nations Watch, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[26 August 2014]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.14-15579 (E)



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## **Request for Prof. William Schabas to Recuse Himself due to Prejudicial Statements Giving Rise to Appearance of Bias**

On the basis of highly unusual facts, UN Watch requests that Prof. William Schabas recuse himself from this Council's Commission of Inquiry established under resolution S-21/1 on the grounds that his numerous, recent, public and prejudicial statements — adverse to relevant parties, and pronouncing on the merits of the very question to be decided by the Mission — give rise to actual bias or the appearance thereof. Failing to do so, he should be disqualified by the other Mission members or by the UN Human Rights Council President.

We request the Council to examine the full request as sent to Prof. Schabas, which can be seen online at [www.unwatch.org/schabasreport](http://www.unwatch.org/schabasreport).

The relevant prejudicial statements by Prof. Schabas include:<sup>1</sup>

- “[P]rima facie, there is evidence of disproportionality in the response that Israel is undertaking in order to protect itself.” (Schabas speaking about the very operation that is now before him, BBC, 17 July 2014)<sup>2</sup>
- “Actually, my favorite would be Netanyahu within the dock of the International Criminal Court,” Schabas declared before an advocacy group’s mock trial of Israel in 2012.<sup>3</sup>
- In a law journal article, Schabas wrote that Netanyahu could be considered “the single individual most likely to threaten the survival of Israel.”<sup>4</sup>
- Schabas called for “going after” Nobel Peace Prize laureate Shimon Peres in the ICC, saying, “Why are we going after the president of Sudan for Darfur and not the president of Israel for Gaza?”<sup>5</sup>

The impartiality requirement under international law is unequivocal. Scholars of international law list impartiality as the first principle of fact-finding. Impartiality as a requirement is further set forth in Articles 3 and 25 of the UN Declaration on Fact-Finding.

Finally, precedents from analogous international tribunals are equally clear. In the 2004 case of Sesay, the Special Court for Sierra Leone disqualified a judge who had published statements on the culpability of an organization connected to the defendants. This precedent applies a fortiori to the case of Prof. Schabas, whose prior determination of guilt directly concerned one of the parties under examination.

The remedy applied in Sesay should apply here. Never in the history of international tribunals and fact-finding panels has there been a more overt case of actual bias in the form of a fact-finder’s declaration that one of the parties is his “favourite” criminal, and prior determination of the merits of a particular case in controversy.

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<sup>1</sup> The links are available here: <http://blog.unwatch.org/index.php/2014/08/11/ngo-william-schabas-must-recuse-himself-from-un-gaza-inquiry>.

<sup>2</sup> The links are available here: <http://blog.unwatch.org/index.php/2014/08/11/ngo-william-schabas-must-recuse-himself-from-un-gaza-inquiry>.

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<sup>5</sup> The links are available here: <http://blog.unwatch.org/index.php/2014/08/11/ngo-william-schabas-must-recuse-himself-from-un-gaza-inquiry>.

Because of Prof. Schabas' highly unusual and prejudicial statements, the reasonable person would consider him to be partial. Therefore, if justice is to be done—and to be seen to be done—the only remedy is Prof. Schabas' recusal, or his disqualification by the Mission or the Human Rights Council President.

We request the Council to examine the full request as sent to Prof. Schabas, which can be seen online at [www.unwatch.org/schabasreport](http://www.unwatch.org/schabasreport).

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