**Scandal Rocks the U.N.**

February 6, 2015

By Anne Bayefsky

National Review Online

http://www.nationalreview.com/article/398077/scandal-rocks-un-anne-bayefsky*No.*

Four days ago, on February 2, the head of a U.N. commission of inquiry created to investigate war crimes in Gaza was forced to resign after it was revealed that he had taken money from the PLO for providing legal advice. William Schabas’s U.N. job was to expose war criminals and recommend how to hold them “accountable.” William Schabas’s PLO job was to show them how to use the International Criminal Court (ICC) to hold Israeli war criminals accountable. He didn’t think there was a problem.

His conflict of interest did not surface, however, until after the inquiry he was heading had “largely completed” its evidence-gathering, and the writing of the requisite report had begun, according to Schabas himself. But instead of taking the only legitimate route and setting aside the whole tainted exercise, the president of the U.N. Human Rights Council, Joachim Rücker of Germany, claimed he was “preserving the integrity” of the inquiry simply by accepting Schabas’s resignation.

The council — the U.N.’s top human-rights body — had voted to create the Schabas inquiry in the middle of the Gaza War last July. Palestinians garnered support from council members and human-rights authorities like China, Russia, Saudi Arabia, and the United Arab Emirates. The United States and the members of the European Union either voted against or abstained. A majority of the states that have seats on the council are not “fully free” (on the Freedom House scale).

The idea of the inquiry was to open a second front in the war, conducted by international lawyers, to tie the hands of Israeli decision-makers — political and military — behind their backs.

Hence, the Schabas inquiry’s mandate was to examine human-rights violations “in the occupied Palestinian territory,” not “in Israel.” The date cited for the beginning of the inquiry was June 13, 2014, because Palestinian terrorists had kidnapped (and later murdered) three Israeli teenagers the day before — and Israeli aggression was a given of the investigation. The mandate never mentioned “Hamas” or its terror tunnels, almost half of which opened into Israel.

With the terms of the “inquiry” set to ensure the desired outcome, Schabas and two others became the council’s tools. They were selected by President Rücker “in consultation” with the Palestinians in the belief that they could be counted upon to deliver a guilty verdict.

Little wonder, then, that Schabas was miffed about the council’s newfound concern over his past activities. He had earlier had plenty to say in public about the subject matter covered by his new position. In 2012, on camera, he lectured about “crimes against humanity, war crimes, and the crime of aggression, all of which I think it can be shown have been perpetrated at various times during the history of the State of Israel. . . . The International Criminal Court is in a position to exercise jurisdiction over crimes committed on the territory of Palestine . . . So much of my effort these times is addressed to try to get . . . the Court . . . to take up this burning, important issue. . . . With a bit of luck and by twisting things and maneuvering, we can get them before the courts.”

This was just the kind of lawyer who the U.N. Human Rights Council would think satisfied its rule requiring the “independence, impartiality, personal integrity, and objectivity” of all its “mandate-holders.”

The council could even be sure Schabas would go after Israel’s prime minister personally. Said Schabas on camera before he was hired: “My favorite would be Netanyahu in the dock at the International Criminal Court.”

His manifest bias, thought Schabas, should have saved him from his not-so-manifest conflict of interest. So he decided not to go quietly, even if it meant taking the council down with him. In his letter of resignation he divulged: “[W]hen I was asked if I would accept nomination to the Commission of Inquiry, I was not requested to provide any details of my past statements and other activities concerning Palestine and Israel.” He assumed that because his “views on Israel and Palestine . . . were well known,” the council was getting exactly what it wanted. And so was he.

What finally clued Schabas in to the fact that the jig was up? Shortly before he resigned, the council tried to save face all around by pretending “this matter” was so very complicated that it required an opinion from the U.N.’s legal office.

With Schabas gone, the legal opinion on the meaning of impartiality has been shelved — though it is a lesson the council evidently still needs. President Rücker moved the deck chairs around, appointing one of the two remaining members of the inquiry, the American Mary McGowan Davis, as chair, and fancies it is now business as usual.

The February 3 letter from Rücker to Schabas accepting his resignation thanks him for his “work over the past six months,” says that the “appearance” of a problem has now been solved, and says that Rücker is “looking forward” to the report, due out in March. Six months preparing the report, a month to go before publication, and the U.N. imagines all appearances of impropriety and contamination have vanished into thin air.

Rücker told McGowan Davis: “I am convinced that you will . . . uphold the highest standards of integrity, particularly the principles of independence, impartiality and objectivity.”

Seriously? Unlike Schabas, McGowan Davis previously worked for the same U.N. employer on the same subject! In 2010 and 2011 she was a member of a Human Rights Council committee responsible for promoting the implementation of the council’s infamous Goldstone Report on the 2008–09 Gaza War. She chaired this follow-up committee in the last months of its work. The Goldstone Report’s central lie was its claim that Israel set out to kill Palestinian civilians deliberately. After Goldstone himself retracted the slander, McGowan Davis told the *Jerusalem Post* his statement “does not have any impact” and she would continue “to take his report as a given.”

At that time, McGowan Davis had the specific task of assessing whether Israel had adequately responded to the Goldstone Report’s defamatory accusations — and lo and behold, in her own report she found Israel’s response wanting. Apparently her assessment of Israeli “proceedings” in one Gaza war between Israel and rocket-launching Palestinian terrorists leaves her “impartial” and “objective” about Israel’s “accountability measures” in the subsequent Gaza war between Israel and rocket-launching Palestinian terrorists. Her 2011 finding that Israel did not conform to the “international standards” required to avoid the dominion of the International Criminal Court mirrors precisely the end game of her current job.

Furthermore, throughout her work for the U.N. Human Rights Council, McGowan Davis has been a member of the board of directors of the American Association of the International Commission of Jurists, which according to its website is “an affiliated organization of the ICJ in Geneva.” The ICJ participated in the July council session that adopted the resolution creating the 2014 Gaza inquiry. Prior to the vote and only two weeks into the war, this group of lawyers made a statement to the council, judging Israel guilty of war crimes and making a specific suggestion: “[T]he ICJ calls on this Council to establish a commission of inquiry to investigate all breaches of international humanitarian law and gross violations of human rights committed during the Israeli military operations in Gaza.”

Not only did the council adopt the ICJ’s recommendation, it appointed a member of the board of directors of the ICJ’s American affiliate to do the job — Mary McGowan Davis.

Three days ago, she accepted Schabas’s chair with alacrity and promised “a report that meets the highest standards of independence and impartiality.”

In what universe?

There is a reason why the council — along with its Palestinian partners, who are working furiously behind the scenes to salvage the fiasco — is so desperate to plow ahead. We now know that Schabas provided the Palestinians with legal advice about how to move forward with the prosecution of Israelis before the ICC, a step that they subsequently took. There is no doubt that the Schabas/McGowan Davis report will immediately be sent to the ICC prosecutor to assist in deciding whether a “preliminary examination” already underway should become a full-fledged “investigation.” The report’s lack of credibility has put the credibility of the ICC in question.

Setting aside all the legal verbiage, the politics are painfully clear. Criminalizing Israel’s efforts to exercise its right of self-defense against a foe openly committed to genocide strikes at the heart of the sovereignty, well-being, and legitimacy of the Jewish state. Demonizing a democratic society that is ready, willing, and able to ensure the accountability of its armed forces is not about protecting Palestinians. It is about endangering Israelis.

Human-rights law is being perverted for anti-human-rights ends, and it is about time human-rights lawyers — and all those who care about defeating the enemies of rights and freedoms — stood up and objected.