

GOLDSTONE II

QUESTIONS ON THE IMPARTIALITY OF THE U.N. TOMUSCHAT COMMITTEE

UN Watch

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EXECUTIVE SUMMARY

The U.N. Human Rights Council's newly-renewed committee to enforce the Goldstone Report, headed by German law professor Christian Tomuschat, has declared Israel to be in breach of a duty to investigate "those who designed, planned, ordered and oversaw 'Operation Cast Lead,'" and the "serious allegations" that "officials at the highest levels were complicit in violations." Specifically, the committee cited the name of Israeli opposition leader Tzipi Livni, who served as foreign minister during the 2009 war with Hamas.

As soon as the Tomuschat Committee released its first report in September 2010, Palestinian organizations, echoed by Amnesty International and Human Rights Watch, called for the prosecutor of the International Criminal Court, and prosecutors worldwide, to intervene. This latest U.N.-inspired "lawfare" campaign recalls last year's successful effort by pro-Palestinian activists in Britain to obtain a court-ordered arrest warrant, on charges of war crimes, against Ms. Livni, who has since avoided traveling to Britain.

While the Tomuschat Report emphasized the principles of independence and impartiality as applicable to investigations, there are serious questions as to whether Professor Tomuschat's membership on the panel conforms with those same principles, as required by the standards applicable to U.N. experts. To determine these fundamental procedural aspects of the Tomuschat Committee, the present report examined Professor Tomuschat's legal advocacy work, academic publications, and other public statements concerning the Middle East conflict.

Regarding a U.N. expert's obligation to be independent, the report found credible evidence that Professor Tomuschat performed legal advocacy work for PLO leader Yasser Arafat. It was reported that he and four other international jurists advised Mr. Arafat in 1996 on how the PLO should make its case before the U.N. and the International Court of Justice in The Hague.

Professor Tomuschat's claim that he "could not recall" whether his legal brief was done for Yasser Arafat was found to be not credible. Moreover, despite later opportunities to recollect the facts, and to contest the evidence during a U.N. Human Rights Council debate, and again at a U.N. press conference, Professor Tomuschat declined to do so. Accordingly, the evidence gives rise to serious questions concerning the independence of Professor Tomuschat and his committee, and, consequently, the credibility of his report.

Regarding a U.N. expert's obligation to be impartial, the report found—from the past decade alone—more than 25 examples of statements by Professor Tomuschat that exhibited an unbalanced approach toward Israel, and, in notable instances, undisguised hostility.

The mandate of the Tomuschat Committee, as recently renewed, is to monitor and assess any domestic, legal or other proceedings undertaken by both the Government of Israel and the Palestinian side concerning the allegations in the Goldstone Report, including the independence, effectiveness, and genuineness of these investigations and their conformity with international standards.

Astonishingly, eight years before Tomuschat undertook to objectively and impartially perform this examination, he had already made up his mind about Israel's system for investigations. In discussing Israel and its alleged ordering of the "systematic commission of war crimes," he concluded that "[i]n such instances, there is little hope that the judicial system of the State concerned [*i.e.*, Israel] will conduct effective investigations and punish the responsible agents."

Impartiality requires that an investigator be free of any commitment to a particular outcome. Given that Tomuschat had stated, in stark and unequivocal terms, his commitment to a particular outcome—that Israel's judicial system offers "little hope" of effective investigation or punishment of alleged violations—his impartiality on the principal question addressed by his committee are severely compromised.

One of the most peculiar and troubling findings of the report is that, on several occasions, Professor Tomuschat associated Israeli military actions not to contemporary and similar actions by American, British or NATO troops, which have resulted in many thousands of civilian casualties in places like Iraq and Afghanistan, but rather to the barbarism of World War II:

- In a 2007 essay on the previous year's Lebanon war, Tomuschat compared Israel's actions to the "barbarism which was the particular hallmark of World War II."
- In a further comment on Israel, he wrote that its alleged practice of classifying targets as military even if they "only remotely serve to benefit one war party" could be regarded "as a relapse to the Inferno of World War II, when in many cases both sides acted according to the principle that the means justify the end."
- In 2006, Tomuschat wrote that "the observer gets the impression that the Israeli Armed Forces inconsiderately geared itself toward the overall concept of the *Totalen Kriegen*." This concept was made most famous by Goebbels' 1943 Total War speech. In 2007, Tomuschat again accused Israel of actions that were "close to total war, which does not take into consideration any protection needs of the civilian population." And in an essay from earlier this year, Tomuschat wrote that Israel's actions are "a recipe for total war."

An additional theme that emerges from Tomuschat's statements is Israel as a state terrorist—morally indistinguishable from, and equally blameworthy as, those who deliberately target Israeli civilians with suicide bombs. For example, in a 2002 essay, Tomuschat singled out Israel as a prime example of “state terrorism,” of the “systematic” commission of “war crimes,” and of “crimes against humanity.” Such states, in his view, “deserve the same blame as those targeted by them.”

In a 2007 interview, Tomuschat equated Israel's targeting of Hamas terrorist leader Ahmed Yassin with terrorism itself, saying that “Targeted killings are as reckless as terrorist attacks.” Asked if this meant “state terrorism,” Tomuschat said that “It very much leads in this direction.”

Tomuschat adopts an extreme position toward counter-terrorism in general. He has argued that the targeted killing of terrorist mastermind Osama Bin Laden would be “absolutely illegal under international law.” Moreover, he argues that a country targeted by terrorism needs to “discover [its] own shortcomings,” “analyze its own conduct,” and “ask itself searchingly whether it has made mistakes which have given and give rise to frustration, hatred and despair.” The only way to cure terrorism, argues Tomuschat, is for countries to show that they are “seriously committed to world-wide welfare goals without any distinction as to race, colour or religion.”

It is telling that when a German academic journal featured a debate on the 2006 war between Israel and Hezbollah, Christian Tomuschat was the one chosen to present the side opposed to Israel.

Other examples of Tomuschat's statements on Israel include:

- Israel is bombing “entire families”;
- Arab nations rightly feel that Israel receives “far better treatment”;
- Israel targets U.N. peacekeepers;
- Israel seeks “to reduce humanitarian law to irrelevance”;
- Israel's policy is to “bomb a country out into a lunar landscape”;
- Israel's peace concessions are a cynical plan for “dominance.”

At the 27 September 2010 debate of the U.N. Human Rights Council, UN Watch raised several of these points in an interactive dialogue with Professor Tomuschat, and distributed an advance copy of this report to the press. The Reuters news agency concluded that Tomuschat's reply to UN Watch was non-responsive to the issues raised, and, at a press conference, asked him once again to address the questions.

In response, Tomuschat attempted to defend his statements as nothing more than legitimate academic writings that criticized targeted killings, and as being unrelated to

the Goldstone Report. At the same time, Tomuschat revealed that he had shared his doubts with U.N. authorities in Geneva about whether to accept the position; that he offered to step down from the committee, presumably at some later point after having assumed the chairmanship, if they felt he was biased; but that the U.N. authorities in Geneva, which would be the office of High Commissioner for Human Rights Navi Pillay, saw no reason for it. Tomuschat insisted that his writings were “not in any way the offspring of some kind of prejudice.” Moreover, his opposition to targeted killings was only his “personal view.”

The report finds that Tomuschat’s attempted rebuttal misrepresented the prejudicial nature, degree and extent of his statements and actions, and failed to establish their conformity with his obligation to be independent and impartial.

In conclusion, this report finds that Professor Tomuschat’s extensive record of prejudicial actions and statements gives rise to actual bias, or the perception of bias. Accordingly, the report recommends that he immediately recuse himself from the committee, which was just given a renewed mandate from the Human Rights Council and asked to report back at its March 2011 session.

In the event that Professor Tomuschat refuses to recuse himself, U.N. High Commissioner for Human Rights Navi Pillay should disqualify him from the panel. In addition, she should clarify her process for selecting Professor Tomuschat, and explain why her office rejected his prior offer to step down. Finally, in light of calls for intervention by the ICC prosecutor, UN Watch recommends that the credibility of the Tomuschat Report be weighed in light of his lack of impartiality and independence. This should also be recognized by U.N. Secretary-General Ban Ki-moon, and by the Chatham House group of international legal experts that addressed similar procedural deficiencies in the Goldstone Report.

INTRODUCTION

The U.N. Human Rights Council's follow-up committee to the Goldstone Report, headed by German law professor Christian Tomuschat, has declared Israel to be in breach of a duty to investigate "those who designed, planned, ordered and oversaw 'Operation Cast Lead,'" and the "serious allegations that officials at the highest levels were complicit in violations."¹ Specifically, the committee cited the name of Israeli opposition leader Tzipi Livni, who served as foreign minister during the 2009 war with Hamas.

As soon as the Tomuschat Committee's first report was released in September 2010, Palestinian organizations, echoed by Amnesty International and Human Rights Watch, called for the prosecutor of the International Criminal Court, and prosecutors worldwide, to intervene.² This latest U.N.-inspired "lawfare" campaign recalls last year's successful effort by pro-Palestinian activists in Britain to obtain a court-ordered arrest warrant, on charges of war crimes, against Ms. Livni, who has since avoided traveling to Britain.

While the Tomuschat Report speaks at length about the principles of independence and impartiality as applicable to investigations, there are serious questions as to whether Professor Tomuschat's membership on the panel conforms with those same principles, as required by the standards applicable to UN experts. To determine these fundamental procedural aspects of the Tomuschat Committee., this report examines Professor Tomuschat's legal advocacy work, academic publications, and other public statements concerning the Middle East conflict.

¹ See "Report of the Committee of Independent Experts," A/HRC/15/50, available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.50_en.pdf.

² During the 27 September 2010 U.N. Human Rights Council debate which followed the Tomuschat Report, groups calling for ICC action included the Palestinian Center for Human Rights, Badil, the Cairo Institute for Human Rights Studies, Amnesty International, Human Rights Watch, and Federation Internationale des Ligues des Droits de l'Homme (FIDH). See NGO statements on the Extranet site of www.ohchr.org. Amnesty, for example, called on the ICC prosecutor to "urgently seek a determination from the Pre-Trial Chamber on whether the ICC has jurisdiction to investigate crimes committed during the Gaza conflict"; called on states worldwide "to investigate and prosecute crimes committed during the conflict before their national courts by exercising universal jurisdiction"; and requested the U.N. Secretary-General to place the Tomuschat Report before the Security Council. Human Rights Watch called for the endorsement of the Tomuschat Report, which "impartially analyzes the domestic investigations conducted thus far, highlighting serious failures, to different degrees, in the investigations by Israel and Hamas," and for action by the ICC prosecutor.

The U.N.'s Code of Conduct for Human Rights Council mandate-holders requires them to uphold the highest standards of "impartiality, equity, honesty and good faith."³ Scholars have recently addressed this requirement. After the publication of the Goldstone Report, Chatham House and the School of Oriental of African Studies convened a group of legal experts in London, on November 27, 2009, to examine its procedural aspects. The group addressed the criticism that one of the Goldstone Report's authors, Christine Chinkin, had published prior statements giving rise to actual or perceived bias, thereby establishing her lack of impartiality.⁴

The experts noted international standards that require fact-finders not to act "in a way that would damage their impartiality," and to "therefore exercise great care when writing or speaking on international disputes that could potentially be subject to an investigation." The experts addressed the "especially acute" problem of "academics who participate in fact-finding missions regarding conflicts or disputes on which they may have written in the past."⁵

This basic standard of impartiality should be upheld by all UN investigators—including, one would expect, those dealing with the report specifically scrutinized by Chatham House.

³ See http://www2.ohchr.org/english/bodies/chr/special/docs/CodeofConduct_EN.pdf.

⁴ See UN Watch *Request to Disqualify Prof. Christine Chinkin From UN Fact Finding Mission on the Gaza Conflict*, supported by 50 jurists, at <http://blog.unwatch.org/?p=447>.

⁵ *Report of an Expert Meeting which Assessed Procedural Criticisms made of the UN Fact-Finding Mission on the Gaza Conflict (The Goldstone Report)*. The meeting took place at Chatham House on 27 November 2009, and the group consisted of Elizabeth Wilmshurst (Chair); Professor Matthew Craven; Dr. Catriona Drew, Professor Charles Garraway, Professor Steven Haines, Professor Françoise Hampson, and Professor Sir Nigel Rodley. The meeting was organized by Chatham House and the Sir Joseph Hotung Programme in Law, Human Rights and Peace Building in the Middle East, School of Oriental and African Studies, University of London. Available at http://www.chathamhouse.org.uk/files/15572_il271109summary.pdf.

FINDINGS

This report considered Tomuschat's legal advocacy work, academic publications, and other public statements concerning the Arab-Israel conflict. The report found, from the past decade alone, more than 25 examples of statements that exhibited an unbalanced approach toward Israel, and, in several notable instances, undisguised hostility. The findings raise serious questions concerning the independence and impartiality of the Tomuschat Committee, and its credibility related to the Middle East conflict and the Goldstone Report.

1. **“Could not Recall” If Pro-PLO Brief Was for Yasser Arafat**

Not only has Tomuschat systematically advocated against Israel in his scholarly writings, often using inflammatory rhetoric, but he is reported to have done actual advocacy work on behalf of PLO leader Yasser Arafat:

“[Tomuschat] acknowledged on Saturday that he had helped prepare an advisory opinion analyzing legal aspects of the Israeli-Palestinian issue in the 1990s, but said he could not recall whether he had done this work on behalf of Palestinian leader Yasser Arafat. In any case, he said, the legal work had been objective, should not be regarded as “a blemish” and did not constitute a reason for him to step down from the Goldstone follow-up panel. Jerusalem Post had received information to the effect that he and four other international jurists prepared a brief for Arafat in 1996 concerning the international law aspects of the peace process, which suggested that Arafat should bring his case to the UN General Assembly, which could then refer it to the International Court of Justice.⁶”

Tomuschat's claim that he “could not recall” whether his legal brief was done for Yasser Arafat is not credible.

2. **Israel Commits “State Terrorism,” “Crimes Against Humanity,” “Systematic War Crimes”**

In a 2002 paper entitled “The Individual Threatened by the Fight Against Terrorism,” Tomuschat singled out Israel as a prime example of “state terrorism”—and of the “systematic” commission of “war crimes” and “crimes against humanity”—and argued that the Jewish state deserves the same blame as terrorists:

⁶ See B. Weinthal, “Goldstone committee head denies bias,” *Jerusalem Post*, July 25, 2010, at <http://www.jpost.com/ArtsAndCulture/Entertainment/Article.aspx?id=182483>.

“[T]here can indeed be something which one may rightly call “State terrorism.” If a State strikes blindly (back?) against presumed terrorists and their environment, accepting that together with the suspects other civilians lose their lives, it uses the same tactics as the terrorists themselves. In this perspective, many actions carried out by the Israeli military in the occupied Palestinian territories would also have to be scrutinized carefully. Normally, States see themselves as guardians of human rights. However, by ordering the systematic commission of war crimes and crimes against humanity they themselves deserve the same blame as those targeted by them.”⁷

3. “Little Hope” Israeli Judicial System Will Conduct Effective Investigations and Punish Military Violations

The mandate of the Tomuschat’s follow-up committee to the Goldstone Report is to monitor and assess any domestic, legal or other proceedings undertaken by both the Government of Israel and the Palestinian side concerning the allegations in the Goldstone Report, including the independence, effectiveness, and genuineness of these investigations and their conformity with international standards.

Yet eight years before Tomuschat undertook to objectively and impartially undertake this task, he had already made up his mind about Israel’s system for investigations. In discussing Israel, and its alleged ordering of the “systematic commission of war crimes,” he wrote:

“In such instances, there is little hope that the judicial system of the State concerned will conduct effective investigations and punish the responsible agents. Nowhere have excesses committed by security forces been adequately punished. In a spiral of violence and counter-violence the commands of law tend to be overlooked and forgotten.”⁸

Impartiality requires that an investigator be free of any commitment to a particular outcome. Given that Tomuschat already stated, in stark and unequivocal terms, his commitment to a particular outcome—that Israel’s judicial system offers “little hope”

⁷ “The Individual Threatened by the Fight Against Terrorism?” gehalten am 13 September 2002 in Warschau im Rahmen des Kolloquiums "Society in Danger", organisiert vom Polish National Committee of International Association of Legal Sciences und der Fakultät für Recht und Verwaltung der Warschauer Universität, at 4. Available at <http://s6.rewi.hu-berlin.de/jura/ex/tms/sp/warschau.pdf>.

⁸ *Ibid.* at 4.

of effective investigation or punishment of alleged violations—he cannot be regarded as impartial on the principal question addressed by his committee.⁹

In addition, it is noteworthy that Tomuschat’s attitude contravenes the essence of the ICC treaty, which provides that states preserve the primary right and duty to investigate and prosecute serious crimes in their jurisdiction.

4. Israel Shows “Relapse to the Inferno of World War II”

Time and again, Tomuschat compares Israeli practices not to contemporary actions by American, British or NATO troops in Iraq and Afghanistan, where many thousands of civilians have been casualties of military operations, but rather to the “Inferno of World War II”:

“For the future of international humanitarian law it would be disastrous if the praxis gained international acceptance whereby an institution is classified as a military target if it only remotely serves to benefit one war party. It could be regarded as relapse to the Inferno of World War II, when in many cases both sides acted according to the principle that the means justify the end.”¹⁰

5. Israeli Actions Akin to “Barbarism of World War II”

While discussing Israel, Tomuschat once again accuses the Jewish state of World War II barbarism:

“The formative feature of self-defense, proportionality as well as the essentials of humanitarian law, the differentiation between civilians and combatants and the differentiation between military and civilian targets must be maintained. Otherwise, there will be the threat of barbarism which was the particular hallmark of World War II.”¹¹

⁹ When this quote was referenced by the media in July, a crucial point was omitted: Tomuschat’s distrust of state investigations was expressed specifically in the context of his discussion of Israel. See B. Weinthal, “Goldstone committee head denies bias,” *Jerusalem Post*, July 25, 2010, available at <http://www.jpost.com/ArtsAndCulture/Entertainment/Article.aspx?id=182483>.

¹⁰ *Debatte: Christian Tomuschat, “Der Sommerkrieg des Jahres 2006 im Nahen Osten. Eine Skizze”*; Michael Wolffsohn, “Land für Unfrieden — Guerillakriege verstehen,” at 190, summary available at <http://friedens-warte.de/de/archiv/2006/heft-1.html>.

¹¹ Tomuschat, “*Der Sommerkrieg*” (2007) at 116

6. Israel Commits “World War II Carpet Bombing,” “Overruns Country like Steamroller,” “Butchers Everything in its Way”

Tomuschat writes:

“Military actions that overrun a country like a steamroller, butcher everything in its way or carpet bombardments like those of World War II, which were deliberately targeted against the civilian population, cannot be the solution. Government forces are committed to the same core values as the state in whose name their act. If they were to act with the same recklessness as their opponent, they would put themselves on the same level and lose any legitimacy.”¹²

7. Israeli Approach Akin to “World War II Carpet Bombing of Civilian Targets”

According to Tomuschat, Israel’s approach in the Lebanon war “does not represent the concept of the customary standard as reflected in Art. 48 and 52 of the Additional Protocol, unless the carpet bombing of civilian targets in World War II are taken as a model.”¹³

8. 2006: Israel Perpetrates “Totalen Krieges” — Total War

In 2006, Tomuschat accuses Israel of committing “Total War”:

“Unfortunately, the observer gets the impression that the Israeli Armed Forces inconsiderately geared itself toward the overall concept of the *Totalen Krieges*.”¹⁴

The concept is perhaps most famously associated with Joseph Goebbels’s 1943 Total War speech, delivered under a giant “Totaler Krieg” banner.¹⁵

9. 2010: Israel Practices “Total War”

In his 2010 essay, Tomuschat wrote again that Israel’s actions are “a recipe for total war.”¹⁶

¹² C. Tomuschat, “*Der Sommerkrieg*” (2007) at 111-112.

¹³ C. Tomuschat, “*Der Sommerkrieg des Jahres 2006. Eine Skizze*” at 187-188.

¹⁴ C. Tomuschat, “*Der Sommerkrieg des Jahres 2006. Eine Skizze*” at 188.

¹⁵ See “Totaler Krieg” speech: <http://www.youtube.com/watch?v=gOZ8oJhETfQ>

¹⁶ C. Tomuschat, “Human Rights and International Humanitarian Law,” *The European Journal of International Law* (2010) Vol. 21 No. 1, 15-23, at 22, note 26.

10. In Debate on 2006 War, Tomuschat Represented Side Opposed to Israel

In 2006, the German academic journal *Friedenswarte* featured a debate between two opposing views on that year's war between Israel and Hezbollah.¹⁷ The pro-Israel side was presented by Michael Wolffsohn. For the pro-Hezbollah side, the journal chose Christian Tomuschat.¹⁸ His essay compared Israel's actions to World War II barbarism.

11. Israel is “Bombing Entire Families”

When Tomuschat treated the issue of collateral damage, in a 2010 essay on the relationship between human rights and international humanitarian law, he singled out Israel as his only example of a country that commits war crimes:

“It cannot be in conformity with international law to destroy, by bombing from the air, entire families on account of the suspicion that someone in a specific house is somehow involved in Hamas activities.”¹⁹

12. Israelis “Eradicate Anyone” Remotely Tied to Hamas

In a 2010 academic essay, Tomuschat addressed the issue of governments that treat political operatives of militant groups as combatants. The only country in the world that he singled out was Israel:

“[T]he law of war [cannot] be light-handedly extended by including in the category of combatants or fighters all those who belong to the political groundwork of a movement engaged in actual hostilities. For instance, policies which seek to eradicate anyone who has discharged a political function for Hamas in the Gaza strip would therefore be clearly inconsistent with the requirements of IHL [international humanitarian law]. There is no justification for withdrawing attacks

¹⁷ *Debatte: Christian Tomuschat, “Der Sommerkrieg des Jahres 2006 im Nahen Osten. Eine Skizze”;* Michael Wolffsohn, “Land für Unfrieden — Guerillakriege verstehen,” available at <http://friedens-warte.de/de/archiv/2006/heft-1.html>.

¹⁸ C. Tomuschat, “Der Sommerkrieg des Jahres 2006. Eine Skizze” (“The Summer War of 2006 in the Middle East. An Outline”), *Die Friedenswarte* 81 (2006) 1, 179-190.

¹⁹ C. Tomuschat, “Human Rights and International Humanitarian Law,” *The European Journal of International Law* (2010) Vol. 21 No. 1, 15-23, at 21. Tomuschat provided no facts to support his claim. During Israel's 2009 war with Hamas, a significant proportion of those killed in Gaza were men of military age, indicating a policy entirely opposite to that portrayed by Tomuschat.

against the ambit of human rights by blurring the borderline between that population and those involved in armed activities.²⁰

13. **“Arab Nations Rightly Feel Israel Receives Far Better Treatment”**

Despite America’s massive military, financial and strategic support for Saudi Arabia, Egypt, Jordan, Lebanon, Qatar, Bahrain, and despite its billions in aid disbursed to the Palestinians, Tomuschat complains that the U.S. mistreats the Arab nations. In an essay entitled “America and the Future of Multilateralism,” he writes:

“[T]he Arab nations rightly feel that Israel continues to receive far better treatment than is shown to them. It is such inconsistencies which badly affect the credibility of US foreign policy and which give rise to a cloud of mistrust. This is maybe the greatest impediment that limits the influence the US can exert in the world.”²¹

The fact that Israel, unlike its Arab neighbors, is a liberal democracy with free elections and an independent judiciary, and therefore a natural ally of the U.S. and other Western states, was of no significance to Tomuschat.

14. **Israel Targets UN Peacekeepers**

In his 2006 essay on that year’s Lebanon war, Tomuschat accused Israel of deliberately targeting UN peacekeepers in a particular incident—despite that fact that one of the peacekeepers testified to the very opposite, saying “*This has not been deliberate targeting.*” Going further, Tomuschat urged his readers to generalize and extrapolate from his interpretation of this incident in order to find Israel guilty in “similar” incidents:

“[T]here must be the willingness to respect protected persons. Apparently, there was a lack of such kind of willingness, when four members of the UNIFIL force were killed on July 26, 2006 by Israeli shells. Deputy UN Secretary General Mark Malloch reported on that

²⁰ C. Tomuschat, “Human Rights and International Humanitarian Law,” *The European Journal of International Law* (2010) Vol. 21 No. 1, 15-23, at 22. Tomuschat here makes the extreme claim, without providing any factual basis, that Israel has a policy or practice of seeking to “eradicate anyone” who discharged a political function for Hamas in Gaza.

²¹ C. Tomuschat, “America and the Future of Multilateralism,” *Vortrag im Rahmen der Konferenz der Deutschen Gesellschaft für auswärtige Politik zu dem Thema “America’s Changing Role in the World” am 28. Juni 2003*. Available at: <http://s6.rewi.hu-berlin.de/jura/ex/tms/sp/dgap.pdf>.

issue that the leadership of the Israeli Army had been repeatedly requested (about 10 times) to cease fire, as beforehand a number of projectiles had fallen in the immediate vicinity of the shelter of the four observers. Those requests were simply ignored — a fact which inevitably leads to the drawing of conclusions on the conduct of the Israeli armed forces in similar situations.”²²

In his eagerness to find malicious intent on the part of Israel, Tomuschat omitted material facts that call into question his narrative and thesis. He uncritically adhered to one interpretation of events without bothering to explore alternatives, including Israel’s version of the events. For example, Tomuschat deliberately omitted to mention that—as reported by one of the UN peacekeepers present—Hezbollah gunmen were firing at Israel from the vicinity of this UN position.²³ Nor did he mention that the UN itself admitted that during this time Hezbollah had been firing from numerous UN positions.²⁴ Finally, despite its highly probative value on the question of alleged Israeli targeting of peacekeepers, Tomuschat failed to mention that, only two days’ earlier, the UN reported that one of its observers had been seriously wounded by Hezbollah fire; that the peacekeeper was rescued by an Israeli

²² C. Tomuschat, “*Der Sommerkrieg des Jahres 2006. Eine Skizze*” at 183.

²³ That UN post, in the words of the Canadian peacekeeper who was killed there, was being used by Hezbollah as cover. See

http://www.ctv.ca/CTVNews/Specials/20060718/mideast_lebanon_UN_060716/.

Retired Canadian Major General Lewis Mackenzie explained: “We received emails from [the Canadian peacekeeper who was killed at the UN post] a few days ago, and he was describing the fact that he was taking fire within, in one case, three meters of his position for tactical necessity, not being targeted... What he was telling us was Hezbollah soldiers were all over his position and the IDF were targeting them. And that’s a favorite trick by people who don’t have representation in the UN. They use the UN as shields knowing that they can’t be punished for it.” See Andrew Bolt, “Why the UN post was bombed,” *Herald Sun*

(Melbourne), July 27, 2006, available at

http://blogs.news.com.au/heraldsun/andrewbolt/index.php/heraldsun/comments/why_the_un_post_was_bombed/P30/.

²⁴ “Hezbollah firing was also reported from the immediate vicinity of the UN positions in Naqoura and Maroun Al Ras areas at the time of the incidents.” UNIFIL press release dated 20 July 2006, available at

<http://unifil.unmissions.org/Portals/UNIFIL/Repository/pr04.02d3251e-7570-4581-a0de-a2aba16b30c1.pdf> ; “In the last 24 hours... Hezbollah fired from the vicinity of four UN

positions at Marwahin, Alma Ash Shab, Brashit, and At Tiri.” UNIFIL data reported in “Lebanon response OCHA situation report No. 6,” UN Office for the Coordination of Humanitarian Affairs, 27 July 2006, available at

<http://www.reliefweb.int/rw/RWB.NSF/db900SID/SODA-6S545Y?OpenDocument>.

military ambulance; and that his life was saved by Israel after an operation in a Haifa hospital.²⁵

15. Israel Had “Clear Intention” to Cut Lebanon Off From Outside World

Tomuschat not only presented a one-sided set of facts on the Lebanon war, but also rushed to draw negative inferences on Israeli intent, always finding malice. In the following paragraph, he determines that Israel expressed the “clear intention” of “cutting off [Lebanon] from the outside world,” and that Israel’s actions “did not lead to any apparent military advantage”:

“The self-defense must not unduly extend, neither by type nor scope, the attack to which the self-defense initially responded. Therefore there are considerable doubts whether Israel respected the legal barriers.... The airport of Beirut and single plants of the seaport were partially destroyed and individual plants of the seaport as well as bridges and roads, which expressed the clear intention of cutting off the country from the outside world. Even considering that the North of Israel had been under attack by single rockets in the previous days, one can hardly speak of proportionality. The paralyzing of the airport as well as the seaport did not lead to any apparent military advantage. First and foremost, the Lebanese civilian population was hit.”²⁶

16. Israel Violated Proportionality, Hezbollah Attacks Justified

Accusing Israel of violating the proportionality principle, and of being responsible for Hezbollah’s escalation, Tomuschat asserts that “No specific war acts against Israel originating from Beirut are known”:

“Moreover, it is hard to see any justification for the bombing of the mainly Shiite-inhabited southern suburbs of Beirut. Here, apparently damage was done which by far exceeded anything that Israel on its side had to face in terms of damages. In particular it has to be taken into consideration when examining proportionality that Lebanon as such did not want a war but was taken hostage in the current conflict... But as the war had been taken straight to Beirut in the first phase, Israel intensified the quality of the war in a manner that is hardly consistent with the principle of proportionality. No specific war acts against Israel

²⁵ UNIFIL press release dated 24 July 2006, available at <http://unifil.unmissions.org/Portals/UNIFIL/Repository/pr08.350b7575-cec8-4ba3-87b2-99bb2f2e8b7a.pdf>.

²⁶ C. Tomuschat, “Der Sommerkrieg des Jahres 2006. Eine Skizze” at 183 - 184.

originating from Beirut are known. So right from the second day, the war received an escalation by Israel that led on the side of Hezbollah to an escalation in intensity of the shelling of Israeli settlements and towns that was hitherto never seen.”

Tomuschat failed to consider alternative evidence. For example, according to Israel, the Beirut targets included a structure at Hezbollah headquarters that had been used for directing, instructing, and managing terror activity, a permanent base of the senior ranks of Hezbollah leaders including Hassan Nasrallah, and a weapons depot. This may or not be true, but an impartial approach would have required considering both versions.²⁷

17. Hezbollah is Not Outlawed, “Real Victim” is Lebanon

Tomuschat writes:

“[The] real victim of the clash is indeed Lebanon and its people and its infrastructure. Even the members of Hezbollah are not outlawed. They are at least under the protection of common human rights, even though they don’t enjoy a special status under humanitarian law since they act on their own accord and not in the function of the Lebanese state. In any case, Lebanon may request that humanitarian law be fully applied to its territory and the people living there.”²⁸

18. Israel “Reduced Humanitarian Law to Irrelevance”

Tomuschat disregarded evidence of Hezbollah’s embedding missiles and gunmen in populated civilian areas, and instead used sweeping language to accuse Israel of seeking “to reduce humanitarian law to irrelevance”:

“It is obvious that Israel interprets the term military targets in a very broad sense. The observer may get the impression that [Israel’s] government considers all of Lebanon as a hostile environment. A broad interpretation of the concept of military target as such is at risk to reduce humanitarian law to irrelevance...”²⁹

²⁷ See <http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Terrorism+from+Lebanon-+Hizbullah/IDF+operations+against+Hizbullah+in+Lebanon+14-Jul-2006.htm>.

²⁸ C. Tomuschat, “Der Sommerkrieg des Jahres 2006. Eine Skizze” at 185.

²⁹ C. Tomuschat, “Der Sommerkrieg des Jahres 2006. Eine Skizze” at 186-188

19. Israeli Policy is to “Bomb Country into a Lunar Landscape”

In regard to Israel, Tomuschat wrote:

“If one were to perceive any advantage given by civil infrastructure as an effective contribution to military actions, the whole distinction between military and civil targets were to be annulled and bombing a country out into a lunar landscape would be permissible in order to isolate the military forces that one is combating.”³⁰

20. Israel’s Peace Moves Bely Machiavellian Motives

In 2007, Tomuschat authored a follow-up to his *Friedenswarte* essay on the Lebanon war, responding to the comments of various contributors, in an article entitled “*Der Sommerkrieg des Jahres 2006. Ein Schlusswort.*”³¹ In seeking to refute his counterpart’s assertion that Israel gave concessions but received terror in return, Tomuschat endorsed as “resolute” the view that Israel’s peace moves are cynical and Machiavellian:

“Meyer has given a resolute counterpoint to Wolfssohn’s statement that Israel had given land and received terror in return. According to his opinion, Israel has never seriously pursued the strategy to obtain peace by returning land, since it only withdrew from the Gaza Strip in order to establish itself more firmly in the West Bank.”³²

21. Israeli Concessions Insufficient, Palestinian Rejection Justified

Tomuschat portrays all of Israel’s concessions as insufficient, accuses it of a policy of “dominance,” rejects Israel’s unilateral withdrawal, and fully justifies the Palestinian position:

“Also, Israel has only rendered belated promised benefits in the agreements with the Palestinians and has taken them back mostly immediately, when the Palestinian side could not guarantee unrestrained freedom from terror attacks. Also Martin Beck criticizes that Israel has not ended its occupation of East Jerusalem, and that the Palestinians in the West Bank are only conceded with humble powers

³⁰ C. Tomuschat, “*Der Sommerkrieg des Jahres 2006. Eine Skizze*” at 187-188

³¹ Christian Tomuschat, “*Der Sommerkrieg des Jahres 2006. Ein Schlusswort.*” (“The Summer War of 2006—A Summary”), *Friedenswarte* 82 (2007).

³² Tomuschat, “*Der Sommerkrieg*” (2007) at 108-109.

and that the control by the Israeli military, which Beck calls “interdiction strategy,” has continued tied to a “settlement boom to an yet unknown extent”. In fact, there is still today an apparent lack of a policy that could have given the Palestinians a reliable perspective of conveying the occupied land to them based on a set time schedule, even with some slight modifications here and there. The policy of one-sided decisions did not endow trust. It is a policy of dominance that very deliberately rejects cooperation by agreement. Actually, it is no wonder that the opposite side — that at least for its own benefits may refer to the UN Security Council Resolution 242 (1967) — is not content with such measures which deny an equal position as negotiations partner.”³³

22. Israeli Violations “Cannot be Stopped by Legal Proceedings”

Tomuschat implies that extra-legal measures are needed to stop Israel:

“The Israeli government might have a different opinion, but the Palestinians must consider the continuation of the Wall building and the apparent continuous extension of settlements as a clear breach of law which, it seems, cannot be stopped by means of legal proceedings.”³⁴

23. Israeli Actions Close to “Total War”

Again, Tomuschat accuses Israel of the practice of “Total War”:

“Of course, Israel has destroyed waterworks far away from the actual combat theatre, which Münkler obviously wants to justify. With that we are close to total war, which does not take into consideration any protection needs of the civilian population.”³⁵

24. Israel Targets Civilian Population

Tomuschat disregards the presence of Hezbollah in civilian areas, including its Beirut headquarters:

“[The] Israeli warfare in the center of the country, mainly in Beirut and its surroundings had nothing to do with combating typical risks of a

³³ Tomuschat, “*Der Sommerkrieg*” (2007) at 108-109.

³⁴ Tomuschat, “*Der Sommerkrieg*” (2007) at 109.

³⁵ Tomuschat, “*Der Sommerkrieg*” (2007) at 109.

guerilla war. Bomb dropping again far off the actual war action was meant to pressure the Lebanese population.”³⁶

25. Palestinians Should Not Be Held Accountable

Tomuschat inserted a sarcastic exclamation mark to convey his view that it is absurd for Palestinians to be held accountable to any obligations:

“In the July 9, 2004 advisory opinion on the construction of the Wall on Palestinian territory, the International Court of Justice reminded Israel and Palestine (!) of their duties.”³⁷

26. Israel Cannot Use Force to Defend Itself Against Terrorists

Tomuschat casually dismisses counter-terrorism involving force, and accuses Israel of targeting people having only the most tenuous ties to terrorism:

“The suicide assassins, whose actions are reported on a daily basis in the media, are the prototype of such terroristic alienation. The decline of a society that destroys itself cannot be effectively combated by military force that on its part uses undifferentiated violence against anyone who is only suspected of terrorist actions or linkage or even sympathy.”³⁸

27. Skeptical Toward Evidence of Hezbollah Embedding in Civilian Areas

While quick to draw conclusions against Israel, Tomuschat adopts a very different approach toward evidence that Hezbollah embedded itself in civilian areas:

“It needs close examination as to what extent Hezbollah applied the strategy in southern Lebanon to embed itself into the settlement structure of the local population in an indistinguishable way and this may not be assumed as self-evident.”³⁹

³⁶ Tomuschat, “*Der Sommerkrieg*” (2007) at 109-110.

³⁷ Tomuschat, “*Der Sommerkrieg*” (2007) at 111.

³⁸ Tomuschat, “*Der Sommerkrieg*” (2007) at 110.

³⁹ Tomuschat, “*Der Sommerkrieg*” (2007) at 112.

28. Equated Israel's Targeting of Hamas Terrorist Leader with "Terrorism"

In a 2007 interview with *Die Tageszeitung* (TAZ), Tomuschat equated Israel's targeting of Hamas terrorist leader Ahmed Yassin with terrorism itself:

“In the Middle East conflict we see what happens if targeted killings are allowed. There are always innocent victims. In 2004, when Israel killed Hamas spiritual leader Sheikh Yassin with a missile, eight companions were killed as well, and twelve others were hurt. Targeted killings are as reckless as terrorist attacks.”⁴⁰

Asked if this meant “state terrorism,” Tomuschat said that “It very much leads in this direction.”⁴¹

29. Targeted Killing of Osama Bin Laden is "Absolutely Illegal"

Tomuschat adopts an extreme view on combating terrorism:

TAZ: Mr. Tomuschat, [Germany's] Minister of Interior wants to examine the option of targeted killings of leading terrorists such as Osama Bin Laden. Do you see any need for this clarification?

Tomuschat: No, such targeted killings are absolutely illegal under international law. There is nothing to examine or to clarify.⁴²

According to Tomuschat, the very discussion of targeting terrorist masterminds such as Al Qaeda leader Osama Bin Laden—responsible for the murder of thousands—is “monstrous.”⁴³ In adopting this extreme position, Tomuschat reveals a profoundly warped moral compass that is at odds with mainstream opinion in democracies on how they can legitimately defend themselves against mass murder by terrorists like Bin Laden.

⁴⁰ <http://www.taz.de/1/politik/deutschland/artikel/1/rechtsstaat-nicht-aufgeben/>

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Ibid.*

30. Terrorism Caused by Unjust Policies

Tomuschat writes:

“It is deeply worrying that as a result of the terrorist attacks of the recent past the trust in the virtues and necessity of a just policy is rapidly fading. Instead of seeking to discover their own shortcomings, nations rush to cure symptoms... Every nation should at the same time analyze its own conduct and ask itself searchingly whether it has made mistakes which have given and give rise to frustration, hatred and despair.... [T]he fanatics will remain an infinite minority if the perception grows that all the countries of the globe are seriously committed to world-wide welfare goals without any distinction as to race, colour or religion.”⁴⁴

In Tomuschat’s view, terrorism against Western nations is caused by their failure to adopt “a just policy,” and by their “mistakes which have given and give rise to frustration, hatred and despair.” In order to stop terrorism, Tomuschat believes that Western states must prove to others that they are “seriously committed to worldwide welfare goals without any distinction as to race, color or religion.”

⁴⁴ Tomuschat, “The Individual Threatened by the Fight Against Terrorism?” (2002), at 11.

TOMUSCHAT QUESTIONED IN COUNCIL PLENARY BY UN WATCH

*Testimony by UN Watch
UN Human Rights Council, 15th Session
Agenda Item 7: "Human rights situation in Palestine and other occupied Arab territories"
Interactive Dialogue with Tomuschat Committee
Delivered on September 27, 2010*

Thank you, Mr. President.

Professor Tomuschat, after the Goldstone Report was published, Chatham House convened legal experts to examine its procedural aspects. We wish to ask you similar questions concerning your report.

Your report sets forth the duty of investigators to be independent. Paragraph 22 says that this means "being institutionally detached from those implicated in the events."

In this regard, we call your attention to news reports that, in 1996, you helped prepare a legal brief for Yasser Arafat, in which you advised the PLO leader on how to bring his case before the UN and the ICJ.

You are quoted, in the 25 July report of the Jerusalem Post, as saying that your brief was objective; that it should not be regarded as a "blemish"; and that you "could not recall" whether this work was done on behalf of Mr. Arafat.

Professor Tomuschat, assuming that, with the passage of time, you have been able to recall your brief for Mr. Arafat and the PLO, would you not agree that this contravenes the principle of independence as defined in your own report?

Second, your report addresses the duty of impartiality—the question of whether an investigator is, or is likely to be, biased.

In this regard, the Chatham House legal experts cited the acute problem of individuals who "participate in fact-finding missions regarding conflicts on which they may have written in the past."

UN Watch has published a report today that documents numerous examples of your use of inflammatory language and one-sided conclusions against Israel.

We note three:

- In 2002, and again in 2007, you cited Israel as your prime example of "State terrorism." You wrote there was "little hope" its judicial system would conduct

effective investigations. Is not this preconception, going back eight years, directly relevant to today's report?

- In 2006, when a German academic journal featured two opposing views on the Israel-Hezbollah war, you presented the side opposed to Israel.
- This past year, you accused Israel of bombing “entire families” on frivolous grounds.

Professor Tomuschat, would you not agree that these statements breach the Chatham House standard on perceived bias, and the standard of your own report?

Finally, we ask: How is it that, last month, at the same time as Hamas openly claimed credit for murdering four Israelis—an act of terror condemned by the High Commissioner—your committee was engaging with it as a serious stakeholder that might investigate its crimes against civilians?

Thank you, Mr. President.⁴⁵

U.N. Human Rights Council's Response to UN Watch

The chair of the session, the UNHRC's vice-president, took the exceptional move of responding, and read out the following remarks, as prepared by the council's secretariat.

I thank you for your statement. Excellencies, ladies and gentlemen, we are presently holding an interactive dialogue on the report submitted by the committee of independent experts. Participants are expected to make comments or ask questions on the report. I cannot fail to notice that a specific member of the committee has been targeted in this statement. This is not acceptable. Everyone has the right to express his or her views about the report or activity of the committee but this should remain within the accepted framework ensuring that the sense of respect remains in our discussion. With this in mind, I give the floor to the next speaker.⁴⁶

Analysis

The council mischaracterized legitimate and substantive questions, regarding fundamental procedural aspects of impartiality and independence, as ad hominem “targeting.”

⁴⁵ See video at <http://www.youtube.com/watch?v=JMXhhEHMLnI>.

⁴⁶ *Ibid.*

TOMUSCHAT'S RESPONSE TO UN WATCH

Sept. 27, 2010

During the Human Rights Council's interactive dialogue, Professor Tomuschat expressed the following statement in response to the above questions posed by UN Watch.

Professor Tomuschat: “Let me just reply on a personal note to UN Watch by saying that I do believe in judicial settlement of international disputes. It seems that UN Watch does not share that view.”⁴⁷

Analysis

UN Watch cited specific actions and statements by Tomuschat that affect his independence and impartiality. Regrettably, Tomuschat's attempted rebuttal in the council plenary was non-responsive to the questions posed, and did not advert to the facts presented. This was also the conclusion of Reuters, as conveyed in the exchange that follows below.

⁴⁷ See video at <http://www.youtube.com/watch?v=JMXhhEHMLnI>.

TOMUSCHAT'S RESPONSE TO REUTERS

Sept. 27, 2010

Later that afternoon, at a UN press conference, Reuters told Professor Tomuschat that his response to UN Watch's questions was "not clear to those listening," and asked him to respond.⁴⁸

Reuters: This morning one of the NGOs challenged you personally, Prof. Tomuschat, on your record on Israel, and your response was not clear to those listening.

The NGO has come up with a whole list of publications in which you have been very critical of Israel, going back to the year 2000 and beyond. What is your attitude to this?

Do you feel that the fact that you have in the past written very critically about Israel does actually enable you to be objective in this—working together with your two colleagues, obviously—on this report? Perhaps you were not, in this case—these are not my words—a suitable choice? Perhaps you could comment on that.

Professor Tomuschat: You know, these are all academic publications which are accessible to everyone, and in some of the publications I have been critical of Israel, that's true.

And in particular, I have criticized many times the practice of targeted killings, very, very openly. I think that targeted killings can hardly be reconciled with the guarantee of the right to life.

Still, I did not feel prevented from accepting the invitation. I discussed it with people here in Geneva, sharing with them my doubts, and I also offered them to withdraw, you know, if they felt that I was, in some way, biased, and they told me they didn't feel my academic writings made me unable to assume the function.

And, well — this is how it went, and, of course, I'm a scholar of international law, interested in humanitarian law. And if you write on humanitarian law, it's inevitable that you also have to turn, from time to time, to what is going on between Israel and Palestine. It's impossible not to look into these events. And, I think what I have written is not in any way the offspring of some kind of prejudice. It is my personal view that some practices, in particular these targeted killings, you know, cannot be

⁴⁸ UN press conference, 27 September 2010, audio at <http://www.youtube.com/watch?v=JMXhhEHMLnI>. See also original recording: <ftp://MVE-PWSU:vo4KeQnm@unis-ftp.unig.ch/PCOHCHR20100927.mp3>.

reconciled, but, I think in the Gaza operation, this, in particular, this question of targeted killings was not one of the topics which were to be discussed.

Analysis

Tomuschat's attempted rebuttal misrepresented the amount, nature, and degree of his prejudicial statements and actions, and failed to establish how they are consistent with his obligation to be independent and impartial. First, his inflammatory pronouncements were hardly limited to the issue of targeted killings. Second, the fact that many of these were academic writings is immaterial. On the contrary, it is recalled that the Chatham House group of legal experts specifically addressed the problem of bias in regard to academic writings. Third, the fact that his extreme pronouncements are his "personal view" does not mitigate their relevance to establishing actual or perceived bias. Finally, Tomuschat failed to address the gravely prejudicial fact of his legal work for Yasser Arafat.

CONCLUSIONS AND RECOMMENDATIONS

The report finds credible evidence, not disputed by Professor Tomuschat, that he performed legal work for PLO leader Yasser Arafat, thereby rendering him in breach of the legal standard for independence as would be reasonably expected for a U.N. arbiter of legal matters concerning the Israeli-Palestinian conflict.

The report also finds Professor Tomuschat to be in breach of the legal standard of impartiality as set forth in the U.N.'s Code of Conduct for Human Rights Council mandate-holders, and of the standard as recently defined by the expert group of international legal scholars convened by Chatham House and the School of Oriental of African Studies. As documented in the present report, the numerous statements of Professor Tomuschat regarding the Middle East demonstrate a pattern of severe bias toward Israel's positions.

These include scurrilous analogies of Israeli actions to World War II barbarism and the repeated characterization of Israel as a "state terrorist." That Professor Tomuschat was the one chosen by his German academic peers to present the side opposed to Israel in a debate on the 2006 Hezbollah-Israel war only underscores the wider perception of his stance on such matters.

In light of these findings of fact and law, UN Watch makes the following recommendations:

1. To Professor Christian Tomuschat:

Professor Tomuschat should acknowledge that his actions and statements have seriously compromised his independence and impartiality, giving rise to actual or perceived bias, and should resign immediately from the chairmanship of the U.N.'s Goldstone follow-up committee, whose mandate was renewed by the U.N. Human Rights Council on 29 September 2010.

2. To U.N. High Commissioner for Human Rights Navi Pillay:

In the event that Professor Tomuschat refuses to recuse himself, U.N. High Commissioner for Human Rights Navi Pillay should disqualify him from the panel. Because Ms. Pillay was the one who appointed Professor Tomuschat, by virtue of UNHRC Resolution 13/9, she has the power to rescind his appointment. In addition, High Commissioner Pillay should (a) clarify her process for selecting Professor Tomuschat, disclosing whether any of the actions or statements in the present report were known to her office; and (b) clarify why her office rejected Professor Tomuschat's offer to step down from the panel, as he stated at the 27 September 2010 U.N. press conference.

3. To U.N. Secretary-General Ban Ki-moon:

U.N. Secretary-General Ban Ki-moon should uphold the U.N. standards of impartiality and independence, applicable to all U.N. experts and investigators, and publicly call on Professor Tomuschat to step down from his chairmanship of the committee.

4. To Commissioners Mary McGowan Davis and Param Cumaraswamy:

Professor Tomuschat's two committee colleagues have an ethical obligation to speak out against their chairman's non-compliance with the basic standards of independence and impartiality. Mary McGowan Davis, as a retired Acting New York State Supreme Court Justice and former Assistant U. S. Attorney for the Eastern District of New York, and in compliance with the ethical principles governing lawyers in New York State, should publicly call on Professor Tomuschat to recuse himself.

Similarly, Param Cumaraswamy, as the former U.N. Special Rapporteur on the Independence of Judges, and as a member of the Malaysian Bar Council, the International Bar Association, the International Commission of Jurists, and the Law Association of Asia and the Pacific, should comply with the ethical principles of those organizations by calling on Tomuschat to recuse himself.

5. To ICC Prosecutor Luis Moreno-Ocampo:

On the basis of the Tomuschat Report, Palestinian groups, echoed by Amnesty International and Human Rights Watch, are now calling for action on the part of ICC Prosecutor Luis Moreno-Ocampo. The goal of this campaign is the ICC prosecution of Israeli political and military leaders. Should Mr. Moreno-Ocampo assess recent or future reports by the Tomuschat Committee, its credibility should be weighed in light of the serious breach of impartiality and independence as documented in the present report.

6. Chatham House Group of Legal Experts on the Goldstone Report:

The Chatham House group of international legal experts who examined procedural aspects of the Goldstone Report, having clarified standards applicable to academics whose writings give rise to actual or perceived bias in regard to their capacity as U.N. investigators, should publicly call on Professor Tomuschat to recuse himself for being in breach of those impartiality standards. The members of the group are: Elizabeth Wilmshurst (Chair); Professor Matthew Craven; Dr. Catriona Drew, Professor Charles Garraway, Professor Steven Haines, Professor Françoise Hampson, and Professor Sir Nigel Rodley.

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