

Palestinian Rights Advocacy and International Law

As lawyers and legal scholars with expertise in relevant areas of law, we provide the following clarification of certain legal issues that have arisen in the context of efforts to restrict or even punish Palestine solidarity advocacy on university campuses and in other settings. We are particularly concerned that statements and campaigns that seek to draw attention to well documented breaches of international law have been characterized as antisemitic hate speech.

1. Terms such as “occupation,” “apartheid,” and “genocide” have established legal meanings, applicable to Israel’s actions and practices towards Palestinians.

- *Occupation*

The occupied status of Gaza and the West Bank is recognized as a basic factual premise by authoritative international legal institutions and organizations including various United Nations bodies, committees and independent experts, the International Court of Justice, the International Committee of the Red Cross, Amnesty International, and Human Rights Watch.¹

Two separate UN investigations have concluded that Israel’s 56-year-long occupation of Palestinian territories is illegal, due to its initiation in an act of aggression, its prolonged and ostensibly permanent duration (no other occupation lasting longer than ten years has been found to be legitimate), its practices of land annexation and apartheid (see below), and its denial of Palestinian self-determination.²

- *Apartheid*

The crime against humanity of apartheid is defined by the Rome Statute of the International Criminal Court as

inhumane acts [...] committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime.³

Examples of apartheidic inhumane acts listed in the UN Convention on the Suppression and Punishment of the Crime of Apartheid and the Rome Statute,⁴ and long documented as elements

¹ ex. <https://www.icj-cij.org/sites/default/files/case-related/186/186-20230623-req-02-01-en.pdf>; <https://www.icj-cij.org/case/131>; <https://www.icrc.org/en/document/ihl-occupying-power-responsibilities-occupied-palestinian-territories>; <https://www.amnesty.org/en/documents/mde15/5141/2022/en/>; https://www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution#_ftn3.

² <https://www.un.org/unispal/document/ceirpp-legal-study2023/>; <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coiopt/2022-10-19/Report-COI-OPT-14Sept2022-EN.pdf>.

³ Article 7(2)(h), <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>.

⁴ Article 2, https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.10_International%20Convention%20on%20the%20Suppression%20and%20Punishment%20of%20the%20Crime%20of%20Apartheid.pdf; Article 7, <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>.

of Israel's regime of control over Palestinians, include: **extrajudicial killings**;⁵ **forcible transfers**;⁶ **arbitrary arrest and illegal imprisonment**;⁷ **torture**;⁸ deliberate imposition of **living conditions designed to cause physical destruction** of the subordinated group in whole or in part (including the blockade of Gaza, in flagrant violation of Israel's obligations as an occupying power to ensure access to food, water, medicine, and other necessities for the occupied population);⁹ denial of basic human rights and dignity, including **grossly differential access to education, land, housing, and water**;¹⁰ **spatial segregation** of populations (ex.

⁵ ex. <https://www.btselem.org/topic/firearms>; <https://statistics.btselem.org/en/intro/fatalities>; <https://s3.eu-west-1.amazonaws.com/files.yesh-din.org/LAW+ENFORCEMENT+AGAINST+ISRAELI+SOLDIERS+2017-2021/YeshDin+-+Data+12.22+-+English.pdf>; <https://www.amnesty.org/en/latest/news/2016/09/israel-opt-pattern-of-unlawful-killings-reveals-shocking-disregard-for-human-life/>; <https://www.hrw.org/news/2023/08/28/west-bank-spike-israeli-killings-palestinian-children>.

⁶ ex. <https://www.ohchr.org/sites/default/files/Documents/Issues/Housing/SubmissionsCFIhousingdiscrimin/BADIL-CoerciveEnvironments.pdf>; <https://www.amnesty.org/en/latest/news/2022/02/israels-apartheid-against-palestinians-a-cruel-system-of-domination-and-a-crime-against-humanity/>; [https://www.ochaopt.org/sites/default/files/palestinians at risk of forcible transfer.pdf](https://www.ochaopt.org/sites/default/files/palestinians%20at%20risk%20of%20forcible%20transfer.pdf).

⁷ ex. https://www.addameer.org/israeli_military_judicial_system/administrative_detention; <https://www.yesh-din.org/en/a-life-exposed-military-invasions-of-palestinian-homes-in-the-west-bank/>; https://www.btselem.org/administrative_detention/statistics.

⁸ ex. UN Committee Against Torture, "Concluding observations on the fifth periodic report of Israel," 3 June 2016, <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsmEKqNhdzbr4kqoulZPE79BvBJe97SSM1KP2v4ng3Dhx74ohsby7x4AIEgvGhwTVav7rPvZmtwpwObldkyK%2BM9cNY7svWLIYmp6PB4chW8O>; <https://www.amnesty.org/en/latest/news/2023/11/israel-opt-horrific-cases-of-torture-and-degrading-treatment-of-palestinian-detainees-amid-spike-in-arbitrary-arrests/>; <https://www.addameer.org/sites/default/files/publications/Cell%2026-%20A%20Study%20on%20the%20Use%20of%20Torture%20Against%20Palestinian%20in%20Israeli%20Interrogation%20Centers.pdf>; <https://stoptorture.org.il/en/torture-in-israel-today/>.

⁹ ex. <https://www.oxfam.org/en/press-releases/starvation-weapon-war-being-used-against-gaza-civilians-oxfam>; <https://imeu.org/article/putting-palestinians-on-a-diet-israels-siege-blockade-of-gaza>; <https://gisha.org/en/what-is-the-closure-of-gaza/>; https://www2.ohchr.org/english/bodies/hrCouncil/docs/15session/A.HRC.15.21_en.pdf; https://mural.maynoothuniversity.ie/11743/1/JR_Enduring_2010.pdf.

¹⁰ ex. UN Committee on Economic, Social, and Cultural Rights, "Concluding observations on the fourth periodic report of Israel," 12 November 2019, <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSm1BEDzFEovLCuW0fekJcyLV E4h%2FkYmh4jSatSY66nsJOxboaAu4bfCDK5HY6MTTcGy79Oycfl9hr1wv3zD%2FCRdXz86uGTUR1%2BJvrNJQLfgjL9vVSE7OE5dJet>; <https://s3-eu-west-1.amazonaws.com/files.yesh-din.org/Apartheid+2020/Apartheid+ENG.pdf>; <https://www.btselem.org/settlements>; https://www.ochaopt.org/sites/default/files/ocha_opt_planning_crisis_east_jerusalem_april_2009_english.pdf; <https://www.ochaopt.org/data/demolition>; <https://reliefweb.int/report/occupied-palestinian-territory/west-bank-demolitions-and-displacement-overview-january-march-2023>; <https://unhabitat.org/sites/default/files/download-manager-files/IAB%20Report%20on%20Area%20C.pdf>; <https://www.hrw.org/reports/2001/israel2/ISRAEL0901-01.htm>; <https://www.adalah.org/en/content/view/9128>; <https://www.haaretz.com/israel-news/2023-08-07/ty-article/.premium/israels-smotrich-blocks-funds-for-arab-local-councils-higher-education-in-east>

Israeli-only settlements in the West Bank, established in violation of the Geneva Conventions);¹¹ **denial of freedom of movement** (ex. via separate road systems in the West Bank, and checkpoints and other extreme restrictions impeding mobility for Palestinians even within and between Palestinian territories);¹² **denial of rights of nationality and residence** (under Israel's Nation-State Law which declares that the "exercise of the right to national self-determination in the state of Israel is unique to the Jewish people," its Law of Return that provides automatic access to Israeli citizenship only for Jewish people, and its Citizenship Law which retroactively repealed the citizenship of hundreds of thousands of Palestinian refugees following 1948 and denied them access to citizenship in Israel despite having lived on the land for millennia);¹³ widespread **land expropriations**;¹⁴ **prevention from political participation**;¹⁵ and **persecution of rights defenders**,¹⁶ through a **differentiated legal regime** under which, for example,

[jerusalem/00000189-cfd8-d20c-addf-cfda6e9f0000;](https://www.amnesty.org/en/latest/campaigns/2017/11/the-occupation-of-water/)

https://www.alhaq.org/cached_uploads/download/2022/12/12/al-haq-report-2-1670826325.pdf.

¹¹ ex. UN Committee on the Elimination of Racial Discrimination, "Concluding observations on the seventeenth to nineteenth reports of Israel," 27 January 2020,

<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPpRiCAqhKb7yhsoedJOJgbAvx1268MgR6ZECmZQOSxzeFTc8j8UEx5lpE6uoQzg2uUWiM2z3DaYIRjvfyF6EzdRBCGyxWU2UdMRXMrMogf3NnamP5vhcnqlrjxU6kUOTAEHiM0krVFJUCg%3D%3D>;

<https://www.ohchr.org/en/press-releases/2022/04/israels-housing-policies-occupied-palestinian-territory-amount-racial>; <https://www.btselem.org/settlements>, <https://www.nrc.no/shorthand/stories/in-the-west-bank-segregated-roads-displace-palestinians/index.html>.

¹² ex. <https://visualizingpalestine.org/visuals/seggregated-roads-west-bank/>;

<https://www.nrc.no/shorthand/stories/in-the-west-bank-segregated-roads-displace-palestinians/index.html>;

<https://www.un.org/unispal/document/auto-insert-186867/>;

https://www.btselem.org/topic/freedom_of_movement.

¹³ ex. UN Human Rights Committee, "Concluding observations on the fifth periodic report of Israel," 5 May 2022,

<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPpRiCAqhKb7yhsjE8R4c4NRTrnrvejYey%2FQ9EWnQY26sz%2BPk0%2BTQAcRpAAIFue4n%2BRvXZead9hu22zSszcLg7RJ2Gi6oDhLTy2yOHpdQPrSorR5%2B2xzYmiDc>; https://www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution#_ftn3;

<https://www.hrw.org/news/2017/08/08/israel-jerusalem-palestinians-stripped-status>. Imseis, A., *The United Nations and the Question of Palestine* (Cambridge, 2023) at 128-131.

¹⁴ ex. https://www.un.org/unispal/wp-content/uploads/2023/03/A.HRC_.52.76_150323.pdf;

<https://haqel.org.il/en/publications>; <https://www.adalah.org/en/law/view/538>;

<https://www.haaretz.com/israel-news/2023-06-02/ty-article-magazine/.premium/israeli-settlers-allowed-to-live-in-w-bank-firing-zone-after-palestinians-were-evacuated/00000188-7832-d4df-a39c-ff7bf4500000>; <https://www.akevot.org.il/en/news-item/document-revealed-by-akevot-ariel-sharon-instructed-idf-to-create-training-zone-to-displace-palestinians/>; https://www.nrc.no/globalassets/pdf/legal-opinions/absentee_law_memo.pdf; <https://www.btselem.org/settlements>.

¹⁵ ex. <https://reliefweb.int/report/occupied-palestinian-territory/not-vibrant-democracy-apartheid-enarhe>; <https://www.amnesty.org/en/latest/press-release/2019/09/israel-discriminatory-measures-undermine-palestinian-representation-in-knesset/>;

https://ecfr.eu/special/mapping_palestinian_politics/palestinian_citizens_of_israel/.

¹⁶ ex. <https://www.ohchr.org/en/press-releases/2022/08/un-experts-condemn-israeli-suppression-palestinian-human-rights>; <https://www.theguardian.com/world/2022/aug/22/cia-report-israel-palestinian-rights-groups>.

Palestinians in the West Bank are subject to military law while Israelis, including West Bank settlers, are afforded greater rights protections under Israeli civil law.¹⁷ Palestinian human rights organization Adalah has identified more than 65 Israeli laws that discriminate against Palestinians.¹⁸

As Israeli human rights organization B'Tselem observes, "The Israeli regime, which controls all the territory between the Jordan River and the Mediterranean Sea, seeks to advance and cement Jewish supremacy throughout the entire area. To that end, it has divided the area into several units [Gaza, the West Bank, East Jerusalem, and Israel], each with a different set of rights for Palestinians – always inferior to the rights of Jews."¹⁹

Human rights organizations and independent UN experts concurring that Israel's system of rule over Palestinians meets the legal definition of apartheid include Amnesty International, Human Rights Watch, Yesh Din, Harvard Law School's International Human Rights Law Clinic, Addameer, Al-Haq, Al Mezan Center for Human Rights, B'Tselem, the UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, and the UN Committee on the Exercise of the Inalienable Rights of the Palestinian People.²⁰

- *Genocide*

UN Experts and more than 800 international law and genocide scholars have characterized Israel's current military assault on Gaza as giving rise to a risk of, or even amounting to an unfolding, genocide,²¹ defined by the UN Convention on the Prevention and Punishment of the Crime of Genocide and Rome Statute as certain acts "committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such."²² Legal experts have also

¹⁷ ex. <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coiopt/2022-10-19/Report-COI-OPT-14Sept2022-EN.pdf>.

¹⁸ <https://www.adalah.org/en/content/view/7771>.

¹⁹ https://www.btselem.org/publications/fulltext/202101_this_is_apartheid.

²⁰ <https://www.amnesty.org/en/documents/mde15/5141/2022/en/>;

https://www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution#_ftn3;

[https://s3-eu-west-1.amazonaws.com/files.yesh-](https://s3-eu-west-1.amazonaws.com/files.yesh-din.org/Apartheid+2020/Apartheid+ENG.pdf)

[https://hrp.law.harvard.edu/wp-](https://hrp.law.harvard.edu/wp-content/uploads/2022/03/IHRC-Addameer-Submission-to-HRC-COI-Apartheid-in-WB.pdf)

[https://www.alhaq.org/advocacy/20219.html#:~:text=On%2031%20May%202022%2C%20Al,of%20the](https://www.alhaq.org/advocacy/20219.html#:~:text=On%2031%20May%202022%2C%20Al,of%20the%20inalienable%20rights%20of)

[%20inalienable%20rights%20of](https://www.alhaq.org/advocacy/20219.html#:~:text=On%2031%20May%202022%2C%20Al,of%20the%20inalienable%20rights%20of);

[https://observatoridesc.org/en/gaza-bantustan-israeli-apartheid-gaza-](https://observatoridesc.org/en/gaza-bantustan-israeli-apartheid-gaza-strip)

[strip](https://www.btselem.org/publications/fulltext/202101_this_is_apartheid);

https://www.btselem.org/publications/fulltext/202101_this_is_apartheid;

[https://documents-dds-](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/448/72/PDF/G2244872.pdf?OpenElement)

[ny.un.org/doc/UNDOC/GEN/G22/448/72/PDF/G2244872.pdf?OpenElement](https://www.un.org/unispal/document/ceirpp-legal-study2023/);

<https://www.un.org/unispal/document/ceirpp-legal-study2023/>.

²¹ [https://www.ohchr.org/en/press-releases/2023/11/gaza-un-experts-call-international-community-](https://www.ohchr.org/en/press-releases/2023/11/gaza-un-experts-call-international-community-prevent-genocide-against)

[prevent-genocide-against](https://www.ohchr.org/en/press-releases/2023/11/gaza-un-experts-call-international-community-prevent-genocide-against);

[https://www.ohchr.org/en/press-releases/2023/11/gaza-un-experts-call-international-community-](https://www.ohchr.org/en/press-releases/2023/11/gaza-un-experts-call-international-community-prevent-genocide-against)

[prevent-genocide](https://www.ohchr.org/en/press-releases/2023/11/gaza-un-experts-call-international-community-prevent-genocide-against);

[https://www.ohchr.org/en/press-releases/2023/11/gaza-un-experts-call-international-community-](https://www.ohchr.org/en/press-releases/2023/11/gaza-un-experts-call-international-community-prevent-genocide-against)

[prevent-genocide](https://www.ohchr.org/en/press-releases/2023/11/gaza-un-experts-call-international-community-prevent-genocide-against);

[https://www.ohchr.org/en/press-releases/2023/11/gaza-un-experts-call-international-community-](https://www.ohchr.org/en/press-releases/2023/11/gaza-un-experts-call-international-community-prevent-genocide-against)

[prevent-genocide](https://www.ohchr.org/en/press-releases/2023/11/gaza-un-experts-call-international-community-prevent-genocide-against);

[https://www.ohchr.org/en/press-releases/2023/11/gaza-un-experts-call-international-community-](https://www.ohchr.org/en/press-releases/2023/11/gaza-un-experts-call-international-community-prevent-genocide-against)

[prevent-genocide](https://www.ohchr.org/en/press-releases/2023/11/gaza-un-experts-call-international-community-prevent-genocide-against);

[https://www.ohchr.org/en/press-releases/2023/11/gaza-un-experts-call-international-community-](https://www.ohchr.org/en/press-releases/2023/11/gaza-un-experts-call-international-community-prevent-genocide-against)

[prevent-genocide](https://www.ohchr.org/en/press-releases/2023/11/gaza-un-experts-call-international-community-prevent-genocide-against);

²² Article 2, https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf.

provided detailed opinions on this question in the context of litigation that has been commenced in the United States, alleging that US officials have breached their duty to act to prevent genocide.²³ That includes an opinion from Canadian academic William Schabas, widely recognized to be one of the world's leading legal authorities with respect to genocide.²⁴

Acts that may qualify as genocide, when performed with the requisite intent, include any one of:

- a) **Killing members of the group**²⁵: Israel's offensive has killed more than 18,000 Palestinians in Gaza so far, with a significantly higher proportion of civilian casualties than the average for all other world conflicts in the 20th century, including in attacks on schools, hospitals, refugee camps, evacuation convoys, churches, and mosques without any apparent military target, and using prohibited means such as white phosphorous in civilian areas;²⁶
- b) **Causing serious bodily or mental harm to members of the group**²⁷: a further 50,000 Palestinians have been injured so far, while the capacity for treatment has been dismantled by the destruction of hospitals, attacks on ambulances, and denial of anaesthetics, antiseptics, and other medical necessities under blockade;²⁸ and

²³ https://ccrjustice.org/sites/default/files/attach/2023/11/Complaint_DCI-Pal-v-Biden_w.pdf

²⁴

https://ccrjustice.org/sites/default/files/attach/2023/11/Declaration%20Expert%20William%20Schabas_w.pdf

²⁵ Article 2(a), https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf.

²⁶ <https://www.reuters.com/world/middle-east/people-are-all-dead-gazan-mother-speaks-wars-horror-2023-12-12/>; <https://www.theguardian.com/world/2023/dec/09/civilian-toll-israeli-airstrikes-gaza-unprecedented-killing-study>; <https://www.amnesty.org/en/latest/news/2023/10/damning-evidence-of-war-crimes-as-israeli-attacks-wipe-out-entire-families-in-gaza/>; <https://www.theguardian.com/world/2023/oct/14/gaza-civilians-afraid-to-leave-home-after-bombing-of-safe-routes>; <https://www.hrw.org/news/2023/11/14/gaza-unlawful-israeli-hospital-strikes-worsen-health-crisis>; <https://www.amnesty.ca/human-rights-news/israel-opt-nowhere-safe-in-gaza-unlawful-israeli-strikes-illustrate-callous-disregard-for-palestinian-lives/>; <https://www.hrw.org/news/2023/10/12/israel-white-phosphorus-used-gaza-lebanon>.

²⁷ Article 2(b), https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf.

²⁸ <https://www.theguardian.com/world/2023/dec/12/injured-palestinians-face-potentially-fatal-delays-in-treatment-say-aid-agencies>; <https://www.theguardian.com/world/2023/oct/24/gaza-hospitals-ceasing-to-function-as-water-and-fuel-run-out>; <https://www.hrw.org/news/2023/11/14/gaza-unlawful-israeli-hospital-strikes-worsen-health-crisis>; <https://www.who.int/news/item/04-12-2023-who-appeals-for-protection-of-the-health-system-from-further-attacks-and-degradation-of-its-capacity>; <https://reliefweb.int/report/occupied-palestinian-territory/gaza-healthcare-crisis-urgent-action-required-address-alleged-unlawful-israeli-attacks#:~:text=Escalating%20Crisis%20in%20Gaza's%20Healthcare%20System&text=Hospitals%20are%20struggling%20to%20function,being%20used%20as%20an%20antiseptic..>

- c) **Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part**²⁹: conditions of mass starvation, dehydration, and infectious disease transmission created by the intensified blockade precluding food, water, and fuel from entering the territory; the incapacitation of food production, sewage treatment, and water purification facilities; and telecommunications blackouts preventing the activities of humanitarian agencies.³⁰

Evidence of genocidal intent includes statements by Israeli political and military leaders referring to Palestinians in familiarly genocidal terms as “savages,” “barbarians,” “bloodthirsty monsters,” and “human animals,” promising “a Nakba that will overshadow the Nakba [massacre and mass expulsion of Palestinians] of ‘48,” and pledging to “eliminate everything” and “wipe [the people of Gaza] off the face of the earth.”³¹ On 28 October, Israeli Prime Minister stated to the Israeli public: “You must remember what Amalek has done to you, says our Holy Bible, and we do remember, and we are fighting . . .,” alluding to the biblical edict to the Israelites commanding them to completely eradicate their archenemy the Amalekites.³²

2. Canada has obligations of prevention, punishment, and non-complicity under international law vis-à-vis Israel’s violations.

The prohibitions against genocide, apartheid, and deprivation of the right of self-determination are all *jus cogens* (also known as peremptory) norms – the highest level of norm in international

²⁹ Article 2(c), https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf.

³⁰ <https://www.oxfam.org/en/press-releases/starvation-weapon-war-being-used-against-gaza-civilians-oxfam>; <https://www.wfp.org/news/gaza-faces-widespread-hunger-food-systems-collapse-warns-wfp>; <https://www.bbc.com/news/world-middle-east-67670679>; <https://reliefweb.int/report/occupied-palestinian-territory/israel-waging-extensive-war-starvation-against-gazas-civilian-population-enar>; <https://www.theguardian.com/world/2023/oct/17/fears-grow-people-are-dehydrating-to-death-in-gaza-as-clean-water-runs-out>; <https://reliefweb.int/report/occupied-palestinian-territory/gazas-water-crisis-puts-thousands-risk-preventable-death>; <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-special-session-of-the-executive-board-on-the-health-situation-in-the-occupied-palestinian-territory---10-december-2023>; <https://www.theguardian.com/global-development/2023/oct/28/airstrikes-on-gaza-bakeries-add-to-catastrophic-food-shortages>; https://www.btselem.org/gaza_strip/20231207_humanitarian_catastrophe_as_policy.

³¹ https://ccrjustice.org/sites/default/files/attach/2023/11/Complaint_DCI-Pal-v-Biden_w.pdf; <https://www.timesofisrael.com/likening-hamas-to-isis-netanyahu-vows-victory-in-war-for-our-existence/>; https://www.timesofisrael.com/liveblog_entry/netanyahu-never-again-is-now-israel-fighting-war-for-all-of-humanity/; <https://reliefweb.int/report/occupied-palestinian-territory/gaza-un-experts-call-international-community-prevent-genocide-against-palestinian-people>; <https://jewishcurrents.org/a-textbook-case-of-genocide>.

³² “Now go and smite Amalek, and utterly destroy all that they have, and spare them not; but slay both man and woman, infant and suckling, ox and sheep, camel and ass.” 1 Samuel 15:3; <https://www.nytimes.com/2023/11/15/world/middleeast/israel-gaza-war-rhetoric.html>.

law, from which no derogation is permitted.³³ As such, they entail obligations *erga omnes* – towards the international community as a whole.³⁴

In addition to the general obligation **not to aid or assist** in the commission of *jus cogens* violations,³⁵ Canada and other third-party states are positively obliged under the UN Genocide Convention to take measures to **prevent** genocide³⁶ – an obligation “aris[ing] at the instant that the State learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed,” according to the International Court of Justice.³⁷

States also have a duty under the UN Genocide and Apartheid Conventions to **punish** apartheid, genocide, and complicity in genocide.³⁸ Forms of complicity identified by international criminal tribunals and UN bodies include provision of arms, financial assistance, and moral support for the perpetration of atrocities.³⁹ As the UN’s Independent International Fact-Finding Mission on Myanmar noted, “States are obliged to investigate and, if there is sufficient evidence, prosecute acts amounting to genocide, crimes against humanity and war crimes. This obligation extends to acts and omissions by corporate officials that aid, abet or otherwise assist in the commission of those crimes.”⁴⁰

3. Palestine solidarity advocacy seeking to uphold international law should not be treated as hateful or tortious.

Therefore, far from constituting hate or racism, advocacy accurately naming Israel’s violations against the Palestinian people and promoting legally-mandated means to redress them – including by divestment from complicit entities⁴¹ – seeks to ensure respect for fundamental legal

³³ <https://legal.un.org/ilc/reports/2019/english/chp5.pdf>.

³⁴ <https://legal.un.org/ilc/reports/2019/english/chp5.pdf>.

³⁵ Article 41(2), https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf.

³⁶ Article 1, https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf.

³⁷ <https://www.icj-cij.org/sites/default/files/case-related/91/091-20070226-JUD-01-00-EN.pdf>, para 431.

³⁸ Articles 3-7, https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf; Article 4, https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.10_International%20Convention%20on%20the%20Suppression%20and%20Punishment%20of%20the%20Crime%20of%20Apartheid.pdf.

³⁹ *ex. Prosecutor v. Musema*, Case No. ICTR-96-13-T, Trial Judgement and Sentence, para 178; *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Trial Judgement, para 536; *Prosecutor v. Anto Furundžija*, Case No. IT-95-17/1-T, Trial Judgment, para 209; *Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-T, Trial Judgement, paras 64-5, 87;

https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/FFM-Myanmar/EconomicInterestsMyanmarMilitary/A_HRC_42_CRP_3.pdf; <https://www.icj.org/report-of-the-international-commission-of-jurists-expert-legal-panel-on-corporate-complicity-in-international-crimes/>.

⁴⁰ https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/FFM-Myanmar/EconomicInterestsMyanmarMilitary/A_HRC_42_CRP_3.pdf, para 45.

⁴¹ <https://www.ohchr.org/en/press-briefing-notes/2023/06/update-database-business-enterprises-relation-occupied-palestinian>.

norms and duties which are unequivocally binding on Canada, and which the Canadian government regularly purports to uphold.⁴² Regardless of whether one agrees with the particular legal terms of art applied to classify Israel's copiously documented violations, the right of students, scholars, and lawyers to use them must not be repressed.

As the Supreme Court of Canada recently affirmed, in dismissing a defamation lawsuit against an LGBTQ rights defender, "counter-speech motivated by the defence of a vulnerable or marginalized group in society" lies in "close proximity to the values at the core" of constitutional speech protections.⁴³ In a similar vein, Canadian courts have permitted defamation suits brought by individuals and groups labelled as "terrorism" supporters for their Palestine solidarity to proceed, and indicated that there may be grounds to infer that such labeling stems from "malice."⁴⁴

As stated by Richard Falk, Albert G Milbank Professor Emeritus of International Law at Princeton University and former UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967: "In the end, we are left with the imperative of protecting free speech, especially in calling genocide genocide, and with a challenge to take all responsible action to end this scourge by actions that go beyond words of lament and condemnation, and consider what forms of boycott, divestment, and sanctions can be brought to bear to stop genocide in Gaza."⁴⁵

The treatment of Palestinian rights advocacy as hateful, racist, discriminatory, defamatory, or otherwise wrongful inverts both fact and law. When such advocacy calls for action to address ongoing gross violations of the international protected rights of Palestinians, including with respect to apartheid and genocide, and draws attention to Canada's continuing abdication of its international legal obligations, far from being restricted or limited, speech of that nature should be respected and protected.

ENDORSED BY:

Alex Neve, OC, Senior Fellow, Graduate School of Public and International Affairs, University of Ottawa; Adjunct Professor, Faculties of Law, University of Ottawa and Dalhousie University

Azeezah Kanji, legal academic and journalist

Richard Falk, Albert G. Milbank Professor of International Law and Practice, Emeritus, Princeton University; Chair of Global Law, Queen Mary University London

⁴² This is not to suggest that advocacy *not* framed in international legal terms may therefore be considered hateful or impermissible; international human rights law is meant to provide a minimum floor for justice, not a ceiling.

⁴³ *Hansman v. Neufeld*, 2023 SCC 14, paras 81 and 82.

⁴⁴ *Lascaris v. B'nai Brith Canada*, 2019 ONCA 163; *Canadian Union of Postal Workers v. B'nai Brith Canada*, 2021 ONCA 529; *Canadian Union of Postal Workers v. B'nai Brith Canada et. al*, 2020 ONSC 323.

⁴⁵ <https://www.transcend.org/tms/2023/12/israels-genocide-hate-speech-or-truth-telling/>.

Jim Cavallaro, Visiting Professor, Yale Jackson School of Global Affairs; Former President and Rapporteur for Canada, Inter-American Commission on Human Rights

Michael Lynk, Professor Emeritus, Western University; former UN Special Rapporteur for human rights in the occupied Palestinian territory

Ardi Imseis, Assistant Professor, Academic Director, International Law Programs, Queen's University Faculty of Law; Legal Counsel, United Nations Relief and Works Agency for Palestine Refugees in the Near East, 2002-2014

Obiora Okafor, Edward B Burling Chair in International Law, Johns Hopkins School of Advanced International Studies; former Chairperson of the United Nations Human Rights Council Advisory Committee

E. Tendayi Achiume, Alicia Miñana Professor of Law, UCLA School of Law, Former United Nations Special Rapporteur on Racism, Racial Discrimination, Xenophobia and Related Intolerance

Leilani Farha, International human rights lawyer, former UN Special Rapporteur on the right to adequate housing

Frédéric Mégret, Professor, Hans & Tamar Oppenheimer Chair in Public International Law, McGill University Faculty of Law

François Crépeau, Professor, McGill University Faculty of Law

Naiomi W. Metallic, Chancellor's Chair in Aboriginal Law and Policy, Associate Professor, Schulich School of Law, Dalhousie University

Paul Champ, lawyer

Arman Chak, lawyer

Penelope Simons, Professor and Gordon F. Henderson Chair in Human Rights, University of Ottawa

Omar Farahat, Associate Professor, McGill University Faculty of Law

Kathleen Mahoney KC, FRSC, Emeritus Professor of Law, University of Calgary

Bruce Ryder, Associate Professor, Osgoode Hall Law School, York University

Jasminka Kalajdzic, Professor, University of Windsor Faculty of Law

Shannonbrooke Murphy, Endowed Chair in Human Rights, St Thomas University

Faisal Bhabha, Associate Professor, Osgoode Hall Law School, York University

Pamela Palmater, Professor and Chair in Indigenous Governance, Toronto Metropolitan University

Ed Bécharad Torres, Assistant Professor, Lincoln Alexander School of Law, Toronto Metropolitan University

Christopher Campbell-Durouflé, Assistant Professor, Lincoln Alexander School of Law, Toronto Metropolitan University

Aditya Rao, lawyer

Sarah Beamish, founder and principal, Beamish Law

Irina Ceric, Assistant Professor, University of Windsor Faculty of Law

Heidi Matthews, Assistant Professor, Osgoode Hall Law School, York University

Faisal Kutty, Affiliate Faculty at Center for Security, Race and Rights, Rutgers University; Associate Professor of Law Emeritus at Valparaiso University

Kjell Anderson, Assistant Professor of Law, University of Manitoba

Mark Kersten, Assistant Professor, Criminology and Criminal Justice, the University of the Fraser Valley

Jamie Chai Yun Liew, Professor, Faculty of Law, University of Ottawa

James Yap, President, Canadian Lawyers for International Human Rights (CLAIHR)

Craig Martin, Professor of Law, Co-Director, International and Comparative Law Center, Washburn University School of Law

Priscylla Joca, Assistant Professor, Lincoln Alexander School of Law, Toronto Metropolitan University

Vasanthi Venkatesh, Associate Professor, Faculty of Law, University of Windsor

Rick Lines, Honorary Professor, Department of Criminology, Sociology and Social Policy, School of Social Sciences, Swansea University

Ishat Reza, Lawyer

Sofia Ijaz, Lawyer

Irvin Waller, Professor Emeritus, University of Ottawa

Reem Alex Elawny, Lawyer

Asaf Rashid, Lawyer