

# **Canada and the Global Rules-Based Order: Third State Responsibility for Genocide, War Crimes and Crimes Against Humanity in Gaza**

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*The post-World War II rules-based order is failing, leaving Canada exposed economically, diplomatically and militarily. The US' abdication from the field tends towards a world of 'might-makes-right'. It is in Canada's self-interest to ally with other like-minded democracies to support international legal institutions – specifically including the International Court of Justice and the International Criminal Court – and to adopt a more muscular approach to universal jurisdiction. Canada must not limit itself to the easy cases. In helping to fashion a re-imagined democratic and human rights focused order, Canada must take a principled stance that embraces hard cases, such as those presented by Israel's war crimes, crimes against humanity and genocide in Palestine. Much immiseration can be avoided if Canada and other democracies (without US leadership) can accomplish this. A more humane world would be a more peaceful world.*

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*L'ordre international fondé sur des règles mis en place après la Seconde Guerre mondiale est en déclin, ce qui rend le Canada vulnérable sur les plans économique, diplomatique et militaire. Le désengagement des États-Unis à cet égard contribue à l'émergence d'un monde où « la force prime sur le droit ». Il est dans l'intérêt du Canada de s'allier à d'autres démocraties partageant les mêmes valeurs pour soutenir les institutions juridiques internationales, dont la Cour internationale de justice et la Cour pénale internationale, et privilégier une approche plus affirmée en matière de compétence universelle. Le Canada ne doit cependant pas se limiter aux dossiers faciles. Dans sa contribution en vue de refaçonner un ordre international axé sur la démocratie et les droits de la personne, il se doit d'adopter une position de principe qui englobe également les affaires complexes, telles que celles soulevées par les crimes de guerre, les crimes contre l'humanité et le génocide imputés à Israël en Palestine. L'appauvrissement et les souffrances qui en découlent pourraient être en partie évités si le Canada et d'autres démocraties y parvenaient, indépendamment des États-Unis. Un monde qui respecte davantage la dignité humaine se traduirait également par un monde plus pacifique.*

"We [Canada, Britain, France] strongly oppose the expansion of Israel's military operations in Gaza. The level of human suffering in Gaza is intolerable."<sup>1</sup>

— Joint statement from Canada, UK and France

## I. Introduction

Canada faces unprecedented threats to its sovereignty as its nearest neighbour threatens to upend the global rules-based order.<sup>2</sup> Trump's bullying necessitates enormous changes to Canada's military, economic and diplomatic activities and alliances, at home and abroad.<sup>3</sup> If Canada is to successfully negotiate this re-ordering of international relations, it must ally with other like-minded nations to save what it can of the old order, while creating a new global rules-based order. The old American led system,<sup>4</sup> flawed as it was,<sup>5</sup> cannot be saved. What will take its place cannot be predicted. Regardless, a return to the pre-World War II order, where aggressive war was lawful, and where regional powers jockeyed for spheres of influence, threatens every nation.<sup>6</sup> Human rights, and indeed human existence, are at stake.

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<sup>1</sup> Prime Minister of Canada, "Joint Statement from the leaders of Canada, the United Kingdom and France on the situation in Gaza and the West Bank" (19 May 2025), online: <pm.gc.ca> [perma.cc/8KJ9-VTBW].

<sup>2</sup> The Trump administration's corollary to the Monroe doctrine, as espoused in its new National Security Strategy, presents multifarious challenges to Canadian sovereignty. These challenges go beyond Trump's 51<sup>st</sup> state provocations and towards issues such as "trade diversification, sovereignty in the Arctic, protection of cultural identity and support for multilateralism". Mike Blanchfield, "Where's Canada on Trump's roadmap", *Politico* (8 December 2025), online: <politico.com> [perma.cc/VBM7-AUQQ].

<sup>3</sup> According to Charlie Angus, Canada is facing a "gangster regime" whose "focus is on breaking us economically. He [Trump] has never wavered in this determination. The document states that Trump is seeking to restore the gunboat diplomacy of the Monroe Doctrine to maintain U.S. dominance in the Americas", Charlie Angus/The Resistance, "The Gangster Regime Revealed" (8 December 2025), online (blog): <charlieangus.substack.com> [perma.cc/F6MH-96MM].

<sup>4</sup> See Section II below.

<sup>5</sup> For examples of American flouting of the rules it helped to create, see *infra* note 29; *infra* note 39.

<sup>6</sup> As I will discuss more fully in sections II & IV, I use the phrase "might-makes-right" in its formal, legal sense in that nation-states used war for political ends. Racist, imperial conquest, remained lawful until the outlawry of war during the period leading up to World War II. Although early efforts to limit war can be traced back to the 19<sup>th</sup> century, an increasing web of treaties sought to regulate commerce and create international organizations. Moreover, there were attempts to curb the worst effects war, particularly with respect to *jus in bello* as well as moves to end the slave trade, piracy, privateering and the like. For a full discussion on the efforts to outlaw war see Oona A Hathaway & Scott J Shapiro, *The*

To avoid the worst effects of the demise of the global rules-based order, like-minded nations must focus on supporting international and transnational law across a variety of fora. These efforts by Canada and other nations must include strengthening economic ties between nations, military and security arrangements, and international law generally. Specifically, international humanitarian, human rights and international criminal law must first be saved and then made universal, neutral and impartial. Moreover, nations, like Canada, must do so, not just with respect to the easy cases, such as Russia's plainly illegal and immoral invasion of Ukraine,<sup>7</sup> but with respect to the hard cases, such as the Israeli and Hamas conflict.<sup>8</sup> The world faces no harder or more difficult a conflict than the clash between Israel and Hamas, which threatens the Palestinian people with ethnic cleansing and genocide.

From a political standpoint, the conflict between Israel and Palestine is one of the most difficult cases nations are presently facing. Sympathy naturally arises for those who suffered the mass murders of the Shoah.<sup>9</sup> As such, the focus has been on Hamas as the instigator of the conflict, attacking civilians and taking hostages. However, Israel's actions cannot be overlooked. Countering the Trump administration's misguided but staunch

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*Internationalists: How a Radical Plan to Outlaw War Remade the World*, (New York: Simon and Schuster, 2017); see also, Oona A Hathaway & Scott J Shapiro, "The Internationalists: How a Radical Plan to Outlaw War Remade the World" in Donna Lyons, ed, *Leading Works in International Law* (New York: Routledge, 2024) at 54.

<sup>7</sup> "Any prosecution of Vladimir Putin's unprovoked, brutal and illegal attack on Ukraine navigates unknown terrain. Moreover, any such prosecution invites charges of selectivity and hypocrisy (the Iraq war, for example, is widely thought to violate this principle). Yet, if the international community is to confront the scourge of war, it must begin somewhere. Will the world finally confront Nuremberg's challenge to outlaw and punish aggressive war?", Alan W Clarke, "Prosecuting Putin for the Crime of Aggressive War" (27 November 2023), online: <buffalo.edu> [perma.cc/2AFM-378P].

<sup>8</sup> See, e.g., "Why the Israeli-Palestinian conflict is so hard to resolve", DW News (2023), online: <youtube.com> [perma.cc/LAB7-9Z7V].

<sup>9</sup> "Holocaust" is the English term and 'Shoah' the Hebrew term used to describe the genocide perpetrated by Nazi Germany during World War II. Both terms have a theological or cosmic dimension. "Holocaust" is derived from the Greek for burnt offering and is generally defined as a vast destruction caused by fire or other non-human forces. 'Shoah,' meanwhile, has its biblical root in the term 'shoah u-meshoah' (wasteness and desolation) that appears in both the Book of Zephaniah (1:15) and the Book of Job (30:3)". World Jewish Congress, "What is the difference between 'Holocaust' and 'Shoah'" (last visited 16 January 2026), online: <aboutholocaust.org> [perma.cc/2FSQ-HB8C].

defence of Israel<sup>10</sup> would be difficult for any nation to navigate. Finally, in part because of these complexities, public opinion has been divided, making forceful action difficult.<sup>11</sup>

While both sides have violated international criminal law,<sup>12</sup> and while it is true that Hamas started this current conflict,<sup>13</sup> nothing justifies the current Israeli war crimes. These war crimes include crimes against humanity and the ongoing genocide being perpetrated against innocent Palestinian civilians.<sup>14</sup> While it is legally and morally correct that Canada must apply international law even-handedly, it is also true that in the present conflict, Canada's leverage with the US lies in allying with other nations to stop Israel's flagrant violations of international law. This article will argue that Canada must do the following: proactively prepare to arrest criminals from the Israel Defense Forces ("IDF") who come within Canada's jurisdiction; stop sending weaponry of any kind to the US that we know will then be transshipped to Israel; and speak out and act more forcefully, in a variety of fora – including strong support for the International Court of Justice ("ICJ") and the International Criminal Court ("ICC"). Supporting the ICC and ICJ will actively oppose US' attempts to undermine these courts – a stance that will not win Canada any friends in Washington.

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<sup>10</sup> "If Washington refuses to rein in Israel and does not search for a just political answer to the Palestinian question, it risks weakening ties with key regional partners and losing influence over the emerging regional order. Failing to address the issue of Palestine and allowing Israel to behave aggressively with impunity will also fuel a new wave of radicalism that will threaten U.S. interests, regional stability, and global security." Galip Dalay & Sanam Vakil, "The Middle East That Israel Has Made: Why Washington Will Rue the Costs of Israeli Aggression", *Foreign Affairs* (1 October 2025), online: <foreignaffairs.com> [perma.cc/MW3W-BSD4].

<sup>11</sup> In the aftermath of the October 7 Hamas attacks, Canadian public opinion largely supported Israel. However, public opinion may now be shifting to recognize that Israel is committing genocide in Gaza. Angus Reid Institute, "Canadian Opinion Continues to Turn Against Israel" (6 August 2025), online: <canadatalksisraelpalestine.ca> [perma.cc/N6WR-YPQG].

<sup>12</sup> UN Human Rights Office of the High Commissioner, Press Release, "Israel/occupied Palestinian territory: UN experts deplore attacks on civilians, call for truce and urge international community to address root causes of violence" (12 October 2023), online: <ohchr.org> [perma.cc/86CB-PV5R].

<sup>13</sup> *Ibid.*

<sup>14</sup> *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, UNGA, 59th Sess, A/HRC/56/26 (2024) at Agenda Item 2, s V.

## II. Pax Americana is Dead: Canada Must Respond

The post-World War II order did not arise in a vacuum. Earlier attempts to regulate war can be traced at least to Saint Augustine, and perhaps earlier.<sup>15</sup> However, for the purpose of this article, it suffices that the nineteenth century saw a dramatic increase in treaties designed to make the world order more regular and less likely to go to war.<sup>16</sup> Similarly, broad human rights protections had their roots in nineteenth and early twentieth century developments.<sup>17</sup> Pax Britannica encouraged free trade and, while racist and imperialist,<sup>18</sup> it did serve to reduce the likelihood of war.<sup>19</sup> As Buzan and Lawson put it: “If states wanted to go to war they could. But if they wanted to pursue commerce and peace, then an ever-denser sphere of international rules and regulations over commerce, transportation and communications helped to coordinate interstate behaviour.”<sup>20</sup>

Moreover, attempts to regulate war, *jus in bello*, prefigured the outlawry of aggressive war.<sup>21</sup> The creation of the League of Nations after World War I constituted an important, if ultimately ineffectual, attempt to end the scourge of war as well as creating the precursors of much of our human rights rules and organizations. Nonetheless the formal outlawry of war originating in the Nuremberg trials and UN charter was revolutionary. Similarly, in the latter part of the twentieth century, rising interest in

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<sup>15</sup> Oona A Hathaway & Scott J Shapiro, *supra* note 6 at 10.

<sup>16</sup> While there were wars during the nineteenth century, after the Concert of Europe, Europe avoided war on the scale of the Napoleonic conflict until World War I. Paradoxically, the Congress of Vienna established and managed a balance of power, with the Britain as arbiter in Europe. This system constrained but did not eliminate war as it is also thought to have created the pressures that led to World War I. The conflict between the great powers during this period was refocused on the extra-European world, where firmer spheres of influence played a prominent role, while also exporting great power conflict beyond Europe.

<sup>17</sup> In the nineteenth century “the rise of liberal understandings of economics and, in particular, the idea that both prosperity and peace arose from pursuing free trade. ... the basic framings for modern ways of thinking about international relations were being put into place during the nineteenth century.” Barry Buzan & George Lawson, *The Global Transformation: History, Modernity and the Making of International Relations* (Cambridge: Cambridge University Press, 2015) at 50.

<sup>18</sup> For more on this, see e.g. Amitav Acharya, “Race and racism in the founding of the modern world order” (2022) 98:1 Intl Affairs 23.

<sup>19</sup> *Supra* note 16.

<sup>20</sup> Barry Buzan & George Lawson, *The Global Transformation: History, Modernity and the Making of International Relations* (Cambridge: Cambridge University Press, 2015) at 50.

<sup>21</sup> These efforts include the Lieber Code of 1863 promulgated by President Lincoln during the US Civil War, the Geneva Convention of 1864, the Hague Conventions of 1899 and 1907, and the Geneva Convention of 1929.

international human rights and dignity has led to the erosion of the rules of non-interference and non-inquiry<sup>22</sup> into another nation-states' domestic legal regime. This ultimately contributed to an erosion of state sovereignty.<sup>23</sup> Additionally, concerns for human rights led to the creation of international criminal courts and to the concept of universal jurisdiction.<sup>24</sup> While these developments may have had roots in the nineteenth and early twentieth centuries, the post-World War II order nonetheless represents a significant advancement in the creation of widely accepted law-based conceptions, focusing on individual rights as opposed to an unfeeling monolithic state. At least in more-or-less democratic states, sovereignty grudgingly, and inconsistently, began to give way to the individual.

By making aggressive war an international crime, the centuries-old practice of using war for purely political ends was upended, and the rules surrounding neutrality were changed. As Buzan and Lawson put it regarding the post-World War II period, “[w]ar remained as an institution of international society, but its legitimate use was narrowed to the right of self-defence, plus uses authorized by the UN Security Council, while the right of anti-colonial war was legitimated by decolonization.”<sup>25</sup> However, earlier evolution in international law pre-figured the outlawry of war. Beginning in the nineteenth century and accelerating with the League of Nations after World War I, the international community created a dense web of international governmental organizations and international non-governmental organizations which sought to regulate a variety of what we now see as human rights issues.<sup>26</sup>

Along with other human rights advances – such as the *Universal Declaration of Human Rights*, and treaties such as those prohibiting torture,

<sup>22</sup> The rule of non-inquiry is “the doctrine that prohibits a state from inquiring into the fairness of another nation's judicial system in deciding whether to extradite a person pursuant to an extradition treaty. The trend away from rigid adherence to the rule of non-inquiry can be traced back to the expansion of human rights after World War II, and perhaps even to the ill-fated League of Nations. However, the most direct precedent in death penalty extradition matters did not come until 1989, in *Soering v United Kingdom*.” See Alan W Clarke et al, “Does the Rest of the World Matter? Sovereignty, International Human Rights Law and the American Death Penalty” (2004) 30:1 *Queen's LJ* 260 at 261.

<sup>23</sup> For details on how the erosion of rule of non-inquiry (a subset of the rule of non-interference in the domestic affairs of another nation-state) has advanced modern conceptions of human rights in the death penalty context and has led to an erosion of state sovereignty, see *ibid* at 269–71, 308–10.

<sup>24</sup> See e.g. Paul Gordon Lauren, *The Evolution of Human Rights: Visions Seen*, 2nd ed (Philadelphia: University of Pennsylvania Press, 2003) at Chapter 9; Robert Cryer et al, *An Introduction to International Criminal Law and Procedure*, 2nd ed (Cambridge: Cambridge University Press, 2010) at Chapter 8.

<sup>25</sup> Buzan and Lawson, *supra* note 17 at 216.

<sup>26</sup> *Ibid* at 92–93.

genocide and racial discrimination – third state obligations regarding human rights and war have been radically changed.<sup>27</sup> The post-World War II global rules-based order<sup>28</sup> represented a significant departure from the past. This order had implications for those states not directly involved in a particular conflict as well as those states not participating in or committing egregious human rights violations. As we will demonstrate, it is no longer morally or legally acceptable for Canada to simply sit on the sidelines. Nor is it in Canada's self-interest.

Nonetheless, the post-World War II rules-based order has always been fragile, riven with great-power hypocrisies, dissenting countercurrents, and cynical manipulation of the legal order.<sup>29</sup> However, despite its many faults, and paradoxically perhaps, for eight decades it has also remained the best hope for progress to a fairer more humane world.<sup>30</sup> As Ivo Daalder and James Lindsay contend:

The world America made ... was never perfect ... The United States at times ignored its own lofty rhetoric to pursue narrow interests or misguided policies. But for all its shortcomings, the postwar order was a historic success. Europe and Japan were rebuilt. The reach of freedom and democracy was extended. And with the collapse of the Soviet Union, the US-led postwar order was suddenly open to all.<sup>31</sup>

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<sup>27</sup> *Universal Declaration of Human Rights*, UNGA, 3rd Sess, UN Doc A/810 (1948) GA Res 217A (111); *Convention on the Prevention and Punishment of the Crime of Genocide*, (1948) 78 UNTS 277 [*Crime and Punishment Convention*]; *Convention Against torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1984) UNTS 1465; *International Convention on All Forms of Racial Discrimination, opened for signature* (1965) UNTS 660.

<sup>28</sup> However, the order was never fully global because it did not include the Soviet bloc, and it was inconsistently applied by the west and the global south. Nonetheless, it is beyond the scope of this article to interrogate all the many inconsistencies and failures of the Post World War II order.

<sup>29</sup> *Rendition to torture* discusses the ways in which the Bush administration manipulated domestic and international law to justify torture, torture "lite" and participated in the rendition of people to countries with a history and reputation for torture. Chapter 6 also details the contortions made by that administration to justify the illegal war in Iraq and how rendition to torture played a role therein. See Alan W Clarke, *Rendition to Torture* (New Brunswick: Rutgers University Press, 2012).

<sup>30</sup> "[N]o US administration has ever fully lived up to international human rights standards or even its own declared values on human rights. But under both Republican and Democrat administrations, the State Department provided critical funding to human rights defenders. It promoted independent media, championed some core women's rights issues, and supported justice for victims of atrocity crimes." See Andrew Stroehlein, "'America First' - Rights Last?" (30 April 2025), online (blog): <hrw.org> [perma.cc/2CT5-4EGF].

<sup>31</sup> Ivo H Daalder & James M Lindsay, "The Committee to Save the World Order: America's Allies Must Step Up as America Steps Down", *Foreign Affairs* (30 September 2018), online: <foreignaffairs.com> [perma.cc/U5C3-5P67].

Rules and norms after all, constrain but do not prevent, misconduct; when it comes to wars, poverty, and suffering, inhibitions are useful even if imperfect.<sup>32</sup> Now, in a world of vicious imperialistic dictators like Vladimir Putin, and would-be authoritarians like Donald Trump and Benjamin Netanyahu, the world faces its greatest ever threat to postwar progress on human rights and human dignity.

The US, under Donald Trump, seeks to upend 80 years of multilateral rules-based diplomacy in favor of the power politics and spheres of influence redolent of the nineteenth century's Concert of Europe.<sup>33</sup> If accomplished, the dismantling of rules respecting human rights and the laws of war will result in an increase in the number and ferocity of armed conflicts resulting in incalculable human suffering. With the US abdicating the field,<sup>34</sup> the old order cannot be saved, and given its great-power hypocrisies, it is no doubt in need of a major overhaul. However, smaller and middle power countries, like Canada<sup>35</sup> can and should work with other like-minded democracies, both in the West and in the global South, to mitigate the worst effects of the destruction of the human rights regimes so painstakingly constructed in the aftermath of the San Francisco Conference of 1945.<sup>36</sup> In time, a new and better world, based on universal rights, equality and freedom may emerge. While changes to the global rules-based order will need to occur on many levels, including trade, economics, and security,<sup>37</sup> as

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<sup>32</sup> "The post-World War II order wasn't perfect, but it delivered remarkable outcomes. American leadership produced the longest period without a major war between great powers in modern history. Global poverty declined dramatically, with the number of people living in extreme poverty falling from over half the world's population in the 1950s to fewer than 10 percent today." Nicholas Creel, "Pax Americana is over. What comes next will be worse.", *The Hill* (1 March 2025), online: <thehill.com> [perma.cc/2XET-S7K6].

<sup>33</sup> Stacie E Goddard, "The Rise and Fall of Great-Power Competition: Trump's New Spheres of Influence", *Foreign Affairs* (22 April 2025) <foreignaffairs.com> [perma.cc/8RTD-7X4H].

<sup>34</sup> Conor Doran, "Rights advocates claim erosion of global human rights exacerbated by Trump", *JURIST* (29 April 2025) online: <jurist.org> [perma.cc/8QUM-JUL6].

<sup>35</sup> Canada has been particularly fortunate in this regard. First, as a part of the British Empire, it enjoyed substantial protection from attack or interference in its domestic affairs. Pax Britannica was very good for the settler state even though it proved disastrous for its Indigenous people. See e.g. Laurelyn Whitt & Alan W Clarke, *North American Genocides: Indigenous Nations, Settler Colonialism, and International Law* (Cambridge: Cambridge University Press, 2019). Since World War II, Canada has been the beneficiary of Pax Americana with close military ties to the US

<sup>36</sup> See Daalder & Lindsay, *supra* note 31.

<sup>37</sup> Ngaire Woods, "Order Without America: How the International System Can Survive a Hostile Washington", *Foreign Affairs* (22 April 2025) online: <foreignaffairs.com> [perma.cc/2RGH-9XB2]; In particular, Canada should seek to cooperate with Europe. See e.g. Arancha González Laya, "The

well as human rights, and democracy,<sup>38</sup> this article will focus on one less obvious aspect of this larger project – the need to lend Canada’s considerable diplomatic soft power to seeking justice, specifically, Canada’s soft power within the context of atrocities in Palestinian territories.<sup>39</sup> The goal of reducing immiseration in the Middle East would go far towards bolstering a new world order where smaller and middle power nations comfortably coexist alongside nuclear-armed great powers.

Countries like Canada cannot effectively act alone; they must act in concert with others.<sup>40</sup> Moreover, they are beginning to do so.<sup>41</sup> Canada can, however, do much more than it currently is to support the global rules-based legal order.<sup>42</sup> Not only is it the morally right thing to do, it is also in Canada’s self-interest. Most importantly, it should join the Hague Group,<sup>43</sup> “a bloc of states that is coordinating efforts to ensure accountability for Israeli breaches

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Resurgence of Europe: How the Continent Can Survive American Antagonism and Come Out Stronger”, *Foreign Affairs* (12 May 2025) online: <<https://www.foreignaffairs.com/europe/resurgence-europe-how-survive-american-antagonism>> (“[i]t would be dangerous to overlook the damage being done by the Trump administration to the U.S. capacity to project power. ... If member states muster enough will to act on ..., the EU will be able to preserve its unique model of pooled sovereignty and advance a more secure, prosperous, and democratic future for its citizens”).

<sup>38</sup> Alexander Panetta, “U.S. could lose democracy status, says global watchdog”, *CBC News* (18 March 2025), online: <[cbc.ca](https://www.cbc.ca)> [perma.cc/CF37-ZUZ6]; V-Dem Institute, *Democracy Report 2025: 25 Years of Autocratization – Democracy Trumped?* (Gothenburg: V-Dem Institute, 2025).

<sup>39</sup> Others have made similar arguments that nations must band together to support the rules-based order in Gaza as a part of a broader effort to support the rules-based order more generally. See generally Boyd Van Duijk, “Israel, Gaza, and the Starvation Weapon: The ICC Test a Rarely Prosecuted War Crime”, *Foreign Affairs* (30 April 2025) online: <[foreignaffairs.com](https://www.foreignaffairs.com)> [perma.cc/7V59-IH5MW] (“now, the ICC case against Israel—and the implication that even powerful allies of the West can be held to account—puts these changing global norms to the test. In late April, *The Guardian* reported that Khan, the ICC prosecutor, has applied for additional arrest warrants against Israeli officials, suggesting the case may broaden further. As major European powers seek to rapidly step up their defense capabilities in a world in which the US defence umbrella is no longer assured, their governments face a choice: they can either enforce the international principles they so often champion or abandon their claim to moral leadership”).

<sup>40</sup> “Just as anti-liberal powers outside the west are becoming stronger than ever, the assault on everything we stand for has been joined by the United States. Against this massed onslaught of anti-liberal nationalists we need a determined fightback of liberal internationalists. Canada ...can contribute a strong mounted brigade.” See Tony Garton Ash, “Donald Trump, beware – this is what a global liberal fight back looks like”, *The Guardian* (28 April 2025) online: <[theguardian.com](https://www.theguardian.com)> [perma.cc/AAZ7-GR3F].

<sup>41</sup> Prime Minister of Canada, *supra* note 1.

<sup>42</sup> Others have argued that Canada must do more to oppose Israel’s violations of international law with respect to occupied Palestine. See Alex Neve, “Israel/Palestine and Canada’s Empty Support for International Law” (2025) 80:2 *Intl J* 323.

<sup>43</sup> *Bulletin on action by the United Nations and Intergovernmental Organizations relevant to the question of Palestine*, UNISPAL, 2025, Vol XLVIII, Bulletin No IV, s III online: <[un.org](https://www.un.org)> [perma.cc/M3VX-4F6M].

of international law and uphold decisions by the International Court of Justice (ICJ) and the International Criminal Court (ICC)."<sup>44</sup> It is also important that Canada has now joined the 142 UN states that have recognized Palestinian statehood.<sup>45</sup> Canada should also fully support the International Criminal Court in its effort to bring the leadership of both Israel and Hamas to account. Canada must fully comply with the World Court's advisory opinion<sup>46</sup> with respect to ending Israel's illegal occupation of Palestine including Gaza, East Jerusalem and the West Bank, ending apartheid, and ending its criminality with respect to the State of Palestine.<sup>47</sup> Finally, Canada should openly commit to proactively and aggressively using its universal jurisdiction law to prosecute those who commit international atrocity crimes. Specifically, it must not give a free pass to members of the Israeli Defense Forces who are credibly accused of committing atrocity crimes and who fall within the jurisdiction of Canadian courts.

Both Israel and Hamas have committed war crimes and crimes against humanity in the present Israel/Gaza war.<sup>48</sup> Israel is also credibly accused of

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<sup>44</sup> United Nations Human Rights Office of the High Commissioner, Press Release "Amid Escalating Horror, UN experts urge States to take concrete action to end impunity for Israel" (3 April 2025), online: <ohchr.org> [perma.cc/LJ2Q-A3TZ].

<sup>45</sup> Prime Minister of Canada, "Statement by Prime Minister Carney on Canada's recognition of the State of Palestine" (21 September 2025) <pm.gc.ca> [perma.cc/N6ZP-BJ6S]. See also, "Three quarters of UN states support Palestinian State", *France 24* (28 November 2025), online: <france24.com> [perma.cc/A764-HWF2]; James Joseph, "Explainer: Palestinian Statehood and Why it Matters Amid Gaza Conflict"; *JURIST* (24 May 2024), online: <jurist.org> [perma.cc/2455-4BA4].

<sup>46</sup> *Legal Consequences Arising From the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion, [2024] ICJ Rep 186 [ICJ Advisory Opinion, Legal Consequences].

<sup>47</sup> International Court of Justice, Press Release, 2024/57, "Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem" (19 July 2024), online: <icj-cij.org> [perma.cc/F2GH-N49M] [International Court of Justice, "Legal Consequences"].

<sup>48</sup> United Nations Human Rights Council, *Detailed findings on the military operations and attacks carried out in the Occupied Palestinian Territory from 7 October to 31 December 2023*, 56th Sess, A/HRC/56/CRP.4 (2024) GEN UNDOC; See also United Nations Human Rights Council, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, 59th Sess, A/HRC/56/26 (2025) Agenda Item 2 [RIICI 2025]; On May 20, 2024, the Prosecutor of the ICC, Karim Khan, announced that his office was filing an application for arrest warrants for Israeli and Hamas leadership in the situation in the State of Palestine for war crimes and crimes against humanity. However, all of the Hamas' alleged perpetrators have been killed leaving only Israelis with outstanding arrest warrants: Benjamin Netanyahu, the Prime Minister of Israel, Yoav Gallant, the Minister of Defence of Israel. See UN News, "ICC issues arrest warrants for Netanyahu, Gallant and Hamas commander", *UN News* (21 November 2024), online: <news.un.org> [perma.cc/FKV2-QLYB].

committing genocide in Gaza,<sup>49</sup> atrocity crimes in the West Bank and East Jerusalem, as well as the crime of apartheid in Israel proper.<sup>50</sup> Israel cannot excuse its own international criminality by pointing to Hamas' crimes, horrific as they were. Such *tu quoque* (literally, "you too,") attempts at justification have not been a defence in international law since the Nuremberg Trials.<sup>51</sup> One cannot lawfully justify a violation of serious international criminal norms by showing that one's opponent has perpetrated similar wrongs.<sup>52</sup> This is particularly the case for international atrocity crimes that violate peremptory international *jus cogens* norms and as to which there is an *erga omnes*, that is a universal obligation on all states owed to the community of states as a whole. Similarly, that staple of tabloid journalism, "whataboutism", is no defence to international criminality.

Realistically, Canada, like many other nations, can affect Israeli policy and behaviour more directly than it can Hamas' behaviour. It seems more likely that members of the Israeli Defense Forces may travel to Canada and find themselves within the jurisdiction of Canadian courts than it is that members of Hamas will travel to Canada. Moreover, the prosecution of Hamas' war criminals is far less politically sensitive than the prosecution of Israelis.<sup>53</sup> This is true regardless of whether prosecution is before domestic courts or the ICC. Canada must even-handedly and non-selectively comply

<sup>49</sup> United Nations Human Rights Council, *Anatomy of a Genocide: Report of the Special Rapporteur on the situation of human rights in the Palestinian Territories occupied since 1967*, UNHRC, 55th Sess, UN Doc A/HRC/55/73 (2024) [UNHRC, "Anatomy of a Genocide"].

<sup>50</sup> International Court of Justice, "Legal Consequences", *supra* note 47; see also Neve, *supra* note 42.

<sup>51</sup> The *tu quoque* defence was generally not successful during the trial of the Major War Criminals at the Nuremberg Trials. Michael R Marus, *The Nuremberg War Crimes Trial 1945-46: A Documentary History* (NY: Bedford Books, 1997) at 171.

<sup>52</sup> It is well established in the jurisprudence of the Tribunal that arguments based on reciprocity, including the *tu quoque* argument, are no defence to serious violations of international humanitarian law. See *The Prosecutor v Théoneste Bagosora et al*, ICTR-98-41-T, Judgment and Sentence (18 December 2008) at para 2000 (International Criminal Tribunal for Rwanda), online: <ucr.irmct.org> [perma.cc/LW53-59RW].

<sup>53</sup> Historically Canada's support for Israel had been unwavering. "Canada's relationship with Israel has travelled a long way since 2015, when prime minister Stephen Harper and aspiring rival Justin Trudeau competed to claim the title of best friend of the Jewish state." That support lessened in 2019 after Netanyahu formed his fifth government, but after the Hamas attacks and massacre on October 7, 2023 "the Canadian, French and British governments all gave Israel strong support." Israeli atrocities have since weakened that support and Canada and other Western countries have condemned Israel's actions. Evan Dyer, "How Canada's relationship with Israel went from 'best friend' to breakdown", *CBC News* (24 May 2025), online: <cbc.ca> [perma.cc/ZXU9-EYD8]. Anita Anand, Alan Clarke, "Re CBSA Questioning of Richard Falk and Hilal Elver" (27 November 2025) via letter [communicated to author]. The letter indicates that Canada is not yet ready to agree with the overwhelming consensus coming out of international bodies concerning Israeli genocide, war crimes and crimes against humanity.

with all international law, including laws with respect to war crimes, crimes against humanity and genocide. It must also be realistic about where, when and how it can most effectively affect international criminal law and help to end impunity for the horrors arising out of this conflict. For pragmatic reasons, we will focus here primarily on Israeli war crimes, while acknowledging that Canada has broader duties.

The entire post-World War II rules-based order is being unwound step-by-step, including the Hague Conventions, and the Geneva Conventions and Protocols which follow the principles of humanity, distinction, proportionality and military necessity.<sup>54</sup> These protocols and conventions specifically protect civilians as well as special protections for civilian objects, cultural objects, hospitals, etc.<sup>55</sup> The unwinding of such protections is especially evident in the Israel/Gaza conflict where contempt for and flouting of the rules of modern warfare is manifest and where “[b]oth sides have committed violations of international Humanitarian Law (IHL), too many to list individually.”<sup>56</sup> As United Nations Special Rapporteur on the situation of human rights in the Palestinian territories, Francesca Albanese, notes:

Seventy per cent of recorded deaths have consistently been women and children. Israel failed to prove that the remaining 30 percent, comprising adult males, were active Hamas combatants – a necessary condition for them to be lawfully targeted. By

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<sup>54</sup> Prior to Trump’s presidency, Russia’s war of aggression, and Israel’s commission of genocide and crimes against humanity were being vigorously countered by shifting coalitions of willing states. For the most part this included the United States. The Trump administration has since shifted against supporting Ukraine, has redoubled its support for Israel. Most notable is the change to its national security strategy. The “Trump corollary to the Monroe Doctrine” will “will reassert and enforce the Monroe Doctrine to restore American pre-eminence in the Western Hemisphere, and to protect our homeland and our access to key geographies throughout the region. We will deny non-Hemispheric competitors the ability to position forces or other threatening capabilities, or to own or control strategically vital assets, in our Hemisphere.” US, “National Security Strategy of the United States of America” (November 2025), online (pdf): <whitehouse.gov> [perma.cc/9QQM-DCDZ]. This is a clear challenge to Canada, particularly in the arctic where the northwest passage has long been subject to dispute between the two countries. Moreover, the US’ plainly illegal attacks on alleged Venezuelan drug vessels and the double tap strike on shipwrecked survivors plainly demonstrates that the US is now throwing in with Russia, China and other nations to attempt to undermine the global international legal order. Regarding the illegality of attacking and treatment of shipwrecked persons, see *Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflict Protocol I* (8 June 1977) 1125 UNTS 3, art 8(b), 9–11 [*Protocol 1*].

<sup>55</sup> *Protocol 1*, *supra* note 54. As to the protection of civilians and civilian objects in non-international armed conflicts see, *Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts Protocol II* (8 June 1977) 1125 UNTS 609.

<sup>56</sup> Tom Dannenbaum & Janina Dill, “International Law in Gaza: Belligerent Intent and Provisional Measures” (2024) 118:4 AJIL 659 at 660.

early December, Israeli security advisers claimed the killing of “7,000 terrorists” in a stage of the campaign when less than 5,000 adult males in total had been identified among the casualties, thus implying that all adult males killed were “terrorists”. This is indicative of an intent to target members of the group indiscriminately.<sup>57</sup>

Albanese adds that Israel Defense Forces habitually violate prohibitions against genocide and crimes against humanity. She further notes that defence forces actively distort the laws of war in order to conceal genocidal intent.<sup>58</sup>

### III. Israel is Committing Genocide in Gaza

In a damning report to the United Nations Human Rights Council, The Independent International Commission on the Occupied Palestinian Territory (“the Commission”), including East Jerusalem, and Israel has found “*fully conclusive evidence that statements made by Israeli authorities are direct evidence of genocidal intent*”<sup>59</sup> (emphasis added). The Commission further concludes that “the State of Israel bears responsibility for the failure to prevent genocide, the commission of genocide and the failure to punish genocide against the Palestinians in the Gaza Strip.”<sup>60</sup> While the Commission stuck to the usual “reasonable grounds” evidentiary standard in its conclusions<sup>61</sup>, it is reasonable to infer that the Commission believes that evidence of Israeli genocide in Gaza is in fact “fully conclusive.”

Past UN special rapporteurs and commissions have found evidence of Israeli genocide under the lesser “reasonable grounds to conclude” standard.<sup>62</sup> In its conclusions, the Commission limited itself to the “reasonable grounds” standard. However, by reporting the evidence as “fully conclusive” in the body of its findings, it suggests that the more rigorous standard has also been met. The Commission did not assess individual criminal responsibility for individuals such as Benjamin

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<sup>57</sup> UNHRC, “Anatomy of a Genocide”, *supra* note 49 at para 25.

<sup>58</sup> *Ibid* at paras 55–92.

<sup>59</sup> *Legal Analysis of the Conduct of Israel in Gaza pursuant to the Convention on the Prevention and Punishment of the Crime of Genocide: Conference room paper of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, UNHRC, 60th Sess, UN Doc A/HRC/60/CRP.3 (2025) at para 220 [*Legal Analysis of the Conduct of Israel in Gaza*].

<sup>60</sup> *Ibid* at para 255.

<sup>61</sup> *Ibid* at paras 251–255.

<sup>62</sup> *Ibid*.

Netanyahu or Yoav Gallant<sup>63</sup> (that would be for the International Criminal Court to determine) but the Commission did discuss their part in inciting genocide as well as their public comments as bearing on the intent to commit genocide.<sup>64</sup> While the Commission's legal analysis is not legally binding, because of expert contribution and it being commissioned by the UNHRC, it carries great weight. The evidence and conclusions reached can be used by the World Court or the International Criminal Court in later proceedings.<sup>65</sup> Most importantly, as discussed below, it puts the onus on third states, like Canada, to do more to meet its obligations under the Genocide Convention to prevent genocide.<sup>66</sup> The sheer weight of multiple international governmental and non-governmental organizations finding either "reasonable" or "fully conclusive" evidence of genocide adds urgency to Canada's obligation to act.

Moreover, The ICC prosecutor's application for arrest warrants gains urgency because of the various governmental and non-governmental bodies that find, on reasonable grounds, that Israel has committed genocide in Gaza. The ICC prosecutor has not charged either Israel or Hamas with genocide. Nonetheless, there is a reasonable case to be made that Israel has committed, and is committing, genocide in Gaza. Canada must consider this factor in its response to any arrest warrants that the Pre-Trial Chamber may issue. It also has implications for Canada's obligations under the Genocide Convention and international customary law regarding crimes against humanity. These are morally and legally consequential issues. Canada has a duty under the Genocide Convention to take steps to prevent and punish genocide and there is a positive duty under international law to avoid complicity in genocide<sup>67</sup> or crimes against humanity.<sup>68</sup> Canada's assistance to either Israeli Defense Forces or Hamas fighters could potentially place it

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<sup>63</sup> *Ibid* at para 6. "This report does not examine individual criminal responsibility under the Rome Statute."

<sup>64</sup> *Ibid* at para 220.

<sup>65</sup> The ICJ regularly refers to the reports by United Nations Independent Commission of Inquiry and Special Rapporteurs. See, e.g. Legal Consequences Arising From the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion, [2024] ICJ Rep 186 at para 113.

<sup>66</sup> *Crime and Punishment Convention*, *supra* note 27, art VII.

<sup>67</sup> *Crime and Punishment Convention*, *supra* note 27, art III.

<sup>68</sup> European Center for Constitutional and Human Rights, "Lafarge in Syria: Accusations of complicity in grave human rights violations" (last modified 2016), online: <ecchr.eu> [perma.cc/ F7N2-55RF]; Reuters, "Lafarge loses latest appeal over crimes against humanity charges", *Reuters* (18 May 2022), online: <reuters.com> [perma.cc/7EFT-V94Y].

in jeopardy for state liability under the Genocide Convention, or for violating international customary law with respect to crimes against humanity.

## A. The “Reasonable Grounds to Believe” Standard is a Sound Basis for Action

While criminal conviction before the International Criminal Court requires proof beyond a reasonable doubt,<sup>69</sup> the reports of Commissions of Inquiry,<sup>70</sup> as well as Provisional Measures from the International Court of Justice, are expected to affect the behaviour of nation-states *ex ante*.<sup>71</sup> The “reasonable grounds to believe” standard is used by the ICJ in its Provisional Measures, and also by United Nations Commissions of Inquiry in assessing alleged genocides, crimes against humanity and violations of international humanitarian law.<sup>72</sup> Fact-finding inquiries ordinarily use this standard as a basis for action<sup>73</sup> and it is unquestionably the appropriate standard for determining Canada’s response to the allegations that Israel is committing genocide in Gaza.

## B. Evidence Implicating Israel in the Commission of Genocide<sup>74</sup>

Francesca Albanese, United Nations Special Rapporteur on the situation of human rights in the Palestinian territories, has reported that there are “reasonable grounds” to believe that Israel is committing genocide in Gaza:

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<sup>69</sup> *Rome Statute of the International Criminal Court*, 17 July 1998, 2187 UNTS 3, art 66(3) [*Rome Statute*].

<sup>70</sup> Larissa van den Herik & Catherine Harwood, “Sharing the Law: The Appeal of International Criminal Law for International Commissions of Inquiry” (2014) Grotius Centre, Working Paper 2014/016-ICL at 10.

<sup>71</sup> Dannenbaum & Dill, *supra* note 56 “[a]ccountability is important. However, IHL is also meant to constrain belligerents’ actions *ex ante* and to help third states evaluate these actions so they can concurrently meet their obligations. Law must discharge these functions while hostilities are ongoing or not at all” at 660).

<sup>72</sup> *Letter dated 19 December 2014 from the Secretary-General addressed to the President of the Security Council*, UNSC, 2014, UN Doc S/2014/928. This letter adopts the “reasonable grounds to believe” standard.

<sup>73</sup> *Ibid* (“[t]his approach is fully consistent with that commonly used in international fact-finding inquiries of this sort” at para 16).

<sup>74</sup> Brevity requires that this be a relatively cursory examination of the evidence demonstrating Israeli genocide in Gaza. Readers should consult the various reports and advisory opinions cited herein to get a fuller picture of just how damning this evidence is.

Following nearly six months of unrelenting Israeli assault on occupied Gaza, it is my solemn duty to report on the worst of what humanity is capable of, and to present my findings ... Specifically, Israel has committed three acts of genocide with the requisite intent: causing ... serious bodily or mental harm to members of the group, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, and imposing measures intended to prevent birth within the group.<sup>75</sup>

The International Court of Justice in *South Africa v Israel*, has issued a provisional order finding plausible evidence that Israel is committing genocide in Gaza and will later consider the case on the merits. Presiding Justice Joan E Donoghue found that “at least some of the acts and omissions alleged by South Africa to have been committed by Israel in Gaza appear to be capable of falling within the provisions of the [Genocide] Convention.”<sup>76</sup>

Human Rights Watch<sup>77</sup> and Amnesty International<sup>78</sup> have both assessed that Israel is defying the ICJ by failing to comply with its provisional order to take “immediate and effective measures”<sup>79</sup> to protect Palestinians in the occupied Gaza Strip from the risk of genocide. Israel has failed to ensure sufficient humanitarian assistance to enable basic services. That failure has led to starvation which gives added urgency to the needs of the Palestinian people. Moreover, statements made by high government officials regarding the intentional starvation of the Palestinian people also evince an intent to commit genocide.<sup>80</sup>

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<sup>75</sup> “Rights Expert finds ‘reasonable grounds’ genocide is being committed in Gaza”, *UN News* (26 March 2024), online: <news.un.org> [perma.cc/8F8K-C3FZ].

<sup>76</sup> “Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (*South Africa v Israel*)” Order of 26 January 2024 [2024] ICJ at para 30, online: <icj-cij.org> [perma.cc/W7FM-GC5Q].

<sup>77</sup> Human Rights Watch, News Release, “Israel’s Crime of Extermination, Acts of Genocide in Gaza: Authorities’ Widespread Deprivation of Water Threatens Survival” (19 December 2024), online: <hrw.org> [perma.cc/JQP9-6VSH].

<sup>78</sup> Amnesty International, Press Release, “Amnesty International investigation concludes Israel is committing genocide against Palestinians in Gaza” (5 December 2024), online: <amnesty.org> [perma.cc/Q8HM-TXNH].

<sup>79</sup> *Supra* note 76 at para 80.

<sup>80</sup> In the words of National Security Minister Itamar Ben Gvir, the Israeli government’s goal is to “to ‘completely halt’ the flow of humanitarian aid, calling it a way to open the ‘gates of hell . . . as quickly and deadly as possible.’” In early March, as its cease-fire with Hamas began to unravel, Israel again turned to a tactic it had used earlier in the war in Gaza: imposing a total blockade on the territory, including a cutoff of all deliveries of food, medicine, fuel, and electricity. . . . Moshe Saada, a Knesset member from Prime Minister Benjamin Netanyahu’s Likud Party, told Israel’s Channel 14 TV that that was the intention: “Yes, I will starve the residents of Gaza, yes, this is our obligation.” Van Duijk, *supra* note 39.

In the United Kingdom 600 British lawyers and jurists, citing grave breaches of international law and the likelihood that genocide is occurring in Gaza, demanded that Great Britain to cease sending arms to Israel.<sup>81</sup> This puts the United Kingdom,<sup>82</sup> and by inference Canada, at risk for complicity in genocide. Both nations are also in breach of the obligation to prevent genocide. While Canada has now suspended most arms sales to Israel,<sup>83</sup> it still exports parts to US manufacturers for the F-35 fighter aircraft which are then transferred to Israel.<sup>84</sup> Both Canada and the UK have, as of this writing, lawsuits filed attempting to block the sale of F-35 parts for planes destined to Israel.<sup>85</sup> Canada is also exporting less sophisticated, but nonetheless lethal materials to the US Department of Defense that will be exported to Israel.<sup>86</sup>

Nation-states have an obligation under both the Genocide Convention and international customary law to take steps to prevent genocide. Further, prevention of complicity in genocide is a mode of responsibility under the Genocide Convention.<sup>87</sup> Likewise, there is a developing duty under international customary law to avoid complicity in crimes against humanity.<sup>88</sup> As Amnesty International puts it:

States that continue to transfer arms to Israel at this time must know they are violating their obligation to prevent genocide and are at risk of becoming complicit in genocide. All states with influence over Israel, ... must act now to bring Israel's atrocities against Palestinians in Gaza to an immediate end.<sup>89</sup>

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<sup>81</sup> "UK Judges and Lawyers Open Letter Concerning Gaza" (3 April 2024) online: <maddenfinucane.com> [https://perma.cc/997F-7BNT].

<sup>82</sup> The UK has now suspended some arms exports to Israel. See UK Government, Press Release, "UK suspends around 30 arms export licences to Israel for use in Gaza over International Humanitarian concerns" (2 September 2024), online: <gov.uk> [perma.cc/8X8G-S87F].

<sup>83</sup> Harjaap Ahluwalia, "Canada foreign affairs minister announces immediate suspension of 30 arms export licenses to Israel and blocks US ammunition deal", *JURIST* (12 September 2024), online: <jurist.org> [perma.cc/SZA2-5FST].

<sup>84</sup> CJPME, Press Release, "Canada Must Cut Ties With F-35 Program as Israel Bombs Gaza: CJME" (18 March 2025), online: <cjpme.org> [perma.cc/7FRH-LZAT].

<sup>85</sup> The Legal Centre for Palestine, "Our Landmark Case Against the Government of Canada: EL Batanigi and Jarada v Attorney General of Canada" (last visited November 2024), online: <lcpal.ca> [perma.cc/3N4F-5A64]; Neggeen Salid, "Campaigners take UK to court over export of F-35 components to Israel", *Aljazeera* (13 May 2025), online: <Aljazeera.com> [perma.cc/4636-DQTS].

<sup>86</sup> Neve, *supra* note 42 at 11.

<sup>87</sup> Elies van Sliedregt, "Complicity to Commit Genocide" in Paola Gaeta, ed, *The UN Genocide Convention: A Commentary* (New York: Oxford University Press, 2013) at page 173; Grant Dawson & Rachel Boynton, "Reconciling Complicity in Genocide and Aiding and Abetting Genocide in the Jurisprudence of the United Nations *Ad Hoc* Tribunals" (2008) 21 *Harv Hum Rts J* 241 at 241-242.

<sup>88</sup> European Center for Constitutional and Human Rights, *supra* note 68.

<sup>89</sup> Amnesty International, *supra* note 78.

The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 has stated that the EU President, Ursula Von Der Leyen, should be tried for complicity in Israel's war crimes and crimes against humanity in Gaza.<sup>90</sup> It is difficult to believe that she is the only world leader who may be at risk. However, actual risk of prosecution should not be the criterion for action. Nations, like people, should strive to do the right thing.

#### IV. Avoiding a 'Might-Makes-Right' World

Israeli genocide, war crimes and crimes against humanity in Gaza, Putin's illegal war of aggression and Russia's monstrous atrocities in Ukraine, have a common well-spring; they subvert the entire edifice of the post-World War II rules-based order. Similarly, Trump's bullying of Ukraine's President Zelensky and his suggestion to remove all Palestinians from Gaza, the 'Riviera' plan,<sup>91</sup> puts the United States squarely within the effort to elevate might-makes-right over international laws and norms. The US, along with other bad actors on the world stage, would substitute naked power for rules that, however inconsistent and hypocritically enforced, on the whole have advanced collective human needs. Even Trump's tariffs and his imperial designs on Canada, Greenland and the Panama Canal must be seen in this light.

All the while, Trump has ramped up economic pressure on U.S. allies in Europe and on Canada (which he hopes to coerce into becoming "the 51st state") and has threatened to seize Greenland and the Panama Canal. Almost overnight, the United States went from competing with its aggressive adversaries to bullying its mild-mannered allies...

But it should now be clear that Trump's vision of the world is not one of great-power competition but of great-power collusion: a "concert" system akin to the one that shaped Europe during the nineteenth century. What Trump wants is a world managed by strongmen who work together – not always harmoniously but always purposefully – to impose a shared vision of order on the rest of the world. ... And

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<sup>90</sup> Arshiya Gupta, "UN expert calls for prosecution of EU Officials over complicity in Israeli war crimes", *JURIST* (6 May 2025), online: <jurist.org> [perma.cc/PFB6-MA9M].

<sup>91</sup> It is unclear from public reporting on the subject whether Trump's plan contemplated the forced removal of the Palestinian people from Gaza, or if it evinced "obliviousness to the aspirations of Palestinians and [the] assumption that they'd prefer a modern housing development elsewhere show[ing] a stunning naivety about the causes of the conflict." See Stephen Collinson, "Trump's Gaza 'Riviera' plan is the most outlandish idea in the history of US Middle East peacemaking", *CNN* (5 February 2025), online: <cnn.com> [perma.cc/U4G6-LJ54].

yet if history sheds any light on Trump's new approach, it is that things may end badly.<sup>92</sup>

Today's crop of dictators seek a world where, as Thucydides wrote in the fifth century BCE, "the strong do what they can and the weak suffer what they must" — a world where war, and war crimes, and even the "crime of crimes" becomes normalized and the acceptable currency of the powerful.

Israel contributes to this larger project to undermine the post-World War II rules-based order.<sup>93</sup> Iran's support for terrorism and race to acquire nuclear arms,<sup>94</sup> as well as China's threats with respect to Taiwan and its attempt to dominate parts of international waters in the South China Sea are also part of this larger project.<sup>95</sup> Principles of customary law relating back to the Nuremberg Trials are under attack. It is a death by a thousand cuts to human rights, dignity and humanitarian considerations in international law. Even the prohibition of aggressive war, is under attack.<sup>96</sup> Canada must join with other nations in voicing its concern regarding these developments and resist a return to the Grotian "might-makes-right" rules that have existed at least since Hugo Grotius's "DE JURE BELLI AC PACIS".<sup>97</sup>

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<sup>92</sup> Goddard, *supra* note 33.

<sup>93</sup> Patrick Wintour, "Israel seems set on destroying system of international law, ICJ hears", *The Guardian* (28 April 2025), online: <theguardian.com> [perma.cc/4ZWP-42TU].

<sup>94</sup> US Department of State, Department Press Briefing, "U.S. Findings on Iran Pursuant to the Iran Freedom and Counter-Proliferation Act (IFCA) of 2012" (17 June 2025), online: <state.gov> [perma.cc/3E9J-S737]; Mostafa Salem, "Everything you need to know about Iran's nuclear program", *CNN World* (13 June 2025), online: <cnn.com> [perma.cc/J45K-GPGB]; Alex Plitsas, "After proxies and nuclear program threats, Iran may turn to terror abroad", *Atlantic Council* (25 March 2025), online: <atlanticcouncil.org> [perma.cc/4NAH-56C2].

<sup>95</sup> US Department of State, *G7 Foreign Ministers Declaration on Maritime Security and Prosperity* (14 March 2025) at paras 5–6, online: <state.gov> [perma.cc/MWD6-XCX6].

<sup>96</sup> Hathaway & Shapiro, *supra* note 6. Hathaway and Shapiro argue that Grotius's work effectively created a might-makes-right legal order for the world. Russia, China, Iran and North Korea are actively working in concert to change the rules with respect to aggressive war. Russia's illegal and unjustified war of aggression against Ukraine is part of this larger trend that, if allowed to succeed, will undermine the stability of all nations that are not presently great powers. See Hans Corell et al, "Proposal for a resolution by the United Nations General Assembly and Accompanying proposal for a Statute of a Special Tribunal for Ukraine on the Crime of Aggression" (7 September 2022), online (pdf): <globalaccountabilitynetwork.org> [perma.cc/X58U-PSHJ]; Clarke, "Prosecuting Putin", *supra* note 7.

<sup>97</sup> Hathaway and Shapiro trace international law from Hugo Grotius's *De Jure Belli ac Pacis*, which rewarded the victor in war, to the present UN Charter which prohibits aggressive war. Hathaway & Shapiro, *supra* note 6.

Under President Trump, the United States is adopting transactional policies that leave “human rights last – in other words, not at all”,<sup>98</sup> making a “might-makes-right” world more likely:

Pax Americana is gone. Born with the Japanese attack on Pearl Harbor on December 7, 1941, the U.S.-led international rules-based order died with the second inauguration of Donald J. Trump ...

Trump sees few significant U.S. interests outside the Western Hemisphere, considers alliances to be a drain on the U.S. Treasury, and believes the United States should dominate its neighborhood. His is a Thucydidean worldview – one in which ‘the strong do what they can and the weak suffer what they must.’ ...

U.S. allies must demonstrate strength. ... If they succeed in mobilizing their resources collectively, they may also be able to blunt some of Trump’s worst foreign-policy impulses. That may in turn create the opportunity down the road to forge a new global order that matches Pax Americana’s record for peace and prosperity. But if they fail, a darker era of unchecked power politics awaits – one that is less prosperous and more dangerous for all.<sup>99</sup>

In such a world, it is military and nuclear superpowers, such as China and Russia, which stand to benefit. Canada can and should be a leader in restraining this Hobbesian trend towards a world of nation-against-nation, in perpetual war. Acts that contribute towards restraining global conflict include impartially and non-selectively standing up for the global rule of law, while defending the prohibition against aggressive war and neutrally enforcing international humanitarian law. If Canada and like-minded allies fail, their own sovereignty falls at risk. Thus, Canada’s own enlightened self-interest, spurred by the US’ abdication, should also motivate it to lead in the effort to reimagine, recreate and reinforce the global rules-based order.

This appeal to enlightened self-interest complements the compelling moral reason why steadfast promotion of human rights and humanitarian norms is critical to the present age. External pressure to conform to universal human rights norms can realistically be expected to constrain bad actors, in turn reducing human suffering.<sup>100</sup> While after-the-fact accountability measures can deter future criminality, insistence on compliance with norms

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<sup>98</sup> Stroehlein, *supra* note 30.

<sup>99</sup> Ivo H Daalder & James M Lindsay, “The Price of Trump’s Power Politics: Why China and Russia Stand to Win in a Might-Makes-Right World”, *Foreign Affairs* (30 January 2025) online: <[foreignaffairs.com](https://foreignaffairs.com/perma.cc/54PN-PB9V)> [perma.cc/54PN-PB9V].

<sup>100</sup> For an example of how development and enforcement of human rights norms can reduce suffering, see, e.g. Alan W Clarke, “Climate Change, Migration, and Pandemics: Human Rights in the Anthropocene”, (2022) 47:1 *Vt L Rev* 1.

even in the midst of an ongoing conflict can constrain bad behaviour, thereby reducing immiseration. While “accountability is important”,<sup>101</sup> international humanitarian law “is also meant to constrain belligerents’ actions *ex ante* and to help third states evaluate these actions so they can concurrently meet their own obligations. Law must discharge these functions while hostilities are ongoing or not at all.”<sup>102</sup>

Canada thus has a legal and moral obligation to seriously confront Israel’s violations of international humanitarian law and to adjust its foreign policy in order to meet its obligations with respect thereto. It must do its part to constrain the immiseration wrought by Israel’s flouting of international norms. In this respect, legal and moral obligations align with self-interest.

## V. Prosecuting Israeli Soldiers for Their Crimes Committed in Gaza, East Jerusalem and the West Bank

Prosecution for crimes committed by the Israeli officials and military are first and foremost the responsibility of Israel’s Court system.<sup>103</sup> Under international principles of complementarity, domestic courts bear primary responsibility for prosecuting grave violations of international criminal law committed by their nationals.<sup>104</sup> Only where those domestic courts refuse or fail to institute good faith prosecutions will the ICC act.<sup>105</sup> Finally, where the ICC is unable to act, other nations may intervene using their universal jurisdiction laws.<sup>106</sup> In this regard, Israel’s failure is unambiguous, complete,

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<sup>101</sup> Dannenbaum & Dill, *supra* note 56 at 660.

<sup>102</sup> *Ibid* (emphasis added).

<sup>103</sup> Under the Rome Statute the ICC will find a matter inadmissible, that is it will refuse to hear the matter, where “The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution”. *Rome Statute, supra* note 69, art 17(1)(a).

<sup>104</sup> *Ibid*. For a discussion of complementarity in international criminal law see International Center for Transitional Justice, “What is Complementarity: National Courts, the ICC, and the Struggle Against Impunity” (last visited 30 January 2026), online: <ictj.org> [perma.cc/79XN-XB3X].

<sup>105</sup> *Rome Statute, supra* note 69, art 17(1)-(3).

<sup>106</sup> See Xavier Philippe, “The principles of universal jurisdiction and complementarity: how do the two principles intermesh?” (2006) 88:862 *Int’l Rev Red Cross* 375 at 377 (“the principle of universal jurisdiction is classically defined as ‘a legal principle allowing or requiring a state to bring criminal proceedings in respect of certain crimes irrespective of the location of the crime and the nationality of the perpetrator or the victim’. This principle is said to derogate from the ordinary rules of criminal jurisdiction requiring a territorial or personal link with the crime, the perpetrator or the victim. But the rationale behind it is broader: ‘it is based on the notion that certain crimes are so harmful to international

and unlikely to change, necessitating and fully justifying ICC intervention.<sup>107</sup> Thus, the International Criminal Court has indicted both Prime Minister of Israel, Benjamin Netanyahu, and Former Minister of Defence, Yoav Gallant, for starvation as a method of war, willfully causing great suffering or serious injury to body or health, willful killing or murder as a war crime, intentionally directing attacks against a civilian population and persecution.<sup>108</sup>

Individual Israeli soldiers have committed thousands of serious war crimes, crimes against humanity and genocide.<sup>109</sup> The ICC lacks resources and cannot conceivably prosecute most cases of Israeli military criminality. Plainly, Israel will not do its duty under international law to prevent and punish the war crimes of its ordinary soldiers. Other nations, exercising universal jurisdiction, must then fill in the gaps.<sup>110</sup>

Concerned nations are now beginning to vigorously investigate and prosecute those Israeli soldiers credibly accused of war crimes coming within the reach of their respective court systems. This is in large part due to the efforts of the Hind Rajab Foundation, a nonprofit foundation under Belgian law.<sup>111</sup> It is actively tracking Israeli war crimes and crimes against humanity with a view towards focusing on offensive legal action against the perpetrators, accomplices and inciters of Israeli war crimes. When members of the Israeli Defense Forces have traveled to other nations, the Hind Rajab Foundation has filed complaints with the ICC and the nations to which such

interests that states are entitled – and even obliged – to bring proceedings against the perpetrator, regardless of the location of the crime and the nationality of the perpetrator or the victim’. Universal jurisdiction allows for the trial of international crimes committed by anybody, anywhere in the world”).

<sup>107</sup> According to Amnesty International, Israel’s actions have caused “unprecedented destruction, which experts say occurred at a level and speed not seen in any other conflict in the 21st century, levelling entire cities and destroying critical infrastructure, agricultural land and cultural and religious sites. It thereby rendered large swathes of Gaza uninhabitable.” Amnesty International, *supra* note 78.

<sup>108</sup> International Criminal Court, “Netanyahu” (last visited 13 November 2025), online (warrant): <icc-cpi.int> [perma.cc/2MWA-P2XG]; However, as of this writing, the Appeals Chamber has sent the case back to the Pre-trial Chamber to re-assess Israel’s challenge to the court’s jurisdiction. International Criminal Court, Press Release, “Situation In The State of Palestine: Appeals Chamber Reverses The Pre-Trial Chamber’s Decision On Israel’s Challenge To The Jurisdiction of The Court and Remands The Matter To The Pre-Trial Chamber” (24 April 2025), online: <icc-cpi.int> [perma.cc/KR3Q-CVHT].

<sup>109</sup> *RIICI 2025*, *supra* note 48.

<sup>110</sup> Universal jurisdiction is the legal principle that allows nation-states to prosecute certain international crimes such as piracy, slavery, genocide, crimes against humanity, and grave breaches of the Geneva Conventions regardless of where the crime occurred and irrespective of the perpetrator’s nationality. This obviates the usual rules by which the domestic courts of a nation acquire jurisdiction over the person and subject matter.

<sup>111</sup> Amanda Taub, “Israeli Soldiers on Vacation Are Being Investigated for War Crimes in Gaza”, *The New York Times* (8 January 2025), online: <nytimes.com> [perma.cc/DLJ6-79GY].

soldiers have traveled. Their work has been crucial to helping nations use their universal jurisdiction laws to end Israeli impunity.<sup>112</sup> In one recent case, Brazilian police began an investigation into a vacationing Israeli soldier accused of war crimes in Gaza. The soldier fled Brazil amid allegations that Israel orchestrated his departure to obstruct justice.<sup>113</sup> This process is further assisted by Israeli historian Lee Mordechai who has produced a database documenting thousands of Israeli war crimes arising out of the Israel-Gaza war.<sup>114</sup>

The Israeli government seeks to shield Israeli Defense Forces soldiers' identities from the media<sup>115</sup> and is tracking approximately thirty war crimes complaints against its personnel; complaints have been filed in South Africa, Sri Lanka, Belgium, France and Brazil.<sup>116</sup> Pressure is growing to detain Israeli soldiers suspected of war crimes in Gaza, the West Bank and East Jerusalem. Israeli soldiers are being warned by the Israeli news outlet, Ynet, not to post videos that may be used against them in war crimes trials.<sup>117</sup> As a result, an Israeli newspaper has published a guide for soldiers on how to avoid being arrested while traveling abroad.<sup>118</sup>

The trend towards using universal jurisdiction to advance human rights and human dignity is part of a broader movement at regional and national levels to enforce international humanitarian and human rights norms.<sup>119</sup> An ineffective United Nations (with its Security Council paralysed by veto

<sup>112</sup> The Hind Rajab Foundation, "About Us" (last visited 30 January 2026), online: <hindrajabfoundation.org> [perma.cc/76AU-25VW].

<sup>113</sup> "Israeli soldier flees Brazil amid investigation into Gaza war crimes", *Middle East Eye* (5 January 2025), online: <middleeasteye.net> [perma.cc/6F8V-HUJQ].

<sup>114</sup> Nir Hasson, "A Massive Database of Evidence, Compiled by a Historian, Documents Israel's War Crimes in Gaza", *Haaretz* (5 December 2024), online: <haaretz.com> [perma.cc/Q858-67LA].

<sup>115</sup> Lauren Izso & Hira Humaayun, "Israel to conceal soldiers' identities after Brazilian probe into war crimes allegations", *CNN* (8 January 2025), online: <cnn.com> [perma.cc/D5QS-T7PC].

<sup>116</sup> "Israeli media publishes guide for holidaying soldiers on how to avoid arrest", *Middle East Eye* (6 January 2025), online: <middleeasteye.net> [perma.cc/CZ6R-WSWC].

<sup>117</sup> *Ibid.*

<sup>118</sup> *Ibid.*

<sup>119</sup> For a discussion of the growth and impact of regional human rights regimes see, Jack Donnelly & Daniel J Whelen, *International Human Rights*, 6th ed (NY & London: Routledge 2020) at chapter 6. While there have also been advances in some of the world's democracies, it is beyond the scope of this article to attempt to catalogue these developments. It is also beyond the scope of this article to discuss the rise of international human rights non-governmental organizations (e.g. Amnesty International and Human Rights Watch) which are undoubtedly becoming increasingly effective.

wielding permanent members)<sup>120</sup> has left a gap in addressing atrocities and gross violations of human rights. With US withdrawal from the field, it falls upon Canada to join other like-minded democracies to reimagine a global world order where human rights and dignity have a central place. Some nations are already in the process of taking action. For example, courts around the world are now prosecuting the perpetrators of genocide and other atrocity crimes against the Yazidi people of Iraq.<sup>121</sup>

While national courts are beginning to recognise their power in ending impunity, ... much more needs to be done to increase prosecutions of this kind. This will ensure that perpetrators are brought to account for their heinous crimes and survivors can get the recognition and justice they deserve.<sup>122</sup>

Supporting the post-World War II rules-based order by focusing on international law provides accountability where otherwise gaps are evident; it helps end impunity and it advances that which we all desire – peace. Canada should take the lead in insisting on such accountability and avoid becoming a refuge for war criminals and those who commit atrocity crimes.

Without attempting to be comprehensive, the crimes allegedly committed by Israel and its military are among the most serious violations of human rights and include:<sup>123</sup>

- torture as a war crime;
- collective punishment and gender persecution;
- systematic and widespread torture as a crime against humanity;
- attacks on civilians that violate the principles of precaution, distinction and proportionality;
- violation of the special protection for hospitals, health care facilities, ambulances, etc.;
- extermination;

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<sup>120</sup> Oona A Hathaway et al, “Crisis and Change at the United Nations: Non-Amendment Reform and Institutional Evolution” 46:1 *Mich J Int’l L* (2025) 1. Hathaway et al. argue that the P5 veto power “paralyzes the organization and necessitates reform, but the same P5 countries can prevent the *United Nations* from making the changes needed to address that paralysis.” (Emphasis added)

<sup>121</sup> Alexis Boddy, “Courts across the world seek justice for Yazidi genocide survivors amidst new convictions and ongoing challenges”, *JURIST* (19 December 2024), online: <[jurist.org/perma.cc/5LGM-ZXMQ](http://jurist.org/perma.cc/5LGM-ZXMQ)>.

<sup>122</sup> *Ibid.*

<sup>123</sup> *RIICI 2025*, *supra* note 48 at paras 88–112.

- willful killing and attacks on civilian objects;
- deliberately creating conditions of life resulting in the destruction of Palestinian children;
- violation of the right to life, health, human dignity and discrimination;
- perfidy;
- enforced disappearance;
- use of human shields;
- sexual and gender-based violence;
- rape as a form of torture;
- forced displacement;
- use of hostages as a war crime;
- other inhumane acts; and
- starvation.

It bears repeating that Hamas' crimes do not justify the crimes committed by the state of Israel and its defence forces. As the Commission of Inquiry on the Occupied Palestinian Territory has noted,

*This systematic abuse is directly and causally linked to statements made by Israeli officials, including the Minister of National Security, who is responsible for the Israel Prison Service, and other members of the Israeli coalition Government legitimizing revenge and violence against Palestinians. The lack of accountability for actions of individual member of the Israeli security forces and the increasing acceptance of violence against Palestinians have allowed such conduct to continue uninterrupted and become systematic and institutionalized.*<sup>124</sup>

One of the primary reasons for Commissions of Inquiry, such as this one, is to promote and further the value of accountability in international law. As Larissa van den Herik and Catherine Harwood, persuasively argue:

In this sense, fact-finding investigations [by United Nations Commissions of Inquiry] are seen as an opportunity to deliver a clear message to key decision-makers in areas of crisis that their actions could be subject to criminal prosecution or other forms of

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<sup>124</sup> *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, UNGA, 79th Sess, UN Doc A/79/232 (2024) at para 103 [emphasis added] [RIICI 2024].

accountability. This form of dissuasion is not meant as offering direct accountability in itself, but should be seen as an initial step towards action.<sup>125</sup>

The accountability function of Commissions of Inquiry "aims to prepare more directly for criminal prosecutions."<sup>126</sup> Finally, such commissions "mostly have broad mandates and are committed to applying them in an even-handed manner by looking at the behaviour of *all* parties to a conflict."<sup>127</sup> Thus, while we have focused primarily on Israeli war crimes arising out of the war, it must be acknowledged that Canada must work to support the prosecution of war criminals on both sides –and must also do so with respect to other conflicts. For example, Canada must prosecute individuals committing war crimes in Russia's war of aggression against Ukraine, the Sudanese Civil War and the Democratic Republic of the Congo.

By actively prosecuting war criminals whose criminality has been credibly established, Canada provides a necessary accountability; this in turn assists in protecting the post-World War II rules-based order.

## **VI. Canada's Obligation to Prosecute Under its Universal Jurisdiction Legislation**

On January 17<sup>th</sup>, 2025, ICC prosecutor Karim Khan stated that Israel has made no real effort to investigate the allegations against its Prime Minister and Minister of Defense for war crimes.<sup>128</sup> In light of Israel's dismal record there is no reason to think that any such prosecutions will be forthcoming. The office of the High Commissioner for Human Rights set up a Commission of Inquiry collecting evidence of war crimes committed by all sides in Israel and Occupied Palestinian Territories since October 7<sup>th</sup>, 2023.<sup>129</sup> Given its limited resources, it is unrealistic to expect the ICC to pursue all but a few of the most high-profile defendants, clothing most Israeli war criminals with impunity. Moreover, political concerns, as well as US sanctions against the

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<sup>125</sup> van den Herik & Harwood, *supra* note 70 at 10.

<sup>126</sup> *Ibid* at 16.

<sup>127</sup> *Ibid* at 19.

<sup>128</sup> Anthony Deutsch, "ICC prosecutor sees 'no real effort' by Israel to probe alleged Gaza war crimes", *Reuters* (17 January 2025), online: <reuters.com> [perma.cc/BL7L-Y8UG].

<sup>129</sup> *RIICI 2025*, *supra* note 48.

court's chief prosecutor, may constrain the prosecutor's ability to seek and secure arrest warrants with respect to Israel.<sup>130</sup>

This leaves it to the domestic courts of nation-states to use their universal jurisdiction laws to prosecute these gap cases. Israeli soldiers who travel abroad are increasingly finding themselves subject to such prosecutions.<sup>131</sup> If these gaps in prosecution are to be closed, it will be important for nations with universal jurisdiction laws to proactively respond to the presence of any Israeli soldiers within their respective jurisdictions who are credibly accused of atrocity crimes.

Canada has implemented universal jurisdiction legislation in its *Crimes Against Humanity and War Crimes Act*<sup>132</sup> and Canadian prosecutors have successfully obtained convictions under this legislation.<sup>133</sup> The Act permits prosecution for crimes against humanity, genocide, war crimes and torture as a stand-alone crimes under international law.<sup>134</sup> Of the Israeli atrocity crimes, forcible transfer of population, other severe deprivation of physical liberty, rape, sexual slavery, prostitution, forced pregnancy, enforced sterilization, forced disappearance, and apartheid are omitted from this law.<sup>135</sup>

## VII. To End Impunity and Support the Global Rule of Law, Nations Must Support the ICC and the ICJ

Both the Israeli military and Hamas fighters have committed some of the most heinous international atrocity crimes. Israel's crimes in Gaza include starvation as a method of war, willfully causing great suffering, or serious

<sup>130</sup> Harry Davies, "ICC judges order that arrest warrant requests in Palestine case be kept secret", *The Guardian* (28 April 2025), online: <theguardian.com> [perma.cc/UT94-L4Q7] ("[a]ccording to court officials with knowledge of internal discussions, the publicity generated by Khan's statements has frustrated ICC judges and staff within the prosecutor's office due to concerns his actions have departed from routine practice and placed pressure on the judges considering the applications" [emphasis added]).

<sup>131</sup> *Legal Analysis of the Conduct of Israel in Gaza*, supra note 59 at paras 6, 220, 255, Section VII; *Crime and Punishment Convention*, supra note 27, art III, VII.

<sup>132</sup> *Crimes Against Humanity and War Crimes Act*, SC 2000, c 24, s 6 [CAHWCA].

<sup>133</sup> *R c Munyaneza*, 2009 QCCS 2201; *Munyaneza c R*, 2014 QCCA 906 [Munyaneza 2014].

<sup>134</sup> Open Society Justice Initiative, "Universal Jurisdiction Law and Practice in Canada" (last visited 14 November 2025) at 4–7, online (pdf): <trialinternational.org> [perma.cc/3G9T-WM9X].

<sup>135</sup> *Ibid* at 6. However, in *Munyaneza* 2014, the Quebec Court of Appeal noted that the list in Section 6(3) of the CAHWCA is non-exhaustive, as "any other act or omission that contravenes customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations may constitute a proscribed underlying act." See *Munyaneza* 2014, supra note 133 at para 130.

injury to body or health, wilful killing or murder as a war crime, intentionally directing attacks against a civilian population, extermination, and persecution.<sup>136</sup> Hamas has committed extermination, murder, taking hostages, rape and other acts of sexual violence, torture, other inhumane acts, cruel treatment as a war crime, and outrages upon personal dignity as a war crime.<sup>137</sup>

Pursuant to Article 58 of the Rome Statute, the ICC's Pre-Trial Chamber issued warrants for the arrests of Netanyahu and Gallant.<sup>138</sup> Canada's legal obligations under the Rome Statute thus come into play. It is exceedingly important that Canada review its obligations under international law and make every effort to comply fully. Canada's failure to fully and unequivocally support the ICC in its attempts to prosecute Netanyahu and Gallant has been sharply criticized by "law professors, lawyers, legal scholars, academics, civil society, faith and labor movement leaders, and former diplomats and parliamentarians."<sup>139</sup>

Canada, along with the United Kingdom and France have belatedly begun to publicly "oppose the expansion of Israel's military operations in Gaza" stating that,

The Israeli Government's denial of essential humanitarian assistance to the civilian population is unacceptable and risks breaching International Humanitarian Law. We condemn the abhorrent language used recently by members of the Israeli Government, threatening that, in their despair at the destruction of Gaza, civilians will start to relocate. Permanent forced displacement is a breach of international humanitarian law.<sup>140</sup>

They go on to threaten sanctions if the Israeli government fails to comply. However, nothing in the joint statement even mentions the word

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<sup>136</sup> *RIICI 2024*, *supra* note 124.

<sup>137</sup> Amnesty International, *Targeting Civilians: Murder, Hostage-taking and Other Violations by Palestinian Armed Groups in Israel and Gaza* (London: Amnesty International Ltd, 2025).

<sup>138</sup> It appears that the warrants requested by the Prosecutor for Hamas militants accused of war crimes was rendered moot for two of the accused because of their deaths. See UN News, "ICC issues arrest warrants for Netanyahu, Gallant and Hamas commander", *UN News* (21 November 2024), online: <news.un.org> [perma.cc/669L-8GXT]; An arrest warrant was issued for Mohammed Deif, but it also appears that he was killed in the conflict. See Samia Nakhoul & Laila Bassam, "Who was Mohammed Deif, Hamas's Oct 7 architect killed in Israeli strike?", *Reuters* (1 August 2024), online <reuters.com> [perma.cc/N4SU-JUNL].

<sup>139</sup> Neve, *supra* note 42 at 334.

<sup>140</sup> UK Government, Press Release, "Joint statement from the leaders of the United Kingdom, France and Canada on the Situation in Gaza and the West Bank" (19 May 2025), online: <gov.uk> [perma.cc/V8GC-WNMT].

“genocide”<sup>141</sup> and it falls short of the positive action needed to prevent genocide and avoid complicity. Despite the strong evidence to the contrary,<sup>142</sup> Prime Minister Carney appears to have been equivocal on the proposition that Israel is committing genocide in Gaza.<sup>143</sup> While the former Prime Minister’s support for the rule of law was welcome,<sup>144</sup> the official opposition, the Conservative Party of Canada, fail in this regard.<sup>145</sup>

However, no matter what their personal views on the subject might be, the legal and moral obligation to support these international courts is plain. As its need to align with other nations to reinvigorate the global rule of law increases, Canada’s self-interest and duty align. It is reported that Israel now plans to uproot a majority of Palestinians and relocate them out of Gaza.<sup>146</sup> Forced removal is a violation of the Geneva Convention and the Rome Statute of the ICC<sup>147</sup> relating to occupying powers and is also a crime against humanity.<sup>148</sup>

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<sup>141</sup> *Ibid.*

<sup>142</sup> The evidence demonstrating Israeli genocide in Gaza has been addressed in Section II above. William Schabas, perhaps the world’s foremost expert on genocide, has stated in the context of complicity of other nations in assisting Israel’s actions in Gaza, “It’s clear that there is a case,” he said. “Not all of Israel’s supporters around the world would be ‘accomplices’ but [Ursula von der Leyen’s] the head of a very important intergovernmental organisation and is encouraging Israel.” However, he also pointed out that: “it’s unreasonable to expect the prosecutor of the ICC to take it up because he’s only issued a couple of arrest warrants identifying people in the Israeli government and hasn’t shown any interest in going further afield than that.” See Arthur Neslen, “EU President Should be Investigated for Complicity in Israel’s War Crimes, Says Top U.N. Expert on Palestine”, *The Intercept* (3 May 2025), online: <theintercept.com> [perma.cc/TRW8-V6TP].

<sup>143</sup> CBC News, “Carney clarified Gaza comments during recent rally”, *CBC News* (9 April 2025).

<sup>144</sup> To his credit, former Prime Minister Justin Trudeau has said that Canada would abide by its obligations with respect to the ICC and international law. Prime Minister Justin Trudeau maintained this stance even as the frontrunner to replace him announced that his government would refuse to support the ICC in its arrest warrants issued against Netanyahu. Rahim Mohamed, “Poilievre blasts PM as ‘extreme’ for backing arrest of Israeli prime minister”, *National Post* (22 November 2024), online: <nationalpost.com> [perma.cc/3CKH-93TJ].

<sup>145</sup> The Conservative leader rejected South Africa’s genocide allegation against Israel two weeks ago, calling the case brought before the ICJ a “shameless” and “dishonest” attack on Jewish people and the Jewish state. Brennan MacDonald, “Poilievre calls Trudeau’s stance on genocide case against Israel ‘incomprehensible’”, *CBC News* (22 January 2025), online: <cbc.ca> [perma.cc/T7H2-5EPZ].

<sup>146</sup> Amnesty International, “Israel must immediately abandon any plans for annexation in Gaza and mass forcible transfer of Palestinians” (7 May 2025), online: <amnesty.org> [perma.cc/DI3X-7Q7S].

<sup>147</sup> *Rome Statute*, *supra* note 69, art 7(d).

<sup>148</sup> “Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.” See *Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, 12 August 1949, 75 UNTS 287, art 49 [*Geneva Convention IV*].

Importantly, ethnic cleansing, while not ordinarily a stand-alone violation of the Genocide Convention or of customary international laws relating to genocide, is evidence of genocidal intent.<sup>149</sup> Given that Israel has committed at least three and perhaps four acts of genocide, given the genocidal statements of many of Israel's top officials, and given all the other circumstantial evidence of genocidal intent, the evidence that Israel is committing genocide in Palestine is now quite strong, perhaps even meeting the beyond a reasonable doubt standard<sup>150</sup>. So, the questions for Canada and other nations assisting Israel are these: 1) When will Canada, et al. recognize and act on their duty to prevent genocide?; and 2) Should Canadian officials, and those of other similarly situated states, be held responsible for complicity in this ongoing genocide?

Canadian officials may feel quite insulated from the likelihood of any arrest warrants coming from the ICC; after all, with its limited resources it is unlikely that it can meaningfully prosecute all of the direct perpetrators, much less officials of other nations that may be complicit. However, Canada has a direct obligation as a state not only to prevent genocide, but to ensure its highly placed officials avoid even the appearance of being complicit in genocide.<sup>151</sup>

## A. Canada's Obligations as a State Party to the Rome Statute of the ICC

Canada deposited its instrument of ratification of the Rome Statute of the International Criminal Court on July 7<sup>th</sup>, 2000.<sup>152</sup> As a result, Canada has the obligation to cooperate fully with the Court.<sup>153</sup> If it fails to cooperate with the ICC, the Court can "make a finding to that effect and refer the matter to the Assembly of States Parties."<sup>154</sup>

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<sup>149</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)*, [2007] ICJ Rep 43 at para 190. Ethnic cleansing can constitute evidence of specific intent, but may also itself constitute genocide if done to create conditions of life with the intent to destroy. Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.

<sup>150</sup> See *Rome Statute*, *supra* note 69, art 66.

<sup>151</sup> See Section III (B), above, for a discussion of complicity in genocide. See also Neslen, *supra* note 142 for discussion of the possible complicity of Ursula von der Leyen, President of the European Commission.

<sup>152</sup> The Government of Canada, "Canada and the International Criminal Court" (last modified 30 October 2023), online: <international.gc.ca> [perma.cc/ZV9V-LR7G].

<sup>153</sup> *Rome Statute*, *supra* note 69, art 86.

<sup>154</sup> *Ibid*, art 87(7).

Canada's obligations under Part 9 of the Rome statute<sup>155</sup> include assistance in investigations and prosecutions, identifying and locating witnesses, taking evidence, questioning persons who are being investigated, taking steps to identify, trace and freeze assets and instruments of crime, and to provide any other assistance not prohibited by Canadian law.

The Rome Statute also<sup>156</sup> requires Canada to arrest and surrender any accused persons who may be in Canada as soon as possible, while ensuring that the rights of the accused are respected. Under the Court's statute, Canada could be asked to offer its detention facilities to the ICC.<sup>157</sup> If any of the persons sought by the ICC should come to Canada, even if transiting through, Canada would be obligated to arrest the person and surrender or extradite that person to the ICC.<sup>158</sup>

## B. International Court of Justice

In its persuasive Advisory Opinion on Israel's illegal activities and atrocity crimes in occupied Palestinian territory, the ICJ also addressed the responsibilities of other States. The Court clarifies the obligations, emphasizing that all nations, including Canada, should comply.<sup>159</sup>

Canada's obligations to the international community with respect to this war can be broadly summarized as mandating four key duties:

1. abstain from treaty relations with Israel where it purports to act in any way on behalf of the State of Palestine;
2. abstain from economic activities or trade with Israel that has the effect of entrenching Israel's unlawful presence in Palestine;
3. stop diplomatic missions or activities that recognize Israel's illegal presence in the Occupied Palestinian Territory; and
4. take steps to prevent trade or investment relations that assist in the maintenance of the illegal situation created by Israel in the Occupied Palestinian Territory.

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<sup>155</sup> *Ibid*, art 86–102.

<sup>156</sup> *Ibid*, art 59(1).

<sup>157</sup> ICC, *Cooperation Agreements*, (The Hague: ICC, 2023) at 16, online: <icc-cpi.int> [perma.cc/P2XR-8HPB].

<sup>158</sup> *Rome Statute*, *supra* note 69, art 89.

<sup>159</sup> ICJ Advisory Opinion, *Legal Consequences*, *supra* note 46 at para 278.

Canada should review its diplomatic and trade policies and actions with respect to Israel with the goal of complying fully with the Court's opinion.

## VIII. Conclusion

Canada should proactively and aggressively move to support the prosecution of war criminals using its universal jurisdiction laws; it must support the ICC in its prosecutions and fully comply with the ICJ with respect to Israeli occupation and apartheid. As a middle power nation with a long, mostly undefended Arctic coast, confronted by great powers in an increasingly dangerous world, Canada should be at the forefront of vigorously supporting and furthering the international rules-based order. It may be that rules do not always constrain the great powers, but they do often enough to make them useful. It would be foolish to give up on the post-World War II order just because we are frustrated by its failures and inconsistencies. In this respect it is both morally right and in Canada's interest to aggressively use its universal jurisdiction laws to prosecute credibly accused war criminals in the Israeli/Gaza war.

Israeli courts have failed to properly deal with the many credible allegations of grave criminality on the part of both Hamas and the Israeli Defense forces. These are crimes which violate peremptory (*jus cogens*) norms, and which are *erga omnes*, that is, crimes against all humanity. As a result, it will fall on other nations, like Canada, exercising principles of universal jurisdiction to end impunity for these crimes,

The current US administration has abandoned all efforts to support human rights as well as compliance with international law and treaty norms more generally. Canada and Mexico have both responded to the Trump created trade war<sup>160</sup> with calls for domestic and international unity in the face of US aggression.<sup>161</sup> While unity on trade is important it is, without more and by itself, insufficient. Canada must seek to support international efforts to uphold the rule of law more generally. This includes supporting human rights and dignity as strongly as it can, wherever it can. Standing up to

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<sup>160</sup> Emilliano Rodriguez Mega & Ian Austen, "Facing Trump's Threats, Mexico and Canada Draw Closer. Will it Last?", *NYT* (30 April 2025), online: <nytimes.com> [perma.cc/A4AV-7ZYT]; Nadine Yousif, "Canada and Mexico agree to deepen ties amid Trump trade war", *BBC* (18 September 2025), online: <bbc.com> [perma.cc/92RP-UWFT].

<sup>161</sup> Yousif, *supra* note 160.

bullies such as Russia, China and now the US, must necessarily be about more than trade and economics.

Specifically, Canada should join the Hague Group of nations in supporting the International Criminal Court in coordinating “legal, diplomatic and economic measures against Israel’s violations of international law in the State of Palestine.”<sup>162</sup> Canada’s recent recognition of Palestinian Statehood is a starting point for the two parties, Israel and Palestine, to adopt a peaceful two-state solution.

Canada, through its Crimes Against Humanity and War Crimes Program, has procedures in place to prevent people who have committed serious international crimes from entering or staying in Canada as well as to investigate and prosecute those who have perpetrated such crimes and who fall within Canadian jurisdiction. However, given the seriousness of the crimes of Israeli Defense Forces and the improbability of their being adequately prosecuted either in Israel or in the ICC, it is important that Canada be especially vigilant in these circumstances.

Canada should set up a special group to cooperate with the UN High Commissioner for Human Rights and the Commission of Inquiry in (1) collecting evidence of war crimes committed by all sides in Israel and Occupied Palestinian Territories since October 7<sup>th</sup>, 2023; (2) in tracking those who have committed atrocity crimes arising out of this conflict; and (3) in ensuring that any who fall within the jurisdiction of the Canadian court system are swiftly and fairly prosecuted.

Further, Canada should unequivocally condemn, and take all measures to end, both the apartheid perpetrated by Israel and the settler violence and theft of lands in the West Bank. Canada should implement the use of universal jurisdiction to prosecute war criminals, including any Israeli Defense Forces credibly accused of atrocity crimes who come within Canadian court jurisdiction. Finally, Canada should declare full support for the International Criminal Court in its prosecution of national leaders complicit with genocide and fully comply with the International Court of Justice’s Advisory Opinion on the Israel/Palestine Conflict. This includes stopping all military assistance to Israel including the indirect assistance for

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<sup>162</sup> Nandana Arun, “Nine countries for the Hague Group to support ICC and Palestine”, *JURIST* (1 February 2025), online: <[jurist.org](http://jurist.org)> [[perma.cc/V5NF-DP5U](https://perma.cc/V5NF-DP5U)].

weapon components that are used in US weapons systems (like the F-35) which are then provided to Israel.

Canada has both the moral and legal responsibility to do these things, leading the way where necessary and joining with other nation-states whenever possible to support the rules-based order unequivocally. In a world where Pax Americana is dead and where the return of “might-makes-right” condemns the entire world to immiseration, support for a new rule-based order, starting with international courts, is the only sane response.