A MACDONALD-LAURIER INSTITUTE PUBLICATION

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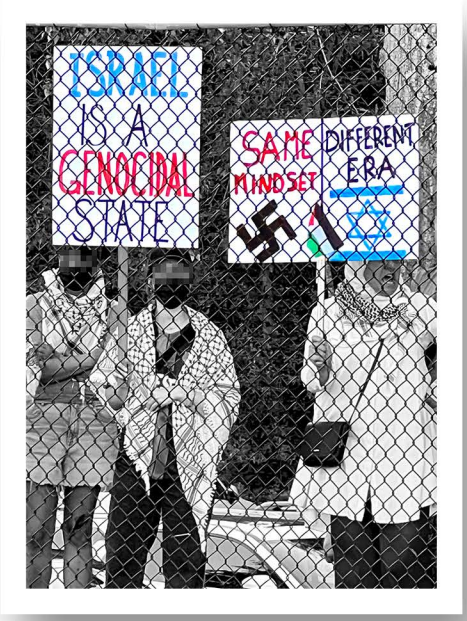
THE COST OF SILENCE

How Canada is falling short in the global fight against antisemitism



September 2025

MLI
TRUE NORTH
IN CANADIAN PUBLIC POLICY

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Cover image: Pro-Palestinian activists protest a friendly women's softball game between Canada and Israel on July 3, 2024, in Surrey, BC. (photo courtesy Michael Sachs)

Cover design: Renée Depocas

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Time and again, Canada has responded to international antisemitism with political half measures, equivocation, and a troubling willingness to play along with institutions where anti-Israel bias is deeply entrenched. Demonization of Israel simply because it is a Jewish state is itself a form of antisemitism, one that is becoming increasingly normalized on the world stage.

Antisemitism today appears in two starkly different forms: the virulent racism of Nazism and the ideological vehemence of anti-Zionism. While their methods diverge, their outcomes intersect. The 1988 Hamas Charter and the atrocities of October 7, 2023, are modern expressions of this enduring hate, illustrating how anti-Zionism can serve as a contemporary mask for traditional antisemitism.

Canada's engagement with a range of international bodies – including UN agencies, multilateral organizations, and human rights councils – reflects a pattern of wilful blindness and missed opportunities with shortcomings. Canada often fails to call out antisemitic rhetoric or antisemitic resolutions cloaked in the language of human rights. Instead, it defaults to diplomatic niceties and consensus-building, even when such efforts undermine the very principles it claims to uphold.

Despite this grim assessment, there is hope. Alongside a few commendable examples of Canadian leadership and integrity, there are also notable international initiatives that could serve as models. Drawing on both domestic and international best practices, Canada could take a more principled, assertive approach to combating antisemitism.

There are several concrete steps Canada can and should take to more robustly fight antisemitism:

- At the national level, Canada should ensure the public release of all Holocaust-related records and Nazi war crimes files, including those held by Library and Archives Canada and any remaining files within other federal departments.
- Canada should intervene in all relevant proceedings directed against Israel at the International Court of Justice, the United Nations General Assembly, and the United Nations Human Rights Council, whether or not it is a member of the body in question.

- Canada should also adopt and implement the May 2022 action plan by the United Nations Special Rapporteur on Freedom of Religion or Belief to combat antisemitism.
- Canada should state that it does not intend to enforce the arrest warrants against Israeli Prime Minister Benjamin Netanyahu and former Defence Minister Yoav Gallant.
- It should state that it will cease funding the United Nations Relief and Works Agency (UNRWA) and channel aid to Palestinians in Gaza through an organization whose mission is solely humanitarian.
- It should reverse the decision to suspend the trade in military goods and technology with Israel.

Canada has a meaningful voice on the world stage – but it needs to use it courageously. It must replace diplomatic inertia with principled resolve. In an era where antisemitism has adapted and rebranded itself globally, Canada must do more than merely reject hate. It must actively and unflinchingly oppose it. **MLI**

À de nombreuses reprises, le Canada a réagi *à l'antisémitisme international en adoptant des mesures politiques insuffisantes, en usant de faux-fuyants ou en affichant une tolérance déconcertante envers les institutions fortement marquées par des préjugés anti-israéliens. La stigmatisation d'Israël, simplement parce qu'il s'agit d'un État juif, est en soi de l'antisémitisme, un phénomène de plus en plus banalisé à travers le monde.*

De nos jours, l'antisémitisme se présente sous deux formes distinctes : d'une part, le racisme violent associé au nazisme et, d'autre part, la violence idéologique associée à l'antisionisme. Leurs approches diffèrent, mais leurs résultats se rejoignent. La Charte du HAMAS (1988) et les atrocités du 7 octobre 2023, des expressions modernes de cette perdurable haine, montrent comment l'antisionisme contemporain peut remplacer l'antisémitisme du passé.

L'engagement du Canada avec diverses organisations internationales – les agences onusiennes, les organisations multilatérales et les conseils des droits de la personne – témoigne de l'existence de pratiques systématiques d'aveuglement volontaire et d'occasions ratées du fait de nombreuses défaillances. Le Canada ne dénonce pas suffisamment l'antisémitisme dans les discours sur les droits de la personne. Il privilégie plutôt les politesses diplomatiques et le consensus, même si cela va à l'encontre des principes mêmes qu'il prétend défendre.

Malgré cette évaluation sombre, il y a de l'espoir. Outre quelques exemples louables de leadership et d'intégrité canadiens, des initiatives internationales remarquables pourraient également servir de modèle. En s'appuyant sur les meilleures pratiques tant nationales qu'internationales, le Canada pourrait, pour combattre l'antisémitisme, envisager une approche plus résolue et davantage ancrée dans des principes.

Le Canada peut et doit prendre les mesures concrètes que voici pour lutter contre l'antisémitisme :

- *Sur le plan national, le Canada doit rendre publics tous les documents sur l'Holocauste et les crimes de guerre nazis, y compris ceux qui sont conservés par Bibliothèque et Archives Canada, ainsi que tous les autres dossiers dans le reste des ministères fédéraux.*
- *Le Canada doit intervenir dans toutes les procédures pertinentes dirigées contre Israël devant la Cour internationale de justice, l'Assemblée générale des Nations Unies et le Conseil des droits de l'homme des Nations Unies, qu'il soit ou non membre de l'instance en question.*
- *Le Canada doit également adopter et mettre en œuvre le plan d'action de mai 2022 du Rapporteur spécial des Nations Unies sur la liberté de religion ou de conviction pour combattre l'antisémitisme.*
- *Le Canada doit déclarer qu'il ne fera pas appliquer les mandats d'arrêt lancés contre le premier ministre israélien Benjamin Netanyahu et l'ancien ministre de la Défense Yoav Gallant.*
- *Il doit annoncer qu'il cessera de financer l'Office de secours et de travaux des Nations Unies, l'UNRWA, et qu'il assurera la distribution de l'aide humanitaire aux Palestiniens de Gaza par une organisation strictement humanitaire.*
- *Il doit annuler sa décision de suspendre les livraisons de biens et de technologies militaires à Israël.*

Le Canada a l'occasion de s'exprimer sur la scène internationale – mais il doit user de courage pour se faire entendre. Il doit remplacer l'inertie diplomatique par une détermination basée sur des principes. En ces temps où l'antisémitisme s'ajuste et se repositionne à l'échelle mondiale, le Canada doit aller au-delà de la simple condamnation de la haine. Il doit s'y opposer activement et fermement. **MLI**

Introduction

There are two distinct but ideologically connected forms of antisemitism: Nazism and anti-Zionism. Though their methods differ, their devastating consequences intersect. The 1988 Covenant of the Islamic Resistance Movement, more informally known as the Charter of Hamas, and the atrocities committed on October 7, 2023, offer chilling reminders that anti-Zionism today can mirror the ideological extremism of Nazi ideology. The echoes are not subtle; they are deliberate and dangerous.

The Government of Canada's policies for dealing with international entities on the issue of antisemitism are wrong in a number of different ways. The policies, while not antisemitic in themselves, routinely fail to meet the moral and strategic demands of the moment. They do not reflect the scale of the threat nor live up to Canada's professed commitment to human rights and justice.

The demonization of Israel, simply because it is a Jewish state, is a form of antisemitism that dominates international institutions today. While fair criticism of any government's policies is legitimate, what too often masquerades as a "critique" of Israel is, in fact, thinly veiled bigotry. Canada must recognize that the disproportionate condemnations of Israel on the world stage are often not about policy, but are about prejudice.

Across a number of different entities, how Canada has engaged internationally on antisemitism is a story of missed opportunities, wilful blindness, and wishful thinking. In place of strategic clarity, there is hesitancy; in place of principle, politeness. Antisemitism has become normalized in too many international circles and Canada has more often than not chosen to go along with it rather than push back.

There is a stark contrast between the grim reality of the international landscape and Canada's too-often inadequate responses. If it were to follow a number of recommendations – practical, urgent, and long overdue – Canada could remove its diplomatic blinkers and face the challenge with honesty and courage. Canada has a voice at many international forums. It should use its voice not to placate the unappeasable or to preserve consensus at any cost, but to stand firmly on principle. When it comes to antisemitism, neutrality is not neutrality, it is complicity.

Core principles

In Canada's dealings with international entities, a guiding principle it must keep in mind is that it is never too late to do what is right, particularly on issues of justice. Canada can and has made mistakes, and it can and must correct them. Where Canada has taken a wrong turn in its approach to international antisemitism, the path forward is not denial or delay, but course correction. Better late than never, and certainly better late than never at all.

One key principle is that of nonderogation. It is enshrined in the *International Covenant on Civil and Political Rights* (United Nations 1966), a covenant to which Canada is a party.[1] It holds that "in time of public emergency which threatens the life of the nation" a state may take non-discriminatory measures derogating from (i.e., excepting), with those exceptions listed, their human rights obligation (United Nations 1966, art. 4). The United Nations is clear: human rights are not to be tossed aside when they are most inconvenient. Canada must remember this principle when engaging with international entities that selectively ignore antisemitism while claiming to champion human rights.

A second core principle is the right to self-determination of peoples, which at times entails the right to statehood. This right emphasizes dignity, safety, and historical justice. *The Universal Declaration of Human Rights* (1948b) speaks of rights that conform "to the conscience of humanity." It does not conform to the conscience of humanity to deny to a people a right

of statehood and to require that a people live instead in a state or states where they have been victims of mass atrocities, whether their perpetrators remain in power or not. In the case of the Jewish people, one powerful reason the right to self-determination coalesced into the right to statehood is the reality of antisemitism, which culminated in the Holocaust. For hundreds of thousands of Jews who fled Nazi-controlled Europe – many to British Mandate Palestine or later to Israel – it would have been inhumane to demand they return to live among those complicit in their persecution.

> *Past trauma, persecution, and existential threats are important. They justify, and in some cases, demand, statehood.*

International refugee law already recognizes a third principle, the right to self-determination, on an individual level. A person may be entitled to refugee protection not only because he or she faces present-day harm, but because there are "compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of his nationality (United Nations 1951, art. 1 C(5))." That same logic must apply collectively: where a people have suffered historic, systemic persecution, they are entitled to self-determination. Past trauma, persecution, and existential threats are important. They justify, and in some cases, demand, statehood.

These three principles are not abstract ideals. They are legal obligations, moral imperatives, and practical guideposts. If Canada is to meaningfully address antisemitism on the international stage, it must do so not with vague platitudes or careful neutrality, but by anchoring its actions in these principles.

Canada's violations of justice

Failure to sign the London Agreement on the Nuremberg Charter

Canada's record on justice in the aftermath of the Holocaust is marred by a telling omission, one that remains uncorrected to this day.

The effort to bring to justice Nazi war criminals in Canada was a landmark in the establishment of international criminal law. The 1945 London Agreement between the US, the UK, the USSR, and France established the *Charter of the Nuremberg International Military Tribunal*, the foundation for prosecuting major Nazi war criminals. Crucially, any member state of the UN could join the Agreement (International Military Tribunal 1945, art. 5). Nineteen countries did exactly that (United Nations 1945). Canada did not.

There was no legal, political, or moral barrier preventing Canada from joining and there is no justification for its continued absence. Canada can, and should, sign the agreement, even now. Adhering to the agreement now would constitute a formal endorsement of the legal principles embedded in the charter and upheld by the tribunal's judgements. It would send a clear message that Canada recognizes the enduring importance of the Nuremberg legacy and is willing to align itself with the international legal consensus that emerged from humanity's reckoning with the Holocaust. This goes beyond symbolic redress; it affirms the standards of justice that Canada claims to uphold.

Howard Margolian, a historian formerly with the war crimes unit of Canada's federal department of justice, wrote that Canada admitted approximately 2,000 Nazi war criminals into Canada in his book, *Unauthorized Entry: The Truth about Nazi War Criminals in Canada 1946–1956* (Margolian 2000). The number is striking. Further, the immunity that Canada gave to this group was actually much larger than the 2,000 Margolian identified, as that number only refers to the Canadian definition of war criminals and not the Nuremberg Tribunal definition.

It is too late to bring to justice all of the thousands of Nazi war criminals Canada admitted after the war (JTA 1997). But it is not too late to have a functioning criminal justice system. The *Crimes against Humanity and War*

Crimes Act (S.C. 2000, c. 24) has no provision akin to the Nuremberg Charter and tribunal that makes criminal a person's membership in an organization where the organization is used for the purpose of crimes against humanity or war crimes. Such a provision needs to be enacted. Without such a measure, Canada risks continuing to offer safe haven to those complicit in atrocities, undermining both justice and its international human rights obligations.

Failure to respect the International Holocaust Remembrance Alliance's principle of access to Holocaust archives

Justice delayed is often justice denied as is evident in Canada's continued failure to provide full access to Holocaust-related archives. The effort to bring Nazi war criminals to justice in Canada remains incomplete. Canada is a member of the International Holocaust Remembrance Alliance (IHRA), which is more than just a symbolic commitment. Among membership responsibilities is the clear obligation, set out in the alliance's 2000 *Stockholm Declaration*, to "take all necessary steps to facilitate the opening of archives in order to ensure that all documents bearing on the Holocaust are available to researchers" (International Holocaust Remembrance Alliance 2000). Yet Canada has fallen short.

As long as barriers remain to Holocaust documentation in Canada, efforts to identify, expose, and understand the full extent of complicity remain obstructed. The 2017 IHRA *Multi-Year Work Plan on Archival Access Final Report* recommended that:

> Member country governments should ensure that regulations pertaining to access conform to IHRA's mission, i.e., make exceptions for access to those materials that relate to the Holocaust, crimes against humanity, war crimes, and genocide. (IHRA 2017)

Canada's failure to do so is a breach of principle and a betrayal of memory.

The IHRA Monitoring Access to Holocaust Collections Project[2] recommended in 2023 that:

- As we notice that obstacles to access to Holocaust records stem from legislation, which is general in nature, general legislation should be amended to provide an exception specific to Holocaust records to these general requirements, concerning both perpetrators and victims... .

- Insofar as there is discretion in current legislation to allow for exceptions to prohibitions to access, that discretion should be exercised in favour of access to Holocaust-related records, as defined in the IHRA Guidelines for Identifying Relevant Documentation for Holocaust Research, Education and Remembrance. (IHRA 2023)

The project's recommendations were adopted by consensus at the IHRA Plenary in Zagreb, Croatia, in November 2023, and thus by extension, were adopted by the Government of Canada. Canada's representatives attended the Zagreb plenary and did not speak against the recommendations, vote against the recommendations, or abstain.

B'nai Brith Canada made an access-to-information request seeking the unredacted version of Alti Rodal's report, *Nazi War Criminals in Canada: The Historical and Policy Setting from the 1940s to the Present,* which was written for Canada's 1985–86 Commission of Inquiry on War Criminals in Canada (the Deschênes Commission) (*B'nai Brith Canada v. Librarian and Archivist of Canada,* T-200-25). The commission produced a two-part final report: Part I, which was intended for public release, and Part II, which addressed individual cases and was not recommended for public release. B'nai Brith Canada unsuccessfully applied under an access-to-information request to receive Part II. The organization appealed the refusal to the Office of the Information Commissioner. That appeal, too, is now pending.

In principle, in addition to the unredacted Rodal report and Part II of the Deschênes Commission report, Canada's federal government should release the contents of all its Nazi war crimes files assembled by the Department of Justice's War Crimes Unit, no matter what the resolution of those files. As affirmed by the Supreme Court in *Sherman Estate v. Donovan, 2021,* the open court principle takes precedence over privacy, even where disclosure may cause embarrassment. Most criminal charges in Canada end without trial, yet transparency remains essential. Releasing these files would not imply guilt – many may contain exculpatory material – but it is only through disclosure that the public can be assured justice was done and seen to be done. The federal government should also release the name of everyone who was a member of various Nazi criminal organizations and who was admitted to Canada but never the subject of an investigation because of the immunity Canada granted to members of these units who themselves did not

commit crimes against humanity or war crimes through specific, individual actions. Transparency about who was allowed in – and why – is essential to understanding how Canada became a haven for war criminals and to preventing history from repeating itself.

The immunity Canada gave to all but a small number of the thousands of war criminals this country admitted after the Second World War came back to bite Parliament and the Trudeau government when Ukrainian Prime Minister Volodmyr Zelensky came to Canada in September 2023 and addressed the Canadian Parliament. The Speaker of the House of Commons, Anthony Rota, had invited Yaroslav Hunka, a constituency resident and a former member of the Waffen SS, to attend the Parliamentary session when Prime Minister Zelensky was speaking. At the session, the Speaker pointed out Hunka, who was sitting in the public gallery, and called him a hero for fighting for Ukrainian independence against the Russians (Duggan 2023). His comment generated a standing ovation from the Parliamentarians present.

Afterwards, when Hunka's actual military history became public, Prime Minister Justin Trudeau issued an apology and Rota resigned as house speaker. The incident would not have happened if the names of Waffen SS members admitted to Canada had been a matter of public record. This deeply embarrassing episode underscores the long-term consequences of secrecy and inaction, and could have been avoided if there was full transparency about Canada's post-war immigration record and the individuals it allowed to enter.

Canada's mixed record on international courts

International Court of Justice

a. Canada's appropriate response to the question of an Israeli security barrier

Canada's relationship with international justice must extend to defending principles when they are undercut by political bias masquerading as law. This is particularly true in the realm of international courts, where the appearance of neutrality is too often undermined by the reality of politicization. A case in point is the 2003 advisory opinion issued by the International Court of Justice (ICJ) concerning Israel's security barrier.

In 2003, the United Nations General Assembly asked the ICJ for an advisory opinion on this question:

> What are the legal consequences arising from the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, as described in the report of the Secretary-General, considering the rules and principles of international law, including the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly resolutions? (United Nations General Assembly 2003)

The question posed was hardly neutral. The resolution called a fence a "wall," though the barrier is a fence for 95 per cent of its length and a wall for only 5 per cent. The question refers to Israel as "the occupying Power." It refers to the West Bank as "Occupied Palestinian Territory." It defines this "Occupied Palestinian Territory" to include East Jerusalem. The notion that Israel is an occupying power, that the West Bank is "Occupied Palestinian Territory," and that this occupied Palestinian territory, insofar as it exists, includes East Jerusalem, are all issues contested in international law. The resolution was not a request for an opinion, but rather a request for the endorsement of an opinion already formed.

The Government of Canada, in a statement filed with the Court wrote, in part:

> Canada's view... is that, in light of the resolutions at the United Nations Security Council and the General Assembly which encourage the parties and the international community to proceed by way of the 'Roadmap' to a negotiated solution, these issues would be more effectively addressed in a broader negotiation context rather than within the procedural limitations of a judicial hearing. Canada respectfully requests that the Court exercise its discretion and decline to respond to the request for an Advisory Opinion at this time. (Swords 2004)

In this instance, the ICJ would have been better served by accepting the Canadian position than, as happened, rejecting it. Justice at the ICJ would have benefited from adopting Canada's more balanced approach, rather than yielding to a heavily biased framing presented by the United Nations General Assembly. Canada's position was the appropriate one to take. It is regrettable

that the Court did not adopt that conclusion in its judgment. By accepting the resolution's framing and proceeding with the opinion, the Court not only stepped beyond its proper judicial role, but also risked undermining the very negotiations essential to achieving a lasting peace.

b. Canada's appropriate response to a Palestinian claim of occupation

The question of Israel's security barrier was not the only time the ICJ was presented with a politically charged indictment dressed up in the language of law rather than with an impartial legal question. And, once again, Canada's more balanced and legally grounded position was cast aside in favour of a predetermined narrative.

In December 2022, the United Nations General Assembly adopted a resolution requesting the ICJ to render an advisory opinion on these questions:

> (a) What are the legal consequences arising from the ongoing violation by Israel of the right of the Palestinian people to self-determination, from its prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967, including measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem, and from its adoption of related discriminatory legislation and measures?
>
> (b) How do the policies and practices of Israel referred to in paragraph 18 (a) above affect the legal status of the occupation, and what are the legal consequences that arise for all States and the United Nations from this status? (United Nations General Assembly 2023)

There are at least ten different legal opinions that the request asserts. They are that:

- There is an ongoing violation by Israel of the right of the Palestinian people to self-determination.
- Israel occupies Palestinian territory.
- This territory has been occupied since 1967.
- Israel has settled in Palestinian territory.
- Israel has annexed Palestinian territory.
- Israel has adopted measures aimed at altering the demographic composition of Jerusalem.

- Israel has adopted measures aimed at altering the character of Jerusalem.
- Israel has adopted measures aimed at altering the status of Jerusalem.
- Israel has adopted discriminatory legislation.
- Israel has adopted non-legislative discriminatory measures.

The request in the General Assembly resolution does not ask the Court whether these opinions embedded in the resolution are correct. Instead, the questions presented to the Court assumed the very conclusions they sought, painting a one-sided picture of "prolonged occupation" and "discriminatory legislation" without acknowledging the complex legal, historical, and political context that underpin many Israeli actions. This was, once more, a call for validation of a particular political stance, not a request for an advisory opinion in the spirit of objective legal interpretation.

Again, the Government of Canada took an appropriate position. In a statement filed with the Court, it wrote:

> In light of the fact that the questions posed pertain to the resolution of a bilateral dispute, where an interested State has not accepted the jurisdiction of the Court, and given that the UN Security Council has established a framework for the parties to resolve the dispute through negotiations, Canada is of the view that there are compelling reasons for the Court to exercise its discretion to decline the request of the UN General Assembly for an advisory opinion with respect to the questions posed in its resolution... . (Global Affairs Canada 2023)

The Court, unfortunately, gave little weight to these concerns. Its judges are nominated by their home countries, supported by regional blocs, and are elected to the General Assembly for renewable nine-year terms. Any judge seeking reappointment may be reluctant to depart too far from the prevailing views of their national government, regional bloc, or the General Assembly itself. In this instance, the advisory opinion rendered was less an exercise in impartial legal analysis than a reflection of political pressure, undermining the credibility and neutrality the court is meant to uphold.

c. Canada's failure to act on South Africa's application for a charge of genocide against Israel

In its response to South Africa's application to the ICJ under the Genocide Convention, Canada abandoned the consistency of its own past legal positions, undermining justice and its credibility as a principled actor on the world stage.

The case is part of a broader campaign to delegitimize the Jewish state under the guise of international law. In December 2023 South Africa brought a charge of genocide against Israel, an accusation as inflammatory as it is unfounded, while conspicuously omitting a key party to the conflict, Hamas.

Canada remained silent. It failed to call out the selective framing of the case, failed to advocate for fairness in the application of international law, and failed to defend a foundational principle of justice: that all parties to a conflict must be held accountable, not just the politically convenient target.

Bret Stephens, a columnist for the *New York Times*, wrote:

> For too many, including those who call themselves 'pro-Palestinian,' Palestinian misery seems to matter only when the blame can be pinned on Israel.... Yahya Sinwar, the mastermind of the Oct. 7 massacres and Hamas' leader in Gaza until he was killed last year... described the thousands of civilians in Gaza killed in the conflict as 'necessary sacrifices' to his cause... the group's leaders divert food aid to themselves at the expense of hungry Palestinians. (Stephens 2025)

Hamas arguably committed genocide against Jews on October 7, 2023, and arguably continues to commit acts of genocide against Palestinians themselves. The basis for the claim of genocide committed by Hamas against Palestinians has several components including placing civilians in harm's way, weaponizing humanitarian crises, and using their own population as disposable pawns.

Hamas provoked the behaviour that is the subject of the Court litigation by its attack on October 7. After the provoked Israeli response, Hamas used Palestinians as shields, shot rockets from and near commercial buildings, residences, mosques, schools, and hospitals, stored rockets and weapons at or near these same edifices, built tunnels for military purposes underneath and tunnel entrances at or near these edifices, did not allow Palestinian civilians

to shelter in Hamas tunnels, urged Palestinians to disregard Israeli evacuation warnings and prevented Palestinians from fleeing in response to Israeli evacuation warnings, diverted humanitarian aid for military stockpiling, and glorified the deaths of Palestinians as martyrdom.

The Genocide Convention allows for states – and only states – to be parties to a dispute before the Court on the interpretation, application, or fulfilment of the Convention (United Nations 1948a, art. IX). No state can petition the ICJ to adjudicate the question of responsibility for genocide in a dispute between that state and a terrorist entity. A proceeding where there is a claim of genocide and where the party arguably responsible for the genocide, if there was a genocide, legally cannot be present is inherently flawed. Canada could have filed a written statement in this case, as it had done in the two advisory opinion cases addressed above. But it has not done so. The written statement could have and should have taken the same position that Canada did in the other proceedings – i.e., that the Court, in its discretion, should not get involved.

> *"Hamas arguably committed genocide against Jews on October 7, 2023, and arguably continues to commit acts of genocide against Palestinians themselves.*

The legal standards governing the Court's discretion in contentious cases differ from those applicable to advisory opinions. Nonetheless, it can be argued that the Court does have discretionary authority to decline to hear a contentious case under certain circumstances. American academic Edward Gordon has written about the ICJ:

> Its judgments... and some supportive scholarly writings, suggest variously that discretionary authority is inherent in the Court as a judicial institution; that it is to be inferred from language contained in Articles 36 and 38 of the Statute; that it is implicit in the nature of international law

> or the remedies available to the Court to fashion relief for violations of it; or that unless otherwise indicated it should be deemed implicit in, even coextensive with, express grants of jurisdiction (Gordon 1987, 129-135).

An intervention by Canada in the South Africa case would have to argue not only for the exercise of Court discretion not to decide the case, as Canada did in the advisory opinion cases, but also for the position that the Court has the jurisdiction to exercise that discretion. Yet, obviously that could have been done and, since the case is still pending, could still be done. By remaining silent, Canada has not only abdicated a chance to advocate for judicial restraint in a deeply flawed proceeding, but also missed the opportunity to reinforce a consistent and principled approach to international adjudication.

The International Criminal Court fails to respect Canadian sovereignty

When it came to the International Criminal Court (ICC)[3] and the question of Palestinian statehood, Canada initially took a principled and legally sound stand, but then reversed course. In 2015 the Palestinian Authority deposited an instrument of accession to the Statute of the ICC in the name of the State of Palestine – that is, the Palestinian Authority claimed that they represented a state, Palestine, and, as that state, purported to sign on to the Court treaty. All permanent missions to the United Nations were notified of the deposit and only one responded – Canada. The Canadian response was this:

> The Permanent Mission of Canada notes that "Palestine" does not meet the criteria of a state under international law and is not recognized by Canada as a state. Therefore, in order to avoid confusion, the Permanent Mission of Canada wishes to note its position that in the context of the purported Palestinian accession to the Rome Statute of the ICC, "Palestine" is not able to accede to this convention, and that the Rome Statute of the ICC does not enter into force, or have an effect on Canada's treaty relations, with respect to the "State of Palestine." (United Nations 2015)

Canada was the only country to formally object. It gave a strong, clear defence of both legal principle and Canadian sovereignty. But, in 2020 when the Court prosecutor asked the Court for a ruling on the issue of whether the

Court had jurisdiction over crimes committed on the territory of what the Palestinian Authority claimed was the territory of the State of Palestine, Canada did not intervene in the proceedings. Seven other countries did intervene in that proceeding and took the position that the Court did not have jurisdiction over the territory. Canada thought it had already stated this same position in 2015 and chose not to join them. The Court asserted jurisdiction, sidestepping the fundamental question of statehood and effectively undermining the principle Canada had once defended. Recognition of statehood is an expression of national sovereignty – Canada cannot be compelled to accept the Court's ruling as legitimate when it rests on a definition of "state" that Canada itself does not accept.

Does "Palestine" qualify as a state under international law? A Montevideo analysis

The 1933 Montevideo Convention on the Rights and Duties of States sets out four foundational criteria for statehood: (1) a permanent population, (2) a defined territory, (3) a government, and (4) the capacity to enter into relations with other states. Though originally a treaty among American states, the Montevideo criteria have since come to reflect customary international law. They form the legal framework through which claims to statehood are assessed. Applying these criteria to the current configuration of "Palestine" reveals serious legal deficiencies that preclude recognition of full statehood under international law, even if states may choose, for political reasons, to extend recognition regardless.

1. Permanent population

There is no doubt that a Palestinian population exists. However, under international law, a "permanent population" requires more than mere presence; it implies a stable, settled community with enduring ties to a defined territory. The Palestinian population, as legally defined by the United Nations in 1949, consisted of individuals whose "normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948, and who lost both home and means of livelihood as a result of the 1948 conflict" (United Nations General Assembly 1949). The population of the region at the time was far from permanent and included many transitory groups. The definition is even more problematic with respect to its consistency with the Montevideo Convention in that it does

not refer to the West Bank or Gaza, or to Palestinians as a people, making it imprecise with respect to both the territory and the population it is meant to capture. That definition, rooted in refugee status, does not establish the kind of stable, territorial permanence contemplated by the Montevideo Convention.

Moreover, many Palestinian communities today remain stateless, displaced, or governed by different authorities. The question of permanence is further complicated by rival historical claims. Jewish and non-Arab Muslim communities have maintained continuous presence and political identity in the region over millennia, claims that challenge the singularity and primacy of the Palestinian narrative of territorial permanence.

2. Defined territory

A state must possess a defined territorial base, even if its borders are disputed. Palestine's territorial claims remain unresolved and internally inconsistent. The Palestinian Authority currently exercises limited autonomy over parts of the West Bank. Gaza was governed by Hamas, a separate and hostile entity. There is no unified territorial jurisdiction, and the geographic boundaries of a putative Palestinian state remain highly contested.

Is Jerusalem included, or only East Jerusalem? Does the claim extend to the pre-1967 lines, or further? Does it entail exclusive sovereignty over territory also claimed by Israel? The lack of agreed boundaries, both internally among Palestinian factions and externally with neighbouring states, precludes satisfaction of the Montevideo requirement of a defined territory.

3. Government

The Palestinian Authority does not exercise full or effective governmental control over the areas it claims. It governs only parts of the West Bank under restricted autonomy and has no control whatsoever over Gaza. The existence of two rival administrations, Fatah in the West Bank and Hamas in Gaza, undermines the notion of a unified government. A state must be able to administer its territory and population with a minimum degree of coherence and independence. Fragmentation, contested leadership, and political instability fatally weaken "Palestine's" claim to satisfy this criterion.

4. Capacity to enter into relations with other states

"Palestine" has been granted non-member observer state status by the UN General Assembly and has entered into various agreements with

international organizations. However, these capacities are largely symbolic and not dispositive of statehood under international law. A key element of the Montevideo standard is that the capacity to conduct foreign relations must stem from genuine sovereignty and institutional unity, something the Palestinian Authority lacks, given its fractured governance, limited jurisdiction, and dependence on external actors for basic administration and security.

Recognition outside the law

It is important to acknowledge that the Montevideo criteria are legal, not political. States may recognize other entities as states for reasons unrelated to legal qualifications, out of solidarity, strategic interest, or geopolitical alignment. Such recognition is discretionary and does not itself confer or confirm legal statehood. While currently 147 UN member states have recognized "Palestine" as a state, this recognition is largely political in nature and does not alter the fact that the entity in question does not meet the objective legal standards codified in Montevideo and embedded in customary international law.

However, while recognition is ultimately a sovereign prerogative, that discretion is not without normative limits. When the entity being recognized does not merely fall short of legal statehood but is inextricably linked to terrorism, systemic incitement, or the use of violence against civilians, states have an obligation to exercise caution. Recognition in such cases may run contrary to the purposes and principles of the United Nations Charter, which obliges member states to maintain international peace and security and to refrain from supporting actors that endanger those goals. Recognition of an entity that is terrorist in its core and that poses a continuing threat to regional or international stability should be viewed not only as politically problematic, but legally and morally indefensible.

The events of October 7, 2023, should serve as a turning point. The brutal and coordinated attacks launched by Hamas from Gaza, resulting in the largest mass killing of Jews in a single day since the creation of the State of Israel, exposed the depth of operational capacity, ideological extremism, and transnational ambition embedded within one half of the Palestinian political structure. That one arm of the Palestinian polity could perpetrate such acts while remaining unaccountable to the other (the Palestinian Authority) underscores the absence of unified governance and the dangers of legitimizing

a fractured, unstable, and radicalized entity. For states contemplating recognition of a "State of Palestine," October 7 must be understood not only as a moral rupture, but as a legal and strategic warning: recognition in the face of terrorism risks legitimizing actors who are openly committed to violence and rejectionism, rather than peace and coexistence.

The current political and institutional configuration of "Palestine" does not satisfy the Montevideo criteria for statehood. It lacks a stable, permanent population in the legal sense; it does not exercise control over a defined territory; it has no unified or effective government; and its capacity to enter into international relations is limited. While political recognition may continue to expand for strategic or symbolic reasons, legal recognition under international law must remain grounded in established criteria, not sentiment or political expediency. The Montevideo framework remains the touchstone for determining when a claim to statehood is legally justified, and by that standard, "Palestine" falls short.

"The current political and institutional configuration of "Palestine" does not satisfy the Montevideo criteria for statehood.

Despite this, in a February 2021 decision the International Criminal Court accepted Palestine as a state party to the Court's treaty and thereby claimed it had the jurisdiction to adjudicate over alleged crimes committed in the territory of Palestine or against Palestinians. The Court based this decision not on legal criteria, but on the 2012 United Nations General Assembly's grant of non-member state observer status to Palestine (International Criminal Court 2021). By allowing political recognition to take precedence over established legal standards, the Court undermined its own credibility. A judicial body that substitutes politics for law is no longer functioning as a court. Since Israel is not a party to the ICC treaty, it should not be subject to its jurisdiction, yet the Court has issued arrest warrants for Israeli leaders based on this flawed foundation.

The Court has evolved from bad to worse. In November 2024 the ICC prosecutor issued arrest warrants for Benjamin Netanyahu, the prime minister of Israel, and Yoav Gallant, a former minister of defence of Israel (International Criminal Court 2024a). In doing so, the Court, in addition to violating the Montevideo Convention, violated its own statutory provision on complementarity, that is, that the Court would rule a case admissible only where a state with jurisdiction over the crime is either unwilling or unable to investigate or prosecute (International Criminal Court 2024b).

Israel is a country subject to the rule of law, with a free press, an independent judiciary, and an independent prosecutorial process. In light of the legal history and legal institutions in Israel, insofar as Netanyahu or Gallant are guilty of the acts alleged against them in the arrest warrants, they could be and would be prosecuted and punished in Israel.

In justifying its issuance of the arrest warrants for Netanyahu and Gallant, the statement of the ICC's pretrial chamber made no reference to complementarity. It made no finding that the allegations against Netanyahu and Gallant are not being investigated in Israel, no finding that Israel was either unwilling or genuinely unable to carry out such an investigation, and no finding that the allegations had not already been investigated by Israel. On its face, the decision on the arrest warrants is legally improper.

Former Prime Minister Justin Trudeau said Canada will abide by these Court warrants. He stated: "We stand up for international law, and we will abide by all the regulations and rulings of the international courts" (Fife 2024). Those two statements are inconsistent with Canada's 2015 position in response to the Palestinian Authority's claim to statehood and with each other.

By abiding by the ICC's arrest warrant ruling, Canada is supporting the violations of international law that the Court endorsed – violations of the law of complementarity in the Statute of the Court and of the Montevideo Convention and customary international law on the criteria for statehood. Trudeau's statement piles onto those two violations a third, the international law rights of sovereignty of Canada as an independent state. Canada does not recognize Palestine as a state. The ICC does. It is that Court recognition that gave the Court the jurisdiction to issue the warrants. However, that Court recognition cannot usurp or change Canadian non-recognition. For Canada to respect these warrants would mean abdicating its sovereign power to choose for itself which entities it does and does not recognize as a state.

Violations of non-derogation and self determination

Canada fails to respect non-derogability

The principle of non-derogation[4] from fundamental human rights imposes a clear duty on states not to compromise core rights, even in times of political sensitivity or international pressure. Yet Canada's refusal to release records related to Nazi war criminals is not only a matter of justice, as previously discussed, but is a violation of non-derogable human rights obligations.

Transparency about historical atrocities is not optional. The right to truth, particularly in the context of crimes against humanity, cannot be withheld behind vague justifications of bureaucratic red tape. One reason given in support of secrecy is that Russia's propaganda machine would abuse the release of names to undermine Ukraine. The argument is that Russian President Vladimir Putin would use the information to support his claim that Ukraine is overrun by neo-Nazis, and thereby justify his invasion of that country (Woolf 2024). This argument, however politically expedient, does not hold up under scrutiny. The Ukrainian government has not asked Canada to withhold the names.

Silence about Nazi war criminals in Canada, rather than helping Ukraine and harming Russia, has the opposite effect. Disinformation, misinformation, denials, cover up, the search for immunity, and fantasy counternarratives are Russian propaganda machine tactics which, ultimately, discredit their cause. The most effective way to counter Russian propaganda, to show the difference between tyranny and democracy, is not to be silent, but rather to tell the whole truth (Matas 2024).

Unless the records are made public for a case not prosecuted, the public has no knowledge of what happened. Nondisclosure in these cases is justice without a soul. Justice includes both exoneration and accountability – not all accused are guilty, and some files may contain evidence that clears individuals. Concerns about public scorn underestimate the public's ability to distinguish accusation from guilt. Canada's Nazi war crimes prosecutions have ended. Now is the time to review what happened. Disclosure may reveal failures due to lack of resources or political will and help ensure Canada does not remain a haven for perpetrators of mass atrocities.

Moreover, what would become public with full disclosure is not just the identity of individuals and the evidence, if any, against them. It would also include what the investigative and prosecutorial authorities did and did not do about these complaints. Seeing what was and was not done allows us to assess what should have been done. As English philosopher, jurist, and social reformer Jeremy Bentham so aptly put it, we need to put justice on trial.

For the International Holocaust Remembrance Alliance, this cover up is no small matter. The IHRA stands, after all, for Holocaust remembrance. Holocaust remembrance means not just remembering the victims. It also means remembering the perpetrators. The refusal by the Government of Canada to release information about Nazi war criminal records thwarts the very purpose and meaning of the IHRA.

Canada fails to appreciate the changing nature of the United Nations Relief and Works Agency

If there is a case study in the institutionalization of derogation from (i.e., the lessening of) fundamental human rights, it is the United Nations Relief and Works Agency (UNRWA). Far from upholding the dignity and self-sufficiency of refugees, the non-governmental organization (NGO) UNRWA has, over decades, become a vehicle for dependency, politicization, and the indefinite deferral of the right to self-determination for both the Palestinian and Jewish peoples – a prototype of the derogation of fundamental human rights.

UNRWA was created by a 1949 United Nations General Assembly resolution (United Nations General Assembly 1949). Its original mandate was "to carry out in collaboration with local governments the direct relief and works programmes as recommended by the Economic Survey Mission" (United Nations General Assembly 1949, para. 7(a)). At that time, the Economic Survey Mission had produced an interim report that recommended the creation of an agency that had as its "prime object... the finding of temporary work for Palestinian Arab refugees" through "short-term projects." The Agency was "to seek out useful works projects which might relieve the present situation of the Arab refugees Agency." Though the agency was ultimately called a relief *and* works agency, it would have been more accurate, in light of its initial intended purpose, to call the agency a relief *through* works agency.

However, UNRWA today is completely different from the agency that the United Nations General Assembly created. At 75 years old, it is not a

temporary agency serving a temporary purpose. Its mandate is not limited to developing short-term work projects that local governments could take over. The notion of relief through works is gone. The services UNRWA provides are comprehensive – a cradle-to-grave welfare service.

The number of people that UNRWA serves has grown dramatically. From fewer than 750,000 Arab refugees from the territory of the former British Mandate for Palestine at the time of its creation, UNRWA in 2023 had registered close to six million people, an eightfold increase (UNRWA Undated). Moreover, almost entirely, this huge increase does not consist of those the agency was intended to serve, the Arabs who had fled the Israeli side of the armistice line in the territory of the former British Mandate for Palestine.

Today the almost six million number also includes, contrary to the 1951 United Nations Convention relating to the Status of Refugees, former temporary residents of British Mandate for Palestine – despite the fact that international refugee law provides protection to those with a well-founded fear of persecution in their country of nationality or habitual residence, not temporary residence. The number further includes descendants of the original refugee population, regardless of whether they meet the legal definition of a refugee, and also, in violation of international law, those who refuse to renounce armed activity or are complicit in acts of terrorism.

It is not unusual for entities to fall prey to mission creep. However, in UNRWA's case, the mandate grew not just by creeping; the mandate grew by leaps and bounds. The organization now has 30,000 employees and a budget of US$1.5 billion. This growth is troublesome in itself. Hamas's October 7, 2023, attack on Israel and the Israeli response demonstrated that this growth was not just a change in size, but rather a permutation. UNRWA in Gaza has employed members of Hamas and other terrorist organizations. Several of these employees took part in the Hamas attack on Israel on October 7, 2023 (Roman 2024). Many educators in UNRWA schools are Hamas members. The Palestinian Authority has issued textbooks that are antisemitic and have been used in UNRWA schools (Jewish Virtual Library 2021). Three thousand UNRWA teachers in Gaza celebrated the October 7 Hamas massacre (UN Watch 2024a).

UNRWA has a nominal principle of neutrality. Yet the organization issues a steady stream of onesided political statements critical of Israel. Hamas has used UNRWA facilities as command-and-control centres and to store

weapons, and as locations from which to launch attacks against Israel Defense Forces (Israel Defense Forces Undated).

Hamas and Islamic Jihad do more than just provide employees for UNRWA. They effectively run the organization, "to perpetuate Palestinians as refugees with the aim to one day dismantle Israel (UN Watch 2024b)."

Before October 7, 2023, Canada had been contributing to UNRWA's funding. It stopped doing so in January 2024 once it became evident that UNRWA staff were involved in the October 7 attack (Global Affairs Canada 2024a). However, it resumed the funding in May 2024 on the basis of the need of Palestinians for humanitarian aid (Global Affairs Canada 2024b). The refunding announcement came with a statement that referred to an expectation of zero tolerance for terrorism, but not a zero tolerance for terrorism *at the present*. The statement asserted an expectation of necessary reforms, but not a requirement that actual reforms be in place. The reality is that UNRWA has been working hand-in-glove with terrorists. If Canada had a policy of zero tolerance for terrorism, it would not have made this refunding decision.

With the discovery of Hamas tunnels beneath UNRWA facilities, including a substantive data centre, John Spencer, Chair of Urban Warfare Studies at the Modern War Institute at the US Military Academy at West Point in New York, wrote "that alone – UNRWA has to justify it. Explain how a number of employees were involved in Oct. 7. Explain the number of UNRWA facilities where Hamas has turned into military headquarters.... That they refuse to answer any of those questions" would be enough to necessitate putting funding "on hold until we conduct an investigation." It should be enough for Canada to insist "where's the money going?" rather than re-instating the $25 million handout, as it did on March 8, 2024 (Gordon 2024).

Further, the House of Commons passed a resolution on March 18, 2024, which called on the Government of Canada to "suspend all trade in military goods and technology with Israel" (House of Commons 2024). The federal government subsequently announced it was doing just that (Chase 2024). The resolution was justified by preambles, two of which were "the death toll in Gaza has surpassed 30,000, with 70% of the victims women and children" and "the United Nations reports over 70 per cent of civilian infrastructure in Gaza, including homes, hospitals, schools, water and sanitation facilities, have been destroyed or severely damaged by Israeli military attacks" (House of Commons 2024).

The United Nations reports to which the resolution referred come from UNRWA. It is the source for both 70 per cent figures (UNRWA 2024). There is no recognition in the resolution that UNRWA is, in substance, a Hamas front, that casualty figures do not indicate the number of Hamas operatives, that both women and children can be and are components of the Hamas terrorist effort, or that civilian infrastructure in Gaza is also systematically, pervasively, part of the Hamas terrorist facilities. The Canadian Parliamentary resolution should not have been passed and should be rescinded.

There was and is no doubt that Palestinians in Gaza need humanitarian aid. And UNRWA does have an aid distribution network. Nonetheless, it is perverse to channel aid through an organization that is a significant contributor to the problems Palestinians now face and that would use that aid to perpetuate those problems. Canadian aid to Palestinians in Gaza should be channelled through an organization whose mission is humanitarian and nothing more.

Canada misses the context when the UN General Assembly erodes fundamental principles

Perhaps nowhere is the erosion of fundamental principles, especially the right to self-determination of the Jewish people, more blatant than at the United Nations General Assembly. What should be a forum for balanced deliberation and the protection of universal rights has, instead, become a stage for obsessive, disproportionate, and politically motivated condemnation of Israel. United Nations organs pay inordinate attention to Israel. Consider a session of the United Nations General Assembly before the current Hamas-Israel war when there was nothing particular going on in Israel to justify the attention of the UN.

From September to December 2020 at the regular session of the General Assembly there were no resolutions on Belarus, China, Russia, Venezuela, or Zimbabwe. There was one resolution each on Iran, South Sudan, and the Democratic Republic of the Congo, and two on Myanmar. In contrast, there were an astounding 15 resolutions on Israel (Matas 2005). The proliferation of anti-Israel resolutions serves a clear strategic purpose for anti-Zionists; they use the resolutions to delegitimize Israel at every turn.

These resolutions are contrary to the very purpose of the United Nations. When anti-Zionists find an echo chamber at the UN, it undercuts the position of those Palestinians who favour negotiations towards a peaceful settlement of

disputes with Israel. In reality, by their sheer number in contrast to the small numbers of resolutions or nonexistent resolutions addressing the situations in countries that are legitimately the subject of UN concern, these anti-Zionist resolutions to discredit Israel discredit the UN. If the UN wishes to preserve or re-establish its integrity it must sideline these resolutions.

The Government of Canada's position on these resolutions has not been helpful. Rather than looking at them in context as a whole, it addresses them one by one. If Canada supports the text of a resolution, it will vote in favour of it. If Canada is uncertain about a resolution, it will abstain. It votes against only those resolutions that have texts it opposes.

In 2020 Canada voted in favour of a UN resolution titled "The right of the Palestinian people to self-determination." Canada should have voted against it, even though Canada agreed with its content. In doing so, Canada should have explained that realistically supporting the successful creation of a Palestinian State, where its people live in peace and security with its neighbour Israel, requires supporting those Palestinians who favour the acceptance and creation of such a state through negotiations rather than supporting anti-Zionists who use resolutions at the United Nations as an alternative to peace negotiations. To truly support peace and a viable Palestinian state, Canada must resist legitimizing instruments that empower rejectionists over negotiators and that turn the UN from a platform for resolution into a stage for rhetoric.

Canada fails to speak out at the United Nations Human Rights Council

If the United Nations General Assembly is the megaphone of anti-Zionist repetition, then the UN Human Rights Council is its echo chamber, dedicated not to impartial human rights advocacy but to the demonization of Israel. The Council has an agenda item dedicated specifically to Israel, so institutional bias is built into its structure. No other country is subjected to a permanent, dedicated agenda item.

The agenda item is titled "Human rights situation in Palestine and other occupied Arab territories." The very labelling of the agenda item is tendentious. The item refers to Palestine. Yet, for many states of the UN, including Canada, there is no state called "Palestine." The agenda item refers to Palestine as Arab territory. Yet the phrase "Arab territory" is a telegraphic statement of ethnic cleansing. Anyone who is not Arab, according to this phrasing, does

not belong. The phrase refers to the territory as occupied – a term that is not meant to indicate that the territory is simply populated. Rather, its very title is a condemnation of Israel, a claim that Israel sits in occupation of an undefined bloc of territory, a claim that Israel and others contest.

To those not familiar with anti-Zionist, antisemitic coding, the agenda item might seem intended to address the human rights record of the Palestinian Authority in the West Bank and Hamas in Gaza. Yet nothing could be further from reality. The reference to "other occupied Arab territories" is an ambiguous reference to Israel proper as well as any territory in either Lebanon or Syria where Israeli forces have entered to repel and prevent terrorist attacks.

> *If the United Nations General Assembly is the megaphone of anti-Zionist repetition, then the UN Human Rights Council is its echo chamber.*

States, including Canada, that rightly refuse to participate in discussions scheduled for the agenda item devoted specifically to Israel act inconsistently when they are silent about resolutions on Israel in other agenda items. States avoid the anti-Israel agenda item because it should not be there. It should not be the case that only one state out of all the voting members of the UN should be the focus of a specific, on-going agenda item, and a democratic state at that, whatever the merits of the individual resolutions found within that agenda item.

That same logic should apply to all resolutions that target Israel, in all agenda items. To be consistent with their position on the Israel-specific agenda item, states should speak against all these Israel-specific resolutions, simply because the council is the wrong place to address the concerns in the resolution. Those concerns should be addressed in Israel, a country that is both willing and able to deal with them.

Another facet of the UN Human Rights Council's fixation on Israel is the number of special sessions devoted to the country. To date there have been 37 special sessions of the council, eight of which have been devoted to Israel,

far more than to any other country. The most recent was in 2021. At that session Canada criticized Israel for its settlement activity in East Jerusalem and the West Bank, and criticized Hamas and Palestinian Islamic Jihad for their barrage of rockets directed against Israel. Canada said nothing against the fact that the session was called, nor against the commission of inquiry that that session established.

To ignore the structural bias embedded in these resolutions regardless of where they appear on the agenda is to legitimize an intentional misuse of the Council's mandate, one that is further supported by the disproportionate attention given to Israel through mechanisms like special sessions and special procedures.

Canada fails to implement an action plan in the face of the UN Human Rights Special Procedures

Beyond resolutions and agenda items, the whole United Nations system has entrenched its anti-Zionist bias through a sequence of "special procedures" directed against Israel. These mechanisms, originally intended to spotlight global human rights abuses, have been selectively weaponized with glaring one-sidedness and political intent.

One such case is the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967. The UN Human Rights Council has 60 special procedures, but only this special rapporteur and the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel have indefinite mandates. The fact that the mandates are neverending means that it does not matter whether the human rights behaviour in Israel is perfectly acceptable, or whether the occupation, as the mandates refer to it, ends. The mandate of these special procedures, even in these situations, would still continue.

The mandate of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967 also has the unusual feature of being limited specifically to Israel, and is charged with investigating "Israel's violations of the principles and bases of international law." Violations of the principles and bases of international law by the Palestinian Authority, Hamas, or any of the other terrorist groups operating out of the West Bank or Gaza, do not fall within the special rapporteur's mandate. The mandate is explicitly one-sided. The problem with these procedures is not limited to the mandates, but

extends to the mandate holders, as they have a history of hostility to Israel and, in some cases, of explicit antisemitism.

In a report from October 2024, the NGO UN Watch noted that the current Special Rapporteur Francesca Albanese has engaged in:

- Repeated statements that echo antisemitic conspiracy theories and Holocaust distortion.
- Public comments justifying violence against Israeli civilians.
- Dissemination of false claims sourced from Hamas, including during and after the October 7 attacks.
- Failure to correct those claims even after they were debunked by credible sources.
- Routine use of inflammatory and dehumanizing language inconsistent with UN standards (UN Watch 2024c).

In a March 2025 statement, UN Watch noted that the Government of Canada had denounced Albanese for Holocaust distortion (UN Watch 2025a). Albanese has compared the creation of the State of Israel to the Holocaust. In a May 2025 report, UN Watch documented that Albanese was likely at least partially funded by a pro-Hamas lobby group, in violation of UN standards, and that UN officials covered up the evidence of this funding to secure the renewal of her appointment as rapporteur in April 2025 (UN Watch 2025b).

At the recent UN Human Rights Council session in April 2025, the council directed four resolutions against Israel (United Nations Human Rights Council 2025). (There were no resolutions on China, one on Russia, one on Iran, one on Myanmar, and one on North Korea.) One of the resolutions directed against Israel proposed that the UN General Assembly establish yet another special procedure devoted to criticizing Israel (United Nations Human Rights Council 2025). If that proposal should ever surface in the General Assembly, Canada should speak and vote against it.

In fairness to the UN Human Rights Council and its special procedures, the story is not all bad. The United Nations Special Rapporteur on Freedom of Religion or Belief, then Ahmed Shaheed, recommended in 2019 that "all States adopt the [IHRA] Working Definition [of antisemitism] for use in education and awareness raising and for monitoring and responding to manifestations of antisemitism" (United Nations General Assembly 2019).

In May 2022, the same special rapporteur set out an action plan to combat antisemitism. That action plan included this recommendation:

> Governments should use the IHRA Working Definition of Antisemitism as a non-legally binding educational and training tool and ensure it is incorporated, together with relevant human rights standards-based guidance on protecting freedom of opinion and expression, into training and educational materials for all public officials, such as police, prosecutors, and judges, government employees, educators, and national human rights institutions, and integrated into diversity and inclusion programs. Training and educational materials should recognize and reflect that antisemitism is often expressed in coded language and illuminate this phenomenon with contemporary and context-specific examples (Office of the United Nations High Commissioner for Human Rights. (OHCHR 2022)

That is a recommendation that Canada, its provinces, municipalities, its courts, its educators, and its human rights institutions should adopt and implement.

Canada takes no action when the UN's Special Adviser on the Prevention of Genocide is fired

The importance of adopting such recommendations becomes even more evident when contrasted with the consequences of failing to resist politicized pressure within international institutions, as was shown by the treatment of Alice Wairimu Nderitu, a former United Nations Special Adviser on the Prevention of Genocide. Nderitu refused to accede to the demands of that lobby; she refused to condemn Israel for genocide. Her term as special adviser, which began in 2020 and ended in November 2024, was not renewed. She was constructively fired.

The Office of the UN Secretary-General attempted to explain her non-renewal as something that happens all the time with terms of UN independent experts (Berkman 2025). Yet typically the reason that terms are not renewed is because those holding the positions are either unable or unwilling to continue. That was not the case with Ms. Nderitu.

This is part of what Ms. Nderitu said after her termination:

> This push that I should say that there's a genocide going on in Gaza? They knew that I'm not a court of law, and it's only a court of law that can determine whether a genocide has happened.... But I was hounded, day in, day out. Bullied, hounded, with protection from nobody.... It's instructive that this never happened for any other war. (Berkman 2025)

The position of the UN Special Adviser on the Prevention of Genocide is now filled on an acting basis by Virginia Gamba who, unsurprisingly, has expressed alarm and grave concern about Israel's behaviour without mentioning Hamas (Global Centre for the Responsibility to Protect 2025). Because the position is now filled only on an acting basis, technically it remains open. Guterres should ask Ms. Nderitu to resume the position. And Canada should push for that to happen.

Recommendations

In light of Canada's failures across multiple international platforms, including failures of action, consistency, and principle, it is clear that it needs to substantially recalibrate its policies. Too often Canada has been passive in the face of institutionalized anti-Zionism, reluctant to challenge flawed legal processes, or silent when fundamental human rights principles are selectively applied or ignored. If Canada is to uphold its stated commitments to justice, non-derogation, and the right of self-determination, it must shed its diplomatic hesitations and adopt a clearer, firmer position. What follows are recommendations aimed at realigning Canada's international conduct with the values it claims to champion.

Canada should:

1. Notify the United Kingdom that Canada adheres to the London Agreement adopting the Charter of the Nuremberg International Military Tribunal.

2. Release:

- A redacted report by Alti Rodal, *Nazi War Criminals in Canada: The Historical and Policy Setting from the 1940s to the Present*.
- Part II of report of the Commission of Inquiry on War Criminals in Canada.
- All Nazi war crimes files held by the federal Department of Justice war crimes unit and
- The names of all those members of organizations found criminal by the Nuremberg Tribunal, including the Waffen SS, who were admitted to Canada whether they were the subject of war crimes investigations or not.

3. Exercise discretion in favour of access to Holocaust-related records concerning both perpetrators and victims, insofar as there is discretion in current legislation to allow for exceptions to specific prohibitions against access to information.

4. At the International Court of Justice intervene in all proceedings directed against Israel, contentious as well as advisory, taking the position that the Court should decline to address the merits of the proceedings on the basis that the issues should be negotiated.

5. State that the federal government does not intend to enforce the arrest warrants against Israeli Prime Minister Benjamin Netanyahu and former Defence Minister Yoav Gallant.

6. Cease funding UNRWA and channel aid to Palestinians in Gaza through an organization whose mission is humanitarian and nothing more.

7. Reverse the decision to suspend the trade in military goods and technology with Israel.

8. At the United Nations General Assembly vote and speak against all resolutions directed against Israel, and at the United Nations Human Rights Council speak against all resolutions, special sessions, and special procedures directed against Israel on the basis of the inordinate focus on Israel and the willingness and ability of Israel to address internally the criticisms in the initiatives.

9. Adopt and implement the May 2022 action plan by the United Nations Special Rapporteur on Freedom of Religion or Belief to combat antisemitism.

10. Recommend to the United Nations Secretary-General that he reappoint Alice Wairimu Nderitu as United Nations Special Adviser on the Prevention of Genocide.

Conclusion

Canada admitted thousands of Nazi war criminals after the Second World War, yet pursued legal action against only a handful. This failure was largely the result of a deliberately narrow interpretation of war crimes, one that deviated from established international law. Today, Canada compounds that failure by refusing to release records that would explain how and why it did so.

Without full disclosure, we cannot understand the disconnection between the scale of admissions to Canada and the near total absence of accountability. And without that understanding, we are condemned to repeat the same mistakes. Indeed, we are repeating them. The form may differ, but the substance remains the same: Canada is still not doing what it can, and must, to stand against antisemitism of the most vicious sort.

When it comes to something as fundamental as racial hatred, those not part of the solution are part of the problem. That principle applies directly to Canada's conduct in international forums, where antisemitism, often thinly disguised as anti-Zionism, has become normalized. The demonization of Israel, not for its policies but for its identity as a Jewish state, is a modern manifestation of the world's oldest hatred, and Canada has too often responded with silence, evasion, or polite equivocation.

Canada must begin reacting to the world as it is, not as it imagines or hopes it to be. In the face of coordinated campaigns to isolate and delegitimize the Jewish state, Canada has typically said the wrong thing or nothing at all, when what is urgently needed is a firm, principled response that names antisemitism for what it is and calls it out where it thrives.

Antisemitism, both at home and abroad, will not disappear simply because Canada's government pretends it is not there. On the contrary, it is a force that is gaining ground, fuelled by indifference, ideological distortion,

and the failure of governments to speak with clarity and courage. Canada must begin defending human rights principles vigorously at international entities, particularly those that relate to the Jewish people and their right to self-determination. That commitment must also be reflected at home in an honest reckoning with the past and a refusal to allow former failures to be buried.

Accepting the recommendations set out in this paper would be a necessary step – modest, perhaps, but essential – toward restoring integrity to Canada's policies and standing firmly against the normalization of antisemitism in all its forms. Anything less is a failure not just of diplomacy, but of moral responsibility. MLI

About the author

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Endnotes

1 Non-derogation means that when a new law is introduced, it must uphold – and not lessen – any pre-existing rights.

2 I was a member of the project team.

3 Note that the International Criminal Court (ICC) prosecutes individuals whereas the International Court of Justice (ICJ) decides disputes between states.

4 Non-derogation means that no exceptions are allowed.

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