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Submission:

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Subject: Canada's Advancement of a Two-State Solution

I provide this written submission at the invitation of the Standing Committee on Foreign Affairs and International Development, initiated on 25 October 2024, and subsequently reissued verbally on 5 November 2024, and in writing 8 November 2024 by the Honourable Member for Montarville Mr Stéphane Bergeron, Vice-Chair of the Standing Committee.

I write in my capacity as the UN Special Rapporteur on the situation of human rights in the Palestinian Territories occupied since 1967. With over 20 years of experience in the field of human rights, I was appointed to this position in May 2022. In addition, I am an Affiliate Scholar at the Institute for the Study of International Migration at Georgetown University, and a Senior Advisor on Migration and Forced Displacement for the think tank Arab Renaissance for Democracy and Development (ARDD), where I co-founded the Global Network on the Question of Palestine (GNQP), a coalition of renowned professional and scholars engaged in/on Israel/Palestine. I have published widely on the legal situation in Israel/Palestine; including *Palestinian Refugees in International Law* (Oxford University Press, 2020), which offers a comprehensive legal analysis of the situation of Palestinian refugees from its origins to modern-day reality, and more recently the analysis of Article 1D of the 1951 Genocide Convention for the new Commentary to the Convention by the Oxford University Press. Since 2017, I have lectured regularly on International Law and Forced Displacement, and the Question of Palestine, in European and Arab universities. Prior to this, I worked for a decade as a human rights expert for the United Nations, including the Office of the High Commissioner for Human Rights and the Relief and Work Agency for Palestine Refugees.

In my role as Special Rapporteur, I am mandated “to investigate Israel's violations of the principles and bases of international law, international humanitarian law and the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, in the Palestinian territories occupied by Israel since 1967, to receive

communications and report to the Human Rights Council and the General Assembly."[1] As an independent and impartial expert, I am required to investigate objectively all relevant facts, being equidistant to the violations of international law, and to advocate to bring an end to those violations. It is not my role to be equidistant between "the parties" to the violations.

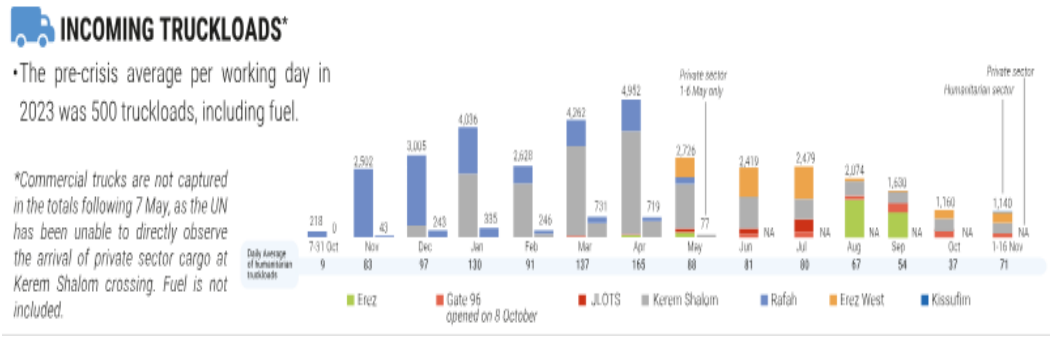
For decades the Question of Palestine has been largely treated as a chronic humanitarian crisis to be managed, a political crisis to be negotiated at most, or a matter of economic development void of realization of fundamental rights and freedoms, until such time as Israel and the Palestinian people are able to negotiate a resolution to their conflict.[2] This approach fails to recognise the starkly unequal power between Israel as the occupying Power, and Palestinians, as the decades-long disenfranchised occupied people. Also, this is entirely at odds with critical obligations of all states under international law. By not addressing Israel's structural impunity and anti-Palestinian violence, such a politicized approach has contributed to paving the way to the current catastrophe unfolding in Gaza, which is steadily metastasizing to the West Bank and the broader region, as I laid out in my most recent report to the United Nations General Assembly on 30 October 2024.[3] I wholeheartedly urge the Committee to consider with due care the facts, evidence and legal analysis that report includes, and which explains that the status quo cannot continue.

Highlighting the current context

To date, and in the violent context that has unfolded after October 2023, very conservative estimates suggest that more than 160,000 Palestinian people in Gaza have been killed, maimed, injured, buried under the rubble or are missing. Among these are 17,000 children, more than 700 of whom were babies, not yet able to walk. Accurate numbers of those who have or will die from starvation, disease and inability to access life-saving health care for cancer, heart disease, kidney conditions, and a multitude of other chronic conditions due to the calculated destruction of Gaza's entire health care system and the deliberate refusal by Israeli authorities to allow in desperately needed food, medication, medical supplies, water, fuel and other of the most basic necessities (see figure 1) will not be known for years to come. The Gaza Strip, a critical part of the State of Palestine, has been rendered an uninhabitable wasteland of rubble, sewage and decomposing bodies, where survivors hold on to life amid this widespread deprivation and disease. The Palestinians trapped there have experienced a level of violence not seen anywhere this century, they have nothing to return to, and it is all by design. Still Israel is intensifying its onslaught, particularly but not exclusively in the north of Gaza.

[1] In line with Commission on Human Rights resolution 1993/2A and Human Rights Council resolution 5/1.
[2] www.undocs.org/A/77/356, para 7.
[3] www.undocs.org/A/79/384.

Figure 1: Trucks of humanitarian aid permitted to enter Gaza since October 7, 2023[4]



Clear patterns of genocidal violence are also replicating from Gaza into the West Bank, including East Jerusalem. Since October 7, 2023, 765 Palestinians have been killed in the West Bank, ten times the previous 20-year average. This includes 167 children, a fifth of all children Israel has executed in the West Bank since the year 2000 when the UN started recording data. Palestinians from all walks of life, academics, journalists, doctors, human rights defenders, children, have been arbitrarily swept up and incarcerated in a campaign of mass arrests, and are now facing deprivation, torture and squalid conditions without charge or trial. Meanwhile, thousands have been displaced in the largest land grab in 30 years.

The reason why I underscore this reality is that this destruction reflects a long-term intentional, systematic, institutionalized and State-organized policy of forced displacement and replacement of the Palestinians by Israel, that has scaled up into genocidal violence given the impetus of events on October 7, 2023. This is what settler-colonial destruction looks like - to destroy - in order to replace. In this context, the totality of Israel's crimes and conduct, targeting the totality of the Palestinian people as such across the totality of the occupied territory, clearly illuminates an intent to destroy a people.[5] On this basis, I issued findings in March 2024 that there are reasonable grounds to believe Israel has committed three acts of genocide in Gaza.[6] I confirmed these findings in October 2024, when I identified a serious risk of genocide enlivening the duty to prevent in relation to Israeli conduct in the West Bank, including east Jerusalem.[7]

Besides my own two reports on genocide in Gaza, I note that in October and November 2023, 34 Independent UN Experts issued three separate warnings regarding the risk of genocide.[8] In January 2024, the International Court of Justice identified a plausible risk of irreparable harm to Palestinian rights under the Genocide Convention and issued provisional measures on three separate occasions.[9] In July 2024, the UN Special

[4] UN OCHA Occupied Palestinian Territories, 19 November 2024 https://www.ochaopt.org/content/reported-impact-snapshot-gaza-strip-19-november-2024
[5] www.undocs.org/A/79/384, para. 54-74.
[6] www.undocs.org/A/HRC/55/73, para 93.
[7] www.undocs.org/A/79/384, para. 81.
[8] https://www.un.org/unispal/document/gaza-is-running-out-of-time-un-experts-warn-demanding-a-ceasefire-to-prevent-genocide/; https://www.ohchr.org/en/press-releases/2023/11/gaza-un-experts-call-international-community-prevent-genocide-against
[9] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Order, 26 January 2024, I.C.J. Reports 2024; Order, 28 March 2024, I.C.J. Reports 2024; Request for the Modification of the Order of 28 March 2024, Order, 24 May 2024, I.C.J. Reports 2024.

Rapporteur on the Right to Food issued a report outlining the use of starvation as a tactic of genocide.[10] On 14 November 2024, the UN Special Committee to investigate Israeli practices published its report finding that "*policies and practices of Israel during the reporting period are consistent with the characteristics of genocide*."[11] Additionally, leading scholars of Holocaust and Genocide Studies have come to similar assessments, including esteemed Canadian scholar William Schabas,[12] and Israeli scholars Raz Segal,[13] Amos Goldberg,[14] and Omer Bartov.[15] Meanwhile, the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel has also issued two reports since October 7, 2023, setting out clear evidence of war crimes and crimes against humanity, indicating underlying widespread and systematic violations against the Palestinian people in the areas of starvation and siege, arbitrary detention and torture, and the attacks on health care especially.[16] On 21 November 2024, the International Criminal Court issued arrest warrants against Israeli Prime Minister, Benjamin Netanyahu, and former Defense Minister, Yoav Gallant, for war crimes and crimes against humanity concerning their actions to deny humanitarian aid in pursuit of a state policy of using starvation as a method of warfare.[17]

Self-determination cannot be failed by statehood-related discussions

This present situation is a direct consequence of a long-standing failure to address the root-causes: the sustained violation of the Palestinian right to self-determination in their land, that is integral to a project of settler-colonial erasure, and the forced taking of their land through military occupation and annexation. As I outlined in my first report to the UN General Assembly in September 2022, the external dimension of the right to self-determination, that is the right to a state, is a precondition to the enjoyment of other components of the right - political and economic. A government cannot function independently while remaining subjugated, without enjoying full jurisdiction over the whole of its territory, citizens and resources. Therefore, the right also implies the right to resist alien domination, subjugation and exploitation that may impede the fulfilment of this right. This was spelled out in Additional Protocol I to the Geneva Conventions, in which people's fight "against colonial domination and alien occupation and against racist régimes in the exercise of their right of self-determination" was recognized. Canada ratified Additional Protocol I in 1990. Liberation and decolonization struggles across history have shown how the right to exist as a people and the right to resist foreign rule and domination are interconnected.[18] While such resistance must be conducted in accordance with international law, including international humanitarian law, and I have

[10] www.undocs.org/A/79/171
[11] www.undocs.org/A/79/363, para 69.
[12] https://ccrjustice.org/sites/default/files/attach/2023/11/Declaration%20Expert%20William%20Schabas_w.pdf
[13] https://jewishcurrents.org/a-textbook-case-of-genocide
[14] https://thepalestineproject.medium.com/yes-it-is-genocide-634a07ea27d4 (original hebrew); https://jacobin.com/2024/07/amos-goldberg-genocide-gaza-israel; https://www.lemonde.fr/en/opinion/article/2024/10/29/amos-goldberg-what-is-happening-in-gaza-is-a-genocide-because-gaza-does-not-exist-anymore_6730881_23.html
[15] Before he changed his position: https://www.nytimes.com/2023/11/10/opinion/israel-gaza-genocide-war.html; now https://www.theguardian.com/world/article/2024/aug/13/israel-gaza-historian-omer-bartov
[16] www.undocs.org/A/HRC/56/26; www.undocs.org/A/79/232
[17] https://www.icc-cpi.int/news/situation-state-palestine-icc-pre-trial-chamber-i-rejects-state-israels-challenges
[18] www.undocs.org/A/77/356, para 19.

repeatedly condemned the possible war crimes and crimes against humanity committed on October 7, as the UN Secretary General Antonio Guterres himself noted, those events did not happen in a vacuum.[19]

The landmark Advisory Opinion issued in July 2024 by the International Court of Justice found that Israel's "security concerns" could not be used to justify its prolonged military occupation, which the Court found to be illegal in its entirety.[20] Confirming the settler-colonial nature of Israeli conduct in all but name, the illegality of Israel's occupation was established on the basis that Israel's policies and practices in the occupied Palestinian territory constitute:

(a) an assertion of sovereignty over and annexation of certain parts of the territory, which is a violation of the prohibition of the acquisition of territory by force; and
(b) constitute an obstruction to the exercise by the Palestinian people of its right to self-determination that amounts to a prolonged deprivation in breach of this fundamental right.

The decision of the Court confirms the "inalienable right" of the Palestinian people to self-determination, as already affirmed by the UN General Assembly on multiple occasions. In essence, the right to self-determination - a cardinal principle of the United Nations system and recognised as a universal right as Common article 1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) - is the right to live and grow as a people within a political community of its own, usually an independent State. The inviolability of the right to self-determination stems from its *erga omnes* and *jus cogens* character. *Erga omnes* means that all States have an inherent interest in the realization of and obligation to respect the right to self-determination, owed by and to the international community as a whole. Such an obligation exists not only in relation "to their own peoples but vis-à-vis all peoples which have […] been deprived of the possibility of exercising their right to self-determination.". This arises out of the *jus cogens* or peremptory norm character of the right to self-determination, which cannot be violated or derogated (except by another peremptory norm).[21]

Under the Law on State Responsibility, the breach of an international obligation by a State gives rise to an internationally wrongful act, the commission of which requires first and foremost the State responsible to immediately cease the illegal act, ensure non-repetition and provide reparation for the damage done. It follows that a breach of international law should not be subjected to negotiations, as this would legitimize what is illegal. This has now been confirmed by the International Court of Justice in its Advisory Opinion, paragraph [257]:

> "The Court considers that the existence of the Palestinian people's right to self-determination cannot be subject to conditions on the part of the occupying Power, in view of its character as an inalienable right."

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[19] https://www.un.org/sg/en/content/sg/speeches/2023-10-24/secretary-generals-remarks-the-security-council-the-middle-east%C2%A0

[20] *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion,* 19 July 2024, I.C.J. Reports 2024, para. 155, 205, 254 and 261-264.

[21] www.undocs.org/A/77/356, para 23.

The Court has also made it abundantly clear that Palestinian people's right to self-determination is not to be the subject of negotiations around issues between the parties, including statehood.[22] The right of the Palestinian people to external self-determination comes before political negotiations for a peaceful settlement. The legal obligation on Israel is to withdraw from the occupied territories, including dismantling all the settlements and associated regime, to allow the return of all those displaced since 1967, and reparations for any harm and damage suffered. For other states, the obligation is not to recognise as lawful this illegality, and to not render aid or assistance to the continuation of this situation of illegality, lest third states be complicit with the underlying breaches of international law.

I acknowledge that the Canadian Government has upheld its political commitment to the two-state solution for decades. In this context, the question of recognition of Palestinian statehood is one of political coherence and rhetorical consistency. In respect of the State of Palestine, indeed the State itself does exist and is recognised by 146 member states of the United Nations, more than 75 percent of the international community. It is recalled, "recognition" is not *per se* a determining criterion for the existence of a state. The Montevideo Convention sets out the four criteria as (a) permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with other states.[23] Therefore, recognition is merely declaratory and needed to determine the establishment of diplomatic relations, including the opening of embassies in states' respective territories.

I conclude that recognition of the State of Palestine would be an act of basic compliance with the *erga omnes* obligations of Canada, and an act of coherence and integrity. Recognition of the State of Palestine, in the face of the existential threat the Palestinians people are exposed to, is a matter of integrity and compliance with international law. Given the undeniably egregious violations of Palestinian rights for decades, exercising the right to self-determination in the form of a politically independent State in all of the occupied Palestinian territory would be a minimum requirement of justice for the Palestinian people. Therefore, in light of the Advisory Opinion, it is arguable that the failure to recognise the state casts a shadow on Canada's enunciated commitment for a two-state solution if it is to continue to make recognition of the State of Palestine conditional upon the realization of self-determination. This is particularly so when that denial is prevented by the very oppression of the State of Israel that Canada so staunchly and unconditionally supports. This incoherence equates with the unlawful denial of the right of the Palestinian people to external self-determination, and as such places Canada in violation of its own obligations under the international law including the Law of State Responsibility.

This must also be followed by a serious commitment to fully resolve the Question of Palestine in line with international law: that consist of a three-pronged approach including (1) an end of the genocide immediately, (2) end of the occupation by September 2025 in accordance with UN General Assembly Resolution A/RES/ES-10/24,[24] and thereafter (3) an end of the apartheid regime.

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[22] For more info, see *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion*, 19 July 2024, I.C.J. Reports 2024, para. 230, 233 and 243.

[23] *Convention on Rights and Duties of States adopted by the Seventh International Conference of American States*. Signed at Montevideo, December 26th, 1933.

[24] www.undocs.org/A/RES/ES-10/24

Only through the implementation of these three actions will Palestinians and Israelis be able to live in freedom and dignity “between the River and the Sea” and be in the position to determine the form of state/s in which they wish to live, such that the foundational principle of self-determination will start to be properly respected.



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