

CANADIAN DIMENSION

States of exception

Is it ‘antisemitic’ to accuse Israel of genocide in Gaza?

[Derek Sayer](#) / August 28, 2024 / 16 min read

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Stripped, blindfolded, and bound Palestinian civilians are taken prisoner and ordered into a line by Israeli occupation forces in Gaza in December 2023. Photo from a social media post by an Israeli soldier.

“Bad men need nothing more to compass their ends, than that good men should look on and do nothing.”

—John Stuart Mill

Supporters of Israel’s current “war” against Gaza often ask why critics don’t show equal concern for the victims of no less horrific conflicts elsewhere.

The implication, which is spelled out in the Holocaust Remembrance Alliance (IHRA) “[working definition](#)” of antisemitism, is that while “criticism of Israel similar to that leveled against any other country cannot be regarded as antisemitic,” we are guilty of antisemitism if we single out Israel for criticism while remaining silent on comparable atrocities in Sudan, or Myanmar, or Yemen.

While the IHRA definition has been accepted by many Western governments ([including Canada](#)), it has been challenged as “unclear in key respects and widely open to different interpretations” by 350 leading international scholars in the fields of Holocaust history, Jewish studies, and Middle East studies who came together to sign the alternative [Jerusalem Declaration on Antisemitism](#) (JDA) in 2020.

Pointing out that “The IHRA Definition includes 11 ‘examples’ of antisemitism, 7 of which focus on the State of Israel,” the JDA offers an alternative set of guidelines and examples. The authors caution:

In general, when applying the guidelines each should be read in the light of the others and always with a view to context. Context can include the intention behind an utterance, or a pattern of speech over time, or even the identity of the speaker, especially when the subject is Israel or Zionism. So, for example, hostility to Israel could be an expression of an antisemitic animus, or it could be a reaction to a human rights violation, or it could be the emotion that a Palestinian person feels on account of their experience at the hands of the State. In short, judgement and sensitivity are needed in applying these guidelines to concrete situations.

Since October 7 I have [published](#) more on the Gaza genocide—I choose the word advisedly, for reasons that have recently been eloquently [spelled out](#) by former Israeli Defense Forces (IDF) soldier and world-renowned historian of genocide Omer Bartov—than I have ever published on *any* contemporary conflict in my 73 years on this planet, which have seen genocides in Bangladesh, East Timor, Cambodia, Somalia, Bosnia, Rwanda, Congo, and elsewhere, in many cases resulting in more deaths. This is an exception to my usual writing. As a rule, I seldom comment on current affairs.

Does this make me an antisemite?

Or is there something truly exceptional in *the Gaza situation itself* that calls for exceptional attention—and action?

Self-defence?

What has been going on in Gaza for almost a year now is not a conventional war between states. Indeed, to describe it as a war at all is misleading.

According to the International Court of Justice (ICJ) Advisory Opinion of July 19 on “Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory,” Gaza remains an occupied Palestinian territory because Israel:

continue[s] to exercise, certain key elements of authority ... including control of the land, sea and air borders, restrictions on movement of people and goods, collection of import and export taxes, and military control over the buffer zone, despite the withdrawal of its military presence in 2005.

“This is even more so,” the judgment pointedly adds, “since October 7, 2023.”

What triggered Israel’s latest assault on Gaza was thus not an attack by a foreign state, like Russia’s assault on Ukraine or Israel’s 1973 Yom Kippur war, but an uprising by an occupied populace exercising a right of armed resistance that is [recognized in international law](#).

This does not mean that Hamas committed no war crimes on October 7, but that *Israel’s retaliation cannot be construed as self-defence*.

A state cannot defend itself against a population whose land, per the ICJ, it has been illegally occupying for the last 67 years. This is not a war but a policing operation, albeit one of exceptional savagery.

October 7 may have seen “the worst horrors perpetrated on Jews since the Holocaust,” as Benjamin Netanyahu [admonished](#) Justin Trudeau when the latter questioned Israel’s “killing of women, of children, of babies” in the Gaza Strip. But contrary to its leaders’ frequent comparisons with the Holocaust, Israel is not facing an existential threat.

Hamas’s [founding covenant](#) promised “to raise the banner of Allah over every inch of Palestine” by Holy War—a statement that may be, but need not be interpreted as threatening a genocide of the Jewish *population* rather than elimination of an Israeli [state](#) in which “the right to exercise national self-determination ... is unique to the Jewish people.” But Hamas is no more in a position to achieve this aim than it was in 1988.

It has no nukes, nor fighter planes, nor warships, nor tanks, nor high-tech drones and bombs. October 7 was launched on the back of hang-gliders, motorbikes, bulldozers, and the kind of assault rifles Americans can buy at Walmart.

In any case, Hamas [revised its covenant in 2017](#) to accept a two-state solution, which has supposedly been the cornerstone of Western foreign policy since the 1993-5 Oslo Accords.

Managing terrorism

The *total* [death toll](#) on October 7—including those killed by IDF [friendly fire](#)—was 1,139 people, and one-third of the Israeli victims were not civilians, but members of the security forces. Horrific as the Hamas massacres were, this is paltry compared with the [slaughter and destruction](#) Israel has wreaked upon Gaza since.

The figure for *known deaths* in Gaza from Israeli military action now exceeds 40,000, while a recent article in the Lancet conservatively estimates the likely cumulative death toll from all war-related causes, including famine and disease, at upward of 186,000.

There was never any *military* necessity for Israel to cause so many civilian casualties. Hamas’s future threat could have been handled as Spanish governments did the Basque separatist

terrorists of ETA or British governments did the IRA, by a combination of military containment and political engagement.

Instead, Israel consciously and deliberately chose the genocidal Amalek option. Sending his soldiers off to war, Benjamin Netanyahu [recalled](#) an episode from the Bible:

“This is what the Lord Almighty says,” the prophet Samuel tells Saul. “I will punish the Amalekites for what they did to Israel when they waylaid them as they came up from Egypt. Now go, attack the Amalekites and totally destroy all that belongs to them. Do not spare them; put to death men and women, children and infants, cattle and sheep, camels and donkeys.”

According to official Israeli figures, 4,688 people were [killed](#) in “Palestinian terrorist attacks” since 1948, *including* the October 7 victims. For comparison, around 3,500 people died in the Irish Troubles between 1969 and 1998—meaning that the number of deaths from terrorism per annum in the Troubles was almost double that of Israel.

Despite this, neither Margaret Thatcher—who narrowly escaped death when the IRA [bombed](#) the Grand Hotel in Brighton in 1984 during the Conservative Party annual conference, killing five people and injuring 34 others—nor any other British prime minister responded by bombing West Belfast and Derry back into the Stone Age, even if the IRA was as embedded in the Catholic civilian population as Hamas is in Gaza.

Nor did Northern Ireland’s British occupiers cut off electricity, water, food, and fuel to Republican areas, as Israeli Defence Minister Yoav Gallant [promised](#) he would do to Gaza’s Palestinian “human animals” on October 9 (a promise Israel largely fulfilled).

The IRA’s indiscriminate pub bombings (and “kneecapping” of suspected informants and collaborators) were appalling too. But I suggest that had the British or Spanish authorities acted like Netanyahu or Gallant toward Gaza, the reaction among other Western governments—not least, the US government—would have been very different.

As a response to a terrorist attack from an occupied territory, Israel’s Gaza campaign is [wholly exceptional](#), at least among Western democracies that claim to be governed by international law—the club to which Israel repeatedly and proudly claims to belong, and on whose behalf, [Netanyahu frequently says](#), it is fighting.

Israel exists in a state of exception, to use the German jurist Carl Schmitt’s concept, in which the rule of law is suspended and the normal rules don’t apply.

Tooling genocide

Although a [handful of countries](#) have broken ranks as the conflict has ground on, the majority of Western states, led by the US, the UK, and Germany, have unconditionally supported Israel irrespective of the ever-rising death toll and destruction in Gaza.

Such unanimity is exceptional. Under President Eisenhower, the US [condemned](#) the British, French, and Israeli 1956 invasion of Suez, while Canada, like France and Germany, refused to participate in the US-led “coalition of the willing” that invaded Iraq in 2003.

As remarkably, this consensus extends across the mainstream democratic political spectrum, with so-called centre-left governments—Joe Biden and Kamala Harris’s Democrats in the US, Keir Starmer’s Labour Party in the UK, Olaf Scholz’s Social Democrats in Germany, Anthony Albanese’s Labour Party in Australia, Justin Trudeau’s Liberals in Canada—being as [“ironclad”](#) in their support for Israel (and as [McCarthyite](#) in their tarring of Israel’s critics as “antisemitic”) as their right-wing counterparts.

This support includes massive provision of arms, without which Israel could not continue its genocide. The US is Israel’s [largest supplier of armaments](#) (69 percent in 2019-23), followed by Germany (30 percent in 2019-23).

On August 13 the Biden administration [approved](#) a further \$20 billion in weapons sales to Israel, including 50 F-15 fighter jets, 30 medium range air-to-air missiles, tactical vehicles, 32,739 tank cartridges of 120-mm rounds and 50,400 120-mm high-explosive cartridges for mortars.

The US’s one and only brief [suspension](#) of a munitions shipment (of 1,800 2,000-pound and 1,700 500-pound bombs) was lifted after Biden [quietly forgot his threat](#) to withhold further supplies of offensive weapons if Israel invaded Rafah.

Genocide Joe has now thankfully bowed out, but his anointed successor Kamala Harris has [let it be known](#) that her administration will not countenance an arms embargo on Israel either.

To be sure that the world got the message, no Palestinian American was [permitted to speak](#) on the main stage at the recent Democratic National Convention in Chicago—despite the risks of alienating Arab American voters in swing states like Michigan, which the Democrats need to win in November to hold the White House.

Canada has supposedly officially halted its arms sales to Israel, though it has now emerged that \$60 million of made in Québec military hardware is [still destined](#) for murdering Palestinian children as part of the US\$20 billion package.

Despite pro forma calls for a ceasefire by their foreign ministers, Germany and the UK are still providing Tel Aviv with arms. Having repeatedly called upon the previous Tory government to make public the legal advice it had received on doing so, the new British Foreign Secretary David Lammy has so far [resisted calls](#) to publish the advice himself.

At best, Western governmental representatives have criticized this or that individual IDF action or Israeli politician’s inflammatory statement or expressed [“heartbreak”](#) at the Palestinian people’s “suffering”—as if it were the result of an earthquake or tsunami rather than a war in which Western governments themselves are deeply implicated.

These mild admonishments are invariably prefaced (and thereby [framed](#)) by affirmations of Israel’s “right to defend itself” and ritual invocation of the horrors of October 7, as if these could somehow mitigate the evils perpetrated by Israel since.



US Defense Secretary Lloyd Austin meeting with Israeli Prime Minister Benjamin Netanyahu and Israeli Defense Minister Yoav Gallant in Tel Aviv, October 13, 2023. Photo by US Department of Defense/[Wikimedia Commons](#).

Diplomatic cover

Recent calls for a ceasefire from the [US](#), [UK](#), and the [settler-colony troika](#) of Canada, Australia and New Zealand are long on pieties and short on proposals that might actually achieve the purported objective—like UN Security Council mandated sanctions on Israel or an embargo on the supply of arms.

David Lammy, for example, issued a statement on July 14 that began: “The death and destruction in Gaza is intolerable. This war must end now, with an immediate ceasefire, complied with by both sides.” He continued:

I am meeting with Israeli and Palestinian leaders to stress the UK’s ambition and commitment to play its full diplomatic role in securing a ceasefire deal and creating the space for a credible and irreversible pathway towards a two-state solution. The world needs a safe and secure Israel alongside a viable and sovereign Palestinian state.

Nothing came of Lammy’s Middle East trip. Netanyahu [refused to meet](#) with the British foreign

secretary, following the incoming Labour government's decision to withdraw its predecessor's objection to the International Criminal Court (ICC) chief prosecutor's pursuit of an arrest warrant for Netanyahu and the Israeli defence minister.

Since October 7 the US and its allies have consistently blocked any effective diplomatic initiatives to end the war through the international body that is best placed to do so, the United Nations. This sharply contrasts with America's unsuccessful attempts to use the UN as a cloak for its unprovoked invasion of Iraq in 2003.

Having vetoed two earlier UNSC attempts to mandate a ceasefire, the US finally abstained on [resolution 2728](#) demanding "an immediate ceasefire for the month of Ramadan, the immediate and unconditional release of hostages and the urgent need to expand the flow of aid into Gaza," allowing it to pass on March 25 on a vote of 14-0.

In a press conference immediately afterwards, US State Department spokesman Max Miller sought to undermine the resolution by repeatedly [denying](#) that it was binding.

Israel predictably ignored this resolution, as it has since ignored [resolution 2735](#), which was presented by the US and passed unanimously on June 10 with one abstention (Russia). This endorses the three-stage US "roadmap to an enduring ceasefire and the release of all hostages" that Joe Biden [unveiled](#) in a televised address to the nation on May 31 as "a comprehensive new proposal" which, he said, "Israel has now offered."

The ball was now firmly in Hamas's court, US representative Linda Thomas-Greenfield assured the Security Council:

"The only way to bring about a durable end to this war" is a ceasefire deal between Israel and Hamas, she stressed, adding that Israel has agreed to a comprehensive deal on the table, which is nearly identical to Hamas' own proposal. "Now we are all waiting for Hamas to agree to the ceasefire deal it claims to want, but we cannot allow to wait and wait," she stated, noting that "with every passing day, needless suffering continues."

Either Biden and Thomas-Greenfield were lying or the Israeli government was stringing them along.

The day after Biden's TV address, senior Hamas official Sami Abu Zuhri [told Reuters](#) that "Hamas accepts a UN Security Council ceasefire resolution and is ready to negotiate over the details," adding that "it was up to Washington to ensure that Israel abides by it."

Benjamin Netanyahu meantime [declared](#), contrary to Biden, that Israel's "conditions for ending the war have not changed":

The destruction of Hamas' military and governing capabilities, the freeing of all hostages and ensuring that Gaza no longer poses a threat to Israel ... The notion that Israel will agree to a permanent ceasefire before these conditions are fulfilled is a non-starter.

Negotiations have continued in Doha and Cairo, but every time a breakthrough seems in sight Israel moves the goal posts and comes up with new conditions it knows are likely to be unacceptable to Hamas. The latest have included continuing IDF [military occupation](#) of the Philadelphi Corridor on the Gaza-Egypt border and the newly-bulldozed Netzarim corridor that now divides the north and south of the Gaza Strip.

Crucially for Hamas, Netanyahu has repeatedly refused to commit to what Biden, in his May 31 address, [assured](#) the American people would be the outcome of the process—namely, that in phase two of the proposal,

Israeli forces would withdraw from Gaza; and as long as Hamas lives up to its commitments, a temporary ceasefire would become, in the words of ... the Israeli proposal, “the cessation of hostilities permanently.”

Notwithstanding these repeated attempts to derail the talks—not to mention Israel’s assassination of Hamas’s political leader Ismail Haniyeh, the chief negotiator in the Cairo ceasefire talks, in Tehran on July 31—the US continues to [blame](#) the failure to reach an agreement on Hamas.

These are not good faith negotiations. They are political theatre.

Legal aid

On January 26, in response to South Africa’s request that the ICJ impose provisional measures “preserving ... the right of the Palestinians in Gaza to be protected from acts of genocide and related prohibited acts,” the court ruled that there was a “plausible” risk of genocide in Gaza. It required Israel, *inter alia*, to:

take all measures within its power to prevent ... (a) killing members of the group [Palestinians]; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; and (d) imposing measures intended to prevent births within the group.

A US state department spokesperson dismissed the ICJ findings (and the extensive and compelling evidence on which they were based), with the [blithe assertion](#): “We continue to believe that allegations of genocide are unfounded.”

This is typical of US attempts to undermine the authority and discredit the judgments of the world’s two highest courts.

While paying lip-service to the ICJ’s “work in upholding the international rules-based order,” Canada [made clear](#) that “Our support for the ICJ does not mean that we accept the premise of the case brought by South Africa.” As ever, Mélanie Joly’s statement, which [conspicuously ignored](#) the question of genocide, went on to affirm “Israel’s right to exist and defend itself” and condemn “Hamas’s brutal attacks of October 7.”

On May 20, Chief Prosecutor Karim Khan [asked the ICC](#) to issue arrest warrants for Israeli Prime Minister Benjamin Netanyahu and Defence Minister Yoav Gallant for war crimes and crimes against humanity that included “starvation of civilians as a method of warfare,” “wilfully causing great suffering, or serious injury to body or health,” “wilful killing ... or murder as a war crime,” “intentionally directing attacks against a civilian population,” “extermination,” “persecution,” and “other inhumane acts.”

Khan concurrently requested warrants for three Hamas leaders for crimes including “murder,” “taking hostages,” “rape and other acts of sexual violence,” “torture,” “cruel treatment,” and “outrages upon personal dignity.” Dispensing its own brand of summary justice, Israel has since assassinated two of them, Mohammed Deif and Ismail Haniyeh.

Predictably and ludicrously, Israeli politicians branded the ICC, as they [previously had](#) the ICJ, as “antisemitic.”

“We haven’t seen such a show of hypocrisy and hatred of Jews like that of the Hague Tribunal since Nazi propaganda,” [proclaimed](#) far-right Finance Minister Bezalel Smotrich. This is a man who recently [complained to a conference](#) in support of Jewish settlements that:

It’s not possible in today’s global reality to manage a war—no one will allow us to starve two million people, even though that might be just and moral until they return the hostages.

By ignoring the rulings of its own highest international courts, the West, led by the US, is allowing Israel to do exactly that.

Ignoring the substance of Khan’s charges, many Western governments—this time France and Germany were more circumspect—responded to his request for arrest warrants for Israeli leaders with outrage. Urged on by the US, Rishi Sunak’s UK government [launched proceedings](#) at the ICC challenging its jurisdiction in Gaza.

Joe Biden issued a White House [statement](#) that read, in full:

The ICC prosecutor’s application for arrest warrants against Israeli leaders is outrageous. And let me be clear: whatever this prosecutor might imply, there is no equivalence—none—between Israel and Hamas. We will always stand with Israel against threats to its security.

Secretary of State Antony Blinken [wrote that](#):

We reject the Prosecutor’s equivalence of Israel with Hamas. It is shameful. Hamas is a brutal terrorist organization that carried out the worst massacre of Jews since the Holocaust and is still holding dozens of innocent people hostage, including Americans.

On June 4, the US House of Representatives [passed a bill](#) “To impose sanctions with respect to

the International Criminal Court engaged in any effort to investigate, arrest, detain, or prosecute any protected person of the United States and its allies.”

This time Mélanie Joly refrained from any official Canadian comment beyond noting that “All parties must make sure that they abide by international law.” But Justin Trudeau, too, found “the sense of an equivalency between the democratically elected leaders of Israel and the bloodthirsty terrorists that lead up Hamas” “[troubling](#).”

For these Western leaders, what was outrageous or troubling was Kamil Khan’s even-handed focus on the *crimes committed*, irrespective of the status of their perpetrators.

What is more troubling is the unspoken assumption that elected representatives of “democracies” deserve different treatment to those whom the West has branded as terrorists—even if *their crimes are the same (or worse)*. Do I need to remind today’s politicians that Adolf Hitler was democratically elected as German Chancellor too?

In a [press release](#) summarizing its advisory opinion of July 19 on “Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory,” the ICJ unambiguously spelled out the obligations of states regarding Israel’s behaviour in the occupied Palestinian territories, including Gaza:

all States are under an obligation not to recognize as legal the situation arising from the unlawful presence of the State of Israel in the Occupied Palestinian Territory and not to render aid or assistance in maintaining the situation created by the continued presence of the State of Israel in the Occupied Palestinian Territory.

The West’s continuing military and diplomatic support of Israeli action in Gaza and the other occupied Palestinian territories, in short, has been and continues to be in flagrant violation of international law.

Israel again inhabits that state of exception, beyond and outside the law, rather like the absolute immunity the US Supreme Court has recently granted Donald Trump.

States of exception

If Israel inhabits one state of exception, Palestinians inhabit another—and the two are mutually complementary.

The Palestinian state of exception is one of perpetual homelessness, hunger, disease, and violence. It is policed by [IDF snipers](#) who shoot Palestinian children in the head, the [torturers and rapists](#) of [Sde Teiman](#) and other Israeli detention camps and prisons, and the depraved young soldiers of “[the most moral army in the world](#)” who post videos of themselves prancing around in [underwear](#) stolen from displaced—or dead—Palestinian women on social media.

It is Israel’s state of exception, guaranteed by the West, that enables this [reduction of Palestinian existence to bare life](#).

So to return to the question with which I began: is it antisemitic to single out Israel for criticism over Gaza while remaining silent on comparable atrocities elsewhere?

I do not think I—or the thousands of others across the West who are appalled by the genocide in Gaza—have suddenly morphed into antisemites. We refuse, rather, to make Palestinians an *exception to human rights* or Israelis an *exception to human obligations*.

My short answer to the question “Why Gaza?” and not Sudan, Myanmar, or Yemen—or East Timor, Bosnia, or Rwanda—is that inadequate as their responses to other atrocities may often have been, Western governments (and other institutions, like corporations, the mainstream media, or [universities](#)) were rarely actively complicit in perpetrating these horrors. Gaza is different. We are up to our necks in it.

I refuse to turn away and pretend the genocide in Gaza is a quarrel in a faraway country between people of whom we know nothing.

As a citizen of two Western democracies, Canada and the UK, I want to say, loud and clear: ***not in my name***.

Derek Sayer is professor emeritus at the University of Alberta and a Fellow of the Royal Society of Canada. His most recent book, [Postcards from Absurdistan: Prague at the End of History](#), won the 2023 Canadian Jewish Literary Award for Scholarship and was a finalist for the Association of American Publishers PROSE Award in European History.