



Yavar Hameed
B.A., M.A., LL.B.

yhameed@hameedlaw.ca
T: 613-232-2688
F: 613-232-2680

43 Rue Florence St
Ottawa, Ontario
K2P 0W6

www.hameedlaw.ca

URGENT

VIA EMAIL

November 23, 2023

The Right Honourable Justin Trudeau, P.C., M.P.
Prime Minister of Canada

The Honourable Mélanie Joly, P.C., M.P.
Minister of Foreign Affairs

The Honourable Arif Virani
Attorney General

Michael Robert Duheme
Commissioner of RCMP

Kathleen Roussel
Director of Public Prosecution

Dear Prime Minister, Minister of Foreign Affairs, Attorney General, RCMP
Commissioner, and Director of Public Prosecution:

**RE: Notice of intention to prosecute Canadian governmental and
military officials for aiding and abetting war crimes and crimes against
humanity committed by Israel in the occupied Palestinian territory**

We act for a collective of Canadian families, individuals, and permanent residents with relatives in Gaza who have been killed, injured, or affected by the Israeli army after the 7th of October 2023 or who continue to be stranded in the occupied Palestinian territory (West Bank, Gaza and East Jerusalem). The purpose of this correspondence is to provide notice to you and to the Canadian government of our clients' intention to initiate or participate in criminal complaints and civil action, domestically or internationally, in order to hold accountable any Canadian public and military officials, in Canada or abroad, where there is evidence that they have participated in the perpetration of war crimes, crimes against humanity or genocide by Israel in the occupied Palestinian territory on or after the 7th of October, 2023, either by aiding or abetting or otherwise contributing, supporting, encouraging, or providing material, political, intelligence or diplomatic assistance for the commission of such crimes. The basis of this notice is set out below.

The instant notice is supported by private lawyers, Canadian legal organizations and other civil society groups.

Prior Notice of Israel's Crimes

Throughout the years and in particular during previous wars on Gaza, Canadian legal scholars and civil society groups have denounced Canada's silence and failure to demand accountability for Israel's war crimes, crimes against humanity and other violations of international human rights law.¹ They have also demanded that Canada recognize that Israel is perpetrating the international crime of apartheid against the Palestinian people.²

For decades, the Canadian government has recognized explicitly that Israel's settlements in occupied territory violate the Fourth Geneva Convention, yet Canada's government effectively encourages Israel's settlement policy by conferring preferential tariff treatment on products made in those illegal settlements and exported to Canada. On November 9th, Canada was also among only 7 nations to vote against a UN General Assembly Resolution condemning Israel's settlement activity in the occupied Palestinian territory, including East Jerusalem, and in the occupied Syrian Golan heights.³

Today, after more than a month of relentless and disproportionate military attacks on Gaza and its civilian population in which more than 11,000 Palestinians have been killed – the vast majority of them children, women and elderly – and more than 27,000 Palestinians have been injured, and approximately 1.4 million were displaced we are obliged to denounce what may constitute criminal acts by a number of Canadian public and military officials, for endorsing, supporting and facilitating Israel's war crimes, crimes against humanity and genocide against Palestinians.

Canada's Awareness of Israel's International Law Violations

The Canadian government and public officials are aware of Israel's violations of international law, including international criminal law, international human rights law and international humanitarian law, and of Israel's explicit intentions to perpetrate further crimes against Palestinians. They have nevertheless given political and diplomatic cover to Israel to continue perpetrating these

¹ See for instance the letter signed by Canadian law professors in 2021 calling the Canadian Government to demand that Israel government reverses its decision criminalizing Palestinian human rights organizations:
<https://docs.google.com/forms/d/e/1FAIpQLSe97AQPHTUypDSS1r9BQqQJdRiMehm0K3-gWhK3fkMzuENA/viewform?pli=1>

² [Israel's apartheid against Palestinians - Amnesty International, A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution | HRW.](#)

³ [Fourth Committee Approves Six Draft Resolutions, All by Recorded Vote, Addressing Middle East Situation and Palestinian Question | UN Press.](#)

crimes, while providing financial, military and intelligence support to Israeli authorities.

We note, in particular, the following:

1. Clear evidence and knowledge of the commission of war crimes and crimes against humanity

Canadian officials cannot feign ignorance of the commission of war crimes and other serious breaches of international humanitarian law by Israel in the West Bank and the Gaza Strip on and after the 7th of October 2023. These crimes have not only been denounced by well-established human rights organizations and officials within the United Nations on multiple occasions, but the Israeli authorities have also publicly announced some of them. Israeli crimes include the following:

- cutting off electricity, water, food, fuel, and telecommunications to the entire civil population of Gaza which is a form of collective punishment prohibited under the Geneva conventions;⁴
- the forced transfer of populations within occupied territory as announced and imposed by Israel on October 13th;⁵
- the targeting of protected objects including mosques, schools, hospitals, humanitarian corridors, and UN installations;⁶
- intentionally directing attacks against the civilian population as such and intentionally launching attacks with knowledge that they will cause disproportionate harm to civilians or civilians objects;⁷

⁴ See, for example, Israel/OPT: Israel must lift illegal and inhumane blockade on Gaza as power plant runs out of fuel, Amnesty International, 12 October 2023:

<https://www.amnesty.org/en/latest/news/2023/10/israel-opt-israel-must-lift-illegal-and-inhumane-blockade-on-gaza-as-power-plant-runs-out-of-fuel/>

⁵ 'It's impossible': A million people have 24 hours to flee northern Gaza, CBC News, 13 October 2023: <https://www.cbc.ca/player/play/2272616003847>

See as well United Nations Human Rights Office of the High Commissioner <https://www.ohchr.org/en/press-releases/2023/10/israel-must-rescind-evacuation-order-northern-gaza-and-comply-international>

⁶ See the Norwegian Refugee Council, 13th of October 2023, <https://www.nrc.no/perspectives/2023/10-things-you-should-know-about-the-humanitarian-situation-in-gaza/>

⁷ See, for example, Protection Approaches, Statement on preventing mass atrocity crimes in Israel & in Gaza, 13 October 2023: <https://protectionapproaches.org/news/f/statement-on-preventing-mass-atrocity-crimes-in-israel-in-gaza>

See, for example, "In Gaza, entire families destroyed by Israeli bombing: 'My son, my niece and another child are still under the rubble'", Clothilde Mraffko, Le Monde, 12 October 2023: https://www.lemonde.fr/en/international/article/2023/10/12/in-gaza-entire-families-destroyed-by-israeli-bombing-my-son-my-niece-and-another-child-are-still-under-the-rubble_6167251_4.html

- willfully impeding the access to humanitarian aid and health assistance for the civilian population caught in armed conflict;⁸
- the use of prohibited weapons in densely populated civilian areas, such as white phosphorous.⁹

These crimes have directly affected Canadian nationals in Gaza and their families in Canada.

2. Clear evidence of intent to commit international crimes by Israeli authorities

Canadian officials have been made aware of Israel's intention to commit international crimes, collective punishment, other war crimes, and genocide. Israeli officials have publicized their intention to impose collective punishment on the population of Gaza by cutting off electricity, water, food, fuel, and telecommunications. They have impeded access to humanitarian aid and medical assistance. Leaked documents have also revealed plans to forcibly transfer Gaza's entire population to the Egyptian Sinai, in clear violation of international law.¹⁰ These war crimes and crimes against humanity have been accompanied by genocidal statements uttered by Israeli officials since the beginning of their attacks on Gaza. Below are a few of these statements:

- October 8th, Israeli Prime Minister Benjamin Netanyahu stated in a TV speech: "We will turn Gaza into an island of ruins";
- October 29th, Benjamin Netanyahu, cited 1 Samuel 15:3 of the Holy Bible by saying "Remember what Amalek has done to you". This expression refers to the following provision in the bible: "Now go and smite Amalek, and utterly destroy all that they have; do not spare them, but kill both man and woman, infant and suckling, ox and sheep, camel and ass." where action was taken in response to an attack on Jews. Netanyahu cited this provision as a template for Israel's intent in Gaza.
- October 16, Yitzhak Herzog, the Israeli President, declared in a press conference: "it is an entire nation who is responsible. This rhetoric about civilians supposedly not being involved is absolutely untrue (...) and we will fight until we break their backs";

⁸ See Human Rights Watch, 23rd of October 2023, <https://www.nrc.no/perspectives/2023/10-things-you-should-know-about-the-humanitarian-situation-in-gaza/>

⁹ See, for example, Israel: White Phosphorus Used in Gaza, Lebanon Use in Populated Areas Poses Grave Risks to Civilians, Human Rights Watch, 12 October 2023: <https://www.hrw.org/news/2023/10/12/israel-white-phosphorus-used-gaza-lebanon>

¹⁰ [Leaked document fuels concern Israel plans to push Palestinians from Gaza into Egypt | CBC News](#)

- October 9th, Israel's Defense Minister, Yoav Gallant: "There will be no electricity, no food, no fuel, everything is closed. We are fighting human animals and we will act accordingly";
- October 10th, Daniel Hagary, the Israeli army spokesperson, stated in the Israeli newspaper Haaretz: "We are dropping hundreds of tons of bombs on Gaza. The focus is on destruction not accuracy";
- October 7th, Israeli politician, Ariel Kallner, a member of Likud, the party of the Israeli Prime Minister, publicly stated on Twitter (now X): "Now there is only one goal: Nakba (expulsion of Palestinians). A Nakba in Gaza that will dwarf the Nakba of 1948";
- October 9th, Tally Gotliv, politician from the Likud party publicly stated on Twitter (now X), alluding to the use of nuclear weapons: "Jericho missile! Doomsday weapon! That's my opinion. Rockets to be fired without borders, Gaza to be smashed and razed to the ground. Without mercy".

In light of these and other statements by Israeli officials, it is difficult for Canadian public officials to deny knowledge of Israel's genocidal intent, particularly when it has been acting on it. These dehumanizing comments are evidence of the intent of Israeli officials to destroy, in whole or in part, Palestinians as a national group. They constitute incitement to genocidal violence, and eerily resemble the evidence used by the International Criminal Tribunal for Rwanda to convict individuals for genocide not only as direct perpetrators, but also as accomplices.

3. Complicity in war crimes and crimes against humanity

Under international law direct perpetrators are not the only individuals who can be held criminally responsible or liable for international crimes. Any individual who participates in the commission of an international crime by ordering, soliciting, inducing, aiding and abetting, or otherwise contributing to the commission of a crime by a group of persons acting with a common purpose may be held individually criminally responsible for the crimes in question by Canadian courts, the International Criminal Court, or domestic courts of third states according to the principle of universal jurisdiction. Canadian public officials are not exempt from liability.

The 1948 Convention on the Prevention and Suppression of Genocide criminalized "complicity in genocide."¹¹ In 1993 and 1994, the United Nations Security Council established the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda, followed by

¹¹ Convention on the Prevention and Punishment of the Crime of Genocide art. III(e), Dec. 9, 1948, 78 U.N.T.S. 277, 280.

the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia. For the first time since the post-WWII trials at Nuremberg, these institutions delineated the *mens rea* and *actus reus* elements of accomplice liability for war crimes, crimes against humanity, and genocide.¹² In 1998 the Rome Statute, which was ratified by Canada, established the International Criminal Court (ICC). The ICC has jurisdiction to prosecute individuals for war crimes and crimes against humanity, including establishing various modes of liability for complicity in international criminality.¹³ It is worth mentioning that there is already an ongoing investigation into crimes committed in Palestine at the ICC.

Finally, in 2000 the Rome Statute was incorporated into Canadian domestic law by the *Crimes Against Humanity and War Crimes Act*.¹⁴ Any Canadian citizen who conspires or attempts to commit, or is an accessory after the fact in relation to, or counsels in relation to crimes of genocide, crimes against humanity or war crimes committed outside of Canada, is guilty of an indictable offence.

In addition to the international crimes that have already been committed by Israel in Palestine on and since October 7th, we hereby put Canadian public officials on notice that approving or endorsing further aid, assistance, and support to Israel may very well constitute complicity in these and other imminent international crimes.

Demand to Refrain from Future Acts of Complicity

We intend to prosecute, where there is evidence of participation, for complicity in the crimes already committed and, in order to prevent legal actions for further crimes, we demand that the Canadian Government immediately:

1. Issue a public statement condemning Israeli breaches of international law, including breaches that amount to international crimes;
2. Ask each government official that has encouraged or condoned war crimes in occupied Palestinian territory to publicly rescind their statements;

¹² See, for example, ICTY, Prosecutor v. Brđanin, Appeal Judgment, IT-99-36-A, 3 April 2007, para. 277; Prosecutor v. Bemba et al., Judgment Pursuant to Article 74 of the Statute, ICC-01/05-01/13-1989-Red, 19 October 2016. [probably not necessary]

¹³ Article 25 of the Rome Statute. Even though the Rome Statute seems to establish more stringent standards for accomplice liability, namely, not only knowledge but also purpose.

¹⁴ Crimes Against Humanity and War Crimes Act (S.C. 2000, c. 24)
<https://laws-lois.justice.gc.ca/eng/acts/C-45.9/FullText.html>

3. Insist that Israel complies unequivocally with its obligations under international humanitarian law and international criminal law;
4. Call for an immediate ceasefire;
5. Call for an immediate end to the Gaza blockade, the Israeli occupation of Palestine, and the crime of apartheid imposed on the Palestinian people by the Israeli government;
6. Call for immediate access of unimpeded humanitarian aid to Gaza;
7. Impose an immediate arms embargo on Israel;
8. Impose diplomatic and economic sanctions on all Israeli government and military officials who are directing Israel's attacks on Gaza and/or who have declared Israel's intention to conduct those attacks without regard to international law; and
9. Take all steps necessary to facilitate the immediate evacuation of Canadian citizens and Canadian permanent residents, and student visa holders stranded in Gaza, as well as the evacuation of non-Canadian relatives of Canadian citizens and permanent residents.

Please be advised that we are preparing to commence litigation or intervene and cooperate in proceedings in all available jurisdictions including Canada, the International Criminal Court, eventual internationalized tribunals, and/or other third-party national jurisdictions according to the principle of universal jurisdictions and any other possible judicial avenue.

We urge you to take all steps to prevent further violations of International Law and trust that you will comply with all legal measures to address justiciable matters that will be prosecuted in relation to this Notice.

Yours very truly,

HAMEED LAW



Yavar Hameed