

**Submission  
No 8**

## **MEASURES TO PROHIBIT SLOGANS THAT INCITE HATRED**

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## Submission to the NSW Parliamentary Committee on Law and Safety

### Inquiry into the Use of Slogans that Intimidate Communities and Threaten Community Safety

Submitted by: Professor Halim Rane

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#### 1. Introduction

This submission responds to the Committee's inquiry into the use of slogans alleged to intimidate communities or threaten community safety, with particular reference to phrases such as "*globalise the intifada*." It aims to assist the Committee by providing:

1. An accurate linguistic and historical explanation of the term *intifada*;
2. A clear international law framework concerning Israel's occupation of Palestinian territory and the Palestinian right to self-determination, including recent determinations by the International Court of Justice (ICJ) and the United Nations;
3. A principled distinction between lawful political communication and unlawful incitement to hatred or violence; and
4. Guidance on protecting community safety while respecting democratic freedoms, including the implied freedom of political communication under the Australian Constitution.

The submission proceeds from a foundational democratic and legal premise: community safety and social cohesion are best protected by narrowly targeting violence, intimidation, and incitement—rather than suppressing contested political language or lawful criticism of state conduct.

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#### 2. Linguistic and Historical Meaning of the Term *Intifada*

##### 2.1 Linguistic meaning

The Arabic term *intifāda* (انتفاضة) derives from the root *n-f-d*, meaning *to shake off, to rise, or to cast off a burden*. In Arabic usage, it does not inherently denote violence. The term has been used historically to describe a range of political, social, and labour movements across the Arab world, including non-violent mass protests and popular uprisings.

As a matter of language, *intifada* is closer in meaning to *uprising, popular mobilisation, or resistance to domination*, rather than a specific method of violence.

##### 2.2 Historical usage in the Palestinian context

In the Palestinian context, the term is most commonly associated with two periods:

- **The First Intifada (1987–1993):**  
Widely recognised by historians and human rights organisations as a largely civilian-led movement characterised by strikes, boycotts, civil disobedience, demonstrations, and other forms of mass mobilisation against Israeli military rule in the occupied Palestinian territories.
- **The Second Intifada (2000–2005):**  
Marked by significantly higher levels of violence by multiple actors, including attacks against civilians. Such attacks are unequivocally prohibited under international humanitarian law.

Crucially, the term *intifada* itself does not prescribe tactics or targets. Its meaning is contingent on context, intent, and accompanying conduct. As with terms such as *resistance*, *liberation*, or *uprising*, it can be invoked in non-violent or violent ways, and cannot be presumed to constitute a call for violence absent of contextual evidence.

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### **3. International Law Context: Occupation, Unlawfulness, and the Right of Self-Determination**

#### **3.1 Legal status of the Occupied Palestinian Territory (OPT)**

For decades, the international legal position has been that the West Bank (including East Jerusalem) and Gaza constitute occupied territory, and that Israel is bound by the law of occupation under international humanitarian law, including the Fourth Geneva Convention.

The UN Security Council has repeatedly affirmed that Israel's settlement activity in territory occupied since 1967 has "no legal validity" and constitutes a "flagrant violation" of international law (e.g. UNSC Resolution 2334 (2016)). These determinations form part of a long-standing and consistent international legal consensus.

#### **3.2 The ICJ's 19 July 2024 Advisory Opinion: occupation as unlawful**

On **19 July 2024**, the International Court of Justice delivered its Advisory Opinion in *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*. In that opinion, the Court concluded, inter alia, that:

- Israel's continued presence in the OPT is unlawful;
- Israel is under an obligation to bring its unlawful presence to an end as rapidly as possible;
- Israel must cease immediately settlement activity, evacuate settlers, and dismantle measures that entrench the unlawful situation;
- Israel is under obligations of reparations for damage caused by its internationally wrongful acts; and

- Other states and international organisations are under obligations of non-recognition and must not render aid or assistance that maintains the unlawful situation, and must cooperate to bring it to an end.

These findings are of central relevance to this inquiry. They confirm that the status of the OPT is not merely the subject of competing political narratives, but the object of authoritative legal determination by the UN's principal judicial organ.

### **3.3 UN General Assembly endorsement: Resolution ES-10/24 (September 2024)**

Following the ICJ's Advisory Opinion, the UN General Assembly adopted Resolution A/RES/ES-10/24 (19 September 2024). That resolution explicitly references the ICJ's findings and calls upon Israel to comply with the Court's determination by ending its unlawful presence in the OPT without delay.

The resolution underscores that the ICJ's opinion is not legally or politically marginal, but has been formally endorsed by the UN's principal deliberative body. This further reinforces the legitimacy of political advocacy and protest grounded in international law.

### **3.4 Palestinian self-determination as a legal right**

The right of peoples to self-determination is enshrined in the UN Charter and core human rights treaties, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. It is widely regarded as a foundational norm of the international legal order.

The ICJ's 2024 Advisory Opinion emphasised that Israeli policies and practices in the OPT impair the Palestinian people's ability to realise this right. Advocacy for Palestinian self-determination is therefore not a rhetorical or ideological claim, but an assertion grounded in international law.

### **3.5 Legal limits: absolute prohibition on violence against civilians**

International law draws a clear and non-negotiable line: violence against civilians is prohibited in all circumstances. Political expression or protest that, in context, incites violence, intimidation, or threats against a community properly falls within the scope of criminal law.

However, international law equally recognises that criticism of an unlawful occupation, support for self-determination, and calls for political or economic pressure to end violations fall within protected political expression.

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## **4. Slogans, Political Expression, and Community Safety**

### **4.1 Distinguishing political speech from incitement**

International human rights law, including Articles 19 and 20 of the ICCPR, requires a careful distinction between:

- Political advocacy, even when emotive or confronting; and
- Incitement to violence, hostility, or discrimination, which requires intent, likelihood, and a clear causal nexus to harm.

A slogan such as “*globalise the intifada*” may be understood by some as a call for global solidarity, protest, or political mobilisation against oppression. Others may perceive it differently. Ambiguity alone does not satisfy the legal threshold for prohibition.

## **4.2 Australian constitutional considerations**

Under Australian constitutional law, restrictions on political communication must be suitable, necessary, and proportionate. Blanket prohibitions on contested political phrases risk capturing lawful advocacy concerning international law, human rights, and foreign policy, and may therefore fail constitutional scrutiny.

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## **5. Chilling Effects and the Suppression of Scrutiny**

### **5.1 Conflation of criticism of Israel with antisemitism**

There is a growing tendency in public discourse to conflate criticism of Israeli state policies with antisemitism. This conflation is deeply problematic:

1. It undermines genuine efforts to combat antisemitism, which remains a serious and persistent form of racism;
2. It delegitimises Palestinian experiences and voices grounded in international law; and
3. It risks insulating a state from accountability for alleged violations of international humanitarian and criminal law.

Criticism of a state’s conduct—particularly when supported by ICJ findings, UN resolutions, and ICC processes—cannot be presumed to constitute hatred toward a religious or ethnic community.

### **5.2 International criminal accountability**

In 2024, the Prosecutor of the International Criminal Court announced applications for arrest warrants relating to alleged crimes committed in the context of the Gaza conflict. These developments reinforce the principle that no actor is above international law, and that public discussion and protest concerning accountability mechanisms are integral to democratic oversight.

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## 6. Best Practice: Protecting Communities Without Criminalising Speech

Comparative experience, including in the United Kingdom and Europe, demonstrates that broad bans on political slogans often prove ineffective, selectively enforced, and vulnerable to legal challenge.

Best practice emphasises:

- Targeting violent conduct, not legitimate and necessary advocacy for the upholding human rights and the rule of law;
  - Enforcing laws against threats, harassment, and violence;
  - Applying high thresholds for incitement consistent with international law;
  - Investing in education, media literacy, and conflict literacy to reduce fear-driven interpretations of political expression; and
  - Avoiding and preventing political manipulation from foreign interference.
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## 7. Recommendations

1. Avoid categorical bans on political slogans absent of clear evidence of intent to incite violence.
  2. Adopt a contextual, evidence-based approach focused on intimidation, threats, and violence.
  3. Affirm the legitimacy of international-law-based advocacy, including support for Palestinian self-determination.
  4. Strengthen protections for all communities—Jewish, Muslim, Arab, Palestinian, and others—against genuine hatred and violence.
  5. Promote civic education on international law, human rights, and democratic disagreement.
  6. Apply foreign interference provisions consistently, including from states, such as Israel, that seek to use Australian political institutions and processes to prevent legitimate and necessary accountability for war crimes and crimes against humanity.
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## 8. Conclusion

Community safety and social cohesion are not advanced by suppressing lawful political expression or shielding states from scrutiny. They are strengthened by upholding the rule of law, protecting human rights, and preserving democratic space for principled dissent. A resilient, pluralistic society must be capable of confronting injustice abroad without criminalising conscience or political disagreement at home.

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