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NEWS

‘Canada not interested in conversation’ about Israeli settlements despite ICJ opinion: international law expert

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A week after the United Nations court reaffirmed its opinion on the illegality of Israel’s occupation of the Palestinian territories, Canada seems to be trying to “keep its head in the sand” rather than reckon with the implications, says international criminal justice expert Mark Kersten.

On July 19, the International Court of Justice (ICJ) delivered a non-binding advisory opinion that Israel’s occupation and “unlawful policies and practices” regarding the Palestinian territories—including the Gaza Strip, West Bank, and East Jerusalem—violated “the Palestinian people’s right to self-determination,” and deemed its presence in those territories illegal.

The ICJ opinion was initiated by the UN General Assembly in 2022, preceding the Oct. 7, 2023, Hamas terrorist attack that killed nearly 1,200 Israelis and saw 250 hostages taken into Gaza.

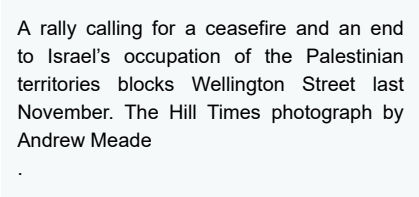
Israel’s Prime Minister Benjamin Netanyahu called the opinion “absurd,” and a denial of the “legal rights” of Is-

raelis to live in their “ancestral home.”

While allies like Australia, the United Kingdom, and the United States—expressing their support, neutrality, and opposition, respectively—were swift in the immediate days after the opinion was issued, Canada’s only official public acknowledgement arrived nearly a week later on July 26, in the eighth sentence of a joint statement alongside Australia and New Zealand on the need for an urgent ceasefire in Gaza and the risk of expanded conflict.

“We call on Israel to respond substantively to the ICJ’s advisory opinion and ensure accountability for ongoing acts of violence against Palestinians by extremist settlers, [and] reverse the record expansion of settlements in the West Bank, which are illegal under international law, and work towards a two-state solution,” the statement reads.

Despite the government’s relative silence, individual Liberal MPs have acknowledged the opinion, including MPs Shafqat Ali (Brampton Centre, Ont.), Salma Zahid (Scarborough Centre, Ont.), Iqra Khalid (Mississauga–Erin



A rally calling for a ceasefire and an end to Israel’s occupation of the Palestinian territories blocks Wellington Street last November. The Hill Times photograph by Andrew Meade

Mills, Ont.), and Adam van Koeverden (Milton, Ont.), who offered their support for the ICJ.

In response to The Hill Times’ request for comment on the ruling, Foreign Affairs Minister Mélanie Joly’s (Ahuntsic–Cartierville, Que.) office directed questions to Global Affairs Canada (GAC).

In its statement, the department said Canada “respects the independence of the Court in its issuance of the opinion,” and is a “strong supporter of the ICJ and its critical role in upholding the international rules-based order.”

“Illegal settlements constitute an obstacle to achieving just and lasting peace,” the statement reads, affirming Canada’s commitment to a two-state solution “that gives hope to both Palestinians and Israelis that they may live side by side in peace, security, and dignity.”

Kersten, a University of the Fraser Valley professor, told The Hill Times he has “mixed feelings” about the federal government’s tepid public response, but his opinion will ultimately depend on the feds’ reaction behind the scenes.

“If they’re taking so much time because they’re carefully studying the implications for Canada, then that’s not a bad thing,” Kersten said in a July 26 interview. “On the other hand, if they’re doing absolutely nothing and trying to pretend the opinion didn’t say what it did, then that’s a mistake.”

Kersten said the opinion has provided an impetus for political discussion and action on the part of different states around the world, but for whatever reason, Canada seems to want to avoid that diplomatic discussion for as long as possible.

“This may be an advisory opinion, but based on how comprehensive it is, it’s probably one of the most important ICJ opinions of all time,” Kersten said, explaining that the extensiveness of the opinion’s legal arguments will undoubtedly have far-reaching implications for other occupations in Ukraine, Tibet, or even potentially Taiwan.

“This ruling speaks to and clarifies a whole area of international law in a really important way,” Kersten said. “It’s just sad that Canada isn’t interested in having this conversation right now.”

Despite what he describes as an attempt to “keep their head in the sand” in response to the court’s opinion, Kersten said that “on a superficial level,” Canada’s official policy and the ICJ are already in agreement. However, the positions of Canada and the ICJ’s differ in one critical aspect.

“Canada says it considers the occupation of Palestinian territory illegal, but it has never articulated why it is illegal,” Kersten said. “I can’t think of another example, in international law or international relations, where Canada will say something is illegal but not explain what law is being broken.”

The federal government’s official policy is that it does not recognize permanent Israeli control over territories occupied in 1967, and notes that the Fourth Geneva Convention establishes Israel’s obligations as an occupying power. Additionally, it says that the settlements in those occupied territories are a violation of that convention and “constitute a serious obstacle to achieving a comprehensive, just and lasting peace.”

In contrast, Kersten said the ICJ articulated in great detail why the occupation is illegal, explaining the specific breaches of international and humanitarian law it constitutes, and how it violates the Palestinian right to determination.

The court also found the occupation and policies related to the territories amounted to a form of racial segregation and discrimination, and that the settlements—especially in the West Bank—which pushed the Palestinian population from those areas, constitute the war crime of forcible transfer of civilians.

“The consequences of the ICJ’s opinion don’t just impact Israel, but all states around the world—including Canada—who directly or indirectly support the occupation,” Kersten said.

In its opinion, the ICJ said that all states are under a legal obligation to not only reject the occupation as illegal, but also to withhold “aid or assistance in main-

taining the situation created by the continuing presence of the State of Israel in the occupied Palestinian territory.”

While the most obvious complication could be Canada’s export of military goods and equipment to Israel, there are also legal implications for individual Canadians.

“The question becomes: what is the implication for a Canadian citizen who owns property in the West Bank or East Jerusalem?” Kersten said. “Are they now directly or indirectly involved in a possible violation of international law, and what obligations does Canada have to do something about that?” Kersten explained that the opinion would make it increasingly untenable to “turn a blind eye” to Canada’s involvement and support for the occupation, including by its citizens or companies who do business in the West Bank or East Jerusalem.

Increasingly intractable Israeli government may require other diplomatic paths, says Mendes University of Ottawa law professor Errol Mendes, who studies constitutional law and human rights, told The Hill Times that despite the court’s opinion reaffirming a previous 2004 decision focused on the Gaza Strip security barrier, he doesn’t expect much change in Canada’s relationship with Israel.

“I’ve taught and practiced in this area for 40 years, but I’m also someone who believes that when we’re discussing issues relating to international law, there should also be a large dose of reality,” Mendes said. Despite the two opinions and several other confirmations of the occupation’s illegality in the past five decades, “the reality is that whoever has the ability to enforce the law wins, and

those who don't lose," he added.

Mendes, the president of the International Commission of Jurists' Canada section, explained that since the ICJ doesn't possess the means to enforce its rulings and opinions itself, it must rely on the international community's respect for the rule of law and the UN Charter to do so for it.

While Mendes said that enforcement of this ICJ opinion wouldn't occur without a major change in U.S. policy, Canada and the rest of the international community can make "incremental progress" towards fulfilling "what the law actually requires."

Currently, however, there are immense challenges to that progress within Israel's government, Mendes said, pointing to a recent declaration by the Knesset—that country's legislature—which voted to reject the establishment of a Palestinian state two days before the ICJ opinion was delivered.

Mendes called the declaration an indirect message to the ICJ to "go to hell," adding that the only way to end the occupation is through a "two-state solution."

Despite the challenges to ending the occupation, Mendes said there are less conventional avenues for progress and that Canada should begin putting more emphasis on working via unofficial diplomatic channels and non-state actors.

"While we deal with Netanyahu and the extreme right wing of his cabinet's refusal to not continue down this dangerous path, we need to work with all the potential moderates in Israeli society to see where we can push the progress in

the short, medium, and long term," Mendes said. "To me, that's being realistic."

"It's not going to happen overnight, but it's never going to happen unless there is an attempt by the democratic world to try to now work with the progressive forces in Israel."

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