Canada Backs Israel in ICC Challenge

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Canada has submitted a letter to the International Criminal Court (ICC) reiterating its position on Palestine, in a case in which Israel asked for Ottawa’s support.

The letter, submitted to The Hague-based ICC on Feb. 14, repeats the policy that Canada does not recognize a Palestinian state, and that the court has no jurisdiction in the case now before it.

Global Affairs said it does not release “this type of correspondence.” But The CJN was told it is the same official position on Palestine that Canada submitted to the ICC in 2015 and again in 2018.

The latest case began in December, when the ICC’s chief prosecutor, Fatou Bensouda, issued a preliminary report that called for an investigation into Israeli soldiers for war crimes perpetrated against Palestinians.

“I am satisfied that there is a reasonable basis to proceed with an investigation into the situation in Palestine,” wrote Bensouda, adding, “In brief, I am satisfied that war crimes have been or are being committed in the West Bank, including east Jerusalem, and the Gaza Strip.”

The allegations include “disproportionate attacks” and “wilful killing and wilfully causing serious injury to body or health” by Israeli troops. As well, the report said Israeli authorities may have committed war crimes relating to “the transfer of Israeli civilians into the West Bank” since 2014.

Bensouda also pointed to evidence of war crimes by Hamas and other armed Palestinian groups.

She asked three ICC judges to first rule on whether the court has jurisdiction in the territories she cited.

“Canada’s long-standing position is that it does not recognize a Palestinian state and therefore does not recognize the accession of such a state to international treaties,” Guillaume Bérubé, a spokesperson for Global Affairs Canada, told The CJN in an email.

“In the absence of a Palestinian state, it is Canada’s view that the (ICC) does not have jurisdiction in this matter under international law,” Bérubé added.

He said Bensouda herself referred to Canada’s position on Palestinian statehood in her request to the ICC panel looking into jurisdiction.

“As a friend and ally of Israel and friend of the Palestinian people, Canada is firmly committed to the goal of a comprehensive, just and lasting peace in the Middle East, including the creation of a Palestinian state living side by side in peace and security with Israel, achieved through direct negotiations between the parties,” Bérubé stated.

After the release of Bensouda’s report, Israeli Prime Minister Benjamin Netanyahu wrote to Prime Minister Justin Trudeau asking that Canada condemn Bensouda’s preliminary report.

Netanyahu called the report “unfounded and dangerous,” and said the ICC has no jurisdiction to investigate because Palestine does not meet the criteria of statehood.

Trudeau’s response to Netanyahu, if any, has not been made public.

There has been widespread support for Israel in the case. At least six countries – Austria, the Czech Republic, Germany, Hungary, Brazil and Uganda – have filed petitions to become “friends of the court,” or interveners in the matter. With that status, they would be permitted to offer their views and submit legal advice to the court on this case. Canada has not sought intervener status.

Israeli Foreign Minister Yisrael Katz tweeted on Feb. 14 that Israel “views favourably the fact that important countries … express a clear position that the ICC does not have the authority to discuss the Israeli-Palestinian conflict.”

The tribunal that will rule on the court’s jurisdictional reach has invited “Palestine, Israel and victims in the situation in the State of Palestine” to submit written views by March 16.

Palestine has been a member of the ICC since 2015, while Israel is not a member and does not recognize the court’s jurisdiction. Still, it has mounted a fierce public campaign against the latest development.

Should the court agree that Palestine is not a formal state under international law, the ICC would not be able to hear the case.

Canada’s financial contribution to the ICC will be $10.6 million this year.