



The Hill Times (Ottawa, ON)

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NEWS

Canada needs to take strong stand against war crimes in Israel-Hamas conflict: aid group

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A flagship global aid group is calling on Canada to uphold its international humanitarian law obligations and ensure the Geneva conventions are followed in the Israel-Hamas war. Since the outbreak of hostilities after Hamas' Oct. 7 attack on Israel, Prime Minister Justin Trudeau (Papineau, Que.) has consistently defended Israel's right to defend itself within international law guidelines. Trudeau has said that the "price of justice" cannot come at the "continued suffering of Palestinian civilians," but has Robert Mardini with the International Committee of the Red Cross says Canada can play a key role in the Israel-Hamas war by calling for adherence to international law.

not indicated whether Canada thinks international law has been breached.

Asked what diplomatic role Canada should be taking to address the conflict, International Committee of the Red Cross (ICRC) director general Robert Mardini told The Hill Times that all parties of the four Geneva conventions

have an obligation to uphold them.

"All parties have the duty to engage with—and also their allies and partners—on these specific provisions that are here to protect civilians and to alleviate human suffering," he said, remarking that the ICRC is having similar conversations with other countries.

The Geneva conventions protect wounded and sick combatants, wounded and shipwrecked maritime military members, prisoners of war, and civilians. Article 1, which is shared across all four Geneva conventions, states that parties have to "respect and to ensure respect" for the conventions in "all circumstances," meaning Canada—which has been party to the conventions since 1965—has to not only follow them, but also must ensure other parties do as well, including Israel and Palestine.

"As a high contracting party to the Geneva conventions, I think it is important [for Canada] to also speak of the importance of international humanitarian law to cover this type of situation," Mardini said.

Prime Minister Justin Trudeau has reiterated that Israel must follow international law in its bombardment of Gaza, but has refused to elaborate on whether Canada thinks it has. The Hill Times photograph by Andrew Meade

Israel and Hamas have both been accused of breaching international law: Hamas by taking hostages and intentionally directing attacks against civilian populations, and Israel through allegations of collective punishment against Palestinian residents.

While in Washington, D.C., on Nov. 3, Trudeau was asked about his previous comments on Israel's right to defend itself not coming at the suffering of all Palestinian civilians, and whether it constitutes collective punishment.

"Obviously the discussions will continue in academic circles, in diplomatic circles, in legal circles around this issue," he said. "For me, it's a matter of common sense. Seeing the suffering of so many is not leading towards opportunities for a two-state solution. It's not leading towards greater prospects for

peace for the medium and long term in the region—that’s what we need to be focused on.”

Mardini was in Ottawa last week as part of the ICRC’s ongoing dialogue with the Canadian government, which included a meeting with International Development Minister Ahmed Hussen (York South–Weston, Ont.), as well as officials from Global Affairs Canada and the Department of National Defence. Mardini said the Israel-Hamas war was a “top priority” and “front and centre” in his meetings with Canadian officials.

Canada can play a helpful role in addressing the conflict by speaking about the importance of upholding international humanitarian law, advocating for financial support for humanitarian assistance, and ensuring that there is space for “impartial and neutral” humanitarian assistance to be deployed, Mardini said.

“The voice of the Canadian government [and] the Canadian people is important,” he said.

Ottawa has publicly advocated for humanitarian pauses to allow aid to enter into Gaza and for foreign nationals to leave. The NDP has pressured the Liberal government to advocate for a ceasefire, a position which has recently been taken up by United Nations leadership.

Israel has rejected any ceasefire while Hamas still has Israeli hostages, and Hamas has indicated it won’t release hostages while Gaza is being attacked.

The ICRC has also advocated for humanitarian pauses, but has pressed further in calling for the war’s de-escalation.

“The human cost of the conflict is sim-

ply too high, and the level of suffering is intolerable and unspeakable, and there should be de-escalation to allow the civilian population to have respite, to allow them to move around, to get access to services, to get access to food, and to have better living conditions, because today it is simply uncontrollable what is happening on the ground,” he said, remarking that the atrocities committed by Hamas in Israel on Oct. 7 were “equally unacceptable” and that there “should be no hierarchy of suffering.”

Trudeau dodging international law responsibility, say legal experts University of Ottawa law professor John Packer, director of the Human Rights Research and Education Centre, said the Canadian government has to ensure all parties follow the Geneva conventions.

He said it has been adjudicated at the International Court of Justice and broadly understood that in multilateral treaties where public interest is the objective—as is the case with the Geneva conventions—the undertakings are between all members of the treaty, and not just those party to the conflict.

“To ensure respect [for the Geneva conventions] means [Canada] in its jurisdictions and its relations should act to ensure respect,” he said. “A good-faith fulfillment of this obligation is that Canada should not only not do things that are contrary to this convention, but it should be acting in ways which contribute to no one else doing bad things.”

Packer said from the Canadian government’s perspective, that would have the real-world effect of public pronouncements and physical actions which are attributable to the state, such as comments made by Trudeau and Foreign Af-

fairs Minister Mélanie Joly (Ahuntsic–Cartierville, Que.).

“We should be doing things which contribute only to upholding the implementation of the Geneva conventions, and we should be doing nothing at all which is or could be undermining the respect of the Geneva conventions,” he said. “We should be actively advocating—not silently—that, so should all other parties be contributing to upholding [and] fulfilling the Geneva conventions.”

Packer said Trudeau and Joly’s statements proclaiming Israel’s right to defend itself within international law is a “patent dodge.”

“It’s almost like a slogan. I would almost say its disingenuous,” he said, remarking the government needs to be precise in which international law actually needs to be followed, as well as what it is doing to ensure the Geneva conventions and other international legal instruments are followed, including the Genocide Convention, which begins when a state party “knows or ought reasonably to know that there exists a serious risk of genocide.”

“If anyone argues there is no risk of genocide from all perspectives with regard to any parties ... they are willfully blind,” he said.

Packer called Trudeau’s comments to the press on Nov. 3 “facile in the extreme,” remarking that allegations of international law breaches aren’t reserved to legal, diplomatic, and academic circles, but also to those leading the government.

“It is precisely his responsibility under international law as head of government, and Mélanie Joly as a foreign

minister ... personally in their status acting for the state, to hold those responsibilities,” he said.

The rules of war under the Geneva conventions that have to be followed are up for dispute due to questions of whether the Israel-Hamas war is considered an international armed conflict or a non-international armed conflict, which is a notion that has countries and legal scholars in disagreement. If it is considered a non-international conflict, the obligations under the Geneva conventions are minimized, but some still exist, such as violence against life and person, as well as taking hostages.

University of the Fraser Valley criminology professor Mark Kersten, an expert on international law and war crimes, said the duty countries have to ensure other states don't breach the Geneva conventions carries with it a positive obligation.

“It's not enough for you to abide by them or to not violate them,” he said. “You also have a positive obligation to do something.”

He said that what a country needs to do to meet that obligation is a bigger question.

At the very minimum, Kersten said Canada may feel it is meeting its commitments by consistently calling on Israel to conform with international law, but others might not find that sufficient.

And citing the need for Israel to follow international law brings additional questions about what Canada does when that goes unheeded.

“Is Canada willing to do anything about it as it has never been willing to do any-

thing about it in the past?” he said.

He said there is additional murkiness in how Canada can know whether international humanitarian law has been breached due to its unwillingness to accept independent and impartial investigations in Israel and Palestine.

“It has nothing to go on, it has no legs to stand on,” he said, remarking that the Canadian government doesn't have to declare a breach of international law is taking place, but it should be supporting some kind of process to investigate alleged war crimes.

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Figure:

NDP Leader Jagmeet Singh has urged the Liberal government to advocate for a ceasefire in the Israel-Hamas war. The Hill Times photograph by Andrew Meade

International Development Minister Ahmed Hussen met with the director general of the International Committee of the Red Cross last week. The Hill Times photograph by Andrew Meade