

11 December 2023

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OIA 28896

Tēnā koe

I refer to your Official Information Act 1982 (OIA) request, transferred to the Ministry of Foreign Affairs and Trade on 15 November 2023. You requested:

Since Oct 7, has DPMC provided advice in any form to elected representatives (governing or caretaker) that suggest whether any war crimes committed by any armed or governing parties have likely been committed in Israel, Gaza or the West Bank? And, what was that advice if advice was given? Has any other advice on the situation in Israel, Gaza and the West Bank been given, and if so, what was that advice?

In line with section 16(1)(e) of the OIA, the Ministry of Foreign Affairs and Trade (the Ministry) is providing you with the following summary of the Ministry's advice to elected representatives (governing and caretaker) since the beginning of the conflict, specifically media talking points, in scope of your request.

Advice on the situation in Israel, Gaza and the West Bank

The Ministry has provided information and advice to Ministers on New Zealand's response to the Israel-Gaza conflict. This advice has been consistently grounded in international law and revolves around four pillars, as follows:

- **The upholding of international law and international humanitarian law**, including the protection of civilians and the provision of humanitarian assistance for those in need – This has guided our position on the release of hostages; protection of civilians; and the urgent need for humanitarian access.
- **Opposition to the use of terror as a political tool and illegal act** – guiding New Zealand's unequivocal condemnation of Hamas' 7 October 2023 attacks on Israel
- **Recognition of the right of a state to defend itself** – guiding statements on Israel's right to defend itself, in full compliance with international law.
- **The importance of political, not military, solutions** - guiding our approach to the long-term solution to the crisis, specifically calling for an urgent restart of the Middle East Peace Process, and for a two-state solution to the Israeli-Palestinian conflict, as the best path for a durable and lasting peace in the region.

The Ministry's advice has also drawn from New Zealand's longstanding approach to the Middle East Peace Process, including:

- Support for a comprehensive and sustainable two-state solution, with secure and recognised borders for both Israel and Palestine (based on 1967 lines).
- Support for Israel's right to exist in peace and security.
- Support for the right of the Palestinian people to self-determination.
- Recognition that direct negotiations between the parties are the only way to achieve a sustainable agreement, and a call for a return to such negotiations.

War crimes

New Zealand is concerned by reports of breaches of international humanitarian law, including allegations of war crimes in the Israel-Gaza conflict. New Zealand has consistently called on all parties to the conflict to abide by international humanitarian law. A recent statement by New Zealand at the United Nations demonstrates our approach and can be found on the Ministry's website: www.mfat.govt.nz/en/media-and-resources/united-nations-general-assembly-informal-plenary-meeting-on-the-conflict-in-israel-and-the-occupied-palestinian-territories/

Allegations of war crimes require complex factual and legal determinations. In these circumstances, and in light of the ongoing investigation, the International Criminal Court (ICC) is best placed to do this. The ICC Prosecutor has released several statements noting his Office's ongoing efforts to advance the investigation in Palestine, for example: www.icc-cpi.int/news/statement-prosecutor-international-criminal-court-karim-aa-khan-kc-situation-state-palestine .

The ICC has an open investigation into the situation in Palestine since 2021, which covers war crimes that are alleged to have been committed since 13 June 2014. The Court can consider all crimes committed in Gaza and the West Bank and the ICC Prosecutor has said this investigation may include actions in the current conflict. It can also consider crimes committed by Palestinian nationals (including Hamas) in Israel or anywhere else. The Court's ability to look at alleged war crimes by both Israel and Hamas, and its independent and impartial mandate, is key to supporting a legitimate accountability process.

Please note that it is our policy to proactively release our responses to official information requests where possible. Therefore, our response to your request (with your personal information removed) may be published on the Ministry website: www.mfat.govt.nz/en/about-us/contact-us/official-information-act-responses/

If you have any questions about this decision, you can contact us by email at: DM-ESD@mfat.govt.nz. You have the right to seek an investigation and review by the Ombudsman of this decision by contacting www.ombudsman.parliament.nz or freephone 0800 802 602.

Nāku noa, hā



Sarah Corbett
for Secretary of Foreign Affairs and Trade