

22 December 2023

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OIA 28902

Tēnā koe

I refer to your email of 16 November 2023 in which you request the following under the Official Information Act 1982 (OIA):

'Ongoing tensions, negotiations and attempted agreements

- *What advice has the Ministry of Foreign Affairs received and prepared on the situation in Gaza and the West Bank since October 7 2023?*
- *What information do you hold on the negotiations and attempted agreements between Hamas and the Israel government since October 7 2023?*
- *What is your understanding of the term "terrorist"?*
- *What information do you hold on the international humanitarian law and international human rights law relevant to the ongoing situation between Israel and Gaza since 7 October 2023?*
- *What information do you hold on the international laws that have been broken by the Israeli government since 7 October 2023?*

Historic relationship, tensions and negotiations

- *What is your understanding of the origins of Israel?*
- *What is your understanding of zionism?*
- *What is your understanding of colonialism?*
- *What is your understanding of the intentions of the Israeli government in the Occupied Palestinian Territories?*
- *What is your understanding of the duties of an occupier?*
- *What is your understanding of the origins and intentions of Hamas?*
- *What information do you hold on the peace negotiations and attempted agreements between Israel and Palestinians for example, through the Middle East Peace Process?*

On 20 November 2023, you rescoped your request to be for the following:

Can you please provide copies of key documents such as reports, memos, and letters on the following topics? Can you also please provide a summary of key information on these topics that the Ministry holds outside of the key documents, as is practicable?

Ongoing tensions, crimes and attempted agreements

- *advice that the Ministry of Foreign Affairs and Trade has received and prepared on the situation between Israel and the Occupied Palestinian Territories of Gaza and the West Bank since 7 October 2023*
- *the terrorist acts, war crimes and crimes against humanity that Hamas and the Israeli government have engaged in since 7 October 2023*
- *the international humanitarian law and international human rights law relevant to the ongoing situation between Israel and the Occupied Palestinian Territories of Gaza and the West Bank since 7 October 2023, including for example the duties of the Israeli government as an occupier of the Occupied Palestinian Territories*
- *the international laws that have been broken by Hamas and the Israeli government since 7 October 2023*
- *the negotiations, attempted agreements and successful agreements between Hamas and the Israeli government since October 7 2023.*

Historic relationship, tensions and negotiations

- *the origins of Israel*
- *the origins of zionism / the zionist movement*
- *the Israeli settlement and/or colonisation of Palestinian land*
- *the main intentions/purpose of the Israeli government in Palestinian land*
- *the origins and main intentions/purpose of Hamas*
- *the peace negotiations and attempted agreements between Israel and Palestinians for example, through the Middle East Peace Process*
- *key engagements of New Zealand in international fora regarding the Occupied Palestinian Territories.*

In line with section 16(1)(e) and section 16(2)(a) of the OIA, the Ministry of Foreign Affairs and Trade (the Ministry) is providing you with the following summary of the information in scope of the first part of your request.

The Ministry's advice on New Zealand's response to the Israel-Gaza conflict since 7 October 2023 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 attacks on Israel;
- **Recognition of the right for a state to defend itself** – guiding statements on Israel's right to defend itself, within the limits of full compliance with international law; and
- **The importance of political, not military, solutions** - guiding our approach to the long-term solution to the crisis, specifically calls 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.

International humanitarian law and 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.

The Ministry is also providing the following submissions which are representative of the Ministry's advice provided to elected officials.

- *Israel and Gaza conflict: Humanitarian Support*, dated 15 October 2023
- *Israel and Gaza Conflict: Further Humanitarian Support*, dated 2 November 2023

We have withheld some information in these submissions under the following sections of the OIA:

- 6(a): to protect the international relations of the New Zealand Government;
- 6(b)(i): to protect the passing of information from another government on a confidential basis;
- 6(b)(ii): to protect the passing of information from an international organisation on a confidential basis;
- 9(2)(a): to protect the privacy of natural persons;
- 9(2)(g)(ii): to protect officers and employees from improper pressure or harassment.

Where the information has been withheld under section 9 of the OIA, we have identified no public interest in releasing the information that would override the reasons for withholding it.

Historic relationship, tensions and negotiations

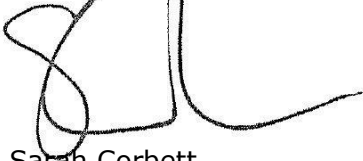
This section of your request is refused under section 18(d) of the OIA, as the information requested is publicly available. You may wish to refer to information regarding the conflict, and the Middle East Peace Process, on the Ministry website, which is regularly updated: www.mfat.govt.nz/en/countries-and-regions/middle-east/israel-hamas-conflict/.

You may also wish to refer to the United Nations website for more information related to your query: www.un.org/en/situation-in-occupied-palestine-and-israel/history.

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, nā

A handwritten signature in black ink, appearing to be 'Sarah Corbett', written over a faint circular stamp.

Sarah Corbett
for Secretary of Foreign Affairs and Trade