



29 November 2023

Minister of Foreign Affairs

For action by

5 December 2023

Israel-Gaza Conflict: Immediate Steps for the Incoming Government

BRIEFING Decision Submission

PURPOSE The Israel-Gaza conflict is currently one of the highest-profile issues on the international agenda, and has provoked strong responses from the international community and the New Zealand public. This submission sets out New Zealand's approach on the Israel-Gaza conflict to date and makes recommendations for some immediate actions by the Government.

Recommended referrals

Prime Minister	For concurrence by	12 December 2023
Minister for Trade	For information by	12 December 2023
Minister of Defence	For information by	12 December 2023
Minister of Police	For information by	12 December 2023
Minister for Ethnic Communities	For information by	12 December 2023

Contact details

NAME	ROLE	DIVISION	WORK PHONE
s9(2)(g)(ii)		Israel-Gaza Taskforce	s9(2)(g)(ii)
s9(2)(g)(ii)		Middle East and Africa	s9(2)(g)(ii)

Minister's Office to complete

- | | | |
|--|---|------------------------------------|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Noted | <input type="checkbox"/> Referred |
| <input type="checkbox"/> Needs amendment | <input type="checkbox"/> Declined | <input type="checkbox"/> Withdrawn |
| <input type="checkbox"/> Overtaken by events | <input type="checkbox"/> See Minister's notes | |

Comments

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Key points

- The recent attacks by Hamas on Israel and ensuing conflict in Gaza have changed the landscape of the Israeli-Palestinian conflict. On 7 October, Palestinian Islamist group Hamas carried out a series of terrorist attacks in Israel, killing over 1,300 Israelis and taking over 240 hostages into Gaza. Since the attacks, Israel has launched an extensive military campaign with the stated goal of the total destruction of Hamas. To date, the military offensive in Gaza has resulted in over 14,000 Palestinian casualties.
- Across the world, there has been significant reaction to both the Hamas attacks and the Israeli military response. s9(2)(g)(i)
- New Zealand's response to the current Israel-Gaza conflict has been based on four pillars, which are principles-based and place the highest priority on upholding international law. These pillars can be summarised as:
 1. The upholding of international law and international humanitarian law;
 2. Opposition to the use of terror as a political tool and deliberate harming or targeting of civilians;
 3. Recognition of Israel's right to defend itself, acting in accordance with international law; and
 4. The importance of political, not military, solutions. Officials assess that these pillars remain fit for purpose, and recommend that you reconfirm them.
- Recent days have seen the welcome announcement of a humanitarian pause and hostage deal, a significant development in the conflict. This development makes it an opportune time to take stock of our approach to the Israel-Gaza conflict.
- There are a number of issues that require quick decisions. First amongst these is the framing of New Zealand's position on calling for a ceasefire. s6(a)
- New Zealand's consular response to date has been successful, with over 60 New Zealanders and other travellers assisted to leave Israel and the West Bank, including via the provision of assisted departure flights. In addition, 14 New Zealand Citizens, Permanent Residents and family members having been assisted to leave Gaza. Six Permanent Residents remain in Gaza seeking MFAT's support to leave. Our consular efforts to date have underscored the critical importance of strong relationships in the region, particularly at the political level.
- Officials recommend early outreach to your counterparts in Israel, Egypt and Qatar, to thank them for their ongoing support for our consular efforts, express New Zealand's position on the conflict, and seek their views on possible ways that we might contribute to

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initiatives designed to end the conflict, and return to Middle East Peace Process (MEPP) negotiations.

- Allegations of war crimes, genocide, and ethnic cleansing have been levelled (primarily at Israel) during the present Israel-Gaza conflict. New Zealand's consistent view is that determination of whether such crimes have taken place are most appropriately undertaken by a competent judicial body, such as the International Criminal Court (ICC). The ICC already has an open investigation into the broader Situation in Palestine, and the ICC's Prosecutor has indicated that the current conflict may fall within scope of the existing investigation.
- s6(a)
- s6(a), s9(2)(f)(iv)

s9(2)(g)(ii)
for Secretary of Foreign Affairs and Trade

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Recommendations

It is recommended that you:

- | | | |
|---|---|----------|
| 1 | Note that the continued worsening humanitarian situation in Gaza, recent announcement of a humanitarian pause and hostage deal, and the formation of a new government in New Zealand, presents an appropriate time to take stock of our approach to the Israel-Gaza conflict. | Yes / No |
| 2 | Reconfirm the four pillars guiding New Zealand's approach to the Israel-Gaza conflict: 1) The upholding of international law and international humanitarian law; 2) Opposition to the use of terror as a political tool and deliberate harming or targeting of civilians; 3) Recognition of Israel's right to defend itself, acting in accordance with its international legal obligations; and 4) The importance of political, not military, solutions. | Yes / No |
| 3 | s6(a) | Yes / No |
| 4 | s6(a) | Yes / No |
| 5 | s6(a) | Yes / No |
| 6 | s9(2)(g)(i) | Yes / No |
| 7 | s9(2)(f)(iv) | Yes / No |
| 8 | Refer a copy of this submission to the Prime Minister for concurrence, and to the Minister for Trade, Minister of Defence, Minister of Police, and Minister for Ethnic Communities for information. | Yes / No |

Rt Hon Winston Peters
Minister of Foreign Affairs

Rt Hon Christopher Luxon
Prime Minister

Date: / /

Date: / /

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Report

October 7 attacks: the new landscape of the Israeli-Palestinian conflict

1. Hamas's recent terror attacks on Israel and the ensuing conflict in Gaza have changed the state of play of the Israeli-Palestinian conflict. On 7 October Hamas launched a series of highly-coordinated surprise attacks into southern and central Israel. About 1,300 Israelis have been killed, the vast majority of whom were civilians. Hamas took over 240 people from Israel (including foreign nationals) into Gaza as hostages. The attacks have had a massive and traumatic psychological impact on Israel. They have been characterised by Israeli leaders as "Israel's 9/11": not since the Holocaust have more Jews been killed in one day. Hamas' tactics have been likened to ISIS.
2. Since the attacks, Israel has launched a military campaign by land, air and sea with the stated goal of the total destruction of Hamas. With much of the Hamas leadership and fighters in Gaza positioned within civilian infrastructure, casualties are mounting and are currently reported to be over 14,000. Across Gaza 1.7 million people, of a population of 2.2 million, are displaced and struggling to meet basic needs. Essential services, including the provision of safe water, electricity, education, emergency and life-saving healthcare, and digital communications, are heavily degraded or not working. Noting the scale of suffering in Gaza, allegations that Israel is perpetrating war crimes and genocide have been made by some governments, and leading human rights organisations (ref paras 26-33).
3. s9(2)(g)(i)
4. The response to this conflict by the international community has differed vastly, and evolved since 7 October. s6(a)
5. s6(a)
6. As of 7:00am Friday 24 November morning local time (Friday evening NZT), a humanitarian pause came into effect for four days following intense negotiations between Israel, the United States, Egypt, Qatar and Hamas. The pause was part of a deal that involves the release of 50 of the 240 hostages (women and children) held by Hamas in return for the release of 150 Palestinian prisoners held in Israeli jails. Humanitarian aid to Gaza would be increased to around 200 trucks per day. Israel has said it would extend the pause by one day for every additional 10 hostages released by Hamas – as at time of writing, the pause had been

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extended for two extra days, with 77 Israeli and foreign national hostages and 180 Palestinian prisoners released in total.

New Zealand's response

7. New Zealand's response to the current Israel-Hamas conflict has been based on four pillars (endorsed by the last Government and then-Leader of the Opposition during the caretaker period), which are principles-based and place the highest priority on upholding international law:
 - **The upholding of international law and international humanitarian law** - this includes the protection of civilians and the provision of humanitarian assistance for those in need. This has guided our position on calls for the release of hostages; protection of civilians; and urgent humanitarian access to Gaza;
 - **Opposition to the use of terror as a political tool and deliberate harming or targeting of civilians** – New Zealand has unequivocally condemned Hamas' 7 October attacks on Israel;
 - **Recognition of the right of a state to defend itself** – New Zealand has supported Israel's right to defend itself, but in full compliance with international law. s9(2)(h)
 - **The importance of political, not military, solutions** - a long-term solution to the crisis is urgently needed. We have joined a majority of countries, including the United States, in calling for an urgent restart of the Middle East Peace Process and for a two-state solution to the Israeli-Palestinian conflict. Support for a two-state solution has been New Zealand's long-standing position as the best path for a durable and lasting peace in the region.
8. Since 7 October, New Zealand has taken several opportunities to outline our position on the current crisis in the United Nations. New Zealand's Permanent Representative to the UN in New York delivered statements in the UN Security Council on 24 October and in the General Assembly on 27 October and 20 November. New Zealand voted for the humanitarian focused resolution in an Emergency Special Session of the General Assembly on 27 October, which called for a humanitarian truce and passed by a large margin.
9. New Zealand has contributed NZ\$10 million to the international humanitarian response in the Gaza Strip, the West Bank and Israel. This has comprised \$5 million to both the International Committee of the Red Cross (ICRC) and the World Food Programme (WFP), to support their responses to address extreme humanitarian needs (particularly in Gaza). Officials assess New Zealand's contribution to the humanitarian response so far remains appropriate and credible, including relative to likeminded partners.
10. MFAT led a significant consular response (supported by Immigration New Zealand (INZ) and the New Zealand Defence Force (NZDF)). s6(a)

New Zealand successfully secured the exit of 14 New Zealand Citizens, Permanent Residents and family members from Gaza to Egypt via the Rafah crossing. A further six New Zealand permanent residents remain in Gaza and are seeking our support to leave. s6(a)

s9(2)(h)

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s6(a) . Minimal daily exit quotas and border closures mean that evacuations may continue for weeks. s9(2)(a)

11. In the days following the 7 October attacks, MFAT helped over 60 New Zealanders and other travellers leave Israel and the West Bank, including via the provision of assisted departure flights.

12. The risk of regional escalation of the conflict remains a real one, s6(a)

Next steps for consideration

13. The most recent development of the conflict has been the announcement of a humanitarian pause and hostage deal. New Zealand has not yet made an official statement on this. Although the terms of the deal have been observed by both Israel and Hamas in Gaza, there is no guarantee it will last beyond its current 48 hour extension.

14. For the incoming government, there are a number of matters that officials recommend addressing urgently in terms of our position:

- **Reconfirmation** of the four pillars listed above in para 7 as the basis for framing our response moving forward;
- s9(2)(g)(i)

- s9(2)(g)(i) accountability for breaches of international law, including New Zealand support for the International Criminal Court's investigation into the "Situation in Palestine", which includes crimes committed on 7 October in Israel (ref paras 26 - 33). New Zealand has traditionally supported the jurisdiction of the ICC on matters related to war crimes.

s6(a)

- s9(2)(f)(iv)

- **Consideration** of further humanitarian support. Officials propose to provide further advice on humanitarian response options in 2024, unless changes on the ground necessitate consideration sooner.

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Approaches to a ceasefire

15. The intensity of Israel's current actions in Gaza, while aimed at Hamas, is having an appalling impact on civilians. s9(2)(g)(i)

16. s9(2)(g)(i)

17. In the public discourse around the conflict, various civil society groups and political leaders are actively calling for a ceasefire to reflect a demand that the fighting and killing stop. s9(2)(g)(i)

18. s6(a)

Issues in achieving a ceasefire

19. s9(2)(g)(i)

20. s6(a)

How should New Zealand position itself?

21. s9(2)(g)(i)

s6(a)

s9(2)(g)(i)

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s9(2)(g)(i)

22. There is strong civil society advocacy for New Zealand to support an immediate ceasefire and to oppose a return to fighting between Israel and Hamas in any circumstances. s9(2)(g)(i)

23. Since the outset of the conflict, New Zealand has supported Israel's right to defend itself in full compliance with international law, s6(a)

We have, in our calls, also prioritised the urgent need for adequate humanitarian access to those in need (backed up by our NZD10 million in humanitarian support), and called on all parties to protect civilians in accordance with their IHL obligations.

24. s6(a)

25. s6(a)

Approaches to accountability for breaches of international law

26. Allegations of war crimes, genocide and ethnic cleansing are often made during conflicts, and such allegations have been levelled s6(a) during the present Israel-Hamas conflict. s6(a) it is important to note that the specific allegations of genocide and ethnic cleansing have an even

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higher threshold in international law than allegations of crimes against humanity or war crimes.

27. s9(2)(g)(i)

28. In each case, any alleged incident requires rigorous investigation involving complex legal and factual determinations. New Zealand's consistent view is these determinations are most appropriately undertaken by a competent judicial body, such as the International Criminal Court (ICC), s6(a). By their nature this process takes time, usually years.

29. In this specific case, the ICC already has an open investigation into the broader Situation in Palestine which covers war crimes that are alleged to have been committed since 2014 (the date from which Palestine formally accepted the Court's jurisdiction). While avoiding any comment on specifics, the Prosecutor has indicated that the current conflict may fall within scope of the existing investigation.

30. New Zealand supports the independence of the ICC and recognises its jurisdiction to consider all crimes committed in Gaza and the West Bank, including East Jerusalem. The investigation also has a mandate to consider crimes committed by Palestinian nationals (which may include Hamas) in Israel.

31. s6(a)

32. Officials recommend that New Zealand's key messages on allegations of breaches of international law should:

- Note strong concern over reports of [breaches of international human rights/war crimes etc.]
- Note that New Zealand supports international efforts to investigate possible war crimes [and crimes against humanity] and for those responsible to be held criminally accountable.
- Note whether these have been committed requires a decision from a competent judicial body (such as the ICC) s6(a). We support the gathering of evidence of possible war crimes [and crimes against humanity] for an ICC process.
- Note these are complex legal and factual determinations, often taking years.
- Repeat calls for the parties to respect international law.

33. Opportunities for New Zealand to engage on the ICC investigation into the situation in Palestine may arise. Next week New Zealand is attending the ICC's annual governance meeting (the Assembly of State Parties) and will acknowledge the ICC's ongoing investigation in our National Statement. There may be further opportunities for New Zealand

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to engage with the ICC on this issue. Officials will assess these opportunities as they occur, and refer them for Ministerial decision where appropriate.

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Annex I: ^{s6(a)}

- s6(a)

- s6(a)

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Annex II: ^{s6(a)}

- s6(a)

- s6(a)

- s6(a)

- s6(a)

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