

4 March 2025

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OIA 29917 and 29926

Thank you for your emails of 29 January 2025 in which you request the following under the Official Information Act 1982 (OIA):

"Under the Official Information Act 1982, I request the following information regarding New Zealand's obligations under international law to address Israel's unlawful occupation of the Occupied Palestinian Territories (OPT), including the dismantling of settlements and opposition to apartheid practices.

*### **1. Obligation to Ensure Dismantling of Illegal Settlements***

*The International Court of Justice (ICJ), in its **Advisory Opinion**, affirmed that Israeli settlements in the OPT violate international law. Further, **UN Security Council Resolutions demands that Israel "immediately and completely cease all settlement activities" and calls on states to distinguish between Israel and the OPT in their dealings.*

*- **Question 1:** Why has New Zealand not taken concrete steps to ensure Israel dismantles all settlements *within a year* as required by international law? What is the reason for the decision to ignore obligations?*

*- **Question 2:** What diplomatic, economic, or legal measures has New Zealand implemented or plans to implement to pressure Israel to comply with these obligations?*

*### **2. Apartheid Practices in the OPT***

*Multiple reports, including by **Amnesty International**, the ICJ decision, and Human Rights Watch (**), conclude that Israel's policies in the OPT constitute apartheid under the International Convention on the Suppression and Punishment of the Crime of Apartheid (1973) and **Article 7 of the Rome Statute of the ICC**.*

*- **Question 3:** Does New Zealand formally recognize that Israel's practices in the OPT meet the legal definition of apartheid? If not, what is MFAT's analysis of these findings?*

*- **Question 4:** How does New Zealand uphold its obligation under **Article III of the Apartheid Convention** to "prevent, suppress, and punish" apartheid, including in its bilateral relations with Israel? If no actions are being taken, please advise the reason for this decision to ignore our obligations under IHL?*

*### **3. Compliance with International Humanitarian Law (IHL)***

*Under **Article 49(6) of the Fourth Geneva Convention (1949)**, Israel's transfer of civilians into occupied territory is prohibited. The **Rome Statute (Article 8(2)(b)(viii))** classifies such acts as war crimes.*

*- **Question 5:** How does New Zealand ensure that its trade, economic activities, or agreements with Israel do not recognize or assist illegal settlements, in line with UNSC Resolution 2334 and IHL? Are we distinguishing between Israel proper and the Israel when acting from the occupied territory?*

*- **Question 6:** Has New Zealand reviewed its cooperation with entities operating in or benefiting from settlements? If so, what were the outcomes?"*

And

"Given that Israeli settlement in the Occupied Palestinian Territories (OPT) are unlawful under international law, and New Zealand acknowledges this, Hamas is a legitimate resistance movement with the right to self-determination. This allows them the legitimacy to struggle against colonial or alien domination "by all available means, including armed struggle."

States like South Africa and Algeria historically framed liberation movements (e.g., ANC, FLN) as legitimate despite armed struggle

New Zealand's stated position should align with the right of occupied peoples to self-determination, including armed resistance under international law. In respect to this:

- 1. Why has the minister not adopted a nuanced approach by: Differentiating between Hamas' political and military wings** in policy (as the EU does)?*
- 2. **Recognized Hamas' political role as the elected government? Some states (e.g., Turkey, Qatar) engage with Hamas' political wing while condemning its military tactics.***
- 3-what efforts have been placed on Israel to dismantle settlements and end apartheid-like practices.*
- 4. Has the minister received advice on treating with the elected government in Gaza? Such as a requirement for Hamas to comply with IHL as a precondition for diplomatic recognition? Why are we sitting on the fence?*
- 5. Why has the government chosen to not Amplify nonviolent Palestinian initiatives (e.g., BDS, diplomatic statehood bids) to advance self-determination? What legal advice has the government received on our obligations under recent icj decisions, and the plausible risk of genocide, as a third party state ??"*

On 11 February 2025, you agreed to refine the scope of your request to be for:

"Under the Official Information Act 1982, I request the following information regarding New Zealand's policies and legal decisions related to trade with Israel and its activities in the Occupied Palestinian Territories (OPT), particularly in light of the 2024 International Court of Justice (ICJ) advisory opinion and relevant domestic legislation.

*Obligation to Ensure Dismantling of Illegal Settlements***

*The International Court of Justice (ICJ), in its **Advisory Opinion *2024***, affirmed that Israeli settlements in the OPT violate international law Further, **UN general assembly Resolutions** demands that Israel "immediately and completely cease all settlement activities" and calls on states to distinguish between Israel and the OPT in their dealings.*

- 1. what steps has New Zealand taken to ensure Israel dismantles all settlements *within a year* as required by international law?*

2. *Under the Customs and Excise Act 2018, the government has the power to regulate imported goods, including their description and classification. Has the government considered labeling requirements as a means of ensuring compliance with this obligation?*
3. *Since the ICJ's 2024 advisory opinion, what specific steps has New Zealand taken to distinguish between Israel and the settlements operating OPT in its trade, diplomatic, or investment policies? Please provide details on all three areas.*

*Apartheid Practices in the OPT***

*Multiple reports, including by **Amnesty International**, the ICJ 2024 ruling on the unlawful occupation of the OPT, and Human Rights Watch (**), conclude that Israel's policies in the OPT constitute apartheid*

4. *Does New Zealand formally recognize that Israel's practices in the OPT meet the legal definition of apartheid? If not, what is MFAT's analysis of these findings?*
5. *How does New Zealand uphold its obligation** to "prevent, suppress, and punish" apartheid, in its bilateral relations with Israel? If no actions are being taken, please advise the reason for this decision to ignore our obligations under ihl?"*

Background

In our email to you of 12 February 2025, confirming your refined request, you were referred to the following publicly available information:

- Previous OIA request releasing information relating to the ICJ decision: <https://www.mfat.govt.nz/assets/OIA/OIA-2025/OIA-29785-Israel-Gaza-19-December-2024.pdf>
- Up to date information including press releases, statements and advice on the Israel-Hamas conflict: <https://www.mfat.govt.nz/en/countries-and-regions/middle-east/israel-hamas-conflict>

Response to your request

In response to part 1 of your request, we confirm that on 13 September 2024, New Zealand voted in support of UNGA resolution A/ES-10/L.31 on an "Advisory opinion of the International Court of Justice on the legal consequences arising from Israel's policies and practices in the Occupied Palestinian Territory (oPt), including East Jerusalem, and from the illegality of Israel's continued presence in the Occupied Palestinian Territory".

That resolution, amongst other things, "Demands that Israel brings to an end without delay its unlawful presence in the oPt, which constitutes a wrongful act of a continuing character entailing its international responsibility, and do so no later than 12 months from the adoption of the present resolution".

New Zealand also provided an explanation of vote which can be found on the Ministry of Foreign Affairs and Trade's (the Ministry) website: <https://www.mfat.govt.nz/en/media-and-resources/unga-illegal-israeli-actions-in-occupied-jerusalem-and-the-rest-of-the-occupied-palestinian-territory-item-5-draft-resolution-aes-10l-31rev-1-explanation-of-vote>.

The explanation of the vote expressed New Zealand's view that the 12-month timeframe is unrealistic but stated in the next 12 months we expect Israel to take meaningful steps

towards compliance with international law, particularly through withdrawal from the occupied Palestinian Territory.

New Zealand's Minister of Foreign Affairs issued a statement on X which can be viewed at: <https://x.com/newzealandmfa/status/1836473214312288447?s=51>.

In response to part 2 of your request, the Customs and Excise Act 2018 is administered by the New Zealand Customs Service. This part of your request is refused under section 18(e) of the OIA because the information does not exist.

In response to part 3 of your request, New Zealand distinguishes in the dealings of the New Zealand state between Israel and the oPt. New Zealand controls imports and exports of certain military and dual-use goods, software, and technology, and chemicals. The Customs and Excise Act also imposes restrictions on the importation of prohibited goods, including some medicines.

Further information can be found on the Ministry website, most notably the Minister of Foreign Affairs' letter to John Minto, National Chair – Palestinian Solidarity Network: <https://www.mfat.govt.nz/assets/OIA/OIA-2024/MFA-letter-to-John-Minto-National-Chair-Palestinian-Solidarity-Network.pdf>

Information relevant to parts 4 and 5 of your request is withheld under section 9(2)(h) of the OIA, in order to maintain legal professional privilege.

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

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



Sarah Corbett
for Secretary of Foreign Affairs and Trade