

6 September 2024

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OIA 29544

Tēnā koe

Thank you for your email of 20 July 2024, in which you request the following under the Official Information Act 1982 (OIA):

1. *'advise to the foreign minister on the recent court decision on Israel's occupation of Palestinian territory.*
2. *The court states it is illegal and must immediately stop and reparations commence. It also states. "It will make sobering reading for Israel's allies, with the court advising that other states are under an obligation not to recognise the occupation as lawful nor to aid or assist it." I am would like to understand New Zealand's position towards the UN and the above decision'*

Your request has been numbered for ease of reference.

On 12 August 2024, the timeframes for responding to your request were extended by an additional 15 working days because responding to your request necessitated the review of a large quantity of information, and due to the consultations necessary to make a decision on your request (section 15A of the OIA refers).

The information relevant to part 1 of your request is attached. We have withheld some information under the following sections of the OIA:

- 6(a): to avoid prejudicing the security or defence of New Zealand or the international relations of the New Zealand Government;
- 9(2)(a): to protect privacy;
- 9(2)(g)(i): to protect the free and frank expression of opinions between Ministers and officials;
- 9(2)(g)(ii): to protect officials from improper pressure or harassment; and
- 9(2)(h): to maintain legal professional privilege.

One document related to part 1 of your request is withheld in full, under section 9(2)(h) of the OIA, to maintain legal professional privilege.

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.

Regarding part 2 of your request, the International Court of Justice (ICJ) has left the means to end Israel's occupation to the United Nations General Assembly and Security Council. New Zealand supports action at the United Nations and elsewhere that will support a peace process. For more information on New Zealand's relationship with the United Nations, please refer to the Ministry of Foreign Affairs and Trade's (the Ministry) website, and Foreign Minister Winston Peters' recent speech to the United Nations General Assembly, which is published on the Beehive website:

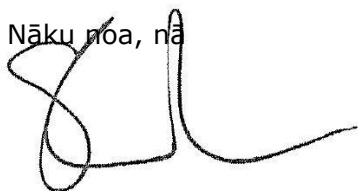
www.mfat.govt.nz/en/peace-rights-and-security/our-work-with-the-un

www.beehive.govt.nz/speech/speech-united-nations-general-assembly-66th-plenary-meeting-78th-session

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

International Court of Justice Advisory Opinion on Israel and Occupied Palestinian Territories

Talking points

- The International Court of Justice – the world’s highest court – issued its Advisory Opinion over the weekend.
- The Court concluded that Israel’s presence in the occupied Palestinian territories is unlawful, and that Israel must end its occupation as rapidly as possible. The Court also said that Israel must cease all new settlement activities, remove all settlers, and make reparations for the damage caused.
- New Zealand has long held the view that settlements are illegal under international law. The Court has confirmed this view.
- New Zealand is firmly committed to the upholding of international law and the role of the Court. The conclusions the Court has reached are consistent with New Zealand’s long-standing positions.
- New Zealand has been clear that Israel’s settlements are unlawful, and that settlement expansion undermines a two-state solution. A two-state solution is the only way for Israelis and Palestinians to live side-by-side with security and dignity.
- New Zealand continues to call on Israel to honour its international legal obligations.

s9(2)(g)(i)

- s9(2)(g)(i)

Background

On 19 July 2024 the International Court of Justice issued its Advisory Opinion in respect of the *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*. The Court reached the following conclusions:

- Israel's continued presence in the Occupied Palestinian Territory is unlawful;
- Israel is under an obligation to bring to an end its unlawful presence in the Occupied Palestinian Territory as rapidly as possible;
- Israel is under an obligation to cease immediately all new settlement activities, and to evacuate all settlers from the Occupied Palestinian Territory;
- Israel has the obligation to make reparation for the damage caused to all the natural or legal persons concerned in the Occupied Palestinian Territory;
- All States (including New Zealand) are under an obligation not to render aid or assistance to Israel in maintaining its occupation.

s6(a)

The Court was unanimous that the construction of settlements and the failure to prevent violence by the settlers violate international humanitarian law, international human rights law and the right of the Palestinian people to self-determination and other rules of international law.

This is a very significant decision s6(a) . For New Zealand, s9(2)(h) , including that settlements are unlawful under international law.¹ Officials will continue to consider the policy implications of the advisory opinion.

New Zealand reaction

New Zealand's Minister of Foreign Affairs released a [statement](#) on 20 July:

- *The International Court of Justice has issued an advisory opinion ruling that Israel's presence in the Occupied Palestinian Territories is unlawful and must end as rapidly as possible.*

¹ New Zealand co-sponsored on UNSC Resolution 2334 in 2016 which condemned Israel's settlements as illegal under international law.
POLI-203-1738

- *Continued settlement expansion makes a two-state solution, the only way for Israelis and Palestinians to live side-by-side with security and dignity, more difficult.*
- *Israel must honour its international legal obligations.*

Partner reactions

- Australia's Minister Wong released a statement on X on 20 July which highlighted that settlement activity is illegal under international law and Israel must cease the expansion of settlements; respect for the independence of the Court and that a just and enduring peace requires a two-state solution.²
- The United Kingdom has released an interim statement noting that the UK is "considering it carefully before responding." The statement also notes that the UK is "strongly opposed to the expansion of illegal settlements" and is "committed to a negotiated two-State solution".³
- The United States has criticised the "breadth" of the Advisory Opinion, suggesting it will complicate efforts to resolve the conflict. However the US was clear that Israel's program of government support for settlements is both inconsistent with international law and obstructs the cause of peace.
- UN Secretary-General António Guterres reiterated his call for the parties to re-engage on the "long-delayed political path" towards ending the occupation and resolving the conflict. "The only viable path is the vision of two States" his spokesperson said in a [statement](#).

² *The Albanese Government has been firm and consistent that settlement activity is illegal under international law and a significant obstacle to peace. We respect the independence of the Court and its critical role in upholding international law and the rules-based order.*

A just and enduring peace will require the legitimate aspirations of the Palestinian people to self-determination to be realised.

We want to see concrete steps taken by Israel to cease the expansion of settlements and to respond to extremist settler activity.

We have made clear that the Australian Government will deny anyone identified as an extremist settler a visa to travel to Australia.

We are carefully considering the detail of the ICJ opinion to fully understand the conclusions reached.

³ [UK statement on the ICJ's Advisory Opinion on Israel and the Occupied Palestinian Territories - GOV.UK \(www.gov.uk\)](#)

Annex: Further analysis

Background

In January 2023 the United Nations General Assembly (UNGA) commissioned this Advisory Opinion to determine *inter alia* the “legal consequences” arising from Israel’s “ongoing violation” of the “right of the Palestinian people to self-determination” and “from its prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967”.

It follows the Advisory Opinion issued in 2004 holding that the wall constructed by Israel in the West Bank violates international law, including the Palestinian right to self-determination (known as the Wall Opinion).

On 19 July 2024, following an 18-month process, including public hearings involving more than 50 states, the Court released its Opinion. The Court concluded that Israel’s presence in the OPT is unlawful, and that Israel must end its occupation as rapidly as possible. s9(2)(h)

s9(2)(h)

Policy implications for New Zealand

s9(2)(h) The ICJ has largely confirmed the position held by New Zealand for some time. These are views we have communicated to Israel's government.

s9(2)(h)

New Zealand is likely to come under increasing pressure from advocacy groups to 'act' on the ICJ advisory opinion. s9(2)(h)

s9(2)(h)

s9(2)(h)

Additional pressure to sanction Israeli settlers will also likely continue. s9(2)(h)

Released under the Official Information Act 1982

Out of scope

From: s9(2)(g)(ii)

Sent: Saturday, 20 July 2024 3:51 pm

To: s9(2)(g)(ii)

cc: s9(2)(g)(ii)

MEDIA <media@mfat.govt.nz>;s9(2)(g)(ii)

Subject: RE: ICJ issues significant advisory opinion on Israeli Occupation

Good Afternoon,

Further to my message this morning, and following a conversation with ^{s9(2)(g)(ii)} we have the following suggest lines to be incorporated in a tweet. s6(a)

In light of the likely interest, we think there is merit in pushing out an X post today so that we have a clear statement on the record before media engagements this week. We (MEA/LGL) have the following lines which could form the basis of a 3 part tweet:

- The ICJ Advisory Opinion on Israel's policies and practices in the Occupied Palestinian Territories is a significant development. New Zealand is a strong supporter of the ICJ which plays a critical role in upholding international law. We will be carefully considering the policy implications ~~in the coming days.~~
- The Court has concluded that Israel's presence in the OPT is unlawful and that Israel must end its occupation as rapidly as possible. The Court also said that Israel must cease all new settlement activities, remove all settlers from the OPT, and make reparations for the damage caused.
- Continued settlement expansion and Israel's occupation of the OPT is unlawful and makes a two-state solution more difficult. A two-state solution is the only way for Israelis and Palestinians to live side by side with security and dignity. Israel must uphold its international legal obligations.

I'll flick through on whatsapp as discussed ^{s9(2)(g)(ii)}

s9(2)(g)(ii)

s9(2)(a)

s6(a)

Released under the Official Information Act 1982

From: s9(2)(g)(ii)

Sent: Saturday, July 20, 2024 5:53:01 AM

To: s9(2)(g)(ii)

Cc: s9(2)(g)(ii)

MEDIA <media@mfat.govt.nz>

Subject: ICJ issues significant advisory opinion on Israeli Occupation

[SEEMAIL] [RESTRICTED]

Good morning all,

As flagged to some (not all) yesterday and included in the Weekly Report, the International Court of Justice issued its advisory opinion earlier this morning NZ time.

The HAG's FM below provides an excellent summary of the immediate reaction. s6(a)

s9(2)(h) with many issues being decided 14 judges to 1.

New Zealand did not make submissions to the Court in this advisory opinion s9(2)(h)

The 83 page decision has only been out a matter of hours, and given its significance, would benefit from considered advice in slower time including input from MEA colleagues on the broader impacts. We will coordinate fuller advice on this issue next week for Ministers

If there are media enquiries to Ministers we recommend drawing on the following interim points:

- New Zealand is a strong supporter of the International Court of Justice – the world's highest court.
- This is clearly a significant advisory opinion which has been released, and one which we will be studying carefully in the coming days.

s6(a)

LGL will s6(a) work with MEA to provide any updates as necessary over the weekend, and into next week.

Please don't hesitate to give me a call if you require anything further

Thanks

s9(2)(g)(ii)

Released under the Official Information Act 1982