

20 June 2024

Prime Minister of New Zealand  
Rt Hon Christopher Luxon  
Private Bag 18888  
Parliament Buildings  
Wellington 6160

Tēnā koe Prime Minister,

**URGENT**

**RE: Letter of demand: on the New Zealand Government's breaches of international law, and individual criminal liability pursuant to the Rome Statute**

We, the Palestine Solidarity Network Aotearoa (PSNA), with the support of the Palestinian community, human rights advocates, and community organisations, hereby raise our concerns as to Aotearoa's breaches of international law in relation to the unfolding situation in Gaza, as well as the individual criminal liability which may attach to New Zealand Government Ministers, Members of Parliament and other officials for aiding and abetting international crimes committed by Israel, including genocide, pursuant to the Rome Statute. This letter hereby puts you on notice for any relevant breach of the New Zealand domestic law or international law. In writing this letter to you we have engaged the assistance of several legal experts, students, academics, and human rights advocates.

We write to put you on notice that the New Zealand Government has the following obligations under international law:

- 1: Its responsibility under the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) to prevent and to punish the ongoing genocide in Gaza;<sup>1</sup>
- 2: Its obligation pursuant to the Geneva Conventions to ensure respect for international humanitarian law;<sup>2</sup>  
and
- 3: Its obligations under customary international law to cooperate with other states to bring an end Israel's ongoing serious breaches of peremptory norms, and to refrain from aiding or assisting Israel in those breaches.

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<sup>1</sup> Article 1.

<sup>2</sup> Common article 1 of the Geneva Conventions and article 1(1) of Additional Protocol I to the Geneva Conventions.

In relation to Israel's ever escalating and horrific crimes in Gaza, the New Zealand Government is failing to meet its obligations, in breach of international law.

We call on the Government to act without delay to fulfil its obligations. In this letter, we outline how the Government can do this.

### **Acts and omissions of the New Zealand Government in breach of international law**

We highlight the following key acts and omissions of the New Zealand Government through which it is in breach of international law, including its responsibility to prevent and to punish the genocide in Gaza:

1. Potential failure to prevent the export of military components for use in weaponry by Israel. Specifically, failure to adequately regulate Rakon Limited (a company based in Tāmaki Makaurau Auckland) regarding the export of components to the United States for use in military equipment, which may be being used in Israel's genocide;
2. Sending New Zealand Defence Force (NZDF) personnel to train alongside Israel Defence Forces during the US-led Rim of the Pacific (RIMPAC) military exercises beginning on 26 June 2024;
3. Sending NZDF personnel to assist in United States and United Kingdom-led military operations against the Houthis in Yemen, with the effect of suppressing regional protest against Israel's genocide in Gaza;
4. Withholding approval for funding for the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA);
5. Failure to provide humanitarian visas to Palestinians in Gaza who have family members in Aotearoa (by contrast with the 2022 Special Ukraine Visa for Ukrainians fleeing from war);
6. Failure to take any measures of retaliation against Israel, such as expelling diplomats or suspending diplomatic relations;
7. Continuing to allow shipping company ZIM to use New Zealand ports;
8. Failure to suspend the Israel Working Holiday Visa for Israeli citizens who have served with the Israel Defense Forces carrying out international crimes;
9. Relatedly, failure to implement a ban on investments in, and imports from, companies building and maintaining illegal Israeli settlements on Palestinian land in line with UN Security Council resolution 2334 (UNSC2334 was co-sponsored at the UN Security Council by New Zealand in 2016).

10. Failure to engage with proceedings in the genocide case at the International Court of Justice (ICJ), and failing to denounce Israel's breaches of ICJ rulings, most notably by illegally continuing its military assault on Rafah;

In sum, these actions and omissions, as well as failure to condemn the actions of Israel exhibit the New Zealand Government's seemingly unconditional support for Israel, and its unwillingness to take any action to prevent or censure genocide and Israel's serious breaches of international law, including war crimes and crimes against humanity. The New Zealand Government is now itself in serious breach of its obligations under the Genocide Convention, the Geneva Conventions, and customary international law.

### **Immediate Actions demanded to bring Aotearoa into compliance with international law**

We demand that the New Zealand Government immediately expedite the following policies as a means to bring Aotearoa into compliance with our international law commitments:

1. Condemn the wholesale killing of Palestinians by Israel, as the government swiftly and repeatedly condemned the killing of Israeli civilians following the 7 October 2023 attacks;
2. Lodge protest with Israel for its atrocities, and if they continue suspend diplomatic relations with Israel;
3. Revoke military export orders to the United States and Israel (above all, Rakon Limited's export licences for crystal oscillators) pending investigation to determine whether and which military components exported from New Zealand are being used in munitions used by Israel;
4. Withdraw Aotearoa from participation in RIMPAC for 2024;
5. Commit to and grant humanitarian visas for Palestinians in Gaza with family members in Aotearoa;
6. Commit to increasing and bringing forward UNRWA funding, in order to make a meaningful contribution to the increasingly desperate humanitarian situation;
7. Withdraw NZDF personnel from operations against the Houthis;
8. Require New Zealand ports to cease providing facilities to shipping company ZIM;
9. Suspend the Israel Working Holiday Visa Programme for Israeli citizens who have served with the IDF;
10. Implement a ban on investments in, and imports from, companies building and maintaining illegal Israeli settlements on Palestinian land in line with UN Security Council resolution 2334;
11. Recognise the state of Palestine, as the vast majority of nations around the world have done as a step towards peace, most recently joined by Ireland, Spain, Norway and Slovenia.

12. File a Declaration of Intervention in relation to South Africa’s case against Israel in the ICJ and make submissions in defence of principles of international law and the urgent need to end the genocide;

13. Denounce Israel’s illegal continuation of its military assault on Rafah despite the ICJ’s prohibition of this;

Given the deepening gravity of Israel’s international crimes, and Aotearoa New Zealand’s ongoing breaches of international law, we expect an official response to our concerns and proposals by **18 July 2024**.

### **Individual criminal liability relating to Israel’s international crimes**

You will be aware that public support by New Zealand Government Ministers or other officials for the actions of Israel, to which we refer in this notice and its appendices (and likewise any future similar actions), expose them to individual criminal liability and prosecution by the International Criminal Court and in domestic courts. However, for the avoidance of doubt, and so that New Zealand Government Ministers and officials cannot at any future stage deny awareness of the factual or legal position, we provide further detail relevant to this criminal liability (in the body of this letter as well as **APPENDIX B** addressing the legal background, and **APPENDIX D** containing statements made by Members of Parliament).

We remind you that the investigation into the Situation in Palestine is presently ongoing at the ICC.<sup>3</sup> This has now led to the Office of the ICC Prosecutor applying to the Court for arrest warrants relating to Benjamin Netanyahu, Prime Minister of Israel, and Yoav Gallant, Minister of Defence of Israel, for war crimes and crimes against humanity committed in Gaza from at least 8 October 2023.

Arrest warrants have also been sought for three leading members of Hamas for war crimes and crimes against humanity committed in Israel and Gaza from at least 7 October 2023.

In this context, pursuant to Article 15(2) of the Rome Statute, the Prosecutor has a very wide power to seek and consider evidence of international criminal activity in the Occupied Palestinian Territory, including in Gaza. Israel has declared it will not cooperate with the investigation, but the investigation was authorised by the Pre-Trial Chamber of the ICC in 2021.

Where there is evidence that New Zealand leaders have aided and abetted Israel or otherwise been complicit in carrying out these crimes, they may be referred to the ICC by a communication made pursuant to Article 15 of the Rome Statute.

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<sup>3</sup> International Criminal Court “State of Palestine: Situation in the State of Palestine: ICC-01/18” <[www.icc-cpi.int/palestine](http://www.icc-cpi.int/palestine)>.

We are presently considering whether international criminal liability may attach to New Zealand Government Ministers and Members of Parliament due to the following:

- a. Potential failure to prevent companies supplying parts used in weapons of war by Israel, specifically Rakon which may be supplying military components to Israel;
- b. Statements made in support of Israel, especially statements characterising Israel's actions in Gaza as self-defence justified by the 7 October 2023 attacks;
- c. Diplomatic support for Israel, in particular through Minister of Foreign Affairs Winston Peters' meeting with the Israeli Ambassador on 12 February 2024; and
- d. Sending New Zealand Defence Force (NZDF) personnel to train alongside Israel Defence Forces at RIMPAC.

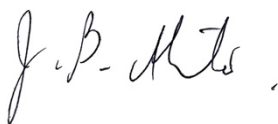
The New Zealand Government should be aware that international criminal tribunals have previously examined the responsibility of those who have substantially contributed to a crime by providing encouragement and moral support to the perpetrators, and where the perpetrator is aware of this support (as discussed in more detail in **APPENDIX B**).<sup>4</sup>

The statements in **APPENDIX D** amount to Members of the New Zealand Parliament providing encouragement and moral support to Israel. It is highly likely that Israel is aware of the support provided to it from New Zealand.

As leading people in our Government, we invite you to rectify the positions you have taken collectively and individually on this issue. This begins by publicly condemning Israel's breaches of international law. It is not too late for Aotearoa to hold Israel to account and to help bring an end to its impunity, and its atrocities.

New Zealand must defend the international rule of law. We may rely upon it ourselves one day.

Sincerely

A handwritten signature in black ink, appearing to read 'J. Minto'.

John Minto  
Chair, PSNA

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<sup>4</sup> See *Prosecutor v Radoslav Brdjanin (Appeal Judgement)* ICTY Appeals Chamber IT-99-36-A, 3 April 2007 at [277].

## Appendix A: The Facts

1. The following is a summary of relevant facts.
2. Since 7 October 2023, Israel has waged an ongoing military assault against Palestinians in Gaza including heavy and persistent bombing as well as a continuing ground invasion.

### Warnings to flee

3. On 13 October 2023, the Israeli Government gave 1.1 million Palestinians in northern Gaza 24 hours to evacuate their homes ahead of a ground invasion. Israeli airstrikes struck Palestinians while they fled.<sup>5</sup> On numerous occasions since, Israel has issued “warnings” to Palestinians to evacuate different areas, including hospitals, with very little time before bombings begin.<sup>6</sup>

### Deaths, injuries and displacements

4. Since the beginning of Israel’s campaign, over 37,000 Palestinians have been confirmed killed, with many thousands more likely deceased beneath rubble. Over 85,000 are confirmed injured, and 1.7 million displaced.<sup>7</sup> The daily death rate is estimated to be the highest among all conflicts of the 21st century.<sup>8</sup>

### Women and children

5. Of those killed, the UN estimates 52 per cent are women and children.<sup>9</sup> UN Secretary General Antonio Guterres has described Gaza as a “graveyard for children.”<sup>10</sup>
6. At least 17,000 children are estimated to be unaccompanied, meaning they are separated from their families or have no existing family left.<sup>11</sup>

### Aid and aid workers

7. In step with its military campaign, Israel has blocked much of the aid desperately needed in Gaza from entering the territory. In early May 2024, the World Food Programme warned that northern

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<sup>5</sup> Isabel DeBre, Edith M Lederer and Wafaa Shurafa “Airstrikes hit Palestinians fleeing northern Gaza after Israel orders 1 million to evacuate” *Los Angeles Times* (online ed, El Segundo, 13 October 2023).

<sup>6</sup> Jane McAdam and Ben Saul “Gaza is being strangled’: why Israel’s evacuation order violates international law” (17 October 2023) *The Conversation* <<https://theconversation.com>>.

<sup>7</sup> United Nations Office for the Coordination of Humanitarian Affairs (OCHA) “Occupied Palestinian Territory” <[www.ochaopt.org](http://www.ochaopt.org)>.

<sup>8</sup> Oxfam Aotearoa “Daily death rate in Gaza higher than any other major 21st Century conflict” (15 January 2024) <[www.oxfam.org.nz](http://www.oxfam.org.nz)>.

<sup>9</sup> <https://www.npr.org/2024/05/15/1251265727/un-gaza-death-toll-women-children>

<sup>10</sup> United Nations “Gaza ‘Becoming a Graveyard for Children’, Warns UN Secretary-General, Calling for Humanitarian Ceasefire” (press release, 6 November 2023).

<sup>11</sup> Jonathan Crickx “Stories of loss and grief: At least 17,000 children are estimated to be unaccompanied or separated from their parents in the Gaza Strip” UNICEF (press release, 2 February 2024).

Gaza was in famine, with famine conditions moving south through the territory.<sup>12</sup> Since the war began, Israeli forces have carried out at least eight strikes on aid workers' convoys and premises, without prior warning, and even though aid groups had provided their coordinates to Israeli authorities.<sup>13</sup> Those deliberate strikes have killed or injured at least 31 aid workers.<sup>14</sup> To date, at least 273 aid workers have been killed by Israel.<sup>15</sup> There is no 21st century precedent of such a high death rate for aid workers.<sup>16</sup>

## Hospitals

8. Less than one third of Gaza's 36 hospitals are currently functioning in any capacity<sup>17</sup> after repeated and deliberate attacks by the Israeli military.
9. Al Shifa Hospital, once Gaza's largest healthcare provider, has been completely destroyed after military sieges in both November 2023 and March 2024,<sup>18</sup> with no remaining patients and little usable equipment.<sup>19</sup>
10. In December 2023, premature infants were found decomposing in Al Shifa Hospital after doctors and patients were forced by the Israeli military to evacuate during the first siege on the hospital.<sup>20</sup>
11. Following the siege on Nasser Hospital in Khan Younis in early 2024, mass graves holding at least 392 bodies were found, with some bodies showing signs of being executed or tortured.<sup>21</sup>
12. The second siege on Al Shifa Hospital may have resulted in over 1,500 deaths, including summary executions of hospital personnel.<sup>22</sup>
13. At least 493 health workers have been killed.<sup>23</sup>

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<sup>12</sup> <https://www.aljazeera.com/news/2024/5/4/northern-gaza-in-full-blown-famine-un-food-agency-chief-says>

<sup>13</sup> <https://www.hrw.org/news/2024/05/14/gaza-israelis-attacking-known-aid-worker-locations>

<sup>14</sup> <https://www.hrw.org/news/2024/05/14/gaza-israelis-attacking-known-aid-worker-locations>

<sup>15</sup> <https://www.ochaopt.org/content/humanitarian-situation-update-179-gaza-strip>

<sup>16</sup> Reliefweb "Gaza's invisible massacre: aid workers killed in record numbers" (press release, 15 May 2024).

<sup>17</sup> World Health Organisation (WHO) "Rafah incursion would substantially increase mortality and morbidity and further weaken an already broken health system" (statement, 3 May 2024).

<sup>18</sup> Tlaleng Mofokeng and Francesca Albanese "Israel/Gaza: UN experts deplore attacks on Al-Shifa Hospital, urge States to stop the massacre" United Nations (statement, 3 April 2024).

<sup>19</sup> World Health Organization (WHO) "Six months of war leave Al-Shifa hospital in ruins, WHO mission reports" (statement, 6 April 2024).

<sup>20</sup> Yasmine Salam, Rima Abdelkader and Matthew Mulligan "Abandoned babies found decomposing in Gaza hospital weeks after it was evacuated" (3 December 2023) NBC News <[www.nbcnews.com](http://www.nbcnews.com)>.

<sup>21</sup> <https://www.aljazeera.com/news/liveblog/2024/4/25/israels-war-on-gaza-live-calls-grow-for-gaza-mass-graves-investigation?update=2859037>

<sup>22</sup> <https://euromedmonitor.org/en/article/6254/Al-Shifa-Medical-Complex-Witnesses-One-of-the-Largest-Massacres-in-Palestinian-History>

<sup>23</sup> <https://www.ohchr.org/en/press-releases/2024/05/un-expert-horrified-death-gazan-orthopedic-surgeon-israeli-detention#:~:text=The%20Ministry%20of%20Health%20in,Many%20more%20have%20been%20injured.>

### Journalists targeted

14. 108 journalists and media workers have been confirmed killed by the Committee to Protect Journalists (CPJ),<sup>24</sup> making Israel’s war on Gaza the deadliest period for journalists since the CPJ began gathering data in 1992. The CPJ has determined that at least three of those journalists were directly targeted by Israeli forces in killings which the CPJ classifies as murders.<sup>25</sup>

### Destruction of buildings and cultural heritage

15. More than half of the buildings in Gaza have now been destroyed, with at least 87,000 homes completely destroyed and 297,000 damaged and rendered uninhabitable.<sup>26</sup> Experts have considered Israel’s bombardment in Gaza to be one of the “most destructive in modern history”.<sup>27</sup>
16. The UN Development Program (UNDP) estimates that under a best-case scenario it would require \$40 to \$50 billion USD and 16 years to even partially rebuild Gaza.<sup>28</sup> Nearly all of Gaza’s religious heritage sites are damaged, including Saint Porphyrius Orthodox Church Complex, considered the world’s third oldest church, and the Great Al Omari Mosque, Gaza’s oldest mosque.<sup>29</sup>

### Education

17. There are no operating schools in Gaza since Israel’s assault began. An estimated 625,000 students do not presently have access to education,<sup>30</sup> with 76% of schools requiring full reconstruction or major rehabilitation to be functional again<sup>31</sup> and at least 296 educational staff killed.<sup>32</sup>

### Harm Beyond Gaza

18. Israel’s aggression since 7 October 2023 is not limited to Gaza but has extended to other areas of occupied Palestine. While attention is focused on Gaza, Palestinians in the West Bank have experienced a wave of violence by extremist settlers and Israeli forces, who have carried out

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<https://cpj.org/2024/06/journalist-casualties-in-the-israel-gaza-conflict/#:~:text=108%20journalists%20and%20media%20workers%20were%20confirmed%20killed%3A%20103%20Palestinian,46%20journalists%20were%20reported%20arrested.>

25 <https://cpj.org/2024/06/journalist-casualties-in-the-israel-gaza-conflict/#:~:text=108%20journalists%20and%20media%20workers%20were%20confirmed%20killed%3A%20103%20Palestinian,46%20journalists%20were%20reported%20arrested.>

26 <https://www.middleeastmonitor.com/20240611-unrwa-says-more-than-half-of-gazas-buildings-have-been-destroyed/>

27 Julia Frankel “Israel’s military campaign in Gaza seen as among the most destructive in recent history, experts say” (12 January 2024) Associated Press News <<https://apnews.com>>.

28 Margaret Besheer “UN: Reconstructing Gaza could cost \$50 billion” (2 May 2024) Voice of America <[www.voanews.com](http://www.voanews.com)>.

29 World Bank, European Union (EU) and United Nations *Gaza Strip - Interim Damage Assessment: Summary Note* (29 March 2024) at 13.

30 <https://www.ochaopt.org/content/humanitarian-needs-and-response-update-16-22-april-2024>

31 <https://www.ochaopt.org/content/humanitarian-situation-update-179-gaza-strip>

32 <https://www.ochaopt.org/content/humanitarian-needs-and-response-update-16-22-april-2024>



extrajudicial killings, destroyed homes and continued land grabbing. 2023 was the deadliest year on record for Palestinians in the West Bank, with at least 507 killed, including at least 81 children.<sup>33</sup>

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<sup>33</sup> “Shocking spike in use of unlawful lethal force by Israeli forces against Palestinians in the occupied West Bank” (5 February 2024) Amnesty International <[www.amnesty.org](http://www.amnesty.org)>.

## Appendix B: Legal background

### Aotearoa's obligation to prevent and to punish genocide

In the Genocide Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:<sup>34</sup>

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

In January 2024, the International Court of Justice (ICJ) ruled that it is plausible that Israel is carrying out a genocide against the Palestinian people.

In May 2024 the ICJ made a provisional order that Israel immediately halt its military offensive on Rafah in order to conform with its obligations under the Genocide Convention.<sup>35</sup> To date, Israel has continued its offensive on Rafah unabated.

Pursuant to article 1 of the Genocide Convention, Aotearoa has an obligation “to prevent and to punish” genocide.<sup>36</sup>

### Aotearoa's obligation to ensure respect for international humanitarian law

Pursuant to the Geneva Conventions, Aotearoa is obliged to ensure respect for international humanitarian law.<sup>37</sup>

The principle of distinction in international humanitarian law requires a state in armed conflict to distinguish between civilians and civilian objects on the one hand, and combatants and military objectives on the other.<sup>38</sup> Direct attacks against civilians and civilian objects, including journalists and aid workers, are prohibited, as are means and methods of warfare that may lead to indiscriminate attack.<sup>39</sup> Israel's use of

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<sup>34</sup> Article 2.

<sup>35</sup> Order of the International Court of Justice dated 24 May 2024, at [50]. [Order of 24 May 2024 | INTERNATIONAL COURT OF JUSTICE \(icj-cij.ohttps://www.icj-cij.org/node/204091rg\)](https://www.icj-cij.org/node/204091rg)

<sup>36</sup> Convention on the Prevention and Punishment of the Crime of Genocide (opened for signature 9 December 1948, entered into force 12 January 1951), art 1..

<sup>37</sup> Common article 1 of the Geneva Conventions and article 1(1) of Additional Protocol I to the Geneva Conventions.

<sup>38</sup> [https://www.icrc.org/sites/default/files/wysiwyg/war-and-law/03\\_distinction-0.pdf](https://www.icrc.org/sites/default/files/wysiwyg/war-and-law/03_distinction-0.pdf)

<sup>39</sup> ICRC Customary International Humanitarian Law database, rule 1 (Principle of Distinction between Civilians and Combatants), rule 7 (Principle of Distinction between Civilian Objects and Military Objectives), rule 11 (Indiscriminate Attacks), and rule 71 (Weapons That Are by Nature Indiscriminate).

white phosphorus, for instance, which “causes severe burns, often down to the bone,” in densely-populated Gaza violates the principle of distinction and the prohibition on indiscriminate attack under international law.<sup>40</sup>

Article 52(3) of Protocol (I) additional to the Geneva Conventions provides that in case of doubt whether an object normally dedicated to civilian purposes, such as a school, hospital, or refugee camp, is being used to make an effective contribution to military action (therefore making it a military objective), it shall be presumed not to be so used. International humanitarian law does not support Israel’s repeated targeting of civilian objects where they allege, they are military objectives (such as occurred with Al Shifa Hospital).

The international humanitarian law principle of proportionality is also relevant. According to the International Criminal Tribunal for the Former Yugoslavia, proportionality means that the incidental and involuntary harm caused to the civilian population during a military attack must not be excessive in relation to the military advantage gained.<sup>41</sup> Israel’s actions in Gaza since October 2023 are overwhelmingly in violation of the principle of proportionality.

Parties to a conflict must allow for unimpeded passage of humanitarian relief to civilians in need.<sup>42</sup> Israel has been in serious breach of this requirement since the outset of its war on Gaza.

Evacuations in armed conflict must also follow international law requirements, such as giving effective advance warning to civilians.<sup>43</sup> The manner in which Israel has issued “warnings” to Palestinians to evacuate different areas, including hospitals (on 13 October 2023 as well as numerous times since), with very little time before bombings begin, is illegal under international law.<sup>44</sup>

### **Aotearoa’s obligations to act in response to serious breaches of peremptory norms**

Aotearoa is obliged under customary international law to cooperate with other states to bring to an end serious breach of peremptory norms, and to refrain from aiding or assisting in those breaches.<sup>45</sup> These obligations apply *domestically* as part of New Zealand’s common law.

<sup>40</sup> Human Rights Watch “Questions and Answers on Israel’s Use of White Phosphorus in Gaza and Lebanon” (12 October 2023) <[www.hrw.org](http://www.hrw.org)>.

<sup>41</sup> *Prosecutor v. Kupreškić et al.*, Case No. IT-95-16-T, *Judgment*, 14 January 2000.

<sup>42</sup> ICRC Database, Access for Humanitarian Relief to Civilians in Need, at Rule 55.

<sup>43</sup> International Committee of the Red Cross (ICRC) Database, Customary International Law (CIL), Advance Warning, at Rule 20.

<sup>44</sup> Jane McAdam and Ben Saul “‘Gaza is being strangled’: why Israel’s evacuation order violates international law” (17 October 2023) The Conversation <<https://theconversation.com>>.

<sup>45</sup> Articles on Responsibility of States for Internationally Wrongful Acts, articles 41(1) and (2). Text adopted by the International Law Commission and noted by the UN General Assembly in 2001. [9\\_6\\_2001.pdf](https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf) ([uhttps://legal.un.org/ilc/texts/instruments/english/draft\\_articles/9\\_6\\_2001.pdfn.org](https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdfn.org))

Peremptory norms of international law - which are binding on all states - include the prohibition of genocide, the prohibition of crimes against humanity, the basic rules of international humanitarian law (discussed above), and the right of self-determination.<sup>46</sup>

A breach by a state of an obligation arising under a peremptory norm is *serious* if it involves a gross or systematic failure by the state to fulfil the obligation.<sup>47</sup>

The prohibition on genocide (defined in the Genocide Convention) is one of the longest-standing and most well-established customary international law norms arising out of the horrors of the Holocaust and the creation of the United Nations.

The definition of crimes against humanity from the Rome Statute reflects the latest consensus among the international community on this matter.<sup>48</sup> It provides as follows:

For the purpose of this Statute, “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized

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<sup>46</sup> International Law Commission Report, A/74/10, 2019, chap. V, Annex at page 208. [chp5.pdf \(uhttps://legal.un.org/ilc/reports/2019/english/chp5.pdfn.org\)](https://legal.un.org/ilc/reports/2019/english/chp5.pdfn.org)

<sup>47</sup> Articles on Responsibility of States for Internationally Wrongful Acts, article 40(2). [9\\_6\\_2001.pdf \(uhttps://legal.un.org/ilc/texts/instruments/english/draft\\_articles/9\\_6\\_2001.pdfn.org\)](https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdfn.org)

<sup>48</sup> United Nations Office on Genocide Prevention and the Responsibility to Prothttps://www.un.org/en/genocideprevention/crimes-against-humanity.shtmlect

as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

(i) Enforced disappearance of persons;

(j) The crime of apartheid;

(k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

For the purpose of paragraph 1:

(a) “Attack directed against any civilian population” means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;

(b) “Extermination” includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;

(c) “Enslavement” means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;

(d) “Deportation or forcible transfer of population” means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;

(e) “Torture” means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;

(f) “Forced pregnancy” means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;

(g) “Persecution” means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;

(h) “The crime of apartheid” means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and

domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;

(i) “Enforced disappearance of persons” means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

Israel’s widespread and systematic killings of Palestinians in Gaza, and the deliberate creation of inhumane conditions by destroying civilian infrastructure and preventing sufficient aid from entering the territory are crimes against humanity.

There can be no doubt that Israel’s atrocities in Gaza amount to a serious breach of peremptory norms, placing obligations on Aotearoa as discussed.

#### **Individual criminal liability pursuant to the Rome Statute**

Aotearoa is a party to the Rome Statute of the International Criminal Court, pursuant to which genocide, crimes against humanity and war crimes are crimes punishable under international criminal law.

The Rome Statute definition of genocide is the same as the definition provided above from the Genocide Convention.

Specifically, regarding war crimes, the International Criminal Court has jurisdiction over their prosecution when they are committed as part of a plan or policy or as part of a large-scale commission of such crimes.<sup>49</sup> Article 8(2)(a) of the Rome Statute defines war crimes in relation to *whom* they are perpetrated against. For present purposes, the fourth Geneva Convention, which affords protection to civilians and their property in international conflict, is relevant. The Rome Statute defines war crimes as follows:<sup>50</sup>

(a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

(i) Wilful killing;

(ii) Torture or inhuman treatment, including biological experiments;

(iii) Wilfully causing great suffering, or serious injury to body or health;

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<sup>49</sup> Rome Statute of the International Criminal Court at article 8(1).

<sup>50</sup> Article 8(2).

- (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
  - (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
  - (vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
  - (vii) Unlawful deportation or transfer or unlawful confinement;
  - (viii) Taking of hostages.
- (b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:
- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
  - (ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
  - (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
  - (iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;
  - (v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended, and which are not military objectives;
  - (vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;
  - (vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;
  - (viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;
  - (ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives...

[Article 8 of the Rome Statute continues with further examples of war crimes]

Israel's intentional targeting of homes, aid workers, journalists, hospitals, refugee camps, religious sites and other civilian targets as discussed in this letter are war crimes, and indeed amount to a large-scale commission of war crimes pursued as a policy by Israel. They fall within the jurisdiction of the ICC.

Israel's commission of crimes against humanity in Gaza also falls within the jurisdiction of the ICC.

As mentioned in the main text of this letter, the ICC Prosecutor has applied for arrest warrants for the Prime Minister of Israel, and the Minister of Defence of Israel, for war crimes and crimes against humanity.

The ICJ's finding that it is plausible that Israel is carrying out a genocide against the Palestinian people signals that Israel's leaders may also face criminal liability for genocide.

Pursuant to Article 25(3)(c) of the Rome Statute, individual responsibility for the crimes prohibited by the Statute attaches not only to the direct perpetrators of international crimes, but also to those who aid, abet, or otherwise assist in the commission of those crimes.<sup>51</sup> Article 25(3)(d) extends this accessorial liability to natural persons who otherwise contribute to the actual or attempted commission of an international crime by a group of people acting with a common purpose. This contribution may be made knowing that the group intended to commit the crime, even though the relevant persons did not aim to further the group's criminal activity or purpose.<sup>52</sup> Article 25(3)(e) of the Rome Statute also provides that a person will be criminally responsible and liable for punishment for the crime of genocide where they "directly and publicly incite others to commit genocide."<sup>53</sup>

In international tribunals, aiding and abetting an international crime has been deemed to include "encouragement" and "moral support".<sup>54</sup> This encouragement or moral support must be substantial.<sup>55</sup> A spectator of an international crime becomes complicit where their status is such that their "presence had a significant legitimising or encouraging effect on the principals".<sup>56</sup> It follows that encouragement and moral support can only form a substantial contribution to an international crime when the principal perpetrators are aware of it.<sup>57</sup>

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<sup>51</sup> Rome Statute of the International Criminal Court, article 25(3)(c).

<sup>52</sup> Article 25(3)(d).

<sup>53</sup> Article 25(3)(e).

<sup>54</sup> *Prosecutor v Dusko Tadic (Appeal Judgement)* ICTY Appeals Chamber IT-94-1-A, 15 July 1999 at [229]; *Prosecutor v Zlatko Aleksovski (Appeal Judgement)* ICTY Appeals Chamber IT-95-14/1-A, 24 March 2000 at [162]; *Prosecutor v Mitar Vasiljevic (Appeal Judgement)* ICTY Appeals Chamber IT-98-32-A, 25 February 2004 at [102]; *Prosecutor v Tihomir Blaskic (Appeal Judgement)* ICTY Appeals Chamber IT-95-14-A, 29 July 2004 at [48]; *Prosecutor v Miroslav Kvočka et al. (Appeal Judgement)* ICTY Appeals Chamber IT-98-30/1-A, 28 February 2005 at [89]; *Prosecutor v Blagoje Simić (Appeal Judgement)* ICTY Appeals Chamber IT-95-9-A, 28 November 2006 at [85].

<sup>55</sup> Tadić Appeal Judgement, para. 229; Aleksovski Appeal Judgement, para. 162; Furundžija Trial Judgement, para. 234.

<sup>56</sup> *Prosecutor v Anto Furundžija (Trial Judgement)* ICTY Trial Chamber IT-95-17/1-T, 10 December 1998 at [232].

<sup>57</sup> See *Prosecutor v Blagoje Simić (Appeal Judgement)* ICTY Appeals Chamber IT-95-9-A, 28 November 2006 at [130].



The ICC does not recognise an individual's official capacity as providing immunity from such scrutiny and prosecution, as article 27 of the Rome Statute makes clear. The ICC Appeals Chamber has found that there is no head of state immunity under customary international law in regard to international courts.<sup>58</sup>

### **Domestic criminal liability**

Genocide, crimes against humanity and war crimes - wherever they are committed - are offences punishable under New Zealand domestic law pursuant to the International Crimes and International Criminal Court Act 2000.<sup>59</sup>

The Act defines genocide, crimes against humanity and war crimes as they are defined in the Rome Statute.

The criminal liability of secondary parties to these international crimes (for instance aiders and abettors) is determined in accordance with section 25 of the Rome Statute,<sup>60</sup> as discussed above.

Criminal proceedings in New Zealand courts for genocide, crimes against humanity and war crimes may not be instituted without the consent of the Attorney-General.<sup>61</sup>

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<sup>58</sup> <https://www.icc-cpi.int/news/al-bashir-case-icc-appeals-chamber-confirms-jordans-non-cooperation-reverses-decision#:~:text=It%20concluded%20that%20there%20is,%C3%A0%2Dvis%20an%20international%20court>

<sup>59</sup> International Crimes and International Criminal Court Act 2000, ss 9, 10, 11.

<sup>60</sup> International Crimes and International Criminal Court Act 2000, s 12(1)(a)(iv).

<sup>61</sup> International Crimes and International Criminal Court Act 2000, s 13(1).

## Appendix C: How New Zealand has breached its international law obligations

### Failure to condemn Israel's atrocities or lodge any protest with Israel

While various statements by New Zealand leaders have decried the humanitarian crisis in Gaza, the New Zealand Government is yet to condemn any of Israel's atrocities. By contrast, the New Zealand Government swiftly and repeatedly condemned Hamas for the 7 October 2023 attacks on Israel. There is no indication that New Zealand has lodged any protest with Israel over its atrocities.

On the contrary, the New Zealand Government appears to have simply encouraged Israel to comply with international law while maintaining friendly relations. Minister of Foreign Affairs Winston Peters' post to X following his meeting with the Israel's Ambassador on 12 February 2024 is indicative of this:



The Minister of Foreign Affairs met with Israel's Ambassador on 12 February 2024, two to three weeks after the ICJ made provisional orders against Israel (on 26 January 2024) to prevent genocide, including that Israel take all measures within its power to prevent killings of Palestinians, and that Israel take immediate and effective measures to enable the provision of humanitarian assistance in Gaza

In the days and weeks that followed the ICJ's 26 January 2024 ruling, Israel's killings continued relatively unabated, and Israel laid siege to Nasser Hospital in Khan Younis<sup>62</sup> (after which, as discussed above, mass graves holding at least 392 bodies were found).<sup>63</sup> Israel continued to place heavy restrictions on aid delivery, causing starvation in northern Gaza.<sup>64</sup>

It is clear from the Minister of Foreign Affairs' post that Israel continued to enjoy New Zealand's friendship and support at that time, despite Israel's continued commission of genocidal acts and other international crimes, in breach of binding orders by the ICJ.

New Zealand has supported Israel to act with impunity. The New Zealand Government's continued diplomatic support to Israel places its leaders, including but not limited to Minister of Foreign Affairs Winston Peters, facing the prospect of their criminal liability for aiding and abetting Israel's international crimes.

### **Failure to call for an immediate and permanent ceasefire**

New Zealand has called for an immediate humanitarian ceasefire leading to a lasting, sustainable peace. This falls short of calling for an end to Israel's war on Gaza.

### **Failure to take any measures of retortion against Israel, such as expelling diplomats or suspending diplomatic relations**

New Zealand has taken no measures of retortion against Israel for its atrocities in Gaza since 7 October 2023. Many other states have done so, with at least 11 recalling their ambassadors to Israel or severing ties altogether: Bolivia, Colombia, Honduras, Chile, Belize, Brazil, South Africa, Chad, Jordan, Bahrain and Turkey.

Diplomatic pressure is a tool for the New Zealand government in seeking to prevent and punish genocide and to ensure respect for international humanitarian law. This tool should have been used. However, it is not too late for Aotearoa to do so.

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<sup>62</sup> [Has Israel complied with ICJ order in Gaza genocide case? | Israel-Palestine conflict News | Al Jaz](https://www.aljazeera.com/news/2024/2/26/has-israel-complied-with-icj-order-in-gaza-genocide-caseeera)  
<https://www.aljazeera.com/news/2024/2/26/has-israel-complied-with-icj-order-in-gaza-genocide-caseeera>

<sup>63</sup> [Israeli siege turns Gaza's Nasser Hospital into 'a place of death' | Israel-Palestine conflict News | Al Jazeera](#)

<sup>64</sup> [Has Israel complied with ICJ order in Gaza genocide case? | Israel-Palestine conflict News | Al Jaz](https://www.aljazeera.com/news/2024/2/26/has-israel-complied-with-icj-order-in-gaza-genocide-caseeera)  
<https://www.aljazeera.com/news/2024/2/26/has-israel-complied-with-icj-order-in-gaza-genocide-caseeera>

Notably, in 2016 Israel swiftly recalled its ambassador to New Zealand after New Zealand proposed and voted for a UN Security Council resolution 2334 banning Israeli settlements in Palestinian territories. Diplomatic ties were restored after several months.

**Potential failure to prevent the export of military components for use in weaponry by Israel. Specifically, failure to adequately regulate Rakon Limited (a company based in Tāmaki Makaurau Auckland) regarding the export of components to the United States for use in military equipment, which may be being used in Israel's genocide**

Rakon Limited (Rakon), a company headquartered in Auckland, produces military-grade crystal oscillators, including Ultra-Stable Oven Controlled Crystal Oscillators (OCXOs), GPS-Disciplined OCXOs, and Temperature-Controlled Crystal Oscillators (TCXO). These crystal oscillators are a key component for military Positioning, Navigation and Timing (PNT) systems.<sup>65</sup> They are used for guiding weapons.

In 2005 and 2006, internal Rakon documents emerged showing that Rakon crystal oscillators were used for US Joint Direct Attack Munition (JDAM) “smart bombs” produced by US company Rockwell Collins. These weapons were used in the US-led wars in Afghanistan and Iraq.<sup>66</sup> Rockwell Collins now operates as part of Collins Aerospace, a subsidiary of RTX Corporation (formerly Raytheon Technologies). RTX Corporation is one of Israel’s major weapons suppliers. RTX technologies exported to Israel include missiles used for Israel’s Iron Dome air defence system, sensors used in Israeli aircraft and ships,<sup>67</sup> and cluster bombs.<sup>68</sup> It is plausible that RTX Corporation is still a Rakon customer; and that RTX Corporation is using Rakon products in weapons that are killing Palestinians in Gaza today.

JDAM bombs have been used by Israel on Gaza since 7 October 2023. In a December 2023 report, Amnesty International documented the use of US-made JDAM bombs to kill civilians in central Gaza.<sup>69</sup> PSNA has not been able to confirm whether Rakon components were used in those JDAM bombs.

Israel bombed a United Nations-run school in Nuseirat refugee camp in Gaza on 6 June 2024. This attack took place without warning, killing at least 40 Palestinians and wounding at least 74 others who were displaced people seeking shelter.<sup>70</sup> A component from the missile used to aid with precision targeting was identified by *Al Jazeera* as being manufactured by US company Honeywell.<sup>71</sup> PSNA asks: is Honeywell a Rakon customer? Were Rakon components used in the missile which struck Nuseirat refugee camp? The

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<sup>65</sup> Rakon Limited “Defence Positioning and Navigation” <[www.rakon.com](http://www.rakon.com)>.

<sup>66</sup> Phil Taylor “The Rakon Files” *The New Zealand Herald* (online ed, Auckland, 27 May 2006).

<sup>67</sup> Vikram Barhat “These Three Arms Stocks Underpin US Support For Israel” (19 October 2023) Morningstar <[www.morningstar.co.uk](http://www.morningstar.co.uk)>.

<sup>68</sup> “C-o-m-p-a-n-i-e-s P-r-o-f-i-t-i-n-g f-r-o-m t-h-e G-a-z-a G-e-n-o-c-i-d-e” American Friends Service Committee <<https://afsc.org>>.

<sup>69</sup> “Israel/OPT: US-made munitions killed 43 civilians in two documented Israeli air strikes in Gaza – new investigation” (5 December 2023) Amnesty International <[www.amnesty.org](http://www.amnesty.org)>.

<sup>70</sup> *Al Jazeera* “US weapons parts used in Israeli attack on Gaza school: Al Jazeera analysis” (online, 6 June 2024).

<sup>71</sup> *Al Jazeera* “US weapons parts used in Israeli attack on Gaza school: Al Jazeera analysis” (online, 6 June 2024).

New Zealand government's obligation to prevent genocide and to refrain from aiding Israel's serious breaches of peremptory norms necessitate the investigation of these questions.

To date, PSNA and the public have not been able to confirm whether and which Rakon products may have contributed towards Israel's atrocities in Gaza. In PSNA's communications with Rakon, Rakon has not denied that it supplies crystal oscillators for use in guided munitions. It is public information that products used for defence applications constituted 9% of Rakon's total revenue in 2022<sup>72</sup> and that Rakon ships their defence-related products to several locations in the US,<sup>73</sup> while the US is by far the largest military weapons provider to Israel. Rakon's 2005 business plan stated that the company's objective was to dominate "the lucrative and expanding guided munitions and military positioning market" within five years.<sup>74</sup> Rakon is among the top five global suppliers of crystal oscillators.<sup>75</sup>

"Target acquisition, designation, range-finding, surveillance or tracking systems"<sup>76</sup> and "guidance and navigation equipment"<sup>77</sup> used for military purposes require an export licence from the Secretary of Foreign Affairs and Trade in order to be exported from New Zealand. If Rakon is exporting military guidance components, the Ministry of Foreign Affairs and Trade should be aware of those exports.

On 5 April 2024, a United Nations Human Rights Council (UNHCR) resolution demanded an end to all arms sales to Israel in response to Israel's war crimes.<sup>78</sup>

On 8 April 2024, PSNA wrote to the Prime Minister seeking an assurance that New Zealand military export orders to the US and Israel were halted following the UNHCR resolution.

Meeting New Zealand's international obligations in this regard, including under the Genocide Convention, requires the revoking of military export orders to the United States and Israel (above all, revoking Rakon's export licences for crystal oscillators) pending investigation to determine whether and which military components exported from New Zealand are being used in munitions used by Israel.

Lack of action by New Zealand Government Ministers and officials on this issue, with the knowledge that New Zealand military componentry may be being used in Israel's international crimes, raises the prospect of criminal liability for aiding and abetting Israel. If it is found that Rakon's crystal oscillators or other New Zealand military componentry is indeed being used by Israel in Gaza, New Zealand leaders may be held criminally liable for this assistance provided to Israel.

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<sup>72</sup> Rakon Limited *Annual Report 2022* at 17.

<sup>73</sup> At 13.

<sup>74</sup> Taylor above, n 73.

<sup>75</sup> [Crystal Oscillator Market - Forecast, Analysis & Industry Share \(mordorintelligence.cohttps://www.mordorintelligence.com/industry-reports/global-crystal-oscillator-market-industry\)](https://www.mordorintelligence.com/industry-reports/global-crystal-oscillator-market-industry)

<sup>76</sup> Ministry of Foreign Affairs and Trade *New Zealand Strategic Goods List* (November 2021) at 41.

<sup>77</sup> At 58.

<sup>78</sup> "UN rights body demands Israel be held accountable for possible 'war crimes'" (5 April 2024) Al Jazeera <[www.aljazeera.com](http://www.aljazeera.com)>.

## **Sending New Zealand Defence Force (NZDF) personnel to train alongside Israel Defence Forces during the US-led Rim of the Pacific (RIMPAC) military exercises beginning on 26 June 2024**

The New Zealand Defence Force is intended to soon participate in RIMPAC alongside Israel Defence Forces.

Minister of Defence Judith Collins has justified this decision, saying: “New Zealand has made its position on Gaza clear: we support peace efforts.”<sup>79</sup>

As the New Zealand Defence Force explains on its website, “The purpose of RIMPAC is to engage in mutual, large-scale military exercises to foster familiarity, trust, interoperability and collective strength among Pacific nations. This means the navies of friendly nations get used to working together.”<sup>80</sup>

In effect, the participation of New Zealand and other US-aligned states with Israel in RIMPAC is a measure of support to Israel and its military forces on the international stage. New Zealand is indicating its continued willingness to work alongside Israeli military forces despite the atrocities it has committed since October 2023.

This is a serious breach of New Zealand’s international law commitments at this time, including with respect to the Genocide Convention. This issue in particular raises the prospect of whether New Zealand Government Ministers are aiding and abetting Israel’s international crimes.

## **Failure to engage with proceedings on the genocide at the International Court of Justice (ICJ), and failing to denounce Israel’s breaches of ICJ rulings, most notably by illegally continuing its military assault on Rafah**

The International Court of Justice holds a critical role in the maintenance of human rights and rule of law. While the ICJ proceeding against Israel for genocide Gaza was brought by South Africa, other states have supported South Africa. The states that have declared their intention to do so are Nicaragua, Belgium, Colombia, Turkey, Libya, Egypt, Maldives, Mexico, Ireland, Chile, Palestine, and Spain.

Historically New Zealand has been an active participant in the ICJ. Notably, New Zealand recently joined genocide proceedings at the ICJ between Ukraine and Russia and made submissions in support of Ukraine.<sup>81</sup> New Zealand’s participation in the genocide proceeding on Gaza is a keyway in which New Zealand can prevent and punish genocide in Gaza. Our absence is telling.

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<sup>79</sup> <https://www.stuff.co.nz/politics/350307737/why-nz-navy-training-israel-and-what-could-mean>

<sup>80</sup> <https://www.nzdf.mil.nz/navy/what-we-do/combat-ready/the-largest-maritime-exercise/>

<sup>81</sup> <https://www.lawsociety.org.nz/news/publications/lawtalk/lawtalk-issue-957/new-zealand-active-in-international-courts-and-tribunals/>

Israel’s breaches of the ICJ’s rulings to date - intended to prevent genocide - are unlawful and undermine the rule of law. In particular, Israel has ignored the ICJ’s order that it halts its offensive on Rafah. New Zealand has taken no steps to denounce Israel’s breaches of the ICJ’s rulings. In this context where Aotearoa is obliged to prevent genocide, and yet binding ICJ rulings intended to prevent genocide are being flouted, it is incumbent upon Aotearoa to denounce Israel’s breaches and demand its compliance with the ICJ’s rulings. New Zealand’s failure to do so is a breach of the Genocide Convention per se.

Minister of Foreign Affairs Winston Peters has said: “New Zealand's consistent position is all of the Court's [ICJ’s] decisions, including on provisional measures, are binding. We expect them to be adhered to”.

<sup>82</sup>There has been no action taken to pursue this apparent expectation.

### **Failure to provide humanitarian visas to Palestinians in Gaza who have family members in Aotearoa (by contrast with the 2022 Special Ukraine Visa for Ukrainians fleeing from war)**

In early 2022, in response to Russia’s war on Ukraine, current Minister of Immigration Erica Stanford and Prime Minister Christopher Luxon (who were then opposition MPs) called for the establishment of a humanitarian visa for Ukrainians with New Zealand family members.<sup>83</sup> Russia invaded Ukraine on 24 February 2022.<sup>84</sup> On 9 March 2022, Ms Stanford issued a statement criticising the Labour Government, stating “It’s been 14 days since Russian bombs started falling on Ukraine, yet the Government has done nothing to expedite visas for wider family members of Kiwi-based Ukrainians.”<sup>85</sup> On March 15 2022, Cabinet put a special visa policy for Ukrainians into effect.<sup>86</sup> The policy was developed into the 2022 Special Ukraine Visa, allowing Ukrainian New Zealand citizens or residents to sponsor their family members and providing a pathway for them to permanent residency.<sup>87</sup>

The rapid response for Ukrainians can be contrasted with the current government’s outright and repeated refusal to create a similar humanitarian visa for Palestinians. Palestinian and refugee groups have been calling for the creation of a Palestinian humanitarian visa for months.<sup>88</sup> In response, the Minister of Immigration Erica Stanford has repeatedly contended that Palestinians are able to enter New Zealand on visitor visas.<sup>89</sup>

<sup>82</sup><https://www.rnz.co.nz/news/political/509167/nz-foreign-minister-urges-israel-not-to-begin-rafah-ground-offensive#:~:text=%22NZ's%20consistent%20position%20is%20all,in%20Rafah%20would%20be%20appalling.%22>

<sup>83</sup> Russell Palmer “National urges visa for Ukrainians fleeing ‘unhinged’ Putin’s war” (1 March 2022) Radio New Zealand <www.rnz.co.nz>.

<sup>84</sup> Madeline Fitzgerald and Elliott Davis Jr. “Russia Invades Ukraine: A Timeline of the Crisis” (22 February 2024) U.S. News <www.usnews.com>.

<sup>85</sup> Erica Stanford “Desperate Ukrainian families can’t wait for Govt” (press release, 9 March 2022).

<sup>86</sup> New Zealand Government “Government offers shelter for around 4000 family members of Ukrainians in New Zealand” (press release, 15 March 2022).

<sup>87</sup> Immigration New Zealand “Temporary visa for family of Ukrainians in New Zealand” <www.immigration.govt.nz>.

<sup>88</sup> “NZ Government must grant visas for Palestinians” Amnesty International (press release, 21 March 2024).

<sup>89</sup> (21 March 2024) 774 NZPD (Questions to Ministers - Immigration, Erica Stanford).

Visitor visas intended for tourists are an inappropriate immigration tool for survivors fleeing war and genocide. Visitor visas have requirements such as demonstrating a genuine intention to depart New Zealand in six to nine months; ties to their home country, such as proof of home ownership and a workplace or school to return to; and good health.<sup>90</sup> As discussed above, Palestinians have endured months of bombing with a decimated healthcare system, destroyed homes, and normal life upended. Gaza is not safe to return to.

In response to a recent Official Information Act (OIA) request, Immigration New Zealand (INZ) has stated that “applicants who apply from Gaza remain subject to the same visa requirements as all other visa applicants.” The visitor visa category sets up applicants from Gaza to fail.

Predictably, Palestinians in Gaza with family members in New Zealand have had their visitor visa applications denied after INZ deemed them ineligible for some of the reasons mentioned above. Fruitless applications for visitor visas have cost desperate Palestinian families time and money they do not have.

It is apparent that the Government has made a conscious decision to not assist Palestinians fleeing genocide in Gaza. In the meantime, New Zealanders have had family members killed who may have survived had they had a pathway to escape.<sup>91</sup> The New Zealand Government’s decision to not assist Palestinians trying to escape Gaza is part of its failure to prevent genocide.

### **Withholding funding from UNRWA**

On 1 March 2024, numerous aid organisations (in a joint statement calling for states to resume funding for UNRWA) described its role in Gaza as follows:<sup>92</sup>

“UNRWA is the largest provider of humanitarian aid in Gaza. The plain reality is that UNRWA’s humanitarian role in this crisis is indispensable - including, but not limited to provision of health and education services, food and water provision, psychosocial support, and solid waste management - and cannot remotely be replaced by any other aid organisation. NGOs have made it clear that they are unable to substitute for or absorb the role of UNRWA, especially in the current crisis...

“UNRWA’s 13,000 staff in Gaza far outstrip the collective capacity of the rest of the humanitarian sector in the territory. Their role in the facilitation and delivery of life-saving humanitarian aid at scale in this crisis has been heroic. UNRWA’s supply of vital shelter, food, and basic services like sanitation, as well as the use of infrastructure by other aid organisations, is irreplaceable.”

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<sup>90</sup> Immigration New Zealand “Visitor Visa” <[www.immigration.govt.nz](http://www.immigration.govt.nz)>.

<sup>91</sup> Matt Hayes “How New Zealand is blocking one of the few avenues for escape from Gaza” *The Post* (online ed, Wellington, 24 April 2024).

<sup>92</sup> <https://www.savethechildren.org.nz/media-hub/joint-ngo-statement-unrwa-funding>



In January 2024, hours after the ICJ ruled broadly in favour of South Africa in its genocide proceeding against Israel, Israel alleged that members of UNRWA were involved in the 7 October 2023 attacks on Israel. No evidence was provided in support of this claim,<sup>93</sup> however Prime Minister Christopher Luxon announced that New Zealand was taking the allegations seriously and would withhold funding pending a UN investigation of the allegations.<sup>94</sup> Former Prime Minister Helen Clark criticised the move, saying it was “fairly obvious” that Israel was attempting to deflect the ICJ’s rulings.

Days later, Minister of Foreign Affairs Winston Peters announced \$5 million of aid funding for Gaza, but not through UNRWA.<sup>95</sup> New Zealand has by now committed \$17 million in new aid funding for Gaza since the war began, none of which has been directed to UNRWA. The annual \$1 million contribution to UNRWA was resumed in time for New Zealand’s scheduled payment in June 2024, the payment continuing without any increase in funding despite the humanitarian catastrophe in Gaza.

Effectively, New Zealand has withheld its aid funding from UNRWA, which is the organisation best placed to use New Zealand aid funding in this crisis. In taking this course of action, New Zealand has furthered what the head of UNRWA has described as Israel’s “insidious campaign to end UNRWA’s operations”.<sup>96</sup> The New Zealand Government must increase and expedite its funding to UNRWA as part of its obligations to prevent genocide in Gaza.

**Sending NZDF personnel to assist in United States and United Kingdom-led military operations against the Houthis in Yemen, with the effect of suppressing regional protest against Israel’s genocide in Gaza**

In January 2024, New Zealand deployed a six-member NZDF team to provide intelligence support for US and UK-led airstrikes on Yemen. The airstrikes were in response to ongoing attacks from Yemen’s Houthis on Israel-linked or Israel-bound ships passing through the Red Sea. Prime Minister Christopher Luxon stated that “Houthi attacks against commercial and naval shipping are illegal, unacceptable and profoundly destabilising.”<sup>97</sup> In the Government’s press release, there was no acknowledgement of the reason behind Houthis attacking ships in the Red Sea. The press release explicitly stated that New Zealand’s actions in the Red Sea had nothing to do with the events happening in Gaza.<sup>98</sup>

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<sup>93</sup> <https://www.aljazeera.com/news/2024/4/22/no-evidence-of-unrwa-staff-links-terrorist-groups-independent-review>

<sup>94</sup> “No more aid for UN aid agency until Peters satisfied - Luxon” (30 January 2024) Radio New Zealand <[www.rnz.co.nz](http://www.rnz.co.nz)>.  
<https://www.rnz.co.nz/news/political/507907/no-more-aid-for-un-aid-agency-until-peters-satisfied-luxon>

<sup>95</sup> <https://www.beehive.govt.nz/release/new-zealand-provides-further-humanitarian-support-gaza-and-west-bank>

<sup>96</sup> <https://press.un.org/en/2024/sc15668.doc.htm#:~:text=UNRWA%20plays%20a%20fundamental%20role,demands%20of%20the%20Palestinian%20people.>

<sup>97</sup> Christopher Luxon, Judith Collins and Winston Peters “New Zealand deploying NZDF team to protect Red Sea shipping” (press release, 23 January 2024).

<sup>98</sup> Luxon, Collins and Peters, above n 53.

In fact, Houthi attacks on ships are directly connected to Yemeni support for Palestinians experiencing genocide. Houthi leaders have stated that their aim is to prevent ships linked to Israel from passing through the Red Sea and Gulf of Aden in a campaign of solidarity for Palestine. The Houthis have stated that they will stop attacking ships when Israel's aggression against and siege of Gaza ends.<sup>99</sup>

The New Zealand Government has demonstrated that it will not act to stop Israel's aggression on Gaza, but that it is willing to use force to impede those who directly confront Israel. The Government's non-recognition of any connection between the Houthi attacks and Israel's war on Gaza underlines its unconcerned approach towards Israel's international crimes. The implication of New Zealand's participation in these operations is that the Government does not perceive Israel to have seriously breached peremptory norms of international law. This is a grave error.

### **Continuing to allow shipping company ZIM to use New Zealand ports**

Zim Integrated Shipping Services Ltd, an Israeli shipping company, is provided access to port facilities by several New Zealand port companies despite its chief executive Eli Glickman pledging that the company's ships, "*will be directed as a first priority, to transfer cargo from anywhere in the world to Israel according to the requirements of the needs of the Ministry of Defence and the government of Israel*".

This has been drawn to the attention of the Government, but no steps have been taken to require port companies to cease providing port facilities to this company which is indicating its direct involvement in assisting Israel's war on Gaza.

### **Failure to suspend the Israel Working Holiday Visa for Israeli citizens who have served with the Israel Defence Forces carrying out international crimes**

The New Zealand Government's refusal to establish a humanitarian visa for Palestinians can be contrasted with the continued granting of visas to Israelis. Between 7 October 2023 and 5 June 2024, 380 visas were issued for Israelis, compared to 61 visas (out of 97 applications) for Palestinians.<sup>100</sup>

The Israel Working Holiday Visa is available to Israeli passport holders aged 18 to 30. It allows for work in New Zealand for up to twelve months and study or training for up to six months. By contrast, the visitor visa available to Palestinians does not allow for work and only allows for three months of study for school-aged children.<sup>101</sup>

Israel's Government requires every citizen over the age of 18 who is Jewish, Druze, or Circassian to serve with the Israel Defence Forces (IDF). Men must serve for a minimum of 32 months, and women must serve for a minimum of 24 months.<sup>102</sup> After this, Israelis can continue to be called for reserve service until the

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<sup>99</sup> "Houthis say they will target Israel-bound ships anywhere within their range" (3 May 2024) Al Jazeera <[www.aljazeera.com](http://www.aljazeera.com)>.

<sup>100</sup> Immigration New Zealand "Situation between Israel and Hamas" (statement, 5 June 2024).

<sup>101</sup> Immigration New Zealand "Visitor Visa" <[www.immigration.govt.nz](http://www.immigration.govt.nz)>.

<sup>102</sup> Israel Defence Forces (IDF) "Our Soldiers" <[www.idf.il](http://www.idf.il)>.

age of 40 or even older in times of war.<sup>103</sup> The IDF's official numbers indicate that 69 per cent of men and 56 per cent of women are conscripted into military service at the age of 18.<sup>104</sup>

While travel bans have been issued for extremist Israeli settlers who have committed violence in the West Bank, New Zealand has not affected any such ban for Israeli citizens who have served with the Israel Defense Forces carrying out international crimes including genocide since 7 October 2023. This is in breach of Aotearoa's obligation to punish genocide.

**Failure to implement a ban on imports from companies building and maintaining illegal Israeli settlements on Palestinian land in line with UN Security Council resolution 2334 (UNSC2334 was co-sponsored at the UN Security Council by New Zealand in 2016)**

In December 2016, the UN Security Council passed resolution 2334 (UNSC2334). Through this resolution the UN Security Council states that, in the occupied Palestinian territories, Israeli settlements have “no legal validity” and constitute “a flagrant violation under international law”. It said they were a “major obstacle to the achievement of the two-state solution and a just, lasting and comprehensive peace” in the Middle East.

This resolution was co-sponsored by the New Zealand Government under National Party leadership with Bill English as Prime Minister and Murray McCully as Foreign Minister.

In December 2022, Israel elected its most extreme ethno-nationalist Government in its history. As well as stepping up their repression of Palestinians and making clear they will not negotiate with Palestinians on a peace plan or the formation of a Palestinian state, this Government said their “[top priority](#)” is to push ahead with more illegal Israeli settlements on occupied Palestinian land. In June 2023 Israel's leaders announced plans to [build more than 5,000 additional houses](#) in these illegal settlements on Palestinian land. Further [expansion of these settlements in the occupied West Bank](#) is taking place while the world is distracted with Israel's ongoing slaughter of Palestinians in Gaza.

Meanwhile, the United Nations Human Rights Council (UNHRC) has recently updated its [database of companies complicit in illegal Israeli settlements](#).<sup>105</sup>

Despite Israel continuing to build and expand illegal settlements on Palestinian land, the government has taken no steps to implement UNSC 2334. Such steps would include directing the NZ Super Fund, the

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<sup>103</sup> Helen Coster and Alexander Cornwell “Israel's reservists drop everything and rush home” (13 October 2023) Reuters <[www.reuters.com](http://www.reuters.com)>.

<sup>104</sup> Etan Nechin “Like Tal Mitnick, I refused to serve Israel as a soldier. It's important to understand why” *The Guardian* (online ed, London, 29 December 2023).

<sup>105</sup> <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session31/database-hrc3136/23-06-30-Update-israeli-settlement-opt-database-hrc3136.pdf>

Accident Compensation Corporation and approved KiwiSaver providers to divest from companies on the UNHRC list, and to decline to purchase goods and services from these companies. No such steps have been taken.

## Appendix D: statements by New Zealand Members of Parliament

### Introduction

This appendix contains statements made by New Zealand Members of Parliament which may be considered to amount to encouragement or moral support for Israel's commission of international crimes in Gaza.

These statements should be considered alongside the other evidence referred to in this letter, and with reference to contemporaneous events occurring in Gaza and Israel.

It is important to note that statements of genocidal intent by Israel's leaders occurred as early as 7 October 2023.

That day, Israel's Prime Minister said on X:<sup>106</sup>

*"All of the places which Hamas is deployed, hiding and operating in, that wicked city, we will turn them into rubble. I say to the residents of Gaza: Leave now because we will operate forcefully everywhere."*

In a televised address, Prime Minister Netanyahu said:<sup>107</sup>

*"We will take mighty vengeance for this black day. We will take revenge for all the young people who lost their lives. We will target all of Hamas's positions. We will turn Gaza into a deserted island. To the citizens of Gaza, I say. You must leave now. We will target each and every corner of the strip."*

There is evidence of wilful killing and wanton destruction of property in Gaza by Israel also as early as 7 October 2023 (and then consistently from that time).

Israeli forces bombed at least three residential buildings in Gaza on the evening of 7 October, killing at least 37 Palestinians.<sup>108</sup> A mosque was also bombed that night.<sup>109</sup>

**On 8 October 2023, Israel's Defence Minister** said: *"The price the Gaza Strip will pay will be a very heavy one that will change reality for generations."*<sup>110</sup>

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<sup>106</sup> <https://x.com/netanyahu/status/1710828720041119818>

<sup>107</sup> <https://www.aljazeera.com/news/2023/10/7/world-is-watching-fears-grow-of-a-massive-gaza-invasion-by-israel>

<sup>108</sup> [https://www.dci-palestine.org/91\\_palestinian\\_children\\_in\\_gaza\\_killed\\_in\\_israeli\\_assault](https://www.dci-palestine.org/91_palestinian_children_in_gaza_killed_in_israeli_assault)

<sup>109</sup> Ibid.

<sup>110</sup> <https://www.newshub.co.nz/home/world/2023/10/israel-hamas-conflict-many-israelis-don-t-know-if-loved-ones-dead-or-alive-gaza-told-it-will-pay-price-for-generations.html>

On 9 October 2023, the Defence Minister ordered a “complete siege” of the Gaza Strip with “no electricity, no food, no fuel, everything is closed.”<sup>111</sup> He said: “We are fighting animals, and we are acting accordingly.”<sup>112</sup>

On 12 October 2023, Israel announced it had dropped 6,000 bombs weighing 4,000 tonnes on Gaza in the previous six days, killing more than 1,400 people.<sup>113</sup>

The following statements in this appendix raise the following issues which are relevant to party liability for Israel’s international crimes:

- Emphasis on the 7 October 2023 attacks on Israel and Israel’s right to self-defence as justifications for Israel’s actions;
- Absence of any criticism of Israel’s actions;
- Suggestions that a ceasefire cannot occur without Hamas taking certain actions first;
- Emphasis on Hamas breaching international humanitarian law (well after the 7 October 2023 attacks);
- Denial that genocide is occurring;
- Suggestion that Hamas must be destroyed.

### **Statements of Prime Minister Christopher Luxon**

On **25 October 2023**, incoming Prime Minister Christopher Luxon was asked by media what he was being told by the outgoing Government about the situation in Gaza.<sup>114</sup>

*"I think it's important the Government is the Government until the new Government's formed, they're taking the lead of New Zealand's response to the situation,"* he said.

*"They're doing a good job of keeping us closely involved and informed and also consulted during that transition period, but the bottom line is that we condemn Hamas' terrorist attacks on Israel and we support Israel's rights to defend itself. We do want to see both sides acting in full compliance with international law and their obligations."*

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<sup>111</sup> [https://www.timesofisrael.com/liveblog\\_entry/defense-minister-announces-complete-siege-of-gaza-no-power-food-or-fuel/#:~:text=October%20%2C%202023-Defense%20minister%20announces%20complete%20siege%20of%20Gaza%3A,No%20power%2C%20food%20or%20fuel&text=Defense%20Minister%20Yoav%20Gallant%20says,siege%20on%20the%20Gaza%20Strip](https://www.timesofisrael.com/liveblog_entry/defense-minister-announces-complete-siege-of-gaza-no-power-food-or-fuel/#:~:text=October%20%2C%202023-Defense%20minister%20announces%20complete%20siege%20of%20Gaza%3A,No%20power%2C%20food%20or%20fuel&text=Defense%20Minister%20Yoav%20Gallant%20says,siege%20on%20the%20Gaza%20Strip)

<sup>112</sup> Ibid.

<sup>113</sup> <https://www.aljazeera.com/news/2023/10/12/israel-says-6000-bombs-dropped-on-gaza-as-war-with-hamas-nears-a-week>

<sup>114</sup> <https://www.rnz.co.nz/news/political/500936/parliament-summer-close-down-period-will-be-shorter-incoming-pm-luxon-says>

On **28 October 2023**, **Mr Luxon** was asked by media for his view on a ceasefire. He avoided saying if he would support a ceasefire, and instead explained: *“From my point of view, what I want to make sure is there’s very strong statements that are condemning the Hamas attacks on Israel on October the 7th.”*<sup>115</sup>

On **1 November 2023**, Mr Luxon was interviewed by Ryan Bridge on the AM Show who mentioned reports that week that there had been an explosion at a refugee camp in Gaza.<sup>116</sup>

When Mr Bridge asked Mr Luxon if he thought Israel was meeting their humanitarian obligations, **Mr Luxon** said *“I haven’t seen any advice to say they are not but what I have seen is obviously concern of what we see on the TV and the images we all see.”*

Mr Bridge asked: “Are you comfortable with Israel’s behaviour right now?”

**Mr Luxon** responded: *“Look, as I said we absolutely support their right to defend themselves but we want both parties, we expect both parties, to be acting in consideration of their international obligations.”*

Mr Bridge: “So given that, do you think they are acting with regard to their international obligations right now Israel or not?”

**Mr Luxon:** *“Well that’s an assessment that will be made by others, but at this point our call and that’s why we signed that agreement or that statement from the UN is to say very clearly that we have high expectations that all parties are complying with their international obligations...”*

**Mr Luxon** later continued: *“What we have said very clearly is we absolutely condemn the attacks by Hamas, you know unprovoked, barbaric, terrorist attacks on Israel, we defend Israel’s right to defend itself, but we expect all parties to be in compliance with their international law and obligations.”*

On **20 November 2023**, Mr Luxon commented as follows to the media, in relation to the Labour Party’s calls for a ceasefire:<sup>117</sup>

*“We would all love to see hostilities cease in the Middle East, we all want to see that, all New Zealanders are all horrified by the images that we’re seeing on our TVs. But the reality is you need the conditions for a ceasefire to be there, and that requires that you have both parties wanting to progress a ceasefire, hostilities have to then stop across the whole of the territory, and thirdly you need a real clear pathway into*

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<sup>115</sup> [Thousands of protesters march in Auckland, Wellington, Christchurch in supphttps://www.newshub.co.nz/home/politics/2023/11/prime-minister-elect-christopher-luxon-hasn-t-seen-any-advice-to-suggest-israel-isn-t-respecting-international-law-in-gaza.html](https://www.newshub.co.nz/home/politics/2023/11/prime-minister-elect-christopher-luxon-hasn-t-seen-any-advice-to-suggest-israel-isn-t-respecting-international-law-in-gaza.html)ort of Palestine | Newshub

<sup>116</sup> [Prime Minister-elect Christopher Luxon hasn’t ‘seen any advice’ to suggest Israel isn’t respecting international law in Gaza | Newshttps://www.newshub.co.nz/home/politics/2023/11/prime-minister-elect-christopher-luxon-hasn-t-seen-any-advice-to-suggest-israel-isn-t-respecting-international-law-in-gaza.html](https://www.newshub.co.nz/home/politics/2023/11/prime-minister-elect-christopher-luxon-hasn-t-seen-any-advice-to-suggest-israel-isn-t-respecting-international-law-in-gaza.html)hub

<sup>117</sup> [Hamas must release hostages before ‘dialogue around ceasefire’ - NZ Jewish Council | RNZ](https://www.rnz.co.nz/news/political/502823/hamas-must-release-hostages-before-dialogue-around-ceasefire-nz-jewish-council)  
<https://www.rnz.co.nz/news/political/502823/hamas-must-release-hostages-before-dialogue-around-ceasefire-nz-jewish-council>ews

*a peace process because military action is not going to restore peace in the Middle East. So, what we mean by that is that actually yes we want to support steps to a ceasefire but you've got to have the conditions there for that to be able to be met.”*

On **3 December 2023** Prime Minister Luxon (now sworn in) explained as follows the Government’s position on the war:<sup>118</sup>

*“Israel has a right to defend itself. But it’s not just at any cost and causing huge damage and hurt, pain and suffering to civilians and innocent civilians. Equally, Hamas needs to release all hostages, stop using human shields... and be compliant with international humanitarian law. That’s what we expect all parties to do is to be fully compliant with international humanitarian law. We really want to see the peace process restarted. It’s the best way in which peace will be delivered in the Middle East not through military action.”*

In Parliament on **7 December 2023**, Prime Minister Luxon said:

*"I am absolutely appalled by the human tragedy that has unfolded in Israel and Gaza since the seventh of October. We would all like to see a sustainable ceasefire, but it actually requires all parties to actually make the conditions to make that happen. For that to happen... Hamas needs to actually cease its attacks on Israel, it needs to stop exploiting civilian infrastructure, using civilians as shields, and it needs to locate and release all the remaining hostages.”*

*"On the other hand, we actually need to see Israel respecting the laws of humanitarian law and war. We need to make sure that they're actually ensuring that innocent civilians are being protected. They need to make sure that civilians have access to food, fuel, resources, and medical supplies. We also need to make sure that the loss of life that we saw in the north doesn't take place in the south. There are responsibilities on both sides of this equation. There are responsibilities on both parties to make sure we get an enduring and sustainable ceasefire.”*

### **Statements of David Seymour**

On **20 November 2023**, in an interview on the AM Show again with Ryan Bridge, David Seymour (not yet a Minister in the incoming government) said:

*“Let’s just remember how it all started because that’s been forgotten. Hamas, which is a terrorist organisation, was the aggressor, went into Israel, they raped, murdered and took hostage hundreds of*

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<sup>118</sup> [Israel-Hamas war: PM Christopher Luxon https://www.nzherald.co.nz/nz/politics/israel-hamas-war-pm-christopher-luxon-on-resumption-of-fighting-in-gaza-palestine-after-humanitarian-pause-says-no-peace-through-military-action/N6GSHXJZGFA5ZMGBKXHSQB74LE/#:~:text=%E2%80%9CIsrael%20has%20a%20right%20to,compliant%20with%20international%20humanitarian%20law.on%20resumption%20of%20fighting%20in%20Gaza,Palestine%20after%20humanitarian%20pause,says%20no%20peace%20through%20military%20action-NZ%20Herald](https://www.nzherald.co.nz/nz/politics/israel-hamas-war-pm-christopher-luxon-on-resumption-of-fighting-in-gaza-palestine-after-humanitarian-pause-says-no-peace-through-military-action/N6GSHXJZGFA5ZMGBKXHSQB74LE/#:~:text=%E2%80%9CIsrael%20has%20a%20right%20to,compliant%20with%20international%20humanitarian%20law.on%20resumption%20of%20fighting%20in%20Gaza,Palestine%20after%20humanitarian%20pause,says%20no%20peace%20through%20military%20action-NZ%20Herald)



*people. They have still got those hostages. Israel is defending itself. How many more rockets were they supposed to allow to go over the border before they started defending themselves?"*

Mr Bridge: "I guess the problem is that you've got to look at what's in front of you here and now don't you and I agree it was Hamas that started this particular conflict."

**Mr Seymour:** *"And it's Hamas that continues it because it is Hamas that holds the hostages."*

Mr Bridge: "But that doesn't give Israel carte blanche to just respond in any way it wants."

**Mr Seymour:** *"And that's not what they're doing either. There's an incredible double standard here. If any other country was attacked the way that Israel has been attacked I think the world would be saying yes this is terrible, but actually the right thing to do is for the other guys to release the hostages and stop attacking Israel. In this case somehow Israel is at fault and the calls are for the Israeli ambassador to be expelled. I'm sorry but that is completely wrong."*

In Parliament on **31 January 2024**, James Shaw asked the following question:

"Is the Prime Minister aware that there is a difference between having found whether genocide has taken place or whether there is a plausible risk of genocide taking place, and that article 1 of the convention requires New Zealand to take action to prevent genocide before it occurs—i.e., when there is a plausible risk?"

**Prime Minister Luxon** responded: *"As I said earlier, the court did not make any findings that Israel has actually engaged in genocidal conduct. That is part of a full and substantive hearing that will take place in subsequent months and years."*

**David Seymour** followed by asking: *"Does the Prime Minister believe that the casual, lazy misuse of the word "genocide" is not only incorrect but highly offensive to those many people who, tragically, throughout history were victims of actual genocide?"*

### **Statements of Winston Peters**

Winston Peters, as Minister of Foreign Affairs, published a press release on **1 December 2023** as follows:

New Zealand welcomes the further one-day extension of the pause in fighting, which will allow the delivery of more urgently needed humanitarian aid into Gaza and the release of more hostages, Foreign Minister Winston Peters said.

*“The human cost of the conflict is horrific, and New Zealand wants to see the violence end. We call on all parties involved in the conflict, as well as countries with influence in the region, to work urgently towards a long-term ceasefire”, Mr Peters said.*

*“We reiterate that all remaining hostages must be released. New Zealand continues to unequivocally condemn Hamas’ terrorist attack of 7 October.*

*“We have consistently supported the right of Israel to defend itself against Hamas’ terrorist attacks, though we repeat our call for international humanitarian law to be observed by all sides and in all circumstances. Ultimately, there can be no military solution. We need to return to the Middle East Peace Process”, Mr Peters said.*

In Parliament on **7 December 2023**, Mr Peters said:

*“I move, That this House express grave concern at the ongoing violence in Israel and the occupied Palestinian territories; unequivocally condemn the Hamas terrorist attack on 7 October 2023, and call for the release of all hostages; call on all parties involved in the conflict, as well as countries with influence in the region, to take urgent steps towards establishing a ceasefire; recognise Israel's right to defend itself, acting in accordance with international law, and that all civilians be protected from armed conflict; affirm that a lasting solution to the conflict will only be achieved by peaceful means and that action to revive the Middle East Peace Process is critical; note that the Government will continue its efforts to help all New Zealanders impacted by the conflict.”*

### **Statements of Nicola Willis**

On **31 October 2023**, Ms Willis was asked (not yet a Minister in the incoming Government) by RNZ if New Zealand needed to take a stronger stance against Israel’s actions.<sup>119</sup> She said:

*"Well I think that it's important that New Zealand express our deep disappointment about Hamas' actions as a terrorist entity and its attacks on Israel, those were barbaric attacks, that we also express our huge disappointment at the death of civilians and what is going on there, that we continue to call for the unconditional release of hostages, which Hamas is still [holding], that we continue to seek peace and promote it. And within that, that we do defend Israel's right to defend itself."*

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<sup>119</sup> <https://www.rnz.co.nz/news/political/501350/nz-vote-on-gaza-at-un-consistent-with-longstanding-position-hipkins>

### **Statements of Todd McLay**

In Parliament on **7 December 2023**, Mr McLay (Minister of Trade) said in relation to Winston Peters' motion:

*"We're extremely concerned about the renewed hostilities and their disastrous impacts upon civilians. We've called on all parties, as well as countries with influence in the region, to take urgent steps towards establishing a ceasefire. The Government urges all parties to return to the negotiating table and to find a way to avoid further suffering and loss of life.*

*"The Government fully supports Israel's right to defend itself from the terrorist organisation Hamas. Israel must abide by international humanitarian law at all times, even when fighting a terrorist group which is clearly disregarding humanitarian law itself. The massive loss of civilian life and displacement of the scale seen in northern Gaza is deeply concerning, and we call again on Hamas to locate and release all hostages immediately. Hamas must cease its attack on Israel, and Hamas must cease using civilian infrastructure and its deplorable use of human shields. We continue to call for food, water, fuel, medical supplies, and other humanitarian aid to get to civilians in Gaza with the utmost urgency.*

*"The Government is pleased that 20 New Zealand citizens, permanent residents, and family members have now exited Gaza. We're aware there are a small number of New Zealanders who are seeking to leave Gaza, and the Ministry of Foreign Affairs officials continue to work to secure approvals for these individuals to leave. The Government has also contributed \$10 million to address immediate humanitarian need. A lasting solution to the conflict will only be achieved by peaceful means. Action to revive the Middle East peace process is critical."*

### **Statements of Simon Court**

In Parliament on **7 December 2023**, Mr Court said as follows in relation to Winston Peters' motion:

*"The ACT Party supports this motion, but I would like to point out there are some real problems with the discourse that is being had in New Zealand over the past few months since 7 October.*

*"What many have described as an occupation of the land of Israel, the Israeli people—Jewish people—call home. The trauma of 7 October has reignited the worst memories of the Holocaust, not just in New Zealand's Jewish community but in Jewish people around the world. The majority of Jewish people in New Zealand see those attacks as an existential threat on Jewish people around the world. The sense is that if*

*Israel is not able to survive this attack and these ongoing attacks, then it will be harder for the Jewish people to survive. And by extension, if a Western liberal democracy like Israel falls to the terrorist attacks of a group like Hamas and its supporters—to the missiles, to the kidnapping, the hostage taking and all the abominable crimes against civilians—then what hope does a small nation of 5 million like New Zealand—a similar Western democracy—have if we were to accept the fall of the nation of Israel?*

*“Anti-Semitism has gone through the roof in New Zealand in the past few months. I’ve had reports that there are incidents where Jewish children in New Zealand’s schools have been bullied for their belief and culture. On the streets here in New Zealand, there’s been a sense of mob rule at times, where even elected members of the New Zealand Parliament have felt free to use Hamas slogans like “From the river to the sea”, which, if you take Hamas seriously, and we should, do mean the eradication of Israel and its people.*

*“But it’s not just Israel and her people that have suffered under Hamas. Dozens of citizens from other countries were killed or captured and are being held as hostages right now. Two million people are being held hostage in Gaza right now by Hamas—a murderous dictatorship akin to ISIS. Institutions and representatives we rely on and trust to uphold the rule of law and protect us are failing to stand up for what’s right.*

*“We should call for peace in the land of Israel, and between Israel and her neighbours. We should call for the return of the hostages, and we should call those who choose death over life what they are: terrorists, because there can never be a lasting peace between Israel and her neighbours until Hamas, Hezbollah, and their enablers, Iran, officially formally recognise Israel’s right to exist.*

*“There are precedents for this. Jordan and Egypt both went to war with Israel with the intention of eliminating the Jewish state many times—1948, 1956, 1967, 1973. In 1988, Jordan became the second Arab state, after Egypt, to formally sign a peace treaty with Israel, recognising that nation’s right to exist and establishing security relationships. There are precedents, but what it takes is for both sides to recognise each other’s right to exist as a precursor for a lasting peace.*

*“So, while we might debate this here in New Zealand’s House of Representatives, we must also consider that when we debate the fate of peoples and nations, we must also think about those communities in New Zealand—the Jewish community, in this case—and how the New Zealand Parliament and our representatives should be supporting them while their family members are held hostage, and while their country is under attack.”*

In Parliament on **26 March 2024**, Mr Court said as follows:

*“On 7 October 2023, Hamas attacked Israel. They killed over 1,200 people. They took hundreds hostage, of which, it is suspected, less than 100 still live in captivity, held in tunnels, held in basements, and even, we've learnt, held in the family living rooms of Hamas operatives in Gaza.*

*“New Zealand has taken action in line with our allies and in relation to our size and scale. New Zealand accepts around 1,500 refugees per year, which is what we can accept with the resources we have available. We must reflect the humanitarian crisis in Gaza is caused by Hamas operating a terrorist State, using Gaza as a base to attack its neighbours, and using the people of Gaza as human shields since 2007. We should not accept Hamas is allowed to exist, and that is why I am proud the New Zealand coalition Government has declared not only Hamas' so-called military wing but also its fake political wing to be a terrorist entity. Hamas has no political legitimacy, and they bear sole responsibility for the terrorist attack on Gaza. The State of Israel has been forced to retaliate to try to get its citizens that are held hostage back and try to create sufficient defensive conditions so that Israel is safe from further attacks.*

*“New Zealand has frozen the assets and the ability for New Zealanders to send funds to Hamas. Now, people would ask, “Well, who in their right mind would want to send funds to Hamas?” Well, it turns out there are New Zealanders who wanted to and, in fact, had organised to. They had organised to. The only group to oppose the New Zealand Government's decision to categorise the political wing of Hamas as a terrorist entity was a group called Palestinian Solidarity Network, led by the confused and bitter John Minto, once a freedom fighter against apartheid, now an apologist for anti-Semitic terrorists. How far that gentleman has fallen. But New Zealand has also, sadly, been slow to the party.*

*“In terms of designating Hamas a terrorist entity, and that includes its political wing, New Zealand and Australia didn't do this until very recently—Australia in 2022; Canada in 2022; the UK in 2003—but the US recognised the problem that Hamas was causing back in 1997. New Zealand has, and dare I say my colleagues in Labour and the Green Party, and no doubt Te Pāti Māori, seem to imagine we live in a world where a resolution or a declaration of ceasefire can be made and all of a sudden there are unicorns and rainbows. It doesn't work like that in the real world. Someone has to get the hostages back. Someone has to keep the people of Israel safe.*

*“A former Labour leader—actually, a former Prime Minister—once declared in May 2001—remember that date: May 2001—New Zealand is in an incredibly benign strategic environment. In September 2001, Al Qaeda terrorists flew two aircraft into the World Trade Center buildings, another one into the Pentagon, and passengers on another flight managed to wrestle the controls away from the terrorists and it landed in a field with all being killed. That was not a benign strategic environment then, and we do not live in one now.*

*“When the UN called for a ceasefire today, it echoes the desire of many people in Israel and Gaza's neighbours for an end to the conflict, an end to the suffering of the Palestinian people in Gaza. Only Hamas can end their suffering. They can accept the deal currently offered by Israel, return the hostages, have a ceasefire. But remember, Hamas, you are not safe; you will face justice—that is clear. The Israelis will come after you. New Zealand can do its bit by helping them and making sure that we can deliver aid to the people of Gaza as soon as we can.”*

### **Statements of Paul Goldsmith**

Paul Goldsmith (Minister of Justice) and Ginny Andersen appeared together on the AM Show with Ryan Bridge on **8 December 2023**.<sup>120</sup>

Ms Anderson was asked if she agreed with her Labour colleague Damien O'Connor that Israel was guilty of genocide. Ms Andersen said: "Those kinds of determinations need to be made by international law, but there is no doubt about the huge number of people who have been killed, and it's really concerning that there's nowhere for people to go."

Paul Goldsmith said a "human tragedy" was under way in Gaza, while also saying: "*I don't think it's appropriate to be using words like genocide. It's a very high threshold, and you've got to be very careful about that. But what we do want to see is... Israel of course has the right to defend itself, but it does need to operate within international laws, and that's what we're calling for them to do.*"

Mr Bridge responded: “Are they? So if you’re calling for them to do it then that would imply that they’re not currently.”

**Mr Goldsmith:** “*No, no it’s just stating the fact that we want all sides to be following international rules and we’re very focused upon them...*”

Mr Bridge: “Do you believe at the moment, does the Government believe that Israel is following the letter of international law?”

**Mr Goldsmith:** “*Well, look, that’s not the statement that we’re making, what we’re making, is what we’re saying is...*”

Mr Bridge: “Why make the statement calling for them to do so if you don’t think they are already?”

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<sup>120</sup> [National Justice Minister Paul Goldsmith disagrees with Labour's Damien O'Connor's characterisation of situation in Gaza as 'genocide' | Newshub](https://www.newshub.co.nz/home/politics/2023/12/national-justice-minister-paul-goldsmith-disagrees-with-labour-s-damien-o-connor-s-characterisation-of-situation-in-gaza-as-genocide.html)

**Mr Goldsmith:** *“Well it’s just a clear reminder of that’s our expectation at every instance, nobody wants to see this going on.”*