

12 April 2024

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OIA 29175

Personal details removed for proactive release

Personal details removed for proactive release

I refer to your email of 28 February 2024 in which you request the following under the Official Information Act 1982 (OIA):

*I request all assessments, communications, meeting agendas/minutes/notes and briefings, etc. relating to New Zealand's consideration of General Assembly resolution 77/247 of 30 December 2022, including all assessments, communication, meeting agendas/minutes/notes and briefings, etc that lead to the decision of New Zealand to oppose this resolution, and all assessments, communication, meeting agendas/minutes/notes and briefings, etc. leading to the decision not to participate in the recently completed oral hearings by the International Court of Justice on this matter.*

*This resolution concerned a request to the International Court of Justice on legal consequences arising from the policies and practices of Israel in the Occupied Palestinian Territory, including East Jerusalem.*

On 29 February 2024, you emailed to correct your request saying:

*In my request I state that New Zealand opposed the UN resolution in question.*

*I was mistaken - New Zealand abstained from voting.*

*My request stands with that correction.*

On 27 March 2024, the timeframes for responding to your request were extended by an additional 10 working days because responding to your request necessitated the review of a large quantity of information (section 15A(1)(a) of the OIA refers).

In relation the first part of your request for:

*all assessments, communications, meeting agendas/minutes/notes and briefings, etc. relating to New Zealand's consideration of General Assembly resolution 77/247 of 30 December 2022, including all assessments, communication, meeting agendas/minutes/notes and briefings, etc that lead to the decision of New Zealand to [abstain from voting on] this resolution.*

The agenda, committee report vote summary and meeting record relating to the General Assembly Resolution 77/247 are available on the United Nations website at:

<https://digitallibrary.un.org/record/4000001?ln=en&v=pdf>. Therefore this part of your request is refused under section 18(d) of the OIA, as this information you requested is publicly available.

We have interpreted the remainder of this part of your request to be for all formal documents and communications created in advance of the vote on General Assembly Resolution 77/247 and any formal notes created immediately after the vote reporting on the vote.

There are nine documents in scope of the first part of your request:

1. UNGA 77: Aotearoa New Zealand's approach to votes on Middle East-related issues [dated 26 Oct 2022]
2. RE: FORMAL MESSAGE: UNGA77: FOURTH COMMITTEE AND SECOND COMMITTEE MEPP RESOLUTIONS: VOTING RESULTS [dated 16 November 2022]
3. FORMAL MESSAGE: UNGA77: FOURTH COMMITTEE MEPP RESOLUTIONS: INSTRUCTIONS [dated 11 November 2022]
4. RE: FORMAL MESSAGE: UNGA77: REQUEST FOR INSTRUCTIONS -MEPP RESOLUTIONS - PALESTINE PROPOSES RECOMMENDATION FOR ICJ ADVISORY OPINION ON ISRAEL IN THE "ISRAELI PRACTICES" RESOLUTION - UPDATE 10 NOVEMBER [dated 11 November 2022]
5. RE: FORMAL MESSAGE: UNGA77: REQUEST FOR INSTRUCTIONS -MEPP RESOLUTIONS - PALESTINE PROPOSES RECOMMENDATION FOR ICJ ADVISORY OPINION ON ISRAEL IN THE "ISRAELI PRACTICES" RESOLUTION - UPDATE 9 NOVEMBER [dated 9 November 2022]
6. RE: FORMAL MESSAGE: UNGA77: REQUEST FOR INSTRUCTIONS -MEPP RESOLUTIONS - PALESTINE PROPOSES RECOMMENDATION FOR ICJ ADVISORY OPINION ON ISRAEL IN THE "ISRAELI PRACTICES" RESOLUTION [dated 9 November 2022]
7. FORMAL MESSAGE: UNGA77: REQUEST FOR INSTRUCTIONS -MEPP RESOLUTIONS - PALESTINE PROPOSES RECOMMENDATION FOR ICJ ADVISORY OPINION ON ISRAEL IN THE "ISRAELI PRACTICES" RESOLUTION [dated 9 November 2022]
8. UNGA77 ISRAELI PRACTICES RESOLUTION AFFECTING THE HUMAN RIGHTS OF THE PALESTINIAN PEOPLE IN THE OCCUPIED PALESTINIAN TERRITORY, INCLUDING EAST JERUSALEM; New Zealand Explanation of Vote: Friday 11 November 2022
9. Next Steps for the 'Israeli Practices' Resolution [dated November 2022]

These nine documents are attached. We have withheld some information under the following sections of the OIA:

- 6(a): to avoid prejudicing the security or defence of New Zealand or the international relations of the New Zealand Government;
- 6(b)(i): to protect the passing of information from another government on a confidential basis;
- 9(2)(a): to protect individuals' privacy;
- 9(2)(g)(i): to protect the free and frank expression of opinions by departments;
- 9(2)(g)(ii): to protect officers and employees from improper pressure or harassment; and

- 9(2)(h): to maintain legal professional privilege.

*In relation to the second part of your request, for all assessments, communication, meeting agendas/minutes/notes and briefings, etc. leading to the decision not to participate in the recently completed oral hearings by the International Court of Justice on this matter.*

The Ministry holds one document which includes information in scope of this part of your request. It is titled 'Aotearoa New Zealand's Policy Settings on the Israeli-Palestinian conflict'. Much of the document is out of scope, the remainder of the document has been withheld under the following sections of the OIA:

- 6(a): to avoid prejudicing the security or defence of New Zealand or the international relations of the New Zealand Government; and
- 9(2)(h): to maintain legal professional privilege.

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

Please note that it is our policy to proactively release our responses to official information requests where possible. Therefore, our response to your request (with your personal information removed) may be published on the Ministry website: [www.mfat.govt.nz/en/about-us/contact-us/official-information-act-responses/](http://www.mfat.govt.nz/en/about-us/contact-us/official-information-act-responses/)

If you have any questions about this decision, you can contact us by email at: [DM-ESD@mfat.govt.nz](mailto:DM-ESD@mfat.govt.nz). You have the right to seek an investigation and review by the Ombudsman of this decision by contacting [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or freephone 0800 802 602.

Nāku noa, nā

A handwritten signature in black ink, appearing to be 'SC', written in a cursive style.

Sarah Corbett  
for Acting Secretary of Foreign Affairs and Trade



26 October 2022

Minister of Foreign Affairs

For approval by

2 November 2022

## UNGA 77: Aotearoa New Zealand's approach to votes on Middle East-related issues

BRIEFING Decision Submission

**PURPOSE** To seek your agreement on Aotearoa New Zealand's positions on the Middle East resolutions to be considered in the 77<sup>th</sup> session of the UN General Assembly from early November 2022.

## Tukunga tūtohua – Recommended referrals

Prime Minister

For information by

9 November 2022

Associate Minister of Foreign Affairs

For information by

9 November 2022

## Taipitopito whakapā – Contact details

NAME	ROLE	DIVISION	WORK PHONE
s9(2)(g)(ii)		United Nations, Human Rights and Commonwealth Division	s9(2)(a)
		Middle East and Africa Division	s9(2)(a)

## Mā te Tari Minita e whakakī – Minister's Office to complete

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

**Comments**



## UNGA77: Aotearoa New Zealand's approach to votes on Middle East-related issues

### Pito matua – Key points

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- Each year at the UN General Assembly, the European Union and the Palestinian delegation negotiate a set of Middle East-related resolutions. These cover issues such as Palestinian refugees, the Golan Heights in Syria, and the status of the occupied Palestinian territories. The resolutions are usually carefully negotiated and worded to receive the broadest possible support from the UN membership. The resolutions are non-binding and pass with a majority of UN member states voting in support.
  - s6(a)
  - Aotearoa New Zealand has endeavoured to take a constructive approach to Middle East issues in the UN, with the primary objective of supporting a sustainable two-state solution, best achieved through direct Israeli-Palestinian negotiations.
  - Maintaining New Zealand's position for a two-state solution and dialogue is more important than ever, at a time where tensions are mounting and paths forward are becoming more unclear.
  - The content of the resolutions is essentially the same each year with minor updates to reflect new resolutions passed by the UN or related developments. Aotearoa New Zealand has maintained a consistent position on the suite of resolutions for over 10 years, and our position is usually aligned with s6(a) and those countries still actively working towards a two-state solution. In recent years the number of resolutions have been streamlined so that some resolutions in the suite are put forward every two years.
  - New Zealand has consistently voted in favour of the majority of resolutions, abstaining on only four s6(a)
- Two out of the four resolutions on which New Zealand traditionally abstains will be put forward this year. In addition New Zealand traditionally co-sponsors the resolution "Right of Palestinian people to self-determination".
- Specific elements we look for and encourage in multilateral resolutions on the Middle East are:
    - support for a comprehensive and sustainable two-state solution, with secure and recognised borders for Israel and Palestine (based on 1967 lines with mutually agreed land swaps);
    - support for Israel's right to exist in peace and security;

## UNGA77: Aotearoa New Zealand's approach to votes on Middle East-related issues

- support for the right of the Palestinian people to self-determination; and
- recognition that direct negotiations between the parties will eventually be the only way to achieve a sustainable agreement, and calling for a return to such negotiations.
- Officials consider that continuing with New Zealand's long-standing approach to the Middle East resolutions is the appropriate approach to pursue our objective of a sustainable two-state solution, achieved through direct Israeli-Palestinian negotiations.
- Voting on these resolutions will commence on or around 11 November 2022 in New York. We seek your approval of the recommendations as set out in this submission. A table of New Zealand's proposed voting positions is attached.
- Because of the way in which this set of resolutions are negotiated between the Palestinian delegation and EU, the final texts only tend to emerge immediately prior to the vote, requiring quick decision making. If amendments are proposed to any of the resolutions s9(2)(g)(i)
 

New Zealand will follow the principles that sit behind its existing voting record, i.e. consistency with our general position on Middle East issues (as above) s6(a)

s6(b)(i)
- s6(a), s6(b)(i)
- s6(a), s6(b)(i)
- s9(2)(g)(i)

s9(2)(g)(ii)

for Secretary of Foreign Affairs and Trade



## UNGA77: Aotearoa New Zealand's approach to votes on Middle East-related issues

### Tūtohu – Recommendations

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It is recommended that you:

- |   |   |          |
|---|---|----------|
| 1 | <b>Note</b> Aotearoa New Zealand's constructive approach to Middle East issues in the UN, with the primary objective of supporting a sustainable two-state solution, best achieved through direct Israeli-Palestinian negotiations.   | Yes / No |
| 2 | <b>Agree</b> that New Zealand maintain its previous voting positions (which have remained consistent for over 10 years) on Middle East resolutions to be considered in the UN General Assembly and vote in accordance with the positions set out in the table annexed to this submission. | Yes / No |
| 3 | <b>Agree</b> that New Zealand vote on amendments to resolutions in line with our constructive approach to Middle East issues, taking into account whether amendments improve the resolution s9(2)(g)(i)   | Yes / No |
| 4 | <b>Agree</b> that if there should be last minute changes to the texts or voting company, s9(2)(g)(ii) should exercise discretion to vote in line with long-standing New Zealand policy.   | Yes / No |

Hon Nanaia Mahuta  
Minister of Foreign Affairs

Date:        /        /

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## UNGA77: Aotearoa New Zealand's approach to votes on Middle East-related issues

### Pūrongo – Report

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#### Update on the Middle East Peace Process (MEPP)

1. s9(2)(g)(i) Whilst there has not been an outbreak of violence on the scale of that which occurred in May 2021, nonetheless tensions on the ground remain high. April and May 2022 saw multiple Palestinian attacks in Israel, and Israeli military raids in the West Bank, as well as violence and repeated incursions by Israeli forces at Al-Aqsa Mosque – Islam's third holiest site. On 11 May, veteran Al Jazeera journalist Shireen Abu Akleh was killed by gunfire in the West Bank. The Israel Defence Forces have since admitted that there is a "high possibility" that Abu Akleh was killed by Israeli fire.
2. In early August, three days of cross-border fighting between Israel and the militant group Palestinian Islamic Jihad (PIJ) in the Gaza Strip erupted following Israeli airstrikes. A total of 46 Palestinians, among them 16 children, as well as members of PIJ, were killed and more than 300 Palestinians and 47 Israelis were injured.
3. You have spoken publically on multiple occasions expressing concern at this violence. s6(a)
4. s9(2)(g)(i)
5. s6(a) After having served as Prime Minister of Israel for just over a year, Naftali Bennett's coalition government collapsed in late June 2022. s9(2)(g)(i)  
Bennett stood down as prime minister, while alternate Prime Minister Yair Lapid has acted as caretaker prime minister until the upcoming elections on 1 November.
6. These will be the fifth elections in three years, s6(a)
7. s6(a)

For example, the Negev Summit in Israel in March 2022 brought together the foreign ministers of Israel, the UAE, Bahrain, Egypt, Morocco, and the United States, s6(a)



## UNGA77: Aotearoa New Zealand's approach to votes on Middle East-related issues

s6(a) An Israel-UAE Free Trade Agreement was signed earlier this year, with officials predicting USD \$10 billion in bilateral trade within five years.

8. Some analysts, particularly in academia, have argued that the decoupling of the Palestinian issue from the Abraham Accords has allowed for the weakening of prospects for a two-state solution to the Israel-Palestine conflict. Tensions in the conflict continue to mount, with the Palestinian death toll in the West Bank for 2022 at its highest total in seven years.

9. s6(a)

10. s6(a)

On 18 October Australian Foreign Minister Penny Wong publicly reversed the Morrison Government's recognition of West Jerusalem as the capital of Israel. The status of Jerusalem remains one of the most sensitive issues for peace negotiations between the Israelis and the Palestinians. Aotearoa New Zealand's position is that the question of Jerusalem's status can only be dealt with in the framework of negotiations between the Israelis and Palestinians, and not beforehand.

11. New Zealand's long-standing position is that both sides should engage in direct negotiations, with the aim of seeing Israel and a Palestinian state existing side-by-side, in peace and security. Maintaining New Zealand's position for a two-state solution and dialogue is more important than ever, s6(a)

## Annex: Resolutions to be considered during UNGA77

	Resolution	Last considered	Most recent voting position	Proposed voting position 2022
	<b>Second Committee (Sustainable Development)</b>			
1	Permanent sovereignty of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population of the occupied Syrian Golan, over their natural resources	2021	Yes	Yes
2	Oil slick on Lebanese shores	2021	Yes	Yes
	<b>Third Committee (Human Rights)</b>			
3	Right of Palestinian people to self-determination	2021	Yes Co-sponsor	Yes Co-sponsor
	<b>United Nations General Assembly</b>			
4	Peaceful settlement of the question of Palestine	2021	Yes	Yes
5	Committee on the Exercise of the Inalienable Rights of the Palestinian People	2020	Abstain	Abstain <sup>1</sup>
6	Division of Palestinian Rights of the Secretariat	2020	Abstain	Abstain <sup>2</sup>
7	Special Information programme on the question of Palestine of the Department of Global Communications of the Secretariat	2020	Yes	Yes
	<b>Fourth Committee (Special Political &amp; Decolonisation)</b>			
8	Assistance to Palestine refugees	2021	Yes	Yes
9	Operations of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA)	2021	Yes	Yes
10	Palestine refugees' properties and their revenues	2021	Yes	Yes
11	Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan	2021	Yes	Yes
12	Israeli practices affecting the human rights of the Palestinian people in the occupied Palestinian territory, including East Jerusalem	2020	Yes	Yes

<sup>1</sup> Aotearoa New Zealand has previously abstained on this resolution s6(a)

However, given the priority we have accorded to raising international awareness of the need for a peaceful settlement, our position has been to abstain rather than vote against. s6(a) s9(2)(g)(i)

<sup>2</sup> As with the resolution above, Aotearoa New Zealand has previously abstained on this resolution s6(a)

However, given the priority we have accorded to raising international awareness of the need for a peaceful settlement, our position has been to abstain rather than vote against. s6(a) s9(2)(g)(i)



**From:** [NEW YORK](#)  
**To:** [UNHC](#); [NEW YORK](#); [ANKARA](#); [MEA](#); [LGL](#)  
**Cc:** [...MULTILATERAL POSTS](#); [MEXICO](#); [BEIJING](#); [MOSCOW](#); [STOCKHOLM](#); [DUBLIN](#); [LGL](#); [PACREG](#); [DEVPP](#); [PHM](#); [CEO](#); [DCE](#); [AUS](#); [NAD](#); [EUR](#); [SSEA](#); [MEA](#); [AMER](#); [...WLN SLT](#); [ISED](#); [PACPF](#); [GENEVA](#); [...MEA POSTS](#); [...EUROPEAN POSTS](#); [FM.P/S MFA \(Seemail\)](#); [FM.P/S MFA \(Seemail\)](#); [FM.DPMC \(FPA\) \(Seemail\)](#); [FM.Defence \(Seemail\)](#); [s6\(a\)](#) [DS PDG](#); [DS EMA](#); [DS MLG](#); [DS AAG](#); [WASHINGTON](#); [SORD](#); [Security](#); [LONDON](#); [PARIS](#); [OJJAWA](#)  
**Subject:** RE: FORMAL MESSAGE: UNGA77: FOURTH COMMITTEE AND SECOND COMMITTEE MEPP RESOLUTIONS: VOTING RESULTS  
**Date:** Wednesday, 16 November 2022 5:39:15 am  
**Attachments:** Out of scope

[RESTRICTED]

### Āpitihanga – Attachments

- Voting sheet for 4C
- Voting sheets for 2C
- EOY as delivered, for the Israeli Practices resolution

### Rāpopoto – Summary

Part of the MEPP package was actioned late last week, with the adoptions in the Fourth Committee (4C) and Second Committee (2C). While the majority of the MEPP resolutions actioned so far have had unsurprising voting outcomes, the *Israeli Practices* resolution saw the biggest shift of member states moving from voting in favour to abstaining. This was due to Palestine's last minute inclusion of the <sup>s9(2)(g)(i)</sup> paragraph requesting an International Court of Justice (ICJ) Advisory Opinion (AO) on Israeli practices in Palestine.

In line with instructions below, <sup>s9(2)(g)(ii)</sup> to abstain on the resolution, a shift from our longstanding position to vote in favour. <sup>s6(a)</sup>

HOM informed the Palestine delegation in person of the decision in advance of the vote.

<sup>s6(b)(i)</sup>

<sup>s6(d)(i)</sup>

### Hohenga – Action

For information.

### Pūrongo – Report

With thanks for instructions (UNHC FM 11 November refers), we voted **yes** for five of the 4C MEPP resolutions actioned on Friday 11 November. The voting outcomes are as follows:

- *Assistance to Palestine Refugees* – **165** in favour, **1** against, **10** abstentions.
- *Palestine Refugees' properties and their revenues* – **160** in favour, **7** against, **7** abstentions
- *Operations of the United Nations Relief and Works Agency for Palestine Refugees in the Near East* – **164** in favour, **6** against, **5** abstentions.
- *The occupied Syrian Golan* – **148** in favour, **3** against, **22** abstentions.
- *Israeli settlements in the Occupied Palestinian territory, including east Jerusalem, and the occupied Syrian Golan ("Israeli Settlements")* – **150** in favour, **8** against, **14** abstentions.

2. The outcomes of these votes on these five resolutions were generally as

expected, aligning with previous voting outcomes from 2021. We will provide more detailed analysis on the budget implications of the new funding paragraph (NYK FM 9 November refers) in the UNRWA resolution in our MEPP wrap up message. s6(a)

On *Israeli settlements* and UNRWA Australia shifted its vote to "yes" (from abstentions in 2020 and 2021 respectively).

### **Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem ("Israeli Practices")**

3. The final outcome of the "Israeli practices" resolution, with the inclusion of the s9(2)(g)(i) ICJ advisory opinion paragraph, saw a big shift from yes votes to abstentions with **98** yeses, **17** Noes and **52** Abstentions. This is compared to 147 yeses, 10 noes and 16 abstentions when [this resolution as last actioned in 2020](#). s9(2)(g)(i) Israel did not call a paragraph vote on OP17bis, so the resolution was on voted upon as a whole.

4. s9(2)(g)(ii)  
s6(a), s9(2)(g)(i)

s6(a)

5. s6(a)

Republic of Korea also decided to abstain. s6(a) The UK, Japan and

s6(a), s9(2)(g)(i)

Australia and Canada maintained their position to vote against this resolution.

### **6. The three way EU split was as follows:**

- **7 yes:** Belgium, Ireland, Luxembourg, Malta, Poland, Portugal, and Slovenia).
- **13 abstentions:** Bulgaria, Croatia, Cyprus, Denmark, Finland, France, Greece, Latvia, Netherlands, Romania, Slovakia, Spain, and Sweden.
- **7 no:** Austria, Czechia, Estonia, Germany, Hungary, Italy, Lithuania.

7. With thanks for the two drafts provided, we delivered a short explanation of vote (EOV), explaining our rationale for abstention, namely on the new ICJ AO paragraph. New Zealand's final statement as delivered is attached. A number of delegations which switched votes spoke along similar lines, concerned primarily with the way the ICJ AO proposal was introduced at short notice and therefore allowing insufficient time for consultation.

8. HOM reached out to the Palestinian delegation to explain our position on the Israeli Practices text in advance of the vote. s6(b)(i)

### **2C MEPP resolutions**

9. With thanks also for instructions for the two second committee resolutions, confirming we voted in favour of both resolutions. The voting outcomes are as follows:

- *Permanent Sovereignty* - **151** yeses, **7** against, **10** abstentions.
- *Oil Slick on Lebanese Shores* - **150** yeses, **8** noes, **5** abstentions.



*3C MEPP resolution*

10. Action on the 3C MEPP resolution, *Right of Palestinian people to self determination* is still to be scheduled. We will report in due course once this is completed.

**Tākupu - Comment**

11. We will report more fully on dynamics on the MEPP package for 2022 at the conclusion of action on the 3C resolution and the plenary resolutions. <sup>s6(a)</sup>

s6(b)(i)

**Mutu – Ends**

**From:** UNHC <DM-UNHC@mfat.govt.nz>  
**Sent:** Friday, 11 November 2022 12:37 am  
**To:** NEW YORK <NYK@mfat.govt.nz>; ANKARA <ANK@mfat.govt.nz>; UNHC <DM-UNHC@mfat.govt.nz>; MEA <DM-MEA@mfat.govt.nz>; LGL <DM-LGL@mfat.govt.nz>  
**Cc:** ...MULTILATERAL POSTS <MLGPOSTS@mfat.net.nz>; MEXICO <MEX@mfat.govt.nz>; BEIJING <BEI@mfat.govt.nz>; MOSCOW <MOS@mfat.govt.nz>; STOCKHOLM <SKM@mfat.govt.nz>; DUBLIN <DUB@mfat.govt.nz>; LGL <DM-LGL@mfat.govt.nz>; PACREG <PACREG@mfat.govt.nz>; DEVPP <DM-DEVPP@mfat.govt.nz>; PHM <PHM@mfat.govt.nz>; CEO <DM-CEO@mfat.govt.nz>; DCE <DCE@mfat.govt.nz>; AUS <DM-AUS@mfat.govt.nz>; NAD <DM-NAD@mfat.govt.nz>; EUR <DM-EUR@mfat.govt.nz>; SEA <DM-SEA@mfat.govt.nz>; MEA <DM-MEA@mfat.govt.nz>; AMER <DM-AMER@mfat.govt.nz>; ...WLN SLT <WLN-SLT@mfat.net.nz>; ISED <DM-ISED@mfat.govt.nz>; PACPF <PACPF@mfat.govt.nz>; GENEVA <GVA@mfat.govt.nz>; ...MEA POSTS <MEAPOSTS@mfat.net.nz>; ...EUROPEAN POSTS <EUROPEANPOSTS@mfat.net.nz>; FM.P/S MFA (Seemail) <PS.MFA@mfat.net.nz>; FM.P/S MFA (Seemail) <PS.MFA@mfat.net.nz>; FM.DPMC (FPA) (Seemail) <DPMCFPA@mfat.net.nz>; FM.Defence (Seemail) <fm.defence@nzdf.mil.nz>; <sup>s6(a)</sup>  
DS PDG <DSPDG@mfat.govt.nz>;  
DS EMA <DM-DSEMA@mfat.govt.nz>; DS MLG <DM-DSMLG@mfat.govt.nz>; DS AAG <DM-DSAAG@mfat.govt.nz>; WASHINGTON <WSH@mfat.govt.nz>; SORD Security <DM-SEC@mfat.govt.nz>; LONDON <LON@mfat.govt.nz>; PARIS <PAR@mfat.govt.nz>; OTTAWA <OTT@mfat.govt.nz>  
**Subject:** FORMAL MESSAGE: UNGA77: FOURTH COMMITTEE MEPP RESOLUTIONS: INSTRUCTIONS

[RESTRICTED]

**RĀPOPOTO – SUMMARY**

We provide voting instructions on the six Fourth Committee resolutions to be actioned on 11 November, including the contentious "Israeli Practices" resolution which includes the recommendation for an International Court of Justice Advisory Opinion.



While we seek to maintain our long-standing position on the suite of resolutions, the surprise inclusion of the ICJ Advisory opinion has meant that we need to be prepared to potentially adjust our vote on the Israeli Practices resolution if required <sup>s6(a)</sup>

#### **– ACTION**

NYK: We would be grateful if you would vote:

- Yes on each of the five resolutions listed in para 2; and
- Yes on the resolution 'Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem,' noting caveats outlined in paras 3-14.

-

Others: for information.

#### **PŪRONGO – REPORT**

1. Thank you NYK for your FMs of 9 and 11 November and for your emails and other communications providing up to date information on other countries' approaches to this suite of resolutions (especially the "Israeli Practices" resolution).
2. We ask that you **vote in favour** of the following five Fourth Committee MEPP resolutions:
  - Assistance to Palestine Refugees
  - Palestine Refugees' properties and their revenues
  - Operations of the United Nations Relief and Works Agency for Palestine Refugees in the Near East
  - The occupied Syrian Golan
  - Israeli practices and settlement activities affecting the rights of the Palestinian People and other Arabs of the occupied territories ("Israeli Settlements").

#### **Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem ("Israeli Practices")**

3. The surprise inclusion of a recommendation for an International Court of Justice Advisory Opinion in the Fourth Committee "Israeli Practices" resolution has required us to consider closely our long-standing support for this resolution.
4. We have some concerns around the language used in the ICJ paragraph - OP17bis - s9(2)(h) and overall about the lack of time and ability to consult on the proposal. However in the wider context of the resolution, we can support it if in good company – although we will wish to expressly reserve our position on annexation as part of an explanation of vote.
5. We set out below instructions on possible voting scenarios.  
*Should a vote be called on the specific ICJ paragraph*
6. We understand that it is now unlikely that a vote will be called specifically on the inclusion of the paragraph regarding the recommendation for an International Court of Justice Advisory Opinion.
7. However, should such a vote be called we ask that you **Abstain**.
8. We provide the attached rationale which can be drawn on as an explanation of vote, or to explain our position to Israel/Palestine and other interested parties, as appropriate.

*Should the ICJ reference be removed from the resolution*



9. If the ICJ paragraph were removed from the resolution – we ask that you vote **Yes** on the resolution.

*Should the ICJ reference remain in the resolution*

10. Should the resolution remain in its current form (including the ICJ paragraph) we ask you to vote **Yes if in good company**.

11. s6(a), s6(b)(i)

12. However, should there be an unforeseen movement away from voting Yes s9(2)(g)(i) switch to an

**Abstention** s9(2)(g)(i)

13. If this were to occur we would explain our decision on the basis of the concerns above in relation to the proposed language and lack of proper consultation on the ICJ proposal, but noting otherwise our support for the resolution (see attached explanation of vote).

*Unexpected amendments from the floor*

14. The Permanent Representative has discretion to vote on unexpected amendments from the floor in accordance with Aotearoa New Zealand's long standing policies and interests, and (where possible) in coordination with likeminded partners. Should an unexpected amendment succeed and alter the nature of the resolution, the Permanent Representative has discretion to move to Abstain on the resolution.

**MUTU - ENDS**

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**From:** NEW YORK <[NYK@mfat.govt.nz](mailto:NYK@mfat.govt.nz)>

**Sent:** Friday, 11 November 2022 10:56 AM

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**Subject:** RE: FORMAL MESSAGE: UNGA77: REQUEST FOR INSTRUCTIONS - MEPP RESOLUTIONS - PALESTINE PROPOSES RECOMMENDATION FOR ICJ ADVISORY OPINION ON ISRAEL IN THE "ISRAELI PRACTICES" RESOLUTION - UPDATE 10 NOVEMBER

[RESTRICTED]

#### PŪRONGO – REPORT

We report on the latest updates on others' positions on the *Israeli Practices* resolution.

s6(b)(i)

We assess, however, that given the shifting landscape instructions on a paragraph vote would remain useful in case Israel change its position and requests an unexpected vote.

s6(b)(i)

#### MUTU-ENDS

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**Subject:** RE: FORMAL MESSAGE: UNGA77: REQUEST FOR INSTRUCTIONS - MEPP RESOLUTIONS - PALESTINE PROPOSES RECOMMENDATION FOR ICJ ADVISORY OPINION ON ISRAEL IN THE "ISRAELI PRACTICES" RESOLUTION - UPDATE 9 NOVEMBER

[RESTRICTED]

#### PŪRONGO – REPORT

We report on the latest updates relating to the *Israeli Practices* resolution, noting that we will need instructions on the resolution by **COB Friday 11 November NZT**. s6(a), s6(b)(i)

2. s6(b)(i)

s6(a), s6(b)(i)

3. Specific updates from likeminded partners on the ICJ paragraph include:

s6(a), s6(b)(i)

4. s6(b)(i)

## MUTU-ENDS

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DS PDG <[DSPDG@mfat.govt.nz](mailto:DSPDG@mfat.govt.nz)>;  
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**Subject:** RE: FORMAL MESSAGE: UNGA77: REQUEST FOR INSTRUCTIONS - MEPP RESOLUTIONS - PALESTINE PROPOSES RECOMMENDATION FOR ICJ ADVISORY OPINION ON ISRAEL IN THE "ISRAELI PRACTICES" RESOLUTION

[RESTRICTED]

#### RĀPOPOTO – SUMMARY

- HOM met with the Deputy Director General for the United Nations and International Organisation in the Israeli MFA earlier this week.
- **Israel rejects the annual package of Middle East related resolutions.**

s6(a), s6(b)(i)

#### HOHENGĀ – ACTION

NYK/UNHC/MEA: For information.

#### PŪRONGO – REPORT

NYK's FM below refers.

2 In an ongoing accreditation trip to Israel by HOM, following her Presentation of Credentials to Israel's President Isaac Herzog (on 31 October), HOM attended calls with the Israeli Ministry of Foreign Affairs (MFA). ANK will report in due course on HOM's accreditation trip.

3 HOM met with the Deputy Director General for the United Nations and International Organisation, Haim Waxman on 7 November. **Israel rejected the annual package of Middle East related resolutions** s9(2)(g)(i)



s6(b)(i)

s6(a), s6(b)(i)

*Other issues raised*

s6(a), s6(b)(i)

**TAKAPU - COMMENT**

11

s9(2)(g)(i)

**MUTU - ENDS**

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**Subject:** FORMAL MESSAGE: UNGA77: REQUEST FOR INSTRUCTIONS - MEPP RESOLUTIONS - PALESTINE PROPOSES RECOMMENDATION FOR ICJ ADVISORY OPINION ON ISRAEL IN THE "ISRAELI PRACTICES" RESOLUTION

[RESTRICTED]

**ĀPITIHANGA – ATTACHMENTS**

- Record of 2021 New Zealand voting position.
- Final drafts of 2022 2C, 3C and 4C MEPP resolutions.
- Letter from Israel on Israeli Practices resolution.

**RĀPOPOTO – SUMMARY**

The UN membership will consider the annual package of Middle East-related



resolutions (MEPP resolutions), initially with voting in Committees from 10 November and then with plenary voting in the UN General Assembly on 30 November. There are 13 MEPP resolutions under consideration in 2022. Six Fourth Committee (4C) MEPP resolutions have been finalised and tabled for adoption on Friday 11 November NZT.

s6(a), s6(b)(i)

While 12 of the 13 resolutions have been agreed, Palestine <sup>s6(a)</sup> to the biennial *Israeli Practices* resolution, tabling a version over the weekend with a surprise recommendation for an International Court of Justice Advisory Opinion. <sup>s6(b)(i)</sup>

## HOHENG – ACTION

UNHC/MEA: Grateful voting instructions on two second committee resolutions, *Permanent sovereignty* and *Oil Slick on Lebanese Shores* and the third committee resolution *Right of Palestinian people to self-determination* by **COB Thursday 10 November NZT**. Instructions for fourth committee resolutions are required by **COB Friday 11 November NZT**.

## PŪRONGO – REPORT

The Palestinian Delegation and the European Union have completed their negotiations on MEPP resolutions spanning UN the General Assembly's second (2C), third (3C), fourth (4C) committees and plenary sessions. Whilst principled agreement on the approach to draft texts has been agreed in the Committees, the plenary MEPP resolutions (to be adopted 30 November) are yet to be finalised. We will follow up with a separate request for instructions for the plenary resolutions once these are tabled.

2. This year, the Fourth Committee will consider six MEPP resolutions:

- [\*Assistance to Palestine Refugees\*](#)
- [\*Palestine Refugees' properties and their revenues\*](#)
- [\*Operations of the United Nations Relief and Works Agency for Palestine Refugees in the Near East\*](#)
- [\*The occupied Syrian Golan\*](#)
- [\*Israeli practices and settlement activities affecting the rights of the Palestinian People and other Arabs of the occupied territories.\*](#)
- [\*Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem\*](#)

3. Palestine pursued largely technical edits across most of the



resolutions, but with small, yet substantive, changes to *Israeli practices* and *Israeli settlements*. The final *Israeli settlements* text contains new language on the events in Masafer Yatta (PP22) and ending prevailing impunity (OP12). <sup>s6(b)(i)</sup>

4. <sup>s6(b)(i)</sup>

*Israeli Practices resolution and the recommendation for ICJ advisory opinion*

5. <sup>s6(b)(i)</sup>

When Palestine originally tabled the draft resolution last month, the text included <sup>s6(a)</sup> language on "apartheid" and holy sites "Temple Mount" or "Haram al Sharif". <sup>s6(b)(i)</sup>

6. <sup>s6(a)</sup>

Palestine tabled the final text with a final "counter proposal" that included a new OP requesting an advisory opinion (AO) from the International Court of Justice (ICJ). <sup>s6(a)</sup>

7. The ICJ AO question is framed in two parts, in full below:

*17 bis.* Decides, in accordance with Article 96 of the Charter of the United Nations, to request the International Court of Justice, pursuant to Article 65 of the Statute of the Court, to urgently render an advisory opinion, on the following questions, considering the rules and principles of international law, including the Charter of the United Nations, international humanitarian law, international human rights law, relevant Security Council, General Assembly and Human Rights Council resolutions, and the advisory opinion of the International Court of Justice of 9 July 2004:

(a) What are the legal consequences arising from Israel's ongoing violation of the right of the Palestinian people to self-determination, its prolonged occupation, settlement and annexation of the Palestinian Territory occupied since 1967, including measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem, and from its adoption of related discriminatory legislation and measures?

(b) How do Israel's policies and practices referred to in

paragraph (a) affect the legal status of the occupation and what are the legal consequences that arise for all States and the United Nations from this status?

8. s6(a)

9. s9(2)(g)(i)

10. s6(a)

s6(b)(i)

11. s6(b)(i)

We are seeking further views from s6(a), s6(b)(i) and will report back in the coming days, including with any elaborations from delegations we have already spoken with.

*Operations of the UN Relief and Works Agency for Palestine Refugees in the Near East resolution (Operations of UNRWA resolution)*

12. The resolution on UNRWA's operations was also tabled as part of the 4C MEPP package, included a new paragraph, proposed by Norway and Jordan as a means to improve UNRWA's dire funding situation (CAI FM 8 Feb 2022 refers). The new paragraph reads as follows:

- 16bis. *Decides* to consider a gradual increase in the United Nations regular budget allocation to the Agency that would, in addition to covering international staff requirements, in accordance with resolution 3331 B (XXIX), be utilizable to support expenses for operational costs related to executive and administrative management functions of the Agency and *invites* the Secretary-General, accordingly, to submit proposals for consideration by the relevant committees at the 78th session;

13. s6(b)(i)

We will revert with further analysis on the implications of this new language for 5C negotiations.

#### *2C and 3C resolutions*

14. The 2C and 3C resolutions which form part of the MEPP package have been tabled:

- *Permanent sovereignty of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan over their natural resources;*
- *Oil Slick on Lebanese Shores; and*
- *Right of Palestinian people to self-determination.*

15. The 2C resolutions are scheduled for adoption by a vote on **10 November NYT**. The adoptions schedule for 3C have yet to be confirmed, but could be as early as 10 November. We will revert as soon as we know more on timings for adoption for 3C..

16. s6(a)

MUTU-END



**UNGA77 ISRAELI PRACTICES RESOLUTION AFFECTING THE HUMAN RIGHTS  
OF THE PALESTINIAN PEOPLE IN THE OCCUPIED PALESTINIAN TERRITORY,  
INCLUDING EAST JERUSALEM**

**New Zealand Explanation of Vote**

**Friday 11 November 2022**

New Zealand has had a long-held policy on Israeli-Palestinian issues, and shares the concerns expressed within the resolution concerning Palestinian human rights in the occupied Palestinian territory, including East Jerusalem. New Zealand reaffirms its position that Israeli settlements in the occupied Palestinian territory are a violation of international law and imperil the two state solution.

New Zealand has decided, however, to abstain on the resolution. New Zealand regrets that the ICJ proposal has not been circulated to Members in sufficient time to allow for an appropriate level of consideration. New Zealand also wishes to clarify that it has concerns with the nature of the question as drafted. In particular, we do not agree with the legal characterisation described at 17 bis (a) as an *annexation* under international law. Despite these concerns, New Zealand is confident that the ICJ's approach to the question will be consistent with international law.

Out of scope

Released under the Official Information Act

Out of scope

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## Next Steps for the 'Israeli Practices' Resolution

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1. On 11 November Aotearoa New Zealand, along with 49 other countries, changed our vote on the biennial 'Israeli Practices' resolution in the Fourth Committee of the UN General Assembly in NYK, from a longstanding 'yes' vote (in New Zealand's case to an 'abstain'). This was due to concerns around the last minute insertion of a request for an International Court of Justice (ICJ) Advisory Opinion into the resolution without consultation. s6(a)
2. Notwithstanding this year's abstention, New Zealand's established position remains in favour of the overall content and intent of this resolution. This was set out in the explanation of vote, which noted that "New Zealand [...] shares the concerns expressed within the resolution concerning Palestinian human rights in the occupied Palestinian territory, including East Jerusalem [and] reaffirms its position that Israeli settlements in the occupied Palestinian territory are a violation of international law and imperil the two state solution."
3. Following the vote you asked us to provide information on how the request for the Advisory Opinion will be implemented, and if there is any scope for New Zealand to contribute. We provide information on the formalities for the UN General Assembly to adopt the resolution, how the request from the General Assembly will be conveyed to the ICJ, and potential New Zealand engagement in the ICJ process.
4. s6(a)

### Formalities in the UN General Assembly

5. The six Middle East Peace Process resolutions that were voted in the Fourth Committee on 11 November, including *Israeli Practices*, will be considered and voted upon again during the General Assembly plenary session that concludes the work of the Fourth Committee for the 77<sup>th</sup> session of the UN General Assembly.
6. Adoption of all of the resolutions and decisions at a General Assembly plenary meeting is a required procedural formality, despite the resolution having been substantively considered during the Fourth Committee's session.
7. The 2022 date for General Assembly plenary action on Fourth Committee resolutions has not yet been set, but as in previous years we expect it will happen early to mid-December.
8. By convention, the vote in the General Assembly yields the same result as in the Committee in which it was substantively considered. While technically any delegation

has the right to change its vote at the General Assembly from that cast in the Committee, this should only happen if a delegation made an error the first time (for instance, pressed the wrong button during voting in the Committee) and needs to correct the record.

9. The vote will be taken without a debate, so there would not be an opportunity to speak ahead of the vote. The UN rules of procedure also make it clear that delegations are expected not to take the floor to deliver an explanation of vote if they have already done so in the Committee stage (as New Zealand has done).

10. s9(2)(g)(i)

11. Ahead of the Fourth Committee vote on 11 November, New Zealand's Permanent Representative to the UN reached out to her Palestinian counterpart, s6(a) to explain New Zealand's position on the Israeli Practices text. s6(b)(i)

You also engaged with representatives from New Zealand's Palestinian community following the vote.

12. s6(a), s9(2)(g)(i)

#### **Implementation of ICJ Advisory Opinion paragraph**

13. The process for implementing the request for an Advisory Opinion is straightforward and automatic. Once the General Assembly adopts the resolution, the UN Secretary-General will write to the ICJ registrar to seek the Court's attention to this matter.
14. Once the ICJ receives the formal request for an Advisory Opinion, under the ICJ rules it must give notice to all UN Member States entitled to appear before it of the question posed. This case has some similarities with the 2004 Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, which was requested by a 2003 resolution of the General Assembly. As a UN Member State Aotearoa New Zealand would likely be eligible to make submissions before the Court.
15. We would expect to receive an invitation from the ICJ inviting all Member States to submit any written statements, or to make oral statements, relating to the question.



16. At this stage, it would be appropriate to consider the feasibility of Aotearoa New Zealand participation in the case s9(2)(g)(i)

s6(a)

Once the timing becomes clear, officials would put up a submission to you and the Attorney-General on the question posed, the likely implications of participation, and whether to seek Cabinet agreement to participate.

*United Nations, Human Rights and Commonwealth Division / Legal Division / Middle East and Africa Division*  
*Manatū Aorere*  
*November 2022*