

DRAFT MOTION – GAZA & GENOCIDE CONVENTION

That Dáil Éireann:

- Recalls the motion passed by Dáil Éireann on 18th October 2023.
- Expresses its utmost concern at the extent of the increase of the civilian death toll in Gaza since the passage of that motion, the scale of the destruction of civilian infrastructure in Gaza, including infrastructure critical to the provision of healthcare and to the supply of food and water, and the reports of UN agencies that hunger in Gaza is now at catastrophic levels, that rates of infection from various life-threatening diseases are soaring and that Gaza is now uninhabitable.
- Recalls that Article I of the Convention on the Prevention and Punishment of the Crime of Genocide ('Genocide Convention') obliges parties to that Convention, including Ireland, to prevent genocide, which is defined in Article II as "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
 - (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."
- Further notes that the International Court of Justice has held that "a State's obligation to prevent [genocide], and the corresponding duty to act, arise at the instant that the State learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed". (*Bosnia and Herzegovina v Serbia and Montenegro* [2007] ICJ 2, paragraph 431)
- Notes with alarm that leading experts on genocide have concluded that both statements made by senior Israeli officials and the manner in which the Israeli government is conducting the war in Gaza establish a serious risk of genocide. For example, Professor William Schabas (Emeritus Professor of human rights law at the University of Galway and author of the book 'Genocide in International Law') has stated as follows in a sworn declaration prepared for the purpose of legal proceedings ongoing against the government of the United States in relation to the war:

"In the present case, there is much direct evidence in the form of statements by senior officials and politicians in Israel indicating an intent to destroy the people of Palestine. Furthermore, the conduct of the State of Israel provides evidence from which genocidal intent may be inferred. The avowed policy of depriving Gaza of water, food, medicine and electricity, bearing in mind the rather desperate economic situation in the territory prior to the conflict and the fact that the borders are sealed, leaving the people of Gaza with nowhere to go, will inexorably lead to their physical destruction. If the siege and blockade

continue, there can be no other outcome [...] I conclude that there is a serious risk of genocide committed against the Palestinian population of Gaza [...]” (Declaration of William A. Schabas in *Defense for Children International – Palestine et al. v Joseph R. Biden Jr. et al.*, paragraphs 17 and 31).

- Notes that South Africa has recently initiated a case against Israel before the International Court of Justice under the Genocide Convention.
- Recalls that Ireland has joined a case brought by Ukraine against Russia under the Genocide Convention which is currently ongoing before the International Court of Justice as an intervener and has, in its written arguments in this case, made certain submissions which are consistent with the arguments advanced by Ukraine.
- Observes that the International Court of Justice has previously held that the obligation to prevent genocide requires States “to employ all means reasonably available to them, so as to prevent genocide so far as possible”; that a State incurs responsibility for breaching this obligation if it “manifestly failed to take all measures to prevent genocide which were within its power, and which might have contributed to preventing the genocide”; that “[v]arious parameters operate when assessing whether a State has duly discharged the obligation concerned” including its “capacity to influence effectively the action of persons likely to commit, or already committing, genocide” which in turn “depends, among other things, on the geographical distance of the State concerned from the scene of the events, and on the strength of the political links, as well as links of all other kinds, between the authorities of that State and the main actors in the events”; and that once a State learns or should normally have learned of a serious risk of genocide materialising, “if the State has available to it means likely to have a deterrent effect on those suspected of preparing genocide, or reasonably suspected of harbouring [genocidal intent], it is under a duty to make such use of these means as the circumstances permit”. (*Bosnia and Herzegovina v Serbia and Montenegro* [2007] ICJ 2, paragraphs 430 and 431)
- Further notes that Ireland’s written submissions in the Ukraine v Russia case state: “In Ireland’s view, the notion of ‘undertake to prevent’ implies that each State party must assess whether a genocide or a serious risk of genocide exists prior to taking action pursuant to Article I [of the Genocide Convention].” (*Written observations of Ireland on the subject-matter of its intervention* (5 July 2023), paragraph 30).
- Notes that it is well-established that the obligation to prevent genocide forms part of customary international law and that, under EU law, EU legislation and EU trade agreements with ‘third countries’ must be interpreted and applied in a manner consistent with customary international law (see, for example, in relation to trade agreements the decision of the Court of Justice of the EU in *Council of the EU v Front Polisario*, Case C-104/16 P, paragraphs 86 et seq.)

Therefore, calls on the government:

- to urgently conduct an assessment for the purpose of Article I of the Genocide Convention of whether there is a serious risk that genocide is being committed in the context of the war in

Gaza, taking into account the views of relevant experts, and to present the conclusion of this assessment to Dáil Éireann at the earliest possible opportunity;

- to identify the measures that the State could use to deter the commission of genocide, including those stemming from relevant political and trade links, and to report to Dáil Éireann on those measures at the earliest possible opportunity;
- to join the proceedings brought by South Africa against Israel to the International Court of Justice as an intervener, supporting in particular the request of South Africa for provisional measures requiring Israel to:
 - immediately suspend its military operations in and against Gaza;
 - desist from the commission of any and all of the following acts:
 - (a) killing members of the group;
 - (b) causing serious bodily or mental harm to the 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; and
 - (d) imposing measures intended to prevent births within the group.
 - desist from and take all measures within its power to prevent:
 - (a) the expulsion and forced displacement from their homes;
 - (b) the deprivation of:
 - (i) access to adequate food and water;
 - (ii) access to humanitarian assistance, including access to adequate fuel, shelter, clothes, hygiene and sanitation;
 - (iii) medical supplies and assistance; and
 - (c) the destruction of Palestinian life in Gaza.