



Briefing No. 55

Sadaka صدقة
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IRELAND'S OBLIGATION TO PREVENT GENOCIDE IN GAZA

Genocide in international law and specific genocidal intent

The crime of genocide is defined in Article II of the 1948 Genocide Convention 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.¹

This definition is reflected in Irish law² and is widely accepted as customary international law. Genocide requires proof of a specific genocidal intent. Since 7th October senior Israeli officials have made countless genocidal public statements. For example, Prime Minister Benjamin Netanyahu' referred to the Palestinians in Gaza as "*Amalek*", in relation to whom the Hebrew bible says: "*Now go, attack the Amalekites and totally destroy all that belongs to them. Do not spare them; put to death men and women, children and infants, cattle and sheep, camels and donkeys*".³ Israeli Minister of Defense, Yoav Gallant compared Palestinians to "*human animals*".⁴ Ruling party Likud's members of the Knesset have made public statements calling for a "*Nakba*"⁵ – a reference to the Arabic word for 'catastrophe' used to refer to the displacement of over 700,000 Palestinians in 1948 – and the erasure of "*the Gaza Strip from the face of the earth!*".⁶

¹ Convention on the Prevention and Suppression of the Crime of Genocide of 1948, entered into force 12 January 1951, 78 U.N.T.S. 277.

² The Convention was acceded to by Ireland on June 22, 1976 and was given effect in Irish law through the Genocide Act 1973, which has now been repealed by s.30 of the International Criminal Court Act 2006.

³ See: <https://www.motherjones.com/politics/2023/11/benjamin-netanyahu-amalek-israel-palestine-gaza-saul-samuel-old-testament/>.

⁴ On 9 October 2023, Yoav Gallant stated this on video in Hebrew on X: <https://twitter.com/yoavgallant/status/1711335592942875097>.

⁵ On 7 October 2023, Likud Member of the Knesset, Ariel Kallner, stated that a Nakba was the goal in writing on X: <https://twitter.com/ArielKallner/status/1710769363119141268>.

⁶ On 7 October 2023, Likud Member of the Knesset Nissim Vaturi stated this in writing on X: <https://twitter.com/nissimv/status/1710694866009596169>; On 1 November 2023 Likud Knesset Member Galit Distel Atbaryan advocated for Gaza to be "erased from the face of the earth" on her Facebook page: https://m.facebook.com/story.php?story_fbid=pfbid02zUZZKxcaBQYgrU7YctcZogyoV1PzVkogqs9k4FtPwGo57eywe8z8zcrybE5iMcpxl&id=100003536093976.

UN international criminal tribunals have found that “*indications of genocidal intent are “rarely overt”*.”⁷ For the 1995 Srebrenica genocide, the ICTY relied on evidence of the overall situation and the scale of atrocities and the systematic targeting of victims.⁸ Evidence of a plan or policy⁹ is not legally required.¹⁰

William Schabas, Emeritus Professor at the University of Galway and leading global expert on genocide, has signed a court document in which he states that both statements such as the above and the conduct of the State of Israel demonstrates genocidal intent.¹¹ This view has been echoed by a number of UN human rights experts.¹²

The duty on Ireland to prevent genocide in Gaza

The Genocide Convention imposes a further obligation on States to *prevent* genocide. This obligation is independent of the obligation not to commit genocide and applies to all States. In the *Bosnian Genocide* case, the International Court of Justice explained when the obligation arises and what it involves as follows:

‘[A] State’s obligation to prevent, 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. From that moment onwards, 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 specific intent [to commit genocide], it is under a duty to make such use of these means as the circumstances permit’.¹³

The ICJ also made clear that it is no defence for a State to say, in effect, ‘we won’t do everything we can to stop genocide because it won’t make a difference’. It stated that ‘it is irrelevant whether the State whose responsibility is in issue claims, or even proves, that even if it had employed all means reasonably at its disposal, they would not have sufficed to prevent the commission of genocide’.¹⁴ Simply put, all States must do everything they can do to prevent genocide when a serious risk of it occurring arises.

For the reasons outlined above, there is beyond a serious risk of genocide being committed in Gaza. Genocide is already being committed.

Ireland must now do everything in its power to influence Israel to stop committing genocide. This includes imposing sanctions and ceasing trade relations – the very kind of measures that the EU and others have reflexively adopted when other States violate international law.

Ireland also cannot hide behind EU law as a reason not to act. It is well established that the duty to prevent genocide is a rule of customary international law. Under EU law, customary international law

⁷ (Re Srebrenica) *Prosecutor v Karadzic*, No. IT-95-5/18-T, [Judgement](#) (24 March 2016) at para. 5825.

⁸ *Ibid.*, at para. 5825.

⁹ (Re Srebrenica) *Prosecutor v Karadzic*, No. IT-95-5/18-AR98bis.1, [Judgement](#) (11 July 2013) at para. 80.

¹⁰ *Prosecutor v. Jlesic*, No. IT-95-10-A. [Judgement](#) (5 July 2001) at para. 48.

¹¹ Declaration of Professor William Schabas in the case of *Defense for Children International - Palestine v. Biden*, para 17:

https://ccrjustice.org/sites/default/files/attach/2023/11/Declaration%20Expert%20William%20Schabas_w.pdf.

¹² See: <https://www.ohchr.org/en/press-releases/2023/11/gaza-un-experts-call-international-community-prevent-genocide-against>.

¹³ *Bosnia and Herzegovina v Serbia and Montenegro* [2007] ICJ 2, para. 431 (emphasis added).

¹⁴ *Ibid.*, para. 430.

is binding on the EU and takes precedence over EU legislation, trade agreements etc. This means that under EU law, both the EU itself and Member States when implementing EU law must comply with a rule of customary international law – in this case to do everything within their power to prevent the genocide in Gaza. In any case, as a matter of international law, Ireland cannot rely on EU law to justify not complying with its customary international law obligation to do everything within its power to prevent genocide.

Photo by UNICEF/El-Baba.