

Supplementary Estimates 2024

Vote 28 (Foreign Affairs)

5 November 2024

Separate remarks by the Tánaiste and Minister for

Foreign Affairs, Micheál Martin TD,

on the

Control of Economic Activity (Occupied Territories)

Bill 2018

A Chathaoirleach, Members of the Committee,

Thank you for this opportunity to set out the Government's approach to the Control of Economic Activity (Occupied Territories) Bill 2018.

Our further consideration of this matter takes place against the backdrop of a deeply troubling situation in the West Bank, including East Jerusalem. The United Nations has reported record levels of settlement expansion and we are also witnessing unacceptable levels of settler violence.

Ireland's position – and indeed that of the European Union – is clear. Settlements are illegal under international law. Those responsible for settler violence must be held to account.

This has been a longstanding priority for the Government. I welcome that successive rounds of EU sanctions have been adopted against violent Israeli settlers this year and that further sanctions are under consideration. We will continue to actively press for such responses at EU level. It is also notable that other partners, such as the US and the UK, have also taken similar measures.

I also welcomed the Advisory Opinion delivered by the International Court of Justice in July. The request by the General Assembly for this Advisory Opinion was strongly supported by Ireland in December 2022 and the Government subsequently shared its legal analysis through both written and oral submissions of the Court.

Ireland's core objective in making submissions in this case was to encourage the Court to clarify the rights of the Palestinian people in international law and the Opinion of the Court largely confirmed the Government's legal analysis.

This Advisory Opinion has changed the legal context for the Control of Economic Activity (Occupied Territories) Bill 2018.

The Court's principal conclusion was that Israel's continued presence in the Occupied Palestinian Territory is unlawful, and that it must be brought to an end as rapidly as possible.

The Court also identified a range of legal obligations for all states arising from that situation. These include a duty not to render aid or assistance in maintaining the illegal situation created by Israel in the OPT.

The ICJ's conclusions on this point were entirely consistent with the arguments made by the Attorney General on behalf of the Government throughout the case.

While the ICJ's Advisory Opinion is not in itself legally binding, the Government accepts that it represents an authoritative statement of applicable international law, which is binding on all states and international organisations.

This is the changed legal context for the Bill.

What has not changed is the EU's exclusive competence in the field of trade for all its member states – including Ireland.

It is against this background that the Taoiseach asked the Attorney General to provide updated advice in relation to this Bill.

The advice provided to the Government remains that the Bill, in its present form, is incompatible with EU law and the Constitution. This advice reflects the conclusions also reached by this Select Committee in its Detailed Scrutiny of the Bill several years ago.

The Attorney has advised that if the EU does not take measures to limit or prevent trade with the settlements there are exceptional grounds in EU law that could allow a member state to take measures itself.

However, it is important to understand that these grounds have never been used by a member state before in similar circumstances. There therefore remains a legal risk if we do take our own domestic measures.

In light of the new context provided by the Advisory Opinion, the Government has decided to review the Bill and to prepare amendments. The purpose of the amendments will be to try to bring the Bill into line with EU law and the Constitution and to reduce the risk of infringement proceedings against the State.

The Government has also now issued the Money Message necessary to enable the Bill to move to Committee Stage.

I must stress however that the amendments required are not merely technical in nature. The Government's analysis is that substantive amendment will be required to most, if not all, of the Bill's provisions.

I should add that, in the meantime, the Government will continue to press for action at the EU level.

I also want to thank the Bill's sponsor, Senator Black, for her constructive engagement. I have been in regular contact with her, and officials from my Department had a very useful meeting with her and her team last week at which they went through the Bill in detail.

A Chathaoirleach, Members of the Committee,
Thank you for your time. I look forward to our discussions this afternoon.