

Written evidence submitted by the Coalition (INR0064)

1. Introduction

The Coalition for Genocide Response (the CGR) is a research and advocacy organisation focusing on strengthening the domestic and international responses to genocide. The CGR collaborates with a broad range of partners to maximise diplomatic and political focus on both the causes of genocide and on what more can be done to honour the UK's obligations set out in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention), which requires affirming nations to prevent and protect and to punish perpetrators. The 1948 Convention was unanimously adopted by the UN General Assembly on 9 December 1948 as UN General Assembly Resolution 260.

The CGR is concerned about the UK's past responses to genocide and in welcoming the Foreign Affairs Committee's important Inquiry into the 'FCO and the Integrated Review', it would encourage the Committee to examine past failures to deter genocide and crimes against humanity which have become a stain on the UK's reputation and exposed an apparent lack of international relevance.

The UK is punching well below its weight and we welcome a new determination for redefining what we mean by 'global Britain.' Here is an opportunity for the UK to be the foremost defender of the rules-based order, and for its flagship to be the upholding of the Genocide Convention and the 1948 Universal Declaration of Human Rights.

If such a commitment formed part of our national DNA it would define Britain's new place in the world.

To enable this to happen, the newly integrated FCO/DFID Ministry, with opportunities to simultaneously rework trade and defence commitments, can use DFID resources, deploy its military power, enable our talented and able diplomats to fashion an exciting agenda to redefine UK global power – all of which are integral to the Review.

The UK is in the enviable position of having a permanent place at the UN Security Council; of being a founding member of the Commonwealth; of having an especially close relationship with both the United States and European countries; of being a strong military power and generous

contributor to NATO; of being home to greatly admired outlets 'soft power' such as BBC World and the British Council (enhanced by our globally used and admired the English language); of dispersing a generous global development programme; and of being respected throughout the world as a democracy which believes in justice, fundamental freedoms, and the upholding of the rule of law.

The UK was one of the founders of the United Nations, the Universal Declaration of Human Rights, the Genocide Convention and many other pillars of civilised society. Domestically, since the Second World War and loss of Empire, the UK has successfully remade itself as a diverse meritocracy – where the whole world lives in one country in relative peace, respectfully honouring different cultures, religions and traditions, while maintaining its own unique identity as a democracy which has evolved over some 800 years. Post-Brexit, the question is how it will use its history, its story, its influence and resources, to promote its values, and to entrench its relationships.

In this submission we argue that if deploys its capabilities to promote a just world order this will create conditions in which impunity cannot survive; where conflict and serial abuses of human rights carry consequences; where small countries like the Gambia (see below) are not left to seek referrals of a regime guilty of war crimes to international judicial fora; where the vicious circle linking genocide, crimes against humanity, and war crimes can be broken – and conditions created which permit development and trade to prosper. Only in this way will we see the creation of conditions in which the mass migration of peoples, a crisis, with 70 million people now refugees or displaced people, are adequately addressed.

Without justice, there can be no peace - and without peace, there can be no stability or progress. We argue here that by deploying the resources of great Departments of State in the struggle against genocide and crimes against humanity (thereby fulfilling our Genocide Convention duty to prevent, protect and punish), and by benchmarking our policies against this priority, the UK will emerge as a unique country which puts its power and resources where it says its values are earning admiration and respect throughout the world.

Our submission (below) considers the UK's response to genocide and argues that the UK needs to take back control over its genocide response and to fulfil its obligations under the Genocide Convention, thus becoming a truly global Britain – and an admired and respected Britain.

2. The UK Government's Position on Genocide Determination

The UK Government has failed to make any genocide determination, relying on the argument that it is not for politicians to make this determination, but is a matter for ‘international judicial systems.’ This policy is highly flawed and must be amended to align with the UK’s obligations under the Genocide Convention. It is noteworthy that the UK does not have any formal mechanism for genocide determination (even for the preliminary finding of genocide). The UK needs to take control of its genocide response rather than shifting this responsibility and relying on the ‘international judicial systems.’

At the parliamentary event on the ‘Question of Genocide Determination’ led by Lord Alton of Liverpool on 20 March 2018, Dr Adrian Gallagher, Associate Professor in International Relations at the University of Leeds, stated that the question of determining genocide should be placed in the hands of legal experts because of several complexities surrounding the definition of genocide. However, this does not mean that such a determination must be made exclusively by the ‘international judicial systems.’ Indeed, the determination could be made by a competent court in the UK (as per the Genocide Determination Bill introduced by Lord Alton of Liverpool and which has been sponsored in the House of Commons by Fiona Bruce MP), or by a body of experts (the UK Government could request an opinion from experts). Indeed, the Dutch government followed the second option in the case of the Daesh genocide.

In 2016, the Dutch Government requested an expert legal opinion on 1) whether the Daesh atrocities amount to genocide and 2) whether politicians can deal with the question of genocide determination. In December 2017, the Dutch Government published a statement based on the obtained legal opinion of experts from the Advisory Committee on International Law Issues (CAVV)¹ and the External Adjudication Adviser (EVA).² Based on the opinion of experts, the Dutch Government confirmed that the Daesh atrocities are likely to amount to genocide and also clarified that politicians can determine genocide if supported by sufficient evidence.

2.1. Who is the Duty Bearer under the Genocide Convention?

The UK Government’s reliance on the ‘international judicial systems’ is flawed because it neglects the fundamental principle that the duty under the Genocide Convention falls upon individual countries such as the UK and not the ‘International judicial systems.’ Hence, the UK must act to

¹ Commissie Van Advies Inzake Volkenrechtelijke Vraagstukken (CAVV) (translation: The Advisory Committee on Issues of Public International Law) is an independent body that advises the government, the House of Representatives and the Senate of the Netherlands on international law issues. See more at: www.cavv-advies.nl/3bz/home.html.

² Extern Volkenrechtelijk Adviseur (EVA) (translation: The External Adjudication Adviser) is an independent body that provides independent advice on important foreign affairs policy where international law aspects are at stake.

ensure that the determination is made by a competent body (in accordance with the law and policy) and that decisive steps follow that fulfil the UK's obligations under the Genocide Convention to prevent, suppress and punish the crime of genocide.

2.2. What Are the 'International Judicial Systems'?

The International Court of Justice (ICJ), UN-established ad-hoc tribunals and the International Criminal Court (ICC) are the main international bodies most relevant to the question of genocide. Although, very often, there will be no 'international judicial system' to make the determination required by the UK Government to recognise mass atrocities as genocide. For example, the ICJ would not engage unless a state takes a pro-active step and initiates proceedings (as this was done by the Gambia in the case of the genocide against the Rohingya Muslims in Myanmar). The ICC, as a treaty-bound international court, often does not have the necessary jurisdiction to engage. For example, the ICC does not have the territorial jurisdiction to consider the Daesh atrocities in Syria and Iraq (apart from being able to exercise its personal jurisdiction over the Daesh foreign fighters coming from signatory states to the Rome Statute) and there is no ad-hoc tribunal to consider the atrocities. Similarly, the ICC does not have the territorial jurisdiction over Burma and there is no ad-hoc tribunal for the atrocities in Burma. (It is acknowledged that the ICC took a very pro-active and creative approach in the case to recognize its jurisdiction through the displacement of thousands of Rohingya Muslims from a non-state party (Myanmar) to a state party (Bangladesh). However, this is not a usual practice of the ICC.)

Historically, the UN Security Council, despite being reluctant to deal with the question of genocide, has undertaken steps to ensure that such a determination is made. For example, in the case of the mass atrocities in Bosnia and Rwanda, the UN Security Council established commissions of experts to examine and analyse the evidence and confirm whether the atrocities amount to genocide. Once the committees of experts confirmed their findings, the UN Security Council then proceeded to establish ad hoc tribunals to deal with prosecutions of the perpetrators. Both steps relied upon states' leadership and support.

The UN Security Council could also refer a situation to the ICC and so ensure that the ICC has the necessary jurisdiction to engage. The ICC has made such a referral to the ICC on two occasions: with the situation in Darfur (Sudan)³ and Libya.⁴ Again, for this to succeed, states' leadership and support.

³ UN Security Council Resolution 1593 (2005). Available at: <https://www.icc-cpi.int/NR/rdonlyres/85FEBD1A-29F8->

2.3. The Genocide Determination

It may be argued that genocide determination is not crucial, but actions to address the atrocities are. However, the empirical evidence suggests that actions and words are strongly linked here and hence are not only a matter of semantics. Gregory Stanton, Research Professor in Genocide Studies and Prevention at George Mason University, conducted a study on the perception and effects of determining genocidal atrocities, using the words 'ethnic cleansing' or 'genocide'. The results of the studies revealed that:

2. Choice of the term to be used is determined by the willingness to take action to stop the killing. When the terms 'ethnic cleansing' or 'crimes against humanity' were used, it indicated an unwillingness to take forceful action to stop the crimes. These weak words never motivated the use of force. Indeed, they were probably chosen because the decision of whether or not to use force had already been made.

3. It was not until the term 'genocide' was applied to the crimes that force was used to stop them ...

4. When the term 'genocide' is used to describe crimes against humanity, the use of force is possible. When the crimes are only called 'ethnic cleansing' or 'crimes against humanity,' it is a sure indicator of a lack of political will to take forceful action to stop them.⁵

It is clear from the above-cited research that recognising mass atrocities that meet the threshold of Article II of the Genocide Convention as genocide, makes all the difference. Only by recognising the mass atrocities committed as genocide, will victims be able to receive an adequate level of justice. Furthermore, the recognition of genocide matters for their resettlement, restitution, compensation, and rehabilitation. By taking control of genocide determination, the UK Government could also take control over its response to the atrocities.

3. The Genocide Determination Bill

4EC4-9566-48EDF55CC587/283244/N0529273.pdf.

⁴ UN Security Council Resolution 1970 (2011). Available at: <https://www.icc-cpi.int/NR/rdonlyres/081A9013-B03D-4859-9D61-5D0B0F2F5EFA/0/1970Eng.pdf>.

⁵ Gregory H. Stanton, *Weak Words Are Not Enough*, (9 December 2015) Testimony to the Subcommittee on Africa, Global Health, and International Organizations of the House Committee on Foreign Affairs.

In response to the UK's long-standing failure to take responsibility for its own genocide response, Lord Alton of Liverpool and Fiona Bruce MP introduced a Private Member's Bill aimed at paving the way for the UK's more comprehensive response, by way of enabling the UK's High Court to make the genocide determination.⁶ Where the evidence is not sufficient to allow the High Court to determine genocide, the High Court may request the Secretary of State to take further actions, for example:

seek to establish an investigative or other appropriate measure to collect relevant evidence through—

- (a) the United Nations General Assembly or Security Council;
- (b) relevant intergovernmental organisations;
- (c) relevant national governments; and
- (d) any other persons the Secretary of State considers appropriate.

Where the High Court makes the preliminary determination of genocide, Clause 2 of the Genocide Determination Bill identifies the steps to be taken by the Secretary of State, including referring the issue:

(a) to the Prosecutor of the International Criminal Court, pursuant to Article 14 of the Rome Statute of the International Criminal Court, or

(b) to the United Nations Security Council, with a view to tabling a resolution for the Security Council to refer the situation to the International Criminal Court pursuant to Article 13(b) of the Rome Statute of the International Criminal Court, or

(c) to the United Nations Security Council, with a view to the Security Council establishing a special tribunal pursuant to Chapter V, Article 29 of the United Nations Charter, or

(d) to any other United Nations mechanism with a mandate to investigate the situation.

⁶ Genocide Determination Bill [HL] 2019-21. Available at: <https://services.parliament.uk/Bills/2019-21/genocidedeterminationbill.html>

(2) The Secretary of State shall make whichever of the referrals in subsection (1) the Secretary of State deems most expedient. The Genocide Determination Bill provides a blueprint that the UK Government could adopt to strengthen its response to genocide. The identified options refer to the legacy of dealing with such mass atrocities as genocide, crimes against humanity, or war crimes, and have been used to address such atrocities in different parts of the world over the recent decades.

4. Other Options

Other states have been less shy to take control over their domestic determination of genocide, whether in relation to historical mass atrocities or current and ongoing atrocities. For example, the recent Daesh genocide against religious minorities in Syria and Iraq has been formally recognised by a few governments, several parliaments, and the major international institutions.

For example, while Canada and the Netherlands have been relying on the argument that it was not for politicians to make such a determination, both countries have now taken a stronger stance on the issue, as presented below.

4.1. Canada

The Canadian parliament debated the issue of Daesh genocide of religious minorities on 14 June 2016. 166 voted against and 139 in favour of recognising this genocide. The parliamentarians argued that such a recognition should have been done by an independent court and not politicians.⁷ However, because the International Independent Commission of Inquiry on the Syrian Arab Republic, a United Nations body, released a report, 'They Came to Destroy': ISIS Crimes Against the Yazidis', confirming that the atrocities against the Yazidis amounted to genocide, the Canadian Government followed this recognition. On 16 June 2016, Minister of Foreign Affairs Stephane Dion made a statement at the Canadian House of Commons confirming Canada's recognition of the Daesh genocide of the Yazidis.⁸ Dion called upon the UN Security Council to

⁷ House of Commons, 42nd Parliament, 1st Session, Number 72, 14 June 2016, <http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&Parl=42&Ses=1&DocId=8365546>.

⁸ House of Commons, 42nd Parliament, 1st Session, Number 74, 16 June 2016, <http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&Parl=42&Ses=1&DocId=8377402>.

undertake urgent actions. The Canadian government indicated that it would be sending a fact-finding mission to Iraq to establish the best practices for helping the Yazidis in Iraq. In October 2016, the Canadian House of Commons unanimously passed a motion recognising the Daesh genocide against the Yazidis and called upon the Canadian Government to assist the affected communities.

4.2. The Netherlands

As explained above, the Dutch Government obtained an expert legal opinion to deal with the question regarding whether the Daesh atrocities amount to genocide and whether politicians can determine genocide. The Dutch Government published its statement in relation to the received expert legal opinion that is explained below.

Summary of the Dutch Statement on Genocide Determination

Parliaments, as opposed to governments, have a higher tendency to make findings regarding such situations of mass atrocities.

CAVV and EVA confirmed that it is not only for judges to give an opinion on genocide and 'it is up to states to make judgments about acts of other nationals or persons relevant to international law.' CAVV and EVA further confirmed that parliaments should not be hindered in making such a recognition, only because a court has not made the decision. However, CAVV and EVA emphasised the difference between governments and parliaments making such recognition, with the parliamentary recognition bearing no particular weight under international law.

CAVV and EVA confirmed that both governments and parliaments could use the term 'genocide' or 'crimes against humanity.' Nonetheless, they should act with caution and consideration with regard to two main issues. First, such a determination should be based on a thorough fact-finding investigation. Second, while the international determination of genocide or crimes against humanity is preferable, the lack of such recognition should not prevent or delay domestic determinations.

CAVV and EVA further considered the legal obligations flowing from the determination of genocide under the 1948 UN Convention on the Prevention

and Punishment of the Crime of Genocide, namely, to prevent and punish. They considered that the obligation to punish is broader than only conducting domestic prosecutions and includes cooperation with international tribunals.

The obligation to prevent is subjected to limitations of the UN Charter. The mere obligation is not equivalent to an obligation to engage in military intervention or justify the use of force in another state.

CAVV and EVA explained that genocide is not necessarily more severe than crimes against humanity, and so proposed not to distinguish between the two at the prevention phase. This means that the duty to prevent should be triggered whenever genocide or crimes against humanity are suspected.

CAVV and EVA emphasised the necessity and importance of determination of genocide as the first step towards fulfilling the obligation to prevent. However, the determination should not be seen as necessary to trigger the obligation. The obligation should be triggered when 'there is a reliable indication of a serious risk of genocide,' even if there is a degree of uncertainty.⁹

5. Responding to Genocide and Other International Crimes

Mass atrocities such as genocide (but also crimes against humanity and war crimes) require a comprehensive response. Some of the needed responses are discussed below.

Preventing and Stopping the Atrocities

We must act to prevent mass atrocities like genocide from occurring. To do so, monitoring is necessary as followed by comprehensive analysis and risk assessment. Where the atrocities are ongoing, it is crucial to stop the atrocities and protect those targeted. It is accepted that while the primary responsibility towards the members of the persecuted communities lies with the state, where the state fails to do so (or indeed, the state is responsible or complicit in the acts), the

⁹ Ewelina U. Ochab, 'Netherlands joins UN Security Council to shine light on IS genocide' (11 January 2018) World Watch Monitor. Available at: <https://www.worldwatchmonitor.org/2018/01/netherlands-joins-un-security-council-shine-light-genocide/>.

international community must act, in accordance with the Genocide Convention and the Responsibility to Protect doctrine.

Assisting the Survivors

The survivors of such atrocities require a wide range of assistance to address their short and long-term needs, including medical aid, humanitarian assistance, and help with homes, businesses and infrastructure in the regions destroyed. In many cases, the assistance required means rebuilding all aspects of their lives pre-atrocities and placing protections to ensure that such atrocities will never happen again.

Prosecuting the Perpetrators

The perpetrators must be prosecuted for their atrocities, whether as genocide, crimes against humanity, and war crimes, (or for a litany of lower offences, including, murder, manslaughter, torture, battery, rape, slavery and many more). This is the primary way to ensure that the survivors and the families of the victims will see some justice being done. Also, such prosecutions may assist with the prevention of similar future crimes by way of deterring. The ever-growing atmosphere of impunity will not be able to achieve this.

Ensuring Safety and Security of the Survivors

The survivors of the genocidal atrocities and other international crimes need to be provided with adequate security to be able to remain in the region where once they faced annihilation (if they choose to do so). If they are not able to stay in the region (or indeed they do not have faith in their future in the region), steps must be taken to ensure that they find a haven somewhere else.

Protecting the Rights of All

Lastly, it is crucial to ensure that the rights of those targeted individuals and communities are adequately protected and enforced to provide a strong foundation for a better future.

6. Recommendations

The UK Government does not have any formal mechanism to make genocide determination and continues to rely on the 'international judicial systems' to do so. This reliance, and a failure to take steps to ensure that one's own analysis is conducted and that the determination is made, results

in the UK Government failing to fulfil its duties under the Genocide Convention. The UK Government needs to take back control over the genocide response, including:

- Ensure that it has a comprehensive mechanism for genocide (and mass atrocities) analysis and determination;
- Ensure that it has a comprehensive action plan for genocide response;
- Designate an inter-departmental team for genocide and mass atrocities response to implement the action plan;
- Establish a ministerial role of a Special Envoy on Genocide (and mass atrocities) Response who will lead and be accountable for the UK's response to genocide and mass atrocities;
- Take pro-active steps at international institutions to address the issue of genocide and mass atrocities, including a resolution on the issue at the UN SC.
- In taking these steps, not only would this fulfil long-standing international commitments and obligations, it would help the UK to reimagine its role in the world. Genocide is the crime above all crimes.
- No day passes – from the far reaches of Uighur camps in Xinjiang to the Yazidi survivors in Northern Iraq and the rickety Rohingya boats buffeted in the Andaman Sea, to the beleaguered minorities of West Africa and the Sahel – on which we do not hear how crimes against humanity are morphing into outright genocide.
- The UK is not powerless, yet the victims are.
- They need our skills, our phenomenal resources, our strengths, and our voice. The UK has enduring global respect, not to be compromised by purposeless introspection and soul searching. Defining ourselves as the champion of all those who are the victims of genocide, of dictatorship, totalitarianism, and as the defenders of democracy, human rights, minorities and the rule of law is a good place for Britannia to set her sails.

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