



Human Rights
Institute

HIGH-LEVEL BRIEFING PAPER GENOCIDE AMENDMENT TO THE UK TRADE BILL

By the International Bar Association's Human Rights Institute

Legal Considerations Arising from the Proposed Genocide Amendment to the UK Trade Bill

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Executive Summary

1. This is a briefing paper considering a proposed amendment to the UK Trade Bill 2019-2021 relating to genocide ("Genocide Amendment").¹ The Genocide Amendment, if passed, would allow for bilateral trade agreements to be withdrawn by the UK if a preliminary determination by the UK High Court ("Court") finds a State counterparty has committed or is committing genocide.²
2. The Genocide Amendment is clearly right in principle. It allows the UK to give meaningful effect to the UK's obligations under the Genocide Convention which include obligations to: prevent the commission of genocide, prohibit complicity in genocide, and to punish perpetrators of genocide. As a matter of international law, these obligations apply to all States. They have a common legal interest and shared responsibility in seeing them complied with and enforced.
3. The Genocide Amendment may undergo necessary clarification and refinement during Parliamentary deliberations. This would ensure there is precision in its application, it adheres to accepted norms and principles of international law and is fit for its purpose.³
4. The Genocide Amendment, with further refinement, would help set a marker down for future development of international law, if other States were to take the UK's lead. A lead not only permissible under the Genocide Convention but warranted to give effect to international obligations.
5. To date, UK government policy has been that genocide is for determination by courts and tribunals and not for the government; a position which has justified inaction. The UK

¹ UK Parliament. 2020. Lord Alton of Liverpool's Amendment After Clause 2 (9) Trade Bill 2019-2021, Report Stage.

² The Genocide Amendment was moved by Lord David Alton of Liverpool and sponsored by Baroness Kennedy QC of The Shaws, Lord Forsyth of Drumlean, and Baroness Falkner of Margravine. It received significant support of 287 to 161 in the U.K. House of Lords on December 7, 2020. The Genocide Amendment will go to the U.K. House of Commons in January 2021.

³ Lords Hope of Craighead and Baroness Kennedy of the Shaws, among others in the House of Lords, affirmed that there were no legal hurdles that could not be remedied to ensure residual difficulties were addressed. Lords Woolf, Anderson of Ipswich, Brown of Eaton-under-Heywood, and Macdonald of River Glaven also voted for the Genocide Amendment.

government, for instance, has never made an Application to the International Court of Justice (“ICJ”), the forum for inter-State disputes, alleging that another State had failed to meet its obligations under Genocide Convention.⁴ Action at the ICJ may also be completely precluded because of reservations made by a State to the ICJ’s jurisdiction over disputes.⁵ Such reservations, however, do not absolve a State of its obligation to not commit genocide and do not free the UK of its positive obligations to prevent and punish genocide.⁶

6. In practice, State action in fulfilment of the positive obligations under the Genocide Convention has been treated as an issue of political expediency or goodwill rather than of formal legal process.
7. The Genocide Amendment will, however, finally give effect to the long-standing UK government policy that genocide determination is, as a matter of law, for courts and tribunals. A preliminary determination by a UK court could oblige further legal steps by the UK government, including measures for individual criminal responsibility for genocide and referrals to the ICJ to definitively ascertain State responsibility (where possible).
8. This briefing paper is a high-level paper introducing the key legal issues relating to the Genocide Amendment; it is neither a comprehensive analysis of the issues and nor does it constitute legal advice. It is intended for policy discussion purposes only.

Genocide and State Responsibility

9. Genocide is the commission of certain prohibited acts with an intent to destroy, in whole or in part, a national, racial, religious or ethnic group, as such. The prohibited acts comprise: (a) killings; (b) causing serious bodily or mental harm; (c) deliberately inflicting conditions of life calculated to destroy; (d) imposing measures intended to prevent births; and (e) forcibly transferring children from the one group to another group (Art II, Genocide Convention).
10. The prohibition of genocide is a peremptory norm of international law⁷ and entails a number of obligations on States from which no derogation is permitted. These obligations on States include: the prohibition of genocide; the prevention of genocide; the prohibition in aiding or assisting the commission of genocide (i.e., complicity); to make effective international obligations relating to genocide in national law; and the punishment of perpetrators of genocide. The prohibition of genocide is an obligation (*‘erga omnes’*) owed to the international community as a whole (Art 48, ILC Articles).⁸ All States must cooperate to bring

⁴ That is notwithstanding the fact that *The Gambia* began proceedings against *Myanmar* at the ICJ in respect of the alleged genocide of the Rohingya. There is also the prospective of action by *The Netherlands* against *Syria* in respect of the allegations of widespread and systematic use of torture by the Syrian State in its detention system.

⁵ Jurisdiction remains strictly consent-based under Article 36 of the ICJ’s statute; notwithstanding that some disputes involve a question of alleged compliance with a peremptory norm of international law. See further, *Armed Activities on the Territory of the Congo, (Congo, the Democratic Republic of the v Rwanda)*, Judgment, Jurisdiction and Admissibility, ICJ, February 3, 2006, at [32 para. 64, 52 para. 125].

⁶ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, ICJ, February 3, 2015, at [85–88].

⁷ Articles on Responsibility of States for Internationally Wrongful Acts, ILC Yearbook 2001/II (2) (“ILC Articles”); Commentary to the Articles on Responsibility of States for Internationally Wrongful Acts, ILC Yearbook 2001/II (2) (“ILC Articles Commentary”), Commentary to Art 26, para. 5; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, ICJ, February 26, 2007 at [43, 110–11 para. 161].

⁸ A peremptory norm is “a norm accepted and recognised by the international community of States as a whole as a norm from which no derogation is permitted” (Art 53, VCLT). The prohibition of genocide is also an obligation *‘erga omnes partes’* which means the duty is a collective treaty obligation as well as an obligation (*‘erga omnes’*) to the international community as a whole as a matter of general international law (Art 48, ILC Articles). The reason for this is the commission of genocide affects the interests of all States and all States have an interest in seeing obligations under peremptory norms being applied, properly interpreted and fulfilled. *Reservations to the Genocide Convention*, 23. See further *Bosnia and Herzegovina v. Serbia and Montenegro*, Preliminary Objections, ICJ, July 11, 1996, at [595, 611–612 para. 22 and 616 para. 31]; International Law Commission, Fifty-second Session, J. Crawford. 2000. *Third Report on State Responsibility*. UN Doc. A/CN.4/507.

the serious breach to an end, while refraining from recognising its lawfulness and providing aid and assistance in maintaining the situation (Art 40-1, ILC Articles).⁹

11. The obligations to prevent and the prohibition on complicity are particularly relevant to the Genocide Amendment.
12. All States have a duty to prevent genocide. A State must “employ all means reasonably available to them” the “instant” it learns, or should have learned, that there is a “serious risk” that genocide may occur.¹⁰ The obligation is one of conduct, is ongoing once genocide occurs, and may not be derogated from.¹¹ Evidence risk frameworks, such as the UN Framework of Analysis for Atrocity Crimes, can help identify States that fall within the ‘serious risk’ category.¹² The Genocide Amendment brings the duty to prevent to the fore in future trade negotiations, requiring some active consideration of genocide risk and having a deterrence effect on the UK’s trading partners.
13. In respect of complicity, there is an obligation on a State the moment it is aware (i.e., has full knowledge) that genocide will take place or is underway to suspend or terminate all assistance which may “enable or facilitate the commission of the crime.”¹³ Judicial determinations of the existence or the inevitability of a genocide, sought pursuant to the Genocide Amendment, would provide clarity as to whether or not a trading partner had committed genocide and, therefore, whether there was any risk of the UK being complicit in genocide through trading arrangements. Currently, the position of some States, including the UK, is that the determination of the existence of a genocide is a matter for judicial decision, rather than for governments or non-judicial bodies.¹⁴ As only governments are able to refer such matters for judicial decision (to the ICJ, for instance, where possible) any question of complicity is precluded and, ultimately, can never be resolved unless a court has considered the matter. This position is unsatisfactory and perpetuates inaction.

Scope, Interpretation, and Operation

14. The purpose of the Genocide Amendment is to allow victims or survivors¹⁵ to make an Application to the UK High Court asking for a ‘revocation’ of a bilateral trade agreement on the grounds that genocide has occurred and is attributable to the State which is party to such an agreement. The Court would then assess the claim and make a preliminary determination on the matter.¹⁶
15. A preliminary determination by the Court that genocide had occurred or is occurring, would allow the UK government to withdraw from any trade agreement with a State to which genocide is attributed.

⁹ See further, Wyler, E., and Castellanos-Jankiewicz, L. 2014. “Serious Breaches of Peremptory Norms.” In *Principles of Shared Responsibility in International Law: An Appraisal of the State of the Art*, edited by A. Nolkaemper and I. Plakokefalos, 284-311. Cambridge: Cambridge University Press.

¹⁰ *Bosnia and Herzegovina v. Serbia and Montenegro*, Judgment, ICJ, 2007 at [182-183 paras 430, 432].

¹¹ Art 53, VCLT; *Bosnia and Herzegovina v. Serbia and Montenegro*, Judgment, ICJ, 2007 at [110-112, paras 161-164].

¹² United Nations. 2014. *Framework of Analysis for Atrocity Crimes*. New York: United Nations Office on Genocide Prevention and the Responsibility to Protect.

¹³ *Bosnia and Herzegovina v. Serbia and Montenegro*, Judgment, ICJ, 2007 at [216-219 paras 419-424].

¹⁴ See, for instance, UK Parliament, Question for Foreign and Commonwealth Office, UIN HL758, tabled on June 20, 2016 and the response by Baroness [Anelay of St Johns](#) on June 30, 2016.

¹⁵ The amendment, as it currently stands, refers to “a person or group of persons belonging to a national, ethnic, racial or religious group, or an organisation representing such a group, which has been the subject of [that] genocide.”

¹⁶ Specification of a standard of proof for any preliminary determination would be helpful in any implementing regulations to the Genocide Amendment to avoid the situation where the Court has to infer the standard from the Parliamentary debates.

- a. The Genocide Amendment only applies to bilateral trade agreements.
 - b. The Genocide Amendment only applies to genocides which may occur in the future, or genocides which are ongoing. It does not apply to past genocides.
14. There are two situations to consider with respect to term “revocation” – it either means “withdrawal” or “termination”.
- a. Withdrawal (usually) occurs where: a treaty expressly or impliedly provides a right to withdraw; there is mutual agreement between parties for withdrawal; or by operation of very limited circumstances under international law none of which apply to Genocide Amendment as currently drafted.¹⁷
 - b. Termination is (usually) where the treaty provides for specified breaches, or there is a unilateral breach, leading to an end in treaty obligations; or by invocation of a ground permitting, as a matter of international law, termination.¹⁸
15. The Genocide Amendment may be construed as giving the Court, as a national court, the power to terminate an international agreement. That is not the avowed intention behind the Genocide Amendment and, in any event, cannot happen as a matter of international law. The amendment is better understood, and may be expressly clarified, to be one of the following.
- a. A preliminary determination *simpliciter* as to genocide requiring the executive to do something more.
 - b. A preliminary determination of incompatibility between two treaties, the Genocide Convention and the relevant bilateral trade agreement, if they are found to be in conflict by the Court, such a finding being made after a preliminary determination as to genocide.
 - c. A preliminary determination where the court says nothing about withdrawal, the amendment having made it express that withdrawal is to occur as a separate step by a specified organ i.e., the executive.
16. The Genocide Amendment intends, as ascertained from debates in the House of Lords to date, to avoid situations of ‘unilateral breach’ of agreements, as such breaches could be in contravention of international law. In terms of practical operation, a unilateral breach would be avoided with an express term in future trade agreements providing that in the event of a preliminary determination of genocide, attributable to a State which is party to a trade agreement, then the said agreement would be: withdrawn by the UK or suspended by the UK pending settlement of the dispute [at an appropriate forum], or void and, therefore, immediately terminated. The outcomes would depend on the final wording of the Genocide Amendment and any implementing regulations giving it effect.¹⁹
17. Situations of unilateral breach, leading to termination, are best avoided. The Genocide Amendment may do this by maintaining a link between trade and the obligations under the Genocide Convention. This would avoid any suggestion of terminating an entire trade

¹⁷ See further, Helfer, Laurence R. 2012. "Terminating Treaties". In *The Oxford Guide to Treaties*, edited by Hollis, Duncan B, 634-650. Oxford: Oxford University Press; Brilmayer, Lea and Yemane Tesfalidet, Isasias. 2011. "Treaty Denunciation and "Withdrawal" from Customary International Law: An Erroneous Analogy with Dangerous Consequences." *Yale L.J* 120 Online 217.

¹⁸ *Ibid.*

¹⁹ Without an express term within future agreements, the Genocide Amendment could be interpreted as allowing for a unilateral breach as a matter of international law. With an express term within future agreements, the Genocide Amendment leaves open the possibility of a unilateral breach if the UK withdraws from an *existing* bilateral trade agreement because the State counterparty goes on to commit genocide in the future. It will be a unilateral breach because these past agreements will not have any express terms allowing for withdrawal or termination in the event of a preliminary determination in the Court attributing genocide to the State concerned. Unilateral breaches can, however, under certain circumstances, be lawful as set out in the section on "Rules on State Responsibility".

agreement as an *unrelated* consequence of a finding that a trade partner may have committed genocide on some part of its territory or as a part of its overall conduct of affairs in its own territory or elsewhere. Rules on State responsibility (set out below) allow that a State can justify withdrawal or termination of a trade agreement if it is shown to conflict with obligations either under the Genocide Convention or other peremptory norms of general international law.²⁰

Rules on State Responsibility

18. Art 53 of the Vienna Convention on the Law of the Treaties (“VCLT”), provides that where a provision of a treaty is in direct conflict with a peremptory norm, such as the prohibition of genocide, the whole treaty is void and therefore terminates.²¹ This provision would apply to a trade treaty if it can be demonstrated that specific provisions of a trade treaty are in conflict with obligations on a State under the international law relating to genocide.²² Arts 65-66 VCLT deals with a possible procedure to be followed in the event of a dispute about a State invoking Art 53 to invalidate a treaty on account of conflict with a peremptory norm.²³
19. Pursuant to Art 26 of the ILC Articles, non-performance of an obligation under a trade treaty can be excused, if not justified, if performance would mean acting in a way that permits another State to violate a *jus cogens* rule such as the prohibition of genocide. Under the Genocide Amendment a bilateral trade treaty would have to be shown as permitting genocide and, therefore, being in conflict with the obligations on a State under the international law relating to genocide.
20. In addition, wrongfulness of non-performance of obligations under a trade agreement may be precluded if the situation may be justified by necessity (Art 25, ILC Articles). The grounds for necessity would be that the international community as a whole should not aid or assist perpetrators of genocide. Whilst necessity may only be invoked to safeguard an “essential interest” from a grave and imminent peril and must be the “only way” available to safeguard the interest, upholding peremptory norms if all other means have failed is within scope. The ILC Commentary on Art 25 is clear that what is essential “cannot be prejudged” and must be “objectively justified”. A preliminary determination of genocide in the Court may go towards meeting the test.
21. These rules on State responsibility, at paras [18-20] above, give theoretical support to the Genocide Amendment although they are not without qualification. The Genocide Amendment should bridge gap between preliminary determination of genocide and unilateral termination of a trade agreement. That gap can readily be dealt with by: allowing some element of

²⁰ The government may pass implementing regulations giving effect to the Genocide Amendment which can resolve some of these technical legal difficulties.

²¹ In such a situation, no separation of the provisions of the treaty is permitted (Art 44(5), VCLT).

²² Many States have asserted that particular treaties are inconsistent with *jus cogens* and thus invalid (Dire 2018, 12-13). There is limited development in State practice in directly applying this provision; it has never been directly applied by the ICJ or an arbitral tribunal. There has been some development in State practice on the invalidity of certain treaties because of their content or effect. See further, Art 53, Commentary on ILC Articles; Costelloe, D. 2017. “Peremptory Norms and Their Legal Consequences as a Feature of General International Law.” In *Legal Consequences of Peremptory Norms in International Law*, 1-53. Cambridge: Cambridge University Press; International Law Commission, Seventieth Session, Tladi, Dire. 2018. *Third report on peremptory norms of general international law (jus cogens)*. UN Doc. A/CN.4/714, at [11-18 paras 30-44]. The prohibition of genocide is part of customary international law. States are bound by the obligations under the Genocide Convention even as non-State Parties. See further, *Reservations to the Genocide Convention, Advisory Opinion*, ICJ, 1951 at [15, 23].

²³ The procedure does not form part of customary international law. See further, International Law Commission, Seventieth Session, Tladi, Dire. 2018. *Third report on peremptory norms of general international law (jus cogens)*. UN Doc. A/CN.4/714, at [18-22 paras 45-54].

government discretion, under enabling or other regulations, to deal with whether continuing a trade agreement would constitute a serious breach of an obligation relating to the prohibition of genocide; permitting the Court to deal with, in a preliminary manner, the issue of a conflict between a trade agreement and obligations relating to the prohibition of genocide; or providing a means through which a referral can be made to the ICJ (where possible) to resolve the matter of conflict between treaties.

Forms of Responsibility for Genocide

22. The Genocide Amendment uses the word “commission”. The debates in the House of Lords made it clear that the Sponsors of the Genocide Amendment intend it to focus only on direct State attribution for the acts of individual perpetrators (restrictive though this is). The word ‘commission’ can be interpreted quite broadly and is likely to capture forms of responsibility other than direct responsibility of a State through attribution to State officials, agents or organs.²⁴ In the event of any doubt, it can easily be made express that the Genocide Amendment only concerns conduct that is directly attributable to a State.²⁵

Issue of State Immunities

23. A court making a preliminary determination, pursuant to the Genocide Amendment, would not be applying any jurisdiction over foreign State officials. Serving high-ranking State officials are (usually) entitled to immunity from jurisdiction of foreign courts for acts performed in their official capacity.²⁶ There is a growing trend to accept exceptions on such immunities for violations of peremptory norms such as the commission of torture or genocide although the exceptions are not yet part of customary international law.²⁷ The Genocide Amendment, however, concerns itself only with whether, according to a preliminary determination, genocide is occurring and is attributable to a State. It in no way suggests anything about, and is without prejudice to, any question of individual criminal responsibility and, therefore, cannot be said to curtail immunity.

²⁴ Other forms of State responsibility are the failure to prevent; the failure to punish; the failure to enact legislation giving effect to the Genocide Convention; and the prohibition on aid and assistance (similar to complicity). There are other forms of conduct that attract individual and State responsibility under Art III, Genocide Convention: (a) genocide; (b) conspiracy to commit genocide; (c) direct and public incitement to commit genocide; (d) attempt to commit genocide; (e) complicity in genocide. See further, *Bosnia and Herzegovina v. Serbia and Montenegro*, Judgment, ICJ, 2007 at [43, 616 para. 32.]

²⁵ It might be made express by using a formulation as follows: “represents a State to which genocide, within the meaning of Art II and Art III(a) of [the GC], is attributable.” Under the current formulation, Art II does not deal with commission. Including Art III(a) avoids any suggestion that other forms of commission, such as complicity, are caught.

²⁶ For instance, if officials were being subject to “criminal processes and procedures” then the amendment could fall foul of procedural rules of international law relating to immunity. This is largely because there is insufficient States practice suggesting that an exception has emerged as to immunity for serving officials for violations of peremptory norms such as genocide. There is arguably sufficient States practice suggesting that former State officials do not enjoy immunity for violations of peremptory norms. See further, *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v Belgium)*, Judgment, ICJ, 2002 and the Joint Separate Opinions of Judges Higgins, Kooijmans and Buerenthal.

²⁷ Article 7, Draft Articles on Immunity of State Officials from Foreign Criminal Jurisdiction, ILC Report, A/72/10, 2017, chap. VII, paras 68–141. It should be noted that there are no exceptions to immunity *ratione personae* under customary international law even if there is for immunity *ratione materiae*. See further, International Law Commission, Seventieth Session, Tladi, Dire. 2018. *Third report on peremptory norms of general international law (jus cogens)*. UN Doc. A/CN.4/714, at [50 para. 123-131] There is, however, no longer any immunity for violations of peremptory norms in the case of former high-ranking State officials. In the UK, in criminal proceedings, this is because of the precedent set in the *Pinochet* case. *R v Bow Street Magistrates’ Court ex parte Pinochet (No. 3)* [2000] AC 147. See further, Akande, Dapo and Shah, Sangeeta. 2010. “Immunities of State Officials, International Crimes, and Foreign Domestic Courts.” *European Journal of International Law* 21 (4): 815–852. Akande and Shah make a persuasive case for the application of such an exception to functional immunity but acknowledge that the argument is not as strong with regard to war crimes in a non-international armed conflict, genocide and crimes against humanity as it is in relation to torture, enforced disappearance and war crimes in an international armed conflict. See also, Foakes, Joanne. 2011. “Immunity for International Crimes?” *Chatham House, International Law Programme*, November 2011.

26. The matter of jurisdictional immunity of States in foreign courts (which sometimes overlaps with functional immunity of State officials) is more complicated but again is unlikely to be relevant to the Genocide Amendment. The principle of the “sovereign equality of States”²⁸ leads to a procedural rule that states that one State may not adjudicate on the affairs of another outside of agreed international fora.²⁹ Jurisdictional State immunity applies in the UK by virtue of customary international law and the State Immunity Act 1978.³⁰ There are a number of specified exceptions under the 1978 Act which include a State submitting to the jurisdiction of the UK courts.
27. A State may submit to the jurisdiction of the UK courts by becoming a party to any proceedings – it may do so by pleading in the relevant court that genocide is not occurring in its territory. Furthermore, an express provision within a trade agreement providing for preliminary determination of genocide in a UK court may also be construed as ‘submission’ to the jurisdiction.
28. Absent the latter two scenarios, the issue of State immunity is largely whether a preliminary determination of the Court might constitute a civil claim against a foreign State.³¹ A preliminary determination is not a civil claim *per se* as the process is not in the ordinary sense ‘litigation’. The Court is simply determining the existence of a state of affairs on a preliminary basis. Such a determination *may* risk being caught by the provisions relating to State immunity on the grounds that it may affect the legal interests of another State i.e., its bilateral trade relations. The issue, however, is resolvable in a number of ways. One way would be to restrict any preliminary determination to the commission of genocide *simpliciter* rather than State responsibility. The obligations, earlier mentioned, under the Genocide Convention naturally follow from any such determination. Another possibility is to decouple a determination on genocide *simpliciter* from a further determination on State responsibility. The final alternative is to take a (political) position, as the United States does (and seemingly only the United States),³² of unilateral extension of jurisdiction to matters related to violation of peremptory norms such as torture or genocide.
29. The lack of consensus on State immunities and a clear guidance by State practice helps strengthen the suggestion that international courts, tribunals and bodies are the appropriate fora in which prosecution of State officials and responsibilities of States for genocide is disputed. The political reluctance, however, to utilise these fora as well as reservations in their use is derisory in the context of the continuing commission of genocide world-wide by States and non-State actors alike. The prospect of utilisation and development of such fora will be greatly assisted by a preliminary determination of the existence of genocide by a UK court as a result of the Genocide Amendment.

²⁸ Article 2, paragraph 1, of the Charter of the United Nations. See further, *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*, Judgment, ICJ, February 3, 2012 at [57].

²⁹ In *Status of Eastern Carelia*, Permanent Court of International Justice (“PCIJ”), Ser. B., No. 5, at [27]. The PCIJ said in that case: “It is well established in international law that no State can, without its consent, be compelled to submit its disputes with other States either to mediation or to arbitration, or to any other kind of pacific settlement.”

³⁰ This is the case even though even though the State does not appear in the proceedings in question (section 1(2) of the 1978 Act).

³¹ State immunity can be waived, even impliedly by conduct such as pleading the merits of a case. See further, Kaldunski, Marcin. 2014. “The Law of State Immunity in the Case Concerning Jurisdictional Immunities of the State (Germany v. Italy).” *The Law & Practice of International Courts and Tribunals* 13: 54-102.

³² See further, *Jones v. Ministry of Interior of the Kingdom of Saudi Arabia and another* (Secretary of State for Constitutional Affairs and others intervening), [2007] 1 AC 270, 292 at [58]: “[...] the existence of the United States Torture Victim Protection Act 1991, which establishes civil liability against an individual who “under actual or apparent authority, or color of law, of any foreign nation”, subjects an individual to torture (section 2). This represents a unilateral extension of jurisdiction by the United States which is not required and perhaps not permitted by customary international law. It is not part of the law of Canada or any other State.”

Conclusion

30. The Genocide Amendment creates a practical mechanism for the UK to give effect to its international law obligations relating to genocide. Those duties include the prohibition of complicity in genocide, and the prevention and punishment of genocide.
31. Last year marked the 75th anniversary of the liberation of Auschwitz, the 25th commemoration of the genocide in Srebrenica, and the 75th anniversary of the Nuremberg trials where genocide was first raised as an issue and where crimes against humanity were charged for the first time. There remains strong evidence of genocide being committed around the world. These genocides have gone, and continue to go, unaddressed due to lacunae in the law and gaps in the international architecture for State accountability.
32. Innovative and bold thinking is required to uphold the promise of 'never again'. The Genocide Amendment provides both the thinking and the starting point for action – it is to be supported, further developed, and ultimately passed.

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Disclaimer. This briefing paper relates to difficult and overlapping areas of domestic and international law which require careful examination, thought and navigation. The purpose of this paper is to provide a high-level briefing outlining the key legal issues emanating from the Genocide Amendment; as such it omits the detail one would ordinarily expect in a legal opinion or formal legal research paper. This paper does not constitute legal advice and may not be relied upon as such. A full detailed legal opinion can be commissioned upon formal instruction.