

PARLIAMENTARY CONDEMNATIONS OF MASS ATROCITIES AND THE OBLIGATION TO PREVENT GENOCIDE AND CRIMES AGAINST HUMANITY

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ABSTRACT

Domestic parliaments can play a critical role in shaping domestic responses to international incidents. Recently, the world has witnessed an increased resort to legal terms such as genocide and crimes against humanity being used to describe mass atrocities outside courtrooms. Parliaments have relied on such language when issuing declarations and condemnations about past and ongoing mass atrocities. However, the focus on qualification has often overshadowed the equally, or perhaps even more, important discussion on follow-up measures or actions. This article provides an overview of parliamentary declarations, analysing their temporal aspect and content. Such typology provides the article with a springboard to assess the potential legal value of such parliamentary declarations in international law. This article makes the claim that parliamentary declarations can play a role within the realm of the obligation to prevent genocide and crimes against humanity. Being a due-diligence obligation, the obligation to prevent mass atrocities is activated when states have knowledge of a serious risk that genocide or crimes against humanity would occur. The article evaluates whether parliamentary condemnations of such atrocities may in some way inform the ‘knowledge’ element. It also inquires whether such condemnations can be meaningful in substantiating the obligation to prevent, for instance by identifying what sorts of measures are available, feasible and/or appropriate and by

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initiating a discussion with their government on possible preventive measures.

Keywords: *Parliamentary declarations; obligation to prevent; genocide; crimes against humanity; state responsibility*

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I. INTRODUCTION

Traditional mechanisms of production of international law, such as treaty negotiations, case law, and even formal declarations made by governments to the international community are the first things that come into an international lawyer or scholar's mind when discussing international law. In the context of international criminal law specifically, Professor Leila Sadat has been a forerunner in further developing the formal architecture of this area of law by taking a lead in the development of a convention on crimes against humanity and through her position as Special Advisor to the ICC Prosecutor. We are therefore very pleased to participate in this special issue honouring her great contributions to international criminal law, and her scholarship on crimes against humanity and accountability more generally. Her activities within the community of international criminal law scholars deserve special mention. By convening a great number of seminars and scholars' fora, Professor Sadat has offered a platform for many academics from different backgrounds and generations to present research and to exchange thoughts. She has thus been a source of inspiration for many.

In this article, we draw on that inspiration as we consider the resort to legal terminology in the political space.¹ Before international law is proclaimed in auditoriums in Geneva and New York or courtrooms in The Hague, it goes through politicians' and stakeholders' minds and actions. Although international lawyers often see these activities as political actions that do not produce any direct legal effects, they do have the capacity to steer international law into certain directions and thus merit the attention of international law scholars.

Members of parliament may play a role in discussing international law and putting situations on the agenda and verifying whether state responses are adequate.² More recently, parliaments have also taken the lead in labelling mass atrocities as genocide and/or crimes against humanity, as part of a broader pattern that Dirk Moses has called "diplomacy of genocide".³

¹ See for a more general analysis on popular and political use of international law, MADELAINE CHIAM, *INTERNATIONAL LAW IN PUBLIC DEBATE*, (Cambridge University Press, 2021), for a more general analysis on popular and political use of international law.

² See Larissa van den Herik & Emma Irving, *Due Diligence and the Obligation to Prevent Genocide and Crimes Against Humanity*, in *DUE DILIGENCE IN THE INTERNATIONAL LEGAL ORDER* 200, 209 (Heike Krieger, Anne Peters & Leonhard Kreuzer eds., 2020). See also, STELIOS STAVRIDIS & DAVOR JANČIĆ, *PARLIAMENTARY DIPLOMACY IN EUROPE AND GLOBAL GOVERNANCE* (2017) (arguing more generally on the role of parliaments in foreign policy).

³ See DIRK MOSES, *THE DIPLOMACY OF GENOCIDE* (2021); See also RevDem Podcast, *Dirk Moses on the Diplomacy of Genocide and the Sinister Ambition of Permanent Security*, RevDem (Dec. 27, 2021), <https://revdem.ceu.edu/2021/12/27/dirk-moses-on-the-diplomacy-of-genocide/>.

Using their means of influence, parliaments have been initiating internal discussions on how to classify mass atrocities, issuing declarations and condemnations concerning certain situations. The focus on qualification has often overshadowed the equally, or perhaps even more, important discussion on follow-up measures or actions. This article examines the relevance of parliamentary declarations from the point of view of international law, and it specifically inquires whether and to what extent such declarations can inform and shape international legal responses to mass atrocities.

The recognition of mass atrocities has become an ongoing feature throughout foreign policy. States have used legal labels such as “genocide” and, to a lesser extent, “crimes against humanity” to name and shame other states that are committing—or have committed—atrocities.⁴ In domestic and international courtrooms, calling an event or situation a “genocide” or a “crime against humanity” will trigger civil, international, or criminal responsibility of those involved in that event. However, beyond courtrooms, labelling something as an international crime is also, and primarily, a political activity.⁵ Nonetheless, these political acts can still guide state actions and obligations, including the obligation to prevent those crimes from happening, continuing, or escalating.⁶

The goal of this article is to analyse past and current parliamentary declarations of mass atrocities. It will provide an overview of existing declarations concerning past and ongoing situations, analysing them through two criteria: a temporal and a substantial one (2). Building on from such typology, the article will analyse the potential legal status and value of parliamentary declarations, including how they may inform legal obligations of states, and specifically the obligation to prevent genocide and crimes against humanity (3). In that sense, this article provides an inquiry into domestic legal structures facilitating the application of international law beyond domestic courts, in tandem with a growing interest of international lawyers in foreign relations law.⁷

4 For criticism on the overfocus on genocide as a term to capture transgression and on its status of crime of crimes, see MOSES, *supra* note 3. See RevDem Podcast, *supra* note 3 for more on the discussion.

5 Michelle E. Ringrose, *The Politicization of the Genocide Label: Genocide Rhetoric in the UN Security Council*, 14 GENOCIDE STUD. & PREVENTION: AN INT’L J. 131-136.

6 Advisory Comm. on Pub. Int’l L. [CAVV] & External Advisor on Pub. Int’l L. [EVA], *Advisory Report on the Scope for and the Significance and Desirability of the Use of the Term ‘Genocide’ by Politicians* CAVV advice on the use of the term ‘genocide’ by politicians, (Mar. 2017), pp. 16-17, <https://www.advisorycommitteeinternationalallaw.nl/publications/advisory-reports/2017/03/03/the-use-of-the-term-genocide-by-politicians>.

7 See *Generally* HELMUT PHILIPP AUST & THOMAS KLEINLEIN, ENCOUNTERS BETWEEN FOREIGN RELATIONS LAW AND INTERNATIONAL LAW: BRIDGES AND BOUNDARIES, (Helmut Philipp Aust &

II. AN OVERVIEW OF PARLIAMENTARY CONDEMNATIONS OF MASS ATROCITIES

Whether reflecting on historical events such as the Armenian genocide, or reacting to discovery of occurring atrocities, parliaments throughout the world have been using their powers to resonate the opinion of domestic stakeholders on atrocity events and generally on foreign affairs. Parliamentary condemnations and, more broadly, declarations about mass atrocities in other states' territories are a growing phenomenon. Regional parliamentary entities such as the European Parliament⁸ and the Parliamentary Assembly of the Council of Europe⁹ have also issued such declarations. This section will zero in on domestic parliaments and will provide an overview of their condemnations against mass atrocities. Although parliamentary condemnations may be remarkably like each other at first glance, they can differ in two aspects: one pertains to the temporal aspect of the events that are part of the condemnations, either past or ongoing atrocities (2.A); and the other pertains to the content of such condemnations (2.B).

A. Parliamentary Condemnations of Old and Ongoing Atrocities

Parliamentary condemnations can cover either atrocities of the past or ongoing ones. Depending on when the atrocities condemned occurred, these declarations will have different content and goals, and consequently produce different potential legal effects. Declarations covering historical atrocities may cover reparations, including apologies, whereas those covering ongoing events may go beyond simply acknowledging wrongdoings to also play an important political role in warning the international community that an atrocity is happening and, consequently, they may propose adequate action.

Parliamentary declarations covering past atrocities¹⁰ have been used by states in relation to two situations. First, there are those acknowledging and recognizing how former colonial powers violated rights of colonized peoples. In 1989¹¹ and 2004,¹² the German parliament recognized that the

Thomas Kleinlein eds. 2021); in THE OXFORD HANDBOOK OF COMPARATIVE FOREIGN RELATIONS LAW (Curtis A. Bradley ed., 2019).

⁸ E.g., EUR. PARL. RES. 2529 (2016).

⁹ See e.g., *Foreign fighters in Syria and Iraq*, PARLIAMENTARY ASSEMBLY, <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=22482&lang=en> (last visited Mar. 4, 2022).

¹⁰ See MOSES, *supra* note 3. See *id* for more on historic genocide recognition.

¹¹ Stenographischer Bericht 11/134, Deutscher Bundestag, 11. Wahlperiode (1989), https://www.namibia-botschaft.de/images/stories/NAMGER/11_134_Plenarprotokoll_16031989.PDF.

¹² Declaration by the German Federal Parliament, June 16, 2004 (Ger.).

German state had a special relation with, and a moral responsibility towards, Namibia due to the mass killings of the Herero and Nama peoples.¹³ The UK Parliament also recognized that the Belgian colonial government in Congo under the regime of King Leopold could be classed as genocide.¹⁴

A second type of parliamentary declarations addresses atrocities committed in past wars, such as the ones where French¹⁵ and German¹⁶ parliaments declared, in 2011 and 2016, that the mass murder of Armenians in 1915 should be classified as a genocide. Following a similar line, several parliaments issued declarations recognizing the 1944 Crimean Tatar deportation¹⁷ and the 1992 events in the Khojaly district in Azerbaijan¹⁸ as genocide. More recently, in 2005, the United States House of Representatives passed a resolution naming the events in Srebrenica as genocide, calling for cooperation with the ICTY and for the recognition of Bosnia and Herzegovina as independent states.¹⁹ These declarations about past atrocities are often presented as part of a broader effort to promote transitional justice, as states recognize wrongdoings, “name-and-shame” those involved in it and call for reparations.

Parliaments have also been issuing declarations and condemnations concerning ongoing mass atrocities. Especially in relation to ongoing armed

13 See also Matthias Goldmann, *Why the Key to the Past Lies in the Future: The Dispute About Reparations for Namibia*, VERFASSUNGSBLOG ON MATTERS CONSTITUTIONAL, (Aug. 20, 2020), <https://verfassungsblog.de/why-the-key-to-the-past-lies-in-the-future/>.

14 *Colonial Genocide And The Congo*, UK PARLIAMENT, <https://edm.parliament.uk/early-day-motion/30788/colonial-genocide-and-the-congo>.

15 Loi 2001-70 du 29 janvier 2001 relative à la reconnaissance du Génocide Arménien de 1915 [Law 2001-70 of January 29, 2001 Relating to the Recognition of the Armenian Genocide of 1915], JOURNAL OFFICIEL DE LA REPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Jan. 30, 2001.

16 See *Erinnerung und Gedenken an den Völkermord an den Armeniern und anderen christlichen Minderheiten in den Jahren 1915 und 1916 [Commemorating and commemorating the genocide of Armenians and other Christian minorities in 1915 and 1916]*, ARMENIAN GENOCIDE, May, 31, 2016, <https://www.armenian-genocide.org/uploads/Affirmation/528.pdf>.

17 See *Lithuanian Parliament Recognizes Soviet Crimes Against Crimean Tatars as Genocide*, THE BALTIC TIMES, June. 6, 2019,

<https://www.baltictimes.com/lithuanian-parliament-recognizes-soviet-crimes-against-crimean-tatars-as-genocide/>. For the Latvian parliament, see *Saeima Pieņem Paziņojumu Par Krimas Tatāru Deportāciju 75.Gadadienu, Atzīstot Notikūšo Par Genocīdu*, LATVIJAS REPUBLIKAS SAEIMA (May 9, 2019), <https://www.saeima.lv/lv/aktualitates/saeimas-zinas/27934-saeima-pienem-pazinojumu-par-krimas-tataru-deportaciju-75-gadadienu-atzistot-notikuso-par-genocidu>. For Canada, see An Act to establish a Crimean Tatar Deportation (“Sürgünlik”) Memorial Day and to recognize the mass deportation of the Crimean Tatars in 1944 as an act of genocide Bill 2015-16, HC Bill C-306 (Eng.).

18 *Anniversary Of The Khojaly Massacre*, UK PARLIAMENT, <https://edm.parliament.uk/early-day-motion/37972/anniversary-of-the-khojaly-massacre> (last visited Mar. 4, 2022). ; *Recognition of the Genocide of Khojaly*, ADMINISTRATIVE DEPARTMENT OF THE PRESIDENT OF THE REPUBLIC OF AZERBAIJAN, 13-17 and 25-26. <https://files.preslib.az/projects/khojali/enkhojali/gl5.pdf>.

19 H.R. Res. 199, 109th Cong. (2005).

conflict, parliaments issue declarations or condemnations about possible mass atrocities, including genocide and crimes against humanity. Following this trend, parliaments such as the United States House of Representatives,²⁰ the UK House of Commons,²¹ and the Dutch Parliament²² condemned the violence against Christians, Yazidis and other minorities in Syria and Iraq committed by the Islamic State. Along similar lines, Chinese actions against the Uyghur people were condemned by the Parliaments of Parliaments of Canada,²³ the Netherlands,²⁴ the United Kingdom,²⁵ the Czech Republic,²⁶ Belgium,²⁷ Lithuania,²⁸ and New Zealand.²⁹

B. Content of Parliamentary Condemnations of Atrocities

The second aspect of parliamentary condemnations that is worth looking at relates to their substance. While parliamentary condemnations are often acclaimed for their use of specific terminology, and especially the word “genocide”, the arguably more relevant question concerns their commitment to subsequent action and their broader engagement with the situation at hand.

In practice, parliaments have adopted three types of declarations: those that condemn atrocities, but otherwise suggest no concrete measures (2.B.1); those mostly concerning past atrocities and proposing measures related to transitional justice, such as commemorations, apologies, recognition of involvement, etc. (2.B.2); and those concerning ongoing atrocities that are accompanied by concrete proposals for legal or political action aimed at stopping the ongoing atrocities or bringing those responsible

²⁰ H.R. Con. Res. 75, 114th Cong. (2016).

²¹ *Treatment of Yazidi And Christian Minorities*, UK PARLIAMENT, <https://edm.parliament.uk/early-day-motion/48786> (last visited Mar. 4, 2022).

²² See, Parliamentary Records 29 754, nr. 610, 20, (Jul. 1, 2021) (the parliament explicitly recognized that genocide had been committed against the Yazidi in July 2021).

²³ *Canada's Parliament Declares China's Treatment of Uighurs 'Genocide'*, BBC NEWS, (Feb. 23, 2021), <https://www.bbc.com/news/world-us-canada-56163220>.

²⁴ Eline Schaart, *Dutch Parliament Declares Chinese Treatment of Uighurs a 'Genocide'*, POLITICO (Feb. 25, 2021), <https://www.politico.eu/article/dutch-parliament-declares-chinese-treatment-of-uyghurs-as-genocide/>.

²⁵ HC Deb (22 Apr. 2021) (692) cols. 1211–46.

²⁶ Res. 228, Czech Republic Senate, 13th term (12th plenary session, 2021).

²⁷ *Belgian Parliament declares Uyghurs at risk of Genocide*, INTER-PARLIAMENTARY ALLIANCE ON CHINA (June 15, 2021), <https://ipac.global/belgian-parliament-declares-uyghurs-at-risk-of-genocide/>.

²⁸ *Resolution on China's Mass, Systematic and Gross Violations of Human Rights and Genocide Against Uyghurs*, SEIMAS OF THE REPUBLIC OF LITHUANIA, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/a6d43eb1ba1111eb91e294a1358e77e9?jfwid=-3cj8of33y>.

²⁹ (5 May 2021) 751 NZPD.

to justice (2.B.3).

1. Condemnations Without Concrete Measures

The first type of parliamentary condemnations refers to those that are composed by a simple declaration about a specific incident. In these declarations, members of a parliament simply recognize and qualify the existence of mass atrocities.

Recent condemnations of the 1915 Armenian mass murders illustrate how such parliamentary declarations operate. One of the first parliaments to issue a condemnation qualifying those acts as having “the dimensions of genocide” was the Cyprian one, in 1982,³⁰ followed by many others in that period.³¹ In 2004, the Dutch Parliament also passed a resolution asking the Government to, in the context of the accession of Turkey to the European Union, “continuously and expressly raise the recognition of the Armenian Genocide.”³² In the following decades, several other European parliaments also began labelling the 1915 incidents in Armenia as a genocide. The Swedish parliament declaration from 2009 specifically mentioned Assyrians, Chaldeans, Pontic Greeks, and other ethnicities, as victims of the genocide.³³ In 2016, the German parliament, after discussing the context in which the Armenian mass murder occurred, followed similar steps to name the incidents as genocide.³⁴

Issued almost 100 years after the Armenian genocide, these condemnations had the goal of addressing violations by recognizing what happened to the victims and acknowledging their suffering, and more generally putting on record a certain account of history. Recognizing an incident as an atrocity makes part of collective history-making, with events being authoritatively established and officially recounted.³⁵ Reckoning with

30 See *Cyprus House of Representatives Resolution (1982)*, ARMENIAN GENOCIDE, https://www.armenian-genocide.org/popup/affirmation_window.html?Affirmation=150.

31 See *States: Resolutions, Laws, and Declarations*, “THE ARMENIAN GENOCIDE MUSEUM-INSTITUTE” FOUNDATION, <http://www.genocide-museum.am/eng/states.php> (last visited Feb. 17, 2022), for a list of states that recognized the Armenian Genocide.

32 *Netherlands Parliament Recognizes Armenian Genocide*, ARMENIAN NATIONAL COMMITTEE OF AMERICA (Dec. 23, 2004) <https://anca.org/press-release/netherlands-parliament-recognizes-armenian-genocide/>.

33 *Protocolo de Riksdagens 2009/10:86*, RIKSDAGEN OF SWEDEN, (Mar. 11, 2009) (Swe.), <https://data.riksdagen.se/fil/07DF1EDA-4D15-4378-9826-CA19B19C8DF8>.

34 Deutscher Bundestag, *Stenografischer Bericht*, 173 (2016). Sitzung. Plenarprotokoll 18(173): 1–192.

35 Frank Haldemann, *Another King of Justice: Transitional Justice as Recognition*, 41 CORNELL INT’L L.J. 675, 726 (2008).

past wrongs offers a societal response to atrocities and it may also initiate a political discussion on measures that may further transitional justice.³⁶ Such practice of condemning past atrocities can also be seen in relation to more recent incidents. In 2012 and 2013, the Swedish and British parliaments have recognized that the Kurdish people suffered genocide at the hands of Ba'athists in 1988 (an event also known as Anfal).³⁷

If the condemnation covers an ongoing incident, it can be followed by political exhortations to those responsible to stop committing such acts or for their home state's government to take more concrete action. Here, the goal is not to repair damages suffered by victims, but rather to inform and urge other actors to take action to stop these ongoing atrocities. In 2016, the US House of Representatives³⁸ and Senate³⁹ declared that the events concerning the religious and ethnic minorities in Iraq and Syria constitute war crimes, crimes against humanity and genocide, calling for all governments and international organizations to recognize it as such. They also called UN members to coordinate to prevent further atrocities and to punish perpetrators, as well commending countries for their efforts against ISIS. Political exhortations are not always included, however. The Dutch condemnation of the situation in Xinjiang is perhaps the prime example of a declaration that merely characterizes and condemns but that is devoid of suggestions for further action.⁴⁰

2. Condemnations of Past Atrocities Accompanied by Transitional Justice Measures

The second type of parliamentary condemnations of mass atrocities relates to those that, beyond just recognizing a given situation as a crime against humanity and/or genocide, also propose transitional justice measures to redress it. These measures typically have the specific goal of providing some transitional justice to victims, such as creating remembrance days or asking for relevant stakeholders to launch investigations on ongoing atrocities.

When condemning past atrocities, parliaments may recognize that an atrocity amounted to crimes against humanity or, more commonly,

36 *Id.* at 722–723. See also, David A. Crocker, *Reckoning with Past Wrongs: A Normative Framework*, 13 ETHICS & INT'L AFF. 43 (2006).

37 *Motion till riksdagen [Motion to the Riksdag] 2012/13: U253*, RIKSDAG OF SWEDEN (Oct. 4, 2012) (Swe.), https://www.riksdagen.se/sv/dokument-lagar/dokument/motion/betrakta-anfal-i-irakiska-kurdistan-som-folkmord_H002U253; HC Deb (28 Feb. 2013) (559) cols. 529–6528.

38 H.R. Con. Res. 75, 114th Cong. (2016).

39 S. Res. 340, 114th Cong. (2016).

40 Schaart, *supra* note 24.

genocide, and announce transitional justice measures such as commemorations and/or remembrances of the events. Just like the recognition of atrocities, these measures aim to repair the damage suffered by victims, but also to raise consciousness about the events in a way that avoids these atrocities from repeating themselves in the future. This is the logic that guided the Assembly of Kosovo in its 2019 “Resolution on Genocide committed by Serbia in Kosovo” which named events of the 1998-1999 Kosovo war as a genocide pursuant to the Genocide Convention. The resolution also called upon Serbia to acknowledge the genocide and adopt measures to repair any reparable damages.⁴¹

The Ukrainian Parliament also passed a 2006 law recognizing the participation and promotion by the USSR in the 1932-33 famine known as Holodomor, defining such acts as genocide. The Ukrainian law also obligated public authorities and self-government bodies to restore and preserve the memory of Holodomor, as well as to memorialize and commemorate it.⁴²

More recently, in 2015, Germany expressly accepted “a special historical responsibility” of Germany towards Namibia and its citizens, especially the Herero, Nama, San and Damara peoples. In doing so, Germany recognized the need to find “a dignified form of commemoration and remembrance of the atrocities of that time.” The German Bundestag recognized that Germany committed war crimes and genocide in the 1904-1908 war.⁴³

Parliaments have also issued declarations or condemnations including transitional justice measures in relation to historical atrocities that occurred in other states. For instance, in 1975, the United States Congress recognized as genocide the 1915 events suffered by the Armenian people and called for the creation of a “National Day of Remembrance of Man’s Inhumanity to Man”.⁴⁴

3. Condemnations of Ongoing Atrocities Accompanied by Responsive Measures

Parliamentary condemnations covering ongoing atrocities may call for measures aiming at stopping these atrocities. In 2021, the parliaments of the Czech Republic and Canada condemned the Chinese actions against the Uyghurs and call for the boycott of the 2022 Beijing Winter Olympics. The Czech Senate motion expressed concern over “massive violations of human

41 Res. No.06-R-017, Assembly of the Republic of Kosovo, Leg. VI, Spring Session (2019).

42 Doc. 376-V, Verkhovna Rada of Ukraine (Nov. 28, 2006).

43 Regierungspressekonferenz vom 10. Juli [Government Press Conference July 10th, 2015].

44 H.R.J. Res. 148, 94th Cong. (1975); H.R.J. Res. 247, 98th Cong. (1984).

rights and freedoms, genocide and crimes against humanity, ethnic discrimination, and the suppression of cultural, religious and political identity in the PRC”, and called on the Czech government to consider a diplomatic boycott of the 2022 Beijing Winter Olympics.⁴⁵ In the same vein, the Canadian Parliament recognized that a genocide was being committed against religious minorities by the state of China, and “call[ed] upon the International Olympic Committee to move the 2022 Olympic Games if the Chinese government continues this genocide”, as well as for the Canadian Government to officially adopt such position.⁴⁶

Parliaments have also taken measures exhorting their own states’ executive branches to act on and stop ongoing atrocities either by exercising direct political pressure over the responsible state to investigate and/or support victims of atrocities, or by exercising indirect, economic pressure. The German Bundestag called on the German Government to ensure that human rights violations committed against the Rohingya in Myanmar would stop, as well as for the continuation of investigation efforts and support of internally displaced persons in Myanmar and refugees in neighbouring countries.⁴⁷ Similarly, the Canadian parliament responded to the 2016 report by the UN Commission of Inquiry on Syria by passing a motion recognizing that ISIS was committing genocide against the Yezidi people. The motion also called on the Canadian government to take immediate action on recommendations of the UN report and to provide asylum to Yezidi women and girls within 120 days of the motion.⁴⁸ In January 2022, the French National Assembly recognized that crimes against humanity and genocide were committed by authorities of China against the Uyghurs, inviting the French Government to protect Uyghur refugees, as well as to adopt the necessary measures before the international community in order to make China stop the crimes being committed.⁴⁹

Another example of a call for measures, the Belgium parliament declared on May 21, 2021 that the Uyghur and other minorities of the Xinjiang region were victims of crimes against humanity and at serious risk of genocide, calling upon the Belgian government to terminate its bilateral extradition treaty with China and to block the ratification of the now frozen EU-China

45 Res. 228, Czech Republic Senate, 13th term (12th plenary session, 2021).

46 Journals no. 63, House of Commons of Canada, 43rd Parliament, 2nd session.

47 Drucksache 19/1708, Deutscher Bundestag (Apr. 18, 2018) (Ger.).

48 Journals n° 97, House of Commons of Canada, 42nd Parliament, 1st session, 910-913, (Oct. 25, 2016).

49 Res. 758, Résolution portant sur la reconnaissance et la condamnation du caractère génocidaire des violences politiques systématiques ainsi que des crimes contre l’humanité actuellement perpétrés par la République Populaire de Chine à l’égard des Ouïghours, Assemblée Nationale (Jan. 20, 2022) (Fra.).

Comprehensive Agreement on Investment.⁵⁰ On 1 February 2022, the National Diet of Japan also condemned the “infringement of freedom of religion and forced incarceration in places including Xinjian Uighur, Tibet, Southern Mongolia and Hong Kong”, and calling on the Japanese Government to gather further information on the “full scope of this serious human rights situation”, as well as “monitor (...) and employ comprehensive measures to help those people in need.”⁵¹

In 2005, the US House of Representatives resolution defining the events in Srebrenica as genocide called for the UN and its member states to accept their share of responsibility, restating that it was in the US national interest to hold individuals responsible for the genocide and to collaborate with the ICTY by transferring indicted people to its premises.⁵² A similar motion was passed by the Canadian House of Commons in relation to the atrocities against the Rohingya. The 2018 resolution endorsed the findings made by the UN Fact Finding Mission on Myanmar that crimes against humanity have been committed against the Rohingya, recognizing these crimes as a genocide. The Canadian House of Commons thus called on the UN Security Council to refer the situation to the ICC and for the senior officials in the Myanmar Military to be investigated and prosecuted for the crime of genocide.⁵³ Also dealing with the Rohingya people’s situation, the Dutch parliament passed in 2018 a motion focusing on the responsibility of the state of Myanmar. The motion stressed that “there are serious suspicious of genocide with regard to the Rohingya population” and asked the Dutch government to examine whether it would be possible to bring a case based on the Genocide Convention before the International Court of Justice.⁵⁴

In some instances, parliaments have called on international organizations to establish international independent investigations, such as the Canadian House of Commons did in relation to the Tamil genocide in 2019.⁵⁵ Parliaments have also called the responsible states to collaborate with international investigations on atrocity incidents. In 2021, the Belgian parliament called for investigations in internment camps and for

50 Res. 7-220/5, Belgian Senate (2020/2021 Session).

51 Resolution regarding the serious human rights situation in Xinjiang Uighur and other areas, National Diet of Japan (Feb. 1, 2022), https://www.shugiin.go.jp/internet/itdb_english.nsf/html/statics/english/ketugi_e220201-1.html.

52 H.R. Res. 199, 109th Cong. (2005).

53 Journals no. 322, House of Commons of Canada, 42nd Parliament, 1st session (2018).

54 *Mensenrechten in het buitenlands beleid* [Human Rights in Foreign Policy] 32 735, nr 248 (vergaderjaar 2018–2019) (Neth.).

55 Hansard n.437, House of Commons of Canada, 42nd Parliament, 1st session, <https://www.ourcommons.ca/DocumentViewer/en/42-1/house/sitting-437/hansard>.

corporations to exercise social responsibility when engaging with Xinjiang.⁵⁶ In the same year, parliaments from Lithuania, New Zealand, and the UK issued condemnations of the situation of the Uyghur that stressed the importance of independent investigations on their situation. The Lithuanian parliament specifically called the situation a genocide pursuant to the Genocide Convention, calling on the UN to launch a legal investigation, as well as to the European Parliament to revise the European Union's Policy on cooperation with China.⁵⁷ The New Zealand parliament recognized that the Uyghurs had suffered atrocities, but did not label them as a genocide because, according to the New Zealand's Minister of Foreign Affairs, such labelling would require a specific judicial finding.⁵⁸ The UK House of Commons classified the events as both, crimes against humanity and genocide, calling the United Kingdom to fulfil its obligations under the Genocide Convention and other relevant instruments of international law.⁵⁹ Since March 2021, members of the UK House of Commons have also been trying to pass a motion recognizing that the UK failed to make a relevant determination of the nature of atrocities against Uyghurs and calling for the implementation of the ICJ *Bosnia v. Serbia* judgment and its determination on the duty to prevent, as well as by imposing sanctions to China.⁶⁰

III. PARLIAMENTARY DECLARATIONS AND THE INTERNATIONAL OBLIGATION TO PREVENT MASS ATROCITIES

What is the legal value of the parliamentary declarations discussed in the previous section?

At a domestic level, parliamentary declarations are part of the normal, day-to-day activities of the legislative organs of a state. It is assumed that part of their powers includes issuing declarations that, in general terms, reflect the opinions and concerns of their constituents. Under international law, these declarations have a more nuanced legal significance. From a legal perspective, states operate by means of their organs and in principle it is domestic law that determines which organs will represent the state before the international community—usually heads of state, heads of government and ministers for foreign affairs. As a result of the powers, they are vested with, unilateral declarations emanating from these authorities may legally

56 Res. 7-220/5, Belgian Senate (2020/2021 Session).

57 Res. XIV-329, Seimas of the Republic of Lithuania (May 20th, 2021).

58 (5 May 2021) 688 NZPD.

59 HC Deb (22 Apr. 2021) (692) cols. 1211–46.

60 *Atrocities against the Uyghurs in Xinjiang*, UK PARLIAMENT, <https://edm.parliament.uk/early-day-motion/58314/atrocities-against-the-uyghurs-in-xinjiang> (last visited Mar. 4, 2022).

bind the state.⁶¹

While parliamentary declarations thus do not enjoy a special status under international law, the declarations discussed in the foregoing section, and particularly those recommending follow-up action, may still be informative when analysing the international obligation to prevent (3.A.). Although state entities such as parliaments do not officially represent states in their international affairs, their official acts condemning mass atrocities are attributable to states under the Articles on Responsibility of States for Internationally Wrongful Acts (“ARSIWA”) Article 4, and they might thus, in some situations, even trigger the duty to prevent itself (3.B.). Most importantly, the condemnations can inform the content of the obligation to prevent genocide and crimes against humanity by initiating a deliberative process on responsive action. (3.C.)

A. Obligation to prevent genocide and crimes against humanity

The duty to prevent mass atrocities is “morally anchored in considerations of humanity.”⁶² The moral obligation that underlies this duty can be traced back to religious ideas and ancient legal codes⁶³ and is also interlinked with modern political doctrines such as the responsibility to protect.⁶⁴ In international law, the legal basis for the prevention of mass atrocities is supported by the customary international law applicable to the prevention of crimes against humanity and by the Convention on the Prevention and Punishment of the Crime of Genocide (“Genocide Convention”) in Article I, as states undertake to “prevent and to punish” the crime of genocide. The bleak terms of the obligation to prevent genocide in the Genocide Convention were later substantiated by the ICJ.

The obligation to prevent is most clearly expressed by the ICJ in the case filed by Bosnia and Herzegovina against Serbia and Montenegro (“*Bosnia Genocide* case”). In this case, the ICJ ruled that genocide is “a matter of global concern,”⁶⁵ as “genocide anywhere is a threat to the security of all

61 Int’l Law Comm’n, Rep. on the Work of Its Fifty-Eighth Session, U.N. Doc. A/61/10 at 369–70 (2006).

62 Van den Herik & Irving, *supra* note 2, at 202.

63 Mark Toufayan, *A Return to Communitarianism? Reacting to “Serious Breaches of Obligations Arising under Peremptory Norms of General International Law” under the Law of State Responsibility and United Nations Law*, 42 CAN. Y.B. INT’L L. 197, 197 (2004).

64 Van den Herik & Irving, *supra* note 2, at 202.

65 CHRISTIAN TAMS ET AL., CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE: A COMMENTARY 54 (2014).

and should never be tolerated.”⁶⁶ The obligation to prevent genocide was recognized as having normative standing and the ICJ held that Article 1 created independent obligations for states to prevent genocide.⁶⁷ Moreover, the ICJ also stated that such obligation was not territorially bound⁶⁸ and was instead premised on the state’s “capacity to influence,”⁶⁹ that is, any state that may be able to prevent genocide, wherever it occurs, must meet such obligation.⁷⁰

Unlike the obligation to prevent genocide, the obligation to prevent crimes against humanity is not yet supported by a treaty consolidating this obligation. The Draft Convention on Crimes Against Humanity, championed by the International Law Commission, transports the Genocide Convention and the *Bosnian Genocide* understandings into the reality of crimes against humanity,⁷¹ thus purporting to create a treaty obligation to prevent crimes against humanity that is parallel to the obligation to prevent genocide.⁷² The obligation to prevent in the Draft Treaty is similar in contents, scope, and nature⁷³ to the one in the Genocide Convention. It contains the same wording of the respective provision, and the references of the ILC Rapporteur to the ICJ *Bosnia Genocide* case in its reports also support the interrelationship between the two obligations.⁷⁴ Therefore, the scope, nature, and contents of the obligation to prevent genocide apply *mutatis mutandis* to the obligation to prevent crimes against humanity as proposed in draft Article 3(2) and as currently already existing under customary international law. Given the concurrence between the two obligations, a compelling argument has been made that parliaments should not differentiate between genocide and crimes against humanity in the prevention phase. The Dutch Advisory Committee on International Law Issues recommended the Dutch Parliament and Government “us[e] the two terms together as standard practice so that attention is focused not on terminological debates but on the more relevant question of what preventive

⁶⁶ *Id.*

⁶⁷ Case Application of The Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro), Judgment, Merits, 2007 I.C.J. 43, ¶¶ 162–65.

⁶⁸ *Id.* at ¶ 183.

⁶⁹ *Id.* at ¶ 430.

⁷⁰ *Id.* at ¶ 183.

⁷¹ Van den Herik & Irving, *supra* note 2, at 202–03. See Int’l Law Comm’n, Crimes Against Humanity: Texts and Titles of the Draft Preamble, the Draft Articles and the Draft Annex Provisionally Adopted by the Drafting Committee on First Reading, UN Doc. A/CN.4/L.892, at 2, 4 (May 26, 2017) [hereinafter Draft Articles].

⁷² Int’l Law Comm’n, Rep. on the Work of Its Sixty-Ninth Session, UN Doc. A/72/10, at 48–51 (2017).

⁷³ Van den Herik & Irving, *supra* note 2, at 203.

⁷⁴ See Draft Articles, *supra* note 71.

acts and measures should be taken or continued.”⁷⁵

In order to mitigate the overreach of the extraterritorial obligation to prevent genocide (as also applicable to crimes against humanity), the ICJ introduced the notion of due diligence, according to which a state can only breach its obligation to prevent when it “manifestly failed to take all measures to prevent genocide which were within its power.”⁷⁶ As stated by the ICJ, the notion of due diligence also demands a concrete assessment of the measures available to states in a situation where acts amounting to genocide would be committed.⁷⁷ Such an approach would allow the adaptation of the obligation to prevent genocide to different contexts creating “differentiated obligations in a global context”.⁷⁸ As noted by Tams, while states must do everything reasonably possible in a concrete setting, they cannot be held responsible if, despite their best efforts, mass atrocities occur nevertheless.⁷⁹ Importantly, preventive acts may only be those permitted by international law.⁸⁰ Hence, the obligation to prevent genocide or crimes against humanity does not constitute and cannot be invoked as an independent basis for the use of force.

The obligation to prevent genocide and crimes against humanity concerns the duty to make well-informed decisions and to publicly explain what actions are going to be taken in atrocity situations.⁸¹ In a sense, such prevention is deeply intertwined with the capacity to influence genocidal actors to stop the effective commission of a genocide and can be read as a “capacity to avert” the commission of crimes against humanity and genocide.⁸²

A state’s capacity to influence or to avert ongoing atrocities is informed by several factors, although its exact content is vague. The ICJ enumerated two main criteria in order to assess whether a state has the capacity to influence: (i) the geographical distance of a state from the scene of the events;⁸³ and (ii) strength of political and other links between the state and the main actors in the events.⁸⁴ Among these ‘political and other links’ that can affect a state’s capacity to influence, there are economic ties, especially

⁷⁵ CAVV & EVA, *supra* note 6, at 17.

⁷⁶ Bosn. & Herz. v. Serb. & Montenegro, 2007 I.C.J. at ¶¶ 183, 430.

⁷⁷ *Id.*

⁷⁸ See Van den Herik & Irving, *supra* note 2.

⁷⁹ TAMS ET AL., *supra* note 65, at 51.

⁸⁰ Bosn. & Herz. v. Serb. & Montenegro, 2007 I.C.J. at ¶ 430.

⁸¹ See Van den Herik & Irving, *supra* note 2, at 208.

⁸² TAMS ET AL., *supra* note 65, at 51.

⁸³ Bosn. & Herz. v. Serb. & Montenegro, 2007 I.C.J. at ¶ 430.

⁸⁴ *Id.*

where one state is economically dependent of another,⁸⁵ specific political relationships between states, such as former colonial or diasporic ties,⁸⁶ or a states' ability to reach the potential perpetrators in time.⁸⁷

A states' due diligence obligation is only triggered when the state "learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed".⁸⁸ This premise is based on the idea of constructive awareness of the risk of genocide. To conclude whether a state has a due diligence obligation, it is therefore necessary to identify, first, whether the situation at hand amounts to "a serious risk", and, second, whether the state knows or should have known about that situation.⁸⁹ According to the Genocide Convention, it is possible to conclude that there is a serious risk of a genocide (or a crime against humanity) occurring when there is evidence that those involved have pursued a "substantial step" towards the commission of the crime.⁹⁰

As for the knowledge—or potential knowledge—of a serious risk of genocide or crimes against humanity, knowledge can be built from traditional sources of information, such as diplomatic information, media coverage, close links between a state and eventual perpetrators⁹¹ or even from digital open-source technologies.⁹² While the notion of awareness is a question of evidence,⁹³ state organs receiving information of a serious risk of genocide or crimes against humanity occurring may also inform the knowledge of that state and activate an obligation to prevent their occurrence. When there is a public, official acknowledgment of such risk by state organs, states will be "hard-pressed to plead ignorance" that there is a serious risk of genocide or crimes against humanity occurring.⁹⁴ In that sense, a parliamentary declaration could, depending on the concrete circumstances, trigger the obligation to prevent genocide and/or crimes against humanity, as it could contribute to a state's knowledge of such serious risk.

85 TAMS ET AL., *supra* note 65, at 52-54.

86 See Van den Herik & Irving, *supra* note 2, at 206.

87 TAMS, *supra* note 65, at 52.

88 Bosn. & Herz. v. Serb. & Montenegro, 2007 I.C.J. at ¶ 431.

89 See TAMS, *supra* note 65, at 52 *citing* Forlati, PolYIL 31 (2001), 201 (referring to the 'structural impossibility to identify once and for all what behaviors would be required to fulfill the obligation of prevention').

90 *Id.* 49.

91 Bosn. & Herz. v. Serb. & Montenegro, 2007 I.C.J. at ¶ 434 (demonstrating awareness is inferred from the generally close links between a state party and the eventual perpetrator of genocide).

92 See, e.g., Van den Herik & Irving, *supra* note 2, at 210–15 (discussing satellite imagery, social media, radio monitoring and mobile phone technology).

93 TAMS ET AL., *supra* note 65, at 49.

94 *Id.*

B. Parliamentary declarations as a trigger of the obligation to prevent

Parliamentary declarations are primarily rooted in domestic law, that is, on parliament's domestic powers and, in principle, have legal effects limited to their territory. However, as noted by Crawford, legislature can also manifest state power,⁹⁵ even if indirectly—they can still shape international obligations and international law. For the late Permanent Court of International Justice (“PCIJ”), those declarations would, from an international law perspective, in principle be considered as “merely facts which express the will and constitute the activities of States.”⁹⁶ The role of representing the state in international affairs, including issuing binding declarations, is usually reserved to the executive branch.⁹⁷

Acts by the parliament, such as legislation or declarations, are not unilateral declarations of states in international law on their own. As noted by the ICJ in the *Nuclear Tests* cases, “declarations made by way of unilateral acts, concerning legal or factual situations, may have the effect of creating legal obligations”,⁹⁸ but only if they fulfil certain requirements. In particular, a binding unilateral declaration must be made publicly and with the intention of the state “by an authority vested with the power to so” – that is, heads of state and/or government and ministers of foreign affairs.⁹⁹ Since parliaments do not have the authority to speak for the state internationally, a parliamentary condemnation of genocide or crimes against humanity will only “bind” the state, or have the possibility to create direct legal obligations, if followed and endorsed by statements and declarations of an authority such as the head or minister of foreign affairs.

Despite their limited legal effects, parliamentary condemnations can still bring consequences to states under the law of state responsibility. It is a well-established rule of customary international law, reflected in ARSIWA Article 4, that the conduct of an organ of a state must be regarded as an act of that state for the purposes of state responsibility.¹⁰⁰ Among the possible

95 JAMES CRAWFORD, *STATE RESPONSIBILITY: THE GENERAL PART* 120 (2013).

96 *Certain German Interests in Polish Upper Silesia* (Ger. v. Pol.), Judgment, 1926 P.C.I.J. (ser. A) No. 7, at 19 (May 25).

97 *See* Application of the Convention of the Elimination of All Forms of Racial Discrimination (Geo. v. Rus. Fed.), Judgment, 2011 I.C.J. 70, ¶ 37 (Apr. 1).

98 *Nuclear Tests* (N.Z. v. Fr.), Judgment, 1974 I.C.J. 253, ¶ 46 (Dec. 20); *Nuclear Tests* (Austl. v. Fr.), Judgment, 1974 I.C.J. Rep 253, ¶ 43 (Dec. 20).

99 Int'l Law Comm'n, *supra* note 61, at 368.

100 The conduct of any organ of a State must be regarded as an act of that State. *See* Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission of Human Rights,

“organs of the state” mentioned in ARSIWA Article 4, there are states’ legislative bodies.¹⁰¹ Hence, the official acts of these legislative bodies¹⁰² are attributable to their states.¹⁰³

Without support from the head of state or other authorities authorized to speak on behalf of the state before the international community, the legal fact arising from parliamentary statements only concerns their issuance and not the content *per se*. Despite that, they can still play a relevant role. Parliamentary condemnations can invite or encourage their government to take a stance, and – depending on the circumstances and the diligence with which the declaration has been adopted – they may also trigger a state’s obligation to prevent.

C. Parliamentary Condemnations and the Obligation to Prevent

As noted, the value of parliamentary condemnations obviously depends on the diligence with which they have been adopted. While the position that some governments initially held, like those the Netherlands and New Zealand,¹⁰⁴ that only courts can decide of genocide, needs to be nuanced and qualified, it is also true that overly political condemnations by parliaments may be too frivolous to have any bearing. In this respect, it is notable that the Dutch advisory report called for restraint. It held that,

Advisory Opinion, 1999 I.C.J. Rep 62, ¶ 62 (Apr. 29).; *See also* Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda), Judgment, 2005 I.C.J. Rep 168, ¶¶ 180, 213 (Dec. 19).

101 Int’l Law Comm’n, Rep. on the Work of Its Fifty-Third Session, U.N. Doc. A/56/49, at 40 (2001) (stating) (stating that acts of a state organ that exercises, among other, legislative functions shall be considered as an act of that state under international law). *See also* Bosn. & Herz. v. Serb. & Montenegro, 2007 I.C.J. at ¶ 385.

102 Int’l Law Comm’n, Rep., *supra* note 101. *See also* B. E. Chattin (U.S.) v. United Mexican States, IV R.I.A.A. 282, 285–86 (1927); *Interprétation de l’Article 79, Par. 6, Lettre C,*

du Traité de Paix (Biens Italiens en Tunisie—Échange de Lettres du 2 Février 1951), XIII R.I.A.A. 389, 438 (1955).

103 Int’l Law Comm’n, Rep., *supra* note 101.

104 As stated by the CAVV in its advice on the use of the term ‘genocide’ by politicians, “It is inherent in the international law system that states pronounce on questions of international law. Often there is no judicial body with the necessary jurisdiction, and international law would lose a great deal of its efficacy if it could not be applied without court decisions. In principle, therefore, it is up to states to make pronouncements on conduct of other states or persons that is relevant to international law. This implies, too, that parliaments are not fettered by any rule prescribing that only courts are permitted to pronounce on genocide or crimes against humanity.” CAVV & EVA, *supra* note 6, at 7. *See also* the Arbitral Tribunal in its 1978 ruling in the case concerning the Air Service Agreement of 1946 between the United States of America and France: ‘Under the rules of present-day international law, [...], each State establishes for itself its legal situation vis-à-vis other States.’ *Case Concerning the Air Force Agreement of 27 March 1946 Between The United States and France*, R.I.A.A. XVIII, 417–93, ¶ 81 (1978).

- A thorough investigation of the facts is essential and in the absence of sufficient and reliable findings of fact, restraint is to be preferred.
- Given the Netherlands' commitment to advancing the international legal order, the preferred course of action is to support international determinations, but this need not be a reason to delay making national determinations.¹⁰⁵

Manifestly fabricated declarations of genocide for abusive interventionist and even aggressive purposes may even violate the Genocide Convention itself.¹⁰⁶

If issued with the necessary diligence, the most interesting effect that a parliamentary condemnation of an atrocity may have is that it can inform the content of a state's obligation to prevent. As discussed in section 3.A., the obligation to prevent is very general, requiring states to "do all in their power, [including] through legislative measures or others, to prevent the commission of such acts". What a state can do to prevent an atrocity from happening or from continuing to happen will depend on the resources that are available to each state as well as its relationship with the state where the atrocities occur and possibly its geographical proximity.¹⁰⁷ Within the legal limits of international law, when a parliament calls on other branches of government to take some specific measures to stop an atrocity from happening this may inform, *in concreto*, what the specific measures are that that state is obliged to take.¹⁰⁸

An analysis of parliamentary condemnations may thus offer some insight into concrete measures that could substantiate the obligation to prevent. Which specific measure will be feasible and adequate depends entirely on the situation at hand, and in particular also on the position of the state vis-à-vis the territorial state and its capacity to influence. As illustrated in the section on the typology, the types of measures that feature in parliamentary condemnations range from a mere political statement or exhortation, to a call for a boycott, e.g., of a sports event, to more extensive measures such as, for example, requests to engage with international investigations, as well as requests to analyse the possibility of bringing an international case, as the Dutch parliament did in its condemnation of the situation concerning the

¹⁰⁵ CAVV & EVA, *supra* note 6, at 16.

¹⁰⁶ Dispute Relating to Allegations of Genocide, (Ukraine. v. Rus. Fed.), Application, 26 February 2022, I.C.J.

¹⁰⁷ TAMS ET AL., *supra* note 65, at 46–50.

¹⁰⁸ *Id.* at 53.

Rohingya population. In certain declarations, parliaments have called for the suspension or even the termination of extradition treaties and for the granting of asylum to potential atrocity victims. An argument could be made that these latter measures regarding asylum and non-extradition are or should be standard components of the obligation to prevent. It flows from this argument that these measures should then also be standard ingredients of non-frivolous parliamentary condemnations so that a parliament or government that condemns atrocities abroad also instantly recognizes its own legal responsibilities to protect.

Parliamentary declarations that install, or call for the installation of, extensive legal measures such as arm embargos, the banning of products tainted in forced labor, economic or targeted individualized sanctions,¹⁰⁹ or even international investigations or for lawsuits¹¹⁰ against the third country may particularly call on governments to take a position. Following this logic, members of the UK House of Commons introduced a motion in 2021, after the executive branch ignored its calls for action to stop crimes against the Uyghur people,¹¹¹ where they recognized the UK Government failed to make a relevant determination of the nature of atrocities against Uyghurs. This new motion specifically calls for the implementation of the ICJ *Bosnia v. Serbia* judgment and its determination on the duty to prevent, including the imposition of economic sanctions to China.¹¹² If the second motion passes with the proposed measures, such condemnation could provide relevant information on what the UK could reasonably be expected to do within the scope of its obligation to prevent genocide and crimes against humanity. Similarly, the NGO Uyghur Rights Advocacy Project, made an application for judicial review in February 2022 of the Government of Canada's acts and omissions in relation to the ongoing genocide against Uyghurs in Xinjiang, China, arguing that Canada had violated its obligation to prevent also drawing attention to measures taken by other states.¹¹³

109 It should be noted that a call for economic sanctions also involves a different but related legal discussion, namely on the legality of unilateral measures. See for this discussion, Charlotte Beaucillon, *Research Handbook on Unilateral and Extraterritorial Sanctions* 16-17, 35, 41 (2021). Whereas some may see economic or targeted individualized sanctions as reasonable measures that state can resort to comply with the obligation to prevent genocide, others argue that such unilateral measures violate international law.

110 For other examples, see Christian Tams, Lars Berster & Björn Schiffbauer, *Convention on the Prevention and Punishment of the Crime of Genocide: A Commentary* 52-54 (2014).

111 Hansard, Vol. 692, UK House of Commons (Apr. 22, 2021), <https://hansard.parliament.uk/commons/2021-04-22/debates/6FA4F300-D244-443E-A48C-57378876DE54/HumanRightsXinjiang>.

112 *Atrocities against the Uyghurs in Xinjiang*, supra note 60.

113 *Canadian Government To Be Reviewed For Its Response To The Uyghur Genocide*, UYGHUR RIGHTS ADVOCACY PROJECT, <https://www.urap.ca/canadian-government-to-be-reviewed-for-its-response-to-the-uyghur-genocide/> (last visited Mar. 4, 2022).

In sum, parliamentary declarations calling for action initiate a deliberative process on what action should be resorted to, and they are thus a means to operationalize the obligation to prevent. If the executive body does not pursue the measures called on by the parliament, the government would then have to explain why it did not do so.

IV. CONCLUSION

Parliamentary condemnations of mass atrocities are inherently political tools. They form part of a space that is called the “diplomacy of genocide”, which is to a very large extent concerned with shaming the other, condemned state. Given this dynamic, these declarations are often greatly focused on terminology and particularly the use of the G-word. With a view to reducing this over-focus, the Dutch Advisory Committee recommended to use the terms “genocide” and “crimes against humanity” in tandem as a standard practice in parliamentary condemnations. This recommendation was given based on the idea that terminology is less important than a conversation on what steps and measures should be taken in response to the atrocity, a topic closely related to the obligation to prevent.

Despite their intense political nature, this article has presented the argument that parliamentary declarations may have some legal significance precisely in the context of preventive obligations. States have an obligation to prevent both genocide and crimes against humanity. Although the obligation to prevent these two sets of atrocities have different legal bases – the obligation to prevent genocide is rooted in the Genocide Convention, while the latter currently exists under customary international law – there is a general assumption that they are triggered by similar conditions and entail similar sets of obligations. As noted by the ICJ in the *Bosnia Genocide case*, such obligation to prevent is triggered only if a state is aware, or should be aware, that there is a serious risk of an atrocity happening. Once it is triggered, the state must take all reasonable steps that it can to influence or avert the commission of the atrocity. What is considered “reasonable” will vary according to the specific circumstances the state faces in a situation, such as its geographical distance to the incident and its actors, and its political and economic ties to those involved in it.

Parliamentary condemnations can play a relevant role in triggering a state’s obligation to prevent and in specifically informing the content of this due diligence obligation. The overview of concrete measures that have been suggested in parliamentary condemnations can be viewed as possible elements of the obligations to prevent. Whether a certain measure is appropriate will obviously depend on many factors and circumstances. Yet,

an argument could be made that offering asylum and suspending or terminating extradition treaties should logically be standard components of genuine condemnations of genocide and crimes against humanity. Viewing parliamentary declarations through this lens, as possibly offering ingredients of the obligation to prevent, might also contribute to a debate that does not merely shame the state committing atrocities but that also has a more introspective dimension that interrogates the role that condemning states have themselves in pursuing the best protective measures for the victims.