

JUSTICE Scotland

in collaboration with the Faculty of Advocates' Human Rights  
and Rule of Law Committee

# **Genocide Denial, Disinformation, Armed Conflict: What can lawyers do?**

20 June 2022, Edinburgh

A report by Jacqueline Fordyce for JUSTICE



**JUSTICE Scotland** in collaboration with the **Faculty of Advocates' Human Rights and Rule of Law Committee** held an event on *Genocide Denial, Disinformation, Armed Conflict: What can lawyers do?*

A panel of speakers addressed an invited audience on a range of themes, followed by a general discussion (subject to the Chatham House rule) of the issues arising. A summary of these matters, compiled by an independent rapporteur, is set out below.

**Panel**

**Refik Hodzic**, strategic communications and transitional justice expert

**Professor Tobias Kelly**, University of Edinburgh (chair)

**Leigh Lawrie**, Advocate, Faculty of Advocates

**Paul Seils**, Director, Peace Practice and Innovation Unit, European Institute of Peace

**Mark Stephens CBE**, Partner, Howard Kennedy LLP

**Jacqueline Fordyce**, Advocate, Faculty of Advocates (rapporteur)

Our panellists explored a number of introductory themes, which set the scene for subsequent discussions with audience members.

## Disinformation in international criminal trials

- 1.1 We heard about **the important role of reported information in international criminal trials**, and equally, **how disinformation may be used** to create the basis for international criminal trials.
- 1.2 Reports and newspaper articles (e.g. provided by journalists, news agencies, intergovernmental organisations such as the UN, and NGOs such as Amnesty International and Human Rights Watch) may be used in addition to witness and expert testimony to prove the contextual elements of international crimes, in order to demonstrate the factors that take ordinary crimes and turn them into international crimes. For example, reported information may be used to establish at the outset that crimes involved large scale, methodical or systematic violence, or extended over a broad geographical area. This is generally achieved through **‘bar table motions’** (i.e. admission of evidence from the bar table) to introduce documentary evidence other than through the testimony of witnesses in the interests of efficiency of proceedings. The reported information is often unchallenged due to the fact that it emanates from reputable sources, but in many respects, it is populated by anonymous witness testimony, and so it is necessary to rely on the professionalism of investigators. Any challenge to reliance on anonymous testimony is likely only to affect the weight to be afforded to it rather than its admissibility. The accuracy of reported information is often established through mere repetition across different sources, and may be unchallenged insofar as it relates to accepted facts, such as the existence of a conflict in a particular territory. However, this approach may be increasingly problematic at a time where disinformation may be gaining traction.
- 1.3 The case of *The Prosecutor v Ruto and Sang (ICC-01/09-01/11)*<sup>1</sup> may be viewed, at least by some commentators, as a notable example of the challenges presented by disinformation in the international criminal justice context, and the potential implications for evidence that may be relied upon for the purposes of any prosecution. As in the *Ruto* case, confirmation proceedings before the International Criminal Court (‘ICC’) may rely upon summaries of anonymous witness testimony in order to demonstrate the required sufficiency of evidence, albeit that witnesses may subsequently fail to attend the trial, recant, or be withdrawn by the prosecution as unreliable. Particular risks may arise in circumstances where independent media or other reports of the matters relied upon by the prosecution are subsequently not produced. In that event, there may be scope for disinformation campaigns to form the basis of serious allegations, and related issues of political and witness interference may also arise.

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<sup>1</sup> [Ruto and Sang | International Criminal Court \(icc-cpi.int\) \(https://www.icc-cpi.int/kenya/rutosang\)](https://www.icc-cpi.int/kenya/rutosang)

## Denial in the prosecution of genocide

1.4 There are difficulties that may arise from **ambiguities in the definition of genocide** when framing questions around genocide denial. There are inherent and deliberate ambiguities in the ‘catch all’ definition of genocide, which has suffered from subsequent misunderstanding of the requisite specific intent. The Genocide Convention<sup>2</sup> is intended to protect groups from genocide denial arising from defences of intent, such as the idea that a perpetrator cannot commit genocide in circumstances of counter-insurgency. Moreover, whilst individuals may be prosecuted for the international crime of ‘extermination’ with respect to political and social groups, they are excluded from the definition of genocide.<sup>3</sup> This creates the danger of a **false hierarchy amongst victims and perpetrators**. Perpetrators may celebrate that they have been convicted ‘only’ of crimes against humanity rather than as a *genocidaire*; victims may feel that they have not been taken seriously if they do not obtain a genocide conviction.

1.5 There are difficulties that may arise from **ambiguities in the definition of genocide** when framing questions around genocide denial. There are inherent and deliberate ambiguities in the ‘catch all’ definition of genocide, which has suffered from subsequent misunderstanding of the requisite specific intent. The Genocide Convention<sup>4</sup> is intended to protect groups from genocide denial arising from defences of intent, such as the idea that a perpetrator cannot commit genocide in circumstances of counter-insurgency. Moreover, whilst individuals may be prosecuted for the international crime of ‘extermination’ with respect to political and social groups, they are excluded from the definition of genocide.<sup>5</sup> This creates the danger of a **false hierarchy amongst victims and perpetrators**. Perpetrators may celebrate that they have been convicted ‘only’ of crimes against humanity rather than as a *genocidaire*; victims may feel that they have not been taken seriously if they do not obtain a genocide conviction.

1.6 Where there is a reasonable case to believe that genocide has been committed, it may be argued that there is a **duty to prosecute** it. Moreover, there is a **risk of ‘self-denial’**

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<sup>2</sup> [United Nations Office on Genocide Prevention and the Responsibility to Protect](https://www.un.org/en/genocideprevention/genocide-convention.shtml) (<https://www.un.org/en/genocideprevention/genocide-convention.shtml>)

<sup>3</sup> Genocide Convention, art. II: *‘In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: ...’*

<sup>4</sup> [United Nations Office on Genocide Prevention and the Responsibility to Protect](https://www.un.org/en/genocideprevention/genocide-convention.shtml) (<https://www.un.org/en/genocideprevention/genocide-convention.shtml>)

<sup>5</sup> See e.g. [Home - NetBlocks](https://netblocks.org/) (<https://netblocks.org/>); [Internet Censorship 2023: A Global Map of Internet Restrictions - Comparitech](https://www.comparitech.com/blog/vpn-privacy/internet-censorship-map/) (<https://www.comparitech.com/blog/vpn-privacy/internet-censorship-map/>); and [Internet Outages Live Map by Pingdom](https://livemap.pingdom.com/) (<https://livemap.pingdom.com/>).

**by prosecutors** in respect of questions of genocide or extermination, to the extent that genocide may be viewed as a politicised concept, and it may be thought to be difficult to obtain a conviction by comparison with other crimes such as murder or torture. Nonetheless, it may be important for the social and political history of a country to acknowledge attacks on the basic rights of groups of people to exist, which ought to be challenged and prioritised above other strategic concerns. Examples may be seen in the circumstances of Guatemala, Darfur and Ethiopia. The balance of risk ought to fall on the judges who must decide whether cases have been made out on the evidence properly brought before them. Prosecutors must investigate and consider that evidence independently. As a matter of practice, however, genocide is committed by dominant groups, and it will be necessary to consider the evidence in the context of the ‘dominant group activity’ in the particular community.

## Genocide denial and policy

- 1.7 Whilst the conflict in Ukraine requires immediate action, there has been resistance to addressing similar issues that are present elsewhere. For example, public discourse in the UK has involved **active disinformation campaigns** (and a lack of information) resulting in the **dehumanisation** of Syrians, which has enabled crimes to continue.
- 1.8 Consideration must be given to the ‘**red flags**’ that might be capable of preventing the possibility of genocide. These should not be dismissed as merely rhetoric or sectarianism, but must be acknowledged as very clear questions of policy. The question must be **what can lawyers do to affect policy?** The UK continues to be a powerful actor on the international stage, and what the UK government does to address these issues matters a lot.
- 1.9 It must be recognised that **genocide is a vehicle to attain political goals**. It is often cloaked in the discourse of ancient hatreds that are impossible to disentangle and unrelated to the present day, but it is in fact a vehicle for achieving easily understood goals in terms of territory, and the removal of certain groups from certain territories. There is an empirically provable correlation between genocide and policy leading to concrete outcomes. Similarly, genocide denial often signals the future, seeking to rehabilitate perpetrators, excuse crimes of the past, and mobilise a critical mass of people to do the same things again. Examples may be seen in Bosnia and Ukraine.
- 1.10 Genocide denial and disinformation has been used to **eliminate the capacity of the dominant group to feel empathy towards the targeted group**, lessening the potential for internal dissent against genocidal policies. It has been documented that, in Bosnia, it took the participation of some 36,000 people to kill and dispose of some 8,000 victims

of Srebrenica. Those people had to be convinced that what they were doing was necessary for the safety and success of their own group. Therefore, **genocide denial and dehumanisation must be tracked and confronted as a policy**. It is often characterised as an issue of freedom of speech or political rhetoric, but even if the idea of violence is abandoned, it is capable of creating instability in communities, especially those recovering from violence, which merely delays the transition from dehumanisation into violence, and always maintains the capacity for the latter. For example, in Prijedor, Bosnia, some 3,500 people were killed without any military activities, largely arising out of the operation of civilian detention camps. (See various references to propaganda towards so-called ‘enemies’ arising in the Karadžić judgments (IT-95-5/18) of the ICTY.<sup>6</sup>)

- 1.11 There is also a need to talk about developing ‘**early warning systems**’ to detect **persistent policies** that encourage genocide denial in recovering countries, and to identify opportunities for prosecution, such as **laws against genocide denial** and their enforcement. For example, changes to the criminal code in Bosnia, whilst not strictly enforced, have cut instances of genocide denial by some 70%.

## Technology and tools of disinformation

- 1.12 We heard about the **tools of disinformation in a post-social media world**, and how they may be used and evolving over time. There is a confluence of data between lawful intercept and monitoring by security services, and data gathered by corporate entities. There is a depth of information available for anyone to use. A significant number of data points per individual (which varies according to the domestic regulatory and privacy context) may be generated through social media, shopping and other online activities, and used to build a very sophisticated profile of any individual. The *Cambridge Analytica* whistle-blower case provides a recent example. It is not well-known how well-used this is around the world, and the potential impact on elections, particularly through the spread of mobile telephony and the resulting increase in data points in Africa and much of the global south. Whilst the collection and use of data may be restricted by privacy laws, assuming government compliance, it remains necessary to consider how much data may be available for use and misuse by totalitarian regimes.

- 1.13 Research has been carried out (by the Programme in Comparative Media Law and Policy at the Centre for Socio-Legal Studies, Wolfson College, Oxford) into **speech as indicia of conflict**, which suggests that media can be an early indicator of the potential

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<sup>6</sup> [Karadžić \(IT-95-5/18\) | International Criminal Tribunal for the former Yugoslavia \(icty.org\)](https://www.icty.org/case/karadzic) (<https://www.icty.org/case/karadzic>)

for violence. It has not been possible to prove a direct causal connection between speech and actual violence, but the existing research relates to the ‘pre-social media’ (and, in some cases, ‘pre-internet’) environment, and further research is now required.

**1.14 The targets in a modern-day coup are data centres, mobile and internet systems.**

The blocking of telephony in order to stifle protests or reports of suffering may itself provide intelligence of conflict or political instability. Internet and data outages around the world are monitored and mapped by a number of organisations<sup>7</sup>, and there is usually a correlation with conflict, political instability, and elections. A more discriminating approach by some states, in order to avoid conspicuous country-wide blocking of telephony, may target particular apps, or the ability to use VPN connections, during periods of conflict. Examples may be seen in Myanmar, Egypt and Turkey. The termination and re-broadcasting of data signals via security and intelligence service systems may also enable the identification of consumers of independent or opposition media sources, thereby effectively leading to self-identification of dissidents. Whilst telephony may be supplied to states by corporate providers in furtherance of connectivity as a basic human right, the fact of connectivity may also enable intercept capability and ‘consultancy’ software (i.e. software by which intercept data may be made useful) to be provided by third states, irrespective of the wishes of corporate providers who may have declined to provide these additional services. Examples may be seen in the activities of Iran and China.

**1.15 The power of social media** is felt more widely through the use of fake accounts, the role of influencers in amplifying particular messages in pursuit of moneymaking ‘clicks’, and the crossover of popular content to the mainstream media. The media activity surrounding the recent Johnny Depp and Amber Heard libel trials provides an example of the potential impacts of these issues, albeit in a vastly different context. In that highly-publicised dispute, similar proceedings in different jurisdictions resulted in differing outcomes (Ms Heard was perceived to have ‘won’ before judges in the UK, and Mr Depp to have done so subsequently before a jury in the US), leading to speculation about the effect of narratives played out in social media campaigns and public expectations as to verdicts in the courtroom.<sup>8</sup>

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<sup>7</sup> See e.g. [Home - NetBlocks](https://netblocks.org/) (<https://netblocks.org/>); [Internet Censorship 2023: A Global Map of Internet Restrictions - Comparitech](https://www.comparitech.com/blog/vpn-privacy/internet-censorship-map/) (<https://www.comparitech.com/blog/vpn-privacy/internet-censorship-map/>); and [Internet Outages Live Map by Pingdom](https://livemap.pingdom.com/) (<https://livemap.pingdom.com/>).

<sup>8</sup> For an example of this type of analysis, see [Why did the Depp-Heard libel outcomes differ in the US and UK? | Defamation law | The Guardian](https://www.theguardian.com/law/2022/jun/02/johnny-depp-amber-heard-libel-outcomes-differ-us-uk) (<https://www.theguardian.com/law/2022/jun/02/johnny-depp-amber-heard-libel-outcomes-differ-us-uk>).

1.16 Subsequent discussions focussed on the fundamental question of what might be done to address the issues highlighted above, and sought to address the potential needs of prevention, intervention and accountability before, during and after genocide.

## **Prevention – ‘before’**

1.17 A preliminary question may be whether ‘**genocide denial**’ is too narrow a concept, and the relevant issue may be ‘**atrocities denial**’ more broadly. The concept of genocide denial represents a development of ‘Holocaust denial’. A broadening of the discourse, taking account of perspectives other than victims alone, may be particularly relevant in order to address the supposed ‘**hierarchy of crimes**’, and the wider perspective that being found guilty of war crimes or crimes against humanity is ‘insufficient’ compared to being found guilty of genocide.

1.18 It was also suggested that there is a need to consider **non-international conflict** which was nonetheless supported by international interests.

1.19 Who, then, is the intended target of any action by lawyers seeking to address these issues? Government – in which case, the UK or Scottish government? The public at large? On what scale should the conversation about resolving these issues be happening – is it genocide denial in the UK, or in Bosnia, Ukraine or Russia, or in the international sphere? The conversation must transcend the current government, in the sense that it must be capable of being taken forward by any government, beyond the current circumstances, and beyond national borders. We, the lawyers, may have to be the **champions against dehumanisation**, irrespective of any hypocrisy that might be involved on the part of government in that regard.

1.20 It was suggested that there may be a need for a **policy brief for government**, charting how dehumanisation and disinformation are used to directly affect what is done in terms of crimes on the ground. For example, the narrative of ‘denazification’ and denial of Ukraine as a nation has been utilised by Russia to the effect that anybody standing up for or defending Ukraine ought to be removed in order to ‘get rid of the problem’. There is a systematic effort, including through the use of video clips and sound bites in the media and online, to dehumanise and desensitise in order to prepare the ground for the razing of cities.

1.21 The way to tackle disinformation may be to provide information and promote understanding through **peaceful education**, but this must take account of the ways in which people perceive and digest media. The rise of populism has impacted on collective understanding, and there is no appetite for long narratives. If there is a need



for access to ‘the truth’, what or whose truth is it, and how do we help people to access it if they wish to do so?

1.22 In this context, it may also be important to **acknowledge our own truth**, in terms of allegations of UK involvement in war crimes, severe restrictions on domestic protest, the Rwanda deportation policy<sup>9</sup> in the context of the post-genocide regime there, and disinformation about government action in the context of the ‘partygate’ affair. Mixed views were expressed as to the utility of engaging with the current UK government in those circumstances, and whether it may be more effective to aim efforts elsewhere. Nonetheless, it was acknowledged that the UK remains a member of the UN Security Council (‘UNSC’) and continues to have an international voice that is taken seriously on the global stage. Some participants thought that we ought to be cautious about undue self-censorship on the basis of domestic concerns, which ought not to get in the way of doing good in service of the international legal order.

1.23 A related question arises as to **whether ‘(de-)humanisation’ is a legal issue, social issue, or both?** There is a distinction to be drawn between immediate international criminal justice responses, and longer-term policy, political and educational responses. It is also important not to dehumanise perpetrators, and to recognise mutual complicity, where appropriate. If it is accepted that almost all atrocity crimes are premised on dehumanisation, then there needs to be an understanding of how it is that perpetrators may come to view their victims as deserving of their fate, and the extent to which this may also be viewed as a product of disinformation.

1.24 Social policy changes over time, and generally develops more quickly than the legal landscape, but it also undoubtedly informs the law, and it is critical to consider them together. The development of social policy is also a matter of education, and is scalable on an international level. If a matter of education, however, it must be accompanied by the necessary political conditions in order for it to be incorporated into curricula. For example, the Holocaust does not form part of the mandatory school curriculum in Scotland. Related initiatives, such as the *Remembering Srebrenica Scotland* charity<sup>10</sup>, are important in this regard.

1.25 **Public legal education is an issue for lawyers**, and cannot be limited to speaking to a room full of other lawyers. There needs to be consideration of who to talk to, and how lawyers can use their skills to critically examine and question disinformation. Equally, there is a need to be realistic about the sort of voice and influence that lawyers may have, as they may not represent the most trusted cohort in the eyes of the public. Trust

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<sup>9</sup> See *R (on the application of AAA (Syria) v Secretary of State for the Home Department* [2022] EWHC 3230 (Admin) (appeal outstanding).

<sup>10</sup> [Home - Remembering Srebrenica \(Scotland\)](https://srebrenica.scot/) (<https://srebrenica.scot/>)

is fundamental, and thought must be given to whether different routes might be followed.

1.26 A possible alternative may be to pursue a proposal for the **establishment of a special rapporteur on dehumanisation** by the UN Human Rights Council, who could keep these issues constantly in the policy realm, from methods and systems of dehumanisation, to the mechanics of how technology is being used, and the impact of connecting policies to action on the ground. However, participants queried whether there was political will to make **active efforts at ‘humanisation’**. There were mixed views as to the utility of establishing a dedicated rapporteur, where existing appointees might be considered to share relevant responsibilities already, and strategic issues might be advanced more effectively through working groups or other similar mechanisms. The effectiveness of any mechanism is, however, likely to depend on the availability of resources and funding.

1.27 It was observed that the **UNSC** has largely failed as a forum, due to the impact of the veto, although there have been other interesting interventions. It was also acknowledged that a large contingent did not vote in favour of the **UN General Assembly** resolution in relation to Ukraine.<sup>11</sup> It is not clear what narratives are operating, or the extent of support for the **ICC**, particularly in the global south, but these factors ought to be part of the conversation.

1.28 There must be knowledge, at the international level, of the relationship between denial and dehumanisation, concrete policy, hate speech and violence, in order to inform debate and contextualise interventions in forums such as the UNSC. Similar understanding could also form the basis of an **early warning system**, combining elements and evidence of previous conflicts. There is no lack of evidence. However, the question is: *what happens when the alarm goes off?*

1.29 There may be a ‘disconnect’ between political awareness and political action in relation to perceived problems, such as rising hate speech or threats from policy development or other contextual factors. That there is some awareness of the need to address threats to democracy and equality is demonstrated via the increased monitoring of elections – if not across the African Union, then certainly across the Commonwealth. The challenge is to create proper interactions between international organisations and ‘in country’ actors who may be able to encourage open debate and take effective action. This may also require coordinated action across all media platforms, perhaps through an international network initiative, in terms of the prevention of escalation and control of disinformation. People need to understand the trajectory and effect of a policy

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<sup>11</sup> Aggression against Ukraine: resolution adopted by the General Assembly (A/RES/ES-11/1) – for the text and voting record, see [Aggression against Ukraine : \(un.org\) \(https://digitalibrary.un.org/record/3959039?ln=en\)](https://digitalibrary.un.org/record/3959039?ln=en).

journey, of dehumanisation and how it develops, and whether intervention may be required in their particular country context.

1.30 According to peace theory, there is a **‘triangle of violence’** – perpetrators, victims, and bystanders – in which positions may change during a conflict, but bystanders may be a source of legitimacy for perpetrators and victims alike, and may be targeted as part of an early warning system.

## Intervention – ‘during’

1.31 There was some discussion around data collection programmes, tools to upload evidence, and **how to capture evidence** in a way that allows proof (i.e. ensures the integrity, and enables an assessment of the accuracy, of available evidence) and is achievable within limited budgets. It was observed that a lot of data is emanating from Ukraine, but the question is where (and what) are the tools to deal with it?

1.32 It was noted that the *‘eyeWitness to Atrocities’* app<sup>12</sup> is not widely known around the world, but has been used successfully in Sri Lanka, in collaboration with the International Bar Association and International Bar Association’s Human Rights Institute. There are concerns about the extent to which apps may be hijacked for improper purposes or used in ways that dehumanise people or lead to overexposure to horrific imagery. However, it was thought that the *eyeWitness* app enables auto-deletion of data in the event of capture, and there have been no known attacks on the data as yet. More generally, digital signatures could be used in such a way that only one person need examine any particular (distressing) content, and problematic online content (such as terrorist propaganda material) could be located and removed if necessary.

1.33 It was noted that other organisations are using **technology to create solutions** for displaced persons (see e.g. *‘Techfugees’*<sup>13</sup>) and those in a war environment, for example by demonstrating combat first aid.

1.34 **Citizen investigators** (i.e. ordinary citizens, members of non-governmental organisations, and non-journalism professionals who are interested in recording and sharing evidence to uncover wrongdoing) were recognised as hugely important in recording atrocities as they happen and the immediate aftermath. However, there has been such a deluge of data and information generated, from Syria, and now Ukraine, that there are **resource issues** as civil society actors do not have the means to store the data produced. Participants also commented that there have been data losses already,

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<sup>12</sup> [eyeWitness | Welcome \(https://www.eyewitness.global/\)](https://www.eyewitness.global/)

<sup>13</sup> [Techfugees – A tech community response to the needs of refugees \(https://techfugees.com/\)](https://techfugees.com/)

arising from deletion due to concerns about who would be able to access the material. There is a need for **high level planning and coordination**, and the UK government could conceivably play a role in regulation, and the regulation of access.

1.35 In the specific Russia-Ukraine context, there is a need to ensure robust access to external resources, such as the BBC, to combat the **deeply ingrained narratives** in Russia. However, there is also a need to address consequential forms of denial of diversity in Ukraine itself, such as the blocking of Russian language education despite the existence of a Russian speaking population, which was observed to be a concerning feature. There is a need to better understand the deeper narrative in Russia. For example, a Polish group, known as **'Squad303'**, set up a website that allows individuals to send text messages to random Russians with accurate information about Putin's war.<sup>14</sup> However, the messages have not received the kinds of supportive response or acknowledgement that were expected.

1.36 There have been **calls by Ukraine for expert support**, including support from lawyers and professional investigators (e.g. police officers and forensic experts) to help investigate and record evidence of atrocities that have taken place, including the mass deportation of children to Russia and the creation of filtration camps. However, efforts to date have been *ad hoc*, particularly prior to the creation of the ICC's dedicated portal (through which any person who may hold information relevant to the Ukraine situation may contact ICC investigators<sup>15</sup>), and a more coordinated approach is required. There may be scope for **institutional partnerships**, and the Scottish Government's Minister for Refugees from Ukraine might also conceivably provide relevant assistance.

1.37 There is relevant knowledge and expertise in Scotland, which ought to be promoted and utilised internationally, but there are limited opportunities to do so. Consideration ought to be given to ways in which to provide **immediate assistance to Ukraine**. The Lord Advocate has expressed solidarity with Ukraine<sup>16</sup>, but it was not known whether any offer of assistance has been made.

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<sup>14</sup> See <https://1920.in/>; see also [How To Text Random Russians The Truth About Putin's War In Ukraine \(forbes.com\)](https://www.forbes.com/sites/johnkoetsier/2022/03/12/how-to-text-random-russians-the-truth-about-putins-war-in-ukraine/?sh=185783b66c53) (<https://www.forbes.com/sites/johnkoetsier/2022/03/12/how-to-text-random-russians-the-truth-about-putins-war-in-ukraine/?sh=185783b66c53>).

<sup>15</sup> See [Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: Additional Referrals from Japan and North Macedonia; Contact portal launched for provision of information | International Criminal Court \(icc-cpi.int\)](https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-situation-ukraine-additional-referrals-japan-and) (<https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-situation-ukraine-additional-referrals-japan-and>), where the 'OTP Contact Pathway' portal can be accessed.

<sup>16</sup> [Lord Advocate's statement on UK-Ukraine memorandum of co-operation | COPFS](https://www.copfs.gov.uk/about-copfs/news/lord-advocate-s-statement-on-uk-ukraine-memorandum-of-co-operation/) (<https://www.copfs.gov.uk/about-copfs/news/lord-advocate-s-statement-on-uk-ukraine-memorandum-of-co-operation/>)

1.38 If people in Scotland were to be actively engaged, and gaining expertise in relation to particular conflicts, there would be a ‘trickle down’ effect. It is necessary to have knowledge of the past in order to contribute to the future.

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## Accountability – ‘after’

1.39 It is said that **genocide denial is a continuation of genocide** itself. The reality is that genocide and crimes against humanity are committed, almost without exception, with dehumanisation (including, but not limited to, genocide or atrocity denial, and the intentional legitimisation of such crimes) having paved the way. Yet it is generally only acknowledged as a contextual explanation of those crimes, rather than a crime that is also charged.

1.40 The Scottish Government has devolved responsibility in relation to criminal justice, and there may be scope for **genocide legislation** to be passed in Scotland in order to tackle the nebulous issue of genocide denial.

1.41 Genocide denial may be considered to fall within the scope of laws against **hate speech**. It may be a straightforward matter of proof as to whether a genocide or crime against humanity has been found by a competent judicial authority to have taken place, and is thereby an established fact. There is a balance to be struck between **freedom of speech** and legitimate control and criminalisation of denial, but other countries have succeeded in introducing such laws. Any legislative developments would have to be accompanied by proper education, however, in order to ensure that there is impact ‘on the street’ and to avoid disinformation, particularly around human rights and the legitimate extent of free speech.

1.42 A separate question arises as to whether there are sufficient mechanisms to **enable individuals in affected countries to make use of available information** in support of claims to accountability through domestic jurisdiction or with the help of international instruments. Developments at a ‘grass roots’ level may be required in this regard.

1.43 Finally, questions may also arise as to the relevant form(s) of accountability in this context, and whether that may be to attempt to validate truth, impose economic responsibility, such as by way of sanctions, or criminal responsibility. In particular, issues of **reparations and disengagement** at the end of any accountability process may require **corrective media engagement**, particularly if victims have been dehumanised or ‘othered’ at the outset. This may also be a pertinent issue in the event of failure to

secure any genocide conviction. Any correction must, however, happen in the same arena as the original dehumanisation took place.

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