

Government response to the advisory report of the Advisory Committee on Issues of Public International Law (CAVV) entitled 'The obligation of third states to prevent genocide'

[Translation of the official government response in Dutch ('[Kabinetsreactie op CAVV-advies nr. 50: De verplichting van derde staten om genocide te voorkomen](#)'), published on October 2, 2026.]

Introduction

On 4 August 2025 the Advisory Committee on Issues of Public International Law (CAVV) submitted to me its advisory report 'The obligation of third states to prevent genocide' (annex 1).¹ As stated in its letter of 7 August 2025, the government has read and appreciates the CAVV's advisory report, which the CAVV published on its own initiative. The government observes that the report largely aligns with the government's interpretation of the Netherlands' obligations under the Genocide 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: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group; (e) forcibly transferring children of the group to another group. In the advisory report, the CAVV examines the obligation of third states to prevent genocide not on the basis of any specific situation, but in a general sense. The report therefore concerns all situations in which genocide occurs, or in which there is a serious risk of genocide occurring. In this government response, the government will therefore comment in general terms on the obligations of third states to prevent genocide as set out in article I of the Genocide Convention, and will respond to the specific conclusions and recommendations of the CAVV.

This report does not address the criteria for third-country complicity in genocide. However, the CAVV does point out the difference between, on the one hand, a violation of the obligation to prevent genocide and, on the other, complicity in genocide. The government shares the CAVV's view that a violation of the obligation to prevent a genocide does not automatically equate to complicity in that genocide. Complicity requires that some action has been taken. This means that a failure or omission by a state is not sufficient to constitute complicity. Like the CAVV, the government will not comment further on the concept of complicity in international law in this response. The government's vision on this matter is laid out in its letter to parliament of 12 January 2024.²

In this response, the government will for the most part follow the structure of the CAVV's advisory report and address:

1. the legal framework governing the obligation that rests on third states to prevent genocide;
2. the nature of the obligation;
3. measures that third states can take.

1. The legal framework

The CAVV's conclusions

Article I of the Genocide Convention codifies the obligation to prevent genocide for the 153 states that are currently party to this convention, including the Netherlands. According to the CAVV,

¹ Advisory report no. 50, The obligation of third states to prevent genocide, 4 August 2025.

² Parliamentary Paper 36 410-V, no. 27. Letter from the Minister for Foreign Trade and Development Cooperation concerning the government's views on the concept of complicity in international law, 12 January 2024.

every third state that is a party to the Genocide Convention has an individual obligation to prevent genocide, wherever in the world there is a serious risk that genocide will be committed (conclusion 1). Although the obligation to prevent genocide is linked to the obligation to punish genocide, the CAVV considers it a separate obligation, with its own substance and scope. The CAVV argues that the obligation to prevent genocide that rests on third states is an obligation *erga omnes partes*, which means that each state that is a party to the Genocide Convention has this obligation towards every other state party, and can therefore invoke the responsibility of any other state party for an alleged violation.

Although, as the CAVV asserts, in practice third states must act jointly or concurrently in order to be effective, the CAVV concludes that a third state has an individual duty to act, even if, on its own, it does not have the capacity to prevent a genocide from taking place (conclusion 2). The CAVV takes the view that the obligation to prevent also applies to preparatory acts, such as direct and public incitement to commit genocide.

According to the CAVV, the obligation to prevent genocide arises at the instant that the third state becomes aware of, or should normally have become aware of, the existence of a serious risk that genocide will be committed (actual or constructive awareness) (conclusion 4). In this regard, the CAVV notes that a third state is meant to take steps to acquire information from a combination of sources. A third state's awareness of the existence of a serious risk of genocide can, according to the CAVV, be inferred from various sources, including United Nations (UN) reports, decisions of the International Court of Justice (ICJ), diplomatic notes, news items, posts and videos on social media, reports published by non-governmental organisations such as the International Red Cross and Amnesty International, and answers to questions in parliament.

The CAVV further states that if the ICJ determines that there is a real and imminent risk that rights under the Genocide Convention will be irreparably harmed, it may be assumed that a 'serious risk of genocide' exists and the obligation to prevent has arisen for third states (conclusion 4). Lastly the CAVV emphasises that a third state may be considered to have breached the obligation to prevent genocide, and may be held responsible for that breach, only after it has been determined that a genocide actually took place (conclusion 3).

The government's response

The government agrees that article I of the Genocide Convention codifies the obligation to prevent genocide for all 153 states that are currently a party to this convention, including the Netherlands. The government also agrees with the CAVV's conclusion that the duty to prevent genocide is a separate obligation, with its own substance and scope.

The government notes that, in addition to the legal framework outlined by the CAVV, the main principles underpinning the Genocide Convention, including the obligation of third states to prevent genocide, are principles of customary international law. It follows that this obligation also applies to states that are not party to the Genocide Convention. Furthermore, the government agrees with the CAVV's analysis of the *erga omnes* character of the obligation for parties to the Genocide Convention and additionally for all states on the basis of customary international law, and notes for completeness that the prohibition on genocide is a peremptory norm of general international law (*jus cogens*), but that this does not apply to the obligation to prevent genocide.

As the CAVV observes, in practice states will generally speaking have to act jointly or concurrently in order to ensure the effectiveness of measures to prevent genocide. Nevertheless, every individual state remains subject to the obligation to take action. As the ICJ also held, the fact that measures taken by an individual state will not have a decisive impact on the actions of a person or state involved in a genocide does not absolve the third state from fulfilling its duty to make an individual effort to prevent genocide. The government agrees with the CAVV's analysis in this regard (conclusion 2). This obligation exists alongside the authority of the UN to take action.

The government agrees with the CAVV's conclusion that the obligation to prevent genocide arises at the instant that the third state becomes aware of, or should normally have become aware of,

the existence of a serious risk that genocide will be committed. The government also shares the CAVV's view that the obligation to prevent genocide arises when there is either actual or constructive awareness of the existence of a serious risk of genocide. In the government's opinion, this awareness can indeed be inferred from the sources identified by the CAVV. The government would make the following point regarding the CAVV's observation that a state is meant to take steps to acquire information from a combination of sources. On the one hand, this is, in the government's view, in keeping with the nature of the due diligence obligation. On the other hand, though, the government does not itself have the capacity to conduct independent, thorough and effective investigations into possible international crimes in every situation around the world. That also applies to situations in which there are factors that could point to the existence of a serious risk of genocide.

The government is of the opinion that the imposition of provisional measures by the ICJ in cases in which certain rights under the Genocide Convention are at issue is a significant indication that a serious risk of genocide exists. In proceedings concerning an application for provisional measures the ICJ rules on the basis of a *prima facie* assessment of the dispute and the rights that are at issue. In such proceedings, the ICJ does not consider the merits of the complaints and there is no in-depth assessment of the evidence adduced and the parties' arguments, with both sides having the opportunity to respond to the other side's evidence and arguments. Provisional measures are imposed to prevent the aggravation of the dispute and to preserve the rights of parties for the duration of the proceedings before the ICJ. Therefore it cannot be inferred directly from such measures that the ICJ has made a determination of genocide or a serious risk of genocide. The measures are focused solely on the rights of the parties in question and whether a risk of genocide actually exists depends on the specific situation.

The government agrees with the CAVV's conclusion that for a violation to have occurred, and responsibility to be incurred, a genocide must have actually taken place (conclusion 3). According to the government (and the ICJ) this conclusion follows from the customary law rules on state responsibility as set out in article 14(3) of the Articles on State Responsibility.³

Nature of the obligation to prevent genocide

The CAVV's conclusions

In regard to the nature of the obligation to prevent genocide, the CAVV underscores that it is an obligation of conduct, not of result. In this context, the CAVV refers to it as a due diligence obligation. According to the CAVV, this means that the measures that need to be taken in order to comply with that obligation will depend on the actual situation. A state incurs responsibility if it, as the ICJ has stated, '*manifestly failed to take all measures to prevent genocide which were within its power, and which might have contributed to preventing the genocide*' (conclusions 3 and 6).

According to the CAVV, the fact that a prohibition on genocide is a peremptory norm of general international law that entails *erga omnes* obligations has consequences regarding how the obligation is fulfilled and regarding accountability for the measures taken. In this regard, the CAVV considers it important for third states to publicly account for the way in which they discharge the obligation, not least because there is no judicial or quasi-judicial monitoring mechanism for the Genocide Convention (conclusion 5).

The government's response

The government agrees with the CAVV's conclusion regarding the nature of the obligation (conclusion 6). The obligation to prevent genocide is a due diligence obligation, which means that a third state cannot be expected to achieve the desired result (preventing a genocide) whatever the circumstances. As the CAVV states, the third state is required to employ all means reasonably

³ Articles on State Responsibility, article 14(3): *The breach of an international obligation requiring a State to prevent a given event occurs when the event occurs and extends over the entire period during which the event continues and remains not in conformity with that obligation.*

available to it to prevent a possible genocide. If a genocide takes place, despite the third state having employed the means reasonably available to it, that state will not incur responsibility. Only if a third state manifestly failed to take measures to prevent genocide can there be a violation of the obligation to prevent and, as a result, can international responsibility be incurred (conclusion 3).

In regard to conclusion 5, the government would note that this conclusion cannot be based on the Genocide Convention or any other requirement under international law. Of course the government is accountable to parliament for the measures it takes in a given situation. Although the government generally agrees that public accountability is important, there are conceivable situations in which it would actually be more effective to work behind the scenes to urge another state to modify its conduct. The government would therefore note that it will not always be in the interests of the objective to be achieved to immediately publicise the steps it takes. This is especially true when it comes to the substance of diplomatic efforts. The CAVV itself states that the way in which a state publicly renders account will vary from country to country, and may depend on many factors.

Measures to prevent genocide

The CAVV's conclusions

According to the CAVV, it cannot be said in the abstract which measures parties to the convention are required to take to prevent genocide. According to the ICJ, third states have an obligation under the Genocide Convention *'to employ all means reasonably available them, so as to prevent genocide so far as possible'*. Like the ICJ, the CAVV sees a connection between the degree of influence (be it economic, political or military) that a third state has and the extent to which the obligation to prevent compels a state to take concrete action; this always requires a factual assessment of the given situation. In many cases, the question as to whether a third state has acted in compliance with the due diligence requirement will depend on its relationship with the state that is the source of the serious risk of genocide (conclusions 7 and 8).

The CAVV emphasises that the obligation to prevent genocide requires that measures be effective and have a deterrent effect. That is why – so states the CAVV – if the measures initially chosen prove ineffective, third states should change course and increase the diplomatic pressure. As a result of the obligation to prevent genocide a third state may be required in specific cases to characterise and condemn violations that indicate (a serious risk of) genocide as such (conclusion 8).

The CAVV then describes a non-exhaustive overview of categories of possible measures for preventing genocide that the Netherlands could consider both independently and in the framework of the EU. The first category specified by the CAVV is diplomatic methods, which include *'naming and shaming'* the state that is the source of the serious risk of genocide through various channels, or lodging a diplomatic protest. The second category is acts of retorsion, measures which, though unpleasant for the *'source state'*, are not unlawful. The examples of such measures provided by the CAVV include imposing entry restrictions or bans on specific individuals and suspending a convention if this is allowed under the terms of the convention. The third category specified by the CAVV is countermeasures or reprisals. These are measures that are in themselves unlawful, but become lawful when they are taken to induce a state that is violating international law to stop doing so. The fourth category specified by the CAVV is the option of bringing proceedings against another state before the ICJ.

The government's response

The government considers the overview of categories of possible measures that third states can take to discharge their obligation to prevent genocide both insightful and useful. The government reads this part of the advisory opinion as descriptive – a classification that can help the government determine its strategy to prevent a genocide in a specific situation. The government does not regard this overview as a compulsory step-by-step plan or as a series of measures that

should be taken in a particular order. The government agrees with the CAVV's view that a factual assessment must be made in each case to determine which measures are reasonably available to the government in a given situation and which, in the specific circumstances of the case, are likely to be most effective. It is up to the government to make this assessment on a case-by-case basis and the government has a margin of appreciation in doing so. In this regard, it is possible to combine measures from the various categories described by the CAVV and forego taking other types of measures, depending on the specific situation, capacity and degree of influence that the Netherlands can exert in that situation.

The government also agrees with the CAVV's conclusion that if the measures taken appear to have no effect, the third state concerned must consider different or further reaching measures, provided it has the capability to do so. Although this approach is not derived directly from the Genocide Convention, this interpretation is in keeping with the due diligence requirement of the obligation to prevent genocide. When it comes to assessing the effectiveness of specific measures the government has a duty to consider each case individually. In this regard, the government has a margin of appreciation. The choice of available measures is in any case delimited by the UN Charter and the third state's other international obligations; in this connection, derogation from *jus cogens* requirements or from requirements in the context of peaceful dispute resolution can never be justified. The government would also note that the third state may take account of other interests, including its own security interests, when choosing which specific measures to take. A measure that is expected to put the state's national security at risk cannot be considered to be a measure that is reasonably available to the state.

The government agrees with the CAVV that publicly characterising violations as (posing a serious risk of) genocide and condemning them can be part of the measures that a third state can take to prevent genocide, but this is not required by the Genocide Convention. Furthermore, it cannot be said that characterising events as genocide and condemning them is a necessary or even effective step towards prevention in every case. As the CAVV stated in advisory report no. 28 on the use of the term 'genocide' by politicians, there are political risks to using this terminology and it can even 'prove counterproductive' for the prevention of genocide.⁴ The government would also point out the importance of conducting a thorough investigation of the facts when characterising events as genocide and the high evidence threshold that arises from the definition of the genocide in the Genocide Convention, particularly when it comes to so-called 'genocidal intent'. The ICJ also applies a heavier burden of proof for genocide than for other, less grave, charges.⁵ In this light, the government generally exercises restraint in using this characterisation. Determinations by (international) courts and criminal courts, the UN Security Council and clear conclusions from scientific research weigh heavily in the government's considerations. In principle, it is up to the government to assess whether characterising a particular event as genocide in the concrete circumstances of the case and condemning it as such will contribute to effective prevention.

The government agrees with the CAVV's analysis that there is a connection between the degree of influence (be it economic, political or military) and the extent to which this obligation compels a state to take concrete action, in which regard determining the actual capacity to exert influence requires an assessment *in concreto* in each case. In this respect, the government would note that in the only proceedings in which the ICJ has held a state responsible for violating the obligation to prevent genocide, there were very strong financial, political and military connections, geographical proximity and close historic ties between the third state and the actor that ultimately committed genocide.

In this context, the government notes that it will only consider taking countermeasures, or reprisals, in the general interest, for example to prevent a genocide in another state, in the event of a serious breach of a peremptory norm of general international law. In any case, taking

⁴ CAVV advisory report no. 28, p. 16.

⁵ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*), judgment of 26 February 2007, I.C.J. Reports 2007, p. 43, at para. 209.

countermeasures is permitted only in the event of a breach of international law. In the government's view, countermeasures are therefore not an appropriate measure if there is only a serious risk of genocide. At that juncture, no unlawful act has been established and there is no legal basis for taking countermeasures. As the CAVV states, countermeasures are measures that are in themselves unlawful, but whose wrongfulness is precluded when they are taken to induce a state that is violating international law to stop doing so. In other words, before countermeasures are taken it must first be established that a state has violated its international obligations. This need not be a violation of the Genocide Convention itself, however. Generally speaking, in a situation which involves, or might involve, genocide, there will usually also be (many) other violations of international law. These may include, for example, violations of international humanitarian law or crimes against humanity. Countermeasures taken after it has been established that such violations have occurred can contribute to the prevention of genocide. The fact that these countermeasures are not explicitly based on a violation of the Genocide Convention is irrelevant.

In closing, the CAVV noted that third states, when faced with comparable situations involving a serious risk of genocide, must be consistent in speaking out and taking measures (conclusion 9). The government is of the opinion that *every* situation in which there is a serious risk of genocide requires parties to the convention to employ all means reasonably available to them to prevent it. The government agrees that it is important to practice consistency in fulfilling the obligations under the Genocide Convention, not least in order to uphold the integrity of international law. As stated above, the question of which means are reasonably available to the Netherlands, and which means may be considered most effective, must however be assessed *in concreto* in the light of the circumstances of each individual case. Consistent compliance with the obligation to prevent genocide therefore does not require that in each (individual) case the same, or even similar, measures should be taken as in other (individual) cases. When it comes to speaking out consistently about situations involving (a serious risk of) genocide, the government would refer to its observations above concerning the matter of publicly characterising violations as (posing a serious risk of) genocide and condemning them as such.