Notes on a letter from the APPG on Rohingya Rights dated 17 December 2020

1. Rushanara Ali MP has blocked my access to her Twitter feed. It might be because I pointed out on Twitter, as graciously and succinctly as I knew how, several errors of fact in her Joint Letter with Jeremy Hunt of 17 December 2020 to Dominic Raab on the Rohingya issue. The Joint Letter is at http://www.networkmyanmar.org/ESW/Files/RA-JH-171220.pdf

2. My main concern with the Letter is the allegation that there is a provisional measures Order "agreeing with The Gambia that there is a *prima facie* case of genocide of the Rohingya". The Order http://www.networkmyanmar.org/ESW/Files/178-20200123-ORD-01-00-EN.pdf makes it clear throughout that the only *prima facie* issue decided is that of jurisdiction, not of the facts of the case alleging genocide. See especially Paragraph 66 of the Order.

3. The Letter expresses the view that the UK's "failure to join the case could unintentionally send the wrong signal". Any intervention under Arts 62 and 63 of the ICJ Statute is at the discretion and decision of the Court. The Gambia case is not an instrument open for signature by any State Party to the Genocide Convention.

4. The allegation that the sanctioning of 16 individuals by the UK "ensured the establishment of the Independent Investigative Mechanism on Myanmar" is not correct. The Independent Investigative Mechanism for [not "on"] Myanmar was established by Resolution of the Human Rights Council https://undocs.org/en/A/HRC/RES/39/2 The sanctioning of 14 (not 16) individuals https://t.co/Lg5Dc4undV?amp=1 did not "ensure" the IIMM.

5. The reference to "Russia and China blocking a full referral of Burma to the ICC by the UNSC" is puzzling. Russia and China would block all referrals, full or otherwise.

6. No "expert in international law" has to my knowledge expressed, as alleged, "strong support" for UK intervention which "would bring benefits in helping ensure the most positive outcome from the case". Legal experts who have examined declarations of intent to intervene from The Maldives, Canada and The Netherlands have highlighted the risks and complexities, notably http://opiniojuris.org/2020/09/11/third-state-intervention-in-the-rohingya-genocide-case-how-when-and-why-part-i/ and http://opiniojuris.org/2020/09/11/third-state-intervention-in-the-rohingya-genocide-case-how-when-and-why-part-ii/

7. For example, as the second opinion above put it: "To admit *erga omnes partes* intervention under Article 62 by Canada, the Netherlands, the Maldives, or any other party to the Genocide Convention is to envision the loss of judicial economy in disputes with dozens of participating States, a potential loss of cases submitted to the Court by *compromis* (due to a perceived erosion of party autonomy in this forum), and a potential increase in respondent non-appearance in cases instituted under multilateral treaties."

8. I doubt that the Letter was drafted by the two signatories. It has all the hallmarks of activist ideology. I have taken the precaution of consulting a former FCO legal adviser (as is Dominic Raab himself) about this response.

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