



Genocide Determination Bill [HL]

HL Bill 23 of 2022–23

Author: James Tobin

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The [Genocide Determination Bill \[HL\] 2022–23](#) is a private member's bill proposed by Lord Alton of Liverpool (Crossbench). The bill is scheduled to have its second reading in the House of Lords on 28 October 2022.

The bill would provide for the High Courts in England and Wales, and in Northern Ireland, and the Court of Session in Scotland, to make preliminary determinations as to what constitutes genocide in accordance with the UK's obligations under the genocide convention. It would also introduce a referral mechanism for such determinations to be referred to international courts.

Lord Alton has raised the subject of genocide, and the UK's duties to address it as a signatory to the Convention on the Prevention and Punishment of the Crime of Genocide (the genocide convention), more than 300 times in the House of Lords. He has also introduced similar private member's bills in previous parliamentary sessions, none of which progressed to their second reading.

However, recent legislative changes have been made on the subject of genocide following amendments tabled by Lord Alton and others to the Trade Bill 2019–21, now the Trade Act 2021. Following debate at various stages of the bill, the Houses of Commons and Lords agreed a compromise amendment meaning that a House of Commons committee will henceforth be able to identify credible reports of genocide and insist on a parliamentary debate if the committee is not satisfied with the government's response to its report.

The provisions in Lord Alton's bill and the debate on the amendments tabled to the Trade Bill are examined in this briefing, alongside the difficulties in defining and acting against genocide under the terms of the genocide convention.

I. What is genocide?

The Convention on the Prevention and Punishment of the Crime of Genocide (the genocide convention) defines genocide as any of the following acts, committed with the intent to destroy a national, ethnical, racial or religious group:

- killing members of the group,
- causing serious bodily or mental harm to members of the group,
- deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part,
- imposing measures intended to prevent births within the group, or
- forcibly transferring children of the group to another group.¹

The crime can be committed in both a time of peace and in times of war. Examples of genocide include genocide under the Nazis (the Holocaust) and more recently the genocide in Darfur.²

The genocide convention was the first piece of international law to codify the crime of genocide. It was initially approved in 1948 and came into force in 1951. It places an obligation on signatories to take measures to prevent and punish genocide, including enacting relevant legislation and punishing perpetrators.³ As of July 2019, the convention had been ratified or acceded to by 152 states. The UK acceded to the convention in 1970.

¹ United Nations, '[Convention on the Prevention and Punishment of the Crime of Genocide](#)', as entered into force 12 January 1951.

² BBC, '[Genocide under the Nazis \(the Holocaust\)](#)', accessed 27 July 2022; and Holocaust Memorial Day Trust, '[Darfur: Genocide today](#)', accessed 27 July 2022.

³ United Nations, '[Convention on the Prevention and Punishment of the Crime of Genocide](#)', as entered into force 12 January 1951.

2. What other international agreements on genocide has the UK signed?

There are several other agreements to prevent genocide to which the UK is a signatory. Agreements include: the Rome Statute of the International Criminal Court; the responsibility to protect principle; and the Accountability, Coherence and Transparency Group's Code of Conduct.

2.1 Rome Statute of the International Criminal Court

The UK ratified the Rome Statute of the International Criminal Court on 4 October 2001.⁴ This statute established the International Criminal Court (ICC). The ICC investigates and tries individuals charged with crimes of concern to the international community, including genocide.

In 2001, the UK enacted the International Criminal Court Act 2001. This incorporated ICC crimes (such as genocide) into domestic legislation.

2.2 Responsibility to protect principle

As part of the United Nations (UN), the UK adopted the principle of 'responsibility to protect' (R2P) at a UN world summit meeting in 2005.⁵ This principle placed a legal obligation on member states to protect their populations from atrocity crimes such as genocide. The R2P principle has three pillars:

- The responsibility of each state to protect its populations.
- The responsibility of the international community to assist states in protecting their populations.
- The responsibility of the international community to protect when a state is manifestly failing to protect its populations.

⁴ International Criminal Court, '[United Kingdom](#)', accessed 27 July 2022.

⁵ United Nations, '[Responsibility to protect](#)', accessed 27 July 2022.

The government reaffirmed its commitment to R2P in response to the House of Commons Foreign Affairs Committee report ‘Global Britain: Responsibility to protect and humanitarian intervention’, published in 2018.⁶

2.3 Accountability, Coherence and Transparency Group’s Code of Conduct

In a 2015 speech, the then UK permanent representative to the UN, Matthew Rycroft, confirmed that the UK would sign up to the Accountability, Coherence and Transparency (Act) Group’s Code of Conduct (the code).⁷ The code requires members of the UN security council (the council) not to vote against any credible resolution that aims to prevent or halt atrocity crimes such as genocide.

The five permanent members of the security council have a special right to veto any security council resolution. If used, the respective resolution is deemed not approved. The five permanent members are the UK, the USA, China, France and Russia. Permanent members were given the power of veto because of their key roles in the establishment of the UN.

The code was developed by the Act group—a group of 27 states that are responsible for improving the working methods of the council—in response to concerns about the frequency of permanent council members using their power of veto in situations where atrocities either occurred or were at risk of occurring.

A complete list of vetoes is published by Security Council Report.⁸ The last UK veto of a council resolution occurred in 1989.

⁶ House of Commons Foreign Affairs Committee, ‘[Global Britain: Responsibility to protect and humanitarian intervention—government response to the committee’s twelfth report](#)’, 8 November 2018.

⁷ HM Government, ‘[Statement by Ambassador Matthew Rycroft of the UK Mission to the UN at the ACT Group event on the Code of Conduct](#)’, 1 October 2015; and Center for the Development of International Law, ‘[UN Security Council Code of Conduct](#)’, accessed 1 August 2022.

⁸ Security Council Report, ‘[The Security Council veto](#)’, accessed 1 August 2022.

3. The difficulties of defining and acting against genocide

Recent events, including the reported treatment of Uyghur Muslims in China,⁹ have led some to question whether the existing definitions of genocide are sufficient. Indeed, BBC News reported in April 2022 on the views of some analysts who said the convention's definition of genocide is so narrow that none of the mass killings perpetrated since the treaty's adoption would fall under it.¹⁰

The objections most frequently raised against the genocide convention include:

- The convention excludes targeted political and social groups.
- The definition is limited to direct acts against people and excludes acts against the environment which sustains them or their cultural distinctiveness.
- Proving intention beyond reasonable doubt is extremely difficult.
- UN member states are hesitant to single out other members or intervene, as was the case in Rwanda.
- There is no body of international law to clarify the parameters of the convention (although this is changing as UN war crimes tribunals issue indictments).
- The difficulty of defining or measuring a group's destruction "in part" and establishing how many deaths may equate to genocide.

However, as the BBC article noted, other commentators have suggested that genocide is recognisable. For example, former Secretary-General of Medecins Sans Frontieres (MSF) Alain Destexhe contends that genocide remains distinguishable from all other crimes "by the motivation behind it".¹¹

⁹ BBC News, '[Who are the Uyghurs and why is China being accused of genocide?](#)', 24 May 2022.

¹⁰ BBC News, '[How do you define genocide?](#)', 4 April 2022.

¹¹ BBC News, '[How do you define genocide?](#)', 4 April 2022; and Alain Destexhe, 'Rwanda and Genocide in the Twentieth Century', 1995.

He added:

Genocide is a crime on a different scale to all other crimes against humanity and implies an intention to completely exterminate the chosen group. Genocide is therefore both the gravest and greatest of the crimes against humanity.

He has expressed concern that the term genocide has fallen victim to “a sort of verbal inflation, in much the same way as happened with the word fascist”, becoming “dangerously commonplace”.

Michael Ignatieff, former director of the Carr Centre for Human Rights Policy at Harvard University, has voiced a similar view, arguing that the term has come to be used as a “validation of every kind of victimhood”. For example, he examines the case of slavery, which has been called genocide and yet he contends was a “system to exploit, rather than to exterminate the living”.¹²

4. What would the bill do?

The bill would provide for the High Court in England and Wales, the High Court in Northern Ireland, and the Court of Session in Scotland, to make preliminary determinations as to what constitutes genocide in accordance with the UK’s obligations under the genocide convention.

Clause 1 of the bill would mean that a person or group belonging to a national, ethnic, racial or religious group, or an organisation representing such a person or group, may make an application to the court for a preliminary determination—subject to certain restrictions, as provided for in clause 4—that evidence presented to the court is sufficient to find that there is a serious risk of genocide or that genocide is being, or has been, committed.

¹² BBC News, [‘How do you define genocide?’](#), 4 April 2022.

Clause 2 would provide for operational provisions, including that the secretary of state may make regulations which specify the form, content, and criteria for admissibility of applications, and the procedure to be followed.

Clause 3 would provide for a mechanism through which cases where genocide is determined by UK courts to have occurred, or is at serious risk of occurring, to be referred to the International Criminal Court, International Court of Justice, or other relevant international organisations.

Clause 4 would place a duty on the secretary of state to respond in writing to a report produced by the responsible committee of the House of Commons or House of Lords if it concludes that there exists credible evidence of a serious risk of genocide or that genocide is being, or has been, committed outside the United Kingdom. Such a response must have been issued before an application to the UK courts can be made under the provisions of clause 1.

Lord Alton introduced similar legislation the 2016–17, 2017–19, 2019–19 and 2019–21 parliamentary sessions. None of the bills progressed to their second reading. However, recent legislative changes have been made regarding genocide as a result of the recent Trade Act 2021, as explored below.

5. Genocide amendments to the Trade Bill 2019–21

Lord Alton spoke to a series of amendments related to genocide at report stage of the Trade Bill 2019–21 (now the Trade Act 2021), some of which would have similar effect to his private member's bill, enabling the courts to determine that an international trade agreement should be revoked if a signatory country has committed genocide.¹³

¹³ House of Commons Library, '[Trade Bill 2019–21: Lords amendments](#)', 17 January 2021.

Introducing the provisions, Lord Alton said:

Amendment 9 straightforwardly asks the House to give the High Court of England and Wales the opportunity to make a predetermination of genocide if it believes that the evidence substantiates the high threshold set out in the 1948 UN Convention on the Prevention and Punishment of the Crime of Genocide, to which the United Kingdom is a signatory.¹⁴

The amendment covered similar ground to amendments covered earlier in the debate at report stage and at the bill's committee stage. Commenting on that debate, Lord Alton added:

Three speeches were made in committee that explain the thinking behind this amendment very well. The noble Lord, Lord Stevenson of Balmacara [Labour], rightly said that enabling the UK High Court [sic] to make legal determinations on genocide is preferable to other legal avenues. Pursuing such claims through international courts has proven ineffective. The amendment provides a respected means to assessing genocide, allowing the UK to live up to its legal commitments on genocide. He is right. The noble Baroness, Lady Northover [Liberal Democrat], added that future trade deals may not be subject to parliamentary scrutiny, so it is imperative that the government decide now to rule out deals with perpetrators of genocide [...]

My noble and learned friend Lord Hope of Craighead [Crossbench], [said] there is inadequacy in the judicial architecture currently in place. In comparing the genocide convention with the convention on torture, he said: "The UN Convention on the Prevention and Punishment of the Crime of Genocide now seems, with hindsight, to be a deplorably weak instrument for dealing with the challenges we face today ... we can now see, in today's world, how ineffective and perhaps naive this relatively simple convention is".

¹⁴ [HL Hansard, 7 December 2020, col 1059.](#)

The noble and learned Lord said that the amendment would “allow for due process in a hearing in full accordance with the rule of law”. It would “achieve its object” and result “in a fully reasoned judgment by one of our judges. That is its strength, as a finding by a judge in proceedings of this kind in the applicant’s favour will carry real weight, quite apart from the effect it will have on the relevant agreement”.¹⁵

Lord Alton added that the amendments would not provide for criminal prosecutions to be carried out in UK courts, but to establish whether there was sufficient evidence available.

Other members spoke in support of the provisions, including Baroness Kennedy of the Shaws (Labour), who also spoke to the issue of the courts defining criminality. She said:

The noble Lord, Lord Alton, explained the purposes of this amendment: the genocide amendment. Its purpose is to ensure that there is a preliminary determination by the High Court, not any lower court, as to whether there is genocide. It is pre-emptive: the whole purpose of the genocide convention was to prevent genocide by placing a duty on nations to act to prevent it. I will say immediately what this genocide amendment is not: it is not, to use the language of the noble Baroness, Lady Noakes [Conservative], an effort to swamp the courts. The bar is so high that such a case could not possibly be brought before the High Court of this country and have any serious reception if it were not presented with a whole body of evidence that was highly persuasive and involved eminent lawyers who could testify to the bar having been passed on the definition of genocide [...]

The final thing that this is not is that it is not about determining the liability of individuals for criminal offences. That is not what the High Court would be doing in this case at all. Individual determinations of criminality would not be before the court and would not be determined by the court.¹⁶

¹⁵ [HL Hansard, 7 December 2020, cols 1059–61.](#)

¹⁶ [HL Hansard, 7 December 2020, cols 1062–3.](#)

Responding for the government, Lord Younger of Leckie said ministers “share[d] wholeheartedly the concerns underpinning this amendment”.¹⁷ However, in the case of trade agreements, the minister argued that such provisions would risk the separation of powers between the courts and Parliament. He also noted that the evidential threshold for defining genocide is high, which could lead to long and costly legal proceedings:

The key point is that this would strike at the heart of the separation of powers in Britain’s constitutional system, allowing the High Court to frustrate trade agreements entered into by the government and ratified after parliamentary scrutiny. The noble and learned Lord, Lord Hope, raised a point about the separation of powers and the role of the courts. The government’s position has consistently been that only a competent court should make determinations of genocide, and this does not entail the courts having the power to revoke trade agreements. State genocide is very difficult to prove in the judicial context—the evidential threshold is very high, and proceedings tend to be long and costly but the amendment would make it simple to bring vexatious allegations of genocide to the court as a means of putting political and international pressure on the government.¹⁸

Despite these reservations, the amendment received support and was inserted into the bill in the House of Lords. The amendment also received support from external organisations such as the International Bar Association’s Human Rights Institute and the Board of Deputies of British Jews.¹⁹

However, the provision was removed during the House of Commons consideration of Lords amendments debate on 19 January 2021.²⁰

¹⁷ [HL Hansard, 7 December 2020, col 1085.](#)

¹⁸ [HL Hansard, 7 December 2020, col 1086.](#)

¹⁹ International Bar Association, ‘[IBAHRI calls for UK Parliament to recognise the essential role of courts in applying the genocide convention](#)’, 29 January 2021; and Board of Deputies of British Jews, ‘[Board of Deputies reacts to narrow defeat of the genocide amendment](#)’, 19 January 2021.

²⁰ [HC Hansard, 19 January 2020, cols 793–901.](#)

Several iterations of the amendment were moved during subsequent debates but did not form part of the final Trade Act 2021. Instead, a compromise amendment was agreed to.²¹ This provision will enable a House of Commons committee to identify credible reports of genocide and insist on a parliamentary debate if the committee is not satisfied with the government's response to its report.²²

²¹ UK Parliament, '[Lords agrees to Commons Trade Bill compromise](#)', 24 March 2021.

²² More information on the amendments in the House of Lords can be found in the House of Commons Library briefing: '[Trade Bill 2019–21: Lords amendments](#)', 17 January 2021.

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