



Strengthening UK Law on Genocide, War Crimes and Crimes Against Humanity

House of Lords Briefing Note on planned amendments to the Coroners and Justice Bill June 2009

The Aegis Trust

1. The Aegis Trust campaigns against crimes against humanity. It runs the Kigali Memorial Centre in Rwanda, the Holocaust Centre in the UK, and co-ordinates the All Party Parliamentary Group for Genocide Prevention.

Amendments to the Coroners and Justice Bill

2. Baroness D'Souza and Lord Carlile of Berriew QC plan to introduce amendments to Coroners and Justice Bill to expand the UK's jurisdiction to prosecute persons in the UK who are suspected of committing war crimes, crimes against humanity and genocide in or outside the UK. The amendments would amend the International Criminal Court Act 2001 (*ICC Act*) which determines the UK's jurisdiction for crimes against humanity, war crimes and genocide.

Why are the amendments necessary?

3. There is an anomaly in the law: UK courts have the jurisdiction to prosecute perpetrators for crimes against humanity, war crimes and genocide, irrespective of where the crimes are committed, if (i) the suspects are UK nationals or 'resident' in the UK; and (ii) the crime was committed after 2001. Currently, there are people in Britain who are suspected of war crimes, crimes against humanity or genocide but, because the crimes were committed prior to 2001 and because the suspects are not UK residents or nationals, they cannot be prosecuted.
 - a. **Timing:** §70(3) of the *ICC Act* limits the jurisdiction of UK courts to crimes committed after the introduction of the Act. Therefore, people suspected of genocide, war crimes and crimes against humanity who are in the UK can only be prosecuted here if the acts were committed after 2001 (when the *ICC Act* came into force). Prosecution in the UK is not possible if the crime was committed before 2001.
 - b. **Presence:** In addition to the timing constraint, these crimes can only be prosecuted in the UK if the suspect is a UK national or resident. Visitors and other non-residents may not

be prosecuted. The anomalous result is that a person suspected of atrocity crimes committed prior to 2001 can be present in the UK without being resident and thereby escape prosecution.

- c. **Immigration action or extradition:** Of course non-UK nationals who are suspected of war crimes may be deported or extradited but only if the UK is certain that the receiving country will provide a fair trial and/or respect that person's human rights. If not, the suspect would be permitted to remain in the UK. If and until that person becomes a UK resident, s/he would not be subject to the UK's criminal jurisdiction for the alleged crimes. It is also not possible to use immigration rules to expel a suspect from the UK where extradition fails ('disguised extradition'ⁱ) – to the same country.
- d. **Internal Conflicts:** International law distinguishes between internal and international conflicts. UK courts have jurisdiction regarding crimes committed in *international* conflicts since 1957 but not where the crimes were committed in an *internal* conflict prior to 2001 (and after 2001, such crimes may be prosecuted only if the suspect is a UK national or resident). Since 1945 most serious conflicts have been internal (for example, the conflicts in Sri Lanka or Rwanda) and yet, for the most part, the commission of crimes during such conflicts could not be prosecuted in the UK.
- e. **Inconsistency:** These problems exist only in respect of crimes against humanity, war crimes or genocide and not in respect of other international crimes, such as hostage-taking and torture. See table below. The former Director of Public Prosecutions, Sir Ken Macdonald QC, has argued that these distinctions 'lack moral logic'.ⁱⁱ

This table sets out the UK's jurisdiction over the crimes discussed above:

Crime	Prosecutable if you are a UK resident?	Prosecutable if you are present on UK soil but not a UK Resident?
Genocide	Yes – for crimes committed since 2001 (ICC Act)	No
Crimes against Humanity	Yes – for crimes committed since 2001 (ICC Act)	No
War Crimes - internal conflicts	Yes – for crimes committed since 2001 (ICC Act)	No
War Crimes – Nazis	Yes– for crimes committed between 1939-45 (War Crimes Act)	No
War Crimes - international conflicts	Yes – for crimes committed since 1957 (Geneva Conventions Act)	Yes – from 1957
Torture	Yes – for crimes committed since 1988 (Criminal Justice Act)	Yes – from 1988
Hostage-taking	Yes – for crimes committed since 1982 (Taking of Hostages Act)	Yes – from 1982

The problem in practice

4. On April 8th 2009, the High Court ruled that four Rwandans living in the UK and suspected of genocide in Rwanda in 1994 could not be extradited to Rwanda because there was a ‘real risk’ they would suffer a ‘flagrant denial of justice’. As things currently stand, the suspects cannot be prosecuted in the UK for genocide. The Crown Prosecution Service has ruled that their alleged crimes do not fit the offences of torture or hostage taking – for which the UK has full extraterritorial jurisdiction. These four suspects have therefore been released without trial.
5. There are other suspects here in the UK. For example, since 2004, the UK Border Agency has considered 1,863 cases of people suspected of war crimes, crimes against humanity and genocide and it investigates about 600 cases per annum.ⁱⁱⁱ Sixteen per cent (c 300) of those 1,863 cases have been referred for immigration action and of these, 138 have been had such action taken against them.^{iv} Twenty two cases have been referred to the police.^v

The amendments’ key provisions

6. **Temporal jurisdiction:** The amendments would enable UK courts to have jurisdiction with respect to crimes against humanity, war crimes and genocide committed prior to 2001. To avoid the retrospective application of law, the courts could only have jurisdiction from the date on which these acts became crimes according to UK law. Therefore, in respect of:
 - a. Genocide – only if the crime was committed after **9 December 1948** (being the date when the Genocide Convention was approved by the General Assembly of the United Nations);
 - b. Crimes against Humanity – only if the crime was committed after **1 January 1991**, being the date from which the United Nations, through the adoption of the Statute of the International Criminal Tribunal for the former Yugoslavia, recognised crimes against humanity as a crime under customary international law (New Zealand used this date when retrospectively applying jurisdiction over crimes against humanity).^{vi}
 - c. War crimes –
 - (i) for those which fall within article 8.2(a) or article 8.2(c) of the Rome Statute, only if the crime was committed since **12 August 1949** (being the date the Geneva Conventions were done),
 - (ii) other than those referred to in sub-paragraph (i), only if the crime was committed **since the date when they were criminal according to the general principles of law recognised by civilised nations.**

The non-Geneva Convention war crimes mentioned in c.ii above could not be retrospectively applied further back than 1945 – as the War Crimes Act (1991) confers jurisdiction for war crimes in Nazi occupied territory between 1939 and 1945.

7. **Presence:** The Amendments would expand the jurisdiction of UK courts in respect of suspects who are *present* in the UK and not only those who are UK nationals or residents. A simple presence requirement would bring the UK into line with other common law countries, such as Australia, New Zealand, Canada, South Africa and the US (for genocide only).
8. **Discretion and the public interest:** The decision to bring a prosecution would remain within the discretion of the DPP. Any prosecution would also, as now, require the consent of the Attorney-General.

Resource implications

Law reform in this area will only be effective if police officers are appropriately resourced to investigate such crimes. The resources for this would not be extensive. In Sweden, for example, the newly established War Crimes Unit comprises 10 investigators and has a budget of US\$2.6m for 2008/9. There are currently 30-40 investigations ongoing in Sweden.^{vii}

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ⁱ Bozano v France (1987) 9 EHRR 297.

ⁱⁱ Speech by the Director of Public Prosecutions, Sir Ken Macdonald QC, to the APPG Genocide Prevention and Parliamentary Human Rights Group, October 21st 2008.

ⁱⁱⁱ <http://www.publications.parliament.uk/pa/cm200708/cmhansrd/cm081014/text/81014w0013.htm#08101492000857>

^{iv} <http://www.publications.parliament.uk/pa/cm200708/cmhansrd/cm081113/text/81113w0013.htm#081113122000907>

^v <http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm081215/text/81215w0047.htm#0812167001567>

^{vi} Secretary-General's Report on the ICTY Statute, 3 May 1993 (S/25704), paragraph 34, holding that crimes against humanity are "beyond any doubt part of customary law".

^{vii} <http://www.thelocal.se/8454/20070911/>