

Dr Jean-Pierre Gauci

Speaking Notes: All Party Parliamentary Group Rule of Law

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1. Focus of contribution: Is the Bill compliant with the UK's international legal obligations and in particular the 1951 Refugee Convention?

Short Answer: NO

The bill violates a number of direct provisions of the refugee convention including:

- **Article 31** of the Refugee Convention – **non-punishment** of refugees for their 'illegal entry' into the country – surely complete exclusion from protection avenues; detention and destitution are punishments within the scope of the article. Whilst some have sought to present an interpretation of Article 31 as being limited only to those coming to the UK directly from their country of origin, this is an incorrect interpretation of the provision which refers to people
- **Article 33** of the Refugee Convention – prohibition of returning an individual to a place where they will not be safe.

Beyond the refugee convention, the Bill also results in violations of:

- **Article 3 of the ECHR** with Article 13 of the ECHR – Negative and Positive obligations of States party to the convention – including as set out in *Hirsi Jamaa and others v Italy*
- Article 3 of the **Convention Against Torture**
- International Covenant on Civil and Political Rights **ICCPR**
- As well as more specialised instruments – e.g., Convention on the Rights of the Child
- Etc.

And also, as a result of the detention provisions:

- Article 5 of the ECHR with Article 13 ECHR [and provisions in other international instruments on the right to liberty]
- Arguably, the prohibition of collective expulsion(?)

More broadly however, the bill also amounts to a violation of the general purpose and objects of the 1951 Convention, which implies a need to check for eligibility to refugee status

- The bill amounts to a '**refugee ban**' – no right to seek asylum for anyone arriving in the United Kingdom via irregular channels;
- Individual assessment – the bill **removes the individual assessment** and instead makes the ability to enter into the system at all entirely dependant on mode of entry
- Critically – **refugee status is declaratory** – meaning that the UK is bound to treat everyone as if they were a refugee until they are determined not to be; and moreover it means that under international law the UK would be in violation if it doesn't treat refugees as refugees.
- The Vienna Convention on the Law of Treaties and Customary International Law require States to perform the agreements they enter into and to do so in **good faith**.

There have been arguments around whether people should be entering the country illegally. However, it is worth noting that:

- **(Legal) access to the UK is virtually impossible** except in limited situations where specific routes have been put in place (Afghanistan, Ukraine); for the rest, irregular arrival remains the only available option
- The Refugee convention does not include a provision requiring governments to determine refugee status – yes, but only because this was considered to be so **self-evident** and so fundamental to the achievement of the goal of the treaty that it needed not be set out.
- The Convention is outdated: the convention, whilst adopted in 1951 has been consistently interpreted in ways to reflect evolving realities; it has been supplemented by more recent developments in international human rights law (including the adoption of instruments like CEDAW, the Convention on the Rights of the Child etc.). Importantly, the Convention and its foundational principles were re-iterated in the **Global Compacts** on Safe, Orderly Migration and on Refugees (both soft law instruments) adopted as recently as 2018.

The bill also raises a number of other important rule of law issues including (but not limited to):

- Curtailing **access to the courts** including the immigration tribunal making appeals from the draconian measures imposed by the Bill practically impossible and often subject to decisions by the Home Office rather than judicial bodies;
- Increasing the **discretion** of the home secretary (e.g., on the application of interim measure) whilst reducing the capacity of the courts to act;
- Creating increasingly burdensome procedures (e.g., making the only access to any form of protection procedure an appeal on serious harm grounds) whilst making **the timescales and access to a lawyer all but impossible to meet.**

2. How will the Bill impact the UK's standing as a beacon for the rule of law internationally?

- Reputation will be severely **damaged**;
- Partners the UK is trying to agree to work with (including in trying to reach return agreements) will see the UK as faltering on its international promises and obligations and therefore not a reliable partner;
- This will also have impacts well beyond the migration/refugee space – people and States will **lose trust** in the UK
- The UK was a strong proponent of the Refugee Convention when it was developed.

3. How will the Bill impact refugees and persons seeking asylum in the UK, including children?

- Short term: **Detention** with its known impacts on physical and mental health.
- Medium to long term: Effectively the UK is walking into a situation where very significant numbers of people will be in the UK **without any status**, right to work etc. This will make them **increasingly vulnerable to exploitation and trafficking**; it will hinder integration and therefor

social cohesion, raise significant risks to physical and mental health and increase the risk of dependency and destitution.