

The Baroness Chakrabarti
House of Lords
London
SW1A 0PW

24th October 2025

Dear Shami,

BORDER SECURITY, ASYLUM AND IMMIGRATION BILL: HOUSE OF LORDS COMMITTEE

I am writing further to the debate in the Lords Committee on Monday 13th October (Official Report 13 October Column 113) to provide further details in relation to your suggested amendments 184 and 185, concerning the Refugee Convention.

The Government is, of course, committed to upholding its obligations and commitments under international law and has due regard for both the Refugee Convention and domestic legislation which enshrines this regard into immigration policy, such as the Immigration and Asylum Appeals Act 1993 and the Asylum Act 1999.

As you said when moving your amendments, the UK already shows great deference to international law in the form of the Human Rights Act 1998, which enshrines the European Convention on Human Rights into domestic legislation. As mentioned, section 4 of said Act provides the courts with the ability to make a declaration of incompatibility in cases where it is felt that UK legislation is not compatible with a Convention right in such cases where the primary legislation concerned prevents removal of the incompatibility.

Whilst ensuring consideration of, and adherence to, international law is of course a goal which the Government supports, there is also the need for flexibility in interpreting the Refugee Convention as well as an understanding that it does not and cannot realistically apply to all signatory states in the same way in which it did in 1951. Countries must retain the ability to tailor the way in which the Convention is adopted into their own domestic legislation so as to be best equipped to meet the challenges of migration in the modern day, which are greatly different from those of post-War Europe.

In committing to an enshrinement of the Refugee Convention, in the vein of that of the ECHR in the Human Rights Act, Parliament would effectively be ceding decisions about policy to judges when they are more legitimately the business of Ministers and Parliament, recognising that Ministers are accountable to Parliament and to the Courts. The comparison with the ECHR is not an entirely fair one, as in that case there is a supra-national Court which decides on its interpretation. One of the main purposes of the Human Rights Act 1998 was to spare litigants the need to go to the European Court of Human Rights to have their rights vindicated, something which would not apply to the changes you

suggest. I am also concerned that, if enacted, declarations of incompatibility would be of questionable utility given that, in the current context of the Human Rights Act, they do not, as the Act states, “affect the validity, continuing operation or enforcement of the provision in respect of which it is given and are not binding on the parties to the proceedings in which it is made”.

On the subject of amendment 185, as mentioned in the debate, Article 31 is already referenced in domestic legislation in section 31 of the Asylum Act 1999. Section 31 provides a good faith interpretation of Article 31 of the Convention and provides a legal defence for asylum seekers who commit certain specific offences in their coming to the UK.

Again, the Government naturally takes its obligations under the Convention seriously, particularly when it comes to safeguarding those fleeing oppression and persecution. The offences set out in section 31 were chosen in order to provide those who have fled a dangerous home and reached this country in keeping with the stipulations set out in the Convention. In the case of documents, the possession or lack of them is not the salient point; it is more the methodology of entry which informs the defensibility of the illegal entry or arrival. The defence is not intended to be a blanket exemption from immigration offences, in particular for the facilitation offence which you mentioned during the debate, an offence which is specifically targeted at those who facilitate other migrants’ illegal journeys, very often putting them in extreme danger of serious injury or death.

The Convention is quite clear about the need for migrants to “come directly” to benefit from the protections it affords them. In reality, not a single small boat that has reached the UK has set out from a dangerous country where migrants could not be reasonably expected to claim asylum. France, Belgium and the Netherlands are all signatory to the Convention and are entirely safe countries with functioning asylum systems of which migrants are able to avail themselves.

Any extension of the list of offences for which section 31 provides a defence would be inappropriate. It would send the message that any and all irregular migration to the UK is essentially legal and embolden the people smugglers who endanger innocent migrants seeking to reach the UK and who the Government is determined to bear down on in part through this legislation.

I hope this explanation helps. I look forward to further debate of the Bill as it progresses to Report stage, commencing on Tuesday 28th October. I will also send a copy to those Peers who spoke in the debate and place a copy in the library of the House.

Best wishes,

A handwritten signature in dark ink, appearing to read 'Mike', with a horizontal line drawn underneath it.

**The Lord Katz MBE
Lord in Waiting (Government Whip)**