INTERNATIONAL COURTS – A FORCE FOR ORDER AND JUSTICE

Lawyer and parliamentarian **Lord Garnier** traces the story of Europe's Human Rights Convention and Court. He warns anti–Europe critics that moving away from the rule of law and core international agreements would create a massive headache for any UK prime minister – and leave us all worse off.

I first arrived in the House of Commons in May 1992. At that time, the subject most often chewed over at Westminster was our relationship to Europe – and this has remained the case ever since. Most of the time it has been about our relationship with the European Union.

I made my maiden speech during the Committee stage of the bill to ratify the Maastricht Treaty agreed in December 1991. I spoke at about 12.30am so there was no one in the Chamber apart from Douglas Hurd, the Foreign Secretary, who kindly came from his room to listen to my speech, and those, unlike him, who had to be there.

Beyond praising my predecessor, Sir John Farr, and extolling the beauty and economy of my constituency, I said this: 'In delegating power to Europe, as we must do occasionally, we do not abdicate it, but delegate it. To pass the [Maastricht ratification] Bill is to ensure the orderly development of Europe and, what is more, to reinforce it with the authority of this ancient House.'

Scroll forward over 25 years later to my maiden speech in the House of Lords. I referred back to that night in May 1992: 'It seems that the relationship between the European Union and the United Kingdom has dogged my political life like two squabbling passengers at the back of a bus—no matter where you sit, you can still hear them.'

It is not just our relationship with the EU which has caused the noise at the back of the bus. There seems to have been, increasingly, a good deal of sound and fury directed against that other European institution, the European Convention on Human Rights (ECHR) and its subsidiary, the European Court on Human Rights (ECtHR).

Having left the EU there now seems to be a growing, but not yet overwhelming demand that the UK should leave the ECHR, a treaty organisation we have been part of since the 1950s, 20 years before we joined the EU.

It is regrettable that some of those who advocate our departure from the convention do so on the basis that the ECtHR is a foreign court and that we are being governed by dubious foreign judges from countries full of, guess what, foreigners. The UK is a founder member of the convention and participates in it on equal terms with our fellow members, including by having a UK judge sitting on the court. Notably, this criticism often comes from the same people who accept without question that we should remain a member of NATO, another 'foreign' organisation led by politicians and military leaders from other countries who, under the terms of the 1949 Washington Treaty, can command us to go to war and fight alongside them.

The argument about the folly of remaining in the ECHR is perhaps not so much about the terms of the convention, but more about the way in which the court interprets ECHR rights and applies them to the United Kingdom as and when it does. The court's preliminary refusal to accept the involuntary removal of asylum seekers to Rwanda as convention–compliant sent many into a frenzy of antagonism for this 'foreign' court. This was made worse when our own Supreme Court concluded that just because the government asserted that Rwanda was a safe destination for illegal immigrants to Britain did not make it so. Admittedly not full of foreign judges, the court was full of something apparently even worse, 'leftie lawyers' who might as well be foreign for all the loyalty they have to parliament and the elected government. We have now passed a law in parliament, The Safety of Rwanda (Asylum and Immigration) Act, to make it clear that Rwanda is for all purposes safe. That's an end of the matter – enacted as a fact for all time.

This is not the first time in the recent past we have watched such legislative acrobatics to sidestep the ECHR – Dominic Raab's Bill of Rights Bill, for example, put forward in various forms over the last decade. The most recent version, as previously, created far more problems than it claimed to solve. This is perhaps why the government eventually saw the light and dropped it. Significantly, Mr Raab asserted that the Bill would make it possible for UK courts to ignore ECHR rulings in Strasbourg, even while the UK remained a committed member of the European Convention.

The cold reality is that provisions on Rwanda's safety, and shutting out the courts, is nonsense. If the UK is to remain a signatory to the European Convention – which it should for a host of legal, reputational, and economic reasons – then it will continue to be bound by decisions of the Strasbourg court.

This is how international treaties work. To be a signatory to a convention requires a shared interpretation of what that convention means. But the Rwanda Act tells our courts, and by implication the ECtHR through the disapplication of the convention and any legal routes of appeal, that to all intents and purposes we will not be applying the convention. This goes far beyond the '*margin of appreciation'* which Strasbourg already allows states to apply.

This a matter of international law, and it is beneficial for the UK to uphold the consistent application of the European Convention, which was written by Conservative lawyers under the shadow of the wreckage of World War II. It was designed to break the cycle of conflict that dominated Europe and ensure countries across the continent were bound by minimum standards to secure a stable and prosperous peace.

Only one country has ever willingly left the European Convention: Greece jumped before it was pushed after its fascist military coup in the 1970s: it has since re–joined. Russia was expelled recently following its illegal invasion of Ukraine. In addition to the UK, only Hungary and Poland under its last government proposed to undermine the convention; both with questionable commitments to the rule of law.

Some would argue, 'ignore the ECtHR' rather than withdraw. But doing that would create conflict with and divergence from the European Court and its interpretation of the convention and, inevitably, many more UK cases would go to Strasbourg and the court would rule against the UK more often.

In reality, 1 per cent of current pending cases at the European Court relate to the UK and 98 per cent of all UK cases since 1975 have been closed by the court. We are a rule–of–law nation; we drafted the European Convention; and when we argue our corner in court, we are listened to with respect and, more often than not, we win. Ignoring or ridiculing the ECtHR is, frankly, embarrassing. We should be in court making the arguments.

The UK's current obsession with the European Court must seem at best bizarre, at worst extremely objectionable to our allies across Europe who remain committed to the international rules–based system upon which so much of our trade and diplomacy depends.

Our international standing as an upholder and exporter of the rule of law is at risk of being irreparably damaged – and that damage is already underway. Scores of governments, including Belgium, Canada, Germany and even Ukraine (despite its current situation and being a recipient of UK military support) publicly expressed concern over the Raab Bill of Rights which did not go as far as legislating for withdrawal from the convention altogether.

The UN High Commissioner for Human Rights, Michelle Bachelet, expressed concern about the UK government's plans in speaking to the UN Human Rights Council. Strikingly, it appears to be unique for the UK to be mentioned in this context, not least because not properly implementing the European Convention would breach the Good Friday Agreement, which requires the European Convention to be incorporated into Northern Ireland law. By undermining the current arrangements for Northern Ireland we would risk threatening the delicate peace settlement in Northern Ireland, in which Ireland and the United States, in particular, have a strong interest in maintaining. Imagine the despair from our allies across Europe and in the US were the UK to leave the convention altogether.

Our recent experience shows how international markets react to instability and uncertainty. What would investors make of a UK hell bent on moving away from the rule of law and undermining core international agreements it is signed up to? Ignoring our obligations under the European Convention, or worse, withdrawing from it altogether, would create a massive headache for any UK prime minister – and would leave us all worse off. We must ask ourselves, is it worth the trouble?

The views expressed in this essay are the author's own and not those of Amnesty International UK