IS THE EUROPEAN CONVENTION WORKING?

INTRODUCTION

As you will be aware the present government at Westminster is carrying out a review of the operation of the Human Rights Act and of the ECHR. This was announced in the Queen's speech and trailed in a Conservative Party paper published last October and repeated in the Conservative manifesto.

In the year of the 800th anniversary of Magna Carta, in which the Prime Minister has played a leading role in its commemoration, the Conservative Party-my Party, is mired in doubt as to the benefits that both the ECHR and the Human Rights Act have delivered. The intention behind the Convention is lauded. But while it is described in the paper as "an entirely sensible statement of the principles which should underpin any democratic nation" it then goes on to assert that "Both the recent practises of the Court and the domestic legislation passed by Labour (that is to say the HRA) has damaged the credibility of human rights at home". It accuses the Strasbourg Court of mission creep and outlines a programme of fundamental change, advocating the repeal of the HRA and its replacement by a new Bill of Rights which would "clarify" rights particularly under Articles 3 and 8, to prevent their abuse in respect of deportation cases and to confine the right to invoke a breach of human rights to "cases that involve

criminal law and the liberty of the individual, the right to property and other serious matters", providing a threshold set by Parliament below which Convention rights will not be engaged. It wants to limit the reach of human rights cases to the UK removing the activities of British armed forces from its scope. It also advocates breaking the link between British courts and the Strasbourg Court so that no account has be taken in future of the rulings of that Court and asserts a desire to negotiate a new status for the UK where the Strasbourg Court judgments are merely advisory and no longer an international legal obligation to implement, or if this cannot be achieved, leave the Convention entirely.

And lest it be thought that all this is entirely a quirk of my own Party, it is noteworthy that some sections of the Press are even more hostile to the Convention and actively campaign for our withdrawal from it without any prior negotiation to try to achieve change. Furthermore, while other political parties have generally displayed greater enthusiasm for the Convention and for the Human Rights Act, this has often been muted when it has come into conflict with issues that might not be electorally popular. Thus, when Parliament at Westminster debated its response to the judgment of the European Court of Human Rights in Hirst and Green and MT on prisoner voting, the silence from the Labour opposition front bench and the SNP at Westminster and from the SNP government in Edinburgh, on whether or not the judgment should lead to Parliament changing our law to bring us into compliance with the decision of

the Strasbourg Court, was very noticeable, just as was the fact that a previous Labour government had succeeded when in office in procrastinating for five years so as to avoid having the issue properly addressed at all.

So it was with these matters in mind that I felt it might be useful to concentrate, principally this evening, not so much on the impact of the Convention domestically but on its impact elsewhere. For if we are set on a course of action that may lead to our withdrawal from the Convention it is important for us to assess what impact this might have on the way the Convention works for others.

THE INTENTION BEHIND THE CONVENTION

In understanding the working of the Convention, a good starting place is why it was created in the first place. We know that in the years after the end of the Second World War there was a widespread and laudable drive to try and create international structures that might help ensure that its horrors were not repeated. It was this that led to Eleanor Roosevelt promoting the UN Universal Declaration of Human Rights and Freedoms and to her describing it as the Magna Carta of the 20th century. It was in order to give the aspirations of the UN Charter some possibility of implementation in practise, that the member

states of the newly formed Council of Europe created the European Convention and agreed between themselves by treaty that its terms would, if a challenge arose as to its interpretation, be adjudicated on by an international tribunal, the European Court of Human Rights. They bound themselves under Article 46 to observe and implement its findings made against any of them in a particular case.

It is doubtless true that most Britons considered in 1950 that our Common Law tradition of liberties and our unwritten constitution upheld by a democratic parliament offered a better level of protection for freedom than any continental model. So in signing up to the Convention we were doing something new. We were intent, at the risk of innovation, through the creation of rights that we ourselves believed that we already enjoyed as liberties, not so much on protecting ourselves, but on setting a standard of behaviour for states towards their citizens that could be universally applied. The ten key rights in the Convention, with the exception of Article 8 on the right to a private and family life, are classic expositions of the liberties which successive generations of Britons have taken to be their birthright.

But there were also clear differences of approach from our own tradition as one might expect in a document whose principal movers came from two very different

national traditions. The British participants led by David Maxwell Fyfe looked to establish a detailed list of clearly defined rights, whereas the Frenchand some other nations preferred a general list of principles that would be left to the Court to clarify by its decisions, derived from the ideas set out in the Declaration des Droits de l'Homme et du Citoyen. There was undoubtedly unease in official circles in Britain as to how it would work. The Foreign Office said in a memo that "to allow governments to become the object of such potentially vague charges by individuals is to invite Communists, crooks and cranks of every description to bring actions."

But this clear awareness of the potentially dynamic nature of the Convention did not deter us from signing up. Indeed we were the first country to ratify the Convention in 1951 and Lord McNair, a British legal scholar of renown became the first President of the Court of Human Rights in 1959. Most importantly the United Kingdom recognised the right of individual petition in 1966, with little argument to the contrary-indeed the principal advocate was Terence Higgins a right of centre Conservative MP who supported it as he feared the curbs on freedom which a socialist government might introduce. This more than anything has transformed the Court from a international tribunal intended to deal with a very limited number of cases into the institution handling thousands of cases which it is today.

An examination of the work of the Court since 1960, shows that its impact has been profound and beneficial.

In its early years it produced a series of landmark cases which have challenged and halted practises which were once considered acceptable in western democracies but which would now be seen as entirely unacceptable by the vast majority of our public. In Marckx v Belgium 1979 6383/74 the Court ended state discrimination against children on the grounds of their illegitimacy. In Ireland v UK 1978 5310/71 it ruled that British interrogation techniques constituted inhuman/degrading treatment; practises, I would add, that were commonly used by some other signatory states military forces at the time. In Dudgeon v UK 7525/76 in 1981 the Court held that the criminalisation of homosexual acts in private in Northern Ireland breached the Convention, a decision with beneficial consequences far wider than just the UK. Another case with widespread consequences concerned judicially sanctioned corporal punishment on the Isle of Man, which has led to its total disappearance in all member states.

What is striking about these decisions is how well they have stood the test of time. In every example, although they were controversial at the time, some of them extremely so, the human rights norms which they express are now ones we largely take for granted.

This is a key issue when one comes to consider one of the fundamental objections currently being raised against the ECHR by its domestic critics in our country. It focusses on the complaint that the Convention is being interpreted as a "living instrument" in a manner that undermines the intentions of its signatories. The implication if taken to its logical conclusion would be that the court should remain fixed in the moral and ethical standards of 1950. On that basis, none of the cases I have just cited would ever have been decided as they were, as the matters complained of would all have been considered acceptable at that time.

Moreover, judicial interpretation to reflect current values is not new and is rooted in our common law tradition and not just an invention of the Strasbourg Court. As Baroness Hale stated in her Gray's Inn Reading of 2011: "….it is in a comparatively rare case that an Act of Parliament has to be construed and applied exactly as it would have been applied when it was first passed. Statutes are said to be always speaking and so must be made to apply to situations which would never have been contemplated when they were first passed.

Thus in 2001, a " member of the family", first used in 1920, could be held to include a same sex partner. In 1998, "bodily harm" in a statute of 1861 could be

held to include psychological harm. And in 2001 “violence could be held to extend beyond physical violence into other sorts of violent behaviour.

And she went on:

“in all these examples, the court is seeking to further the purpose of the legislation in the social world as it is now, rather than as it was when the statute was passed”.

This is exactly what the Strasbourg Court was doing as it developed its jurisprudence in the cases I have just identified. It is also what it has continued to do more recently. In Rantsev v Cyprus and Russia 25965/04 it held that trafficking fell within the definition of slavery in Article 4 and placed a positive obligation on states to halt it. The same principle was used in S and Marper 30562/04 in 2009, to identify that the blanket retention of DNA, practised in England and Wales (the only jurisdiction in Europe to do this) was a breach of the right to a private life, even if the existence of DNA was unknown in 1950.

I have never heard a complaint against either of these decisions.

THE CONVENTION TODAY

The greatest change to the operation of the Convention since the right of personal petition became general has been in the enlargement in the number of member states of the Council of Europe. As most had previously been governed by Communist tyranny, the Convention and the Strasbourg Court has had to grapple with its consequential transformation from an international tribunal dealing with a limited, albeit growing number of cases, from countries in which the rule of law has become well established, into a court of final resort for some 800 million people, many of them living in states where the principles underpinning the rule of law are often misunderstood, misapplied or ignored.

Yet for all the challenges this has created for the functioning of the Court, to which I wish to return later, the Convention has been of the greatest importance in helping promote the Rule of Law in environments where it has never previously existed.

Let us look first at just a few examples-familiar I am conscious to many of you here but largely unknown to most of the British public.

In Campeanu v Romania 47848/08, the Court held a violation of Article 2 where a young man, abandoned as a child, HIV positive and mentally disabled was transferred aged 18 from a centre for disabled children to a neuropsychiatric hospital where he was found by a local NGO, in an unheated

room, with bed with no bedding, dressed only in a pyjama top and with no assistance to eat or use the lavatory. He died the same day.

In Mammadov v Azerbaijan15172/13, an opposition leader in that country published a blog post on a riot that contradicted the government's version of events. He was subsequently accused of inciting the riot in question and was imprisoned for seven years for endangering the lives of public officials. The Court held there had been breaches of Article 5 (1) as there was no basis for the reasonable suspicion required to justify his arrest and detention and of Article 5(4) as his claims as to the unreasonableness of his arrest had been dismissed without proper consideration-the court merely copying out the prosecutor's submissions on the matter; and of Article 6(2) in that the State had put out a press release indicating his guilt before he was tried.

In Avilkina v Russia 1589/09, the St Petersburg local authority was found to have violated Article 8, in ordering all hospitals to disclose medical information on those who had refused blood transfusions, with the intention of rooting out Jehovah's Witnesses. It was held that there had been no pressing need for this disclosure of confidential medical information, no prior opportunity to object and no effort made to balance the right of ensuring public health with the privacy of the applicants.

And I could go on, through a series of cases ranging from beatings up and torture in Russian police stations, in the context of a complaints system that does not work (Lyapin v Russia 46956/09) to a Ukrainian local authority rendering the applicant's house uninhabitable and his land unusable by the construction and development of a cemetery that breached environmental health laws and where compensation was refused (Dzemyuk v Ukraine 42488/02). These, regrettably almost routine cases, fill up the Court's caseload. And I have deliberately avoided cases such as Abu Zubaydah and Al Nashiri where Poland was to have participated in holding terrorist suspects in secret prisons and torturing them after their unlawful rendition by the United States or ground further ground breaking judgments such as Vallianatos v Greece 2014 29381/09 where the Greek government was held in breach of Articles 8 and 14 in not including same sex couples in their new "civil union". This has been followed by Oliari v Italy 18766/11 21/7/15 where the court has made a similar finding against Italy following three decades of failed efforts to give same sex couples legal recognition.

Looking at just one country with a difficult human rights record the extent and importance of the Convention's reach is readily apparent. In the case of Turkey, for example, it generated between 1959 and 2011 over 2400 decisions against it, the largest number of any member state in that period. It was responsible for 43% of all cases that came before the court alleging violations of Article 10 on

freedom of expression. These cover everything from the actions of the security forces against the PKK, the prosecution of an ex prisoner for writing an article criticising prison conditions, demands for the wearing of headscarves at universities, the lack of any provision to recognise conscientious objections to military service, the expropriation of Greek Cypriot property in northern Cyprus, and the legitimacy of banning a political party. In all of these the Strasbourg Court has, in the words of Basak Cali formerly a senior law lecturer at UCL now at Koc University, provided "a reasoned and authoritative statement about the boundaries between rights and the space for politics in Turkish domestic political discourse" and thus given "leverage and resources for those fighting for the entrenchment of a human rights culture in the legal and political discourse of their countries".

We can see the same thing in Russia, where despite the obstacles generated by those in authority, the continuing work of human rights groups in challenging the serious violations of human rights that have taken place in the north Caucasus has been empowered by the long list of cases on some of those violations brought before the Strasbourg Court.

In July of this year I had the opportunity of meeting with the Public Defender (Ombudsman) of Georgia. He emphasised to me that in the challenges he had to meet to promote the rule of law, the role of the Court and of the Council of

Europe in promoting compliance was crucial. Georgia had a long history of non observance of domestic law by state authorities and it was a very difficult legacy. But because the Georgian Government was also committed to its membership of the Council of Europe and the status it brings, he found at the end of the day that it would respond and reform its practices where required. Without that backing, he believed that his work would be made much harder if not impossible.

THE PROBLEM OF COMPLIANCE

One of the criticisms I most commonly hear in Britain of the working of the Convention, however, is that in many cases the Court's judgments are often unobserved. This is used as basis for arguing that the Convention's beneficial impact is waning and that it is ceasing to be of real value.

The recent 8th report of the Council of Europe into the implementation of judgments certainly highlights some serious problems. The number of cases where implementation has not been completed has for the last few years been stuck at around 11,000. It is no longer rising, as but its fall so far has been small.

Not surprisingly the source of the problem comes principally from the states that are breaching the Convention the most, although in the worst case Italy, it is principally linked to a vast number of repeat cases on the excessive length of judicial proceedings. But the other eight in descending order of non implementation are Turkey, Russia, Ukraine, Romania, Greece, Poland Hungary and Bulgaria. In the case of Hungary it reflects a serious deterioration in the current government's attitude to human rights abuses, much of which centre around cases involving discrimination against Roma. For Poland the picture is rather one of steady and sustained improvement over its previous failings in respect of over lengthy periods of imprisonment on remand. For the remainder the picture that emerges is one of systemic problems ranging through unlawful detentions and administrative acts violating privacy, non-enforcement of domestic judicial decisions, deaths and ill treatment in custody and in the Ukraine issues of judicial impartiality. In Russia there are issues of serious discrimination against persons who are LGBT.

The reports also highlight other states whose failures to respond to judgments may be numerically less significant but are in relation to their size substantial. These are Albania, Armenia, Azerbaijan (where the judgment in Mammadov has yet to be acted upon), Bosnia, Serbia, Georgia and Moldova. The contrast between most former Communist states and the rest of the member states of the Convention is therefore striking. Indeed apart from Italy there are no significant

implementation issues concerning such states apart from ourselves because of the failure to deal with Greens and MT over prisoner voting and the problems we are having in dealing with the substantial number of inquests arising from the Troubles in Northern Ireland. This I might add is rather contrary to the myth which circulates around some elements of the Press that states such as France ignore the consequences of adverse judgments of the Court or in the case of Germany can disregard them if contrary to its constitution. Indeed one recent example is the case of M v Germany, where the Constitutional Court differed from the ECHR on the emotive issue of the legality of retrospectively imposed preventative detention. Despite a public outcry that dangerous criminals would be released, the Court and the German Government accepted the need resolve the matter. France too, has had to accept changes to the status of foreign birth certificates for children born from a surrogacy arrangement, following the judgement in Mennesson 65192/11 in 2014.

And as the Council of Europe report shows, despite long delays in some countries, compliance is generally eventually achieved. The average period for the states under scrutiny is just over 4 years, although for Russia it is closer to 10. This is far from satisfactory but as an international treaty, its success is substantially dependant on peer group pressure for the implementation of judgments. As long as that pressure can be maintained and membership of the Council of Europe is seen as a benchmark of international respectability then it

will progress. If this does not happen, then the future of the Convention will be in jeopardy.

THE POSITION AND ROLE OF THE UNITED KINGDOM

And this brings me back to the UK government's present position. As I explained at the start, the government has announced a series of proposals that display considerable ambivalence to the value of the Convention. The original Conservative paper, clearly implied withdrawal as it demanded a special status for us that it is inconceivable our fellow members of the Council of Europe could grant. Withdrawal is something that no democratic state has ever done and we would be following Greece under its military dictatorship in the 1960s. The government's position has however now become rather more nuanced, with the Prime Minister stating on two occasions in Parliament that he does not want us to leave the Council of Europe or the Convention. But at the same time the Justice Secretary Michael Gove has told the Justice Select Committee that he is not 100% sure that the policy of scrapping the HRA will not lead to withdrawal.

This ambivalence is not surprising. Criticisms of the workings of the Strasbourg Court are not confined to politicians. From Lord Hoffman in his speech to the Judicial Studies Board in 2009 and Lady Justice Arden's Thomas More lecture

of the same year and more recently the views expressed by Lord Judge and Lord Sumption, a critique has been made that the Strasbourg Court has failed at times to respect national differences of interpretation of the Convention which should be allowed under the principle of subsidiarity, by which the primary responsibility for the observance of the Convention falls on national governments, courts and parliaments and which is recognised by the margin of appreciation they have in doing so. It is also argued that the Court is failing to appreciate sufficiently the practical limits of its authority if it gives judgments which contradict settled democratic will in areas where the margin of appreciation might be reasonably considered to apply.

The problem originates in the understandable desire of the Strasbourg Court to protect human rights in countries with poor records. As a result it has sometimes micro managed the Convention too much. The problem caused by its decision on prisoner voting is a good illustration. The issue is one on which a strong policy case can be made for extending the vote to some prisoners. But an equally coherent case can be made for depriving them of it, as the Court has acknowledged. The issue is largely symbolic. But symbols matter in the context of parliamentary democracy and the judgement was in my opinion an unnecessary interference with a policy that enjoys overwhelming parliamentary support in the UK. I am sorry that I was not able to get it fully reversed when I intervened in the case of Scoppola v Italy 126/05 in 2012 on the same point.

But as a lawyer, I have to admit that this is not the first time I have disagreed with a court decision in which I have appeared. What is far more striking to me is, prisoner voting apart, the paucity of concrete examples that are identifiable in the Government's list of complaints against the way the Strasbourg Court is interpreting the Convention and the incoherence of its suggested solutions.

Complaint is made that the way the Convention is being interpreted is allowing foreign nationals, who have committed serious crimes in the UK, to use qualified rights under Article 8 to remain here. It is this, along with proposals to reform the application of Article 3 on the Prohibition of Torture, in deportation and extradition cases, which forms the heart of the proposals to differentiate the Bill of Rights interpretation of the Convention from that in the HRA.

I have no difficulty agreeing that Article 8 is invoked irritatingly often to justify foreign criminals escaping deportation at the end of their sentences. But this has little to do with the Convention and a lot more to do with our domestic courts and the failure of the UK Borders Act 2007 to address this issue as intended. This is why Parliament passed the Immigration Act 2014. It is intended to be compatible with the Convention. It makes clear within that framework, Parliament's perception of what the public interest requires, namely that where a sentence of four years or more has been imposed, the public interest requires

deportation unless there are very compelling circumstances over and above the cultural and family ties that are set out for foreign criminals sentenced to a lesser period of imprisonment. If it works, then it is difficult to see how any proposed changes to gloss the Convention text itself will make any difference, unless the intention is to create total incompatibility with its principles. There is a hint of this in the indication that a foreign national who "takes the life of another" will be excluded from invoking Article 8 altogether. But what "taking a life" means is not specified. Does it just cover murder, or is it to include manslaughter and causing death by dangerous or even careless driving? How will it apply to minors? And if it extends beyond just murder how will it be applied to those whose offence is not held to merit even a custodial sentence?

The same problem can be seen with the suggestion of tinkering with Article 3. The Conservative Party paper described it as an "inalienable right", but then suggests that this right should be qualified to alter the "real risk" test and replace it with another that would somehow make removal from the UK easier but still be in line with "our commitment to prevent torture and in keeping with the approach taken by other developed nations".

As, at present 47 of those developed nations accept or at least are supposed to accept the current interpretation of Article 3 by the Strasbourg Court, it is hard to see where this is going. Even the USA, which does not, is bound by the terms

of UN Convention against Torture, which is one of the reasons it cannot return some Guantanamo detainees to their home countries. So either the proposed change will in fact be of almost no effect, or, if significant, undermine a key principle, not just of the Convention but of one of our other international obligations.

Finally in this brief analysis of the Government's criticisms, is its concern at the extension of the Convention to some of the activities of the UK overseas and in particular that of our armed forces. The suggested response is that any replacement Bill of Rights should be restricted in its operation to our own national territory.

As a former Attorney General, I am well aware that the extension of the ECHR to the deaths or injury of our own servicemen abroad in an active service setting, arising from the judgment in Smith v MOD in our Supreme Court has caused understandable concerns. It is also clear that the overlap between international humanitarian law and the Convention lacks clarity, so that uncertainty exists as to when the ECHR will apply to the investigation of improper acts against enemy military or civilians. The development of Strasbourg jurisprudence in this area has been criticised by lawyers for the International Red Cross as creating unhelpful complexity. But the principles of the standards of behaviour required of our own armed forces cannot be

diminished by restricting the ECHR territorially, even if it might deal with issues such as the legality of detention arising from cases such as Al-Jedda. Furthermore the recent Strasbourg Court judgment in Hassan v UK has clarified the law helpfully on the compatibility of detention under the Geneva conventions with Article 5 of the Convention and seems to me to provide a sensible point on which to build. I am very doubtful therefore that the simplistic solution of restricting the scope of the Convention territorially will resolve all the problems or is in fact necessary.

The proposal also entirely fails to take into account the consequences for the citizens of other states if this change were ever to extend to all signatory states to the Convention. It would mean that the many victims of serious human rights violations, occurring outside the territory of the member state complained of would be left without redress. This would include, from past examples, civilians who lost homes and property during the Nagorno-Karabagh conflict, Greek Cypriots suffering loss from the Turkish occupation of the north of Cyprus and migrants who were intercepted at sea and returned to Libya by Italy where they faced ill treatment.

CONSEQUENCES OF UK NON COMPLIANCE

What is clear however to me, are the adverse consequences of these proposals. Some have suggested that these would be limited, as creating incompatibility with the Convention and treating Strasbourg judgements thereafter as merely advisory would have few practical effects, even on our membership of the Council of Europe, which would be reluctant to lose our participation.

I disagree. The issue is not our membership but what our supportive participation delivers in respect of our foreign policy goals. Precisely because the Convention is dependent on peer group pressure for its observance, we will offer an example and an invitation for it to be ignored by others. It is already the case that countries such as Russia and the Ukraine have used the UK position to procrastinate on implementing judgments. Others will do the same and the Convention will be further challenged and undermined.

Indeed the impact will go further. Our current statements have already had an effect beyond the member states of the Convention. The UK position was used by Venezuela in justifying ignoring obligations under the American Convention on Human Rights arising prior to its denunciation of it in 2013. The President of Kenya cited it at the time when the UK and others were pressing him to cooperate with the ICC, of which Kenya accepts jurisdiction. And this is before one looks at the beneficial impact which will be lost if the ECHR ceases to be viewed as benchmark for citation in courts in places such as India and South Africa.

Thus, at a time when the UK rightly says it intends to continue to devote a substantial part of its foreign policy objectives to promoting human rights globally, as is evidenced by our recent participation in the campaign against rape in war, we would damage our ability to pursue it. Yet compliance with the Convention has been shown to be effective in this regard. We need look no further than that classic bugbear of the tabloid Press Abu Qatada. By accepting the judgment of the Strasbourg Court, the Government was still able to deport him, even if it delayed the process. But most importantly it helped ensure reforms to the Jordanian criminal justice system which were not only much needed but overwhelmingly welcomed.

Adherence to the principles of the Convention is explicit in our EU membership. At present the ECJ in Luxembourg is confined to applying the Convention as enshrined in the Charter of Fundamental Rights only to matters within EU competence. But it has been expansive in this regard and it has been a goal of government policy to restrict this trend. I can think of little more likely to accelerate it than claims being brought before the ECJ by persons claiming they can get no redress domestically or through the Strasbourg Court for a Convention violation. Any judgment of the ECJ against the UK would then have direct effect here.

Domestically, non-compliance with the Convention calls into question the Devolution settlements for Wales, Scotland and Northern Ireland which enshrine Convention rights as governing all their actions. Parliament at Westminster could of course legislate to change the position, but there is overwhelming evidence that this would be against the will of the devolved administrations. In the case of Northern Ireland, it is also part of an international treaty involving Ireland. At a time when the peace settlement in Northern Ireland is still fragile and the future of the United Kingdom itself is in question it opens up the prospect of new areas of political discord. While I appreciate that there may be some, including of course in this audience, who might welcome this as hastening their domestic political goals, I find this a very odd thing for a Government committed to the Union to do.

THE WAY FORWARD

Rather oddly in this debate on the Convention's future, the Government seems to either underestimate or ignore how well placed we are to influence its development. When The United Kingdom held the presidency of the Council in 2012, I worked with Ken Clarke as Lord Chancellor, to build a consensus for reform among the 47 signatory states, which built on the work of previous UK governments. The result was the Brighton Declaration which sought to address the backlog of cases, the quality of judicial appointments and got the principles

of subsidiarity and the margin of appreciation into the preamble to the Convention, so as to guide the Court towards avoiding the type of decision we saw in Hirst.

We would have achieved more and changed the text of the Convention itself if our fellow signatory governments, who shared our analysis and our goals, had not been deterred by their domestic NGOs from full cooperation with our agenda because of a fear that we wished to diminish and not improve the Court's effectiveness. That fear was misplaced. But it was in the circumstances entirely understandable.

Three years after Brighton, there are many signs that reform is working. The backlog of cases is being addressed. It is down from a peak of nearly 150,000 cases to 63,800 as at 30/6/15. The system for early assessment of merit has led to many being filtered out more rapidly. 99.9% of the cases brought against the UK in 2013 were struck out as inadmissible. There has, as we have seen been some progress on implementation. There needs to be more, but seeing the Prime Minister specifically emphasised the importance of this in his speech to the Parliamentary Assembly of the Council of Europe during our presidency, it would help if we did some leading by example. The Council of Europe unlike the EU has always viewed the United Kingdom as one of its key champions. Coming as we do from a two hundred year tradition of creating, deepening and

observing international obligations to make the world a safer and better place (over 13,000 treaties since 1834), this is not surprising. We are in an excellent position to continue this work if we are willing to move away from destructive measures and rhetoric.

The importance of our role is not confined to the government. It is the entire tradition of judicial independence and high quality jurisprudence. The important shift by our own national courts away from the principles in Ullah, defining the requirement of "take account of" as being the close mirroring of Strasbourg decisions, has initiated a dialogue that has led in a number of cases to the Strasbourg Court showing deference to our own. We can see this in the way the Court moved from a condemnation by a chamber of the Court of our rules on hearsay in Al Khawaja v UK26766/05 in 2009 to the acceptance of the Supreme Court decision when the Grand Chamber revisited the case in 2011, following the rejection of its previous decision by the Supreme court in Horncastle. Recent decisions such as the Animal Defenders case on political advertising and its potential infringement of Article 10 on the Freedom of Expression, reinforce the view that well reasoned interpretations by our own senior courts of Convention rights are unlikely to be rejected. Moreover a key factor in the Strasbourg Court's decision in the Animal Defenders case was that the matter had been thoroughly considered by our own Parliament. In pressing for a

wholesale reform of our relationship with the Convention and the Court the government is in danger of fighting yesterday's battle.

CONCLUSION

The Government has stated that it will publish a detailed consultation paper on its ideas for a Bill of Rights and our future relations with the Convention this autumn. I very much welcome this. For the reasons I have tried to set out tonight I rather suspect that in doing so it will have to accept the overwhelming evidence that the Convention, when viewed in its totality, has been and remains today a success, arguably the single most important legal and political instrument for promoting human rights on our planet. It has also conceded that the text of the Convention sets out rights it wishes to see protected. For those of us who want to preserve and enhance our country's role in supporting the Convention there is therefore a great opportunity. We need to repeatedly ask how any proposal that is put forward will in practice deliver benefits which outweigh the obvious costs to our influence, reputation and national interest, in reducing Convention rights domestically and thus violating the terms of our adherence to it, with all the consequences that flow from it. When the froth of political polemic is removed there can only be one answer to this question. This

is why I convinced that if this matter is debated with determination and good humour we will get the right answer at the end of the day.

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