HOUSES OF PARLIAMENT

Joint Committee on Human Rights

Oral evidence: Legislative Scrutiny: Nationality and Borders Bill, HC 588

Wednesday 20 October 2021

Watch the meeting

Members present: Harriet Harman MP (Chair); Lord Brabazon of Tara; Joanna Cherry MP ; Lord Dubs; Lord Henley; Baroness Ludford; Baroness Massey of Darwen; Angela Richardson MP; David Simmonds MP; Lord Singh of Wimbledon.

Questions 1 – 9

Witnesses

I: Daniel Ghezelbash, Associate Professor at Macquarie University; Sonali Naik QC, Barrister at Garden Court Chambers; Aurélie Ponthieu, Co-ordinator Forced Migration Team at Médecins Sans Frontières

Examination of witnesses

Daniel Ghezelbash, Sonali Naik QC and Aurélie Ponthieu.

Q1 **Chair:** Welcome to this session of the Joint Committee on Human Rights. My name is Harriet Harman and I am Chair of the Joint Committee on Human Rights, half of whose members are Members of the House of Lords and half of whose members are Members of the House of Commons. In this afternoon's session, we are a hybrid committee. Some are here in person and some are joining us online.

One of the responsibilities of the Joint Committee on Human Rights is to scrutinise and report to Parliament on the human rights implications of legislation that the Government are putting forward to Parliament. This work we are doing this afternoon is a further evidence session in the course of our scrutiny of the Nationality and Borders Bill.

We have two panels of witnesses and I am very grateful to be welcoming the first panel of witnesses who will help us in compiling our report to Parliament on this Bill. The first panel consists of Daniel Ghezelbash, who is an associate professor at Macquarie University and joins us from Sydney, Australia. Thank you very much for joining us. Daniel's research focuses on comparative refugee and immigration law, so we are looking forward to hearing from him. We have with us today online Sonali Naik QC, a barrister at Garden Court Chambers and a senior practitioner with over 28 years' experience, with a substantial immigration and asylum practice in both the High Court and the appeal courts. She is also chair of Liberty. Thank you very much, Sonali, for joining us. We also have Aurélie Ponthieu, the co-ordinator of the forced migration team for MSF, Médecins Sans Frontières, in Brussels. Aurélie has been working for MSF since 2006 and is a humanitarian specialist on displacement.

With that, I would like to put the initial question to MSF. In our last session, we heard from an asylum seeker who had arrived in the UK by boat. He told us that his parents paid people smugglers to help him leave Iran and that he had no idea that it was in the UK that he was going to end up. How typical is it for asylum seekers not to have any knowledge, let alone choice, as to where they end up? He also told us that he did not know he was going by boat. Is it typical that asylum seekers also do not have choice or knowledge about their means of travel? Sometimes we assume a plan is made and they know exactly what will happen. How representative of that is the situation?

Aurélie Ponthieu: Good afternoon and thank you for having me. Based on our experience in providing humanitarian assistance at different borders in the world, what we can see is that—

Chair: Sorry, Aurélie, could I interrupt? I know that I have asked for us to be very succinct in this evidence session, but could you speak a little

bit more slowly and loudly so that we can hear you more distinctly? Thank you.

Aurélie Ponthieu: With pleasure. Peter's story is not uncommon at all. Based on our experience, we provide assistance at different borders along different routes that people use to seek safety, and there is also some academic research that shows that plans are rarely fixed. People's trajectories are very diverse. They are fragmented. People do not always have a very clear destination in mind. Plans change according to the reality of the smuggling networks and the obstacles of the day. Quite often, we hear people telling us that they did not know that they would have to take a boat. Often they even tell us that they heard that they would cross a river when it was actually the sea they were crossing, which obviously adds to the trauma that people suffer. Very often, they have never been at sea before, so you can imagine how it is when you realise in the middle of the night that you need to climb into a dinghy.

It is quite often that we hear those stories and these challenge this notion that you have very fixed trajectories and that migrant journeys are based simplistically on pull and push factors. People sometimes have to make different plans according to the obstacles that they face on the way and change completely the destination, if they had one at the beginning of their journey.

Chair: So is our assumption that those fleeing have agency in where they are going and how they are travelling questionable?

Aurélie Ponthieu: Most of the time they have to put their fate in the hands of the people who have been contracted to organise the journey. Very often, they do not know these people beforehand, so obviously the choice they can make is very limited. We are talking about forced migrations only, so people who very often have no choice than to make that journey.

Q2 **Lord Dubs:** I want to ask about pushbacks. I have a question and two possible supplementaries. The main question is to MSF and to Daniel. Can you briefly outline what is meant by the term "pushback"? In your experience, what occurs when a vessel is subject to pushback? What are the risks to asylum seekers on board vessels and officials carrying out such pushbacks?

Daniel Ghezelbash: Thank you very much for the question and thank you for having me.

There is no accepted official definition of a pushback. It broadly refers to the various measures that states use to repel or stop asylum seekers travelling by boat from reaching their territory. They generally involve two steps. One is the interception, so physically stopping the boats, and then the second step is taking them to some location. That varies. It can be returning them to international waters or to the territorial sea of another country or to port in another country, or even handing them at sea to government authorities of another country.

Regardless of the way that they are carried out, pushbacks are extremely dangerous. The UN special rapporteur on the human rights of migrants has referred to them as cruel and deadly. There are dangers in every step of the operation. That physical act of stopping migrant boats or asylum seeker boats, given their very precarious and overcrowded nature, is very dangerous. Trying to forcefully redirect or tow them can result in the boat sinking. The experience in Australia and the Mediterranean has been that the passengers on board, the asylum seekers, can panic, jump overboard, and the boats can capsize. There have also been a number of instances that I am aware of in Australia where there has been attempts at self-sabotage of the boats to stop the pushbacks taking place, which have resulted in significant loss of life.

It can also be very dangerous leaving the boats adrift at sea following the pushback operations. This is what the Australian Government do with respect to returns to Indonesia because Indonesia does not consent to accepting those returns. I understand that this is what the UK Government may be considering doing with respect to returns in the English Channel, given that France has similarly not accepted return. The experience of Australia was that those people end up in significant distress once they are left adrift at sea, and, again, there have been numerous instances of confirmed deaths and the need for the Indonesian navy to engage in rescues. Even when the asylum seekers make it back to land, they are still at risk of danger and could be subject to persecution and other forms of serious harm.

Aurélie Ponthieu: I would like to reinforce what was said by Daniel. Based on our direct experience of pullbacks that are occurring weekly and daily at different borders in Europe, I can say that there is no safe way to intercept and to stop any migrant boat at sea. We are talking about unseaworthy vessels. We are talking about people who do not have any navigation skills or materials. They very often do not have life jackets. If they have life jackets, these life jackets do not save their lives. We are talking about boats filled with children, pregnant women and people who are already in danger and in immediate need of rescue.

What we have observed is that in order to deter these boats from continuing their journey or in order to intercept them, they turn them back in the case of the Mediterranean Sea with Libya or just push back the boats towards Turkey, for example, between Greece and the Turkish coast. We have seen very dangerous practices implemented by different individuals, coastguards, masked people. We have directly witnessed coastguards making waves to push the boat back. We have witnessed water hosing in the Mediterranean Sea as well between Turkey and Libya. We have witnessed direct boarding of these dinghies, physical violence applied and objects thrown at people in the middle of the sea.

These actions have, of course, very clear consequences. People have died during pushbacks at these borders, both land and sea borders. We can only testify to the endangerment that these practices create, with very clear mental health consequences. The survivors of these pushbacks who

MSF has treated have shown very acute reactions of anxiety, depression and post-traumatic stress disorders. Sometimes they can develop psychotic symptoms in the long term if they do not receive proper care. When we are talking about people who have already been through traumatic experiences in the country they have been in or in their country of origin, this is just additional suffering that is intolerable for them. Obviously, any legislation that would justify these types of practices will lead to very serious and wide consequences and the endangerment of lives.

Q3 **Lord Dubs:** Thank you. Could I address my supplementary to Sonali? You have heard how dangerous these pushbacks are from the first two answers. As you know, the Bill contains a new power that would permit UK Border Force to direct vessels out of UK territorial waters. What implications does this power have for the right to life of asylum seekers under Article 2 of the ECHR and possibly other ECHR articles?

Sonali Naik: Thank you very much, Chair and Lord Dubs, for that question. I just want to confirm that I am speaking professionally and personally and not on behalf of Liberty, just to make that clear.

Those provisions under the Bill are potentially very stark in practice and appear to be in direct contravention of Articles 2, 3 and 13 of the ECHR. Jurisdictionally, I think it is important to address that there is authority to confirm that turnback by British ships at sea would engage the UK's jurisdiction under the ECHR, even if they are in international waters, under legal principles that were established in a case, Hirsi Jamaa v Italy in 2012, where Italy was held liable for breaches of Articles 13 and 3 for turning back refugee boats to Libya in international waters. That is the first important principle. It seems clear that if the UK officers use their new powers under that part of the Bill to require a boat to leave, the territorial jurisdiction would be engaged.

Assuming that the jurisdiction is engaged, then it is arguable that turning back a boat instead of rescuing people would breach the obligations under Article 2 where it exposes a person to an avoidable risk of drowning. We have just heard the evidence from Daniel and Aurélie about what happens in practice to people on those boats. There are legal consequences of those that would engage the UK's obligations. In some circumstances, Article 2 imposes an operational duty where the authorities know or ought to have known that there is a real and immediate risk to life and to take reasonable and appropriate operational measures to prevent that risk arising. There is a hard-edged way in legal terms as to how that could arise. Where the authorities knew that someone was at risk of drowning or may drown, that is where the duty lies.

In practice, it is likely to be that this would be a fact-sensitive question, but those facts are quite likely to be common and stark, as we have identified here. I cannot imagine, certainly when we are talking about real risk of Article 3 harm, that there would be much way, absent a statutory derogation, for the UK to avoid any liability under Article 2.

Lord Dubs: I have another quick supplementary question. I think you have partly dealt with this. The Bill, as you know, would grant immunity in criminal or civil proceedings for an immigration officer who exercises pushback powers, providing they act in good faith and there are reasonable grounds for doing so. Does this have any further implications for the right to life under Article 2?

Sonali Naik: As I understand the immunities, it has two limbs. One is civil and one is criminal. In the civil context, there is a question as to whether individual officers could be sued under the common law for false imprisonment or negligence, but there is no immunity from suit in respect of liability for Human Rights Act damages. There would have to be a specific derogation for that. An ordinary reading of the Bill as it is proposed would be incompatible with the Human Rights Act because in those circumstances as described an act may violate an ECHR article and give rise to a claim for damages for just satisfaction, even if the officer was acting reasonably and in good faith. Again, it is incompatible with the ordinary provisions of our obligations under the HRA unless there were some sort of derogation.

In relation to criminal matters, a successful criminal prosecution might be excluded where a defence of reasonableness or good faith was made out, but that defence would not be available for, say, a deliberate killing or deliberate ill-treatment. There is still a question of the UK's obligations under Article 2 that arises under the civil proceedings and there are still circumstances where the criminal prosecutions could not be avoided. I understand that it was the Border Force's objections to operating this provision in practice that may have led to this proposal on immunity. My understanding is that Border Force's reaction was, "This is inoperable by our members, by our actual individuals".

Q4 **David Simmonds:** I will ask you in a moment to outline the various international treaties to which the UK is signatory that are relevant when conducting pushbacks. Pushbacks at sea are undertaken not just by the UK—FRONTEX, the EU border agency, is embroiled in an ongoing controversy about this—and they are also a relevant consideration, for example, in fisheries protection and in general operations to protect sea borders. They are commonly used as a last resort, following a risk assessment, to deal with those kinds of infringements. Could you set out why a specific and different set of rules, if that is the case, would apply to vessels carrying migrants from those that would apply to the same vessel if it were, for example, a fisheries vessel or a smuggling vessel but one not carrying a cargo of human beings?

Daniel Ghezelbash: There are a number of overlapping regimes at play. You are correct in stating that there are some enforcement powers in the United Nations Convention on the Law of the Sea that do allow for interceptions and returns in certain circumstances. The scope of those powers varies based on the maritime zone in which a boat is engaged. The further away it is from the shores of the coastal state, the less scope there is to carry out enforcement powers.

What makes the interception of asylum seeker vessels different is the fact that the United Nations Convention on the Law of the Sea does not operate in isolation. It needs to be read in conjunction with obligations under international human rights law and international refugee law that apply at sea. It is directly referenced within the United Nations Convention on the Law of the Sea that its powers should be interpreted in line with other obligations under international law.

The other significant difference between the other examples you gave and the situation of asylum seeker vessels is the precarity of the vessels involved. Given the small, overcrowded and precarious nature of the vessels, in most instances this will engage the search and rescue obligations of a state. These are found again in the United Nations Convention on the Law of the Sea, as well as a number of other conventions including the Convention for the Safety of Life at Sea and the international convention on maritime rescue. Those would trump any powers that exist in terms of carrying out enforcement activities. The duty to render assistance at sea is a fundamental, long-standing principle of international maritime law.

David Simmonds: Thank you. Leaving aside the list of the various international treaties, it would be helpful to clarify. It sounds from that answer that there will always be circumstances in which pushback would be both lawful and reasonable, but with the situations that we all recognise in the English Channel, for example, or at beaches I have seen in the Mediterranean, where people are seeking to cross the sea on small inflatables, those are unlikely ever to be circumstances where it would be reasonable to exercise a pushback function—but that is unlikely to be what is envisaged within the Bill anyway. I am concerned that we may be dealing with this by attacking the wrong issue and we need to think more about what those wider duties and obligations in terms of search and rescue that you touched on are. Clearly, if the Border Force is faced with a large, seaworthy vessel travelling under its own power, regardless of why it is violating the UK's policies, it would be reasonable to use pushback against it if that was felt by the Border Force at the site to be appropriate.

Daniel Ghezelbash: Again, it would all depend on the individual circumstances of that case and the status of the people on board. It would depend on where they were being returned to. You would still have to respect the principle of non-refoulement. If the people have any sort of protection claim, you will also have issues around collective expulsion, which requires that each person be given a due process right. That requires that each person be able to put forward a claim that would mitigate their removal. That is not just around non-refoulement but also other claims such as a right of entry or residence or any claims arising from specific vulnerabilities such as their status as a minor or as victims of trafficking. That obligation in particular, which the UNHCR observes is now recognised as a general principle of international law, as well as enshrined in a number of regional and international treaties, including the International Covenant on Civil and Political Rights, would be very hard to

get around. It would be very hard to envisage any situation where asylum seeker boats are pushed back that would not amount to collective expulsion.

David Simmonds: This is my final question. Given the UK's obligations, would it be lawful, in your view, for the Border Force to direct a vessel out of territorial waters without there having been another country that had agreed to take it in? I am particularly interested in your angle on the fact that the Border Force role for EU member states is carried out by FRONTEX, so it is quite possible that a patrol vessel, for example, that was on the French side of territorial waters would not be a French vessel; it may well be Dutch, Belgian or Spanish. What would be the lawfulness of that?

Daniel Ghezelbash: In terms of the nuances of the EU context, I may defer to my colleagues on the panel who are based in the EU. I can speak generally to the point of the pushbacks where no other country has accepted their return.

There is the power under the Convention on the Law of the Sea to carry out enforcement activities, including the removal inside a coastal state's territorial sea where a vessel is suspected of violating the country's laws, including its immigration laws. Arguably, that would provide a power to carry out such a removal, but again exercise of that power would be conditioned on respecting the prohibition on collective expulsion and the other human rights obligations observing non-refoulement, but also, importantly, the search and rescue obligations. The vast majority of vessels carrying asylum seekers that would be intercepted would not be in a condition where it would be safe to leave them adrift at sea at the edge of another country's territorial waters. The UK vessels could not enter the foreign territorial sea to carry out that pushback, so it is also the logistical question of how you would force these boats back without violating the territorial sovereignty of neighbouring states.

Chair: Thank you very much. I think that has been a helpful exposition of how the rights in respect of fishing boats that are invading territorial waters or those smuggling goods do not come under the obligations to respect human rights of refugees. That is a material point for us to consider, so thank you for that illumination. Baroness Massey, I look to you to put the next question.

Q5 **Baroness Massey of Darwen:** I want to go back to Aurélie Ponthieu from MSF with two and a half questions. Why do you rescue people at sea? Are you bound by maritime law obligations to rescue people at sea?

Aurélie Ponthieu: We rescue people at sea because we are a humanitarian organisation. We observed a very big gap in rescue at sea in the Mediterranean Sea and in the Aegean Sea in 2015 so we started these operations that we did not have any experience in before. Obviously, as soon as we have a ship at sea, we are bound by it to rescue any vessel in distress. That applies to any ship that is navigating the seas.

To be clear, the notion of distress also does not mean that you have to wait for the person to call for help or to be immediately drowning. The notion that these people are in danger, they are navigating in unseaworthy ships with children and women on board, makes them already in distress and in need of immediate assistance. That is what guides our mission.

We decided to launch this operation as well because there was a big issue in co-ordination by coastal states of rescue missions, mostly because no one wanted to take responsibility for bringing these people back to a port of safety, which is also an obligation in rescues at sea. Not only do we have to rescue people in distress but we also have to bring them back to a port of safety. That is what MSF is doing at sea at this stage in the central Mediterranean Sea.

Q6 **Baroness Massey of Darwen:** Under provisions in the Bill, individuals who facilitate asylum offences are also guilty of committing an offence. Those acting on behalf of organisations that "aim to assist asylum seekers" and "do not charge for their services" are excluded from the scope of the offence. Notwithstanding that exception, do you think the offence is likely to discourage organisations and people from helping those in difficulty at sea?

Aurélie Ponthieu: I do not think this provision will deter organisations or shipmasters from rescuing people at sea. This is a very long tradition and a very clear legal obligation. It might create more difficulties such as we are facing at this moment with increasing criminalisation of those who try to rescue migrants and refugees at sea. Most of the criminalisation that is happening is not really directly targeted at acts of rescue but is more criminal proceedings on other aspects of our operations. This is a very big issue for us and as MSF we are directly concerned by these strategies, especially in Italy at the moment. This is clearly impacting the ability to perform rescue duties for everybody. I am talking about fishermen; I am talking about private ships. It is creating more dangers for people who are forced to take those routes, so this is indeed quite problematic.

Q7 **Baroness Ludford:** I am a Liberal Democrat Member of the House of Lords.

In our last session, Raza Husain QC told us that, "non-penalisation criminally and administratively of those who arrive irregularly, is at the very core of the Refugee Convention". What implications does the new offence of knowingly arriving in the UK without a valid entry clearance have for the UK's obligations under the refugee convention and obligations to assist victims of modern slavery? I will put the supplementary at the same time. Do you think the new offence will reduce irregular entry into the UK?

Sonali Naik: I totally agree with Raza Husain's opinion. I am sure the committee is aware of his detailed written opinion commissioned by Freedom from Torture, of which I am also a trustee. The opinion there of his colleagues set out in great detail why the non-penalisation provision is

at the heart of the refugee convention and that this Bill and the proposal of introducing the new offence of knowingly arriving in the UK without a valid entry clearance changes the whole landscape of the way in which the convention will operate in the UK.

At present, asylum seekers who enter illegally are liable to prosecution, but asylum seekers who arrive at the port of entry and claim asylum immediately are not. The amendment in Clause 37 of the Bill to the Act removes that distinction. Therefore, it will criminalise genuine asylum seekers, even if they have no other option but to flee. One cannot get a visa to claim asylum. It is so basic but needs to be said because it goes to the core of what the Bill is purporting to do without identifying any solution.

If a refugee cannot get a visa to claim asylum, they will necessarily when they arrive in the UK, if they arrive and present at port or even if they have arrived irregularly, not have a visa. The Explanatory Memorandum to the Bill noted that 62% of claimants arrived irregularly; 40% arrived clandestinely. We know that there is no ability to obtain a visa, so in those circumstances, if the proposal to criminalise and prosecute that cohort were implemented, it would mean that, notwithstanding that people are genuine refugees who then may get entitlement to refugee status or a limited protection status, they would be penalised for their method of entry, which is in direct contravention of Article 31 of the refugee convention.

There is no defence within the Bill for method of entry in the new offence under Section 24. There is no option given there to persons who arrive in that way, so it is a wholesale attack on the non-penalisation provision within the refugee convention. It will have significant consequences because then if those persons were prosecuted, even if they have obtained protection status, they will have a criminal record. They will be deemed to be persons not of good character. It will impact on their ability to integrate and settle in the UK. Down the line, it will impact on their ability to acquire, if they wish to, British citizenship because they will be criminalised. Using this new prosecution provision is a completely different way of operating the international protection obligations that the UK has had.

Just as an aside, it is interesting that you cannot get a visa to claim asylum, but the Secretary of State is also saying we might want to resettle or relocate people who come from other countries, including Syrians in Lebanon or Afghans in Pakistan. Those persons are not lawfully present in those countries necessarily. The UK is saying that we will criminalise people who come here but we will positively want to take people, or encourage people even, to leave their countries of origin and go to another country, even though they have no status in that third country. There is an obvious contradiction on a policy basis in why it should be an advisable position for refugees to relocate locally, albeit illegally, but not relocate to the UK if that involves an illegal entry method. Again, that is a contradiction without any explanation in the Bill.

Daniel Ghezelbash: I wholeheartedly agree with everything that Sonali has stated on this point. For me, it really is one of the most shocking elements of the Bill. There are a lot of very restrictive measures in there, but from a comparative perspective it is quite rare for liberal democracies to criminalise asylum in this way. Australia is known for its very harsh asylum policies, but we have never considered criminalising irregular entry. It can be unlawful under immigration law, but criminalisation is an extraordinary step that is in clear violation of Article 31 of the refugee convention.

I wanted quickly to touch on the second question about whether this would result in a reduction in the number of asylum seekers coming to the UK. I preface my remarks by saying that it is very difficult to isolate the push and pull factors and identify the impact of one specific policy on asylum flows. In a general sense, looking at the Australian experience, it is correlation not causation. No matter how harsh, strict and punitive are the measures we have introduced, which apply to people after they arrive in the country, these have not correlated with a reduction in numbers. That is a testament to the fact that people are fleeing much more egregious situations at home. No matter what penalties we apply on their arrival, it is still a better outcome for them than staying in their home country. The only thing that correlated with a drop in numbers in Australia was literally stopping people before they came to the country. As I have discussed already, that raises serious concerns under international law.

Aurélie Ponthieu: I just want to add that when we are talking about criminalising asylum seekers we are talking about people who have already been through very traumatic experiences. We are talking about survivors of torture and survivors of political violence. When people reach the UK they will already have been through many countries where they have been victims of violence and where they have been detained. They will arrive in a very vulnerable state, so on top of the legal implications of this provision, that would have very clear consequences in terms of their mental and physical health. I think it would be very problematic and very destructive.

Q8 **David Simmonds:** I have a quick question. The Government's defence on this point will be that safe and legal routes will be available and, therefore, anyone arriving will always have had a choice other than to facilitate illegal entry to the UK. Perhaps Sonali might be best placed to answer this. What is the test, in your view, that the availability of safe and legal routes would need to meet in order to be a defence to a judicial review in respect of the penalisation of illegal entry?

Sonali Naik: Take Afghanistan as a current and very acute example. We have many people who are fleeing Afghanistan and if they want to claim asylum in the UK, if they have family members here and so on, there is no mechanism by which that can currently happen. The Secretary of State's long-term commitment to resettle a number of refugees, 20,000 or whatever over however many years, will not deal with the immediate and acute risks of persons who are at risk of serious harm or persecution.

There is no way that a resettlement programme can deal with those who are at immediate risk, and there is no legal route. I cannot emphasise it enough. If you cannot get a visa to claim asylum, you cannot then criminalise somebody for arriving in the UK and claiming asylum if there is no method by which they could have gained entry. Even if there are those resettlement schemes, it cannot replace the requirement to immediately offer protection to those who arrive on UK soil territorially. Afghanistan is the case in point.

David Simmonds: Just to clarify the specific point, though, what the Government are saying is that there will be a means available by which you can obtain that visa. If, for example, you can obtain a visa from a consulate or from a third country that is providing that as a neutral party through the UNHCR or, indeed, digitally in the way that you can currently apply for some other Home Office travel documents, would that, in your view, meet the test or would that still be insufficient?

Sonali Naik: I have yet to see any detail of how that would or could work in practice. It seems very difficult for people who are seeking visas in the ordinary family reunion sense or other visas to the UK to get those processed within a particular period.

The refugee convention requires states to protect those who arrive on their territory; that is a fundamental principle of it. That a safe and legal route may be available to another person does not address the risks in terms of protection from refoulement or protection from serious harm or persecution of that person who arrives on UK soil. If the Secretary of State wants to argue about whether they had a reasonable alternative, it is unlikely ever to be able to be shown that an individual could have opted for a different route when the need for protection is immediate and current. I cannot see how that could really offer any reasonable alternative and, therefore, be a reason why a person should be subject to the provision under this Bill.

Q9 **Joanna Cherry:** Good afternoon. I am the SNP Member of Parliament for Edinburgh South West.

I want to ask all three of you whether you think there is a risk that the approach in Part 3 in particular of the Bill and other provisions of the Bill could lead to other countries, other states, taking a more restrictive approach to refugees and, therefore, undermining what the UN High Commissioner for Refugees has called the global humanitarian and co-operative principles on which the refugee system is founded.

Daniel Ghezelbash: This goes to the very heart of my own research, which very clearly demonstrates the interdependence of asylum policy settings across countries. These changes in the UK's asylum policy, if adopted, will not just impact refugees and asylum seekers trying to come to the UK, there will be ripple effects around the world, giving states the green light to follow suit. As I documented in my book *Refuge Lost*, we see this competitive mindset developing around the world where states are keeping a very close eye on developments abroad and seeking to

outdo one another when it comes to implementing progressively more restrictive asylum policies. The end point of the race to the bottom is the end of the hard-won institution of asylum, with people in immediate danger unable to cross borders and access safety.

Implementing international law into practice relies on leadership. It needs states to step up and lead by example and persuade other states to abide by their obligations. The UK has traditionally been one of those states that has been doing this and has taken on this leadership role, and the international refugee protection regime is at a tipping point right now. I fear that if the UK goes down the same path as Australia and numerous other states around the world that are implementing measures blocking access to asylum it could potentially inflict a mortal wound on the universal principle of asylum and the international protection regime more broadly.

Aurélie Ponthieu: To confirm what Daniel said, I think we have very clear evidence in the field of our operations where we see certain countries referring to other countries' policies to implement deterrence policies. For example, in South Africa the Government have used some of the Dublin Regulations to promote a deterrence approach against asylum seekers. In the EU territory agreement there is this notion that the EU would open safe and legal pathways in exchange for further control from the Turkish authorities. This has created a very negative environment for asylum seekers at these borders, with the EU being now exposed to blackmail. We see more and more asylum seekers being used as a tool, as a leverage, to gain political benefits on different borders in the region.

There is definitely a domino effect, a ripple effect, and as one country implements a deterrence policy, the country at the other side of the border does the same. We then see people who are unable to seek safety directly at the immediate borders of the countries of origin. That is very clear. There is strong evidence of that impact.

Chair: I thank our panel very much for their extremely helpful evidence. Thank you for all the written work that you have done, which we are able to draw on for this as well. At this point, I will invite our second panel to join us to give evidence.