

“Undesirable and Unreturnable?”

Policy Challenges around Excluded Asylum Seekers and Other Migrants Suspected of Serious Criminality but Who Cannot be Removed

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Institute of Advanced Legal Studies, University of London

‘What do we do with Abu Qatada?’ Impediments to the expulsion of migrants suspected or convicted of serious criminality pose an increasing challenge for public policy in both the national and international spheres. These obstacles can be ‘practical’, such as the lack of means to send the person to their country of origin, or ‘legal’ in nature, as where human rights standards prevent removal. However, even though such cases appear comparatively few in number, they tend to attract significant public interest due to the real concerns that they generate for State migration control, the integrity of the institution of asylum, the role of human rights in contemporary society, and the bringing to justice of perpetrators of serious crimes.

The archetypal expression of this problem is presented by those asylum-seekers excluded from refugee status due to suspected involvement in serious crimes - as defined by Article 1F of the Refugee Convention - but who cannot be removed from the host State’s territory on other legal or practical grounds. The alleged Rwandan *genocidaires* seeking asylum in the UK are a case in point. A greater tendency to apply exclusion clauses in the last decade means that such cases are becoming increasingly common. Moreover, other migrants who have attracted adverse attention as a result of alleged criminal activities in the host State may end up in a similar situation, including former refugees such as Abu Qatada. The variety of measures adopted by different countries and their often ad hoc nature suggest that States do not know how to respond effectively to this issue. In the case of migrants suspected of having committed serious crimes overseas, the host State is faced with further uncertainty over whether it should seek to prosecute. The challenges here are of a different order, but the response of States is equally hesitant.

By providing a forum for advancing thinking on these challenges, the ‘Undesirable and Unreturnable?’ conference seeks to integrate a wide range of participants from the academic community and beyond, including new researchers, research students and national and international policy-makers, addressing these issues in a comparative international perspective from the standpoint of both legal and non-legal disciplines. This AHRC-funded conference provides an important forum to share knowledge on and compare the practice of selected States around the globe, and review policy and other measures taken in addressing this issue of asylum seekers and other migrants suspected of serious criminality.



CONFERENCE PROGRAMME

Day One

9:00 – 9:30	Registration
9:30 – 9:45	Welcome, opening remarks and introduction – <i>Dr. David James Cantor</i> (RLI) and <i>Dr. Joris van Wijk</i> (CICJ)
9:45 – 11:15	<p>Session 1: Prosecuting undesirable and unreturnable migrants</p> <ul style="list-style-type: none"> • ‘Prosecution of Undesirable and Unreturnable Persons’ <ul style="list-style-type: none"> ○ <i>Dr. Joseph Rikhof, University of Ottawa, Dept. of Justice, Canada</i> • ‘Undesirable yet Unreturnable - Extradition and Other Forms of Rendition’ <ul style="list-style-type: none"> ○ <i>Prof. Geoff Gilbert, University of Essex, UK</i> • ‘When International Criminal Justice Concludes: Undesirable but Unreturnable Individuals at the ICC’ <ul style="list-style-type: none"> ○ <i>Emma Irving, University of Amsterdam, Netherlands</i>
11:15 – 11:30	Coffee/tea break
11:30 – 12:30	<p>Session 2: Other measures for addressing their situation</p> <ul style="list-style-type: none"> • ‘Deporting Undesirable Migrants: Diplomatic Assurances and the Challenge of Human Rights’ <ul style="list-style-type: none"> ○ <i>Dr. Mariagiulia Giuffré, Edge Hill University, UK</i> • ‘Removal, Voluntary Return and Relocation: A Case Study of 1F Excluded Individuals in the Netherlands’ <ul style="list-style-type: none"> ○ <i>Dr. Joris van Wijk, VU University Amsterdam, Netherlands</i>
12:30 – 13:30	Lunch break
	Recap of the morning program, introduction of the afternoon program
13:30 – 15:00	<p>Session 3: Practice in the European Union, civil law jurisdictions I</p> <ul style="list-style-type: none"> • ‘New Exceptions to the Principle of Non-Refoulement: The German Case’ <ul style="list-style-type: none"> ○ <i>Dr. Burcu Toğral Koca, Eskişehir Osmangazi University, Turkey</i> • ‘Undesirable and Unreturnable Migrants under French law: Between Legal Uncertainty and Legal Vacuum’ <ul style="list-style-type: none"> ○ <i>Chloé Peyronnet, Université Jean Moulin Lyon 3, France</i> • ‘Non-removable Migrants Suspected or Convicted of Serious Crimes in the Netherlands’ <ul style="list-style-type: none"> ○ <i>Maarten Bolhuis, VU University Amsterdam, Netherlands</i>

15:00 – 15:15	Coffee/tea break
15:15 – 16:45	<p>Session 4: Practice of European States, civil law jurisdictions II</p> <ul style="list-style-type: none"> • ‘The Situation of Undesirable/Unreturnable Migrants in Norway’ <ul style="list-style-type: none"> ○ <i>Prof. Terje Einarsen, University of Bergen, Norway / Mi Hanne Christiansen, Norwegian Directorate of Immigration</i> • ‘Undesirable and Unreturnable: A Case Study of Italy’ <ul style="list-style-type: none"> ○ <i>Dr. Marco Odello, Aberystwyth University, UK</i> • ‘The Indefinite Detention of Undesirable and Unreturnable Third Country Nationals in Greece’ <ul style="list-style-type: none"> ○ <i>Dr. Eleni Koutsouraki, Panteion University, Greece</i>
18:00 – 21:00	Evening meal at TAS restaurant, near British Museum (separate registration required)

Day Two

9:00 – 9:15	Introductory comments for second day
9:15 – 10:45	<p>Session 5: Approaches in common law jurisdictions (UK / Australia)</p> <ul style="list-style-type: none"> • ‘Undesirable and Unreturnable in the United Kingdom’ <ul style="list-style-type: none"> ○ <i>Dr. Sarah Singer, Refugee Law Initiative, University of London, UK</i> • ‘Undesirable, Unreturnable and No Effective Remedy: UK Country Report’ <ul style="list-style-type: none"> ○ <i>Sheona York, Kent Law Clinic, University of Kent, UK</i> • ‘Country Report: Australia’ <ul style="list-style-type: none"> ○ <i>Prof. Satvinder Juss, King’s College London, UK</i>
10:45 – 11:00	Coffee/tea break
11:00 – 12:00	<p>Session 6: Approaches in common law jurisdictions (North America)</p> <ul style="list-style-type: none"> • ‘Country Report: Canada’ <ul style="list-style-type: none"> ○ <i>Dr. Jennifer Bond, University of Ottawa, Canada</i> • ‘Deportation and Detention in the US: Human Rights Principles and the Treatment of Unreturnable Migrants’ <ul style="list-style-type: none"> ○ <i>Prof. Rebecca Sharpless, University of Miami School of Law, USA</i>
12:00 – 12:45	Lunch break



12:45 – 14:15	<p>Session 7: Approaches in other countries</p> <ul style="list-style-type: none"> • ‘Undesirable and Unreturnable in Brazil: Refuge, Exclusion and Illegal Acts’ <ul style="list-style-type: none"> ○ <i>Prof. Liliana Jubilut, Universidade Católica de Santos, Brazil</i> • ‘Turkey: The Challenging Problem of “undesirable and unreturnable” Asylum Seekers’ <ul style="list-style-type: none"> ○ <i>Didem Dogar, McGill University, Canada</i> • ‘Invisible People: Suspected LTTE Fighters in Special Refugee Camps of Tamilnadu’ <ul style="list-style-type: none"> ○ <i>Dr. Sreekumar Panicker Kodyath, NA Palkhivala Academy of Advanced Legal Studies and Research, Calicut, India (co-author Sheethal Paadathu Veettil, Tata Institute of Social Sciences, Mumbai)</i>
14.15 - 14.30	Coffee/tea break
14.30 - 16:00	<p>Session 8: Approaches by international organizations</p> <ul style="list-style-type: none"> • ‘Refugee Adjudication under the UNHCR’s Statute or Mandate and the Exclusion Dilemma’ <ul style="list-style-type: none"> ○ <i>Prof. James Simeon, York University, Canada</i> • ‘Union Law Solutions for Excluded Persons’ <ul style="list-style-type: none"> ○ <i>Prof. Hemme Battjes, Vrije Universiteit Amsterdam, Netherlands</i> • ‘Non-removable Returnees under European Union law – Status Quo and Possible Developments’ <ul style="list-style-type: none"> ○ <i>Mr. Fabian Lutz, European Commission, Brussels</i>
16:00 – 16:30	Session 9: Roundtable Discussion: Towards harmonised solutions
16:30 – 16:45	Concluding remarks and farewells – <i>Dr. David James Cantor</i> and <i>Dr. Joris van Wijk</i>

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