



United Kingdom Mission
to the United Nations

One Dag Hammarskjold Plaza
(885 Second Avenue)
New York, NY 10017

Tel: +1 (212) 745 9200
Fax: +1 (212) 745 9316

Email: uk@un.int
http://twitter.com/UKUN_NewYork

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

UNITED NATIONS GENERAL ASSEMBLY, SIXTH COMMITTEE,
SEVENTY-SECOND SESSION, AGENDA ITEM 82,
EXPULSION OF ALIENS

STATEMENT BY MR STEPHEN H. SMITH
ASSISTANT LEGAL ADVISER
UNITED KINGDOM MISSION TO THE UNITED NATIONS

12 OCTOBER 2017

Check against delivery

Mr Chairman,

On the topic of **Expulsion of Aliens**, the position of the United Kingdom of Great Britain and Northern Ireland has always been that this is a difficult and complex subject, which intrudes directly into the domestic sphere of States.

The United Kingdom continues to take the view that the topic of the expulsion of aliens is not suitable for a convention at the present time. The United Kingdom does not accept that the draft articles reflect customary international law, and does not agree with the content of those draft articles which claim to represent the progressive development of international law.

While the United Kingdom considers this subject to be insufficiently developed or coherent for codification, we do highlight that the United Kingdom's own domestic legal framework shows its commitment to the protection of the rights of aliens faced with expulsion. We consider it should remain the case that individual States should enjoy considerable discretion in this area. More than ever, the international community has a mobile global population moving between States; States must be able to manage migration for their benefit and secure their borders against those who would seek to undermine effective immigration control.

Migrants are expected to comply with the laws of host States. If they do not, then the host State should be able to take appropriate, reasonable measures to promote compliance.

Mr Chairman, the United Kingdom has further, detailed comments on the draft articles which are contained in an annex to the written copy of this statement. I do not intend to set these out in my oral intervention today, but would ask that these comments be reflected in the record as the formal position of the United Kingdom on these draft articles.

Thank you, Mr Chairman.

Annex to the United Kingdom's statement on the topic of the Expulsion of Aliens

Whilst not exhaustive, the United Kingdom also wishes to reiterate its concerns in respect of the following specific issues:

- The United Kingdom considers the text and scope of **draft article 2(a)** to refer to persons seeking entry from outside of the State and exclude persons who are refused entry at the border. This draft article should more specifically refer to immigration acts of in-country enforcement. As presently drafted, this draft article refers to all State acts and omissions to compel aliens to leave (including those already recognised as being lawfully present). This, therefore, could be considered to apply to the whole of the immigration system; the UK system of immigration is premised on tackling illegal immigration.
- The United Kingdom also considers that **draft article 5** should be amended. The United Kingdom's concern lies with the specific reference in the draft article to the proximity of the threat, i.e. "*the current nature of the threat to which the facts give rise.*" This draft article, as currently worded, implies limiting the grounds of expulsion which the United Kingdom would be unable to accept. The United Kingdom would suggest amending draft article 5(3) to read as follows:

"(3) The ground for expulsion for those otherwise lawfully present shall be assessed in good faith and

reasonably, taking into account the gravity of the facts and in the light of all of the circumstances, including the conduct of the alien in question.”

The United Kingdom’s position is that illegal migrants are notified of their liability to removal under domestic law where they have no permission to enter or remain in the United Kingdom and so they should presume that they will be removed unless they make an application to regularise their stay or depart voluntarily. Under this process, when an illegal migrant is served with a notice containing a decision to refusing to grant them permission to remain in the United Kingdom they will also be informed of their liability to removal. This will state the reason for the refusal and removal, i.e., that they are present in the United Kingdom illegally.

- In the United Kingdom’s view, **draft article 8** would also benefit from further clarification. The United Kingdom will use deprivation of citizenship either to address a fraud in the application for citizenship, or to protect the public, albeit that the grounds for deprivation may also be grounds for expulsion in their own right.
- The United Kingdom still has concerns regarding **draft article 19**. Whilst draft article 19(1)(a) is acceptable, draft article 19(1)(b) is unacceptable in its entirety. Those time-served Foreign National Offenders who are to remain in prison as immigration detainees at the end of their sentence are, although treated as unconvicted (i.e. remand) prisoners,

held in the same prison accommodation as prisoners serving sentences. There will be no separation between the two categories within the particular prison. The same position would also apply to immigration detainees transferred from Immigration Removal Centres to prisons for security/control reasons. Further, whilst draft article 19(3)(a) is acceptable to the United Kingdom, it considers that it is necessary to amend Article 19(3)(b), to bring the wording of this subparagraph into line with draft article 19(2)(a), as follows:

“(3)(b) Subject to paragraph 2, detention shall end when the expulsion cannot be carried out within a reasonable period of time, which may be longer where the reasons for delay are attributable to the alien concerned.”

- The United Kingdom has significant concerns regarding **draft article 20** as currently drafted. This draft article goes beyond the scope of those international obligations cited in the commentary to this draft article by referring to the protection of property by the State, which could be interpreted as going wider than the identified mischief, i.e., arbitrary deprivation of property. The United Kingdom allows people to take property with them on removal from the country (although they may have to pay excess baggage charges) or to make arrangements with family or friends for the shipment or disposal of their property. The United Kingdom does not, and would not, take any other measures to protect the property of aliens being expelled from the country beyond those that apply generally to all persons. The United Kingdom

suggests draft article 20 should be redrafted, as proposed, to specifically reflect the prevention of arbitrary deprivation of property:

“20. The expelling State shall take appropriate measures to ensure that aliens subject to expulsion are not arbitrarily deprived of their lawfully held personal property, and shall, in accordance with the law, allow the aliens to dispose freely of their property, even from abroad.”

- The UK is now content with **draft article 23**.