

**INTERNATIONAL HUMAN RIGHTS**

**LouvainX online course [Louv2.01x] - prof. Olivier De Schutter**

**READING MATERIAL**

**related to: section 3, sub-section 1, Unit 2: Diplomatic Assurances**

**Report of the Special Rapporteur on the question of torture, Manfred Nowak, submitted to the sixty-second session of the Commission on Human Rights, E/CN.4/2006/6 23 December 2005, para. 31:**

- (a) The principle of non-refoulement (CAT, art. 3; ECHR, art. 3; International Covenant on Civil and Political Rights (ICCPR), art. 7) is an absolute obligation deriving from the absolute and non-derogable nature of the prohibition of torture;
- (b) Diplomatic assurances are sought from countries with a proven record of systematic torture, i.e. the very fact that such diplomatic assurances are sought is an acknowledgement that the requested State, in the opinion of the requesting State, is practising torture. In most cases, those individuals in relation to whom diplomatic assurances are being sought belong to a high-risk group ('Islamic fundamentalists');
- (c) It is often the case that the requesting and the requested States are parties to CAT, ICCPR and other treaties absolutely prohibiting torture. Rather than using all their diplomatic and legal powers as States parties to hold other States parties accountable for their violations, requesting States, by means of diplomatic assurances, seek only an exception from the practice of torture for a few individuals, which leads to double standards *vis-à-vis* other detainees in those countries;
- (d) Diplomatic assurances are not legally binding. It is therefore unclear why States that violate binding obligations under treaty and customary international law should comply with non-binding assurances. Another important question in this regard is whether the authority providing such diplomatic assurances has the power to enforce them *vis-à-vis* its own security forces;
- (e) Post-return monitoring mechanisms are no guarantee against torture – even the best monitoring mechanisms (e.g. ICRC and CPT) are not 'watertight' safeguards against torture;
- (f) The individual concerned has no recourse if assurances are violated;
- (g) In most cases, diplomatic assurances do not contain any sanctions in case they are violated, i.e. there is no accountability of the requested or requesting State, and therefore the perpetrators of torture are not brought to justice;
- (h) Both States have a common interest in denying that returned persons were subjected to torture. Therefore, where States have identified independent organizations to undertake monitoring functions under the agreement, these interests may translate into undue political pressure upon these monitoring bodies, particularly where one is

funded by the sending and/or receiving State.