

[3.2.4] The Abu Qatada Case - Discussion

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[MatthiasMS](#) about a month ago

Are you in agreement with the reasoning of the European Court of Human Rights? Does the Court provide a convincing answer to the arguments against diplomatic assurances put forward by Manfred Nowak, the former UN Special Rapporteur against torture?

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[40 votes \(click to vote\)](#) [NathanTulkens](#)

21 days ago

I believe that most concerns voiced by Manfred Nowak about diplomatic assurances have been answered by detailed provisions of the MOU, and it is thus not surprising that the ECHR considered this document to be a sufficient guarantee against the risk of ill-treatment.

The only concern that stays unanswered and still vivid is this one: "[...] 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."

It seems indeed that, with all the guarantees contained in the MOU, Abu Qatada will be treated with much more caution and respect than most other detainees in Jordan...

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- I agree with your point, Nathan.

With respect to the concern that you raise, I think that the Court is aware of its own role and limits. The Court has no prerogative to edict human rights standards in *non-contracting* States (like Jordan); and fortunately does not do so. Neither is it called upon to arbitrate diplomatic relations between (contracting and non-contracting) States.

The Court must rule individual cases. As it states in paragraph 186 : « its only task is to examine whether the assurances obtained in a particular case are sufficient to remove any real risk of ill-treatment. »

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-posted 20 days ago by [AmauryV](#)

- I also agree with the above that the MOU is a detailed provision so it can be understood that the ECHR considers this to be a good document against ill treatment. It is a good principle to first make sure the person will be safe before extraditing them. I also think that that paragraph that Nathan wrote makes clear that it will only be obtained in a particular case, which is understandable.

But it is a pity that other detainees will still be treated differently.. It is like some say in the forum, it is good that they make these agreements, but once a person is meant to

return to their country, how will we know for sure that they do not mistreat them? So I think that even though they try to make a good document with the MOU, it is still doubtful that the country will follow it.

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-posted 19 days ago by [CarolienVdB](#)

- sono pienamente d'accordo. La Corte purtroppo ha pur sempre dei limiti. In primis bisogna osservare il grado di validità del MOU, in particolare osservare se nel Paese della Giordania gli accordi internazionali siano gerarchicamente superiori alle leggi nazionali. Inoltre, l'individuo, una volta rientrato nel suo paese, venga trattato realmente nel rispetto delle condizioni e assicurazioni previste dal MOU, controllo concretamente possibile solo attraverso organismi internazionali e non individui di controllo del paese ove si ammette l'uso di torture.

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-posted 6 days ago by [Rossella87](#)

- The guarantees are a good start in the evolution of bilateral cooperation for the dissemination of international human rights, however, I would still invoke the obligations that states have towards the original universal rights charter that prohibit torture unconditionally. Cause of doubt of human rights infringement is ground enough to cancel entitlements, and therefore in this case, Jordan should have been denied access to the accused. It seems to me a clever arrangement was put into place with a MOU that hoodwinked learned judges while helping both governments with what they want: UK to get him off the island, Jordan to get a hand on him.

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-posted 6 days ago by [abhiroop1](#)

- I cannot help thinking that a document like that is pretty worthless. I seriously doubt that the UK would do anything to rescue him if he was subjected to torture or an unfair trial.

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-posted 6 days ago by [Lyck](#)

- At least the document adds sufficient pressure on the receiving nation. Further, if it comes to light that they have not honored the MOU, UK will not deport such subjects in later cases.

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-posted 6 days ago by [phantom210](#)

- The fact that Jordan ultimately had to change its constitution, and set aside testimony previously gained under torture probably made this case a step forward for human rights. By letter of the law, it gives all Jordanian citizens protection. Whether action will follow words, I don't think anyone can predict... in every case a State prepared to change its constitution has to be given a chance to fulfil it, or nothing will ever progress.

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-posted 5 days ago by [ChristineHerbert](#)

- I don't know if you should just put Jordan's reputation aside based on a MoU. It is unclear to me whether the UK has much interest in checking up on this man.

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-posted 5 days ago by [sarah1988nijh](#)

- I agree with the first point of view

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-posted 5 days ago by [RemHab](#)

- Is a hypocrisy a person which is suspect (even been a victim) to have a better treatment then the other citizens... where's the justice for everybody? This bilateral agreement is a way to wash their hands in face of the situation. The same happens for example in Guantanamo where the prisoners have confort, medical assistance 24 hours/day and the public health system for the americans are failed.

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-posted 5 days ago by [Maiariadine](#)

- Lyck has got it right. The vague promises (adequate, promptly) are worthless in practice.

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-posted 5 days ago by [TomRizzo](#)

- I agree with Nathan.

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-posted 5 days ago by [JulieThonus](#)

- Yes to either questions.

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-posted 4 days ago by [Adamlex](#)

- The Abu Qatada case can be understood in terms of what is more valuable or easier to mimplement in International Relations, the multilateral covenants or the bilateral ones, in this case, the MOU between Jordan and UK proves to be a useful tool to implement a Multilateral treaty, it is true that the sole existence of the MOU damages the principle contained in the treaty, in practical ways some can say is even more effective because is easier to follow and the consequences of not doing so are tangibles, in most cases bilateral relations are more importan than multilateral ones.

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-posted 4 days ago by [damcor10](#)

- I agree with Nathan's first point.

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-posted 4 days ago by [Walter Knorz](#)

- hi i think A law is good, but it is important to practice law.

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-posted 4 days ago by [ALISAD](#)

- What interest me as of now is that is there a real check up if he was deported? I haven't read the court document as it was suggested not to before involve in the discussion. But i would like to continue seeing the check up which is to confirm there is no torture and violation of it if he was deported.

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-posted 4 days ago by [N9A](#)

- Indeed, as others have pointed out, rather than compel Jordan to comply with CAT across the board of all its citizens and those that fall within its jurisdiction, the MOU serves only to guarantee the rights of one specific individual. The obligations under CAT are not owed by one state to another state, but to humanity. A MOU is a mutual understanding or agreement between states. The interests or obligations created in a MOU are between the two countries. If the use of MOU becomes a widespread practice, it will undermine human rights treaties as an international legal regime. It renders human rights guarantees as something for countries to bargain among themselves. It gives the responsibility of monitoring human rights violations to NGOs and strip treaty organs of their jurisdiction and function.

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-posted 4 days ago by [DominicK65](#)

- It is interesting to read the ultimately conflicting views of DominicK65 and ChristineHerbert above; is the effort on the part of Jordan in negotiating and implementing the treaty indicative of progression for the individual State in respecting international law or a backward step for the international legal regime as a whole?

I also find the distinction between bilateral and multilateral treaties interesting in this example. Like the previously discussed 'paradox of many hands', does a country feel a greater obligation to comply to a bilateral understanding because they are more likely to be held accountable?

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-posted 3 days ago by [sfoxton](#)

- I agree with Lyck

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-posted 3 days ago by [Graphinya](#)

- I support what Nathan said.

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-posted 3 days ago by [ElphabaThropp](#)

- I agree with CarolienVdB!

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-posted 3 days ago by [TorJorgensen](#)

- The all case shows how difficult it is to strike a balance satisfactory to all . The decision

of the Court is naturally correct but it Leaves open a series of questions on the difficulty of entertaining realtions to other countries and their honorability . I think it leads to a lack of incentive to progress on the development of human rights if you realise that your assurances are Worth nothing

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-posted 3 days ago by [Alepalms](#)

- I agree with Alepalms. It is very difficult to make a balance between the sending nation and the receiving one. The only solution would be if that person has been addressed as a terrorist symbol, is to send him to a third party country (ie, a country which does not belong to either parties as long as the person is acceptable).

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-posted 3 days ago by [Ryousif](#)

- I also believe that the MOU does not sufficiently guarantee any rights (converse limitations) that the court must consider. Essentially, it's even less than a slap on the wrist.

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-posted 3 days ago by [ShrnLm](#)

- I agree with the above that MOU will not necessarily guarantee the rights of a person be protected. It is easier to put down laws and and agreements than it is to practice them. I think at the end it is the country concerned that will decide to abide by the understandings between the two countries. Just like we have seen before when US has violated different international laws despite the fact that they are members to the treaties.

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-posted 3 days ago by [Floradoto](#)

- I agree with Nathan opinion.

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-posted 3 days ago by [johalf](#)

- I would like to add that the fact that Abu Qatada will be treated better than other detainees is not necessarily a bad thing because of the potential trickle down effect.

Once the government of Jordan agrees to comply with the HR protections in the MOU in respect of Abu Qatada, it would be hard pressed to justify a denial of these same protections to other detainees on the ground that a similar MOU was not signed. Not to mention that the government might open itself to constitutional challenge by the other detainees based on the right of equality (assuming that Jordan's constitution does provide for such a right, that is).

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-posted 3 days ago by [JamesLow](#)

- Abu Qatadah is not an object to be managed, he is a man who has the right to be free, and if you want to do well then you need to let him free, but if you do not want him to continue to live in the UK then you have to pay him a one-direction ticket where he

wanted it!

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-posted 3 days ago by [selimmiles](#)

- I agree with JamesLow, it is important to establish a precedent that will help other prisoners to improve their situation. This case can open the door to invoke Human Rights against torture and human treatment to prisoners.

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-posted 2 days ago by [dacristo](#)

- I agree with this view and also see what response I expected us to the unknown in your question about "[...] Rather than using all legal and diplomatic Their powers as States parties to hold other States parties accountable for Their Violations, Requesting States , by means of diplomatic assurances, only seek an exception from the practice of torture for a few Individuals, que leads to double standards vis-à-vis other detainees in Those countries. "

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-posted 2 days ago by [ipevega](#)

- This situation may have been dealt with in the only way it could be at the time. Hopefully both governments abided by the rulings and there was a way to be sure of that. We have to keep trying.

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-posted 2 days ago by [GlennaSue](#)

- A good point of view, but i am really concerned about the fulfill of the MOU, and its application only to few people.

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-posted 2 days ago by [JCVELASCO](#)

- Manfred Novak's opinion is valid. How can we expect a state which does not abide by international treaties and tortures its citizens to abide the MOU?

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-posted 2 days ago by [ismailk](#)

- I understand all the concerns of Nowak and as a result I seriously doubt about successful implementation of MOU.

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-posted 2 days ago by [MirkaGaborova](#)

- Surely completely agree with Lyck

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-posted 2 days ago by [LeaSecco](#)

- After having been aired in the news so many times, I would find it hard to judge on the man guilt or innocence to Jordanian accusations. He may well have guilt, but the case

should be can we trust the Jordan legal system to guarantee safety in time to the individual, irrespective of the assurances given to British government or courts.

The evidence which could have been obtained by torture, indicate how he might end up being treated. So we have duty to not hand him over for this doubt that he may well be exposed to torture.

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-posted 2 days ago by [TonyBerr](#)

- I also agree with Nathan. To the extent that the Court is disposed to allow diplomatic assurances at all, it comes up with a detailed, multi-factor test for assessing the adequacy of those assurances. And the test addresses many concerns: the human rights record of the receiving state (including that state's practice of torture); the actual and likely experience of the applicant; the seriousness with which both states seem to take the agreement; the specific mechanisms for supervising the treatment of the returned applicant. As Nathan notes, the one huge question the Court does not address is why, if states are willing to violate the binding CAT (and other states are content to let this happen), assurances are at all helpful. But unlike the Special Rapporteur, the Court is not dealing with general principles and worldwide practices. Rather, the Court has been asked to decide the one case before it — that of Othman — on that case's facts. And though the Court does express some general unease about assurances, it finds on examining the facts before it, that this one applicant does not run a real risk of being tortured on return to his home country. And for the record, I think the Court MAY be right. That is, even a state that is notorious for engaging in torture might, for a variety of reasons (including concern for relations with the sending state, or fear of negative publicity), abide by its assurances in one particular case.

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-posted 2 days ago by [LeeRyan](#)

- Damcor 10 has touched a key point... Can bilateral agreements be a sufficient guarantee to a multilateral agreement on universal values and core principles. Certainly, the Court has no means to get sufficient guarantees that the state parties comply with their obligations. However, the precautionary principle should prevail.

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-posted 2 days ago by [FRANCXBARROS](#)

- At the diplomatic level, a bilateral or multilateral agreement is not a guarantee that the action will be executed properly. It is simply a political tool. Therefore, the main concern in this case is the ability of the Court to comply with due process, and the respect of human rights. Similarly, the European Courts should ensure not only apply the European law but also the international law. And continue to respect his culture, customs and the religion.

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-posted a day ago by [francela_aguirre](#)

- I think the Court overall fulfills its role when it identifies the risks and the violation of article 6 (fair trial, denial of justice) so that the diplomatic assurances are not only formally considered but also their evidence and actual realization. Nonetheless, it

remains still a delicate matter because of their political nature, difficult accountability and the precedent of differentiation between citizens mentioned here.

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-posted a day ago by [Diane novi](#)

- The close examination of each of the points in the MOU were, I think, a practical response to the Special Rapporteur's rejection of the validity of diplomatic assurances. It was clear from the length, complexity and contentiousness of the case, that the UK had to move on it and so sought as practicable and legal a solution as they could find. It is not perfect but it is working towards making it more difficult for the receiving state to continue to torture prisoners, regardless of whether or not it has signed the convention. As mentioned above, the fact that a particularly notorious person is protected from ill-treatment does set a high-profile precedent. I still agree with the Special Rapporteur that since it is in the interest of both States not to find evidence of torture, the NGO, funded by the UK government, would be under a lot of pressure. To make it really clear, and of more weight, the ECHR or another multilateral body could have been asked to monitor the situation.

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-posted a day ago by [FCRR](#)

- I agree that this ruling doesn't address Nowak's concern that diplomatic assurances only cover particular individuals, and do nothing for other potential victims of torture or ill-treatment. However as many people have pointed out, and the judgement made clear this is not their remit.

"it not for this Court to rule upon the propriety of seeking assurances, or to assess the long term consequences of doing so; its only task is to examine whether the assurances obtained in a particular case are sufficient to remove any real risk of ill-treatment."

This is a stand that I also agree with. It is not the job of the court to address this issue, although through the development of case law they do effect future interpretation of treaties they can only view the case in front of them. The nature of the legal system is such that it must be view in terms of the one specific case. It's the job of treaty makers/legislators to address the wider issues such as the impact on other individuals in the countries in question.

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-posted a day ago by [AlisJay](#)

- I agree with Nathan's post that the ECHR has provided a very profound revision of the MOU and has reasonably argued that an extradition of Mr Abu Qatada under these circumstances can be justified. However, I also see a problem with the double standard that is applied: one for arrested nationals of the receiving country, and one for those extradicted from other countries.

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-posted a day ago by [Almagro](#)

- I agree, but the MOU does not address the issue of double standards (arrested nationals

of a state vs extradited detainees).

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-posted a day ago by [luzar](#)

- I agree with Nathan's main point about the case. Of course it would be much better if assurance could be obtained that all detainees in Jordan would not be tortured, that was not what was before the court in this case.

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-posted a day ago by [Mary3](#)

- I agree with the first point.

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-posted a day ago by [rake132](#)

- I agree with Mr. Tulkens in both of his points, that the concerns of the Special Rapporteur have been adequately dealt with, in this specific case, and also that the more important concern is that the Contracting States should be striving to protect the Rights of all people, especially those in Contracting States. States should be using all diplomatic means to prevent all torture in other States and not just the torture of certain citizens.

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-posted a day ago by [RobBarrett](#)

- Agree with Nathan's (and prof. Nowak's) concern regarding double standards- by definition, diplomatic assurance of individual cases can always become a subject of double standards.

As for the ECHR judgement, I am wondering whether the decision would have been same in the case of a low-level detainee and the sending country with less leverage. The high profile of Abu Qatada and strong UK-Jordan relations could have diminished the risk of ill-treatment regardless of any diplomatic assurance.

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-posted about 24 hours ago by [Zalanova](#)

- I think that the exception pointed out by Nathan brings up the main reason argued for non-reflowment, which is that the receiving country is a place where the human rights are not respected, protected or promoted. I think that the diplomatic assurances depends on the good relationships between the sending and the receiving country, once the receiving state has make clear that does not respect HR treaties. The safety of this people is therefore also depending in diplomacy and politics, and a new, conflictive situation between receiving and sending country could give place to a suspension of an assurance like the MOU and put in risk the enjoyment of rights, and even the life of the deported.

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-posted about 22 hours ago by [ginescb](#)

- I agree with the concern regarding other potential torture victims. But it seems that there is a focus on the single person being deported because the state extraditing the person is taking a direct action that would lead to the individual being tortured - throwing them

into the lion den, so to speak. This is seen as a different level of culpability compared to the fate of other potential torture victims already in the destination state, as the extraditing state is not actively leading to their maltreatment (though it could be said it is negligent to stand by idly while knowing that torture is conducted in the destination state - like not rescuing someone from a well). I don't agree with that stance, but I think that's the reasoning.

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-posted about 18 hours ago by [Beth-M](#)

- Agreed, excellent points Nathan. Good point as well Lyck.

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-posted about 15 hours ago by [mkross2k](#)

- I agree with you. Double standards are not acceptable

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-posted about 12 hours ago by [ZoranIsrael](#)

- The guarantees to avoid the risk of ill- treatment can be said to have been covered by the MOU which entails in details and more all the concerns voiced by Manfred Nowak and a lot grounds covered by the contracting state up to the signing of a treaty of Mutual Legal Assistance and Legal Matters signed in march 2013. this will streamline positively on his retrial and also put at rest his fear on being judged on the incriminating statements by two witnesses whom may have been tortured. I believe that the MOU if derogated from will cause a serious breach in the relationship between the two parties and therefore will be a yardstick for the receiving state to adhere to international best practices in the case.

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-posted about 12 hours ago by [OKAFOROBIOIRA](#)

- I Agree

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-posted about 11 hours ago by [MatthewLenggu](#)

- One point stands out for me: "It is no part of this Court's function to review whether an individual is in fact such a threat; its only task is to consider whether that individual's deportation would be compatible with his or her rights under the Convention"

This gives us the overview we need. There is no doubt that the MOU satisfies the requirements needed. However, it is sad that these assurances are for countries where abuse of these rights are apparent and nothing are done about it. In my perspective, it's almost funny to think that a country that cannot uphold the tenets of a convention which it has ratified, will uphold the agreement in an assurance!

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-posted about 10 hours ago by [Alufa](#)

- I agree with Christineherbert's point of view. As the agreement necessitates that Jordan change some of its policies to be in compliance, Jordan is indirectly adopting human

rights policies that may be beneficial in the long run. Of course, that is assuming that the MOU is followed to the letter, but if it is violated, then the UK will no longer send any deportees there.

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-posted about 8 hours ago by [Kasiayar](#)

- I agree with Nathan.

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-posted about 6 hours ago by [Izzy550](#)

- I too agree with Nathan. In respect of Manfred Nowak's concern that diplomatic assurances (if these actually are effective in improving the destination country's respect of human rights for a remitted individual) would create a double standard because the protections would not extend to other detainees.

I would add that, although this is a valid concern, it would not be reasonable to expect one nation to attempt to force another nation to respect the human rights of all of its detainees because it seeks to remit one person to a nation that practices torture.

As AlisJay noted, the court said that:

"its only task is to examine whether the assurances obtained in a particular case are sufficient to remove any real risk of ill-treatment."

It is intuitive that if the Court finds that in all the circumstances of a case there is no real risk of ill treatment in the destination country (perhaps no matter how those circumstances arose) then the Court does not have a basis under Article 3 of the ECHR to prevent the person from being remitted.

Do you think that the Court could have interpreted its power more broadly in this instance to decide in a way that would have satisfied all of the Special Rapporteur's concerns outlined in the reading we were given?

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-posted about 3 hours ago by [SusiH](#)

- I agree with Nathan, concern about double-definitions. Is what I thought.

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-posted about 2 hours ago by [Ferojas](#)

- I agree with Caroline and some others. How can we assure, even with the MOU, that a person is not being mistreated? This is my doubt...The MOU is necessary but how can we control its execution?

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-posted 31 minutes ago by [Prixy](#)

- Yes, I am in agreement from what I understand with the responses above that said they believe that most concerns voiced by Manfred Nowak about diplomatic assurances have been answered by detailed provisions of the MOU, and it is thus not surprising that the ECHR considered this document to be a sufficient guarantee against the risk of ill-

treatment.

-