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Help

In recent years, particularly in the context of the "War on Terror" launched following the 9/11 attacks on New York and Washington, States have been increasingly confronted with the presence of people suspected of terrorism or of supporting or promoting terrorist organizations, but whom they could neither prosecute nor, therefore, detain, in particular because of a lack of evidence against them. As we have seen in section 2, this is one of the reasons why some countries sought to derogate from their obligations to guarantee the right to liberty and security: the United Kingdom, for instance, notified a derogation from Article 5 of the European Convention on Human Rights and from Article 9 of the International Covenant on Civil and Political Rights in that context. At the same time, these individuals -- though they cannot be prosecuted or, in principle, detained pending a criminal trial against them -- often could not be returned to their countries of origin because the countries concerned were considered to be "unsafe": they had a reputation of torturing individuals suspected of terrorist activities, or of subjecting them to inhuman or degrading treatment or punishment, and therefore it would not have been acceptable to return the individuals concerned to these countries, since this would have meant putting these individuals at risk. Therefore, the "sending" countries approached the "receiving" countries in order to seek "assurances" from these countries that the persons expelled would be treated in accordance with international human rights standards -- for instance, that they would not be tortured or subjected to ill-treatment, that they would only be prosecuted in accordance with fair trial standards, etc. Are such "diplomatic assurances" acceptable? In other terms, would they make acceptable an expulsion or an extradition which otherwise would not be consistent with the duty of the "sending" State not to put the individual concerned at risk? Please read the views expressed (/c4x/LouvainX/Louv2.01x/asset/\_Materials\_\_Diplomatic\_Assurances\_-\_Nowak\_Final\_.pdf) by Manfred Nowak, the former UN Special Rapporteur on the question of torture (2005-2011).



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