IV CONGRESSO DE ESTUDOS JURÍDICOS INTERNACIONAIS E I SEMINÁRIO INTERNACIONAL DE PESQUISA TRABALHO, TECNOLOGIAS, MULTINACIONAIS E MIGRAÇÕES -TTMMS

MIGRAÇÕES, DIREITOS HUMANOS E AGENDAS DA TEORIA CRÍTICA E JUSFILOSÓFICA NO DIREITO E DIREITO INTERNACIONAL

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IV CONGRESSO DE ESTUDOS JURÍDICOS INTERNACIONAIS E I SEMINÁRIO INTERNACIONAL DE PESQUISA TRABALHO, TECNOLOGIAS, MULTINACIONAIS E MIGRAÇÕES -TTMMS

MIGRAÇÕES, DIREITOS HUMANOS E AGENDAS DA TEORIA CRÍTICA E JUSFILOSÓFICA NO DIREITO E DIREITO INTERNACIONAL

Apresentação

Trabalho, Tecnologias, Multinacionais e Migrações:

por que discutir os constantes desafios dos direitos humanos na ordem democrática global?

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Debates contemporâneos sobre os desafios dos direitos humanos, suas teorias e agendas de resistência e transformação não poderiam ficar alijados da compreensão analítica em torno da relevância ou pertinência de temas transversais da globalidade e que hoje merecem atenção pela academia brasileira. Os múltiplos movimentos envolvendo pessoas, as forças laborais, o capital, e os produtos do intelecto, em escala global, não apenas ignoram fronteiras, padrões culturais ou referenciais morais e éticos, como sistematicamente a realidade prática e pragmática tem demonstrado. Eles igualmente escancaram o esgotamento das formas e procedimentos ditados pelo direito, suas instituições e narrativas.

Nas entrelinhas e encruzilhadas do repertório de atores, contextos e papéis reduzidos ao imaginário das crises cíclicas, da sucessão das fases do capitalismo (industrial, financeiro, tecnológico e informacional) ao longo dos séculos ou da banal “pós-modernidade”, florescem espaços e pontes de transição, sobretudo construídos a partir do trabalho crítico na academia e projetado para governos, legisladores, tribunais, e para a sociedade como um todo. Essa seria a proposta de repensar a permanência e a estabilidade dos direitos humanos como instrumentos transformadores e de irreversível apelo de tolerância. Entre seus desafios contemporâneos, dentro da própria reconceptualização e afirmação do Estado Democrático de Direito, certamente encontram-se a necessária integração entre o exercício de prerrogativas da cidadania e o resgate da humanidade que deve subsistir em todas as partes do globo, regiões ou localidades.

Com essa nota introdutória, a presente obra vem coligir os estudos coletivos elaborados para a o IV CONGRESSO INTERNACIONAL DE ESTUDOS JURÍDICOS e o I SEMINÁRIO INTERNACIONAL DE PESQUISA EM DIREITO "Trabalho, Tecnologias, Multinacionais e Migrações –"TTMMs": Desafios contemporâneos dos direitos humanos na ordem democrática global", eventos científicos realizados nos dias 18, 19 e 20 de abril de 2018, na cidade de Belo Horizonte, sob os auspícios do Programa de Pós-Graduação em Direito da Universidade Federal de Minas Gerais. Os agradáveis encontros de abril congregaram parceiros acadêmicos nacionais e internacionais que se engajaram em iniciativa inovadora e inclusiva de reflexão crítica no Direito e suas interfaces transdisciplinares.

As iniciativas aqui relatadas envolveram ações especialmente voltadas para disseminar a produção na área do Direito, evitando-se incorrer em quaisquer arbitrariedades formalistas que poderiam minar a relevância da dogmática como objeto de estudos no Direito ou vulgarizar o caráter laborativo que deve nortear a academia e as universidades brasileiras. Nesse sentido, em linha com os formatos de plenárias e sessões de discussão de trabalhos, os eventos destacaram a proposta de articular as dimensões políticas, regulatórias, sociais e normativas em torno dos movimentos gerados pelo eixo analítico "Trabalho, Tecnologias, Multinacionais e Migrações – TTMMs", absolutamente inédito na América Latina.

A tarefa de coordenação acadêmica, tendo como plataforma inicial o tradicional e prestigiado Programa de Pós-Graduação em Direito da UFMG, com doutorado mais antigo em funcionamento no Brasil (desde 1932), seria a de proporcionar esse espaço de reflexão, agora registrado em obra publicada pelo Conselho Nacional de Pesquisa e Pós-Graduação em Direito (CONPEDI). Da mesma forma, a oportunidade criada pelos idealizadores veio a sediar a quarta edição do Congresso Internacional de Estudos Jurídicos, projeto acadêmico de iniciativa dos estimados colegas e professores Luciana Aboim e Lucas Gonçalves, da Universidade Federal do Sergipe - UFS, em continuidade à terceira edição do evento realizada em setembro de 2017, na cidade de Aracajú, Sergipe.

A centralidade do trabalho torna-se cada vez mais evidente nas sociedades de capitalismo central e periférico, haja vista os novos arquétipos que veem surgindo a partir da divisão internacional do trabalho, propiciado tanto pela intensa utilização das tecnologias digitais, bem como pelas migrações, muitas vezes provocadas pela nefasta prática do dumping social e ambiental.

Com o objetivo de proporcionar às leitoras e leitores o aprofundamento de temas contemporâneos no eixo investigativo "Trabalho, Tecnologias, Multinacionais e Migrações – "TTMMs", o livro permitirá apresentar os desafios a serem enfrentados na interface com os

direitos humanos. Esperamos que os trabalhos aqui selecionados e sistematicamente organizados possam capitanear novas pesquisas temáticas e que respondam a demandas de investigação na academia, dentro da compreensão de dinâmicas e condicionantes que afetam e transformam a sociedade global no século XXI.

Belo Horizonte, outubro de 2018.

MIGRAÇÕES INTERNACIONAIS E A PROIBIÇÃO ABSOLUTA DA TORTURA: A EXEQUIBILIDADE DO PRINCÍPIO DE "NON-REFOULEMENT" NO DIREITO INTERNACIONAL

INTERNATIONAL MIGRATIONS AND THE ABSOLUTE PROHIBITION OF TORTURE: THE ENFORCEABILITY OF THE NON-REFOULEMENT PRINCIPLE IN INTERNATIONAL LAW

Caroline Stéphanie Francis dos Santos Maciel [1]

Resumo

O objetivo deste artigo é analisar os efeitos da proibição absoluta do uso de tortura nas migrações internacionais, de forma a argumentar que o princípio de "non-refoulement" não admite exceções. Isso significa que nações democráticas não devem deportar pessoas para serem torturadas em outros países; caso contrário, configura-se uma violação às normas e standards internacionais de direitos humanos.

Palavras-chave: A proibição absoluta da tortura, Princípio de "non-refoulement", Migração internacional, Violações a direitos humanos

Abstract/Resumen/Résumé

The purpose of this paper is to examine the effects of the absolute prohibition of torture on international migrations, in order to argue that the non-refoulement principle does not allow any exceptions. This means that democratic nations must not send human beings to face torture elsewhere; otherwise, it is a violation of international human rights norms and standards.

Keywords/Palabras-claves/Mots-clés: The absolut prohibition of torture, Non-refoulement principle, International migration, Human rights violations

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1 Introduction

Torture is the most profound violation of the dignity of a human being (SUSSMAN, 2005, p. 2). This statement expresses the graveness of committing torture and the overall repugnance for this hideous crime. Torture means the annihilation of the victim and the torturer's humanity, whether temporarily or permanently.[1] For this reason, international law system established the absolute prohibition of torture by customary law and also through treaties and other legal mechanisms. Yet these practices are still widely adopted by a great number of countries, from dictatorships to democratic states and recently justified on a "terrorism fight" basis.

From the prohibition of torture derives the non-refoulement principle; since the practice of torture is forbidden, a democratic state has a moral duty to help the eradication of it and then cannot acquiescent with its use abroad. To send someone to face torture elsewhere would be taking part in it and democracy shall not be complicity with such abominable practice. Therefore, a democratic nation is also prohibite to compel this kind of international migration that will result in torture.

In this context, this essay will firstly outline a concept of torture, then, analyze the absolute prohibition, in order to expose the challenges that a post 9/11 world brings upon it. Subsequently, it will explain the meaning and scope of the non-refoulement principle, examine the arguments in favour of extraordinary exceptions and the objections against it. From that, it will discuss the issue of the enforceability of the provision and the widespread violations. For this purpose, the methodological procedure adopted was discourse analysis of international norms and selected case law, guided by a qualified theoretical frame.

2 The definition of torture in International Law

In order to fully comprehend the absolute prohibition of torture and other cruel, inhuman and or degrading treatment (CIDT) and also the issue of deportation to face it, we must understand the concept of torture and the difference from other ill-treatments. Yet this is not a simple task. Many authors talk about the difficulties to draw a precise definition of torture and the controversy around it (SUSSMAN, 2005, p. 1). Hope (2004, p. 815) affirms

[1] This is known as the Kantian's argument against torture (SUSSMAN, 2005, p. 15).

that the main source to construct a definition of torture has always being case law, although the international legal instruments are often used as a starting point.

The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (UNCAT) gives a definition in Article 1[2], in which torture's concept is outlined in three main elements: the infliction of severe physical or mental pain or suffering; intentionality and the purpose of the practice (NOWAK, 2006, p. 817). The Convention's concerns are mainly focus on torture connected with public officials, whether is being practiced by one (action) or is being allowed to happen (omission).

The first element is related to the severity of the pain caused by one's conduct. Secondly, the person has to inflict pain intentionally, which exclude the hypothesis of torture by negligence. It is not possible to torture someone accidentally (SUSSMAN, 2005, p. 5). And lastly, the qualification of a practice as torture depends upon the existence of a specific purpose, such as the extraction of confession, obtainment of information, punishment, coercion or any kind of discrimination. The provision is not an exhaustive clause, although the existence of any purpose at all is not enough (NOWAK, 2006, p. 832).

Some countries[3] are in favour of the intensity of pain be used as the ultimate criteria to distinguish torture from CIDT, but the European Commission of Human Rights (ECHR) and the Committee against Torture (CAT) sustained in many occasions that it is the existence of a purpose that makes the distinction.[4] This means that torture has a specific purpose while other forms of ill-treatments do not; by this approach, harsh interrogation techniques used on terrorism suspects are torture,[5] such as the ones used by British forces in Northern Ireland.[6] Nonetheless, the European Court of Human Rights (ECtHR) held that the combination of the five techniques in this case was CIDT, since they "did not occasion suffering of the particular *intensity* and cruelty implied by the word torture as so understood".[7]

Additionally to these three elements of the Convention's concept, Nowak (2006, p. 832-833) adds the powerless of the victim. Sussman (2005, p. 6) also refers to the victim's

[2] Article 1: For the purposes of this Convention, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.
[3] For example, UK and USA are in favour of this approach.
[4] The ECHR took this approach in the Greek Case, 1969.
[5] About this subject, see ECHR, Report of 25 January 1976, 1976.
[6] See: ECtHR, *Ireland v UK*, 1978.
[7] ECtHR, *Ireland v UK*, 1978.

vulnerable position, complete subjection and passivity. It is only possible to have torture if the victim is under complete control of someone else, without any chance of resistance. Outside "a situation of detention or direct control of public officials", it is only possible to have CIDT. This was the determining fact of the decision on *Hajrizi Dzemajl v Yugoslavia* (CAT, 2002).

Hence, in order to discuss the absolute prohibition of torture and, subsequently, the issue of deportation to face torture abroad, torture should be characterized by a *severe* pain *intentionally* inflicted with a specific *purpose*, in a situation of total *control* of the victim by a public authority.

3 The absolute prohibition of torture and the widespread violations

The absolute prohibition of torture and other CIDT is part of international customary law, meaning that it binds all states, regardless their ratification of treaties or conventions, and none can derogate from this obligation. The prohibition has been reinforced by several international legal instruments [8] and it has being emphasized [9] that no exceptional circumstances of any kind can be invoked by a State to justify acts of torture or CIDT. It is a non-derogable obligation, equally for both torture and others ill-treatments and states must comply with it in any territory of its jurisdiction, even in facilities abroad.

Although torture's repulsive nature is broadly recognized and the absolute prohibition of its practice is internationally accepted, torture is still a widespread issue and it has been practiced in almost every country in the world. After the terrorist's attacks in 9/11, torture and other CIDT have been used and justified under the cover of the "war against terror". The "ticking bomb" scenario is draw to justify the choice of saving innocent lives when conflicted with the awful practice of torturing a suspected terrorist, in order to get information that could prevent the attack.

There are many issues on this hypothesis. Firstly, in a practical view, there is no certainty that the suspect actually have the information wanted, which means that an innocent person could be tortured or at least that no benefit would result from the practice (SUSSMAN, 2005, p. 17). Even if there is sufficiently strong evident that the prisoner holds the

[8] See: Article 5 of Universal Declaration of Human Rights (UDHR); Article 7 of International Covenant on Civil and Political Rights (ICCPR); Article 2(2) and Article 16 of UN Convention against Torture and Other Cruel Inhuman or Degrading Treatment; Article 3 of European Convention on Human Rights (ECHR), among others.
[9] See: CAT, General Comment 2, 2007.

information, torture has been proved an inefficient and unreliable mechanism to gather information.[10]

Further, an attempt to override the absolute prohibition of torture, even if only in extreme exceptional circumstances, brings a real risk of dissemination of the practice. Just like an opened Pandora's box, if some levels of torture are allowed, its use is easily abused because it is hard to control and supervise it and then, suddenly, it becomes a routinized practice. And how can democratic states oppose to torture being practiced by tyrannies if they also allow it? What then would be the difference between democrats and terrorists if they share the same cruel methods?

The "dilemma of dirty hands" described by Michael Walzer (1973, p. 160), as "a situation where [a man] must choose between two courses of action both of which it would be wrong for him to undertake", suggest that we should choose the lesser of two evils. But it also raises the question of whether the means justify the ends. Can anything be done, even a violation of individuals dignity and integrity, in order to uncover the truth? How far can democracy go and disrespect its own values without being self-destroyed? "What kind of victory if would be if terrorism were defeated at the cost of sacrificing our democratic values?".[11] In *Israeli case* (Supreme Court of Israel, 1999), the court stated that "this is the destiny of democracy, as not all means are acceptable to it, and not all practices employed by its enemies are open before it (…)".

Furthermore, Levinson (2006, p. 23) discusses the issue of accountability of torturers. States are not willing to prosecute their agents that practiced torture on the pursuit of a public interest and this fact can only encourage more violations of the prohibition and result in a major issue of enforceability of the provision. Dershowitz (2006, p. 257) argues that as long as torture stays covered, torturers will not be hold into account for these actions. In practice, torture is used on suspects of terrorism by democratic countries, thus, it is better to legalize it to determine its limits and hold responsibility in case of abuse. In this regard, he raises the possibility of a torture warrant, meaning that judges would authorize torture, in cases of substantial necessity, previously to its practice. For him, since democratic nations implement torture in extreme circumstances, it has to be subjected to the rule of law.

However, a reasonable objection to this argument is that this approach would actually mean the legitimation of torture, a practice that democratic countries should seek to

[10] This is known as the utilitarian objection to torture.
[11] Supreme Court of Canada, *Suresh v Canada (Minister of Citizenship and Immigration),* 2002.

eradicate. And the legitimation of it does not necessary mean that it would be easier to hold abuse into account; since it is hard to control torture into strict levels and conditions, excessive use of it could easily occur and not be punished.

4 International migration and the principle of non-refoulement

The principle of non-refoulement is stipulated in article 3[12] of the Convention and is also a customary law provision. It is an inevitable corollary of the absolute prohibition of torture: states are prohibited from practicing torture by its own authorities, as well as from sending persons to states where there is a real risk of them being tortured.[13]

From the concept of torture drawn by the Convention (article 1), it is clear that the prohibition to deport someone to face torture elsewhere only applies to torture carried out by public officials, whether they torture (action) or they allow it to happen under their control (omission). As a result, torture carried out by non-state groups, such as a terrorist's forces, it is not protected by the Convention's provisions.

The nature of this prohibition is absolute and no exceptions or limitations can be applied (REHMAN, 2010, p. 819), as repeatedly held by ECtHR[14]; this institute is universal and should not be confused with the asylum procedure, regulated by article 33 of the Refugee Convention,[15] which only applies to refugees and admits exception on national security grounds.

The provision uses the expression "substantial grounds for believing" in reference to the risk of being tortured. In order to determine if this condition has been fulfilled, an assessment of the risk has to be performed. According to the CAT[16], this is a burden of the

[12] Article 3: 1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. 2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

[13] United Nations General Assembly (UNGA), *Report on Torture*, 2010.

[14] See: ECtHR, *Saadi v Italy,* 2008; ECtHR, *Ireland v UK*; ECtHR, *Chanal and others v UK,* 1996; among others.

[15] Article 33: 1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, member- ship of a particular social group or political opinion.2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

[16] CAT, *General Comment 1*, 2003.

state; however, the author has to present an arguable case[17] to be checked by the state's authorities. This means that the author has to show a strong case but it is the state that has to collect the evidences to establish if there are substantial grounds. The assessment is also performed by the Committee, independently from the state, but its result does not bind the state, it is rather a recommendation, since the Committee is only a monitoring body.

In order to make an arguable case, the author has to show that the risk of torture is personal, present and real. As a personal risk, the instability of a country and the fact that it torture is a widespread practice is not enough; it has to be shown that this specific person is under risk for particular reasons. It is also not sufficient to state that this person suffered torture in the past; it has to be shown that the same reasons for it are still present.[18] Lastly, the risk of torture has to go beyond a mere theory or possibility; it has to be proved that this person has a real risk, although it does not have to be probable.[19]

Although the non-refoulement principle is absolute, some are in favour of exceptional circumstances in which the principle should not be applied. The "war against terrorism" brought challenges to the absolute prohibition of torture and other ill-treatments; likewise, it put the absolutism of prohibition of deportation to face torture in question.

It is argued that a test of reasonableness shall be made, in order to balance between the risk of torture in one hand and the threat to national security in the other. Thus, in extreme cases, it might be necessary to deport someone that represents a considerable danger to the country. This argument was used by the British government in *Chahal v UK* (ECtHR, 1996) but rejected by the ECtHR as an acceptable justification to the deport someone in risk of being torture.

Although this approach was accepted by the Supreme Court of Canada in *Suresh v Canada* case,[20] in many occasions[21], the CAT and ECtHR rejected this argument and reaffirmed the absolutism of the prohibition. In *Saadi v Italy* (2008) the ECtHR expressly rejected the statement that only prohibition of torture is an absolute provision and this is not the case of the prohibition to deport someone to face torture elsewhere. The court declared that risk of being torture cannot be weight against national security.[22]

[17] A strong case should show that the risk of torture is personal, present and real, with factual basis.
[18] CAT, *General Comment 1*, 2003.
[19] CAT, *General Comment 1,* 2003.
[20] Supreme Court of Canada, *Suresh v Canada*, 2002.
[21] See: DERSHOWITZ, 2006.
[22] ECtHR, *Saadi v Italy*, 2008.

Another limitation frequently argued to the prohibition is on a geographical basis; states attempt to circumvent the prohibition by declaring parts of their territory an international zone, such as airports, from which they could deport someone without any concerns to the risk of being torture. The same approach is used to argue that the principle of non-refoulement does not apply on countries' facilities located outside their national territory.

The Committee already declared that the prohibition applies in any territory under the state's jurisdiction, meaning that it 'should be respected not only on their territories but on any territory of their jurisdiction and under any person they are exercising effective control over.'[23] The ECtHR[24] also asserted that these zones classified as international do not have an extra-territorial character, thus, do not represent an exception to non-refoulement.

Lastly, another mechanism has been used as a get out clause of the non-refoulement provision: assurances of non-torture by the foreign government, in order to authorize the deportation without, in theory, violate the prohibition. It has to be mention that diplomatic assurances do not have a legal status, which means that they do not bind and no sanctions are applicable in case of violation. Consequently, Nowak asseverates that they are "unlikely to be complied [especially] by states with a well-known reputation of practicing torture".[25]

Nonetheless, the international human rights bodies[26] seem to accept the use of diplomatic assurances but not necessarily as a sufficient measure, since "they do not absolve the State from its obligation to assess the risk [of torture] in the circumstances of the case".[27] Thus, if these assurances are not sufficient, in a particular case, to ensure protection against the risk of being tortured, deportation would mean a breach of Article 3 of UNCAT.

The Committee asseverated that a state should only relied upon diplomatic assurances from "states which do not systematically violate UNCAT's provisions" and recommended an "effective post-return monitoring arrangements"[28]. In *Alzery v Sweden* (Human Rights Commitee, 2006), the Committee observed that such arrangements were not made, as a result, the assurances were not a sufficient mechanism to support the author's removal, his deportation thus amount as a violation of the Convention.

[23] UNGA, *Report on Torture*, 2010, p. 66.
[24] ECtHR, *Amuur v France*, 1996.
[25] UNGA, *Report on Torture,* 2010, p. 67.
[26] Reference to the Committee against torture (CAT), the Human Rights Committee (HRC) and the European Court of Human Rights (ECtHR)
[27] UNGA, *Report on Torture,* 2010, p. 66.
[28] ECtHR, *Othman (Abu Qatada) v UK*, 2012, p. 141.

This is what happens in most of cases: after deportation, states no longer monitor if the written assurances are being followed and the person can easily be submitted to torture. This mechanism is then ineffective to truly protect against torture[29] and is often used as a justification to support deportation to face torture. This is what the CAT observed in the *Agiza v Sweden* case (2003); the complaint was deported to Egypt and, although diplomatic guarantees were issued, he was tortured after being deported. The Committee position was that the Swedish government violated the Convention when deported the applicant because it was well known the large use of torture in detainees by Egypt for security or political reasons.

Human Rights Watch also criticized the use of these assurances, as they are incompatible with the nature of torture to be well hidden and kept in secret, which can make impossible to be detected even if the state attempts to monitor it[30]. In *Othman v UK* (2012), the ECtHR outlined many criteria to evaluate the quality of the assurances made and to determine the weight that should be given to them in a particular case.[31] Based on that, it held that the assurances given in this case were superior in details and formality that any assurances already examined by the Court and that the applicant's deportation would not violate Article 3 of the Convention.[32]

Overall, there are three main arguments used to limit or except the absolute prohibition to deport someone to face torture elsewhere: test of proportionality (balance between national security and the risk of torture); geographical limitation and issue of diplomatic assurances by a foreign government. In spite of substantial objections against all of them and the recommendations of international human right bodies, they are largely applied, especially because of the difficulties to enforce international human rights law.

The lack of efficiency is an issue in any kind of international human rights law because, in these matters, states can only bind themselves as much as they wish and sanctions are hard to be applied. As a result, there is a considerable issue of enforceability of the prohibition to torture or other ill-treatment and of the prohibition to deport someone to face torture. This means that, in practice, states can manage these provisions in order to protect other national interests at stake. The most powerful instrument to enforce these prohibitions without any exceptions is political pressure from other democratic nations and society in general.

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[29] Thomas Hammarberg, the Council of Europe Commissioner for Human Rights, argued that in his "viewpoint" of 27 June 2006.
[30] ECtHR, *Othman (Abu Qatada) v UK*, 2012, p. 146.
[31] Criteria described in ECtHR, *Othman (Abu Qatada) v UK*, 2012, p. 189.
[32] ECtHR, *Othman (Abu Qatada) v UK*, 2012, p. 207.

Even if the prohibition of torture and other CIDT and of the non-refoulement provision are admitted without any kind of limitations, in practice, states have developed some practices to circumvent their international human rights obligations.

First, it has become common the use of extraordinary rendition of suspected terrorists (REHMAN, 2010, p. 916). Public authorities kidnap a suspect and bring him to a country where they can be submitted to torture. This is a substantial violation of the prohibition of torture and non-refoulement as well, because it actually means to do the opposite of the prohibition and deport someone to face torture abroad, in which the state actually takes an active part on.

Secondly, states developed restrictions in their immigrations procedures, in order to prevent that some individuals reach their territories, which, as a result, would prevent the application of the non-refoulement principle. Some examples of these practices are the establishment of a restrictive visa regime that denies entrance of unwanted individuals and the act of sending migrants boats back without assessing the risk of any of them being tortured. These interception measures are clear attempts to limit states' international human rights obligations[33] and should be criticized, since the prohibition remains if the state has a person under their control or jurisdiction.

4 Conclusion

From what has been shown throughout this essay, the prohibition to torture and inflict other ill-treatments and the non-refoulement provision should remain absolute and be strictly followed by states. Even in a "war against terrorism" exceptions should not be made to any of these provisions. The practice of torture or any kind of cruelties are not adequate instruments to combat terrorism or other forms of violence, as it only increases the hatred among nations, which then lead to more terrorist attacks and more death of innocents.

Basically, it is a vicious circle of violence that can only be broken if human rights are truly respected. The "ticking bomb" scenario is used as an excuse to justify human rights violations, when, in fact, saving innocent lives and torturing suspects are not the only two available options: there are more alternatives to gather information and prevent an attack rather than practicing torture.

Democratic nations shall combat terrorism without sacrificing their values and cannot be compliance with violations of human rights by other nations, such as the practice of

[33] UNGA, *Report on Torture,* 2010, p. 68.

torture abroad, which means that deportation cannot, in any circumstances, be justified if there is a risk of being torture. This must be the corollary of democracy: the continuous development of human rights protections above all things.

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