

Diplomatic Assurances in International Law

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Abstract : Diplomatic assurances issued by states declaring that they will not mistreat individuals returned to them occupy a strange middle ground between being legal and non-legal obligations. States assert that they are non-binding, yet at other times that they are binding. However, this assertion may not be the end of the discussion. The International Court of Justice and other tribunals have concluded that similar instruments were binding, states have disagreed that certain similar instruments were binding, and the Vienna Convention on the Law of Treaties and its travaux préparatoires do not appear to contemplate non-binding instruments. This paper is a case study of diplomatic assurances but, by necessity, touches on the delicate question of whether certain texts are treaties, promises, or non-binding political statements. International law, and law in general, requires a binary approach to obligation. All communications must be binding or not, even if the fit is not precise. Through this study, we will find that some of the obligations in certain assurances can be understood as legal and some not. We will attempt to state the current methodology for determining which obligations are legal under the law of treaties and law on binding unilateral promises. The paper begins with some background of the legal environment of diplomatic assurances and their use in cases of expulsion. The paper then turns to discuss the legal nature of diplomatic assurances, proceeding to address various possibilities for legal value as treaties and as binding unilateral statements. This paper will not examine the legal value of diplomatic assurances solely under customary international law other than the way in which customary international law might further refine the treaty definition. In order to identify whether any assurances are contained in legal acts, this study identifies a pool of relevant assurances and qualitatively analyzes whether any of those are contained in treaties or binding unilateral statements. To the author's best knowledge, this study is the first large-scale, qualitative qualitative analysis of assurances as a group of instruments that accounts for their heterogenous nature. It is also the first study to identify the indicators of whether an instrument is a treaty or promise.

Keywords : diplomatic assurances, deportation, extradition, expulsion, non-refoulement, torture, persecution, death penalty, human rights, memorandum of understanding, promises, secret, monitoring, compliance, enforcement

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