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Why do States comply with human rights? Investigating the reasons and addressing paradoxes.

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Introduction

Each State of the international community has the possibility to choose whether or not to comply with human right treaties, despite any possible external influence that would usually encourage compliance almost in any case. The most intuitive premise that lays at the basis of this possibility is that there exist basic human rights that need to be not only observed, but also protected by actual treaties: as a matter of fact, the creation of international human rights treaties guarantees the existence and the maintenance of a safer and more just society. However, despite the fact that nowadays it appears natural to think about this condition, as many human rights treaties have been created and implemented throughout the years, this situation is relatively new because in the past human rights were not considered as important as they are at present time.

The end of World War II (WWII) in 1945 can certainly be considered a pivotal moment for the world and for the international community as well, but it would not be totally appropriate to look at it from a single point of view. As a matter of fact, 1945 marked the end of one of the most destructive and bloody conflicts of world history: it involved at different degrees a huge number of countries, which were divided in two different groups and supported opposite ideals. Certainly, we could state that WWII was a war of people, of countries and of ideas. However, as we have already observed, that year did not only mean the end of an outrageous parenthesis of our history, but is also represented a fundamental starting point, embodied by the acknowledgment of the need to recognise and protect our basic human rights. Hafner-Burton and Tsutsui indeed underline the fact that before WWII the protection of human rights was not as advanced

as it is nowadays: State intervention in such matter was limited at mere declarations of intent or at some minor treaties, but it could obviously not be considered sufficient (2005: 1373 – 1374). Moreover, especially during war time human rights had clearly been oppressed and almost forgotten, overshadowed by the thirst for power and for victory of the participant States. In light of such situation and thanks to the radical change in the worldwide scenario, the international community felt the need for a transformation and it began working on the idea of assuming an active role in the actual protection of basic human rights.

Ideas were finally put into practice with the creation of the 1945 United Nations Charter and especially the 1948 Universal Declaration of Human Rights (UDHR): it was thanks to those two major documents that States and other international actors began evaluating the importance of human rights, and started cooperating in order to totally subvert the situation (2005: 1373 – 1374). The Universal Declaration of Human Rights adopted by the United Nations General Assembly represented one of the greatest achievements for a society devastated by the atrocities of WWII, which was nonetheless a society ready to recognise that there was a strong need to move towards a safer and better world. The content of the Declaration itself not only clarified all the human rights that all people are entitled to, but also the basic rights that all States that recognise the document must respect at any cost. Article 2 of the Declaration set all those basic rights, and it can be taken as an example to understand the dramatic innovation that the document represented: indeed, it provided that everyone is entitled to all rights, without any possible distinction regarding for example race, colour or language, or any distinction of the basis of the political status (UDHR 1948).

Although the Universal Declaration of Human Rights represented the very first step in the process of creating a safer environment for human rights, it should not be forgotten that it is not the only important measure that has been taken by the international community, since it was followed by several other important legal treaties that enhanced the possibility of protecting human rights. Among those treaties, Hathaway identifies the "mainstay of the international legal human rights regime", namely the 1987 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment; the 1976 International Covenant on Civil and Political Rights; the 1981 Convention on the Elimination of All Forms of Discrimination Against Women. Despite the intrinsic diversity in the contents of the treaties, Hathaway concedes that they share the same concern of defining those human rights that States must protect from possible abuses, thus their goal resembles the one of the UDHR (2007: 591-592). The intrinsic importance of all international human rights treaties has been generally acknowledged by the international community, which has committed itself to comply with them and has made important efforts in making the provisions of those treaties truly effective. Still, it remains unclear what are the other reasons that make States decide to comply with international human rights treaties: we could observe, in fact, that the sole idea of protecting human rights cannot be satisfying.

This dissertation tries to assess this unclear situation. On the one hand, it aims at investigating the still uncertain area of the reasons that States advance to explain their compliance with international human rights treaties: indeed, despite the primary goal of preserving human rights from any possible type of abuse, it might not be easy to understand why they would commit to some treaties that, apparently, would ensure them with little benefits. Many have been the scholars that have provided their point of

view, and yet there still does not exist a unique and encompassing explanation generally accepted. On the other hand, the focus of the dissertation will also be on some important cases in which States claim that they still comply with international human rights treaties, despite evidences that prove that they have indeed failed in doing so, and thus perpetrated a violation of their obligations.

In the first Chapter of the dissertation we will take into consideration the whole issue of compliance. At the beginning, we will present some initial observations on the concept, in order to understand what it does really mean to comply with an international treaty in general: it will be possible to see that there exist different ways to address the same concept, even if the basic meaning is always the same. Thus, compliance is related to the adherence of a State's behaviour to the international treaty that it ratifies. Consequently, we will also briefly distinguish compliance from other related concepts, namely implementation and effectiveness, aiming at further underlying that the latter two concepts are profoundly different, even if they are used indifferently sometimes. The Chapter will then mainly focus on the different theories that exist regarding compliance, and they will be described following the order presented by Oona Hathaway, which allow us to enlighten both the similarities and the differences among the different approaches. First, we will outline the basic ideas related to compliance with international treaties in general; second, those ideas will be applied specifically to compliance with international human rights treaties. Furthermore, we will also provide another possible set of explanations that is not encompassed in any specific theory. Finally, the Chapter will also deal with the role of National Human Rights Institutions in explaining State's compliance with human rights treaties.

In the second Chapter of this dissertation we will address the issue of State's compliance with international human rights treaties in relation to one of the most important and effective treaties created, namely the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). To begin with, we will investigate the fundamental steps that led the international community to acknowledge that it had to address the issue of torture more effectively. In fact, even if it was generally recognised that torture could not be allowed under any circumstances, given the fact that it represented a severe violation of basic human rights, little had been done to try to prevent such wrongful practices: hence, many States of the world continued to use torture or other similar acts to fulfil their own goals. It will be possible to observe that Amnesty International played a crucial role in advancing the idea that there should have been created an effective instrument to officially condemn the use of torture or of other ill-treatments, first with its 1972 Campaign and then with the 1973 Conference for the Abolition of Torture: both of them fostered the process of States' acknowledgment of the gravity of the situation. Hence, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment will be taken into account as the first international instrument created for the condemnation of torture and adopted by the United Nations General Assembly in 1975. Nonetheless, in light of our investigation on the reasons that persuade States to comply with international human rights treaties, the Declaration proved to be insufficient to assure strict compliance, because its non-binding characteristic let States continue to practice torture, and thus continue to fail to fulfil their international obligations. As a consequence, the international community further acknowledged the need to strengthen the control over torture practices, and the result

was the 1984 The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which we have already described as one of the most important and effective international human rights treaties. In the Chapter we will provide a general commentary on the Articles of the Convention, and we will underline the most important provisions that further confirmed the importance of the treaty; moreover, we will also see that the Convention against Torture, after entering into force in 1987, has been ratified by a great number of States, while others have either only signed it or they have not expressed their consent. In addition, we will also introduce the important figure of the Committee against Torture, the institutional mechanism created by the United Nations General Assembly in the CAT, whose main purpose is to assure that States comply with the Convention and thus prevent any possible case of torture or other wrongful treatments; in addition, we will also investigate the main powers that allow the Committee to further enhance State's compliance, thus providing us with another explanation on the issue. Finally, in order to better understand the role of the Committee against Torture, we will present three case studies in which the Committee has exerted its powers after receiving credible allegations on the use of torture in Peru, in Lebanon and in Egypt: we will provide a general overview of the cases, and then we will present the final decisions and recommendations issue by the Committee in its Annual Reports. It will be interesting to see that all three cases show some common characteristics, as well as some differences, especially related to the reasons that led them to fail to comply with their international obligations with the Convention against Torture.

In the third Chapter of the dissertation compliance will be analysed in light of the paradoxical case of the United States of America and of Guantanamo Bay detention

facility. The United States has usually been considered the most powerful democracy in the world, and has also often been perceived as one of the greatest advocates of the protection of basic human rights: therefore, it is not surprising to notice that it has also ratified many international treaties, such as for example the Universal Declaration of Human Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, generally showing its willingness to comply with the provisions. Nevertheless, the terroristic attacks occurred on September 11, 2011 could be seen as a turning point for American history. On the one hand, they certainly represented a clear attack to the United States own beliefs, and to democracy in general; on the other hand, however, they also embodied the start of a perceived change of attitude towards many different aspects, especially with regards to the use of torture and other ill-treatments. Thus, we will present an overview of the main events that followed the terroristic attacks that we have just mentioned, and we will then focus on the case of Guantanamo Bay, which is strictly connected to the consequences of the attacks. As a matter of fact, we will see that in 2002 Guantanamo Bay was elected as the detention facility in which the United States transferred its Afghani prisoners, in order to interrogate them. That choice represented the beginning of a very dark chapter in American history, that remains open still nowadays. Indeed, it is generally understood that detainees at Guantanamo Bay have been, and still are victims of many torture practices, used in order to achieve information on the Al-Qaeda terroristic group, the responsible of the 2001 attacks. Furthermore, the majority of them is detained at Guantanamo with no official incrimination and for an illogical prolonged time. Those two observation confirm the fact that, despite the United States is not willingly to admit its wrongful actions, its compliance with international human rights treaties and with

human rights in general is not fulfilled. In the Chapter we will provide some comments on the data related to the detainees present at Guantanamo Bay throughout the years in which the facility has been used by the US Government, by taking into account the information provided by two different sources. Subsequently, we will try to investigate the paradoxical situation in which the international community, represented by some official institutions, strongly denounces the existence of actual violations of human rights, while the United States continues to confute such position by claiming that it condemn any torture practice, in absolute compliance with its international obligations.

In the final conclusions we will try to address all the issues that we have observed and analysed in the dissertation, and we will also try to answer the main question on why States comply with human rights treaties.

To investigate the issue of compliance with human rights and with international human rights treaties in this dissertation, we have taken into account a great variety of sources, in the attempt to provide a thorough explanation on the matter. Generally, we have mainly taken into consideration books and articles written by many different scholars: each source was obviously focused on different aspects of the issue that we have examined in the three Chapters. Furthermore, we have also made reference to official Reports issued by the United Nations and by the Committee against Torture that have provided crucial information for our analysis of the behaviour of the States in some of their non-compliance cases: the Reports contained very technical and exhaustive comments on the issues they were taking into account, and allowed us to acquire a better overview of the whole case. Alongside those Reports, we have also examined those issued by Amnesty International and by Human Rights Watch, which revealed a less official tone in their observations. In addition, since the dissertation was

mainly focused on State's compliance with human rights treaties, we have also referred to those treaties that were in line with our observations: great importance has generally been given to the Articles of the the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and, partially, to the Third Geneva Convention Relative to the Treatment of Prisoners of War. Moreover, there have also been considered some official documents issued by the United Nations, in the case of the resolutions, and by the United States Administration, in the case of the Executive Orders and of the Official Statements. Finally, in the third Chapter we have also taken into account some newspapers articles, not only because they provided us with useful information, but also because they were crucial in assessing an issue that is still very present nowadays; furthermore, it has been provided a personal elaboration of the data collected from The New York Times and from Human Rights Watch regarding detainees at Guantanamo Bay.

Chapter 1

Compliance with international human rights treaties: introducing the different explanations

1.1 The concept of compliance

It is not easy to provide one definition of compliance, since the concept encompasses several dimensions, and it is usually very difficult to take all of them into consideration: from the standpoint of this dissertation, the focus will be on State compliance with human rights treaties; however, we will initially provide some observations on compliance in general.

"Compliance refers to the degree to which a country's behaviour actually conforms to an explicit provision in an international agreement." (Dai 2013: 86-87) Even though it is a very general definition, it provides us with some fundamental details. First, States are considered the main subjects that are expected to comply. From the standpoint of Dai definition, it is irrelevant whether the State is a republic or a monarchy, whether it is big or small, whether it is rich or poor: all States are called upon complying with the international treaty they have ratified. Second, compliance is tied to the behaviour of a State: therefore, if a State behaves accordingly to the provisions of the international treaty, that State will confirm its compliance; on the contrary, if a State does not follow what an international treaty establishes, compliance will not be guaranteed. Third, compliance is also linked to the international dimensions of the agreement: in this case, we are taking into consideration the sole State's compliance with a treaty that has an international characterisation, since it has been signed by multiple States. Consequently,

it is also possible to deduce that even if it is the single State that is called to comply with a specific agreement, its decision may have consequences for other States as well, as international agreements are usually created by many States that work together in order to respond to specific topics or to specific issues.

We have already stated that States are the subjects that are expected to comply, specifically with an international treaty. On this issue, Peter Haas states that "compliance is a matter of state choice" (2003: 45). As a matter of fact, each single State enjoys the faculty and the freedom to decide whether it wants to adhere to a particular international agreement, and therefore whether it wants to comply with it or not: on this issue, we could observe that there possibly exist some pressures that might influence a State's decision, but the final decision can only be taken by the State. Furthermore, given the fact that compliance derives from a State's choice, it may also vary depending on what the desires and, generally speaking, the interests of the State are: there might exist cases of total compliance, in which a State always observes and follows the provisions of the international agreements it has ratified; there might also exist cases of partial compliance, in which some behaviours could endanger the credibility of the State commitment with its obligations; finally, there might exist cases in which States show a theoretical compliance with a given treaty, but it does not match with a subsequent practical compliance.

On the concept of compliance, Sonia Cardenas observes that it could be perceived as having two different dimensions. On the one side, there exist violations, that refer to the degree to which a State deviates from the provisions of a treaty. On the other side, Cardenas refers to commitments as the State's public demonstration of its intent to obey to a norm and not to violate it (2010: 7 – 8). It is interesting to make reference to this

other definition of compliance, because it provides us with a different point of view to understand the concept. Indeed, in this case we could understand compliance as the absence of violations and the presence of commitments: if a State does not deviate from what it is expected by an international treaty, and instead publicly shows that it want to adhere to it, it might be intended as existing compliance.

Furthermore, as many scholars have enlightened, compliance should always be distinguished by other related concepts. We have already seen that compliance can be seen as the conformity of a State's behaviour with an international norm. Thus, on the one hand, it is different from the idea of implementation: as Kal Raustiala observes, "implementation refers to the process of putting international commitments into practice" (2000: 392), so we can understand that it is a process that goes beyond the simple adherence of s State's behaviour to an international norm. In addition, we can state that the two concepts are different because they can exist even without the other: indeed, there can be compliance with an international norm even if it is not implemented, because that norm could already be in line with State's practices, and as a consequence there is no need to implement it at the domestic level. On the other hand, compliance is different from effectiveness. This concepts in fact, refers to the degree to with a specific norm can change the behaviour of a State, and can produce a desirable and even observable effect. As Raustiala underlines, compliance and effectiveness can coexist at different degrees: there can be low compliance with an international norm, but still that little compliance could produce observable effects on the behaviour of a State, thus generating quite high levels of effectiveness (2000: 391 – 394).

1.2 Theories of compliance: realism, institutionalism and liberalism

During the years different scholars have studied and investigated the issue of compliance with international law, providing explanations that were always different depending on the point of view they each of them adopted. Similarly, other scholars have also tried to investigate the reasons that could explain why States comply with international human rights treaties: the task has proved to be quite challenging and difficult, because even in this case there had to be taken into consideration different aspects and different points of view. As a consequence, there have appeared various theories that assess the matter of compliance with international human rights treaties, and each of them has provided a different explanation on the matter.

Oona Hathaway has investigated the many theories that exist and she has been able to come to an interesting conclusion: even if it is true that the theories show evident difference among themselves, it is also true that it is possible to identify some shared characteristics. In order to clarify her observations, she has divided the main theories in two different groups, on the basis of the shared points of view: we will now try to understand what are those theories, what they share and in what they are different.

In this paragraph, we will take into consideration the first group that Hathaway has created, which includes the "rational actor models" (2002: 1944), namely realism, institutionalism, and liberalism. To begin with, Hathaway indicates that the basic assumption that is common for the three theories is that compliance with a treaty only happens if it is in the interests of the State. From this standpoint, States appear to be only self-interested entities that calculate the costs and the benefits that may arise from their actions or decisions and, accordingly, decide to comply with an international treaty only if it can provide them with significant advantages. The advantages that may derive

from compliance might be an improvement of the State reputation, or of State power at the international level. Nonetheless, even though the three approaches share the assumption that compliance is based on the interests of the single State, it has already been observed that among them may also exist some differences. According to Hathaway, each theory identifies a different type and source of interests that can influence the decision of the State, and we shall subsequently observe the different points of view. Moreover, the realist and the institutionalist theories perceive the State as a unitary actor, while the liberalist approach refuses to conceive it as unitary, as it assumes that States are composed by different parts (2002: 1944 - 1952).

The first theory that we are taking into account is realism. It is interesting to point out that the realist theory can be described as multifaceted, as it is characterised by different versions. The most traditional one, which is not very considered nowadays, is called "classical realism" and was dominant after World War II: it assumed that compliance with international law in general only happens if it is in the geopolitical interest of a hegemon or of a very powerful state; consequently, less powerful states would be somehow coerced into following their path. It is evident that already in that approach the interests of a State were the main focus to explain compliance: however, given the fact that it was not capable of providing an acceptable explanation to the evolving reality, classical realism was slowly dismissed. In the following years it has however been substituted by the so called "neorealism" or "structural realism": this new view maintains the idea of a unitary State as the main actor on the international stage, but it has introduced some changes to the previous approach. Hathaway points out that the neorealist approach shares Kenneth Waltz's idea that States are embedded in a situation of anarchy, in which they have to focus on their preservation and possibly aim

at universal domination. As a consequence, compliance with an international treaty happens when it coincides with the interests of the State in preserving itself (2002: 1944 - 1947).

How does the realist theory conceive State's compliance with human rights treaties? According to Hathaway, the approach faces great challenges in providing an explanation because it perceives human rights treaties and regimes as providing little benefits to States that decide to comply with them. In line with what we have stated, it appears clear that if complying with an international human rights treaty does not entail visible benefits for the State, it consequently might not be in its interests to comply: nonetheless, there exist two different points of view in the theory. On the one side, most of realist supporters believe that in most of the cases compliance can be explained "as mere coincidence because no state would actually change its behaviour in response to a human rights treaty absent some independent motivation." From this standpoint, compliance with an international human rights treaty will be the consequence of an accidental coincidence between a State behaviour and the content of the treaty taken into consideration. On the other side, however, some neorealist scholars assume that there can exist a real and genuine motivation beneath the State decision to comply, and they share Kenneth Waltz's opinion on the fact that those same States that decide to comply with a human rights treaty might even try to impose their commitment on weaker countries (2002: 1946). Regarding this last point of view, we could observe that it recalls the basic assumption of the "classical realism," according to which compliance was a consequence of the geopolitical interest of an hegemon, and was consequently imposed on weaker States. Nevertheless, we have already observed that such an explanation cannot be satisfying nowadays, because it fails to portray the actual reality.

On the assumption that powerful States may impose their behaviour and their decision to comply on weaker States, Eric Neumayer further observes that powerful States are not always focused on complying with international human rights treaties, and they are not so often consistent in applying the basic standards in their foreign policy, as it would be expected. Moreover, confuting again the second group of realist scholars mentioned above, Neumayer underlines the fact that powerful States are not interested in sanctioning other countries to improve their human rights adherence, because they do not have any right motivation to do so. All things considered, given the scarce interest showed by strong countries in enhancing compliance practices among other States, the realist theory seems to further confirm the fact that if a State decides to comply with an international human rights treaty, it is the mere product of a coincidence, and not the result of external impositions (2005: 3).

The second theory included in the "rational actor models" is institutionalism. Alongside realism, this approach supports the idea that States are unitary actors that act on the basis of their own interests in a world dominated by a situation of anarchy. In this case, the theory stresses the importance of the existence of international institutions, often called regimes, in fostering cooperation among States and consequently, in facilitating compliance, thus, cooperation is seen as a fundamental strategy for States to fulfil their interests, something that would have not otherwise been possible. Nonetheless, according to the institutionalist approach, States comply with international treaties as long as the reputational costs and the risk of sanctions deriving from non-compliance remain higher than the costs of compliance. Therefore, the main issue that can explain State's compliance is its concern with its reputation not only at the domestic level, but also and above all at the international level.

Subsequently, according to the institutionalist model, compliance with international human rights treaties is guaranteed by the fact that, as long as a State comply, it can maintain or even improve its reputation at the international level; moreover, the same choice to comply explains the possible change in State's behaviour (Hathaway 2002: 1947 – 1952; Neumayer 2005: 4).

The third theory that Hathaway has rational actor model group is represented by liberalism: as we have already mentioned, it is the only approach of the three that does not consider States as unitary actors, because it views them as constituted by different parts, like political institutions or interest groups. Therefore, the theory focuses its attention also on the domestic level of the States: indeed, according to the liberalist view, it is in the interest of the State to comply with an international treaty because it can favour its domestic interests, and avoid any possible pressure from interest groups as a consequence.

The assumption of the liberalist approach that complying with a treaty must also respond to the domestic interests of a State is the same even in the human rights field: indeed, if a State decides to ratify an international human rights treaty and thus accepts to comply with it, it must acknowledge the fact that its international obligations will be translated into its domestic sphere; as a consequence, compliance will be thoroughly controlled by domestic interest groups, that might even create pressure on domestic political institutions if they perceive that the State is not compliant with its obligations. As Hathaway clearly states, liberal States are more likely to comply, in contrast with others, and similarly, even their practices are more likely to change (2002: 1954). As a matter of fact, according to the approach, liberal States will have more incentives to ratify human rights treaties, because they will be highly welcomed by the domestic

sphere, in view of a positive influence of what the treaties establish on the domestic political institutions and on their practices.

The liberalist approach has also been acquired by Andrew Moravcsik, even if advances a modified version of it, which he calls "republican liberalism" (2000: 225). By providing his personal reinterpretation of the classic liberalist approach, Moravcsik argues that newly established democracies, which also tend to be quite unstable from the political point of view, are more likely to support and to comply with international human rights regimes than others. The reason why he advances such a consideration is determined by the fact that, in his view, newly established democracies want to distance themselves from the previous regime to which they were subjected: therefore, by committing to better human rights practices, they want to show their willingness not to return to their previous condition. Obviously, Moravcsik observes that newly established democracies face great problems in pursuing such commitment, and might also incur in high costs deriving from their decision. Nonetheless, if they see that some nondemocratic groups might represent a real threat to their future, they will somehow accept those costs and will try to sustain them. Moreover, they will also try to promote compliance with human rights among those countries that may be in the same conditions in which they were, even if it might not respond to their domestic interests (2000: 225 – 229).

1.3 Theories of compliance: the managerial model, the fairness model and the transnational legal model

After describing the theories of compliance that belonged to the first group created by Hathaway, we will now focus on second group that encompasses the so-called

"normative models" (2002: 1955), which are the managerial model, the fairness model, and the transnational legal process model. In contrast with the basic assumptions of the first group, those three models do not assume that compliance can be only explained by the sole interests of the State; in fact, according to the normative models, compliance is a product of the ideas of the States, which are more important and effective than the interests. As for the previous group, Hathaway has observed that the three models disagree on the reasons why ideas matter in the State decisional process.

The managerial model, which is the one first identified by Abram and Antonia Cheyes, supports the fact that sanctions for treaty violations of whichever nature, economic or military, cannot be considered the primary tools to improve compliance: indeed, they are seen as too costly and probably ineffective, as they do not have any actual control. As a consequence, the managerial model seeks to find another explanation explain why States comply with treaties. According to Cheyes and Cheyes, they do so because they have a propensity to comply with their international obligations, which in turn create obligations on the same States. As a result, to synthetises such observation, States comply with international treaties because they follow one of the main principles of international law, which is the Latin formula *pacta sunt servanda*: the obligations included in the treaties must be observed. In addition to this alternative approach to explain compliance, the managerial model also provides us with its interpretation of non-compliance: from its standpoint, non-compliance is not the consequence of too high costs and too low benefits. Rather, States may decide not to comply with an international treaty because it has either not acquired the necessary information, or it lacks of the capacity to do so. In order to provide a solution to the problem, the managerial model proposes to create some mechanisms aimed at

enhancing compliance, and at persuade non-complying countries to modify their behaviour, in order to be included in the broader international group.

On the issue of compliance with international human rights treaties, the managerial model provides a very intuitive explanation. Indeed, according to this approach, compliance with human rights treaties will only happen if there do not exist any possible issue that could generate non-compliance: therefore, States will generally comply with those treaties because they must do so; on the contrary, they will not comply if they incur in a lack of information or capacity, as we have previously seen (2002: 1955 – 1958).

The fairness model, which is this second approach of this group, further underlines the idea that compliance with an international treaty is not driven by state's interests, but rather it is deeply influenced by the fairness and the legitimacy of the legal obligations themselves (2002: 1958). On the issue of legitimacy of the obligations, Thomas Franck asserts that there exist four principal characteristics that determine such legitimacy. First of all, he invokes the need of "determinacy" of the text of the treaty, that is required to display a clear and transparent message. Second of all, Franck indicates the value of the "symbolic validations" in underlining the importance of complying with a given order. Third of all, the rule must show "coherence" and, finally, "adherence" to the rule hierarchy (1988: 712 – 759).

According to the fairness model, "human rights treaties are largely fair and therefore likely to foster compliance" (2002: 1960): from this standpoint, it is implied that the four basic characteristics enlisted by Franck exist when human rights treaties are taken into consideration, despite there might exist differences among them.

Finally, the third and last approach of the group of normative models is the transnational legal process model. Even in this third case, the model sustains the fact that state's compliance is characterised by voluntary, and not coerced, obedience; the scholar that has introduced this approach was Harold Koh, who therefore considered that the key to compliance was represented by a process of norm-internalisation (Hathaway 2002: 1960). Koh asserts that the process of norm-internalisation requires three basic phases. It begins when one or more transnational actors provoke an *interaction* with another. Subsequently, that process of interaction needs an *interpretation* (or enunciation) of the norm that is required for that situation. At that point, according to Koh, the moving party aims at having the other to *internalise* the interpretation of the international norm into its own normative system. Therefore, the transnational legal process model envisages that the repetition of interactions will lead to better compliance. Indeed, the interaction between different transnational actors can generate a rule that could be used in future transnational interactions; as a consequence, those future interactions will further internalise the norms; finally, "repeated participation in the process will help to reconstitute the interests and even the identities of the participants" (2002: 2646). Compliance with international law will then be guaranteed by the fact that the transnational legal process will create norms that States will internalise, and will therefore follow.

The transnational legal process model, according to Harold Koh, can subsequently be applied to the field of compliance with international human rights treaties. To begin with, Koh underlines the fact that States do not usually try to enforce human rights treaties against one another, for many different reasons: as a consequence, the process of interaction might not exist. He claims that the starting point to subvert such situation

is to empower more actors to participate to the process: from his point of view, those actors would be intergovernmental organisations, nongovernmental organisations, private business entities. Subsequently, in order produce the interpretation of human rights norms, there should exist specific fora for the purpose. Finally, he claims that the internalisation of international human rights norms can happen in three different areas: first, there can be a social internalisation, when the norm acquire public legitimacy that guarantees general obedience; second, there can exist a political internalisation, when the international norm is directly accepted by political elites; third, legal internalisation happens when the international human rights norm is incorporated into the domestic legal system, through different means. Once the process is concluded, compliance with international human rights treaties will be guaranteed (2002: 2655 – 2657).

Nevertheless, in describing the transnational legal process, Koh seems to miss an important point: indeed, his description fails to explain which international norm will be internalised by a State through the three fundamental phases he has identified, or which are the characteristics that have persuaded a State to internalise it a to comply with it, as a consequence (Hathaway 2002: 1962). From this standpoint, we could observe that this third theory has provided us with a convincing process to explain why do States comply with international human rights treaties, but has also failed to specify the exact cases in which compliance subsists.

1.4 Why do States comply with international human rights treaties? Another perspective

By taking into account the different existing theories about compliance, it has been possible to understand that there might be different explanations on the reasons why States decide whether to comply with an international treaty or not; moreover, we have

also seen that those same theories are largely applicable to the field of international human rights treaties as well. Nonetheless, we could observe that there might exist other explanations for that decision.

Complying with an international treaty can require some efforts from the State, for example a change in its behaviour in order to actually be in line with the provisions of that treaty. Similarly, even human rights treaties require efforts from the States that decide to comply with them: as a matter of fact, when a State ratifies a treaty, it shows willingness to assume an obligation not only to the other State Parties and their people (for example, it may be required not to prosecute a foreign citizen for a matter of racial discrimination), but also to its own people (in this case, the State might be obligated not to use torture on a detainee). Nonetheless, it has been pointed out that "human rights treaties do not offer States any obvious reciprocal benefits, as do many other treaties" (Hathaway 2007: 589). How can we explain this observation? To begin with, we could observe that a State might decide to join an international trade agreement that requires States to apply the same economic treatment to all State Parties to the treaty. In light of such possibility, a State will decide to comply with that treaty because it can anticipate that it will gain great benefits from that: for example, if that State had to pay higher tariffs to trade with another State in absence of the international agreement, after joining the new regime, that difference will not be perceived anymore, and all States would evidently benefit from it. On the contrary, it might not be equally clear the reason why a State might join an international human rights treaty that expects it to protect and guarantee basic human rights to all people, with the only promise that other States will behave the same way. Hence, in the first case the benefits deriving from State's

compliance with an international trade agreement are practically observable; in the second case, however, they are only theoretically observable.

Nevertheless, despite this difficulty in understanding the decision to comply with an international human rights treaty when desirable benefits are difficult to be perceived, there have been provided some practical explanations on the issue. Hathaway determines that domestic legal enforcement can play a great role in explaining State's compliance. Indeed, if a State decides to commit with an international human rights treaty and faces high pressures from the inside to actually apply the obligations to the reality, States might therefore be more incentivised and, to some extent, even constraint to comply with the international norms. As a consequence, from the standpoint of a high domestic legal enforcement, human rights treaties will also be more effective. However, what does compliance in these terms mean for a State? If a State accepts to comply with an international human rights treaty due to internal pressure, it might have also to change its behaviour according to the provisions, and thus incur in some evident costs as we have previously anticipated. Therefore, it might happen sometimes that a State might be less likely to ratify and to comply with a given international treaty, if the changes that it is expected to made are perceived as too high.

Nonetheless, Hathaway also advances the idea that there might appear some collateral consequences in case a State does not comply and commit with an international human rights treaty, hence providing further explanations on why such States would decide to comply. Firstly, complying with a given international treaty may represent a possibility for democratic governments to further pursue some specific goals. Secondly, States in which there are many human rights non-governmental organisations (NGOs) might be more willingly to comply with human rights treaties for

the purpose of avoiding critiques and pressures from those same NGOs. Thirdly, complying with an international human rights treaty might enhance transnational relationships among States: on the contrary, non-compliance may cause criticism and other bad consequences, for example related to trade issues (2007: 588 -597).

1.5 The role of National Human Rights Institutions in fostering State's compliance

As we have seen at the beginning of this Chapter, it is the State that chooses whether to comply with an international human rights treaty or not, and there might exist a variety of reasons that can explain the choice. Nonetheless, even though States accept the rules and the provision specifically included in the treaties that they are called to comply with, there might exist some cases in which compliance might be jeopardised by different factors, and States might then need some external help to remain faithful to their international commitments.

On this matter, Sonia Cardenas has observed that National Human Rights Institutions (NHRI) might be useful in assuring State's compliance with international human rights treaties in many cases: indeed, as she underlines, NHRI are usually "depicted as a bridge between international norms and local implementation" (2011: 29). Nonetheless, if the existence of NHRIs is unchallengeable nowadays, there still exist doubts regarding the creation of those institutions: on the one hand, those States that already comply with international human rights treaties might not have the necessary incentives to establish a NHRI; on the other hand, those countries that show low levels of compliance with international human rights might generate unwanted risks with the creation of those institutions. Hence, Cardenas tries to enlighten the possible

explanations that have induced many States to create many National Human Rights Institutions.

First of all, Cardenas observes that States create NHRIs for their strategic calculations, which can be the product of two different cases. On the one hand, States might decide to comply with international human rights treaties to respond to an existing threat of coercion: as a consequence, they will comply to avoid the costs that might arise from the violation of international norms. However, Cardenas also states that the costs deriving from the violation must be high enough, or enforcement will not be effective. On the other hand, inducement might play a very important role: for example, formal institutions could be beneficial in lowering the costs of transactions. From the standpoint of those two sources of strategic calculations, we could agree on the fact that in those cases States usually evaluate the costs and the benefits of complying. All things considered, Cardenas suggests that States that have somehow been subject to enforcement or inducement cases might decide to establish NHRIs to respond to external critics.

Second of all, States might decide to create NHRIs for a series of normative commitments. To begin with, States can participate in a process of socialisation with other States, in which they exchange information, and may have the opportunity to persuade the counterparts to comply with a given international human rights treaty. As a consequence, States can learn from one another, but to do so, they might need some expert help, which can accordingly derive by a NHRI, once it has been established. Therefore, Cardenas suggests that even transnational networks can enhance the creation of NHRIs.

In assessing the role of NHRIs in enhancing State's compliance with international human rights treaties, Cardenas also investigates the strength and the effects of those particular type of institutions, that she summarises in terms of protection and promotion. On the one side, protection corresponds to the regulative effects of a NHRI. In this case, NHRIs are very important as they aim at basically protecting human rights from any possible violation perpetrated by the States: nonetheless, they lack of any enforcement measures, and their task may sometimes appear very difficult. On the other side, promotion corresponds to the constitutive effects of a NHRI: as the same word promotion enlightens, in this case the institution aims at enhancing States' awareness of human rights norms.

In addition to those observation, Cardenas also advances the idea that the strongest NHRIs can usually be found in those States that have incentives to establish them and, simultaneously, believe that such establishment would be normatively appropriate; moreover, NHRIs may also be found in those States that face both domestic and international pressures. With regards to this last statement, Cardenas provides us with an explanation of the two types of pressures. Domestic pressures might arise when human rights practice is very low, and there might appear the need to enhance them: therefore, since in longstanding democracies that level is already quite high, democratising States are the ones that Cardenas expects to receive the highest pressure for building a NHRI, which is accordingly seen as an instrument that will be useful in fostering compliance. Instead, international pressures may cause higher costs for a non-compliant State, thus providing a reason to establish a NHRI and avoid those costs. Furthermore, international pressure could also induce the creation of NHRIs in those States that want to confirm their status of international human rights leaders.

Cardenas then concludes her analysis on the role of National Human Rights Institutions in enhancing State's compliance with international human rights treaties with some very important observations. First of all, those institutions are mostly required in those States were compliance is weakest, in the attempt to change the existing situation; second of all, norm implementation is perceived as fundamental in the field of compliance with human rights, and NHRIs could therefore play a crucial role in helping States to learn the right strategies to ameliorate their behaviour; third of all, NHRIs should help States to modify their normative commitments, in order to learn how to self-regulate themselves (2001: 29 – 51).

Chapter 2

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the role of the Committee Against Torture in enhancing State's compliance

3.1 Early observations on torture, Amnesty International Campaign and Congress against Torture

Although we might think that torture is a relatively recent concept in our world history, it is instead a quite ancient one, as it dates back to the years of the Greeks and the Romans: in fact, as Matthew Lippman has observed, they were the first that used torture on their slaves and then on free citizens (1994: 275 – 276). Nonetheless, as we have already stated in the Introduction, it was only after the world assisted to the atrocities of the Second World War and of the Nazi Regimes that a real necessity to protect human rights appeared: from this standpoint, torture can certainly be inserted in the category of the possible threats to human rights. Therefore, it is not surprising to observe that the Universal Declaration of Human Rights in 1948 took a first step towards a control over torture practices: its commitment is embodied by Article 5 that states "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." (UDHR, 1948). However, despite the strength of the Declaration and of its Article, torture was far from being eradicated, and the custom of using it against political opposition continued. On this issue, Lippman ironically enlightens two particular cases in which States openly failed to comply with the principles of Article 5, thus enacting torture acts. On the one hand, he observes that France continually used

torture practices against Algerian detainees, in order to maintain its colonial control over the country; moreover, France also used torture to gather useful information for its cause: once the country was put in front of undisputable evidence, it started an investigation on the actual use of torture. The investigation eventually proved such practices, further underlining France's failure in complying with its commitment with the UDHR, a failure caused by French thirst for power. On the other hand, Lippman advances a second case, in which the British openly used torture against Irish citizens, in order to placate their insurgences. Once again, an investigation over the problem started, but in this case it ended with the decision that British actions could not be considered torture, rather degrading treatments (1994: 290 - 293). The examples provided as proof of countries using torture and failing compliance with Article 5 of UDHR are only exemplificative of a much more complicated situation that clearly needed to be addressed and modified with more powerful instruments.

1972 represented a first turning point for the torture matter. It was in fact in that year that Amnesty International published a report in which the non-governmental organisation invoked the creation of a world-wide Campaign for the Abolition of Torture, in order to stop governments from using torture as a systematic instrument: the report thus provided material for Amnesty's Conference for the Abolition of Torture, which took place in December 1973. The report clearly observed that, despite all the measures that States had been taking in order to control the use of torture, torture had sadly become a world-wide phenomenon affecting a large number of citizens all over the world, regardless any possible difference among them; moreover, it reported that torture was "a practice encouraged by some governments and tolerated by others in an increasingly large number of countries" (Amnesty Report, 1973: 7). Furthermore, the

report enlisted sixty countries in which it had found proof of torture acts: for the majority of them, torture was a means to respond to a general State of emergency or a State of siege: therefore, Amnesty noted that there was little control over the practices of such States, and they were quite free in arbitrarily arrest and torture their citizens. The list of countries provided by Amnesty International included a great variety of States, basically from every part of the world, as there were: African States, such as Ethiopia or Ghana; Asian States, like India and Sr Lanka; Middle Eastern countries, as Egypt and Iraq; Eastern European States under the sphere of the Soviet Union, such as Poland and Hungary; American countries, such as Brazil and Mexico. Finally and maybe even surprisingly, the report also named Western European countries, like Spain and Belgium, and the United States of America (Amnesty Report, 1973: 109 - 217; Lippman, 1994: 294 - 296).

Despite the harsh criticism against torture acts that the report provided, Amnesty International was not satisfied with the results it had achieved yet, and, as we have already mentioned, it organised the first International Conference on the Abolition of Torture, which took place in Paris in December 1973. The sole purpose of such Conference was, as it was written in the Introduction of Amnesty's Final Report, "to draw up a practical program for eradicating torture in all its forms," and it was attended by more than 250 participants and observers from at least 40 countries: the participants were urged to "respect, implement and improve their own national and international laws prohibiting torture, and to comply with United Nations Resolution 3059." (1973: 9 – 10). The Conference certainly represented an emblematic event for the world, as many countries took upon themselves the burden to fight the problem of torture, even if the task was not easy.

Interestingly, even if we have underlined the importance of both Amnesty's campaign and Conference, it seems that some countries had already been inspired by the sole campaign to adopt adequate measures against the problem. In fact, as Burgers observes, some governments (namely Sweden, Austria, Costa Ria, the Netherlands, Trinidad and Tobago) decided to submit a draft resolution on the issue of torture to the United Nations General Assembly already in the autumn of 1973. The draft was initially criticised, but was then amended, and finally adopted by the General Assembly. The following year that draft was followed by another, which aimed at further strengthening the protection against torture: the new resolution was adopted on November, 7 1974 (Burgers, 1988: 13 – 15).

3.2 Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The Congress begun its preparatory works at the beginning of September 1975, and finished at the beginning of December of the same year (Burgers, 1988: 15 – 17). The non-binding Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment can be regarded as "the first international condemnation of torture" (Lippman, 1994: 303), which represented the basis for the draft of the 1984 Convention against Torture, which will be discussed later. The Declaration was officially adopted by the General Assembly on December, 9 1975, and it consists of twelve Articles. Already in the Preamble, the General Assembly presented the Declaration "as a guideline for all States and other entities exercising effective power." (UNGA Res. 3452, 1975: 91). The first Article

provides us with a definition of the term torture, something that had not appeared in any official document yet:

> 1. For the purpose of this Declaration, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners.
>
> 2. Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment. (Declaration, 1975)

We can observe that the Article describes torture as an infliction of pain or suffering on another person, but it appears to be a quite relative description, that may even change according to the context to which it is applied. Furthermore, the Article specifies that torture, for the purpose of the Declaration, is inflicted by a public official who is trying to obtain information from the person that is being tortured. The following Articles focus on other specific aspects. Article 2 conceives torture as an offence and a violation of human rights in general and of the Universal Declaration of Human Rights specifically. Article 3 States that no forms of torture are to be tolerated by States, not even under exceptional circumstances such as threat of war or political instability.

Article 4 invites States to take effective measures to prevent any form of torture, while Article 5 invokes the need to accurately train the officials who may be responsible of the custody of other people, so as they may never use torture. Article 6 States that each interrogation methods and practices will be constantly reviewed. Article 7 determines every act defined under Article 1 as offences against State's criminal law. Article 8 allows every single person who claims to have been victim of torture to have his or case impartially examined. Article 9 permits an impartial investigation to a State, if there is the suspect of a torture case in its territory. Article 10 establishes that if a person is found guilty under Article 8 or Article 9, he or she will be prosecuted in accordance with their national criminal law. Article 11 envisages the possibility of a compensation to the victim of a proved act of torture. Finally, Article 12 assures that any Statement made under a clear act of torture cannot be used against the victim. (Declaration, 1975).

In 1977 during its thirty-second session, the United Nations General Assembly issued a resolution in which it urged its Member States to express their intent to comply with the Declaration on Torture, by making unilateral declarations; in addition, those States had to commit to give maximum publicity to their declarations (UNGA Res 32/64, 1977: 137).

3.3 The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The non-binding characteristic of the Declaration on Torture made it difficult for the Document to be effective in its fight against eradicating torture practices all over the world: indeed, many States kept on relying on torture practices in order to maintain political order and control, as we have already seen in the previous years. The situation

could not be ignored by Amnesty International, and in fact the organisation issued a Second Report on Torture entitled *Torture in the Eighties* in 1984, observing that "while governments universally and collectively condemn torture, more than a third of the world's governments have used or tolerated torture or ill-treatment of prisoners in the 1980s," and adding that "abolishing torture will require a long-term commitment" (Amnesty International, 1984: 2). Amnesty observation further underlined our previous claim: indeed, while States had openly declared that they would comply with the Declaration, as requested by the Resolution issued by the UN General Assembly itself, in practice they did not stop using torture in order to achieve their mere political goals. In view of such situation, Amnesty International urged the creation of a new and much more useful weapon against torture, thus proposing a Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and enlisting the basic points that needed to be addressed in order for the Convention to be truly effective. First, Amnesty criticised States' practice of invoking the so-called "lawful sanctions"; second, it invoked the universal jurisdiction for the Convention; third, the Convention ought to apply equally to torture and to other cruel, inhuman or degrading treatments as well; finally, the organisation claimed that an implementation mechanism to foster compliance with the Convention was needed. As we will see below, the points advanced by Amnesty will prove to be of the outmost importance for the creation of the actual Convention, as they were key instruments to address the problem of torture.

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is commonly known as Convention against Torture, UNCAT or CAT, and it has already been possible to observe that this document can be considered one of the pillars of the whole human rights regime (Hathaway, 2007: 591 - 592): as a matter

of fact, this observation further underlines the importance of the CAT at the international level.

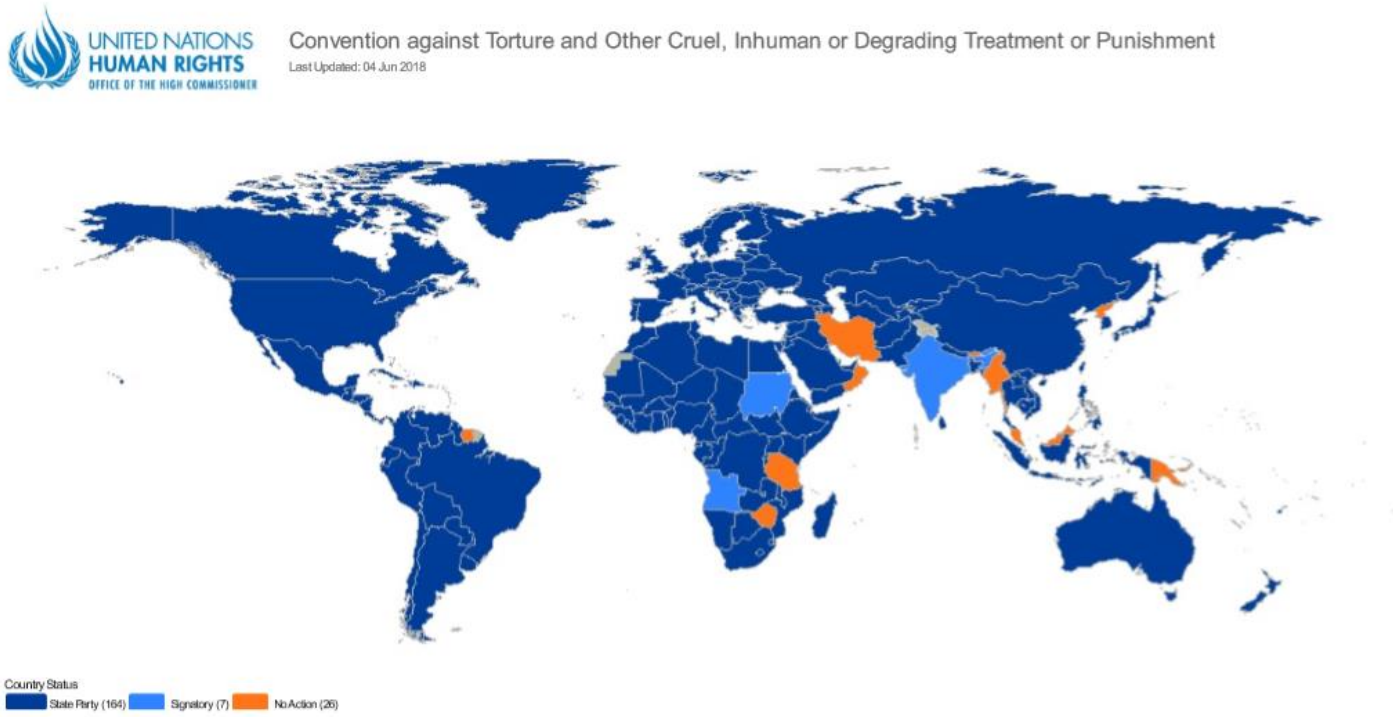
The Convention is a document that consists of 33 Articles, which are divided into three main parts, each taking into consideration a specific aspect of the topic. Part I deals with substantive provisions and includes the first 16 Articles (Burgers, 1988: 1): we can point out that the majority of those provisions only refer to the single concept of torture as such, while the few that remain broaden their aim to other cruel, inhuman or degrading treatment or punishment, as indicated in the title. Part II, instead, consists of Articles going from 17 to 24 and contains the implementation provisions (Burgers, 1988: 1). At the beginning of this second part, specifically in Articles 17 and 18, there is the accurate description of an institutional body called "Committee against Torture", which is supposed to actually implement all the indications provided by the Convention on the issue of torture. As Article 17 indicates, "the Committee shall consist of ten experts of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity." (CAT 1984: 6) The members of the Committee are to be elected among State Parties only, through specific election procedures, which are supposed to take place at biennial meetings (the only exception was granted to the initial election, which should be held within six months after the entry into force of the Convention). Further on, the Convention establishes that State Parties should submit reports to the Committee every four years as proofs of their commitment with the Convention itself. Finally, Part III, and consequently Articles 25 to 33, illustrate the final clauses of the Convention (Burgers 1988: 2). Those provisions include important issues such as signature, accession, enter into force, reservations, and denunciations. The final Article indicates that the Convention and its translated versions

shall be deposited with the Secretary-General of the United Nations, who will then transmit copies to all States (CAT 1984: 11 - 13).

As the official document States, the Convention was “adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984” and entered into force 26 June 1987 (CAT 1984: 1).

The map below show us the State of ratification of the CAT at the international level: as the legend demonstrates, blue-coloured States are the parties to the Convention, light blue-coloured States are signatories, while orange-coloured States have taken no action towards the Convention. CAT State Parties are 164 and are distributed among the continents quite homogeneously: we can point out that, regardless its size in contrast with the others, Europe is the continent with the highest presence of State Parties. Signatories States are those who have preliminary endorsed the treaty, but are still examining the content domestically and are still considering whether to ratify it or not. The map shows that those States are a quite reduced number, as they are only seven: Angola, Brunei Darussalam, Gambia, Haiti, India, Palau, Sudan. Finally, there are twenty-six States that have not expressed their consent to the Convention: Barbados, Bhutan, Cook Islands, Democratic People’s Republic of Korea, Dominica, Grenada, Iran, Jamaica, Kiribati, Malaysia, Micronesia, Myanmar, Niue, Oman, Papua New Guinea, Saint Kittis and Nevis, Saint Lucia, Samoa, Singapore, Solomon Islands, Suriname, Tonga, Trinidad and Tobago, Tuvalu, United Republic of Tanzania. It is important to stress the fact that all the States that are either Signatory or have taken no action with the Convention are spread mainly over Africa and Asia, and in a minimum part even in America (UNHR website 2018).

Figure 1



(UNHR website 2018)

3.4 The role of the Committee against Torture in enhancing compliance with the CAT

As a response to the requests presented by Amnesty International in its *Torture in the Eighties*, and, above all, to the international need of a effective institutional mechanism, the United Nations General Assembly confirmed the creation of a Committee against Torture in the CAT. We have already mentioned the fact that the Committee is introduced and described in the second part of the Convention; moreover, we know that it shall consist of experts in the field of human rights, nominated among State Parties, and shall review the reports made by the States themselves every four years.

The main purpose of the Committee is, as described in the Preamble to the CAT, "to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world" (CAT, 1984: 1). Therefore, in exercising its functions, the Committee shall do whatever it can to prevent any possible act of torture among the State Parties to the Convention, and enact any possible measure to foster compliance with the international document. To do so, the Committee is provided with a series of specific powers included in the Convention against Torture.

Article 19 specifies that each State Party is to submit to the Committee reports on the measure that it takes against torture following its commitment with the Convention: the first report must be sent one year after the Convention enters into force in the State, while the followings will have to be submitted every four years. The Committee will then review the reports and will make general comments on them; once the State Party receives the comments, it has the possibility to make further observations on them.

According to Article 20, the Committee can decide to enact an independent inquiry against a State, if it receives reliable information regarding the use of torture in that same State. The fundamental basis on which the possibility for the Committee to continue its inquiry rests, especially if it needs to visit the territory of the State to acquire more proofs and information, is represented by the need of an accordance between the Committee and the State: indeed, the Article underlines more than once the importance of cooperation between the two subjects. Furthermore, after the inquiry is concluded, the Committee transmits its findings to the State, together with comments and considerations on the situation; finally, the findings will also be included in the Committee's annual report. There is, however, an exception that needs to be pointed out with regards with what Article 20 States: in fact, according to Article 28, when a State

signs or ratifies the Convention, can “declare that it does not recognize the competence of the Committee provided for in article 20” (CAT, 1984: 11). As a consequence, any inquiry over an allegation of torture in one of those countries that do not recognise the competence of the Committee is precluded, thus limiting the power of the institutional body.

Article 21 deals with the possibility for a State Party, which has officially recognised the competence of the Committee, to claim that another State Party is not compliant with the CAT (if the claim was to be made by a State that does not recognise the competence of the Committee, such claim would never be effective). In this case, the first step does not include any act of the Committee: indeed, the State that considers another State not compliant with the Convention will send a communication to the latter, asking for an explanation of the situation; the receiving State then has three months to respond. If the problem is not considered solve by both States, each of them can ask the Committee to intervene. After collecting relevant information, the Committee will have the power to end the inquiry either via a friendly way, with a brief Statement on the facts to the States concerned only, or via a brief Statement which will be attached to a report, which would make the inquiry more public.

Article 22 States that the Committee has the power to investigate over a case of torture by a State Party against individuals, if they ask for its competence through their State. The Committee can require explanations from the State, and forward them to the State and to the individual concerned (CAT, 1984: 7 – 10).

In an attempt to provide a general consideration over the powers of the Committee enlisted and described in the four Articles mentioned above, it is possible to notice that the Committee is certainly not a passive institutional body, rather it has a very active

role in exercising its functions. Fulfilling Amnesty International's desire, it does represent a functional weapon against episodes related to the use of torture among the State Parties of the CAT: nonetheless, given the extended tendency to use torture still nowadays, even in circumstantial occasions, it would be impossible to expect that the Committee had the power to resolve the problem once and for all. It has proven, however, that an institutional body can be useful to enhance compliance among the States with the Convention against Torture: to further address this observation, we will now present three case studies that will show how the Committee intervenes when it receives credible information regarding case of torture acts. In following the development of the procedure under Article 20, we will try to investigate the reasons that caused the actual non-compliance of a State with its obligations towards the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and we will then observe how the Committee exerts its powers to try to solve the situation. The three case studies are included in the relatively narrow list of official inquiries that the institutional body has carried out throughout the years acknowledging the existence of torture acts in the States examined, and despite the similarities among them, they are all interesting from different points of view. We will proceed in a chronological order, starting from the Peruvian case examined between 1995 and 1999, with the official issue of the Committee's Annual Report in 2001; we will then examine the Lebanese case, assessed between 2008 and 2014, and included in the 2014 Annual Report; finally, we will take into consideration the Egyptian case, inquired from 2012 to 2015, and inserted in the last Annual Report in 2017.

3.5 Committee against Torture Annual Report 2001: the Peruvian case

The first case study that we are presenting regards the Committee against Torture's inquiry on Peru under article 20 of the Convention against Torture. It is a first example that allow us to better understand how the Committee works when called to investigate over alleged torture practices, and how it influences States in enhancing their compliance with the CAT, when they openly fail in doing so alone.

Peru ratified the CAT on July, 7 1988 and it is important to point out the fact that it did recognise the competence of the Committee as described under Article 20 of the Convention, thus making the inquiry procedure applicable: the case we are here presenting officially began in April 1995.

The non-governmental organisation Human Rights Watch communicated to the Committee that it had collected fundamental proofs regarding the systematic use of torture in Peru; furthermore, in August of the same year the Peruvian non-governmental body Coordinadora Nacional de Derechos Humanos sent its complaints over the same issue, thus giving further evidence that the problem could actually exist in the State concerned. The following year, after careful examination, the Committee determined that the information collected by both sources was reliable: as a consequence, it invited Peru to express its observations on the allegations received. Further observations were also requested in 1997 due to the submission of new evidence by the same Human Rights Watch and the Coordinadora Nacional de Derechos Humanos.

Despite the private meeting requested by Peru, the Committee continued with the procedure under Article 20 of the Convention, and decided to start a confidential inquiry, inviting the Peruvian Government to cooperate and to agree to receive a visit by delegates of the Committee itself. Meanwhile, the Committee continued to send to Peru

summaries of a total of 517 complaints received. At the end of the official visit, the Committee sent to the State its report, and then received the Peruvian observations over the findings. However, the Committee required further information before adopting a final conclusion over the Peruvian case.

In May 1999 the Committee sent its final report with its observations, conclusions and recommendations. First of all, the Report observed that on the basis of the information collected by the two non-governmental organisations that we have already mentioned above, it had been possible to determine that the victims of torture practices had been arrested either because they were part of armed insurgent groups, or they had been arrested because of ordinary offences. Even if such observation could be enough to State that Peru had actually failed to comply with the Convention against Torture, the Committee continued by pointing out that torture practiced were widespread, and that was confirmed non only by representatives of non-governmental organisations, but also by lawyers and judges; furthermore, the doctors that went to Peru with the mission sent by the Committee found actual evidence of physical signs of torture. Second of all, the Committee noted that cases of torture had decreased between 1997 and 1998: despite considering the data a positive indication, it also underlined the fact that decrease did not mean total disappearance, as proved by the fact that the Committee continued to receive allegations about other cases. Third of all, the members of the mission observed that there had been cases in which the responsible of torture practices had been punished, but only after the victims had died; in addition, punishment was described as being insufficient for the gravity of the acts they had perpetrated.

In conclusion, the Committee affirmed the existence of a systematic, widespread and clear use of torture throughout the all Peruvian territory, and the impossibility of

considering such problem as an occasional occurrence. The legislation at the time of the inquiry further aggravated the situation, as it somehow condoned the use of torture by the militaries and police officials in general. From that point of view, the Committee observed that it would "not be possible to eradicate torture in Peru without radical changes in this area" (A/56/44, 2001: 64). Nonetheless, the Committee appreciated the cooperation shown by Peru throughout the all period of the inquiry.

The Peruvian Government expressed great disappointment on the final findings of the Committee, deriving from the fact that it believed that there did not exist any possible systematic use of torture in its territory, as such practice was not tolerated. As a matter of fact, Peru subsequently asserted that it had already started following some recommendations made by the Committee, in order to improving the general environment in its territory. However, in spite of those declarations, the Committee continued to receive new allegations on cases of torture ideally occurred after the official visit to Peru, and after the issuing of the Report at the end of the inquiry.

The Peruvian case that we have briefly presented above is one of the examples of States failing to comply with the Convention against Torture. As we have seen, the State had ratified the Convention and had subsequently accepted to observe all its indications: at the basis there was of course the commitment to fight and prevent any form of torture or other cruel inhuman or degrading treatment or punishment. Nevertheless, following the findings provided by the Committee, it is evident that the State, or more accurately some officials, used torture against arrested people for the sole purpose of getting useful information for their investigations: this is a clear breach of what the Convention states, as it underlines the fact that under no circumstances the use of torture can be allowed. In this case, Peru decided not to follow the Convention for its

own scopes, regardless the great damage that that decision could cause to the victims. From another standpoint, it could be argued that the Peruvian non-compliance could be a result of the lack of legislative instruments of the country, that would have been of the outmost importance in the fight against torture: perhaps, when the country decided to ratify the CAT did not take into consideration the enormous efforts that its compliance would have entailed. Yet, this possible miscalculation cannot be an excuse for the terrible facts that have occurred in Peru, because the ratification of the Convention against Torture has been its decision and there had been no imposition on that (A/56/44, 2001: 60 – 70).

3.6 Committee against Torture Annual Report 2014: the Lebanese case

The second study case that is here presented involves the inquiry that the Committee against Torture ended in 2014 after it received reliable information on torture practices in Lebanon. We can here anticipate that the inquiry is concluded with the Committee recognising the existence of torture acts in the State, providing us with another example of non-compliance with the Convention against Torture. The reasons that appear to explain why Lebanon has proved inconsistent with its obligations will be presented after the analysis of the case, as the facts and the observations included in the official inquiry are fundamental for our conclusions on the case.

Lebanon has officially become a State Party to the Convention against Torture since its act of accession on October 5, 2000: it does recognise the competence of the Committee as described in Article 20, and therefore the inquiry procedure that begun in 2011 could lawfully be carried on.

The non-governmental organisation called Alkarama for Human Rights presented supporting documentation containing allegations of systematic use of torture in Lebanon to the Committee, requesting its intervention. Despite the fact that the Committee received Alkarama's documentation in 2008, it was only in 2011 that, after preliminary examinations of the case, it determined the information to be valid and reliable: therefore, following Article 20 of the Convention, the Committee invited Lebanon to cooperate by submitting information on the issue. In this case, Lebanon fulfilled its obligations with the CAT and with the Committee's official request, as it responded to the invitation by sending the information required. However, the Committee observed in its Report that what Lebanon had sent was not satisfactory, and further measures were thus necessary. First of all, it undertook a confidential inquiry, and second of all, it asked Lebanon for its cooperation in accepting a visit by the Committee itself, in order to directly investigate whether there actually existed torture practices in the Lebanese territories, or not. After initially postponing the visit, Lebanon agreed on the Committee's request. According to the Report, the Committee requested Lebanon to cooperate under several principles, including freedom of movement and unlimited access to places and documents: such extended cooperation was granted by the State, perhaps in an attempt to make the Committee's visit easier, or to show its good will in that very delicate situation.

The inquiry ended with the Final Report issued by the Committee, in which the institutional body presented its final observations: in an overall consideration of those findings, we can State that Alkarama's allegations against Lebanon were not only considered reliable, but also sadly true. Indeed, the Committee observed that "the occurrence of torture and ill-treatment, often described as isolated incidents, was

acknowledged by representatives of the authorities" (A/69/44, 2014: 266): those initial words confirmed the actual non-compliance of the State with the international treaty. Information and proves were collected from various sources, but they all confirmed the initial assumptions. In fact, many people proclaimed that they had been victims of torture practices, mainly during arrest and interrogation; the group of people involved in such practices usually included those that were suspected of being spies or terrorists, and torture practices against them were of various nature. Furthermore, in assessing the situation, the Committee found other clear proofs: first, there did not exist any independent mechanism for the submission of complaints; second, medical registers in different prisons seemed to have been specifically prepared for the institutional visit, thus providing false information about the actual reality.

The Committee's final observations were then followed by its conclusions and recommendations on the case. On the one hand, the conclusions reasserted once again that torture practices had been proved inside the Lebanese country, as it is already evident from some of the initial Statements:

> The Committee considers that torture is practised systematically when it is apparent that the torture cases reported have not occurred fortuitously in a particular place or at a particular time, but are seen to be habitual, widespread and deliberate in at least a considerable part of the territory of the country in question. […] Inadequate legislation which in practice allows room for the use of torture may also add to the systematic nature of this practice (A/69/44, 2014: 270).

It is immediately clear that the Committee could not ignore the existence of torture practices in Lebanon, and what it considered even worse was the fact that those practices had a systematic nature: this was the proof that torture was not a new phenomenon in the State, and it had become part of habitual practices. A further confirmation of the gravity of such findings was provided by the use of the word *deliberate*, which stresses the attention on the fact that those acts of torture were perpetrated on a voluntary basis by the State (or by any of its officials), even though the same State had accepted to comply with the basic principle that any form of torture should be eliminated as indicated in the CAT. In addition, the Committee enlightened the fact that all torture acts detected had been practiced by armed forces while investigating possible criminals under arrest, and it observed that such situation seemed "to a large extent to be the result of deliberate disregard for fundamental legal safeguards for persons deprived of their liberty" (A/69/44, 2014: 271). In such case, the Committee perceived a situation in which the total disregard for victims' legal safeguards, and basic human rights as a consequence, were a sort of starting point for all torture practices, since victims would have never had the chance to make any compliant about what was happening to them. This is closely tied to our previous observation on the total lack of an effective compliant mechanism. Finally, the Committee reminded Lebanon of its obligations towards the Convention against Torture, entered into force in its system some years before, and its failing approach to them, as the State did not seem to have taken any official measure to prevent torture.

On the other hand, the Committee provided many recommendations that Lebanon should follow in order to ease its current situation. Basically all of them pointed at the eradication of torture from Lebanon, starting with the reaffirmation of the total

prohibition of torture under what described in the Convention against Torture, and continuing with a series of acts that the inquired State was asked to put into practice: we will now briefly present those that seem the most relevant for our discourse. First of all, the Committee further repeated the need to change the general situation inside Lebanese prisons, as a first move against any possible torture practice. Second of all, Lebanon was peremptorily required to establish an independent complaints mechanism, in order to give the possibility to anyone who may need assistance the possibility to ask for help. Third of all, after asking for a mandatory training for all public officials, the Committee also demanded the re-establishment of the full authority of the State in all prisons, because only with a strategic control of such places torture could be effectively controlled and cancelled.

Lebanon officially replied to the inquiry report issued by the Committee, thus forwarding its position towards the findings. It does not come as a surprise the fact that the State was not satisfied with the Committee's conclusion: instead, it was rather shocked by them. As a matter of fact, Lebanon disagreed with the assertion that systematic use of torture had taken place inside its territory: it did recognise, however, that some isolated cases of torture may have happened, but authorities were already investigating on such unacceptable acts; in addition, it reassured the Committee that the project for a national preventive mechanism had already been approved. Nevertheless, for the purpose of our investigation, subsequent Lebanese Statements appear to be even more relevant, as the State indicated that "the inquiry report did not take into consideration the challenges and difficulties that the country had faced and continued to face in a variety of spheres." (A/69/44, 2014: 276). From this standpoint, even though the first sphere to which Lebanon made reference was the conditions of its prisons and

its failure in creating better detention environments in general, we have seen that those same prisons were the main places in which torture practices happened, and thus we could broaden our observation. Indeed, we could infer that the challenges and the difficulties that Lebanon was facing at the time of the inquiry could be directly tied to its failure in complying with its obligations with the CAT. Even if the State had willingly become Party to the Convention against Torture, it might have however not taken into consideration what its act of compliance would have meant: ratifying an international treaty, which in this case relates to the sphere of human rights, can sometimes be very costly for a State, as we have observed in Chapter 1 of this dissertation. In the case inquired by the Committee, Lebanon was clearly not capable of exerting a stronger control over its militaries and police forces, which seemed to perpetrate torture acts quite freely while interrogating possible criminals: apparently the State was not able to sustain the high costs required by the CAT, because it would otherwise have put major efforts in eradicating torture from its prisons and from its territories (A/69/44, 2014: 177 – 179; 265 – 276).

3.7 Committee against Torture Annual Report 2017: the Egyptian case

The final case study here presented proves to be another effective example of the importance of the Committee against Torture in enacting the principles enlisted in the CAT, and in trying to enhance State's compliance with it. The case study deals with the Committee's inquiry against Egypt, which was accused of using torture practices by the same non-governmental organisation that had accused Lebanon in our previous case study, namely Alkarama. Again, we will present summary description of Committee's inquiry, in order to better understand what happened and what were the reasons that

started such inquiry; at the end of the presentation, we will try to provide an explanation of another episode of clear non-compliance with the Convention.

Egypt is one of the State Parties to the Convention against Torture, and it ratified the Document on June 25, 1986: as a consequence, with the ratification it accepted to commit to the obligations enlisted by the CAT. Nevertheless, following the last Annual Report issued by the Committee against Torture in 2017, Egypt failed to comply to its obligations.

In 2012 the Committee was repeatedly informed by the non-governmental organization Alkarama that it had registered a systematic use of torture in the Egyptian territory. The Committee then decided that the information received could be valued as reliable, and following the indications provided by Article 20, it invited Egypt to cooperate in the attempt to examine the situation. However, after initiating the official inquiry and requesting the Egyptian permission for an institutional visit, in 2014 the Committee was forced to cancel the visit, as Egypt did not reply to the official request. Hence the State communicated to the Committee that it was committed to preventing the use of torture, and that it considered inadmissible Alkarama allegations: in addition, in order to shed a positive light over its reputation, Egypt added that it recognised that some torture practices had been perpetrated in its territory, but the State considered them minor incidents and was already taking care of them. It is indicative that Alkarama's communications were not the only one presented against Egypt. Indeed, the Committee could rely on further information provided not only by other non-governmental organisations, but also by some United Nations officials and bodies: the latter underline the close relationship between the Committee and other UN institutions.

Why did Egypt, according to the external information, use torture? At this point, it is legitimate to ask this question, because it is important to understand the reasons beneath Egyptian non-compliance with its commitment with the Convention against Torture. The Report observed that torture practices were enacted by Egyptian military officials in order to punish protesters and to obtain confession: those episodes appeared to be facilitated by a general permissive atmosphere in the State, and by a total lack of any investigating authority for complaints (as in the case of Lebanon).

In conclusion of its inquiry, the Committee presented urgent recommendations to Egypt, requiring the total cessation of any torture practice or ill-treatment in its territory. Even in that case, the Committee observed that torture was not an isolated episode in the country, rather it was "habitual, widespread and deliberate" (A/72/44, 2017: 13): those adjective were certainly indicative of the gravity of Egyptian breach of its commitments with the CAT, as it was a systematic and arbitrary decision of the State itself.

After receiving copy of the inquiry, Egypt responded to the final findings, protesting against the Committee's conclusion of the actual existence of torture acts in its territory: according to the State, in fact, all allegations presented by Alkarama were not true and they should have never been taken into consideration by the Committee. Furthermore, despite announcing the implementation of some of the recommendations made by the Committee, the State openly rejected many others: those included, for example, the creation of the independent authority for the investigation of complaints (A/72/44, 2017: 10 – 14).

As we have already stated, the Egyptian case that we have analysed proves to be important for our analysis over State compliance with human rights treaties. Egypt has ratified many international treaties, and even the Convention against Torture: however,

despite showing a theoretical commitment with it, the Committee's Report has proven that in practice the State fails to maintain its promises. Compliance with the Convention appears to be jeopardised once again by the thirst for power and the need to maintain the control over everything, as proved by the fact that the main victims of torture practices were protesters. In this case, Egypt does not seem to be concerned with a possible undermining of its reputation, and this is confirmed by some facts: first of all, after denying Alkarama allegations, the State still confirmed the existence of some episodes of torture in its territory, thus indirectly confirming that it had failed in complying with the CAT; second of all, even if the final findings of the Committee indicated that torture act had actually taken place in Egypt, the State did not want to accept the decisions and the observations; finally, Egypt refused to accept many crucial recommendations made by the Committee, proving to be unwilling to change the existing situation. All things considered, the Egyptian behaviour could not appear positive in the eyes of the international scenario, thus enhancing the belief that it is a non-compliant State.

Additionally to these observations, the case analysed unfortunately further confirms our previous claim: despite the ratification of the Convention, and the creation of the Committee, torture practices are far from being eradicated from the worldwide scenario. On the contrary, they continue to be enacted by many States, with obvious disastrous effects for the victims. In addition, the Egyptian case enlightens again the practice of using torture for mere political means, something that was very widespread before the international society began to ask for the creation of effective tools to change the situation (A/72/44, 2017: 12 – 14).

3.8 Concluding observations on issue of compliance related to the Convention against Torture

We have observed that the issue of torture roots back in ancient history, but it has unfortunately continued to be practiced until nowadays, and it still seems very difficult to find an encompassing solution that could end the problem. Torture certainly constitutes a threat to all people all over the world: as a matter of fact, when torture acts are perpetrated against someone, that person is consequently deprived from some or even all his or hers basic human rights.

Acknowledging that torture and other cruel, inhuman or degrading treatment or punishment are still pervasive in our world, the international society was urged to actively intervene on the issue, before the situation could become even worse. Article 5 of the Universal Declaration of Human Rights represented the initial step in that direction, but it still proved not to be sufficient, as many countries continued to use torture for the scopes, thus failing to comply to the international treaty.

Certainly, we can state that the initiative undertaken by Amnesty International in 1972 represented another important and effective fact in the fight against torture. On the one hand, we have discussed the importance of Amnesty First Report on torture, which strongly criticised the widespread habit of States that used torture without been effectively controlled by any official institution: in a world in which States had just started recognising the importance of human rights after a long period in which those same rights had almost been forgotten, their extremely wrong behaviour could not be further tolerated. On the other hand, Amnesty went beyond the sole Report, and organised the Conference on the Abolition of Torture: it was an emblematic event, since the participant States were somehow pushed to really acknowledging that the situation

had become unsustainable, and that they had to be prepared to totally eradicate torture from the world.

The most direct and important consequence of both Amnesty's Report and Conference was embodied by the first international instrument with which the world society aimed at condemning torture, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly. Even though the Declaration was non-binding for States, it still embodied a first, and perhaps rudimental, weapon against the problem of torture: indeed, it provided us not only with the first actual definition of the term torture, but it also presented a series of guidelines in form of Articles, and Member States of the United Nations were required to comply with them. Nevertheless, despite its importance at the international level, the Declaration was not as strong as expected: Amnesty International found reliable proof that many States continued to use torture for their political scopes even after having publicly committed to the Document. Amnesty's findings were certainly indicative of the fact that, despite publicly declaring that they would have complied with the Declaration, States were probably not ready to abandon a familiar custom that had guaranteed them the possibility to easily achieve important information and to maintain a stronger control over their territories and people: this confirmed the fact that sometimes the costs of complying with an international human rights treaty (regardless the non-binding characteristic of the Declaration) can sometimes be too high for some States, or even if the States accepted to comply, they recognised that the benefits deriving from such compliance were lower than then benefits they could have achieved if they did not comply.

In light of such difficulties, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was created in order to further address the issue of torture: as we have seen, the Convention was invoked by Amnesty International in its second report, and adopted by the UN General Assembly. As Burgers enlightens, the main aim of the Convention was not to definitely outlaw torture and other cruel, inhuman or degrading treatment or punishment, because such prohibition is already established under international law; rather, the Convention was created to strengthen the existing prohibition with supportive measures (1988: 1). Regarding those measures, we could affirm that the most important and useful one is represented by the Committee against Torture: it was described in Article 17, and it was expressly created to enhance State's compliance with the Convention. In order to do so, the Committee was endowed with a series of powers that allowed the institutional body to investigate possible allegations of torture practices in the States Parties of the Convention that officially recognised its competence (as it has been underlined, despite the fact that Article 20 of the CAT establishes that the Committee should initiate an inquiry if it receives reliable information over a case of torture, Article 28 specifies that the inquiry will not be possible in a State, if it has declared that it does not recognise the competence of the Committee). The possibility to intervene in case of torture practices is of the outmost importance, because it ensures the international society that, at some level, something could be done to assess the situation.

Nonetheless, despite observing that the Convention has been ratified by 164 States and that some others are considering whether to ratify or not, compliance with the international treaty is not totally homogenous, because there still exist documented cases of use of torture in the territories of some State Parties. We have provided three

significant examples to further confirm this observation, and it has been possible to state that in all three cases the Committee has found reliable evidence that torture was used; moreover, it is possible to identify similar characteristics in the three cases, which we shall now introduce. First of all, in all three cases the Committee's inquiry began after it examined the information received by one or more non-governmental organisations: once it established that such information was reliable, the procedure started. Second of all, the inquiry ended with the verification of the actual existence of torture practices in all the three countries, and with the confirmation that such practices were not singular episodes, but they were a systematic habit that persisted over time. Third of all, in the three cases torture was perpetrated to the victims by the police or by militaries in general during arrest or the initial phases of interrogation, with the sole purpose of obtaining relevant information: on this matter, Article 1 clearly states that torture is any act than involves the infliction of pain or suffering by someone in an official capacity, in order to get information or a confession (CAT: 1). Finally, after receiving the Committee's Final Report, all three countries were unsatisfied with the findings, and they all proclaimed that there did not exist any systematic use of torture in their territories; still, some of them conceded that some isolated cases could have happened, but control measures had already been adopted.

Why did Peru, Lebanon and Egypt fail in complying with the Convention against Torture that they had officially ratified? Explanations for those cases, as well as for the others that we have not taken into consideration, can be different. On the one hand, as in the case of Peru, a State may lack the basic legislative instruments, or some fundamental domestic institutions, that would provide important help in fostering compliance with the Convention; furthermore, that same State could somehow avoid to change anything

in its internal mechanism, because it could be persuaded that there exist no problems at all. However, as Goodliffe and Hawkins noticed, "when states commit to new international treaties, they often have to change domestic policies, practices, laws, and even institutions in order to credibly comply with those commitments" (2006: 363). In the Peruvian case, the main problem was not only represented by the use of torture per se, but also by the fact that authorities were aware of those practices and did nothing to stop them. The evident lack of a fairer institutional system was at the basis of Peruvian non-compliance: since there was basically no control over militaries and police forces, torture could be inflicted on many victims almost without any limit, until some non-governmental organisations finally acknowledged the situation and reported the case to the Committee against Torture. Moreover, even if it was true that Peru informed the Committee that it was undertaking some preventive measures, it was even more evident that such moves were not sufficient to stop torture practices in the country: that fact further underlined the weakness of Peru in truly committing to a higher and stronger control, which would have certainly signified the creation of a safer and more controlled environment that would have perhaps strengthen compliance with the Convention.

A further confirmation of the fact that a weak and insufficient legislative and institutional system can jeopardise compliance with the Convention comes from the Lebanese case. Indeed, even in the second case study that we have presented the State lacked some basic institutions that would have been beneficial in fighting torture; even though Lebanon confirmed that it had approved the creation of a preventive mechanism, the measure had clearly been adopted too late, when the torture practice had already become systematic, according to the findings of the Committee. Thus, in a State that directly confirmed that there existed intrinsic difficulties and challenges inside its

territory, non-compliance with the Convention against Torture is not totally surprising: indeed, we could observe that even in this case the State ratified the international treaty without being able to fully sustain the costs that such decision would have entailed, namely the total cessation of any torture practice. On this matter, the Committee noticed that Lebanon had been Party to the Convention for twelve years when the inquiry was made, and consequently it had had the necessary time to change its legislative, administrative and judicial system (A/69/44, 2014: 271): if those measures had not been undertaken, it was the direct consequence of the difficult situation that existed in Lebanon, or, perhaps, the willingness to maintain a practice that guaranteed full access to information, even if it meant the consequent non-compliance with the CAT.

On the other hand, the Egyptian case provides another explanation for State's non-compliance. We have previously advanced the idea that in Egypt all torture practices were used in order to acquire crucial information, following the mere thirst for power and the need to maintain the control, thus disregarding any possible reputational cost that might have appeared because of that decision. As a matter of fact, in total contrast with the institutionalist theory of compliance, in this case the State did not seem to be concerned with its reputation at the international level: as we have already pointed out, Egypt not only refused to accept the Committee's final findings that stated that torture was an habitual practice in the State, but it also admitted that some occasional episodes might have taken place, thus perhaps involuntarily confirming the fact that it had failed to comply with the Convention. Moreover, it refused the Committee recommendation which entailed the creation of an independent mechanism for the investigation of complaints and that decision could be seen under two different points of view: on the one side, it seemed to confirm our idea that the State was not concerned with the

consequence of that decision on its international reputation, because otherwise it would have accepted to implement the mechanism, in order to show its true commitment to the eradication of torture from its territory; on the other side, it showed that the State was unwilling to change its domestic policies and practices, because perhaps it wanted to preserve the current conditions.

All things being considered, we have seen that the Committee against Torture has proven to be a very important instrument in the fight against the use of torture in the States Parties to the Convention against Torture, because it benefits from the power to intervene in case of emergency. Before the creation of this Committee, as we have underlined, there existed no institutional body that could officially act: therefore, the case studies that we have presented and the other cases as well would have never been inquired. Moreover, alongside the sole inquiries undertaken under Article 20 of the Convention, the Committee has assessed many other cases and reports on the use of torture, exerting its powers under Articles 21 and 22: however, those cases have not been taken into consideration for the purpose of this dissertation.

Nevertheless, we have also observed that the powers of the Committee are not unlimited: on the one side, it cannot inquire possible cases of torture practices in those countries that do not recognise its competence under Article 20 of the Convention; on the other side, despite the importance of its inquiries and, above all, of its recommendations regarding the measures to undertake in order to change the general situation of a country and to address the problem of torture, States can sometimes refuse to accept those recommendations.

All things being considered, we can argue that the Committee is very important in enhancing State's compliance with the Convention, because it is the actual instrument

that can guide States to change their practices, regardless their gravity: indeed, the Committee can intervene either when a State does not submit the periodic Report under Article 19, and we could consider such act a minor act of non-compliance with the Convention, or when a State openly uses torture in its territory in order to pursue its own goals, thus failing to comply with the most important obligations of the international treaty. However, we must not forget that the Committee's intervention can sometimes be limited by some behaviours or decision of the States.

Chapter 3

The paradox of the United States of America and the case of Guantanamo Bay: from human rights protectors to violators

3.1 The United States of America and their commitment to international human rights treaties

The United States of America has represented for a long period the role model for all democratic States, especially during Cold War when the federal State was facing the perceived threat of the Soviet Union. Nowadays, we can still consider the United States the most powerful democracy of the world, and a great supporter of the protection of basic human rights. This perception is confirmed by the many human rights treaties that the country has ratified over the years: for the purpose of this dissertation, we will now briefly introduce the human rights treaties related to the issue of torture to which the United States is Party.

On the issue of torture, which will be central even in this Chapter, Cherif Bassiouni observed that "for over half a century, the U.S. led the effort to prohibit torture under international law" and that "during the period of time between 1948 and 1984, the U.S. was in the forefront of international efforts to eliminate the practice of torture in countries whose governments still resorted to such a barbaric practice." Indeed, the United States was one of the greatest supporters during the drafting and adoption process of the Universal Declaration of Human Rights in 1948: we have already seen in Chapter II that Article 5 of the UDHR addressed the issue of torture and other cruel, inhuman or degrading treatment or punishment. Furthermore, the United States showed

great efforts in the adoption of the United Nations International Covenant on Civil and Political Rights in 1973, in which Article 7 mirrors Article 5 of the UDHR (2006: 392).

Alongside those treaties, the United States has also signed the Geneva Conventions in 1949, and officially ratified them in 1955: the Conventions deal with the treatment of people and prisoners in time of was, and will represent a crucial and debatable point in the Guantanamo Bay case, that we will subsequently address.

In addition, the United States has also ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: as we have seen in the previous Chapter, the Convention was adopted by the United Nations in 1984 and entered into force in 1987; the United States ratified the Convention in 1994.

Finally, the United States is also a member of the Organization of American States (OAS), which is a regional treaty-based body in the Americas: its main aim is to advancing democracy and human rights. All members of the OAS, including the United States of America, have ratified two important documents: the OAS Charter and the American Declaration of the Rights and Duties of Man; both of them were adopted in 1948. Nonetheless, the United States has not ratified the 1969 American Convention on Human Rights (Dahlstrom 2003: 664 – 671).

3.2 The war on terror and the first use of Guantanamo Bay

On September 11, 2001 the United States of America, and also the world in general, were deeply shaken by the attacks that a group of Afghan terrorists perpetrated to the heart of the federal State using some civilian airplanes, and provoking the death of thousands of people. On the one hand, the attacks were strongly condemned not only by the American Government, but also by the United Nations and by the international

community, as they represented a clear and organised attack to the democratic world in general. On the other hand, those same attacks represented the beginning of the so-called *war on terror*, invoked and initiated by President George W. Bush and aimed at directly fighting the group of terrorists that perpetrated the attacks. On September 20, 2011 President Bush addressed the Nation, and the entire world, with a famous speech in which he acknowledged the difficulties of those days, and the anger that pervaded the entire State. Nonetheless, he announced that justice would have been brought to their enemies, whose sole goal was to remake the entire world and to impose their radical beliefs everywhere and to everybody. He continued by announcing that "our war on terror begins with al Qaeda, but it does not end there. It will not end until every terrorist group of global reach has been found, stopped and defeated," thus officially introducing for the first time the concept of *war on terror*, which would have consisted in a long campaign that would have also required any possible effort and support. In addition, he strongly claimed that any Nation that would have somehow helped any terrorist would have been regarded as an hostile regime to the United States of America (The Guardian 2001). From this standpoint, we can see that President Bush's speech embodied a further confirmation of the American commitment to the protection of basic human rights, and of democracy as well.

Since Afghanistan was the State from which the Al Qaeda group of terrorists came, the American Government asked the Afghani authorities to surrender any possible Al Qaeda member, and the leader Osama Bin Laden in particular: however, the Muslim Clerics announced that they would not respond to the American request peacefully. The automatic consequence to their communication was the beginning of the American campaign against Afghanistan, which officially began on October 7, 2001 (Dahlstrom

2003: 672; Steyn 2003: 12). Nevertheless, shortly after beginning those operations, there appeared a crucial problem for the American army and for the Government as well: indeed, many Afghan people were arrested during the missions, and they had to be incarcerated in some safe places to be interrogated. The US forces believed that by interrogating them, they could have acquired fundamental information regarding Al Qaeda and the terrorists they were looking for. The problem we have mentioned above soon appeared to be the lack of enough detention places, as the number of arrested people was growing (Reid-Henry 2007: 627). As a consequence, the United States army had to find an alternative solution to deal with the issue.

The place that was chosen was Guantanamo Bay, which was not only the new detention area for detainees, but it also embodied the paradoxical issue that we are going to analyse in this Chapter: as a matter of fact, it was and still is related to the United States failing to comply to its international commitments to fight any torture practice.

Guantanamo Bay was a strategic choice made by President Bush and the American administration, given the peculiar situation that characterised that place. Indeed, Guantanamo Bay was leased from Cuba in 1903 for the sole purposes of coaling and naval stations: therefore, it was under the United States complete jurisdiction, but it was Cuba that exercised the ultimate sovereignty. The lease could end only with the consent of both parties or with the abandonment of the base by the United States: without any surprise, America had no interest in abandoning the base any sooner, because it had understood that Guantanamo Bay would have proved to be of great use for its purposes. Initially, it represented a logistical support for US interventions throughout the Cold War; subsequently, however, it was transformed in a detention camp: first, for the

36000 refugees coming from Haiti and rejected from the American territory, and then for the 21000 Cubans requesting asylum in the United States. Regarding that last transformation, it is interesting to notice that, despite the fact that the United States openly violated the agreement with Cuba, the federal State did not incur in any problem deriving from its choice (Gregory 2006: 411 – 413).

Therefore, as we have already stated, the strategic position and condition of Guantanamo Bay provided the ideal solution for the American problem in Afghanistan. On January 11, 2002 the first group of twenty detainees arrived, and that group was then followed by other thirty people that arrived only two days later: as Dahlstrom observes, on January 21 there were 158 people detained in Guantanamo Bay, and the number even grew up to 600 in the following weeks (2003: 674). Even if we take into consideration those numbers only, we could perceive them as indicative of the rhythm with which the mission in Afghanistan was advancing.

Nonetheless, the arrival of the detainees at Guantanamo Bay was followed by a series of escalating declarations and events that portrayed the progressive change of the American attitude towards the treatment of those people and on the use of torture, which was something quite unexpected for the perceived most powerful democracy in the world.

Following the advice of Secretary of Defence Donald Rumsfeld, in January 2002 President Bush announced that it would have not applied any of the provisions of the Geneva Conventions to any of the detainees at Guantanamo Bay, thus denying them the status of Prisoners of War (POWs) under paragraph 1 Article 4. In spite of that statement, however, he also declared that the same Taliban detainees would have been treated humanely (Dahlstrom 2003: 676; Rumsfeld Memorandum 2002). The decision

was quite surprisingly for many reasons; therefore, in order to acquire a more detailed point of view on the issue, it seems to be important to consider both Article 4 and, consequently, Article 5 of the Third Geneva Convention:

> ART. 4. — A. Prisoners of war, in the sense of the present Convention, are persons belonging to one of the following categories, who have fallen into the power of the enemy:
> 1) Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces. […].
>
> ART. 5. — The present Convention shall apply to the persons referred to in Article 4 from the time they fall into the power of the enemy and until their final release and repatriation. Should any doubt arise as to whether persons having committed a belligerent act and having fallen into the hands of the enemy belong to any of the categories enumerated in Article 4, such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal (Third Geneva Convention 1949).

By making reference to Article 4, the American Administration decided that it could not grant the status of prisoners of war to the Taliban detainees because, in its opinion, they did not pertain to the army of the official Afghani Government. However, we can observe that the statement made by President Bush was in total contradiction with

Article 5 of the same Third Convention of Geneva Relative to the Treatment of Prisoners of War: indeed, the second Article that we have presented expects States to grant protection under the Convention even to those people whose status has not been clearly determined yet. From this standpoint, we could agree on the fact that this embodied a first example of American non-compliance with its international commitments, which correspond in this case to non-compliance with the Third Geneva Convention, which is one of the basic fundamental international human rights treaties. Regarding such example, we could advance the observation that, on this issue, the United States of America decided to disregard the provisions of the Convention in order to pursue a more effective strategy towards a better security in its territory: it appears that, at least in this case, the State considered that the costs that would have derived from their decision not to comply with the Convention would have possibly been lower than the costs generated by compliance.

Nevertheless, given the gravity of the decision, President Bush' statement met a general disappointment among the public opinion and even among some members of the same American Administration as well. As a consequence of such agitated situation and after long debates, the US Government released another official statement on February, 7 2002 via the White House Press Secretary Ari Fleisher. In the communication it was announced that the US President Bush and the US Administration would have continued to treat all detainees in Guantanamo Bay humanely and consistently with the Geneva Convention, confirming the previous position; moreover, it was also announced that the President had decided that the Geneva Convention would have applied to Taliban detainees only, while such benefit would have not been extended to Al Qaeda terrorists. The change in the American

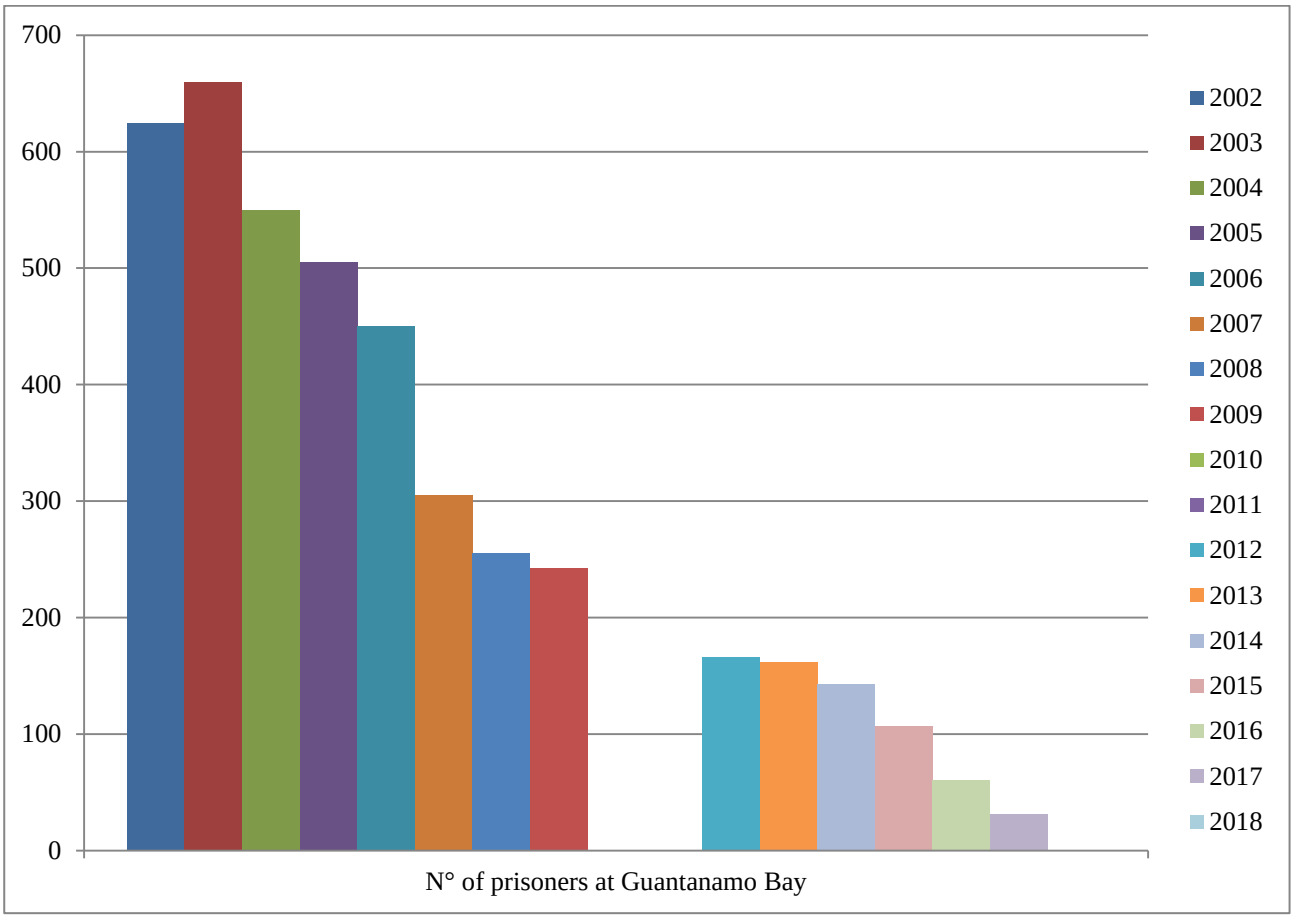
attitude was rooted in the fact that the United States had determined that Taliban members fell under the Convention because Afghanistan was a Party to it, even though the Taliban Government was not recognised as the legitimate one. Nevertheless, Fleisher also stated that Taliban detainees were still not entitled to POW status, because they did not meet the basic requirements under Article 4 of the Convention, alongside with Al Qaeda members. Finally, it was also observed the war on terrorism waged by the United States was yet to be envisaged by the time the Geneva Conventions were signed, but nonetheless the President would maintain the American commitment to the principles of the Convention, still "recognizing that the Convention simply does not cover every situation in which people may be captured or detained by military forces, as we see in Afghanistan today" (White House Press Secretary 2002). By referring to the last statement, we could observe that President Bush had decided to comply with his international obligations, but it had also partially directly and partially indirectly admitted that he would have complied with a sort of personal interpretation of the Convention, which was quite different from the official version. It is possible to advance the supposition that such a decision had been taken in order to appease the international community, that had clearly perceived the statements made in January 2002 as a clear violation of the provisions of the international treaty. Meanwhile, after reassuring the international opinion, the United States could continue to treat detainees according to their own point of view, denying them their own rights as a punishment for their ideas and their positions: still, the State had to take into account that among the detainees at Guantanamo Bay there could have also been some innocent people that were neither terrorists, nor simple supporters, and the State should have assessed those cases differently. However, we could see that the war on terror had generated a general

panic in the United States, which affected in some cases the perception of what was right and what was wrong.

3.3 Acknowledging the facts: an overview of the development of Guantanamo Bay

In order to provide a better understanding of how the number of detainees at Guantanamo Bay changed during the years, we are presenting some data: they range from 2002 up to 2018, and they have been collected by two different sources. Table 1 refers to the information collected by Human Rights Watch in its Annual Reports, while Table 2 focuses on the data provided from The New York Times. First of all, we will provide a detailed description of the data of both Tables separately, in order to have a better understanding of the two groups of numbers. Second of all, we will try to analyse the differences between the two Tables, and to comment on the discrepancies; furthermore, we will try to investigate some interesting details regarding the data provided by the two different sources.

Table 1 - Human Rights Watch



(Human Rights Watch 2003 – 2018)

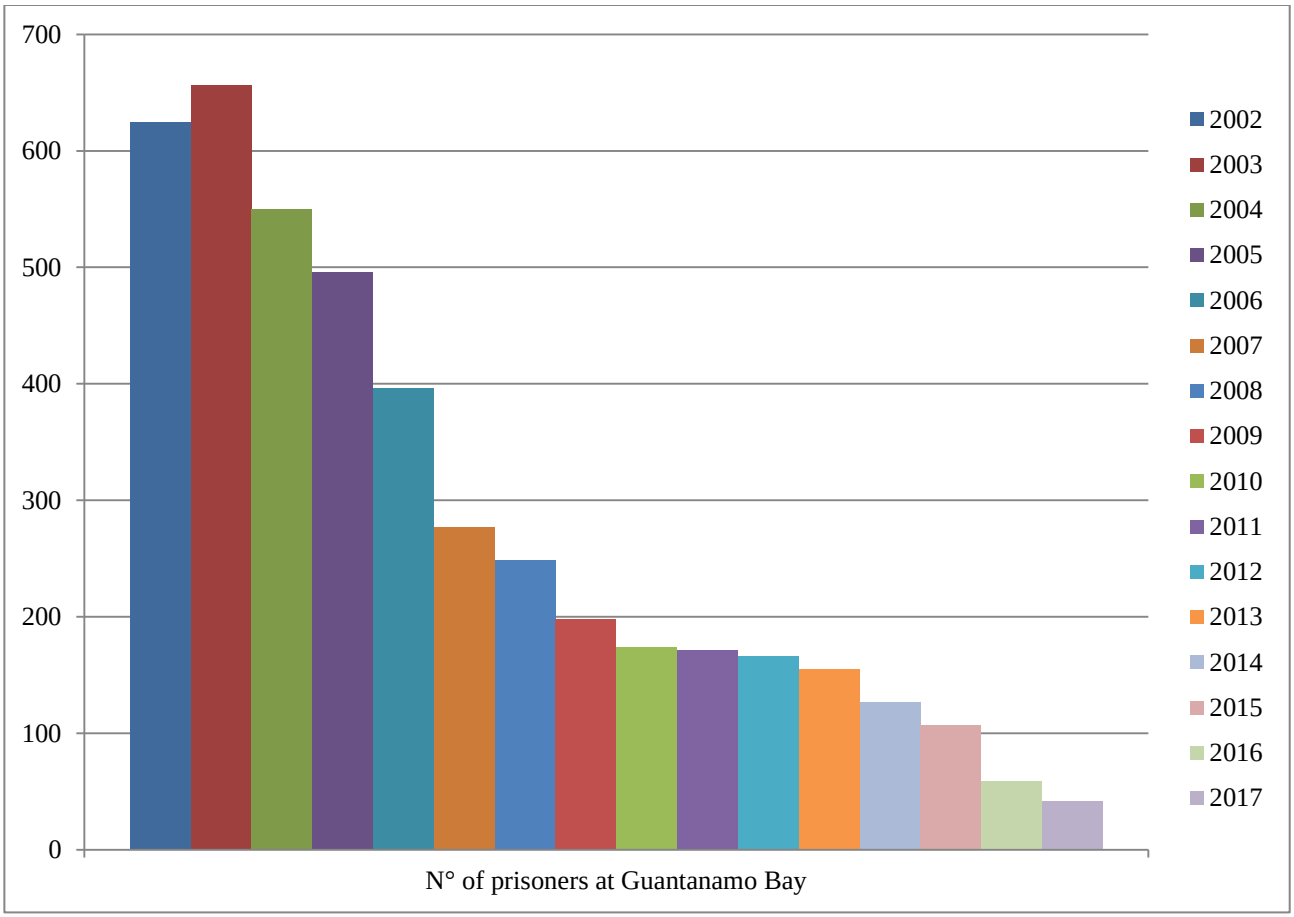
Human Rights Watch issues every year a Report in which it collects its observation on the States and on their behaviour towards human rights: for the purpose of the dissertation and of the current Chapter, only the information and the data referring to the United States and, in particular, to Guantanamo Bay have been taken into account. It is already possible to notice that in some cases, the data are not provided, possibly because Human Rights Watch has not been able to acquire proper information. Furthermore, we can also observe that in the years, the number of detainees has generally decreased.

We have already seen that the first people arrived at Guantanamo Bay in 2002, and that the number grew very fast from the first twenty detainees up to circa 600 in the following weeks (Dahlstrom 2003: 674). The data was then confirmed in the Report issued by Human Rights Watch the next year, as the prisoners counted at the detention facility were 625. The highest peak was reached in 2003, when Guantanamo Bay counted a total of 660 detainees: the number was quite impressive, especially if we take into account the conditions in which those prisoners lived. From that year onwards, the data seemed to decrease quite evidently. In 2004 there were approximately 550 detainees, while Human Rights Watch reported that in 2005 that number 505. It then decreased in 2006, when the prisoners were 450. In 2007 the total was already 305: at this point, it is interesting to notice that within few years there was less than half of the prisoners counted in 2002. In 2008 there were 255 detainees at Guantanamo Bay, while in 2009 there were 222. At this point, the Table shows that Human Rights Watch has not provided the number of detainees in 2010 and in 2011 possibly because it did not have access to the right sources of information. Despite this interruption, the number continued to decrease: in 2012, when data were available again, the Report indicated that there were 166 detainees at the naval base. In 2013, they were 162: therefore, between those last two years considered the Report registered the lowest transfer rate at Guantanamo, as only four people had been moved from there. In 2014, the detainees were 143, and in 2015 they were 107. In the last two years analysed, namely 2016 and 2017, the Report indicated that there were respectively 60 and 31 detainees in total.

Since the Report issued by Human Rights Watch are annual, the last one has been released at the beginning of 2018 and it referred to the previous year. Acknowledging

this, the reason why Table 1 does not show the data of 2018 is explained by the fact that they will be included in the next Annual Report, which will be released in 2019.

Table 2 - The New York Times



(The New York Times 2018)

The New York Times has provided the number of detainees at Guantanamo Bay from 2002 to 2017: in this second case, it is possible to observe from Table 2 that it has been possible to insert the data related to all years taken into exam, something that it has not been possible to do in the previous Table; moreover, the New York Times counter shows the increase or the decrease of the total number of detainees month per month:

however, for the purpose of our analysis, we have only focused our attention on the data collected in December, in order to provide a consistent comparison between the two Tables.

In 2002 the total number was of 624. Even according to the data collected by the New York Times, in 2003 the number of detainees at Guantanamo Bay reached its highest level, as there were 656 people detained: from then, it is possible to see the beginning of the decrease. In 2004 there were 550 people at the detention facility, while in the following year there were 496. In 2006 the total number of detainees was of 396, and in 2007 it decreased to 277. The New York Times further indicated that in 2008 Guantanamo Bay counted 248 total detainees, while in 2009 they were 198. Between 2010 and 2011 the difference was quite low, as in the first case there were 174 people, while in the second case there were 171: apparently, only three people had been transferred from the naval base to another destination. In 2012 there were 166 detainees at Guantanamo Bay, and in 2013 there were 155. In 2014 the data showed 127 prisoners at the detention facility, while the number decreased up to 107 in 2015. In the last two years analysed, namely 2016 and 2017, the New York Times reported that in the first case there were 59 detainees, while in the second case the total number had decreased up to 41. Curiously enough, in March 2018 the number decreased to 40, which is the steady total observed until May 2018.

All things considered, after a brief overview of the specific data showed in Table 1 and in Table 2 by the two different sources, it is possible to provide some general comments, especially on the differences among the total number of detainees provided year by year. To begin with, it might be observed that in some cases the numbers presented by both sources are exactly the same, as observed in 2004, 2012 and in 2015

with respectively 550, 166 and 107 detainees. Similarly, it is possible to see that in other cases the data provided show a minimal discrepancy, such as in 2002 (with 625 detainees according to Table 1 and 5624 according to Table 2) and in 2016 (with 60 detainees counted by Human Rights Watch and with 59 referred to by the New York Times). We could observe that in the cases just analysed no differences or minimal differences may be the proof of the reliability of the data, as in these cases a double confirmation can make a difference; furthermore, we could convene on the fact that even if there might exist a difference of one unit between the two group of information, it should not be considered a problem. Nonetheless, what should be carefully assessed is the greater differences that can be observed in some cases: for example, in 2006 the two Tables show a difference of 54 detainees; in 2009 the data, instead, differ of 24; finally, in 2014 the two sources show a difference of 20 detainees between them. On this issue, it seems to be difficult to provide a fulfilling explanation of the existing noticeable differences between the data provided by the two sources, because both of them have taken into account the same starting point, namely the detainees at Guantanamo Bay in a given moment. We could assume that Human Rights Watch and the New York Times have measured the total number of detainees in two different moments of the year, possibly in two different months. This idea seems to be confirmed by the additional data provided by the New York Times, and it seems possible that the data provided by Human Rights Watch might have been acquired in November (The New York Times 2018). As a consequence, if we take for granted this assumption, it might appear clear that the great differences between the data is significantly important to see how many people were transferred in those periods analysed. According to the two sources, there did not exist a steadily amount of people that each year left Guantanamo Bay, either to

be transferred elsewhere or to be released, and therefore in some cases it could be possible to observe high numbers of people transferred, while in some other cases the number was quite l0w: as we have seen in Table 2, for example, according to the New York Times between 2010 and 2011 only to people had left the detention facility, which is evidently different from the previous examples (Human Rights Watch 2003 – 2018; The New York Times 2018).

3.4 What happened at Guantanamo Bay: a UN Report

After the first prisoners were transferred to Guantanamo Bay, information about the conditions of the detainees and the procedures adopted inside the prison to question the suspects were scarcely available for the public. The level of secrecy raised great interrogatives at the international level, which was concerned that detainees may incur in wrong and unlawful practices and treatments: obviously, the United Nations were among those who were mostly concerned.

In order to face the situation, a group of five members of the United Nations, who were human rights experts, joined their efforts in investigating the condition of detainees inside Guantanamo Bay, thus discovering that there existed reasonable ground to affirm that the United States of America was failing to comply to both international human rights treaties, and to the rule of war as well (Human Rights Watch 2006). The Report that the five UN members issued was a long inquiry, in which they provided their observations and recommendations on the issue. However, despite the fact that they had been following the evolution of events since January 2002, the inquiry could not be perceived as totally satisfying and complete: as a matter of fact, in spite of their official request to the US Government, they had not been allowed to visit Guantanamo

Bay and to hold private meetings with the detainees, which represented a crucial part for their mission. Thus, the US refusal prevented them to acquire all the direct information they need, restricting the findings to second-hand information.

The Report showed concerning results, that were however in line with our previous observation that the war on terror had somehow changed the American behaviour towards its commitment with human rights treaties. First, it was observed that detainees were principally hold in Guantanamo Bay to obtain useful information on Al Qaeda and its supporters; hence, according to the Report, US Authorities were not holding them in order to prevent them to return to fight against the United States, as it had been stated before. Second, the inquiry focused on the creation of the so-called Combatant Status Review Tribunal (CSRT), composed by three officers, whose main aim was to examine all the single cases of detentions and verify the status of any detainee. The CSRT were perceived as not fair and not in line with international standards, because detainees held at Guantanamo Bay had been deprived of the right to challenge the lawfulness of their detention, and that deprivation was causing several problems. Nonetheless, the Report strongly criticised the Tribunal, as it did not meet the basic requirements of Article 9 and 14 of ICCPR: they were not official courts and they did not provide the detainees with a defence counsel, which was seen as a basic and fundamental requirement. All things considered, the US was not guarantying the right to a fair trial to its prisoners, and that was seen as a severe breach of international law (E/CN.4/2006/120 2006: 16 - 18). Third, the Report provided the list of the interrogation techniques that had been approved by the same US Secretary of Defense, and they included: detention in isolation, deprivation of light and of comfort items, extenuating interrogations. It was clear that those examples proved to be in total contrast with the definition of torture and

other cruel, inhuman or degrading treatment or punishment included in the CAT, thus representing a further confirmation of American non-compliance.

As we might expect, the conclusions further confirmed the initial findings and underlined the gravity of the situation inside Guantanamo Bay, which needed to be radically changed. In the recommendations, the five UN members stated that "the United States Government should close the Guantanamo Bay detention facilitate without further delay" (E/CN.4/2006/120 2006: 38), because it was evident that the situation could not be sustained any longer; in addition, the US Government was also urged not only to revise and to apply its commitments with international human rights treaties, thus preventing any act of torture or cruel, inhuman or degrading treatment or punishment, but also to allow an impartial and independent investigation on all the allegations directed to Guantanamo Bay (E/CN.4/2006/120 2006: 1 – 40).

Despite the strong attack that the US Government had received on behalf of the United Nations Report, it did not accept any of the observations and conclusions: on the contrary, it reiterated that all detainees at Guantanamo Bay were treated humanely and that all evidences included in the Report were mere allegations (The Guardian 2006). The American reaction should not be surprising, because it was in line with its official position. After acknowledging the findings and the observations of the UN Report, had the United States confirmed them, it would have subsequently confirmed its failure in complying with its commitment to protect human rights, and that could not clearly happen, or it would have seriously damaged the US image at the international level. What was even more interesting was the fact that the United States continued to underline that they were treating all detainees humanly, thus trying to confirm their positive attitude towards them; moreover, when the State described the evidences

contained in the Report as mere allegations, it did so perhaps basing its observation on the fact that the Report did not contain any direct testimony of any of the detainees at Guantanamo Bay. However, as we have seen, the five members of the United Nations had requested permission for private meetings with the detainees, in order to further support their findings, but such permission had been strongly denied by the United States Government. From this standpoint, we could conclude that the refusal of the permission should be conceived as a sort of a weapon that the United States wanted to preserve, in order to consequently attack any possible negative observation on its practices at Guantanamo Bay. Hence, claiming that the Report could not be totally credible was a means to remove any possible shadow from its possible failure in committing with international human rights treaties, as well as a tool to preserve its reputation as the most powerful democracy in the world, strongly committed to protect human rights.

3.5 The United States of America and the Report to the Committee against Torture: a paradox?

As we have observed in the previous paragraph, the use of Guantanamo Bay as a place for detention of presumed or actual terrorists and supporters of the Al Qaeda organisation was not in line with the provisions of all the main international human rights treaties, of which the United States of America were State Parties. Specifically, the many claims that torture and other cruel, inhuman or degrading treatment or punishment were used during interrogation sessions raised deep concern among the public opinion, and were in total contrast with what the United States had accepted with the ratification of the CAT. The country was a Party to the Convention since October

21, 1994 and, as we have previously observed, it had always been one of the main active States in the leading the efforts to prohibit the use of torture under international law: still, the reality at Guantanamo Bay seemed to prove the opposite. What is paradoxical in our observations on this case was the American attitude towards the issue, which was contrary to the international perception. The paradox was even more evident from the US Report to the Committee against Torture, in which the State seemed to almost totally disregard any allegation on the use of torture in its detention centre. We shall therefore provide a comparison between the American Report and the Committee's Considerations on it, in order to better address the paradox that we have assumed.

Under Article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which required State Parties to submit periodic reports on the measures they were undertaking to prevent any possible torture practice, on May 5, 2005 the United States of America submitted their Report, with some delay from the due date that had been established; it was then followed by an Addendum sent on January 13, 2006 in which there were some revisions to the Annexes: we shall therefore refer to the second version of the Report. Already from the first statements in the Introduction, the American position immediately appeared clear: the United States reaffirmed its strong commitment to respecting the law, the U.S. Constitution, all international treaties, and as a consequence, the Convention against Torture itself. Furthermore, it was announced that "the President of the United States has made clear that the United States stands against and will not tolerate torture under any circumstance" (CAT/C/48/Add.3/Rev.1 2006: 4). The remarks on the American commitment in fighting and prohibiting torture were more than once reiterated, certainly

to underline the high degree of United States compliance with its international obligations. The Report continued with the thorough explanation of all American efforts that had been undertaken under the Articles of the CAT.

Recognising that implausible allegations on the use of torture inside American prisons had been forwarded, the US Report specifically addressed those claims in Annex I Part One, providing an encompassing description of the general situation. First of all, it underlined the fact that all detainees were treated humanely, as President Bush had announced from his official statement on the treatment of detainees in 2002. Second of all, after summarising the escalating events that had led to the terroristic attacks of September 11, 2001, and to the development of the consequent war on terror, the Report focused directly on the detainees: it acknowledged that the US Army had detained thousands of people believed to be supporters of Al Qaeda and of the Taliban groups, in order to screen them and to decide whether they constituted a threat or not; nevertheless, only the ten percent of all those people had been transferred to Guantanamo Bay, or to other similar destinations. Third of all, it was brought to the attention of the Committee against Torture that many Combatant Status Review Tribunals (CSRTs) had taken into account the cases of all detainees in Guantanamo, to verify whether they could still be classified as enemy combatants or not. For clarity of purposes, the Report underlined that an enemy combatant was:

> An individual who was part of or supporting Taliban or al Qaeda forces, or associated forces that are engaged in hostilities against the United States or its coalition partners. This includes any person who has

committed a belligerent act or has directly supported hostilities in aid of enemy armed forces (CAT/C/48/Add.3/Rev.1 2006: 54).

While carefully assessing each singular case, the CSRTs also guaranteed specific rights to all detainees to underline their commitment to favouring just and fair processes. On the matter of detainees' release, the Report claimed that in Guantanamo Bay people were detained as long as it was necessary to judge their status, and that the ultimate goal of the US Administration was to release those detainees that would have not constituted a threat after that; the deep problem related to this was represented by the fact that it was difficult to decide whether a person would have returned to fight for the enemies or not: indeed, there existed documented cases of people that had returned side by side with the Taliban group. Finally, the Report focused on the treatment of detainees and on the allegations on the use of torture or of other wrongful procedure inside Guantanamo Bay. On the first issue, it was underlined that all detainees could enjoy an adequate treatment inside detention areas, as they received food, clothing, hygiene items, and also excellent medical care. Furthermore, the International Committee of the Red Cross could visit every detainee, and confidentially communicate the results of the meetings to the US Government. On the other issue, instead, the Report showed a very resolute attitude, as it regarded all allegations regarding the treatment of the detainees as inconsistent: as a matter of fact, all the examples named in the Report had failed to provide consistent evidence on the supposed use of torture, thus confirming the American position. Nonetheless, in the Report there was the admission of the existence of some incidents of misconduct at Guantanamo: nevertheless, they

were described as mere abuses, and it was confirmed that those responsible had already been punished (CAT/C/48/Add.3/Rev.1 2006: 4 – 71).

After having briefly analysed the main points of the US Report, why shall we describe it as a paradox? The answer seems to be quite straightforward. What the United States had described in the Report could be regarded as a sort of distorted and dysfunctional view of its actions or, as Cherif Bassiouni claimed, "a case of political schizophrenia" (2006: 4). Indeed, the whole American attitude seemed to totally forget what was actually happening inside Guantanamo Bay and, despite the restricted access to information related to the treatment of the detainees, we have seen that there was reasonable ground to determine that torture practices were implied in the prison, thus confirming the American failure in complying with the Convention against Torture and, in general, with its human rights commitment. Thus, the paradox is evident in the contraposition between American official statements on the one side, that were aimed at portraying once again the high level of American compliance with its human rights commitments, and the reality which, even if impartial, showed the contrary and advanced the observation that unlawful practices were used inside Guantanamo Bay.

3.6 Responses from the international opinion: confirming the paradox

The Report submitted by the United States to the Committee against Torture was not exempted from subsequent considerations and even harsh critiques. We will now take into consideration the most interesting and useful examples.

The Committee against Torture adopted its conclusions and recommendations on May 17 and 18 2006, after reviewing the Report during its official meetings. At the beginning, the Committee recognised that the United States had been greatly challenged

by the terrorist attacks of September 11, 2001, and thus it acknowledged that the US Administration was strongly engaged in protecting its security, in order to prevent any similar devastating episodes. Furthermore, it positively welcomed all US statements regarding the condemnation and the prohibition of the use of torture in its territories and even abroad, making clear reference to the initial statements of the American Report that we have already taken into account in our brief analysis. Notwithstanding those initial comments, the Committee continued by expressing deep concerns on a variety of topics: however, we will take into consideration only those that seem to be relevant for the purpose of this dissertation. First of all, the Committee criticised the US position according to which the Convention was not applicable at all times or in the context of that peculiar conflict, because the Committee stressed the fact that the Convention should always apply, without any possible derogations. Second of all, the concern was extended to the fact that not all detainees were officially registered by US authorities, and to the allegations that there existed some secret detention facilities that not even the Red Cross could visit: as a consequence, it would have been extremely difficult to determine whether those detainees were rightfully treated or not. Third of all, the Report clearly indicated that the Committee was not satisfied with the possibility that the Convention against Torture could possibly be derogated under certain particular circumstances, such as the terroristic attacks. Finally, and perhaps most importantly, the Committee expressed its concern on the fact that detainees were held at Guantanamo Bay for too protracted periods, without the basic and sufficient assistance under different aspects: therefore, it provided a strong recommendation on the issue, stating that:

> The State party should cease to detain any person at Guantánamo Bay and close this detention facility, permit access by the detainees to judicial process or release them as soon as possible, ensuring that they are not returned to any State where they could face a real risk of being tortured, in order to comply with its obligations under the Convention (CAT/C/USA/CO/2 2006: 6)

Furthermore, the concern was also extended to the reports received on the use of torture practices on the detainees (such as, for example, electroshock devices), and to the allegations on the use of brutality and ill-treatment by the US armed force, which represented a breach of the Articles of the CAT.

At the end of the Report, the Committee invited the United States to reconsider its declaration under Article 22 of the Convention, so that to recognise the competence of Committee to receive and consider communications submitted by individuals: indeed, until that moment the State Party recognised such competence on the communications received by State Parties only (CAT/C/USA/CO/2 2006: 1 – 10). From this point of view, we could advance a consideration on the Committee's invitation: we could observe, in fact, that it could represent a strategic move that could guarantee the possibility of receiving communications directly from the detainees of Guantanamo Bay, in order to confirm or confute the allegations on the use of torture in the facility. Hence, having the possibility to denounce their situation, it is very plausible that detainees would submit any possible document and information, in order to be helped and to unveil the US practices inside Guantanamo, and inside the other facilities as well.

Even by taking into consideration the Report submitted by the Committee against Torture to the United States we could observe that the paradox is further confirmed. On the one hand, the Committee was satisfied with all the commitments under CAT Articles that the US Government had declared it had undertaken, in order to comply with its obligations. On the other hand, however, the Committee could clearly not supersede the fact that some American statements seemed not to be totally in line with its general international obligations, and also the fact that allegations on the use of torture or of other cruel, inhuman or degrading treatment or punishment continued to be present at Guantanamo Bay, in total conflict with the Convention against Torture in particular. Furthermore, the concern regarding the prolonged detainment of people further enhanced the possibility that those practices could be perpetrated. In the end, the request submitted by the Committee to allow individuals to have their communications considered directly under Article 22 of the CAT could be perceived as a confirmation of the fact that the Committee at least partially acknowledged the fact that allegations against the United States could be true: nonetheless, had the United States accepted that invitation, it might have risked to expose the true reality of Guantanamo Bay to the world, as we have already observed that detainees would have quite undoubtedly submitted their communications to the Committee. Therefore, it should not be surprising to notice that the Committee further urged the United States to extend the Committee competence under Article 22 in its Final Considerations of the new American Report in 2014, confirming that the recommendation had not been followed yet (CAT/C/USA/CO/3-5 2014: 16).

3.7 Guantanamo Bay today: has something changed?

After reviewing some of the main events and issues that have characterised the history of Guantanamo Bay detention centre, we will now focus our attention on more recent years, in order to whether some of the problems have been resolved or not. We can already anticipate that up to the beginning of 2018, Guantanamo Bay is still open and, as we have pointed out thanks to the data provided by The New York Times, there are still few people detained there: the only positive aspect that we can underline is the fact that the number has considerably decreased since 2002.

In spite of his previous statements regarding the possibility of closing down Guantanamo Bay and transferring the detainees to another location, in October 2008 President Bush declared that he would have kept the detention centre open at least until the end of his mandate, and envisioning the possibility that Guantanamo Bay would have remained open even in the years after him. His decision, despite some initial opposition, was largely accepted and supported by the US Administration (The New York Times 2008). Nevertheless, his successor Barack Obama expressed the desire to definitely close Guantanamo Bay at the beginning of his mandate, and even acted coherently with his ideas.

As a matter of fact, on January 22, 2009 President Barack Obama signed Executive Order 13491 – Ensuring Lawful Interrogations, with which he ended any enhanced interrogation technique that had been used until that moment during interrogations of detainees; moreover, he also outlined the new interrogation methodology, which was expected to follow specific rules, and to be acceptable and lawful. Hence, he required all the authorities in charge to take any effort to ensure consistency with the Order (Executive Order 13491 2009). The main aim of that decision was to show, probably

and especially, to the international society that the United States wanted to eliminate any possible practice that was clearly against any provision expressed not only by American law, but also by all the international human rights treaties with which the State had to faithfully comply.

Furthermore, on the same day, President Obama also signed another important document, namely Executive Order 13492 on the Review and Disposition of Individuals Detained at the Guantánamo Bay Naval Base and Closure of Detention Facilities. In the document, President Obama recalled that over the years circa 800 people had been detained at Guantanamo, and noticed that some of them were still there after six years. By acknowledging the concerns that those detentions had raised all over the United States and the world included, President Obama stated that with the Executive Order he was determining the total closure of Guantanamo Bay facilities as soon as possible, or at least within one year from that moment. The closure was of course expected to be anticipated by the transfer of all detainees to other federal prisons, and if some detainees were to be still present at Guantanamo at the closure moment, they would be immediately disposed, according to their condition: according to the single case, they could either be released, sent home, or transferred to other American detention facilities. President Obama then provided the basic guidelines that ought to be followed in the process of reviewing the status of the single detainee, in order to come to the right decision: again, the main goal of the Order was to provide some rules that had to be consistent with the basic human rights of the people (Executive Order 13492 2009).

The signing of those two Executive Orders represented a remarkable event in the United States history, as they aimed at finally closing a long parenthesis in which the State had systematically failed to comply with international law and international

human rights treaties, by permitting the use of torture and other cruel, inhuman or degrading treatment or punishment on the detainees at Guantanamo Bay. At the moment of the signature, it was believed that there still was approximately 245 people at the naval base, and that some of them had been detained without any right incrimination (The Guardian 2009): President Obama had certainly perceived that such a situation could not be sustained any longer, and that a significant change was needed. Indeed, we could define the signing of the two Executive Orders as a signal that President Obama wanted to separate himself from the previous Administration, that had not done anything significant to find a solution to the debated issue of Guantanamo Bay; furthermore, it could also be conceived as a signal that Obama had acknowledged the fact that the United States had failed to fulfil its commitment with the protection of basic human rights for too long, and that he had the duty to re-establish a lawful conduct for his country.

Nonetheless, the international hopes related to a possible effective action and to the actual closure of Guantanamo Bay were quickly deluded, as the Executive Orders signed by President Obama failed in achieving their goals. As a matter of fact, on January 22, 2014, Erika Guevara Rosas, Director for the Americas at Amnesty International, sadly observed that Guantanamo Bay had continued to operate with no change with respect to past years, and five years had already passed since the Presidential decision. In addition, Guevara Rosas also proclaimed that trials under military commission systems that did not respect international standards continued to take place, as well as torture practices continued to be used on the detainees; she also stated that there had been reported nine dead detainees at the base, another aspect that had to be strongly condemned (Amnesty International 2014). As a confirmation of

Guevara Rosas statement, even the Committee against Torture expressed its deep concern on the reality that still existed at Guantanamo Bay in 2014. First, it reminded the United States of their duty to prevent any possible case of torture or of other cruel, inhuman or degrading treatment or punishment in its territory: indeed, the Committee had reasonable concerns regarding the absence of any actual investigation over the reported cases of torture, and once again urged the State to take effective measures. Second, the Committee reaffirmed its concern on the fact that at Guantanamo Bay there still were people detained for indefinite periods of time and without any specific charge on them: as indicated in its previous Observations that we have taken into consideration, such practices constituted a violation of the CAT and had to be soon eliminated. Third, the Committee denounced the use of too brutal interrogation techniques, that were not in line with the basic provisions of international law (CAT/C/USA/CO/3-5 2014): from this denounce, we could agree on the fact that the Executive Order signed by President Obama in 2009 had not achieved the radical change that the President had expected, since unlawful interrogation techniques appeared to be still used.

On January 11, 2016 on the occasion of the 14th anniversary of the opening of Guantanamo Bay detention facility a group of human rights experts from the United Nations and the Organization for Security and Co-operation in Europe (OSCE) addressed the United States with an Open Letter in which they urged the State to end any torture practice that was still enacted, and to fulfil President Obama's order to close Guantanamo Bay, even if the official term expected by the President had already expired. The letter denounced that on January 8, 2016 there were still 104 people that were detained without any lawful trial, and that the Government had not addressed the claims that those same detainees were victims of systematic abuses. Furthermore, the

group of experts indicated that “everyone implicated, including at the highest level of authority, must be held accountable for ordering or executing extraordinary renditions, secret detention, arbitrary arrest of civilians and so-called “enhanced interrogation techniques” in the name of combatting terrorism.” The claim included all the people that were directly or even indirectly implicated in the unlawful acts, because everyone had to pay for their actions, and no one should have been excluded. Moreover, the Letter claimed that security could only be guaranteed if the United States closed the “dark chapter of post-September 11,” because otherwise international law, together with human rights treaties, would have never been totally respected by the State, if it kept on relying in the war on terror. As a consequence, in order to ease such closure, the group provided the rightful solutions to the US Government: the definitive close down of Guantanamo Bay detention facility; the end of the prolonged and arbitrary detention at Guantanamo Bay; the establishment of a mechanism aimed at receiving complaints and review all allegations of torture; the dismantlement of the military commissions at Guantanamo Bay and the transfer of the detainees to other facilities; the investigation and the prosecution of all the people involved in any act of torture or other cruel, inhuman or degrading treatment or punishment. (United Nations 2016). If the United States did not follow those indications, they would have continued to show manifest non-compliance with the Convention against Torture and with other human rights treaties alike: as a matter of fact, all the solutions advanced by the Letter addressed all the main American failures.

We can observe that both the long statements of Amnesty International and of the United Nations and the Organization for Security and Co-operation in Europe mainly focused on the need to end all unlawful actions undertaken by US Military officials and,

primarily, to officially close down Guantanamo Bay detention facilities, as it embodied the starting point for all torture practices that had been denounced: indeed, we could agree on the fact that the strategical position of the naval base had made it easier for the State to act independently by all external denunciations and observations, but given the fact that such favourable situation had continued for too long, it was time for the United States to change its standards. However, despite the strength with which both statements addressed the problem and urged the United States, the US Government did not take any effective act to answer the requests, as proved by the fact that Guantanamo Bay remains open.

A further confirmation of the unchanged situation comes from the UN Special Rapporteur on Torture Nils Melzer, who denounced on December 2017 that the detainee Ammar al-Baluchi was still undergoing severe torture and ill-treatments that were totally in contrast with international law and with international human treaties in particular. Regardless al-Baluchi family bond with one of the masterminds of the September 2001 terrorist attacks, the use of torture could not be tolerated under any circumstances, and Melzer further confirmed that such acts were in clear violation of the basic standards of the Convention against Torture. Finally, the Rapporteur underlined that his request to visit Guantanamo Bay in order to interview the detainees had been refused, as it had happened several times in the past: the American denial was of course determined by the fact that the State did not want any possible interference in its actions, and a possible confirmation that it was actually using some prohibited practices. As we have already pointed out, allowing external people to visit Guantanamo Bay would have probably meant for the United States that its unlawful practices would have been discovered and denounced, thus affecting the credibility and the reputation of the

State, which would have been internationally accused of non-compliance with international human rights treaties.

Despite the fact that Melzer did not reveal the identity of his source, even in this case the accusations made against the US Government were very serious and strong, and related to an issue that it is still central in nowadays international debate. Nevertheless, the US Department of Defense denied all the allegations made, regarding them as inconsistent; furthermore, the United States re-affirmed that the State was against any act of torture or ill-treatments, thus further confuting Melzer accusations (The Independent 2017).

Why is Guantanamo Bay detention facilities still open today, despite President Obama's Executive Orders? A fulfilling answer to this question does not seem to exist. According to Erika Guevara Rosas, "over the years Guantánamo has come to symbolize torture, rendition and indefinite detention without charge or trial – in complete violation of internationally agreed standards of justice and human rights" (Amnesty International 2018). By taking into account her statement, it could be perceived that the situation of Guantanamo Bay, which has not undergone significant changes since January 2002, may have become a standard not only for the United States, but also for the international society. On the one hand, it is true that the naval base has become one of the most well-known symbols of torture, because the concept has come to be intrinsically tied to the place. However, it seems fair to state that almost no one in the world can consider Guantanamo Bay a traditional detention centre, because the collective perception of it is the one of a horrific and unlawful prison in which detainees are victims of despicable treatments by US Officers and Militaries, notwithstanding any US denial: the world has not stopped to criticise and to ask the close down of

Guantanamo Bay. Therefore, the world has not accepted it as a standard situation, rather as a dangerous and exceptional one, that is ought to change as soon as possible. On the other hand, however, the existence and the peculiar characterisation of the detention facility may have become a standard for the US Government, or even a symbol of the results of its war on terror. Hence, the United States seems to have become accustomed to the existence of Guantanamo Bay, as a sort of a symbol of protection against terrorism. The direct consequence to such possible consideration is the fact that the United States may have also become accustomed to forgetting that the same existence of Guantanamo Bay represents a clear breach of international law and of international human rights treaties as a consequence.

3.8 Final observations on the case of the United States failure to comply with international human rights treaties and on the case of Guantanamo Bay

The Chapter has mainly focused on two pivotal issues: on the one hand, it has tried to enlighten the existing paradox of the United States of America as the most powerful democracy in the world, usually committed to the protection of basic human rights, that openly fails to comply with basic international human rights treaties (such as, for example, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) in the name of enhancing its domestic security after the disastrous terroristic attacks on September 11, 2001. As we have seen, the paradox resides in the fact that the United States, even if put in front of evidences and official Reports, still refuses to admit that it has used torture and other types of ill-treatments on the detainees of Guantanamo Bay, in the name of maintaining its internal security. On the contrary, it has repeatedly affirmed that all detainees at Guantanamo Bay were

treated humanely, that the State was strongly against any torture practice and that it would have promptly investigated and assessed any possible case on its territory.

The main consequence of such decision and behaviour could be represented by a declining credibility at international level, and a consequent bad effect on the reputation of the United States, because the double faceted American attitude can only be perceived negatively by the international public opinion. Thus, the assumption that many States comply with human rights treaties in order to preserve their reputation could be somehow confuted in this case, since apparently the United States is not very concerned with such aspect; rather, its main focus is to maintain strong control on its internal security, even if it means failing to comply with international law.

On the other hand, the Chapter has investigated the case of use of torture and ill-treatments on the detainees at Guantanamo Bay, one of the most famous American detention facilities. Guantanamo Bay was chosen by the Bush Administration in order to transfer there the huge amount of prisoners made in Afghanistan during the war on terror, in order to interrogate them and in order to acquire fundamental information about the Al-Qaeda terroristic organisation, which was the direct responsible of the 2001 attacks. As we have seen, Guantanamo Bay enjoyed a strategical position, since it belonged to Cuba, but the United States exerted complete jurisdiction over the territory. Therefore, it could also be described as a sort of "legal limbo" which could not be subjected to any federal court or, as other scholars have observed, "a state of exception" (Reid-Henry 2007: 629; Gregory 2006: 405). From those definitions, we can understand that Guantanamo Bay was indeed strategic for the United States under different points of view: first of all, it was quite far away from the federal State, therefore not easy to control constantly; second of all, it was perceived as an exceptional place basically

because it was not directly subjected to national law, and we could come to the conclusion that it was not even under international law, which should usually be enforced by domestic law; finally, given those characteristics, the United States could feel quite free in doing almost whatever it wanted without been impeded by external influences: the direct consequence was the use of torture or other ill-treatments on the detainees. Nonetheless, emphasis should be put on the use of the word *almost*, because we have seen that American practices have been noticed by the international community, and strongly criticised. Despite the difficult of acquiring direct information, many have been the denounces against the United States regarding the use of unlawful treatments and interrogations methods on the detainees at Guantanamo Bay; consequently, international attention on the case has always been very high. However, despite all the efforts made to obtain the definitive closure of the detention facility, and the hopes derived from the 2009 Executive Orders issued by the new-elected President Obama, Guantanamo Bay remains still open up to nowadays, and cases of use of torture are still being reported. The direct explanation to this phenomenon could be the fact that the United States has wrongly become accustomed to detain people for an indefinite period of time in the name of the war on terror and in the name of maintaining and protecting its security. Certainly, the fact that no sanctions have been imposed has made it even more easier to continue those practices. From this standpoint, the protracted use of torture and other unlawful practices may confirm that the United States has no apparent interest in fully complying with the international human rights treaties it has ratified over the year, especially if the provisions of those treaties somehow impede the total protection of American security and the success of the war on terror.

However, how would the United States of America react if another State behaved in this way and did those same things? We could assume that, in the attempt to confirm its manifest commitment to the protection of human rights, the United States might enact all the measures available to prevent the other State from breaching international law. Nevertheless, this idea can be regarded as a mere assumption, as the question remains open to debateable answers.

Conclusions

As it has been stated in the introduction, the goal of this dissertation was to investigate the reasons that influence the decision of a State to comply with an international human rights treaty. Furthermore, we have also presented some case studies in which, even though States remain firm in their conviction that they are fully complying with their international obligations, those same States have been found guilty of severe violations of some basic provisions of international treaties, thus proving that their compliance was largely theoretical.

In Chapter 1 compliance has been described as the degree of State's behavioural adherence to an international norm (Dai, 2013: 86-87), and has been subsequently distinguished from implementation and effectiveness. Nevertheless, the main focus of the Chapter was on the different theories that exist and that try to provide an explanation to why States comply with human rights. Firstly, we have seen that there exist the "rational actor models" (Hathaway 2002: 1944) that share the basic idea that States comply with international norms only if it is in their interest to do so, as they usually calculate the costs and the benefits that may arise from their decision. Secondly, we have defined the "normative models" (Hathaway 2002: 1955), as those approaches that perceive that ideas are the basic explanation of compliance.

In Chapter 2 we have introduced the issue of torture as one of the main causes of State's non-compliance. Initially, we have presented an overview of the general situation that existed before the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was ratified: given the lack of an international

treaty that could effectively be employed in order to change the situation, many States in the world continued to use torture or other unlawful practices in order to achieve their goals. What was worse was the fact that they continued to do so even if they were aware that those practices constituted a severe violation of basic human rights. With the adoption of the Convention against Torture in 1984 by the United Nations General Assembly many States showed their willingness to comply with the provisions of the international treaty, as demonstrated by the high number of ratifications collected over the years: we could assume that, States agreed to comply with that specific international human rights treaty because they perceived it as the right choice to make, in order to be included in a more fair world, and because they calculated that it would have been beneficial for their citizens. From the standpoint of the General Assembly, compliance would have been then further ensured by the creation of the Committee against Torture, which would have controlled the behaviour of State Parties of the Convention, to prevent them from violating the provisions. Nonetheless, in this second Chapter we have seen that, despite the importance of both the Convention and of the Committee, violations have been perpetrated by three State Parties, namely Peru, Lebanon and Egypt, and we have illustrated what happened in those cases.

Finally, in Chapter 3 we have presented the paradoxical case of the United States an of Guantanamo Bay. To begin with, we have clearly stated that the United States has always been one of the main protectors of human rights, in line with its democratic ideas and its role in the world scenario: the proof is embodied by the many international human rights treaties that it has ratified, of which we have only provided some examples. Nevertheless, its never-ending protective attitude towards the Guantanamo Bay detention facilities has somehow changed the international perception of the federal

State. Indeed, we have seen that the US Government decided to employ the naval base to detain the many people taken as prisoners during the war on terror that was mainly taking place in Afghanistan after the terroristic attacks in September 2001: from this basic point of view, we could observe that there was nothing wrong in the American decision. However, the crucial point was represented by the fact that soon after detainees were transferred to Guantanamo Bay, there begun to appear strong allegations on the use of torture and other ill-treatments by US militaries on the same detainees. Those denounces, alongside with President Bush's statement that he would have not applied the basic provisions of the Geneva Convention on the prisoners, were clearly perceived by the international community as a case of American non-compliance with its international obligations. On the contrary, the American position determined the fact that it was still complying with international treaties: possibly, it was doing so in all cases, except from the Guantanamo Bay case, which was determined as a sort of external issue. Furthermore, we have also enlightened the fact that the United States has continued to deny any torture or ill-treatments cases at Guantanamo Bay, even after receiving the Reports issued by the United Nations and by the Committee against Torture: the basic assumption, of course, was that the federal State could have never been able to violate its international obligations, as it was strongly committed to comply with them. As we have seen in Chapter 3, Guantanamo Bay is still open nowadays, even after President Obama decision to close it down (which has evidently failed) and even after further public denounces have been made. Why has this case been so crucial in our investigation on why States comply with human rights? Certainly, the paradoxical case of the United States and Guantanamo Bay has enlightened the fact that even one of the greatest protectors of human rights has shown weakness in complying with an

international treaty that, in a given historical moment, was perceived as not in line with its interests. Indeed, the United States has remained committed to its international obligations as long as they did not enter in conflict with the perceived most important issue of internal security.

The existence of various and different possible explanations on why States comply with human rights further underline the fact that this concept is still very difficult to be assessed from one single, satisfactory and complete point of view. Thus, in this dissertation it has not been possible to provide a final answer to the main question: certainly, all theories have provided us with satisfactory observations and indications, but given the complexity of the issue, it would be almost impossible to decide what position is the predominant, or what idea is the most satisfying. Nevertheless, if we make reference to the cases that we have presented, namely the Peruvian, the Lebanese and the Egyptian case in the second Chapter, and the American case (which obviously includes the Guantanamo Bay case as well) in the third Chapter, we could observe that the calculation of costs and benefits and the interests of the States seem to prevail over the importance of complying with international human rights treaties and international obligations in general. In the Peruvian and in the Lebanese case, we have seen that there was an evident lack of fundamental legislative institutions that could have monitored State's compliance: in this case, the costs deriving from modifying the situation might have been perceived as too high, and thus compliance with the CAT has been somehow adjusted. On the contrary, as we have seen, in the Egyptian case torture was used in order to acquire information from people, thus serving to satisfy State's mere interests, and regardless any reputational cost that may have derived; similarly, but from a more complex point of view, even with the United States and Guantanamo Bay case it has

been possible to observe that compliance with international human rights treaty was guaranteed as long as it was in line with the interests of the State at that moment, which were related to the level of security. Therefore, once State's interests and State's willingness to comply with an international norm do not match, we have observed that interests will generally be the ones that will prevail, thus confirming the rationalist approach. In conclusion, it is important to underline the fact that the cases presented in the dissertation are only some possible examples that can be used to explain why States comply with human rights, or why they do not comply with them in some cases.

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