

Report to the General Assembly on torture-free trade: examining the feasibility, scope and parameters for possible common international standards

Introduction

1. In Resolution 2001/62, the UN Commission on Human Rights requested the UN Special Rapporteur on Torture, Mr. Theo Van Boven, “to study the situation of trade and production in such equipment, its origin, destination and forms, with a view to finding the best ways to prohibit such trade and production and combat its proliferation, and to report thereon to the Commission”.¹
2. In his 2003 Study to the UN Commission on Human Rights, the Special Rapporteur stated that:
*“the enactment of legal and other measures to stop the production and trade of equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment is part of [the] obligation [under Article 2 of the UN Convention Against Torture] of a general nature to prevent acts of torture.”*²
3. In his subsequent 2004 report to the Commission on Human Rights, the Special Rapporteur recommended, inter alia, that States:
 - Designate and prohibit the manufacture, transfer and use of certain forms of equipment ‘specifically designed for’ or which ‘has no or virtually no, practical use other than for the purpose of’ torture, whose use is inherently cruel, inhuman or degrading;
 - Introduce strict controls on the export of other security and law enforcement equipment to help ensure that it is not used to inflict torture or ill-treatment;
 - Consider the development of an international regulatory mechanism.³
4. In resolution 72/163 adopted at its 72nd session on 19 December 2017, the General Assembly called upon all States to take appropriate effective legislative, administrative, judicial and other measures to prevent and prohibit the production, trade, export, import and use of equipment that has no practical use other than for the purpose of torture or other cruel, inhuman or degrading treatment or punishment.⁴
5. At its 73rd session, on 28 June 2019, the General Assembly adopted resolution 73/304, entitled “Towards torture-free trade: examining the feasibility, scope and parameters for possible common international standards”. Through this resolution, the General Assembly requested the Secretary-General, with the provisions of resolution 72/163 in mind, to seek the views of Member States on the feasibility and possible scope of a range of options to establish common international standards for the import, export and transfer of goods used for (a) capital punishment, (b) torture or other cruel, inhuman or

¹ UN Commission on Human Rights, Resolution 2001/62, Torture and other cruel, inhuman or degrading treatment or punishment, paras 8-9

² Study on the situation of trade in and production of equipment which is specifically designed to inflict torture Submitted by the Special Rapporteur on torture E/CN.4/2003/69, para 35

³ Report of the Special Rapporteur on the question of torture, Theo van Boven. E/CN.4/2005/62

⁴ A/RES/72/163, para 19. This call was reiterated in resolution 74/143 adopted in November 2019 by the General Assembly.

degrading treatment or punishment, and to submit a report on the subject to the General Assembly at its seventy-fourth session.⁵

6. Recognizing that the absence of common international standards on the import, export and transfer of goods used for (a) capital punishment, (b) torture or other cruel, inhuman or degrading treatment or punishment is a contributory factor to facilitate the availability of these goods and enable such practices, the General Assembly acknowledged the growing support across all regions for concluding an international instrument, negotiated on a non-discriminatory, transparent and multilateral basis, to establish such common international standards. It also acknowledged the importance of international trade and the need to ensure that the establishment of common international standards does not create barriers to international trade in other goods.⁶
7. The questionnaire below is aimed at assisting Member States in providing information and inputs for the above-mentioned report on feasibility, including existing national and regional regulations of trade in goods used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment as well as on the scope/categories of goods to be prohibited and strictly controlled for import, export and transfer under the proposed common international standards.
8. For the purpose of this questionnaire, four categories of goods are distinguished:
 - Goods which have **no practical use other than** for the purpose of torture and other cruel, inhuman and degrading treatment or punishment. These may include goods designed to restrain human beings, but are not suitable for such use by law-enforcement authorities, such as weighted leg irons, fetters, thumb-cuffs; restraints fixed to walls, certain multi-point restraints; cage beds; spiked batons and spiked shields;. certain electric shock devices including bodily worn electric shock devices, among others.⁷
 - Goods that **could be misused for** the purpose of torture or other cruel, inhuman or degrading treatment or punishment i.e. law enforcement equipment designed for legitimate use by law enforcement officials but which could be misused for the purpose of torture or inhuman or degrading treatment or punishment, such as certain restraints, electric shock weapons, police batons, riot control agents, including tear gas, among others.⁸

⁵ A/RES/73/304, para 1

⁶ A/RES/73/304, preamble

⁷ For further discussion of indicative goods see: United Nations, Study on the situation of trade in and production of equipment which is specifically designed to inflict torture Submitted by the Special Rapporteur on torture E/CN.4/2003/69; Council of Europe, CDDH(2019)R92Addendum3 16/12/2019. CDDH Feasibility study of a legal instrument concerning the trade in goods used for torture and other cruel, inhuman or degrading treatment or punishment and the death penalty; and EU regulation 2019/125 of 16 January 2019 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment. Annex II.

⁸ For further discussion of indicative goods see: CDDH(2019)R92Addendum3 16/12/2019. CDDH Feasibility study of a legal instrument concerning the trade in goods used for torture and other cruel, inhuman or degrading treatment or punishment and the death penalty; EU regulation 2019/125 of 16 January 2019 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment. Annex III. See also the Study on the situation of trade in and production of equipment which is specifically designed to inflict torture Submitted by the Special Rapporteur on torture E/CN.4/2003/69, para 7 and Report of the Special Rapporteur on the question of torture, Theo van Boven. E/CN.4/2005/62, paras 17- 23

- Goods which have **no practical use other than** for the purpose of capital punishment. These may include for example electric chairs, gas chambers, automatic lethal injection devices, gallows.⁹
- Goods that **could be misused for** the purpose of capital punishment. These may include chemicals which can have legitimate medical use, but can be misused for lethal injection executions such as sodium thiopental or pentobarbital, among others.¹⁰

Questionnaire

1. What are the regional and/or national instruments or policies guiding your country for the regulation of trade in goods used for a) capital punishment b) torture or other cruel, inhuman or degrading treatment or punishment? Please provide examples. Which government department/agency is responsible for monitoring the implementation of such regulations/policies, if any?
2. Have there been any investigations, prosecutions and/ or convictions for breaches of national regulations on the trade in goods indicated in paragraph 8 of the introduction to this questionnaire? If so, please provide details.
3. Do you agree with the proposed categorization of goods used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment indicated in paragraph 8 of the introduction to this questionnaire (see above)? If not, which categories would you propose?
4. Please indicate whether you believe there should be an exhaustive list of goods under each category. If yes, should there be a mechanism for regular updating of the lists under each category?
5. Should the proposed common international standards prohibit trade in goods which have no practical use other than for the purpose of capital punishment or torture or other cruel, inhuman or degrading treatment or punishment? If not, please provide further explanations.
6. Should the proposed common international standards provide for strict control of trade in goods that could be used for the purpose of torture or other cruel, inhuman or degrading treatment or punishment and goods that could be used for the purpose of capital punishment? If not, please provide justification.
7. What types of activities linked to “import, export and transfer” should the proposed common international standards regulate? Please consider activities such as transit, promotion, technical assistance and training, brokering, sharing technology,

⁹ For further discussion of indicative goods see: CDDH(2019)R92Addendum3 16/12/2019. CDDH Feasibility study of a legal instrument concerning the trade in goods used for torture and other cruel, inhuman or degrading treatment or punishment and the death penalty; and EU regulation 2019/125 of 16 January 2019 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment. Annex II.

¹⁰For further discussion of indicative goods see: CDDH(2019)R92Addendum3 16/12/2019. CDDH Feasibility study of a legal instrument concerning the trade in goods used for torture and other cruel, inhuman or degrading treatment or punishment and the death penalty;and EU regulation 2019/125 of 16 January 2019 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment. Annex IV.

manufacturing, production and commercial marketing, among others. Please also provide an explanation for why these activities should be regulated or not.

8. Please indicate which risk assessment mechanisms and criteria should be considered for the import, export and transfer of a) goods that could be used for the purpose of torture or other cruel, inhuman or degrading treatment or punishment and b) goods that could be used for the purpose of capital punishment. Please consider, inter alia, the criteria for preventing diversion to third countries.
9. Please indicate what you consider to be the most suitable type of international instrument to establish common international standards for regulating goods used for capital punishment or torture or other cruel, inhuman or degrading treatment or punishment. Please provide further explanation.